**ALISSA KENY-GUYER**
**STATE REPRESENTATIVE**
DISTRICT 46

**HOUSE OF REPRESENTATIVES**
**900 COURT ST NE**
**SALEM, OR 97301**

**Testimony in Support of Oregon House Bill 3355** May 14, 2019

Chair Helm and Members of the Committee,

Credible, independent scientific research shows that toxic chemicals used in products make their way into children's developing bodies where they can impact their health for life. These health impacts costs our state millions of dollars every year due to learning disabilities, fertility problems, birth defects, cancer, diabetes, and other chronic conditions that cause heartbreak for many Oregon families.

From 2012 to 2015, I worked closely with scientists, health professionals, environmentalists, concerned families, and legislators from both parties to create a law designed to protect children's health from toxic chemicals in products. After much hard work, SB 478 passed with bipartisan support in 2015.

In general, the law has three phases:

1) In the first six months after passage, OHA was required to establish a list of chemicals of high concern in children's products
2) Manufacturers must disclose to OHA their use of any listed chemicals of concern in products for children up to age 12 sold in Oregon by January 1, 2018, and every two years after that
3) Manufactures must phase out listed chemicals of concern in products made for very young kids with the highest potential for exposure, including those that go in the mouth, on the skin, or are made for children under three years old, by January 1, 2022

Data reported to OHA by manufacturers at the beginning of 2018 has shown that chemicals of concern are still widely used in children's products. According to this data, over 100 manufacturers have submitted over 4,000 reports on 53 toxic chemicals of concern used in children's products sold in Oregon. Over 1,100 of those reports were for products designed for children under the age of three.

***Oregon's Toxic Free Kids Act still has important steps to take.*** As implementation of Oregon's Toxic Free Kids Act has progressed, diverse stakeholders have identified several opportunities for improvement. Similarly, other states continue to make improvements in their laws to reduce toxics in children's products. House Bill 3355 would improve the Toxic Free Kids Act in a number of important ways. For example, we have consistently heard from manufacturers and the business community that Oregon should seek to better align our law with similar laws in other states. HB 3355 further harmonizes our law with other states in the following ways:

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1) It harmonizes Oregon's definition of "mouthable" with the definition used in Washington State's Children Safe Products Act
2) It harmonizes Oregon's reporting process with the process in Vermont's Chemicals Disclosure for Children's Products law by including product-level chemical disclosure
3) It harmonizes Oregon's listing process for chemicals of concern with the process used in Washington State's Children's Safe Products Act

Additionally, HB 3355 seeks to clarify and streamline the existing waiver process for manufacturers who seek an exemption to the requirement that they eliminate toxic chemicals of concern from the products they sell for kids. Since the existing process for assessing alternatives to chemicals of concern in Oregon's law (known as "alternatives assessment") already includes a requirement to analyze chemical exposures, the "quantitative exposure assessment" exemption option is redundant and should be eliminated.

While HB 3355 did not pass this year, I want to clarify our legislative intent around a number of key provisions being considered as part of OHA's Phase 3 rule making process for the law. First, I do not believe that additional exemptions are necessary at this point. Specifically, I also believe that OHA should seek credible scientific proof that chemicals of concern in "inaccessible components" or present as contaminants in children's products do not in fact represent a threat to children's health.

As stated in my attached letter from 2016 regarding inaccessible components during the Phase 2 rule making process – the onus is on manufactures to prove with credible scientific data that Oregon's children will not be exposed to the chemicals of high concern present in their products. The law already provides mechanisms for demonstrating that children may not be exposed to chemicals of concern used in inaccessible components. As such, I do not believe OHA should grant any additional exemptions related to inaccessible components.

I would like to reiterate that Oregon law already allows for preemption of regulations created by the Toxic Free Kids Act for relevant federal laws or standards. In cases where federal law, like the Consumer Product Safety Improvement Act or the Toxic Substances Control Act, addresses the same chemicals of concern used in the same kinds of products, then manufacturers are exempted from Oregon's requirements. Federal laws that do not address the same chemicals of concern used in the same kinds of products that are regulated under Oregon's Toxic Free Kids Act, or that provide less stringent or protective regulation than Oregon's, should not be considered for additional exemptions.

Finally, the legislature works hard to protect the interests of Oregon taxpayers. In addition to reducing the need for costly health care, the Toxic Free Kids Act protects taxpayers by enabling OHA to collect fees for implementing our law. Manufacturers should be responsible for their fare share of the costs associated with assessing the safety of the products they sell.

I look forward to working with your committee to enhance the Toxic Free Kids Act.

Sincerely,

**ALISSA KENY-GUYER**
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June 1, 2016

Brett Sherry
Interim Manager
Environmental Public Health Section
Oregon Health Authority

Rebecca Hillwig
Natural Resource Specialist
Public Health Division
Oregon Health Authority

Re: Draft Oregon Administrative Rule – OAR 333-016: "Manufacturer Disclosure of High Priority Chemicals of Concern for Children's Health Used in Children's Products"

Mr. Sherry and Ms. Hillwig:

As one of the legislative champions of SB 478 the Toxic Free Kids Act, I am pleased to see Oregon Health Authority (OHA) moving forward with the development of rules for this important law. Protecting children from health impacts linked to toxic chemicals found in everyday products is an important preventative health strategy. I appreciate your hard work and diligence in the implementation of this law.

It has come to my attention that some questions about the legislative intent of SB 478 have emerged during your current rulemaking process. I would like to clarify two specific aspects of our legislative intent for this law: The definition of children's products, and alignment of Oregon's law with other state and federal laws dealing with the issue of children's exposure to toxic chemicals in products.

The definition of children's products was intended to include all component parts of a product. The definition does not make any kind of distinctions between component parts intentionally, and should not be interpreted as intended to exempt components from regulation when they may be considered physically "inaccessible." Nor was our intent to provide OHA with the discretion to decide if a component part of a product should exclude so-called inaccessible components during the disclosure phase. In defining "product component" or "component part" for rules, OHA should not make exclusions or exemptions for "inaccessible components" unless a waiver process provides sufficient data to prove no exposure over the lifetime of the product.

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Our rationale for this approach to defining a children's product was two-fold: First, a component does not need to be physically accessible to result in exposure through leaching, volatilization, or other physical migration that results in the presence of chemicals of concern. A good example of toxic chemicals used in components that may be considered physically inaccessible but may result in exposure to children are flame retardants in products like children's mattresses and furniture.

Second, we intentionally added the exposure assessment exemption included in Section 7 (b) of SB 478 to address the possibility that a children's product containing high priority chemicals of concern for children's health does not result in exposure. This was intentionally crafted to provide manufacturers with the opportunity for exemption from the assessment and phase out requirements in Section 5, not from the disclosure requirements included in Section 4.

Regarding alignment of Oregon's SB 478 with other state and federal laws dealing with the issue of children's exposure to toxic chemicals in products – we want to harmonize our law with other states in practical ways, but we intentionally altered several important provisions of SB 478 based on feedback from other states including Washington and Maine to address gaps and loopholes in their laws. (Most of this negotiating was done on the Senate side under the leadership of my co-chief sponsor, Sen. Chris Edwards.) This means that there are some places where Oregon's law will differ from similar laws in other states, including the aforementioned disclosure of high priority chemicals of concern for children's health in all product components. The law was promoted with legislators as such.

Note a portion of my testimony given to the Senate Health Committee and later to the Ways and Means Joint Committee on Human Services in 2015:

- These steps mirror the bill passed by the Washington legislature with strong bipartisan support in 2008. Our bill intends to cover the same products and the same chemicals, making it easy for manufacturers to comply, and *allowing Oregon to build on the rule making and implementation in Washington.*

- The main difference between our disclosure and Washington's is that SB 478 exempts manufacturers with global sales under $5 mil/yr, whereas Washington's disclosure requirements apply to manufacturers of any size. *(There are other very minor differences, such as our definition of "mouthable" has been narrowed to only things designed for the mouth.)*

- Manufacturers can apply for a waiver if they show that children are not exposed to the chemicals in the product, or if there are no economically feasible alternatives on the market.

Covering the same products means "toys, clothing, jewelry, etc., intended for children under 12 years old;" it does not refer to the components of that product. While we indeed

aimed to have reporting be as close as possible to Washington's, the intent to protect children far supersedes the intent to ease reporting where possible.

If you decide in rulemaking that disclosure of high priority chemicals of concern present in "inaccessible" components of products belongs in a lower priority category, as Washington does, I encourage you to establish a waiver process that requires responsible parties to provide the agency with credible scientific evidence that children will not be exposed to high priority chemicals of concern (possibly similar, and in addition to the exposure assessment required in the phase-out phase, where it is required by law). While I realize that may add some administrative burden, I am comfortable with that approach.

Finally, With regard to alignment with federal law, we recognized that Oregon can and will be preempted by federal laws in some cases. We included the language in Section 5 for these scenarios.

Sincerely,

Alissa

Alissa Keny-Guyer
House District 46