

Requested by Representative SMITH DB

**PROPOSED AMENDMENTS TO
HOUSE BILL 2495**

1 On page 1 of the printed bill, line 2, after “products;” delete the rest of
2 the line and delete line 3 and insert “amending ORS 431A.253, 431A.268,
3 431A.270, 431A.275, 431A.278 and 431A.280; and repealing ORS 431A.260,
4 431A.263 and 431A.265.”.

5 Delete lines 6 through 30 and delete pages 2 through 5 and insert:

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 break-
10 down products of the substance that form through decomposition, degrada-
11 tion or metabolism.

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

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

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

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

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

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

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

6 “(iii) Car seats.

7 “(iv) Children’s cosmetics.

8 “(v) Children’s jewelry.

9 “(vi) Toys.

10 “(B) Any component part of a product specified in subparagraph (A) of
11 this paragraph **that is accessible to the consumer.**

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

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

14 “(B) Batteries.

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

16 “(D) Bicycles and tricycles.

17 “(E) Chemistry sets.

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

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

24 “(H) Model rockets.

25 “(I) Pocketknives and multitools.

26 “(J) Roller skates.

27 “(K) Scooters.

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

29 “(M) Slings and catapults.

30 “(N) Snow sporting equipment, including skis, poles, boots, snowboards,

1 sleds and bindings.

2 “(O) Sporting equipment and accessories, including but not limited to
3 bats, balls, gloves, sticks, pucks, pads, helmets and other protective equip-
4 ment, weight training and exercise aids, protective eyewear, backpacks and
5 tents, raingear, sport bags and luggage, and golf equipment.

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

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

11 “(4) ‘Contaminant’ means trace amounts of chemicals that are incidental
12 to manufacturing and that serve no intended function in the product com-
13 ponent, including but not limited to:

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

16 “(b) Trace impurities in feedstock;

17 “(c) Incompletely reacted chemical mixtures; and

18 “(d) Degradation products.

19 “(5) ‘De minimis level’ means:

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

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

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

26 “(7) ‘Manufacturer’ means any person that produces a children’s product
27 or an importer or domestic distributor of a children’s product. For the pur-
28 poses of this subsection, ‘importer’ means the owner of the children’s prod-
29 uct.

30 “[8) ‘Mouthable’ means, in describing a children’s product or any part of

1 *a children’s product, that an intended use of the product or any part of the*
2 *product includes being placed in the mouth for any purpose.]*

3 “[~~(9)~~] (8) ‘Practical quantification limit’ means the lowest concentration
4 of a chemical that can be reliably measured within specified limits of preci-
5 sion, accuracy, representativeness, completeness and comparability during
6 routine laboratory operating conditions.

7 “[~~(10)~~] (9) ‘Trade association’ means a membership organization of persons
8 engaging in the same or a similar or related line of commerce, organized to
9 promote and improve business conditions in that line of commerce and not
10 to engage in regular business activities that ordinarily are carried on for
11 profit.

12 **“SECTION 2.** ORS 431A.268 is amended to read:

13 “431A.268. Manufacturers of children’s products with annual worldwide
14 gross sales of less than \$5 million, as reported on the most recent tax return
15 filed by the manufacturer before the notice required under ORS 431A.258, are
16 exempt from the requirements of ORS 431A.258[, 431A.260, 431A.263 and
17 431A.265].

18 **“SECTION 3.** ORS 431A.270 is amended to read:

19 “431A.270. (1) The Oregon Health Authority may conduct testing of
20 children’s products sold or offered for sale in this state in order to determine
21 compliance with ORS 431A.258[, 431A.260 and 431A.263].

22 “(2) The authority may establish by rule a schedule of fees for manufac-
23 turers of children’s products that are based on the costs to the authority for
24 administering ORS 431A.253 to 431A.280. Fees collected by the authority
25 under this subsection shall be deposited in the High Priority Chemicals of
26 Concern for Children’s Health Fund established under ORS 431A.278.

27 **“SECTION 4.** ORS 431A.275 is amended to read:

28 “431A.275. (1) [*Except as provided in subsection (5) of this section,*] The
29 Oregon Health Authority may impose a civil penalty on a manufacturer of
30 children’s products for a violation of any provision of ORS 431A.258[,

1 *431A.260 or 431A.263*].

2 “(2) For purposes of assessing civil penalties under this section, a vio-
3 lation consists of a single course of conduct with regard to an entire
4 children’s product line that is sold or offered for sale in this state.

5 “(3) The authority shall adopt by rule a schedule of civil penalties for
6 violations of ORS 431A.258[, *431A.260 and 431A.263*]. A civil penalty may
7 not exceed \$5,000 for the first violation. A civil penalty may not exceed
8 \$10,000 for the second and each subsequent violation.

9 “(4) In imposing a penalty under subsection (1) or (5) of this section, the
10 authority shall consider the following factors:

11 “(a) The past history of the manufacturer incurring a penalty in taking
12 all feasible steps or following all feasible procedures necessary or appropri-
13 ate to correct any violation.

14 “(b) Any prior violations of statutes, rules, orders or permits pertaining
15 to high priority chemicals of concern for children’s health used in children’s
16 products.

17 “(c) The gravity and magnitude of the violation.

18 “(d) Whether the violation was a sole event, repeated or continuous.

19 “(e) Whether the violation was a result of an unavoidable accident,
20 negligence or an intentional act.

21 “(f) The violator’s cooperativeness and efforts to correct the violation.

22 “(g) The economic and financial conditions of the manufacturer incurring
23 a penalty.

24 “(h) If a manufacturer asserts that a high priority chemical of concern for
25 children’s health used in children’s products is present in a children’s prod-
26 uct only as a contaminant, evidence that the manufacturer conducted a
27 manufacturing control program for the contaminant that meets or exceeds
28 the minimum requirements for a manufacturing control program adopted by
29 rule by the authority under ORS 431A.258 (5) and exercised due diligence.

30 “(5)(a) If a manufacturer violates the notice requirement described in ORS

1 431A.258 [*or 431A.263*], the authority shall provide the manufacturer with
2 written notice informing the manufacturer of the violation and stating that
3 the manufacturer may avoid a civil penalty for the violation by providing the
4 proper notice required under ORS 431A.258 [*or 431A.263*] within 90 days.

5 “(b) If the manufacturer fails to cure the violation within 90 days, the
6 authority may impose a civil penalty not to exceed \$2,500. For a continuing
7 violation, each 90-day period that the violation continues after the preceding
8 imposition of a civil penalty is a separate offense subject to a separate civil
9 penalty not to exceed \$5,000. The authority is not required to provide the
10 manufacturer with an opportunity to cure the continuing violation before
11 imposing a civil penalty for the continuing violation.

12 “(6) If the authority has reason to believe that a children’s product that
13 contains a high priority chemical of concern for children’s health used in
14 children’s products is being sold or offered for sale in this state in violation
15 of ORS 431A.258[, *431A.260 or 431A.263*], the authority may request that the
16 manufacturer provide a statement of compliance on a form provided by the
17 authority. The manufacturer must submit the statement of compliance within
18 10 days after receipt of a request. To prove compliance with ORS
19 431A.258[, *431A.260 and 431A.263*], the manufacturer must:

20 “(a) Show that the children’s product does not contain the high priority
21 chemical of concern for children’s health used in children’s products;

22 “(b) Show that the manufacturer has previously provided the authority
23 with notice as required by ORS 431A.258; **or**

24 “(c) Provide the authority with notice as required by ORS 431A.258[; *or*]

25 “[*d*] *Provide the authority with documentation that the manufacturer has*
26 *previously complied with ORS 431A.263*].

27 “(7) Civil penalties described in this section shall be imposed in the
28 manner provided in ORS 183.745.

29 “(8) All civil penalties recovered under this section shall be paid into the
30 High Priority Chemicals of Concern for Children’s Health Fund established

1 under ORS 431A.278.

2 **“SECTION 5.** ORS 431A.278 is amended to read:

3 “431A.278. (1) The High Priority Chemicals of Concern for Children’s
4 Health Fund is established in the State Treasury, separate and distinct from
5 the General Fund. Interest earned by the High Priority Chemicals of Concern
6 for Children’s Health Fund shall be credited to the fund. Moneys in the fund
7 are continuously appropriated to the Oregon Health Authority to administer
8 ORS 431A.253 to 431A.280.

9 “(2) The authority may accept gifts, grants or contributions from any
10 public or private source for the purpose of carrying out ORS 431A.253 to
11 431A.280.

12 “(3) The High Priority Chemicals of Concern for Children’s Health Fund
13 shall consist of:

14 “(a) Moneys accepted by the authority pursuant to subsection (2) of this
15 section.

16 “(b) Payments and fees collected under ORS [431A.265 and] 431A.270.

17 “(c) Civil penalties imposed under ORS 431A.275.

18 **“SECTION 6.** ORS 431A.280 is amended to read:

19 “431A.280. The Oregon Health Authority shall report to the interim com-
20 mittees of the Legislative Assembly related to environment and natural re-
21 sources and public health no later than September 15 of each odd-numbered
22 year. The report shall include the following information:

23 “(1) Any revisions made under ORS 431A.255 to the list of high priority
24 chemicals of concern for children’s health used in children’s products.

25 “(2) The number of manufacturers of children’s products in compliance
26 with ORS 431A.258 and an analysis of the information collected pursuant to
27 ORS 431A.258 specifying:

28 “(a) The number and types of children’s products sold or offered for sale
29 in this state that contain high priority chemicals of concern for children’s
30 health used in children’s products.

1 “(b) The range of amounts of high priority chemicals of concern for
2 children’s health used in children’s products, by product category, and the
3 total number of and most frequently disclosed high priority chemicals of
4 concern for children’s health used in children’s products.

5 “(c) The potential for exposure to high priority chemicals of concern for
6 children’s health used in children’s products based on the number of
7 children’s products sold or offered for sale in this state that contain chemi-
8 cals on the list established under ORS 431A.255, likely exposure routes and
9 the typical use patterns for the children’s products that contain chemicals
10 on the list established under ORS 431A.255.

11 “(d) Recommendations to limit, reduce or prevent exposure to high prior-
12 ity chemicals of concern for children’s health used in children’s products
13 based on an analysis of the information collected.

14 “[*(3)(a) Details about the implementation of ORS 431A.263 and 431A.265*
15 *regarding hazard assessments and waivers. In cases where the authority*
16 *grants waivers for the continued use of high priority chemicals of concern for*
17 *children’s health used in children’s products and the waiver application in-*
18 *cludes an alternatives assessment, the authority may develop recommendations*
19 *on opportunities to provide technical assistance, provide grants and promote*
20 *public-private partnerships and other actions to encourage manufacturers to*
21 *produce children’s products through green chemistry and that do not contain*
22 *high priority chemicals of concern for children’s health used in children’s*
23 *products.*]

24 “[*(b) In developing the recommendations described in paragraph (a) of this*
25 *subsection, the authority may consult with the Department of Environmental*
26 *Quality, the Oregon Business Development Department and other state agen-*
27 *cies.*]

28 “[*(4)*] **(3)** A summary of compliance testing results obtained under ORS
29 431A.270.

30 “[*(5)*] **(4)** Any recommendations submitted to the authority by manufac-

1 turers under ORS 431A.258 (7).

2 **SECTION 7. ORS 431A.260, 431A.263 and 431A.265 are repealed.**

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