

# Senate Bill 478

Sponsored by Senator EDWARDS, Representatives KENY-GUYER, GOMBERG; Senators GELSER, STEINER HAYWARD, Representative JOHNSON (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 **as introduced**.

Requires Oregon Health Authority to establish and maintain list of designated high priority chemicals of concern for children's health used in children's products and to periodically review and revise list. Requires authority to post certain information on authority's website.

Requires manufacturers of certain children's products to provide notice to authority regarding chemicals on list. Requires certain manufacturers to take additional actions after certain dates to comply with notice requirement.

Allows authority to enter into certain data sharing agreements with other states. Allows authority to participate in Interstate Chemicals Clearinghouse.

Allows authority to establish certain fees by rule. Allows authority to impose civil penalties. Allows authority to accept certain funding.

Establishes High Priority Chemicals of Concern for Children's Health Fund. Continuously appropriates moneys in fund to authority. Specifies uses of moneys.

Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by authority.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to high priority chemicals of concern for children's health; and declaring an emergency.

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

## SHORT TITLE

**SECTION 1. Sections 2 to 13 of this 2015 Act shall be known and may be cited as the Toxic-Free Kids Act.**

**SECTION 2. As used in sections 2 to 13 of this 2015 Act:**

**(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**

**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 to children under 12 years of age:

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

4 (ii) Children's clothing and footwear.

5 (iii) Car seats.

6 (iv) Children's cosmetics.

7 (v) Children's jewelry.

8 (vi) Kitchen merchandise.

9 (vii) Toys.

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

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

12 (A) Athletic shoes with cleats or spikes.

13 (B) Batteries.

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

15 (D) Bicycles and tricycles.

16 (E) Chemistry sets.

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

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

22 (H) Model rockets.

23 (I) Pocketknives and multitools.

24 (J) Roller skates.

25 (K) Scooters.

26 (L) Sets of darts with metallic points.

27 (M) Slings and catapults.

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

30 (O) Sporting equipment, including bats, balls, gloves, sticks, pucks and pads.

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

33 (Q) Food and food packaging regulated by the United States Food and Drug Adminis-  
34 tration.

35 (4) "Contaminant" means trace impurities in feedstock, or chemicals that are  
36 unavoidably present in products because of the chemicals' ubiquitous presence in the envi-  
37 ronment.

38 (5) "De minimis level" means:

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

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

42 (6) "Intentionally added chemical" means a chemical in a product that serves an intended  
43 function in the product component or manufacturing process, or is the unintended by-  
44 product of chemical reactions that occur during the manufacture of the product component,  
45 incompletely reacted chemical mixtures, and degradation products.

1 (7) “Manufacturer” means:

2 (a) A person that manufactures or assembles a final consumer product sold at retail or  
3 whose brand name is affixed to the consumer product.

4 (b) An importer or domestic distributor of a consumer product imported into the United  
5 States if the person that manufactured or assembled the consumer product or whose brand  
6 name is affixed to the consumer product does not have a presence in the United States.

7 (8)(a) “Mouthable” means, in describing a children’s product or any part of a children’s  
8 product, that the product or part of the product may be brought to the mouth and placed in  
9 the mouth so that the product or part can be sucked and chewed. If a children’s product or  
10 part of a children’s product in one dimension is smaller than five centimeters, the product  
11 or part can be placed in the mouth.

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

15 (9) “Practical quantification limit” means the lowest concentration of a chemical that can  
16 be reliably measured within specified limits of precision, accuracy, representativeness, com-  
17 pleteness and comparability during routine laboratory operating conditions.

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

22  
23 **HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN’S**  
24 **HEALTH USED IN CHILDREN’S PRODUCTS**  
25

26 **SECTION 3.** (1) The Oregon Health Authority shall establish and maintain a list of high  
27 priority chemicals of concern for children’s health when used in children’s products. The  
28 authority shall include on the list chemicals that are listed on the Washington State De-  
29 partment of Ecology’s Reporting List of Chemicals of High Concern to Children on the ef-  
30 fective date of this 2015 Act.

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

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

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

38 (b) Data collected under section 4 of this 2015 Act in a format that is searchable and  
39 accessible to the public.

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

42 (a) Shall consider adding or removing a chemical from the list of high priority chemicals  
43 if, after the effective date of this 2015 Act, the chemical is added to or removed from the  
44 Washington State Department of Ecology’s Reporting List of Chemicals of High Concern to  
45 Children or a list maintained by another state agency, another state or a federal agency that

1 the authority has identified by rule as a list intended to identify high priority chemicals; and

2 (b) May remove a chemical from the list of high priority chemicals if the authority de-  
3 termines that the chemical is no longer being used in children's products.

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

6  
7 **MANUFACTURER DISCLOSURE OF HIGH PRIORITY**  
8 **CHEMICALS OF CONCERN FOR CHILDREN'S HEALTH**  
9 **USED IN CHILDREN'S PRODUCTS**

10  
11 **SECTION 4.** (1)(a) A manufacturer of a children's product sold or offered for sale in this  
12 state that contains a chemical included on the list established and maintained under section  
13 3 of this 2015 Act in an amount at or above a de minimis level shall provide a biennial notice  
14 as described in subsection (2) of this section to the Oregon Health Authority by January 1  
15 of each applicable notice year.

16 (b) The first biennial notice required under this section shall be submitted to the au-  
17 thority by January 1 of the year following the year that the chemical contained in the  
18 children's product sold or offered for sale in this state is added to the list.

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

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

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

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

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

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

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

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

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

43 (4) In lieu of the manufacturer's providing notice to the authority under subsection (1)  
44 or (3) of this section, the authority may require that the notice described in subsection (2)  
45 of this section be submitted to the Interstate Chemicals Clearinghouse. The authority by rule

1 shall specify procedures for the provision of such notice by manufacturers to the Interstate  
2 Chemicals Clearinghouse.

3 (5) A trade association may provide required notices on behalf of its member manufac-  
4 turers under the provisions of this section.

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

10  
11 **REMOVAL OR SUBSTITUTION OF**  
12 **CHEMICALS, WAIVERS, EXEMPTIONS**  
13

14 **SECTION 5.** (1) On or before the date on which a manufacturer of a children's product  
15 submits the third biennial notice required under section 4 of this 2015 Act for a chemical that  
16 is present in a children's product, the manufacturer must remove or make a substitution for  
17 the chemical pursuant to section 6 of this 2015 Act, or seek a waiver under section 7 of this  
18 2015 Act, if the chemical is present in a children's product that is:

19 (a) Mouthable;

20 (b) A children's cosmetic; or

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

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

24 (3) Manufacturers are exempt from meeting the requirements of this section for  
25 children's products described in subsection (1) of this section that contain high priority  
26 chemicals of concern for children's health used in children's products at levels that are at  
27 or below allowable levels for children's products as established by the Consumer Product  
28 Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on the effective date  
29 of this 2015 Act.

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

32 (b) For purposes of this subsection, any consumer product safety standard adopted under  
33 federal law that establishes allowable levels for children's products of a high priority chemi-  
34 cal of concern for children's health used in children's products is presumed to establish the  
35 maximum allowable level of the chemical that may be used in children's products that are  
36 sold or offered for sale in this state. The authority may not require a manufacturer in  
37 compliance with the federal standard to also comply with the provisions of this section un-  
38 less the authority establishes in the rulemaking process that a lower maximum allowable  
39 level for children's products of a high priority chemical of concern for children's health used  
40 in children's products than the allowable level set by the federal standard is necessary to  
41 protect human health and welfare.

42 **SECTION 6.** (1)(a) When a manufacturer of children's products sold or offered for sale  
43 in this state removes a high priority chemical of concern for children's health used in  
44 children's products from a children's product sold or offered for sale in this state that is  
45 subject to section 4 of this 2015 Act and substitutes another chemical, the manufacturer

1 must submit a hazard assessment to the Oregon Health Authority that explains how the  
2 children's product, and any substitute chemical the children's product contains, is inherently  
3 less hazardous than before the substitution was made.

4 (b) When a manufacturer of children's products sold or offered for sale in this state re-  
5 moves a high priority chemical of concern for children's health used in children's products  
6 from a children's product as described in subsection (1) of this section and does not substi-  
7 tute another chemical, the manufacturer must submit notice to the authority that the  
8 manufacturer is no longer using the chemical or a substitute chemical.

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

12 (3) The authority shall approve or disapprove a hazard assessment within 180 days after  
13 its submittal. If the authority fails to act within 180 days, the hazard assessment is deemed  
14 approved, and the manufacturer may continue to sell or offer for sale in this state the  
15 children's product for which the manufacturer submitted a hazard assessment. If the au-  
16 thority disapproves a hazard assessment, the manufacturer may submit a revised hazard  
17 assessment for consideration within 180 days after the authority's disapproval.

18 **SECTION 7.** (1) The Oregon Health Authority shall grant a waiver to a manufacturer of  
19 children's products that applies for a waiver in order to comply with section 5 of this 2015  
20 Act if the application:

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

24 (b) Includes a quantitative exposure assessment demonstrating that the high priority  
25 chemical of concern for children's health used in children's products is not reasonably an-  
26 ticipated to result in exposure based upon an analysis of leachability and bioavailability of the  
27 high priority chemical of concern for children's health used in children's products.

28 (2) An alternatives assessment or quantitative exposure assessment submitted under  
29 subsection (1) of this section must be conducted in a manner consistent with the guidance  
30 and frameworks for such assessments in effect on the effective date of this 2015 Act and as  
31 established by the United States Environmental Protection Agency, the Interstate Chemicals  
32 Clearinghouse or other states or nongovernmental organizations with the applicable exper-  
33 tise, or as developed by the authority by rule. The authority may recommend or require that  
34 a manufacturer follow particular guidance or frameworks in order to meet the requirements  
35 of this section.

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

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



1 (h) If a manufacturer asserts that a high priority chemical of concern for children's  
 2 health used in children's products is present in a children's product only as a contaminant,  
 3 evidence that the manufacturer conducted a reasonable manufacturing control program for  
 4 the contaminant and exercised due diligence.

5 (5)(a) If a manufacturer violates the notice requirement described in section 4 or 6 of this  
 6 2015 Act, the authority shall provide the manufacturer with written notice informing the  
 7 manufacturer of the violation and stating that the manufacturer may avoid a civil penalty  
 8 for the violation by providing the proper notice required under section 4 or 6 of this 2015 Act  
 9 within 90 days.

10 (b) If the manufacturer fails to cure the violation within 90 days, the authority may im-  
 11 pose a civil penalty not to exceed \$2,500. For a continuing violation, each 90-day period that  
 12 the violation continues after the preceding imposition of a civil penalty is a separate offense  
 13 subject to a separate civil penalty not to exceed \$5,000. The authority is not required to  
 14 provide the manufacturer with an opportunity to cure the continuing violation before im-  
 15 posing a civil penalty for the continuing violation.

16 (6) If the authority has reason to believe that a children's product that contains a high  
 17 priority chemical of concern for children's health used in children's products is being sold  
 18 or offered for sale in this state in violation of section 4, 5 or 6 of this 2015 Act, the authority  
 19 may request that the manufacturer provide a statement of compliance on a form provided  
 20 by the authority. The manufacturer must submit the statement of compliance within 10 days  
 21 after receipt of a request. To prove compliance with sections 4, 5 and 6 of this 2015 Act, the  
 22 manufacturer must:

23 (a) Show that the children's product does not contain the high priority chemical of con-  
 24 cern for children's health used in children's products;

25 (b) Show that the manufacturer has previously provided the authority with notice as re-  
 26 quired by section 4 of this 2015 Act;

27 (c) Provide the authority with notice as required by section 4 of this 2015 Act; or

28 (d) Provide the authority with documentation that the manufacturer has previously  
 29 complied with section 6 of this 2015 Act.

30 (7) Civil penalties described in this section shall be imposed in the manner provided in  
 31 ORS 183.745.

32 (8) All civil penalties recovered under this section shall be paid into the High Priority  
 33 Chemicals of Concern for Children's Health Fund established under section 12 of this 2015  
 34 Act.

35  
 36 **HIGH PRIORITY CHEMICALS OF CONCERN FOR**  
 37 **CHILDREN'S HEALTH FUND**  
 38

39 **SECTION 12.** (1) The High Priority Chemicals of Concern for Children's Health Fund is  
 40 established in the State Treasury, separate and distinct from the General Fund. Interest  
 41 earned by the High Priority Chemicals of Concern for Children's Health Fund shall be cred-  
 42 ited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health  
 43 Authority to administer sections 2 to 13 of this 2015 Act.

44 (2) The authority may accept gifts, grants or contributions from any public or private  
 45 source for the purpose of carrying out sections 2 to 13 of this 2015 Act.





1       **SECTION 14.** Sections 1 to 13 of this 2015 Act become operative on January 1, 2016.

2       **SECTION 15.** The Oregon Health Authority may take any action before the operative date  
3 specified in section 14 of this 2015 Act that is necessary for the authority to exercise, on and  
4 after the operative date specified in section 14 of this 2015 Act, all of the duties, functions  
5 and powers conferred on the authority by sections 1 to 13 of this 2015 Act. Actions taken  
6 subject to the section shall include actions necessary to establish the list required by section  
7 3 of this 2015 Act by January 1, 2016.

8

9

**MISCELLANEOUS**

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11       **SECTION 16.** Notwithstanding any other law limiting expenditures, the amount of  
12 \$\_\_\_\_\_ is established for the biennium beginning July 1, 2015, as the maximum limit for  
13 payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts,  
14 but excluding lottery funds and federal funds, collected or received by the Oregon Health  
15 Authority for carrying out the duties of the authority under sections 1 to 13 of this 2015 Act.

16       **SECTION 17.** The unit captions used in this 2015 Act are provided only for the conven-  
17 ience of the reader and do not become part of the statutory law of this state or express any  
18 legislative intent in the enactment of this 2015 Act.

19

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**EMERGENCY CLAUSE**

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22       **SECTION 18.** This 2015 Act being necessary for the immediate preservation of the public  
23 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
24 on its passage.

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