Minority Report

A-Engrossed

Senate Bill 478

Ordered by the Senate April 27
Including Senate Minority Report Amendments dated April 27

Sponsored by nonconcurring members of the Senate Committee on Environment and Natural Resources: Senators OLSEN, 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.

Requires Oregon Health Authority to establish and maintain list of designated high priority chemicals of concern for children's health used in children's products [*and to periodically review and revise list*]. **Allows authority to submit certain reports to Legislative Assembly recommending that chemicals meeting certain criteria be added to or removed from list pursuant to express consent of Legislative Assembly.**

Requires authority to post certain information on authority's website.

Requires manufacturers of certain children's products to provide notice to authority regarding chemicals on list. [*Requires certain manufacturers to take additional actions after certain dates to comply with notice requirement.*]

Allows authority to enter into certain data sharing agreements with other states. Allows authority to participate in Interstate Chemicals Clearinghouse.

Allows authority to adopt certain rules.

[*Allows authority to establish certain fees by rule.*] Allows authority to impose civil penalties. Allows authority to accept certain funding.

Establishes High Priority Chemicals of Concern for Children's Health Fund. Continuously appropriates moneys in fund to authority. Specifies uses of moneys.

[*Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by authority.*]

[*Becomes operative January 1, 2016.*]

[*Declares emergency, effective on passage.*]

Preempts local laws regulating registration, notification or use, advertising and marketing, distribution, storage, transportation, disposal or disclosure of confidential information or product composition of chemicals used in children's products.

Requires authority to adopt by rule schedule that meets certain criteria for phasing in requirements for manufacturers to provide notices to authority. Directs authority to consider adopting schedule consistent with time frames used in State of Washington's Children's Safe Products Reporting Rule. Requires first notices under notice requirements to be submitted no earlier than two years following effective date of Act.

Sunsets January 2, 2020.

A BILL FOR AN ACT

Relating to high priority chemicals of concern for children's health.

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

DEFINITIONS

SECTION 1. As used in sections 1 to 10 of this 2015 Act:

(1) "Chemical" means:

(a) A substance with a distinct molecular composition and the breakdown products of the substance that form through decomposition, degradation or metabolism.

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.

(b) A group of structurally related substances and the breakdown products of the substances that form through decomposition, degradation or metabolism.

(2)(a) "Children's cosmetics" means products that are intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, moisturizing, beautifying, promoting attractiveness or altering the appearance, and articles intended for use as a component of such products.

(b) "Children's cosmetics" does not mean soap, dietary supplements or food and drugs approved by the United States Food and Drug Administration.

(3)(a) "Children's product" means any of the following products that are made for, marketed for use by or marketed to children under 12 years of age:

(A) Products designed or intended by the manufacturer to facilitate sucking, teething, sleep, relaxation or feeding.

(B) Children's clothing.

(C) Car seats.

(D) Children's cosmetics.

(E) Children's jewelry.

(F) Toys.

(b) "Children's product" does not mean:

(A) Inaccessible components of a product specified in paragraph (a) of this subsection that during reasonably foreseeable use and abuse of the product would not come into direct contact with a child's skin or mouth.

(B) Used products specified in paragraph (a) of this subsection that are sold in secondhand product markets.

(C) Athletic shoes with cleats or spikes.

(D) Batteries.

(E) BB guns, pellet guns and air rifles.

(F) Bicycles and tricycles.

(G) Chemistry sets.

(H) Consumer electronic products, including personal computers, audio and video equipment, calculators, wireless telephones and game consoles, handheld devices that incorporate a video screen and are used to access interactive software, and the associated peripherals.

(I) Interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs.

(J) Model rockets.

(K) Pocketknives and multitools.

(L) Roller skates.

(M) Scooters.

(N) Sets of darts with metallic points.

(O) Slings and catapults.

(P) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and bindings.

(Q) Sporting equipment, including bats, balls, gloves, sticks, pucks and pads.

(R) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding 24 volts.

(S) Food and beverages, and food and beverage packaging, regulated by the United States Food and Drug Administration or the United States Department of Agriculture.

(T)(i) Drug and biologics regulated by the United States Food and Drug Administration that are over-the-counter drugs, prescription drugs, dietary supplements, medical devices or products that are both a cosmetic and a drug; and

(ii) The packaging of a drug or biologic described in sub-subparagraph (i) of this subparagraph.

(U) The packaging in which a product specified in paragraph (a) of this subsection is sold, offered for sale or distributed.

(V) Paper and forest products.

(4) "Component" means a uniquely identifiable article that is included as a part of a finished product.

(5) "Contaminant" means a chemical that is present in a trace amount, that is incidental to manufacturing and serves no intended function in the children's product or any component of the children's product, and that is:

(a) An unintended by-product of chemical reactions during the manufacture of the children's product;

(b) A chemical that is unavoidably present in products because of the chemicals' ubiquitous presence in the environment;

(c) A trace impurity in feedstock;

(d) An incompletely reacted chemical mixture; or

(e) A degradation product.

(6)(a) "Manufacturer" means:

(A) A person that manufactures a children's product in the form in which the product is sold at retail.

(B) An importer or domestic distributor of a children's product imported into the United States if the person that manufactured the children's product does not have a presence in the United States.

(b) "Manufacturer" does not include a person that is solely a retailer of children's products or a person that manufactures only components.

(7) "Practical quantification limit" means the lowest concentration of a chemical that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness and comparability under routine laboratory operating conditions.

(8) "Trade association" means a membership organization of persons engaging in the same or a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in regular business activities that ordinarily are carried on for profit.

HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN'S HEALTH

SECTION 2. (1) The Oregon Health Authority shall establish and maintain a list of high priority chemicals of concern for children's health. The authority shall initially include on the list only those chemicals that are listed on the Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children on the effective date of this 2015 Act.

(2) In establishing by rule the practical quantification limits for chemicals on the list, the

authority shall consider guidance developed by the State of Washington. The practical quantification limit for each chemical shall specify the analytical method used and shall be based on scientifically defensible, standard analytical methods.

(3)(a) The authority shall publish the list of chemicals of concern for children's health on its website. For each chemical on the list, the authority shall publish:

(A) The chemical name and the Chemical Abstracts Service Registry Number; and

(B) Information contained in the notice required under section 3 of this 2015 Act in a format that is searchable and accessible to the public.

(b) The information published under paragraph (a) of this subsection shall be accompanied by the following notice:

The reports on this website are based on data provided to the Oregon Health Authority. The presence of a high priority chemical of concern for children's health in a children's product 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. The levels of chemicals that trigger reporting requirements are not necessarily levels known to cause adverse health effects.

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(4) The authority may review and recommend revisions to the list of high priority chemicals. In recommending revisions under this subsection, the authority:

(a) May, after public notice and comment, recommend adding a chemical to the list if, on the basis of the weight of credible, peer-reviewed, scientific evidence, the authority determines that the chemical meets both of the following criteria:

(A) The chemical has been demonstrated by a state or federal agency or an accredited research university to:

(i) Harm the normal development of a fetus or child or cause other developmental toxicity;

(ii) Cause cancer, genetic damage or reproductive harm;

(iii) Disrupt the endocrine system such that it causes adverse effects in children;

(iv) Damage the nervous system, immune system or organs or cause other systemic toxicity; or

(v) Be a very persistent and very bioaccumulative toxic substance; and

(B) There are conditions particular to this state resulting in likely exposure to the chemical that is expected to cause negative human health impacts, or the chemical has been found through:

(i) Biomonitoring to be present in human blood, umbilical cord blood, breast milk, urine or other bodily tissues or fluids;

(ii) Sampling and analysis to be present above 100 parts per million in household dust, indoor air, drinking water or elsewhere in the home environment; or

(iii) Monitoring to be present above 100 parts per million in fish, wildlife or the natural environment.

(b) May recommend removing a chemical from the list if the authority determines that the chemical no longer meets the criteria required for addition to the list as described in

paragraph (a) of this subsection.

(5) A person may petition the authority to consider developing a recommendation to add or remove a chemical from the list of high priority chemicals by providing the following information about a chemical to the authority:

(a) The chemical name and the Chemical Abstracts Service Registry Number; and

(b) Information documenting why the chemical meets or fails to meet the criteria required for addition to the list as described in subsection (4)(a) of this section.

(6) The authority shall present a recommendation to revise the list in a report to the interim committees of the Legislative Assembly related to environment and natural resources in the manner provided for in ORS 192.245 no later than September 15 of the year in which the recommendation is proposed. The authority may not adopt a revision to the list except upon the express consent of the Legislative Assembly.

(7) The authority shall update the list of high priority chemicals on its website within one year after the date on which a chemical is added to or removed from the list as provided for in subsection (6) of this section.

(8) This section may not be construed to require the public disclosure by the authority of any information received from a manufacturer under section 3 or 4 of this 2015 Act that is a trade secret. If a manufacturer asserts, and can substantiate in a notice submitted under section 3 of this 2015 Act, that the specific identity of a chemical subject to reporting is a trade secret, the authority shall, in place of the chemical name, publish on the authority's website the generic class or category of the chemical, as provided by the manufacturer.

MANUFACTURER DISCLOSURE OF HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN'S HEALTH

SECTION 3. (1) A manufacturer of a children's product sold or offered for sale in this state that contains a chemical included on the list established and maintained under section 2 of this 2015 Act shall provide notice to the Oregon Health Authority as described in this section if the chemical is:

(a) Intentionally added in the manufacturing of a children's product produced by the manufacturer, or a component of the product, is present at a level above the practical quantification limit and serves an intended function in the product; or

(b) A contaminant in a children's product produced by the manufacturer, or a component of the product, and is present at a concentration above 100 parts per million.

(2) Subject to subsection (3) of this section, the authority shall by rule specify the format for the notice required under this section. In adopting rules under this subsection, the authority shall consider, and to the greatest extent practicable develop, a format for the notice that is consistent with the format required by other states with substantially similar reporting requirements.

(3)(a) The notice required by this section must contain:

(A) The chemical name and Chemical Abstracts Service Registry Number of the chemical contained in the children's product;

(B) A description of the children's product or product component containing the chemical;

(C) The amount of the chemical used in each unit of the children's product reported as

a range rather than an exact amount;

(D) The name and address of the manufacturer, and the name, address and telephone number of a contact person for the manufacturer;

(E) Any other information that the manufacturer deems relevant to the appropriate use of the children's product; and

(F) Any other information determined by the authority by rule to be relevant and essential to fulfilling the reporting requirements of this section.

(b) The notice required by this section may not be required to contain the disclosure of:

(A) Any specific formulation of a chemical or chemicals that is a trade secret; or

(B) The name and address of the person responsible for the introduction of the chemical into the children's product, if that person is a supplier of components, or a person that manufactures components, and is not:

(i) The manufacturer required to provide notice under this section; or

(ii) Owned or operated by the manufacturer required to provide notice under this section.

(4)(a) A manufacturer required to provide notice under this section may rely on a certificate of compliance, data or other information received from the manufacturer's suppliers for the purposes of determining reporting obligations under this section.

(b) "Certificate of compliance," for purposes of this subsection and section 4 (2) of this 2015 Act, means a certificate provided by a supplier to a manufacturer solely for the purpose of indicating compliance with the provisions of sections 1 to 10 of this 2015 Act.

(5)(a) The authority may enter into reciprocal data sharing agreements with other states in which manufacturers of children's products are required to disclose information related to high priority chemicals of concern for children's health. The authority must use the GS1 Global Product Classification system to identify and specify product categories subject to the data sharing agreements. If the authority has entered into a data sharing agreement with another state, and a manufacturer has reported the information required in the notice under subsections (2) and (3) of this section to that state, the manufacturer may request that the other state provide the authority with the information in lieu of the manufacturer's direct reporting of the information to the authority.

(b) A manufacturer fulfills the notice requirement of subsection (1) of this section when the authority receives the information from the other state and the authority determines that the information received satisfies the requirements for the notice under subsections (2) and (3) of this section.

(6) In lieu of the manufacturer's providing notice to the authority under subsection (1) or (5) of this section the authority may require that the notice described in subsections (2) and (3) of this section be submitted to the Interstate Chemicals Clearinghouse. The authority by rule shall specify procedures for the provision of such notice by manufacturers to the Interstate Chemicals Clearinghouse.

(7) A trade association may provide required notices on behalf of its member manufacturers under the provisions of this section.

(8) When a manufacturer provides notice to the authority under the provisions of this section, the manufacturer may submit recommendations to the authority regarding technical, financial or logistical support deemed necessary for innovation and green chemistry solutions related to high priority chemicals of concern for children's health used in children's products.

STATEMENTS OF REMOVAL OF CHEMICALS FROM CHILDREN'S PRODUCTS OR REMOVAL OF PRODUCTS FROM STATE, EXEMPTIONS

SECTION 4. (1) A manufacturer that is subject to section 3 of this 2015 Act may, at any time, submit to the Oregon Health Authority a statement that:

(a) The manufacturer has removed from a children's product sold or offered for sale in this state the chemical for which the manufacturer is required to submit a notice under section 3 of this 2015 Act; or

(b) The manufacturer no longer sells, offers for sale or distributes in this state the children's product containing the chemical.

(2) A statement submitted under subsection (1)(a) of this section must include relevant testing results, supplier certificates of compliance or other information received from the manufacturer's suppliers demonstrating that the chemical has been removed from the children's product.

(3) The authority shall approve or disapprove a statement submitted under subsection (1) of this section within 30 days after its submittal. Within 30 days after the date that the authority approves a statement submitted under this section, the authority shall remove from its website all information related to the children's product that is the subject of the statement.

(4) A manufacturer that has submitted a statement and received approval from the authority under subsection (3) of this section shall not be held liable for civil penalties under section 8 of this 2015 Act for children's products containing the chemical for which the manufacturer was previously required to report that:

(a) Were distributed to retailers within this state prior to the manufacturer receiving approval under subsection (3) of this section; and

(b) Are sold at retail after the manufacturer receives approval under subsection (3) of this section.

SECTION 5. A manufacturer is exempt from the requirements of sections 3 and 4 of this 2015 Act if:

(1) The manufacturer is a manufacturer of children's products with annual worldwide gross sales of less than $5 million, as reported on the most recent tax return filed by the manufacturer before notice would be required under section 3 of this 2015 Act; or

(2) A chemical included on the list established and maintained under section 2 of this 2015 Act is present as a contaminant in a children's product produced by the manufacturer and, during the manufacture of the children's product, the manufacturer had in place a manufacturing control program and exercised due diligence and industry best manufacturing practices to minimize the presence of the contaminant in the children's product.

OREGON HEALTH AUTHORITY

SECTION 6. (1) The Oregon Health Authority may adopt rules necessary to carry out the provisions of sections 1 to 10 of this 2015 Act.

(2) The authority shall develop guidance for manufacturers that may be subject to sections 1 to 10 of this 2015 Act. The guidance shall, at a minimum, address reporting re-

quirements related to product categories, product components, practical quantification limits, systems for exercising due diligence in manufacturing and product function. In adopting guidance under this subsection, the authority shall consider guidance developed by the State of Washington related to the Children's Safe Products Reporting Rule under the Children's Safe Product Act.

(3) The authority may conduct testing of children's products sold or offered for sale in this state in order to determine compliance with sections 3 and 4 of this 2015 Act.

INTERSTATE CHEMICALS CLEARINGHOUSE

SECTION 7. The Oregon Health Authority is authorized to participate in the Interstate Chemicals Clearinghouse in cooperation with other states and government entities to assist the authority in carrying out sections 1 to 10 of this 2015 Act. The authority shall cooperate with the United States Environmental Protection Agency and other states and government entities to obtain and utilize relevant information on high priority chemicals of concern for children's health in carrying out sections 1 to 10 of this 2015 Act.

CIVIL PENALTIES

SECTION 8. (1) Except as provided in subsection (5) of this section, the Oregon Health Authority may impose a civil penalty on a manufacturer of children's products for a violation of any provision of section 3, 4 or 5 of this 2015 Act.

(2) For purposes of assessing civil penalties under this section, a violation consists of a single course of conduct with regard to an entire children's product line that is sold or offered for sale in this state.

(3) The authority shall adopt by rule a schedule of civil penalties for violations of sections 3, 4 and 5 of this 2015 Act. A civil penalty may not exceed $5,000 for the first violation. A civil penalty may not exceed $10,000 for the second and each subsequent violation.

(4) In imposing a penalty under subsection (1) or (5) of this section, the authority shall consider the following factors:

(a) The past history of the manufacturer in taking all feasible steps or following all feasible procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders or permits pertaining to high priority chemicals of concern for children's health used in children's products.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the violation was a result of an unavoidable accident, negligence or an intentional act.

(f) The manufacturer's cooperativeness and efforts to correct the violation.

(g) The economic and financial conditions of the manufacturer.

(h) If a manufacturer asserts that a chemical on the list established and maintained under section 2 of this 2015 Act is present in a children's product only as a contaminant, evidence that the manufacturer had in place a reasonable manufacturing control program for the contaminant and exercised due diligence.

(5)(a) If a manufacturer violates the notice requirement described in section 3 of this 2015

Act, the authority shall inform the manufacturer in writing of the violation and that the manufacturer may avoid a civil penalty for the violation by providing the notice required under section 3 of this 2015 Act within 90 days.

(b) If the manufacturer fails to cure the violation within 90 days, the authority may impose a civil penalty not to exceed $2,500. For a continuing violation, each 90-day period that the violation continues after the preceding imposition of a civil penalty is a separate offense subject to a separate civil penalty not to exceed $5,000. The authority is not required to provide the manufacturer with an opportunity to cure the continuing violation before imposing a civil penalty for the continuing violation.

(6) If the authority has reason to believe that a children's product that contains a chemical on the list established and maintained under section 2 of this 2015 Act is being sold or offered for sale in this state in violation of section 3, 4 or 5 of this 2015 Act, the authority may request that the manufacturer provide a statement of compliance on a form provided by the authority. The manufacturer must submit the statement of compliance within 30 days after receipt of the request. To prove compliance with sections 3, 4 and 5 of this 2015 Act, the manufacturer must:

(a) Show that the children's product does not contain the chemical;

(b) Show that the manufacturer has previously provided the authority with notice as required by section 3 of this 2015 Act;

(c) Provide the authority with notice as required by section 3 of this 2015 Act; or

(d) Provide the authority with documentation that the manufacturer has previously complied with section 4 or 5 of this 2015 Act.

(7) Civil penalties described in this section shall be imposed in the manner provided in ORS 183.745.

(8) All civil penalties recovered under this section shall be paid into the General Fund.

HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN'S HEALTH FUND

SECTION 9. (1) The High Priority Chemicals of Concern for Children's Health Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the High Priority Chemicals of Concern for Children's Health Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Authority to administer sections 1 to 10 of this 2015 Act.

(2) The authority may accept gifts, grants or contributions from any public or private source for the purpose of carrying out sections 1 to 10 of this 2015 Act.

(3) The High Priority Chemicals of Concern for Children's Health Fund shall consist of moneys accepted by the authority pursuant to subsection (2) of this section.

PREEMPTION OF LOCAL LAWS REGULATING CHEMICALS USED IN CHILDREN'S PRODUCTS

SECTION 10. Except as expressly authorized by state statute, the authority to regulate chemicals in children's products is vested solely in the Legislative Assembly. Except as expressly authorized by state statute, a local government, as defined in ORS 174.116, may not

enact an ordinance or resolution that regulates the registration, notification of use, advertising and marketing, distribution, storage, transportation, disposal or disclosure of confidential information or product composition of chemicals used in children's products.

PHASE-IN OF REPORTING REQUIREMENTS

SECTION 11. The Oregon Health Authority shall by rule adopt a schedule for phasing in the reporting requirements under sections 3 and 4 of this 2015 Act. In adopting a schedule, the authority shall consider, and to the greatest extent practicable develop, a schedule consistent with the time frames provided by the State of Washington in the Children's Safe Products Reporting Rule under the Children's Safe Product Act. The schedule adopted under this section must, at a minimum:

(1) Require the first notice under section 3 of this 2015 Act to be submitted no earlier than two years following the effective date of this 2015 Act; and

(2) Be based on the following factors:

(a) The size of the manufacturer subject to the notice requirements under section 3 of this 2015 Act;

(b) The manufacturer's aggregate gross sales; and

(c) The exposure profiles of the children's products or product components subject to reporting.

CAPTIONS

SECTION 12. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

SUNSET

SECTION 13. Sections 1 to 10 of this 2015 Act are repealed on January 2, 2020.