A-Engrossed
House Bill 3043

Ordered by the House March 20
Including House Amendments dated March 20

Sponsored by Representatives NERON, HUDSON, REYNOLDS, Senator PATTERSON; Representatives ANDERSEN, BOWMAN, DEXTER, GAMBA, GRAYBER, HOLVEY, LIVELY, MCLAIN, NELSON, NOSSE, PHAM H, PHAM K, Senators CAMPOS, DEMBROW, GELSER BLOUIN, SOLLMAN (Presession 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, 2024.*]
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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

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

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

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

(1) "Chemical" means:

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

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

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

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

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

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

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

(ii) Children's clothing and footwear.

(iii) Car seats.

(iv) Children's cosmetics.

(v) Children's jewelry.

(vi) Toys.

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.

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

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

(A) Athletic shoes with cleats or spikes.

(B) Batteries.

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

(D) Bicycles and tricycles.

(E) Chemistry sets.

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

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

(H) Model rockets.

(I) Pocketknives and multitools.

(J) Roller skates.

(K) Scooters.

(L) Sets of darts with metallic points.

(M) Slings and catapults.

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

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

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

(Q) Food and beverages and food and beverage packaging regulated by the United States Food and Drug Administration or the United States Department of Agriculture.

~~(4) "Class of chemicals" means a group of chemicals that are related or similar based on their structure, use, physical property, radiological property or other factors.~~

[*(4)*] **(5)** "Contaminant" means trace amounts of chemicals that are incidental to manufacturing and that serve no intended function in the product component, including but not limited to:

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

(b) Trace impurities in feedstock;

(c) Incompletely reacted chemical mixtures; and

(d) Degradation products.

[*(5)*] **(6)** "De minimis level" means:

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

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

[*(6)*] **(7)** "Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.

[*(7)*] **(8)** "Manufacturer" means any person that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

[*(8)*] **(9)** "Mouthable" means, in describing a children's product or any part of a children's product, that an intended use of the product or any part of the product includes being placed in the

mouth for any purpose.

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

(11) "Subclass of chemicals" means a group of chemicals within a class of chemicals that likely share the same type and approximate value of a specific toxicological property or other property based upon analysis of:

(a) Structure, physicochemical properties, composition, computational bioactivity profiles and toxicokinetics;

(b) Mechanism or mode of action, including similarity in eliciting molecular initiating events, key intermediate events and other relevant in vitro data and information; and

(c) Other available toxicological and ecotoxicological testing data and information.

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

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

431A.255. (1)**(a)** The Oregon Health Authority shall establish and maintain a list of high priority chemicals of concern for children's health when used in children's products. The authority shall include on the list chemicals that are listed on the Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children on July 27, 2015.

(b) The authority may include ~~a class~~ a subclass of chemicals on the list. If the authority includes a subclass of chemicals on the list, the authority may exclude from the list specific members of the subclass of chemicals~~, or a subclass of chemicals~~, that do not share the same hazards as the other members of the subclass of chemicals. The authority shall include the specific Chemical Abstracts Service Registry (CAS) number for any chemicals or subclass of chemicals on the list and subject to reporting.

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

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

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

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

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

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

[*(b)*] **(a)** Shall consider adding or removing a chemical **or subclass of chemicals** from the list of high priority chemicals if, after July 27, 2015, the chemical **or subclass of chemicals** is added to or

removed from the Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children or a list maintained by another state agency, another state or a federal agency that the authority has identified by rule as a list intended to identify high priority chemicals; and

~~[(c)]~~ **(b)** May remove a chemical **or s u b class of chemicals** from the list of high priority chemicals ~~if~~ if the authority determines that the chemical **or s u b class of chemicals** is no longer being used in

children's products.

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

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

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

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

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

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

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

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

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

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

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

(3)(a) The authority may enter into reciprocal data sharing agreements with other states in which manufacturers of children's products are required to disclose information related to high priority chemicals of concern for children's health used in children's products. The authority must use the GS1 Global Product Classification system to identify and specify product categories subject to the data sharing agreements. If the authority has entered into a data sharing agreement with another state, and a manufacturer has reported the information required in the notice described in subsection (2) of this section to that state, the manufacturer may request that the other state provide the authority with the information in lieu of the manufacturer's direct reporting of the information to the authority.

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

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

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

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

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

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

(b) The authority shall approve or disapprove an exemption application within 180 days after its submittal. If the authority fails to act within 180 days, the exemption application is deemed approved. If the authority disapproves an exemption application, the manufacturer may submit a revised exemption application for consideration within 180 days after the authority's disapproval.

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

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

SECTION 4. ORS 431A.258, as amended by section 3 of this 2023 Act, is amended to read:

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

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

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

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

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

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

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

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

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

(3)(a) The authority may enter into reciprocal data sharing agreements with other states in which manufacturers of children's products are required to disclose information related to high priority chemicals of concern for children's health used in children's products. The authority must use the GS1 Global Product Classification system to identify and specify product categories subject to the data sharing agreements. If the authority has entered into a data sharing agreement with another state, and a manufacturer has reported the information required in the notice described in subsection (2) of this section to that state, the manufacturer may request that the other state provide the authority with the information in lieu of the manufacturer's direct reporting of the information to the authority.

(b) A manufacturer fulfills the notice requirement of subsection (1) of this section when the authority receives the information from the other state and the authority determines that the infor-

mation received satisfies the requirements for the notice specified in subsection (2) of this section.

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

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

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

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

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

(b) The authority shall approve or disapprove an exemption application within 180 days after its submittal. If the authority fails to act within 180 days, the exemption application is deemed approved. If the authority disapproves an exemption application, the manufacturer may submit a revised exemption application for consideration within 180 days after the authority's disapproval.

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

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

SECTION 5. ORS 431A.263 is amended to read:

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

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

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

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

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

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

(d) A hazard assessment approved or deemed approved under this subsection is valid for a period of three years after the date of submittal of the hazard assessment. A manufacturer must resubmit the hazard assessment at the end of the three-year period.

SECTION 6. ORS 431A.265 is amended to read:

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

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

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

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

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

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

SECTION 7. (1) The amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and 431A.265 by sections 1 to 3, 5 and 6 of this 2023 Act become operative on January 1, 2024.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by the amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and 431A.265 by sections 1 to 3, 5 and 6 of this 2023 Act.

(3) The authority shall begin adopting rules implementing the amendments to ORS 431A.253, 431A.255, 431A.258, 431A.263 and 431A.265 by sections 1 to 3, 5 and 6 of this 2023 Act on the effective date of this 2023 Act.

SECTION 8. (1) The amendments to ORS 431A.258 by section 4 of this 2023 Act become

operative on January 1, 2025.

(2) The amendments to ORS 431A.258 by section 4 of this 2023 Act apply to notices containing the brand name, model and product category of the children's product that contains a chemical due to be submitted to the Oregon Health Authority under ORS 431A.258 on or after January 31, 2026.

SECTION 9. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.
