

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 478**

1 On page 1 of the printed A-engrossed bill, line 2, delete “; and declaring
2 an emergency”.

3 Delete lines 4 through 19 and delete pages 2 through 10 and insert:

4

5

“DEFINITIONS

6

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

8

“(1) ‘Chemical’ means:

9

**“(a) A substance with a distinct molecular composition and the
10 breakdown products of the substance that form through decompos-
11 ition, degradation or metabolism.**

**“(b) A group of structurally related substances and the breakdown
12 products of the substances that form through decomposition, degra-
13 dation or metabolism.**

**“(2)(a) ‘Children’s cosmetics’ means products that are intended to
14 be rubbed, poured, sprinkled or sprayed on, introduced into or other-
15 wise applied to the human body or any part thereof for cleansing,
16 moisturizing, beautifying, promoting attractiveness or altering the
17 appearance, and articles intended for use as a component of such
18 products.**

**“(b) ‘Children’s cosmetics’ does not mean soap, dietary supplements
19 or food and drugs approved by the United States Food and Drug Ad-
20**

1 **ministration.**

2 **“(3)(a) ‘Children’s product’ means any of the following products**
3 **that are made for, marketed for use by or marketed to children under**
4 **12 years of age:**

5 **“(A) Products designed or intended by the manufacturer to facili-**
6 **tate sucking, teething, sleep, relaxation or feeding.**

7 **“(B) Children’s clothing.**

8 **“(C) Car seats.**

9 **“(D) Children’s cosmetics.**

10 **“(E) Children’s jewelry.**

11 **“(F) Toys.**

12 **“(b) ‘Children’s product’ does not mean:**

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

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

19 **“(C) Athletic shoes with cleats or spikes.**

20 **“(D) Batteries.**

21 **“(E) BB guns, pellet guns and air rifles.**

22 **“(F) Bicycles and tricycles.**

23 **“(G) Chemistry sets.**

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

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

1 **“(J) Model rockets.**

2 **“(K) Pocketknives and multitools.**

3 **“(L) Roller skates.**

4 **“(M) Scooters.**

5 **“(N) Sets of darts with metallic points.**

6 **“(O) Slings and catapults.**

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

9 **“(Q) Sporting equipment, including bats, balls, gloves, sticks, pucks**
10 **and pads.**

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

13 **“(S) Food and beverages, and food and beverage packaging, regu-**
14 **lated by the United States Food and Drug Administration or the**
15 **United States Department of Agriculture.**

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

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

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

24 **“(V) Paper and forest products.**

25 **“(4) ‘Component’ means a uniquely identifiable article that is in-**
26 **cluded as a part of a finished product.**

27 **“(5) ‘Contaminant’ means a chemical that is present in a trace**
28 **amount, that is incidental to manufacturing and serves no intended**
29 **function in the children’s product or any component of the children’s**
30 **product, and that is:**

1 “(a) An unintended by-product of chemical reactions during the
2 manufacture of the children’s product;

3 “(b) A chemical that is unavoidably present in products because of
4 the chemicals’ ubiquitous presence in the environment;

5 “(c) A trace impurity in feedstock;

6 “(d) An incompletely reacted chemical mixture; or

7 “(e) A degradation product.

8 “(6)(a) ‘Manufacturer’ means:

9 “(A) A person that manufactures a children’s product in the form
10 in which the product is sold at retail.

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

14 “(b) ‘Manufacturer’ does not include a person that is solely a
15 retailer of children’s products or a person that manufactures only
16 components.

17 “(7) ‘Practical quantification limit’ means the lowest concentration
18 of a chemical that can be reliably measured within specified limits of
19 precision, accuracy, representativeness, completeness and compar-
20 ability under routine laboratory operating conditions.

21 “(8) ‘Trade association’ means a membership organization of per-
22 sons engaging in the same or a similar or related line of commerce,
23 organized to promote and improve business conditions in that line of
24 commerce and not to engage in regular business activities that ordi-
25 narily are carried on for profit.

26

27 **“HIGH PRIORITY CHEMICALS OF CONCERN**
28 **FOR CHILDREN’S HEALTH**

29

30 **“SECTION 2. (1) The Oregon Health Authority shall establish and**

1 maintain a list of high priority chemicals of concern for children’s
2 health. The authority shall initially include on the list only those
3 chemicals that are listed on the Washington State Department of
4 Ecology’s Reporting List of Chemicals of High Concern to Children on
5 the effective date of this 2015 Act.

6 “(2) In establishing by rule the practical quantification limits for
7 chemicals on the list, the authority shall consider guidance developed
8 by the State of Washington. The practical quantification limit for each
9 chemical shall specify the analytical method used and shall be based
10 on scientifically defensible, standard analytical methods.

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

14 “(A) The chemical name and the Chemical Abstracts Service Reg-
15 istry Number; and

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

19 “(b) The information published under paragraph (a) of this sub-
20 section shall be accompanied by the following notice:

21 “ _____
22 The reports on this website are based on data provided to the
23 Oregon Health Authority. The presence of a high priority chemical of
24 concern for children’s health in a children’s product does not neces-
25 sarily mean that the product is harmful to human health or the en-
26 vironment, or that there is any violation of existing safety standards
27 or laws. The levels of chemicals that trigger reporting requirements
28 are not necessarily levels known to cause adverse health effects.

29 “ _____
30 “(4) The authority may review and recommend revisions to the list

1 of high priority chemicals. In recommending revisions under this
2 subsection, the authority:

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

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

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

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

12 “(iii) Disrupt the endocrine system such that it causes adverse ef-
13 fects in children;

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

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

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

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

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

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

28 “(b) May recommend removing a chemical from the list if the au-
29 thority determines that the chemical no longer meets the criteria re-
30 quired for addition to the list as described in paragraph (a) of this

1 subsection.

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

6 “(a) The chemical name and the Chemical Abstracts Service Regis-
7 try Number; and

8 “(b) Information documenting why the chemical meets or fails to
9 meet the criteria required for addition to the list as described in sub-
10 section (4)(a) of this section.

11 “(6) The authority shall present a recommendation to revise the list
12 in a report to the interim committees of the Legislative Assembly re-
13 lated to environment and natural resources in the manner provided
14 for in ORS 192.245 no later than September 15 of the year in which the
15 recommendation is proposed. The authority may not adopt a revision
16 to the list except upon the express consent of the Legislative Assem-
17 bly.

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

22 “(8) This section may not be construed to require the public dis-
23 closure by the authority of any information received from a man-
24 ufacturer under section 3 or 4 of this 2015 Act that is a trade secret.
25 If a manufacturer asserts, and can substantiate in a notice submitted
26 under section 3 of this 2015 Act, that the specific identity of a chemical
27 subject to reporting is a trade secret, the authority shall, in place of
28 the chemical name, publish on the authority’s website the generic
29 class or category of the chemical, as provided by the manufacturer.

30

1 **“MANUFACTURER DISCLOSURE OF HIGH PRIORITY**
2 **CHEMICALS OF CONCERN FOR CHILDREN’S HEALTH**

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

9 **“(a) Intentionally added in the manufacturing of a children’s prod-**
10 **uct produced by the manufacturer, or a component of the product, is**
11 **present at a level above the practical quantification limit and serves**
12 **an intended function in the product; or**

13 **“(b) A contaminant in a children’s product produced by the man-**
14 **ufacturer, or a component of the product, and is present at a concen-**
15 **tration above 100 parts per million.**

16 **“(2) Subject to subsection (3) of this section, the authority shall by**
17 **rule specify the format for the notice required under this section. In**
18 **adopting rules under this subsection, the authority shall consider, and**
19 **to the greatest extent practicable develop, a format for the notice that**
20 **is consistent with the format required by other states with substan-**
21 **tially similar reporting requirements.**

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

23 **“(A) The chemical name and Chemical Abstracts Service Registry**
24 **Number of the chemical contained in the children’s product;**

25 **“(B) A description of the children’s product or product component**
26 **containing the chemical;**

27 **“(C) The amount of the chemical used in each unit of the children’s**
28 **product reported as a range rather than an exact amount;**

29 **“(D) The name and address of the manufacturer, and the name,**
30 **address and telephone number of a contact person for the manufac-**

1 turer;

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

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

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

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

11 “(B) The name and address of the person responsible for the intro-
12 duction of the chemical into the children’s product, if that person is
13 a supplier of components, or a person that manufactures components,
14 and is not:

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

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

19 “(4)(a) A manufacturer required to provide notice under this section
20 may rely on a certificate of compliance, data or other information re-
21 ceived from the manufacturer’s suppliers for the purposes of deter-
22 mining reporting obligations under this section.

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

27 “(5)(a) The authority may enter into reciprocal data sharing agree-
28 ments with other states in which manufacturers of children’s products
29 are required to disclose information related to high priority chemicals
30 of concern for children’s health. The authority must use the GS1

1 Global Product Classification system to identify and specify product
2 categories subject to the data sharing agreements. If the authority has
3 entered into a data sharing agreement with another state, and a
4 manufacturer has reported the information required in the notice un-
5 der subsections (2) and (3) of this section to that state, the manufac-
6 turer may request that the other state provide the authority with the
7 information in lieu of the manufacturer’s direct reporting of the in-
8 formation to the authority.

9 “(b) A manufacturer fulfills the notice requirement of subsection
10 (1) of this section when the authority receives the information from
11 the other state and the authority determines that the information re-
12 ceived satisfies the requirements for the notice under subsections (2)
13 and (3) of this section.

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

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

22 “(8) When a manufacturer provides notice to the authority under
23 the provisions of this section, the manufacturer may submit recom-
24 mendations to the authority regarding technical, financial or logistical
25 support deemed necessary for innovation and green chemistry sol-
26 utions related to high priority chemicals of concern for children’s
27 health used in children’s products.

28

29 **“STATEMENTS OF REMOVAL OF CHEMICALS**
30 **FROM CHILDREN’S PRODUCTS OR REMOVAL**

1 **OF PRODUCTS FROM STATE, EXEMPTIONS**

2
3 **“SECTION 4. (1) A manufacturer that is subject to section 3 of this**
4 **2015 Act may, at any time, submit to the Oregon Health Authority a**
5 **statement that:**

6 **“(a) The manufacturer has removed from a children’s product sold**
7 **or offered for sale in this state the chemical for which the manufac-**
8 **turer is required to submit a notice under section 3 of this 2015 Act;**
9 **or**

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

12 **“(2) A statement submitted under subsection (1)(a) of this section**
13 **must include relevant testing results, supplier certificates of compli-**
14 **ance or other information received from the manufacturer’s suppliers**
15 **demonstrating that the chemical has been removed from the children’s**
16 **product.**

17 **“(3) The authority shall approve or disapprove a statement submit-**
18 **ted under subsection (1) of this section within 30 days after its sub-**
19 **mittal. Within 30 days after the date that the authority approves a**
20 **statement submitted under this section, the authority shall remove**
21 **from its website all information related to the children’s product that**
22 **is the subject of the statement.**

23 **“(4) A manufacturer that has submitted a statement and received**
24 **approval from the authority under subsection (3) of this section shall**
25 **not be held liable for civil penalties under section 8 of this 2015 Act for**
26 **children’s products containing the chemical for which the manufac-**
27 **turer was previously required to report that:**

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

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

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

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

9 “(2) A chemical included on the list established and maintained
10 under section 2 of this 2015 Act is present as a contaminant in a
11 children’s product produced by the manufacturer and, during the
12 manufacture of the children’s product, the manufacturer had in place
13 a manufacturing control program and exercised due diligence and in-
14 dustry best manufacturing practices to minimize the presence of the
15 contaminant in the children’s product.

16
17 “OREGON HEALTH AUTHORITY

18
19 “SECTION 6. (1) The Oregon Health Authority may adopt rules
20 necessary to carry out the provisions of sections 1 to 10 of this 2015
21 Act.

22 “(2) The authority shall develop guidance for manufacturers that
23 may be subject to sections 1 to 10 of this 2015 Act. The guidance shall,
24 at a minimum, address reporting requirements related to product
25 categories, product components, practical quantification limits, sys-
26 tems for exercising due diligence in manufacturing and product func-
27 tion. In adopting guidance under this subsection, the authority shall
28 consider guidance developed by the State of Washington related to the
29 Children’s Safe Products Reporting Rule under the Children’s Safe
30 Product Act.

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

4
5 **“INTERSTATE CHEMICALS CLEARINGHOUSE**
6

7 **“SECTION 7. The Oregon Health Authority is authorized to partic-**
8 **ipate in the Interstate Chemicals Clearinghouse in cooperation with**
9 **other states and government entities to assist the authority in carry-**
10 **ing out sections 1 to 10 of this 2015 Act. The authority shall cooperate**
11 **with the United States Environmental Protection Agency and other**
12 **states and government entities to obtain and utilize relevant infor-**
13 **mation on high priority chemicals of concern for children’s health in**
14 **carrying out sections 1 to 10 of this 2015 Act.**

15
16 **“CIVIL PENALTIES**
17

18 **“SECTION 8. (1) Except as provided in subsection (5) of this section,**
19 **the Oregon Health Authority may impose a civil penalty on a man-**
20 **ufacturer of children’s products for a violation of any provision of**
21 **section 3, 4 or 5 of this 2015 Act.**

22 **“(2) For purposes of assessing civil penalties under this section, a**
23 **violation consists of a single course of conduct with regard to an en-**
24 **tire children’s product line that is sold or offered for sale in this state.**

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

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

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

4 “(b) Any prior violations of statutes, rules, orders or permits per-
5 taining to high priority chemicals of concern for children’s health used
6 in children’s products.

7 “(c) The gravity and magnitude of the violation.

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

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

11 “(f) The manufacturer’s cooperativeness and efforts to correct the
12 violation.

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

14 “(h) If a manufacturer asserts that a chemical on the list estab-
15 lished and maintained under section 2 of this 2015 Act is present in a
16 children’s product only as a contaminant, evidence that the manufac-
17 turer had in place a reasonable manufacturing control program for the
18 contaminant and exercised due diligence.

19 “(5)(a) If a manufacturer violates the notice requirement described
20 in section 3 of this 2015 Act, the authority shall inform the manufac-
21 turer in writing of the violation and that the manufacturer may avoid
22 a civil penalty for the violation by providing the notice required under
23 section 3 of this 2015 Act within 90 days.

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

1 continuing violation.

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

11 “(a) Show that the children’s product does not contain the chemi-
12 cal;

13 “(b) Show that the manufacturer has previously provided the au-
14 thority with notice as required by section 3 of this 2015 Act;

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

17 “(d) Provide the authority with documentation that the manufac-
18 turer has previously complied with section 4 or 5 of this 2015 Act.

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

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

23

24 “HIGH PRIORITY CHEMICALS OF CONCERN FOR
25 CHILDREN’S HEALTH FUND

26

27 “SECTION 9. (1) The High Priority Chemicals of Concern for
28 Children’s Health Fund is established in the State Treasury, separate
29 and distinct from the General Fund. Interest earned by the High Pri-
30 ority Chemicals of Concern for Children’s Health Fund shall be cred-

1 ited to the fund. Moneys in the fund are continuously appropriated to
2 the Oregon Health Authority to administer sections 1 to 10 of this 2015
3 Act.

4 “(2) The authority may accept gifts, grants or contributions from
5 any public or private source for the purpose of carrying out sections
6 1 to 10 of this 2015 Act.

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

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**“PREEMPTION OF LOCAL LAWS REGULATING
CHEMICALS USED IN CHILDREN’S PRODUCTS**

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“PHASE-IN OF REPORTING REQUIREMENTS

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**“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**

1 **Safe Product Act. The schedule adopted under this section must, at a**
2 **minimum:**

3 **“(1) Require the first notice under section 3 of this 2015 Act to be**
4 **submitted no earlier than two years following the effective date of this**
5 **2015 Act; and**

6 **“(2) Be based on the following factors:**

7 **“(a) The size of the manufacturer subject to the notice require-**
8 **ments under section 3 of this 2015 Act;**

9 **“(b) The manufacturer’s aggregate gross sales; and**

10 **“(c) The exposure profiles of the children’s products or product**
11 **components subject to reporting.**

12

13

“CAPTIONS

14

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

19

20

“SUNSET

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22 **“SECTION 13. Sections 1 to 10 of this 2015 Act are repealed on**
23 **January 2, 2020.”.**

24
