TOXIC-FREE KIDS ACT (unofficial)

431A.250 Short title. ORS 431A.253 to 431A.280 shall be known and may be cited as the Toxic-Free Kids Act. [2015 c.786 §1]

431A.253 Definitions. 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.

(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, physical property, radiological property or other factors.

(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.

(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.

(7) “Intentionally added chemical” means a chemical in a product that serves an intended function in the product component.

(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.

(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.

(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.

(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. [2015 c.786 §2; 2023 c.426 §1]

431A.255 List of high priority chemicals of concern in children's products; practical quantification limits.

(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 of chemicals on the list. If the authority includes a class of chemicals on the list, the authority may exclude from the list specific members of the class of chemicals, or a subclass of chemicals, that do not share the same hazards as the other members of the class of chemicals.

(2) In establishing by rule the practical quantification limits for chemicals or classes 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 class of chemicals on the list, the authority shall post:

(a) Information regarding the known health impacts associated with exposure to the chemical or class 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) Shall consider adding or removing a chemical or class of chemicals from the list of high priority chemicals if, after July 27, 2015, the chemical or class 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

(b) May remove a chemical or class of chemicals from the list of high priority chemicals if the authority determines that the chemical or 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 class of chemicals is added to or removed from the list. [2015 c.786 §3; 2023 c.426 §2]

431A.258 Disclosure by manufacturers; notice requirement; exemption.

(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 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. [2015 c.786 §4; 2023 c.426 §§3,4]

431A.260 Requirement to remove or substitute high priority chemicals of concern; waivers; exemptions.

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

(a) Mouthable;

(b) A children's cosmetic; or

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

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

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

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

(b) For purposes of this subsection, any consumer product safety standard adopted under federal law that establishes allowable levels for children's products of a high priority chemical of concern for children's health used in children's products is presumed to establish the maximum allowable level of the chemical that may be used in children's products that are sold or offered for sale in this state. The authority may not require a manufacturer in compliance with the federal standard to also comply with the provisions of this section unless the authority establishes in the rulemaking process that a lower maximum allowable level for children's products of a high priority chemical of concern for children's health used in children's products than the allowable level set by the federal standard is necessary to protect human health and welfare. [2015 c.786 §5]

431A.263 Process for substituting chemicals; rules.

(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 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. [2015 c.786 §6; 2023 c.426 §5]

431A.265 Process for waiving requirement to remove or substitute chemicals.

(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. [2015 c.786 §7; 2023 c.426 §6]

431A.268 Exemption from requirement to remove or substitute chemicals.

Manufacturers of children's products with annual worldwide gross sales of less than $5 million, as reported on the most recent tax return filed by the manufacturer before the notice required under ORS 431A.258, are exempt from the requirements of ORS 431A.258, 431A.260, 431A.263 and 431A.265. [2015 c.786 §8]

431A.270 Testing for compliance; fee schedule; rules.

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

(2) The authority may establish by rule a schedule of fees for manufacturers of children's products that are based on the costs to the authority for administering ORS 431A.253 to 431A.280. Fees collected by the authority under this subsection shall be deposited in the High Priority Chemicals of Concern for Children's Health Fund established under ORS 431A.278. [2015 c.786 §9]

431A.273 Participation in Interstate Chemicals Clearinghouse.

The Oregon Health Authority is authorized to participate in the Interstate Chemicals Clearinghouse in cooperation with other states and government entities to assist the authority in carrying out ORS 431A.253 to 431A.280. [2015 c.786 §10]

431A.275 Civil penalty for violation of ORS 431A.258, 431A.260 or 431A.263.

(1) Except as provided in subsection (5) of this section, the Oregon Health Authority may impose a civil penalty on a manufacturer of children's products for a violation of any provision of ORS 431A.258, 431A.260 or 431A.263.

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

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

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

(a) The past history of the manufacturer incurring a penalty in taking all feasible steps or following all feasible procedures necessary or appropriate to correct any violation.

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

(c) The gravity and magnitude of the violation.

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

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

(f) The violator's cooperativeness and efforts to correct the violation.

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

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

(5)(a) If a manufacturer violates the notice requirement described in ORS 431A.258 or 431A.263, the authority shall provide the manufacturer with written notice informing the manufacturer of the violation and stating that the manufacturer may avoid a civil penalty for the violation by providing the proper notice required under ORS 431A.258 or 431A.263 within 90 days.

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

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

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

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

(c) Provide the authority with notice as required by ORS 431A.258; or

(d) Provide the authority with documentation that the manufacturer has previously complied with ORS 431A.263.

(7) Civil penalties described in this section shall be imposed in the manner provided in ORS 183.745.(8) All civil penalties recovered under this section shall be paid into the High Priority Chemicals of Concern for Children's Health Fund established under ORS 431A.278. [2015 c.786 §11]

431A.278 High Priority Chemicals of Concern for Children's Health Fund.

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

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

(3) The High Priority Chemicals of Concern for Children's Health Fund shall consist of:

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

(b) Payments and fees collected under ORS 431A.265 and 431A.270.

(c) Civil penalties imposed under ORS 431A.275. [2015 c.786 §12]

431A.280 Biennial report to Legislative Assembly. The Oregon Health Authority shall report to the interim committees of the Legislative Assembly related to environment and natural resources and public health no later than September 15 of each odd-numbered year. The report shall include the following information:

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

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

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

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

(c) The potential for exposure to high priority chemicals of concern for children's health used in children's products based on the number of children's products sold or offered for sale in this state

that contain chemicals on the list established under ORS 431A.255, likely exposure routes and the typical use patterns for the children's products that contain chemicals on the list established under ORS 431A.255.

(d) Recommendations to limit, reduce or prevent exposure to high priority chemicals of concern for children's health used in children's products based on an analysis of the information collected.

(3)(a) Details about the implementation of ORS 431A.263 and 431A.265 regarding hazard assessments and waivers. In cases where the authority grants waivers for the continued use of high priority chemicals of concern for children's health used in children's products and the waiver application includes an alternatives assessment, the authority may develop recommendations on opportunities to provide technical assistance, provide grants and promote public-private partnerships and other actions to encourage manufacturers to produce children's products through green chemistry and that do not contain high priority chemicals of concern for children's health used in children's products.

(b) In developing the recommendations described in paragraph (a) of this subsection, the authority may consult with the Department of Environmental Quality, the Oregon Business Development Department and other state agencies.

(4) A summary of compliance testing results obtained under ORS 431A.270.

(5) Any recommendations submitted to the authority by manufacturers under ORS 431A.258 (7). [2015 c.786 §13]