

Requested by Representative OWENS

**PROPOSED AMENDMENTS TO
HOUSE BILL 2495**

1 On page 1 of the printed bill, line 3, delete “and 431A.263” and insert “,
2 431A.260, 431A.263 and 431A.265”.

3 Delete lines 5 through 30 and delete pages 2 through 5 and insert:

4 **“SECTION 1.** ORS 431A.253 is amended to read:

5 “431A.253. As used in ORS 431A.253 to 431A.280:

6 “(1) ‘Chemical’ means:

7 “(a) A substance with a distinct molecular composition and the break-
8 down products of the substance that form through decomposition, degrada-
9 tion or metabolism.

10 “(b) A group of structurally related substances and the breakdown pro-
11 ducts of the substances that form through decomposition, degradation or
12 metabolism.

13 “(2)(a) ‘Children’s cosmetics’ means products that are intended to be
14 rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied
15 to the human body or any part thereof for cleansing, moisturizing,
16 beautifying, promoting attractiveness or altering the appearance.

17 “(b) ‘Children’s cosmetics’ does not mean soap, dietary supplements or
18 food and drugs approved by the United States Food and Drug Administration.

19 “(3)(a) ‘Children’s product’ means:

20 “(A) Any of the following products that are made for, marketed for use
21 by or marketed to children under 12 years of age:

1 “(i) A product designed or intended by the manufacturer to facilitate
2 sucking, teething, sleep, relaxation, feeding or drinking.

3 “(ii) Children’s clothing and footwear.

4 “(iii) Car seats.

5 “(iv) Children’s cosmetics.

6 “(v) Children’s jewelry.

7 “(vi) Toys.

8 “(B) Any component part of a product specified in subparagraph (A) of
9 this paragraph.

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

11 “(A) Athletic shoes with cleats or spikes.

12 “(B) Batteries.

13 “(C) BB guns, pellet guns and air rifles.

14 “(D) Bicycles and tricycles.

15 “(E) Chemistry sets.

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

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

22 “(H) Model rockets.

23 “(I) Pocketknives and multitools.

24 “(J) Roller skates.

25 “(K) Scooters.

26 “(L) Sets of darts with metallic points.

27 “(M) Slings and catapults.

28 “(N) Snow sporting equipment, including skis, poles, boots, snowboards,
29 sleds and bindings.

30 “(O) Sporting equipment and accessories, including but not limited to

1 bats, balls, gloves, sticks, pucks, pads, helmets and other protective equip-
2 ment, weight training and exercise aids, protective eyewear, backpacks and
3 tents, raingear, sport bags and luggage, and golf equipment.

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

6 “(Q) Food and beverages and food and beverage packaging regulated by
7 the United States Food and Drug Administration or the United States De-
8 partment of Agriculture.

9 “(4) **‘Class of chemicals’ means a group of chemicals that are re-**
10 **lated or similar based on their structure, use, physical property,**
11 **radiological property or other factors.**

12 “[4] (5) ‘Contaminant’ means trace amounts of chemicals that are inci-
13 dental to manufacturing and that serve no intended function in the product
14 component, including but not limited to:

15 “(a) Unintended by-products of chemical reactions during the manufacture
16 of the product component;

17 “(b) Trace impurities in feedstock;

18 “(c) Incompletely reacted chemical mixtures; and

19 “(d) Degradation products.

20 “[5] (6) ‘De minimis level’ means:

21 “(a) For a chemical that is an intentionally added chemical, the practical
22 quantification limit; or

23 “(b) For a chemical that is a contaminant, a concentration of 100 parts
24 per million.

25 “[6] (7) ‘Intentionally added chemical’ means a chemical in a product
26 that serves an intended function in the product component.

27 “[7] (8) ‘Manufacturer’ means any person that produces a children’s
28 product or an importer or domestic distributor of a children’s product. For
29 the purposes of this subsection, ‘importer’ means the owner of the children’s
30 product.

1 “[8] ‘Mouthable’ means, in describing a children’s product or any part of
2 a children’s product, that an intended use of the product or any part of the
3 product includes being placed in the mouth for any purpose.]

4 “(9)(a) ‘Mouthable’ means, in describing a children’s product or any
5 part of a children’s product, that:

6 “(A) The product or part may be brought into the mouth and kept
7 in the mouth so that the product or part can be sucked or chewed; or

8 “(B) The product or part is smaller than five centimeters in one
9 dimension, so that it can be placed in the mouth.

10 “(b) ‘Mouthable’ does not mean, in describing a children’s product
11 or any part of a children’s product, that the product or part may only
12 be licked, but not placed in the mouth.

13 “[9] (10) ‘Practical quantification limit’ means the lowest concentration
14 of a chemical that can be reliably measured within specified limits of preci-
15 sion, accuracy, representativeness, completeness and comparability during
16 routine laboratory operating conditions.

17 “[10] (11) ‘Trade association’ means a membership organization of per-
18 sons engaging in the same or a similar or related line of commerce, organized
19 to promote and improve business conditions in that line of commerce and
20 not to engage in regular business activities that ordinarily are carried on for
21 profit.

22 “**SECTION 2.** ORS 431A.255 is amended to read:

23 “431A.255. (1)(a) The Oregon Health Authority shall establish and main-
24 tain a list of high priority chemicals of concern for children’s health when
25 used in children’s products. [*The authority shall include on the list chemicals*
26 *that are listed on the Washington State Department of Ecology’s Reporting*
27 *List of Chemicals of High Concern to Children on July 27, 2015.*] **The au-**
28 **thority shall consider including on the list chemicals that are listed**
29 **as chemicals of high concern in Washington, Maine, Vermont or**
30 **Minnesota.**

1 **(b) The authority may include a class of chemicals on the list. If**
2 **the authority includes a class of chemicals on the list, the authority**
3 **may exclude from the list specific members of the class of chemicals**
4 **that do not share the same hazards as the other members of the class**
5 **of chemicals.**

6 “(2) In establishing by rule the practical quantification limits for chemi-
7 cals **or classes of chemicals** on the list, the authority shall consider guid-
8 ance developed by the State of Washington and other federal, state and
9 nongovernmental organizations with the applicable expertise.

10 “(3) The authority shall post the list of high priority chemicals on its
11 website. For each high priority chemical **or class of high priority chemi-**
12 **icals** on the list, the authority shall post:

13 “(a) Information regarding the known health impacts associated with ex-
14 posure to the chemical **or class of chemicals**; and

15 “(b) Data collected under ORS 431A.258 in a format that is searchable and
16 accessible to the public.

17 “(4) The authority shall review and revise the list of high priority chem-
18 icals every three years. In completing the revisions under this subsection, the
19 authority:

20 “*[(a) May not add more than five chemicals to the list of high priority*
21 *chemicals during each three-year revision period under this subsection;]*

22 “*[(b)]* **(a)** Shall consider adding or removing a chemical **or class of**
23 **chemicals** from the list of high priority chemicals if, after July 27, 2015, the
24 chemical **or class of chemicals** is added to or removed from the Washington
25 State Department of Ecology’s Reporting List of Chemicals of High Concern
26 to Children or a list maintained by another state agency, another state or
27 a federal agency that the authority has identified by rule as a list intended
28 to identify high priority chemicals; and

29 “*[(c)]* **(b)** May remove a chemical **or class of chemicals** from the list of
30 high priority chemicals if the authority determines that the chemical **or**

1 **class of chemicals** is no longer being used in children’s products.

2 “(5) The authority shall update the list of high priority chemicals on its
3 website within one year after the date on which a chemical **or class of**
4 **chemicals** is added to or removed from the list.

5 **“SECTION 3.** ORS 431A.258 is amended to read:

6 “431A.258. (1)(a) A manufacturer of a children’s product sold or offered
7 for sale in this state that contains a chemical **or member of a class of**
8 **chemicals** included on the list established and maintained under ORS
9 431A.255 in an amount at or above a de minimis level shall provide a
10 biennial notice as described in subsection (2) of this section to the Oregon
11 Health Authority by January [1] **31** of each applicable notice year.

12 “(b) The first biennial notice required under this section shall be sub-
13 mitted to the authority by January [1] **31** of the year following the year that
14 the chemical contained in the children’s product sold or offered for sale in
15 this state is added to the list.

16 “(2) The notice required by subsection (1) of this section must contain:

17 “(a) The name and Chemical Abstracts Service Registry Number of the
18 chemical contained in the children’s product;

19 “(b) The **brand name, model and** product category of the children’s
20 product that contains the chemical;

21 “(c) A description of the function of the chemical in the children’s prod-
22 uct;

23 “(d) The amount of the chemical used in each unit of the children’s
24 product reported as a range rather than an exact amount;

25 “(e) The name and address of the manufacturer, and the name, address
26 and telephone number of a contact person for the manufacturer; and

27 “(f) Any other information that the manufacturer deems relevant to the
28 appropriate use of the children’s product.

29 “(3)(a) The authority may enter into reciprocal data sharing agreements
30 with other states in which manufacturers of children’s products are required

1 to disclose information related to high priority chemicals of concern for
2 children's health used in children's products. The authority must use the GSI
3 Global Product Classification system to identify and specify product cate-
4 gories subject to the data sharing agreements. If the authority has entered into
5 a data sharing agreement with another state, and a manufacturer has re-
6 ported the information required in the notice described in subsection (2) of
7 this section to that state, the manufacturer may request that the other state
8 provide the authority with the information in lieu of the manufacturer's di-
9 rect reporting of the information to the authority.

10 “(b) A manufacturer fulfills the notice requirement of subsection (1) of
11 this section when the authority receives the information from the other state
12 and the authority determines that the information received satisfies the re-
13 quirements for the notice specified in subsection (2) of this section.

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

20 “(5)(a) The authority shall grant an exemption to a manufacturer of
21 children's products that applies for an exemption from the notice require-
22 ments of this section if the application demonstrates that:

23 “(A) The high priority chemical of concern for children's health used in
24 children's products is present in the children's product otherwise subject to
25 the notice requirements of this section only as a contaminant;

26 “(B) The manufacturer conducts a manufacturing control program for the
27 contaminant; and

28 “(C) The manufacturing control program meets minimum standards for a
29 manufacturing control program as set forth by the authority by rule.

30 “(b) The authority shall approve or disapprove an exemption application

1 within 180 days after its submittal. If the authority fails to act within 180
2 days, the exemption application is deemed approved. If the authority disap-
3 proves an exemption application, the manufacturer may submit a revised
4 exemption application for consideration within 180 days after the authority's
5 disapproval.

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

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

13 **“SECTION 4.** ORS 431A.263 is amended to read:

14 “431A.263. (1)(a) When a manufacturer of children's products sold or of-
15 fered for sale in this state removes a high priority chemical of concern for
16 children's health used in children's products from a children's product sold
17 or offered for sale in this state that is subject to ORS 431A.258 and substi-
18 tutes another chemical, the manufacturer must submit a hazard assessment
19 to the Oregon Health Authority that explains how the children's product,
20 and any substitute chemical the children's product contains, is inherently
21 less hazardous than before the substitution was made.

22 “(b) When a manufacturer of children's products sold or offered for sale
23 in this state removes a high priority chemical of concern for children's
24 health used in children's products from a children's product as described in
25 [*subsection (1) of this section*] **paragraph (a) of this subsection** and does
26 not substitute another chemical, the manufacturer must submit notice to the
27 authority that the manufacturer is no longer using the chemical or a sub-
28 stitute chemical.

29 “(2) The authority shall establish by rule the methodology that a man-
30 ufacturer must use and the standards that a children's product must meet in

1 order to comply with the hazard assessment requirements described in sub-
2 section (1)(a) of this section.

3 “(3)(a) The authority shall approve or disapprove a hazard assessment
4 within 180 days after its submittal.

5 “(b) If the authority fails to act within 180 days, the hazard assessment
6 is deemed approved, and the manufacturer may continue to sell or offer for
7 sale in this state the children’s product for which the manufacturer submit-
8 ted a hazard assessment[.] **for a period of three years after the date of**
9 **submission of the hazard assessment.**

10 “(c) If the authority disapproves a hazard assessment, the manufacturer
11 may submit a revised hazard assessment for consideration within 180 days
12 after the authority’s disapproval.

13 “(d) **A hazard assessment approved or deemed approved under this**
14 **subsection is valid for a period of three years after the date of sub-**
15 **mission of the hazard assessment. A manufacturer must resubmit the**
16 **hazard assessment at the end of the three-year period.**

17 “**SECTION 5.** ORS 431A.265 is amended to read:

18 “431A.265. (1) The Oregon Health Authority shall grant a waiver to a
19 manufacturer of children’s products that applies for a waiver in order to
20 comply with ORS 431A.260 if the application:

21 “(a) Includes an alternatives assessment demonstrating that removal of
22 the high priority chemical of concern for children’s health used in children’s
23 products is not financially or technically feasible; or

24 “(b) Includes a quantitative exposure assessment demonstrating that the
25 high priority chemical of concern for children’s health used in children’s
26 products is **inaccessible to the consumer or otherwise** not reasonably
27 anticipated to result in exposure based upon an analysis of leachability and
28 bioavailability of the high priority chemical of concern for children’s health
29 used in children’s products.

30 “(2) An alternatives assessment or quantitative exposure assessment sub-

1 mitted under subsection (1) of this section must be conducted in a manner
2 consistent with the guidance and frameworks for such assessments in effect
3 on July 27, 2015, and as established by the United States Environmental
4 Protection Agency, the Interstate Chemicals Clearinghouse, the State of
5 California, as part of that state’s program for reducing toxic chemicals in
6 consumer products, or other states or nongovernmental organizations with
7 the applicable expertise, or as developed by the authority by rule. The au-
8 thority may recommend or require that a manufacturer follow particular
9 guidance or frameworks in order to meet the requirements of this section.

10 “(3) If the authority determines that an alternatives assessment or a
11 quantitative exposure assessment as described in this section is incomplete,
12 the authority may obtain the assessment from another party. The manufac-
13 turer that submitted the assessment that was determined to be incomplete
14 must pay for the assessment performed by the other party.

15 “(4) The authority shall approve or disapprove a waiver application
16 within 180 days after its submittal. If the authority fails to act within 180
17 days, the waiver application is deemed approved, and the manufacturer may
18 continue to sell or offer for sale in this state the children’s product for which
19 the manufacturer submitted a waiver application. If the authority disap-
20 proves a waiver application, the manufacturer may submit a revised waiver
21 application for consideration within 180 days after the authority’s disap-
22 proval.

23 **“SECTION 6.** ORS 431A.260 is amended to read:

24 “431A.260. (1) On or before **the later of January 1, 2023, or** the date on
25 which a manufacturer of a children’s product submits the third biennial no-
26 tice required under ORS 431A.258 for a chemical that is present in a
27 children’s product, the manufacturer must remove or make a substitution for
28 the chemical pursuant to ORS 431A.263, or seek a waiver under ORS
29 431A.265, if the chemical is present in a children’s product that is:

30 “(a) Mouthable;

1 “(b) A children’s cosmetic; or

2 “(c) Made for, marketed for use by or marketed to children under three
3 years of age.

4 “(2) A manufacturer with 25 or fewer employees may apply for a two-year
5 extension of the date specified in subsection (1) of this section to meet the
6 requirements of this section.

7 “(3) Manufacturers are exempt from meeting the requirements of this
8 section for children’s products described in subsection (1) of this section that
9 contain high priority chemicals of concern for children’s health used in
10 children’s products at levels that are at or below allowable levels for
11 children’s products as established by the Consumer Product Safety Improve-
12 ment Act of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on July 27, 2015.

13 “(4)(a) The Oregon Health Authority shall adopt rules providing for ad-
14 ditional exemptions from the requirements of this section.

15 “(b) For purposes of this subsection, any consumer product safety stand-
16 ard adopted under federal law that establishes allowable levels for children’s
17 products of a high priority chemical of concern for children’s health used in
18 children’s products is presumed to establish the maximum allowable level of
19 the chemical that may be used in children’s products that are sold or offered
20 for sale in this state. The authority may not require a manufacturer in
21 compliance with the federal standard to also comply with the provisions of
22 this section unless the authority establishes in the rulemaking process that
23 a lower maximum allowable level for children’s products of a high priority
24 chemical of concern for children’s health used in children’s products than the
25 allowable level set by the federal standard is necessary to protect human
26 health and welfare.

27 **“SECTION 7. (1)(a) The amendments to ORS 431A.253, 431A.255,**
28 **431A.258, 431A.263 and 431A.265 by sections 1 to 5 of this 2021 Act be-**
29 **come operative on January 1, 2022.**

30 **“(b) The amendments to ORS 431A.258 (2)(b) by section 3 of this 2021**

1 Act apply to notices due to be submitted to the Oregon Health Au-
2 thority under ORS 431A.258 on or after January 31, 2024.

3 “(2) The authority may take any action before the operative date
4 specified in subsection (1) of this section to enable the authority to
5 exercise, on and after the operative date specified in subsection (1) of
6 this section, all of the duties, functions and powers conferred on the
7 authority by the amendments to ORS 431A.253, 431A.255, 431A.258,
8 431A.263 and 431A.265 by sections 1 to 5 of this 2021 Act.

9 “(3) The authority shall begin adopting rules implementing the
10 amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and 431A.265
11 by sections 1 to 5 of this 2021 Act no later than the effective date of
12 this 2021 Act.

13 “SECTION 8. This 2021 Act takes effect on the 91st day after the
14 date on which the 2021 regular session of the Eighty-first Legislative
15 Assembly adjourns sine die.”.

16
