

A-Engrossed
House Bill 2495

Ordered by the House April 14
Including House Amendments dated April 14

Sponsored by Representative NERON, Senator DEMBROW; Representatives HOLVEY, PHAM, POWER, PRUSAK, REYNOLDS, SCHOUTEN, WILDE, Senator TAYLOR (Pre-session filed.)

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.

Revises provisions relating to chemicals in children's products.
Becomes operative January 1, 2022.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to chemicals in children's products; creating new provisions; amending ORS 431A.253,
3 431A.255, 431A.258, 431A.260, 431A.263 and 431A.265; and prescribing an effective date.

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

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

6 431A.253. As used in ORS 431A.253 to 431A.280:

7 (1) "Chemical" means:

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

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

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

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

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

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

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

22 (ii) Children's clothing and footwear.

23 (iii) Car seats.

24 (iv) Children's cosmetics.

25 (v) Children's jewelry.

26 (vi) Toys.

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

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

1 **(9)(a) “Mouthable” means, in describing a children’s product or any part of a children’s**
2 **product, that:**

3 **(A) The product or part may be brought into the mouth and kept in the mouth so that**
4 **the product or part can be sucked or chewed; or**

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

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

9 [(9)] **(10) “Practical quantification limit” means the lowest concentration of a chemical that can**
10 **be reliably measured within specified limits of precision, accuracy, representativeness, completeness**
11 **and comparability during routine laboratory operating conditions.**

12 [(10)] **(11) “Trade association” means a membership organization of persons engaging in the**
13 **same or a similar or related line of commerce, organized to promote and improve business conditions**
14 **in that line of commerce and not to engage in regular business activities that ordinarily are carried**
15 **on for profit.**

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

17 431A.255. (1)**(a)** The Oregon Health Authority shall establish and maintain a list of high priority
18 chemicals of concern for children’s health when used in children’s products. *[The authority shall in-*
19 *clude on the list chemicals that are listed on the Washington State Department of Ecology’s Reporting*
20 *List of Chemicals of High Concern to Children on July 27, 2015.]* **The authority shall consider in-**
21 **cluding on the list chemicals that are listed as chemicals of high concern in Washington,**
22 **Maine, Vermont or Minnesota.**

23 **(b) The authority may include a class of chemicals on the list. If the authority includes**
24 **a class of chemicals on the list, the authority may exclude from the list specific members**
25 **of the class of chemicals that do not share the same hazards as the other members of the**
26 **class of chemicals.**

27 (2) In establishing by rule the practical quantification limits for chemicals **or classes of**
28 **chemicals** on the list, the authority shall consider guidance developed by the State of Washington
29 and other federal, state and nongovernmental organizations with the applicable expertise.

30 (3) The authority shall post the list of high priority chemicals on its website. For each high
31 priority chemical **or class of high priority chemicals** on the list, the authority shall post:

32 (a) Information regarding the known health impacts associated with exposure to the chemical
33 **or class of chemicals;** and

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

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

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

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

45 [(c)] **(b)** May remove a chemical **or class of chemicals** from the list of high priority chemicals

1 if the authority determines that the chemical **or class of chemicals** is no longer being used in
2 children's products.

3 (5) The authority shall update the list of high priority chemicals on its website within one year
4 after the date on which a chemical **or class of 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 for sale in this state that
7 contains a chemical **or member of a class of chemicals** included on the list established and
8 maintained under ORS 431A.255 in an amount at or above a de minimis level shall provide a biennial
9 notice as described in subsection (2) of this section to the Oregon Health Authority by January [1]
10 **31** of each applicable notice year.

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

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

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

17 (b) The **brand name, model and** product category of the children's product that contains the
18 chemical;

19 (c) A description of the function of the chemical in the children's product;

20 (d) The amount of the chemical used in each unit of the children's product reported as a range
21 rather than an exact amount;

22 (e) The name and address of the manufacturer, and the name, address and telephone number of
23 a contact person for the manufacturer; and

24 (f) Any other information that the manufacturer deems relevant to the appropriate use of the
25 children's product.

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

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

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

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

45 (A) The high priority chemical of concern for children's health used in children's products is

1 present in the children's product otherwise subject to the notice requirements of this section only
2 as a contaminant;

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

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

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

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

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

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

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

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

28 (2) The authority shall establish by rule the methodology that a manufacturer must use and the
29 standards that a children's product must meet in order to comply with the hazard assessment re-
30 quirements described in subsection (1)(a) of this section.

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

33 (b) If the authority fails to act within 180 days, the hazard assessment is deemed approved, and
34 the manufacturer may continue to sell or offer for sale in this state the children's product for which
35 the manufacturer submitted a hazard assessment[.] **for a period of three years after the date of**
36 **submission of the hazard assessment.**

37 (c) If the authority disapproves a hazard assessment, the manufacturer may submit a revised
38 hazard assessment for consideration within 180 days after the authority's disapproval.

39 (d) **A hazard assessment approved or deemed approved under this subsection is valid for**
40 **a period of three years after the date of submission of the hazard assessment. A manufac-**
41 **turer must resubmit the hazard assessment at the end of the three-year period.**

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

43 431A.265. (1) The Oregon Health Authority shall grant a waiver to a manufacturer of children's
44 products that applies for a waiver in order to comply with ORS 431A.260 if the application:

45 (a) Includes an alternatives assessment demonstrating that removal of the high priority chemical

1 of concern for children's health used in children's products is not financially or technically feasible;
2 or

3 (b) Includes a quantitative exposure assessment demonstrating that the high priority chemical
4 of concern for children's health used in children's products is **inaccessible to the consumer or**
5 **otherwise** not reasonably anticipated to result in exposure based upon an analysis of leachability
6 and bioavailability of the high priority chemical of concern for children's health used in children's
7 products.

8 (2) An alternatives assessment or quantitative exposure assessment submitted under subsection
9 (1) of this section must be conducted in a manner consistent with the guidance and frameworks for
10 such assessments in effect on July 27, 2015, and as established by the United States Environmental
11 Protection Agency, the Interstate Chemicals Clearinghouse, the State of California, as part of that
12 state's program for reducing toxic chemicals in consumer products, or other states or nongovern-
13 mental organizations with the applicable expertise, or as developed by the authority by rule. The
14 authority may recommend or require that a manufacturer follow particular guidance or frameworks
15 in order to meet the requirements of this section.

16 (3) If the authority determines that an alternatives assessment or a quantitative exposure as-
17 sessment as described in this section is incomplete, the authority may obtain the assessment from
18 another party. The manufacturer that submitted the assessment that was determined to be incom-
19 plete must pay for the assessment performed by the other party.

20 (4) The authority shall approve or disapprove a waiver application within 180 days after its
21 submittal. If the authority fails to act within 180 days, the waiver application is deemed approved,
22 and the manufacturer may continue to sell or offer for sale in this state the children's product for
23 which the manufacturer submitted a waiver application. If the authority disapproves a waiver ap-
24 plication, the manufacturer may submit a revised waiver application for consideration within 180
25 days after the authority's disapproval.

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

27 431A.260. (1) On or before **the later of January 1, 2023, or** the date on which a manufacturer
28 of a children's product submits the third biennial notice required under ORS 431A.258 for a chemical
29 that is present in a children's product, the manufacturer must remove or make a substitution for the
30 chemical pursuant to ORS 431A.263, or seek a waiver under ORS 431A.265, if the chemical is present
31 in a children's product that is:

32 (a) Mouthable;

33 (b) A children's cosmetic; or

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

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

37 (3) Manufacturers are exempt from meeting the requirements of this section for children's pro-
38 ducts described in subsection (1) of this section that contain high priority chemicals of concern for
39 children's health used in children's products at levels that are at or below allowable levels for
40 children's products as established by the Consumer Product Safety Improvement Act of 2008, P.L.
41 110-314, 122 Stat. 3016, as in effect on July 27, 2015.

42 (4)(a) The Oregon Health Authority shall adopt rules providing for additional exemptions from
43 the requirements of this section.

44 (b) For purposes of this subsection, any consumer product safety standard adopted under federal
45 law that establishes allowable levels for children's products of a high priority chemical of concern

1 for children’s health used in children’s products is presumed to establish the maximum allowable
2 level of the chemical that may be used in children’s products that are sold or offered for sale in this
3 state. The authority may not require a manufacturer in compliance with the federal standard to also
4 comply with the provisions of this section unless the authority establishes in the rulemaking process
5 that a lower maximum allowable level for children’s products of a high priority chemical of concern
6 for children’s health used in children’s products than the allowable level set by the federal standard
7 is necessary to protect human health and welfare.

8 **SECTION 7. (1)(a) The amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and**
9 **431A.265 by sections 1 to 5 of this 2021 Act become operative on January 1, 2022.**

10 **(b) The amendments to ORS 431A.258 (2)(b) by section 3 of this 2021 Act apply to notices**
11 **due to be submitted to the Oregon Health Authority under ORS 431A.258 on or after January**
12 **31, 2024.**

13 **(2) The authority may take any action before the operative date specified in subsection**
14 **(1) of this section to enable the authority to exercise, on and after the operative date speci-**
15 **fied in subsection (1) of this section, all of the duties, functions and powers conferred on the**
16 **authority by the amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and 431A.265 by**
17 **sections 1 to 5 of this 2021 Act.**

18 **(3) The authority shall begin adopting rules implementing the amendments to ORS**
19 **431A.253, 431A.255, 431A.258, 431A.263 and 431A.265 by sections 1 to 5 of this 2021 Act no later**
20 **than the effective date of this 2021 Act.**

21 **SECTION 8. This 2021 Act takes effect on the 91st day after the date on which the 2021**
22 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

23