

House Bill 3478

Sponsored by Representatives PILUSO, PARRISH, REARDON, Senator ROBLAN; Representatives BARKER, BOONE, CLEM, DAVIS, EVANS, GOMBERG, HOLVEY, KOMP, RAYFIELD, WEIDNER, WILSON, WITT, Senators BOQUIST, JOHNSON, THOMSEN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Phases in prohibition on manufacture and sale of personal care products and over-the-counter drugs that contain synthetic plastic microbeads. Punishes violation as unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to products that contain synthetic plastic microbeads; creating new provisions; and
3 amending ORS 646.608.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. (1) As used in this section:

6 (a) **“Over-the-counter drug” means a personal care product for which the United States**
7 **Food and Drug Administration requires a label with the title “Drug Facts” or “Active in-**
8 **redients” under 21 C.F.R. 201.66, as in effect on the effective date of this 2015 Act.**

9 (b) **“Personal care product” means a product or component of a product that a consumer**
10 **purchases with the intent to apply the product or component to the human body to clean or**
11 **alter the appearance of the body.**

12 (c) **“Synthetic plastic microbead” means a solid plastic particle that a manufacturer in-**
13 **tentionally incorporates into a personal care product and that:**

14 (A) **Measures less than five millimeters in diameter;**

15 (B) **Is not biodegradable;**

16 (C) **The manufacturer intends as a method for exfoliating skin or otherwise cleaning the**
17 **human body; and**

18 (D) **The manufacturer intends for the consumer to rinse off from the body after use.**

19 (2) **A person may not manufacture for sale a personal care product, other than an over-**
20 **the-counter drug, that contains synthetic plastic microbeads.**

21 (3) **A local government or other governmental subdivision of this state may not enact a**
22 **rule, regulation, ordinance or resolution concerning synthetic plastic microbeads in personal**
23 **care products or over-the-counter drugs that differs from the requirements of this section.**

24 (4) **Violation of the provisions of this section is an unlawful trade practice under ORS**
25 **646.608 that is subject to enforcement under ORS 646.632 or an action under ORS 646.638.**

26 **SECTION 2.** Section 1 of this 2015 Act is amended to read:

27 **Sec. 1.** (1) As used in this section:

28 (a) **“Over-the-counter drug” means a personal care product for which the United States Food**
29 **and Drug Administration requires a label with the title “Drug Facts” or “Active ingredients” under**
30 **21 C.F.R. 201.66, as in effect on the effective date of this 2015 Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) “Personal care product” means a product or component of a product that a consumer pur-
 2 chases with the intent to apply the product or component to the human body to clean or alter the
 3 appearance of the body.

4 (c) “Synthetic plastic microbead” means a solid plastic particle that a manufacturer inten-
 5 tionally incorporates into a personal care product and that:

6 (A) Measures less than five millimeters in diameter;

7 (B) Is not biodegradable;

8 (C) The manufacturer intends as a method for exfoliating skin or otherwise cleaning the human
 9 body; and

10 (D) The manufacturer intends for the consumer to rinse off from the body after use.

11 (2)(a) **Except as provided in paragraph (b) of this subsection,** a person may not manufacture
 12 **or accept** for sale a personal care product[, *other than an over-the-counter drug,*] that contains syn-
 13 thetic plastic microbeads.

14 **(b) A person may not manufacture for sale, but may accept for sale, an over-the-counter**
 15 **drug that contains synthetic plastic microbeads.**

16 (3) A local government or other governmental subdivision of this state may not enact a rule,
 17 regulation, ordinance or resolution concerning synthetic plastic microbeads in personal care pro-
 18 ducts or over-the-counter drugs that differs from the requirements of this section.

19 (4) Violation of the provisions of this section is an unlawful trade practice under ORS 646.608
 20 that is subject to enforcement under ORS 646.632 or an action under ORS 646.638.

21 **SECTION 3.** Section 1 of this 2015 Act, as amended by section 2 of this 2015 Act, is amended
 22 to read:

23 **Sec. 1.** (1) As used in this section:

24 (a) “Over-the-counter drug” means a personal care product for which the United States Food
 25 and Drug Administration requires a label with the title “Drug Facts” or “Active ingredients” under
 26 21 C.F.R. 201.66, as in effect on the effective date of this 2015 Act.

27 (b) “Personal care product” means a product or component of a product that a consumer pur-
 28 chases with the intent to apply the product or component to the human body to clean or alter the
 29 appearance of the body.

30 (c) “Synthetic plastic microbead” means a solid plastic particle that a manufacturer inten-
 31 tionally incorporates into a personal care product and that:

32 (A) Measures less than five millimeters in diameter;

33 (B) Is not biodegradable;

34 (C) The manufacturer intends as a method for exfoliating skin or otherwise cleaning the human
 35 body; and

36 (D) The manufacturer intends for the consumer to rinse off from the body after use.

37 [(2)(a)] **(2)** [*Except as provided in paragraph (b) of this subsection,*] A person may not manufacture
 38 or accept for sale a personal care product **or over-the-counter drug** that contains synthetic plastic
 39 microbeads.

40 [(b) *A person may not manufacture for sale, but may accept for sale, an over-the-counter drug that*
 41 *contains synthetic plastic microbeads.*]

42 (3) A local government or other governmental subdivision of this state may not enact a rule,
 43 regulation, ordinance or resolution concerning synthetic plastic microbeads in personal care pro-
 44 ducts or over-the-counter drugs that differs from the requirements of this section.

45 (4) Violation of the provisions of this section is an unlawful trade practice under ORS 646.608

1 that is subject to enforcement under ORS 646.632 or an action under ORS 646.638.

2 **SECTION 4.** ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, is amended
3 to read:

4 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
5 vocation or occupation the person does any of the following:

6 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

7 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
8 proval, or certification of real estate, goods or services.

9 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
10 ciation with, or certification by, another.

11 (d) Uses deceptive representations or designations of geographic origin in connection with real
12 estate, goods or services.

13 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
14 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
15 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
16 person does not have.

17 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
18 teriorated, altered, reconditioned, reclaimed, used or secondhand.

19 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
20 or that real estate or goods are of a particular style or model, if the real estate, goods or services
21 are of another.

22 (h) Disparages the real estate, goods, services, property or business of a customer or another
23 by false or misleading representations of fact.

24 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
25 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
26 advertisement discloses a limitation of quantity.

27 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
28 or amounts of price reductions.

29 (k) Makes false or misleading representations concerning credit availability or the nature of the
30 transaction or obligation incurred.

31 (L) Makes false or misleading representations relating to commissions or other compensation to
32 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
33 stration purposes or in exchange for submitting names of potential customers.

34 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
35 of the goods or real estate does not authorize the service or dismantling.

36 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
37 vides the information required under ORS 646.611.

38 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
39 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
40 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
41 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
42 discount or other value is contingent upon an event occurring after the time the customer enters
43 into the transaction.

44 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
45 cize a product, business or service.

- 1 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
2 not to deliver the real estate, goods or services as promised.
- 3 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 4 (s) Makes false or misleading representations of fact concerning the offering price of, or the
5 person's cost for real estate, goods or services.
- 6 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
7 known material defect or material nonconformity.
- 8 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 9 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
10 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
11 ation.
- 12 (w) Manufactures mercury fever thermometers.
- 13 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
14 law, or is:
- 15 (A) Prescribed by a person licensed under ORS chapter 677; and
- 16 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
17 on the proper cleanup of mercury should breakage occur.
- 18 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
19 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
20 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
21 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
22 graph, "thermostat" means a device commonly used to sense and, through electrical communication
23 with heating, cooling or ventilation equipment, control room temperature.
- 24 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
25 mercury light switches.
- 26 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 27 (bb) Violates ORS 646A.070 (1).
- 28 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 29 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 30 (ee) Violates ORS 646.883 or 646.885.
- 31 (ff) Violates ORS 646.569.
- 32 (gg) Violates the provisions of ORS 646A.142.
- 33 (hh) Violates ORS 646A.360.
- 34 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 35 (jj) Violates ORS 646.563.
- 36 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 37 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
38 thereto.
- 39 (mm) Violates ORS 646A.210 or 646A.214.
- 40 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 41 (oo) Violates ORS 646A.095.
- 42 (pp) Violates ORS 822.046.
- 43 (qq) Violates ORS 128.001.
- 44 (rr) Violates ORS 646A.800 (2) to (4).
- 45 (ss) Violates ORS 646A.090 (2) to (4).

- 1 (tt) Violates ORS 87.686.
 2 (uu) Violates ORS 646A.803.
 3 (vv) Violates ORS 646A.362.
 4 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 5 (xx) Violates ORS 180.440 (1) or 180.486 (1).
 6 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 7 (zz) Violates ORS 87.007 (2) or (3).
 8 (aaa) Violates ORS 92.405 (1), (2) or (3).
 9 (bbb) Engages in an unlawful practice under ORS 646.648.
 10 (ccc) Violates ORS 646A.365.
 11 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 12 (eee) Sells a gift card in violation of ORS 646A.276.
 13 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 14 (ggg) Violates ORS 646A.430 to 646A.450.
 15 (hhh) Violates a provision of ORS 744.318 to 744.384.
 16 (iii) Violates a provision of ORS 646A.702 to 646A.720.
 17 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 18 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
 19 subject of the violation.
 20 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 21 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
 22 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 23 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 24 (nnn) Violates ORS 646A.082.
 25 (ooo) Violates ORS 646.647.
 26 (ppp) Violates ORS 646A.115.
 27 (qqq) Violates a provision of ORS 646A.405.
 28 (rrr) Violates ORS 646A.092.
 29 (sss) Violates a provision of ORS 646.644.
 30 (ttt) Violates a provision of ORS 646A.295.
 31 (uuu) Violates ORS 646A.564.
 32 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
 33 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
 34 do so or unless the person is an active member of the Oregon State Bar.
 35 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
 36 (xxx) Violates ORS 646A.806.
 37 (yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.
 38 **(zzz) Violates section 1 of this 2015 Act.**
 39 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 40 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 41 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 42 need not prove competition between the parties or actual confusion or misunderstanding.
 43 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 44 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 45 declaring the conduct to be unfair or deceptive in trade or commerce.

1 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
2 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
3 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

4 **SECTION 5. (1) Section 1 of this 2015 Act and the amendments to ORS 646.608 by section**
5 **4 of this 2015 Act become operative January 1, 2018.**

6 (2) The amendments to section 1 of this 2015 Act by section 2 of this 2015 Act become
7 operative January 1, 2019.

8 (3) The amendments to section 1 of this 2015 Act by section 3 of this 2015 Act become
9 operative January 1, 2020.

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