

Written Testimony on Senate Bill 836
Senate Environment and Natural Resources Committee

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Founded in 1968, the Oregon Environmental Council (OEC) is a nonprofit, nonpartisan, membership-based organization. We advance innovative, collaborative and equitable solutions to Oregon's environmental challenges for today and future generations.

Chair Dembrow and Members of the Committee:

Oregon Environmental Council strongly opposes Senate Bill 836 which could create loopholes in the current Toxic-Free Kids Law.

We **strongly oppose SB 836** because it would significantly weaken the important protections that Oregon has established for kids health. The provisions included in SB 836 are issues the industry groups have been requesting for years, both during the legislative process and in the rulemaking process; these provisions were considered and not accepted either time and should not be accepted now.

Parents, kids, and Oregonians across the state are counting on the protections established under the Toxic Free Kids Law.

If enacted, SB 836 will erase years of work by legislators and the Oregon Health Authority (OHA). OHA has conducted a full and fair rulemaking process. Industry was allowed unlimited participation, beyond those groups initially invited. This meant that industry voices far outnumbered health advocates at the table. During the rulemaking all the issues raised in SB 836 were considered. However, OHA is using the best available science to develop the regulations and so ultimately did not accept any of these changes. In fact, the Oregon Department of Justice went so far as to weigh in with legal opinions and attend meetings of the Rules Advisory Committee to ensure that the intent of legislators was carried through.

With the introduction of SB 836 we're again asked to stand up for common sense protections of Oregon's children. We'd like share several important ways that the bill before you would negatively impact and compromise protections for kid's health:

1. Increasing "de minimis level": Section 1 (3)(a)(5)

Increasing the de minimis reporting level to 100 parts per million from the current levels would allow manufacturers to avoid reporting on toxic chemicals that they intentionally use in children's products. This would create a reporting loophole for manufacturers, allowing them to hide their use of toxic chemicals from parents and the public. There was a thorough vetting of this issue during the rulemaking process.

The scientific reason for the law as it is structured is that 100 ppm can be a high level of exposure for some chemicals. It is not uncommon for substances to be restricted at levels far below 100 PPM. For example, the FDA limit for mercury in cosmetics is 1 PPM. In addition, the FDA limits the presence of vinyl chloride in food packaging to between 5 and 50 PPM. So it does not make practical or health-protective sense to set a blanket level of 100 PPM.

In addition this provision goes even farther than Washington state, who only has a de minimis level for contaminants.

2. Exempting “inaccessible” components: Section 2 (2)

Just because a component is inaccessible does not necessarily mean that exposure is not possible. Physical accessibility is not the only criteria for determining exposure potential, as chemicals can leach or volatilize from products, resulting in exposure.

Furthermore, a component of a children’s product that contains a chemical of concern is inaccessible and would not result in exposure, then manufacturers have the opportunity to apply for a waiver using a quantitative exposure assessment.

During the rulemaking process the industry stakeholders present were asked to provide an example of a chemical of concern used in an inaccessible component that was proven not to result in exposure to children. Industry stakeholders failed to provide a credible example.

3. Reducing OHA fees for manufacturing control programs (MCP): Section 4 (2)

Industry is proposing to reduce fees for companies that have a manufacturing control program. If these fees are reduced, the agency would not be able to review industry applications for exemptions under the manufacturing control program provision. This would essentially give any regulated company the option to apply for and receive the MCP exemption that then allows them to continue the unrestricted use of toxic chemicals in kid’s products.

While we assume good intentions on the part of the companies that apply for an MCP exemption, eliminating verification of the programs through this underfunding of the review process would allow bad actors to falsely claim the exemption.

4. Requiring OHA to reanalyze data: Section 6 (1)

This provision would be a waste of taxpayer dollars by requiring the agency to conduct work that has already been done. The Oregon legislature and agencies, as well as legislatures and agencies in Washington, California, Minnesota, New York, and Vermont, have already reviewed the available scientific data, evaluated the federal policy context, and determined that toxic chemicals used in kid’s products represents a threat to their health.

The law was drafted intentionally not to recreate the wheel and use the work that other states have already done. This provision would create unnecessary delay and would waste agency and taxpayer resources. This provision would have a large fiscal impact.

5. Requiring legislative and gubernatorial approval of law implementation: Section 6 (4)

Lastly, the bill would require an interim legislative committee to review OHA's determinations before allowing the law to proceed.

Forcing OHA to seek legislative and gubernatorial approval to implement arguably the most important and health protective parts of the law, removal of toxic chemicals from kids products, would create an unnecessary layer of bureaucracy. It would waste thousands of taxpayer dollars and create delay for getting rid of toxics in children's products. This provision would have a large fiscal impact.

The Toxic-Free Kids Law and the provisions in it passed the legislature with bipartisan support and it should be carried out as passed.