VOTE "NO" ON SB 478

The above listed organizations urge you to oppose SB 478. Without question, our organizations and member companies share a common commitment to advancing the safe and secure use of chemicals and consumer products. **However, as the Oregonian editorialized this past weekend, SB 478 is an "unnecessary overreach."**

Presence Does Not Equate to Risk

SB 478 would trigger new reporting and mandatory product reformulation for certain products based on the mere presence of an identified chemical, not through any determination that the product is harmful. For example, products which only contain a listed chemical in an "inaccessible component" that a child could never access could still be banned.

A children's product that contains an identified chemical does not necessarily mean that the product is harmful to human health or the environment or that there is any violation of existing safety standards or laws. Risks associated with a chemical in a product are dependent upon the potency of the chemical and the magnitude, duration and frequency of exposure to the chemical.

Expanded Authority to State Bureaucracy

SB 478 requires manufacturers to complete an "alternatives assessments" on identified chemicals of concern yet provides little guidance or clarity as to what would constitute an acceptable alternatives assessment. Moreover, the bill allows OHA to determine that an alternatives assessment is "incomplete," yet provides no direction as to how that determination would be made. For example, SB 478 does not require that an alternatives assessment consider key issues such as cost, performance and availability. OHA could become the sole arbiter of what children's products may be manufactured for use in Oregon.

Compliance Challenges

SB 478 contains definitions and compliance requirements that differ significantly from other state requirements, including Washington State.

- Companies will incur additional costs and expend additional resources to test and report on the same chemicals in the same products for both programs.

- The data sharing provisions contained in the bill may not be possible due to the inconsistencies on information that must be reported.

- The bill does not contain a "phase-in" schedule for reporting as was done in Washington State which means companies have to report on all product lines at the same time.

- SB 478 requires alternative assessments even though there is no universally accepted framework or guidance at this time.

- It is unclear if any information submitted to OHA by a manufacturer is eligible for protection as confidential business information (CBI).

- The bill permits OHA to establish by rule fees to support the cost of the program yet provides not cap on the amount that could be raised. OHA is also authorized to obtain an alternatives assessment from a third party and charge the assessment to the manufacturer, which raises due process concerns.

New Cost Pressures

OHA would expend resources to create a list of "high priority chemicals", undertake any necessary rulemaking and evaluate information submitted to the Department to comply with reporting, wavier provisions, and hazard and alternative assessment requirements.

As a benchmark, the Washington State Department of Ecology reports it spends roughly $100,000 per year just to maintain a reporting database similar to that envisioned under SB 478. Additional costs for product testing, regulatory development and enforcement range from $200,000 - $300,000 per year.

Congressional Activity Makes SB 478 Unnecessary

Congress is poised to make substantive changes to the federal Toxic Substances Control Act (TSCA). A national, uniform standard makes sense from a policy and economic perspective. Both the US House and Senate are actively moving legislation to update TSCA and give US EPA more authority to review chemicals in commerce, strengthen the safety standard, and strengthen protections for the most vulnerable. Passage of a federal bill would create a cohesive, effective national chemical management system that will give consumers, retailers, manufacturers, public health advocates and regulators across all 50 states the kind of predictability, consistency, and certainty that the national marketplace needs, while also strengthening oversight and providing Americans with more confidence in the safety of chemicals.

In short, it provides a robust, national chemical regulatory system that responds to the concerns that SB 478 attempts to address.

Should you have any questions, please contact Matt Markee (503-510-3371) or Drew Hagedorn (503-380-1075).

'Toxics' bill is an unnecessary overreach: Editorial

The Oregon state Capitol in Salem. *(Michelle Brence/Staff)*

By The Oregonian Editorial Board
on June 28, 2015 at 2:08 PM, updated June 28, 2015 at 2:09 PM

Many of Oregon's notable policy failures are a consequence of overreach. Why do something simple, lawmakers seem to ask, when you can do something complex and hyper-ambitious instead? The answers to that question abound – Cover Oregon, the Business Energy Tax Credit and most recently the low-carbon fuel standard. Lawmakers keep right on reaching anyway, and the impulse is driving Senate Bill 478 – aka "the toxics bill" – ever closer to the governor's desk.

The bill's purpose – to protect children from toxins - is part of its genius. Protecting kids is something everybody wants, for which reason the legislation automatically enjoys a significant level of uncritical support. Even so, similar proposals have died in the Legislature before, including in 2013. As appealing as it might sound, this bill has problems – and a very cheap and simple alternative.

The legislation, broadly speaking, would do two things. First, it would establish a list of "high priority chemicals of concern" and require manufacturers of children's products to report the presence of such substances "at or above a de minimis level." The resulting database would be searchable by the public. Second, the bill eventually would require manufacturers to remove these substances from a few classes of products used by very young children. Manufacturers could apply for waivers under certain circumstances – if, for instance, removal is "not financially or technically feasible" – but otherwise the mere presence of a listed chemical in a covered product would be treated as evidence of danger.

As alarming as the bill's terminology might be, the presence of "high priority chemicals of concern" in a product doesn't necessarily mean that using it is dangerous, acknowledges chief Senate sponsor Chris Edwards, D-Eugene. "Any given product by itself can be deemed to be safe if any child were exposed to only that product," he says. "But there's no way to know the total load on a child's system because there are so many products."

The bill targets a fuzzy area insufficiently covered, supporters believe, by federal regulations, which most efficiently govern products marketed in all 50 states. A handful of states, including Vermont, Minnesota

and Washington, have adopted related legislation that focuses largely upon the reporting of chemicals deemed worrisome. SB478 would leap with unusual vigor into ban-'em territory.

Surely, you'd think, state lawmakers would be loath to contribute in such dramatic fashion to the creation of a nationwide regulatory patchwork unless they were responding to a true health emergency. This view, however, doesn't square with the loopholes written into SB478. Manufacturers of children's products with global sales under $5 million need not report or remove "high priority chemicals of concern." Manufacturers with 25 or fewer employees may ask for an extra two years to remove listed chemicals.

And then there's the special sporting-goods exemption.

The reporting language in SB478 was written carefully to mirror Washington's program. Oregon will adopt Washington's list of worrisome chemicals, for instance. Oregon will consider adding or dropping chemicals added or dropped by Washington. The monkey-see, monkey-do approach is smart – why repeat work someone else is doing already? – and extends even to definitions. Among these are categories of products excluded from scrutiny, including certain sporting goods. As introduced, the definition of a key sporting-goods exemption mirrored Washington law almost exactly. Recently, however, an amendment to Oregon's bill packed the sporting-goods exemption with scads of products – backpacks, tents, rain gear, sport bags, luggage and so on – marketed, Edwards acknowledged, by the "fairly large sporting equipment and apparel cluster in Oregon."

It's unlikely that lawmakers would carve out such exemptions in a law that responded to anything approaching a public health crisis. You could argue that small and local businesses deserve some concessions, but the freedom to poison kids clearly isn't one of them.

Why, given the limited nature of the problem SB478 seeks to address, take the dramatic and unusual step of compelling manufacturers to remove listed chemicals? Supporters argue that the federal government isn't doing enough to address the problem. However, an update of the 1970s-era Toxic Substances Control Act is working its way through Congress, clearing the House Tuesday by a vote of 398 to one. Telling manufacturers what they may not include in products sold to children is best left to Uncle Sam, who happens to be moving in the right direction.

That leaves the matter of collecting and reporting chemical information for the benefit of parents, many of whom might like to exercise an abundance of caution in shopping for their kids. In that respect, SB478 itself points to a solution that eliminates the need for the bill itself. Because the bill's collection and reporting elements deliberately mimic Washington's program – albeit with some Oregon-specific loopholes – why not defer entirely to the state to our north?

Everything in SB478 that's worth doing, in other words, could be accomplished at almost no cost to Oregonians by steering them to the website site for Washington's Children's Safe Products Act.

Udall, Carper, Whitehouse, Merkley, Booker Statement on House Passage of Chemical Safety Bill

June 24, 2015

• **WASHINGTON -** Today, U.S. Senators Tom Udall (D-N.M.), Tom Carper (D-Del.), Sheldon Whitehouse (D-R.I.), Jeff Merkley (D-Ore.), and Cory Booker (D-N.J.), Democratic cosponsors of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, issued the following joint statement in response to passage of chemical safety reform in the U.S. House of Representatives:
"The nation needs a workable chemical safety law, and while we don't agree with the details of the House bill, tonight's vote is yet another bipartisan demonstration that Congress must act. We expect the Senate's comprehensive TSCA reform bill, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to receive a strong bipartisan vote in the Senate in the coming weeks.

"Families in our states -- and across the country -- want a strong, comprehensive law that will finally keep their communities safe from dangerous chemicals. We are committed to ensuring EPA has the necessary tools, resources and mandates to create a comprehensive chemical safety system. That includes a clear focus on chemicals that pose a risk to the environment and public health, a mandate to review the safety of all new and existing chemicals, authority directing the EPA to test chemicals, assurance that companies can no longer hide information from the public, and clear regulatory authorities. We look forward to working with lawmakers on both sides of the aisle and in both chambers to ensure that the bill that goes to the president's desk is as strong and comprehensive as possible."