

# House Bill 3355

Sponsored by Representative KENY-GUYER; Representatives ALONSO LEON, NOSSE, POWER, Senators FAGAN, GELSER

## 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 **as introduced**.

Removes limit on number of chemicals Oregon Health Authority may include on list of high priority chemicals of concern in children's products. Removes requirement that authority grant waiver from requirement to remove or substitute certain chemical if manufacturer submits quantitative exposure assessment regarding chemical.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to high priority chemicals of concern for children's health; creating new provisions;  
3 amending ORS 431A.253, 431A.255, 431A.258, 431A.260 and 431A.265; and declaring an emer-  
4 gency.

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

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

7 431A.253. As used in ORS 431A.253 to 431A.280:

8 (1) "Chemical" means:

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

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

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

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

18 (3)(a) "Children's product" means:

19 (A) Any of the following products that are made for, marketed for use by or marketed to chil-  
20 dren under 12 years of age:

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

23 (ii) Children's clothing and footwear.

24 (iii) Car seats.

25 (iv) Children's cosmetics.

26 (v) Children's jewelry.

27 (vi) Toys.

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

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

**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.

- 1 (A) Athletic shoes with cleats or spikes.
- 2 (B) Batteries.
- 3 (C) BB guns, pellet guns and air rifles.
- 4 (D) Bicycles and tricycles.
- 5 (E) Chemistry sets.
- 6 (F) Consumer electronic products, including personal computers, audio and video equipment,
- 7 calculators, wireless telephones and game consoles, handheld devices that incorporate a video
- 8 screen and are used to access interactive software, and the associated peripherals.
- 9 (G) Interactive software intended for leisure and entertainment, such as computer games, and
- 10 their storage media, such as compact discs.
- 11 (H) Model rockets.
- 12 (I) Pocketknives and multitools.
- 13 (J) Roller skates.
- 14 (K) Scooters.
- 15 (L) Sets of darts with metallic points.
- 16 (M) Slings and catapults.
- 17 (N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and bindings.
- 18 (O) Sporting equipment and accessories, including but not limited to bats, balls, gloves, sticks,
- 19 pucks, pads, helmets and other protective equipment, weight training and exercise aids, protective
- 20 eyewear, backpacks and tents, raingear, sport bags and luggage, and golf equipment.
- 21 (P) Video toys that can be connected to a video screen and are operated at a nominal voltage
- 22 exceeding 24 volts.
- 23 (Q) Food and beverages and food and beverage packaging regulated by the United States Food
- 24 and Drug Administration or the United States Department of Agriculture.
- 25 (4) "Contaminant" means trace amounts of chemicals that are incidental to manufacturing and
- 26 that serve no intended function in the product component, including but not limited to:
- 27 (a) Unintended by-products of chemical reactions during the manufacture of the product com-
- 28 ponent;
- 29 (b) Trace impurities in feedstock;
- 30 (c) Incompletely reacted chemical mixtures; and
- 31 (d) Degradation products.
- 32 (5) "De minimis level" means:
- 33 (a) For a chemical that is an intentionally added chemical, the practical quantification limit; or
- 34 (b) For a chemical that is a contaminant, a concentration of 100 parts per million.
- 35 (6) "Intentionally added chemical" means a chemical in a product that serves an intended func-
- 36 tion in the product component.
- 37 (7) "Manufacturer" means any person that produces a children's product or an importer or do-
- 38 mestic distributor of a children's product. For the purposes of this subsection, "importer" means the
- 39 owner of the children's product.
- 40 (8)(a) "Mouthable" means, in describing a children's product or any part of a children's product,
- 41 that *[an intended use of the product or any part of the product includes being placed in the mouth for*
- 42 *any purpose.]* **the product or part may be brought into the mouth and placed in the mouth so**
- 43 **that the product or part can be sucked or chewed. If a children's product or part of a**
- 44 **children's product in one dimension is smaller than five centimeters, the product or part can**
- 45 **be placed in the mouth.**

1       **(b) “Mouthable” does not mean, in describing a children’s product or any part of a**  
 2 **children’s product, that the product or part may only be licked, but not placed in the mouth.**

3       (9) “Practical quantification limit” means the lowest concentration of a chemical that can be  
 4 reliably measured within specified limits of precision, accuracy, representativeness, completeness  
 5 and comparability during routine laboratory operating conditions.

6       **(10) “Product model” means the specific product name used by the assembler or retailer**  
 7 **to place the product into the stream of commerce.**

8       [(10)] (11) “Trade association” means a membership organization of persons engaging in the  
 9 same or a similar or related line of commerce, organized to promote and improve business conditions  
 10 in that line of commerce and not to engage in regular business activities that ordinarily are carried  
 11 on for profit.

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

13       431A.255. (1) The Oregon Health Authority shall establish and maintain a list of high priority  
 14 chemicals of concern for children’s health when used in children’s products. The authority shall in-  
 15 clude on the list chemicals that are listed on the Washington State Department of Ecology’s Re-  
 16 porting List of Chemicals of High Concern to Children on July 27, 2015.

17       (2) In establishing by rule the practical quantification limits for chemicals on the list, the au-  
 18 thority shall consider guidance developed by the State of Washington and other federal, state and  
 19 nongovernmental organizations with the applicable expertise.

20       (3) The authority shall post the list of high priority chemicals on its website. For each high  
 21 priority chemical on the list, the authority shall post:

22       (a) Information regarding the known health impacts associated with exposure to the chemical;  
 23 and

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

26       (4) The authority shall review and revise the list of high priority chemicals every three years.  
 27 In completing the revisions under this subsection, the authority:

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

30       [(b)] (a) Shall consider adding or removing a chemical from the list of high priority chemicals  
 31 if, after July 27, 2015, the chemical is added to or removed from the Washington State Department  
 32 of Ecology’s Reporting List of Chemicals of High Concern to Children or a list maintained by an-  
 33 other state agency, another state or a federal agency that the authority has identified by rule as a  
 34 list intended to identify high priority chemicals; and

35       [(c)] (b) May remove a chemical from the list of high priority chemicals if the authority deter-  
 36 mines that the chemical is no longer being used in children’s products.

37       (5) The authority shall update the list of high priority chemicals on its website within one year  
 38 after the date on which a chemical is added to or removed from the list.

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

40       431A.258. (1)(a) A manufacturer of a children’s product sold or offered for sale in this state that  
 41 contains a chemical included on the list established and maintained under ORS 431A.255 in an  
 42 amount at or above a de minimis level shall provide a biennial notice as described in subsection (2)  
 43 of this section to the Oregon Health Authority by January 1 of each applicable notice year.

44       (b) The first biennial notice required under this section shall be submitted to the authority by  
 45 January 1 of the year following the year that the chemical contained in the children’s product sold

1 or offered for sale in this state is added to the list.

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

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

5 (b) The product category of the children's product that contains the chemical;

6 (c) **The brand name and product model of the children's product that contains the**  
7 **chemical;**

8 [(c)] (d) A description of the function of the chemical in the children's product;

9 [(d)] (e) The amount of the chemical used in each unit of the children's product reported as a  
10 range rather than an exact amount;

11 [(e)] (f) The name and address of the manufacturer, and the name, address and telephone number  
12 of a contact person for the manufacturer; and

13 [(f)] (g) Any other information that the manufacturer deems relevant to the appropriate use of  
14 the children's product.

15 (3)(a) The authority may enter into reciprocal data sharing agreements with other states in  
16 which manufacturers of children's products are required to disclose information related to high pri-  
17 ority chemicals of concern for children's health used in children's products. The authority must use  
18 the GS1 Global Product Classification system to identify and specify product categories subject to  
19 the data sharing agreements. If the authority has entered into a data sharing agreement with an-  
20 other state, and a manufacturer has reported the information required in the notice described in  
21 subsection (2) of this section to that state, the manufacturer may request that the other state pro-  
22 vide the authority with the information in lieu of the manufacturer's direct reporting of the infor-  
23 mation to the authority.

24 (b) A manufacturer fulfills the notice requirement of subsection (1) of this section when the au-  
25 thority receives the information from the other state and the authority determines that the infor-  
26 mation received satisfies the requirements for the notice specified in subsection (2) of this section.

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

31 (5)(a) The authority shall grant an exemption to a manufacturer of children's products that ap-  
32 plies for an exemption from the notice requirements of this section if the application demonstrates  
33 that:

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

37 (B) The manufacturer conducts a manufacturing control program for the contaminant; and

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

40 (b) The authority shall approve or disapprove an exemption application within 180 days after its  
41 submittal. If the authority fails to act within 180 days, the exemption application is deemed ap-  
42 proved. If the authority disapproves an exemption application, the manufacturer may submit a re-  
43 vised exemption application for consideration within 180 days after the authority's disapproval.

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

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

5 **SECTION 4.** ORS 431A.260 is amended to read:

6 431A.260. (1) On or before the date on which a manufacturer of a children's product submits the  
7 third biennial notice required under ORS 431A.258 for a chemical that is present in a children's  
8 product, the manufacturer must remove or make a substitution for the chemical pursuant to ORS  
9 431A.263, or seek a waiver under ORS 431A.265, if the chemical is present in a children's product  
10 that is:

11 (a) Mouthable;

12 (b) A children's cosmetic; or

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

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

16 (3) Manufacturers are exempt from meeting the requirements of this section for children's pro-  
17 ducts described in subsection (1) of this section that contain high priority chemicals of concern for  
18 children's health used in children's products at levels that are at or below allowable levels for  
19 children's products as established by the Consumer Product Safety Improvement Act of 2008, P.L.  
20 110-314, 122 Stat. 3016, as in effect on July 27, 2015.

21 (4)(a) The Oregon Health Authority [*shall*] **may** adopt rules providing for additional exemptions  
22 from the requirements of this section.

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

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

33 431A.265. (1) The Oregon Health Authority shall grant a waiver to a manufacturer of children's  
34 products that applies for a waiver in order to comply with ORS 431A.260 if the application[:]

35 [(a)] includes an alternatives assessment demonstrating that removal of the high priority chem-  
36 ical of concern for children's health used in children's products is not financially or technically  
37 feasible.[: or]

38 [(b) *Includes a quantitative exposure assessment demonstrating that the high priority chemical of*  
39 *concern for children's health used in children's products is not reasonably anticipated to result in ex-*  
40 *posure based upon an analysis of leachability and bioavailability of the high priority chemical of con-*  
41 *cern for children's health used in children's products.*]

42 (2) An alternatives assessment [*or quantitative exposure assessment*] submitted under subsection  
43 (1) of this section must be conducted in a manner consistent with the guidance and frameworks for  
44 [*such*] **alternatives** assessments in effect on July 27, 2015, and as established by the United States  
45 Environmental Protection Agency, the Interstate Chemicals Clearinghouse, the State of California,

1 as part of that state’s program for reducing toxic chemicals in consumer products, or other states  
 2 or nongovernmental organizations with the applicable expertise, or as developed by the authority  
 3 by rule. The authority may recommend or require that a manufacturer follow particular guidance  
 4 or frameworks in order to meet the requirements of this section.

5 (3) If the authority determines that an alternatives assessment [*or a quantitative exposure as-*  
 6 *essment*] as described in this section is incomplete, the authority may obtain the assessment from  
 7 another party. The manufacturer that submitted the assessment that was determined to be incom-  
 8 plete must pay for the assessment performed by the other party.

9 (4) The authority shall approve or disapprove a waiver application within 180 days after its  
 10 submittal. If the authority fails to act within 180 days, the waiver application is deemed approved,  
 11 and the manufacturer may continue to sell or offer for sale in this state the children’s product for  
 12 which the manufacturer submitted a waiver application. If the authority disapproves a waiver ap-  
 13 plication, the manufacturer may submit a revised waiver application for consideration within 180  
 14 days after the authority’s disapproval.

15 **SECTION 6. (1) The amendments to ORS 431A.253, 431A.255, 431A.258, 431A.260 and**  
 16 **431A.265 by sections 1 to 5 of this 2019 Act become operative on January 1, 2020.**

17 **(2) The Oregon Health Authority may take any action before the operative date specified**  
 18 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**  
 19 **after the operative date specified in subsection (1) of this section, all of the duties, functions**  
 20 **and powers conferred on the authority by the amendments to ORS 431A.253, 431A.255,**  
 21 **431A.258, 431A.260 and 431A.265 by sections 1 to 5 of this 2019 Act.**

22 **SECTION 7. This 2019 Act being necessary for the immediate preservation of the public**  
 23 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**  
 24 **on its passage.**

25 \_\_\_\_\_