

House Bill 2189

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy and Environment)

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**.

Modifies definition of "hazardous substance." Requires Director of Oregon Health Authority to adopt standards for labeling of articles that contain hazardous substances. Requires standards for labeling to be consistent with labeling requirements of Department of Consumer and Business Services where appropriate. Clarifies exemption for food and drugs. Clarifies provisions related to misbranded hazardous substances.

A BILL FOR AN ACT

1
2 Relating to hazardous substances; creating new provisions; and amending ORS 453.005, 453.015,
3 453.035 and 453.055.

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

5 **SECTION 1.** ORS 453.005 is amended to read:

6 453.005. As used in ORS 453.005 to 453.135 unless the context requires otherwise:

7 (1) "Combustible" means any substance that has a flash point above 80 degrees Fahrenheit to
8 and including 140 degrees, as determined by the Tagliabue Open Cup Tester.

9 (2) "Commerce" means any and all commerce within the State of Oregon and subject to the ju-
10 risdiction thereof and includes the operation of any business or service establishment.

11 (3) "Corrosive" means any substance that in contact with living tissue will cause destruction
12 of tissue by chemical action, but does not refer to action on inanimate surfaces.

13 (4) "Electrical hazard" means an article that because of its design or manufacture may cause
14 personal injury or illness by electric shock when in normal use or when subjected to reasonably
15 foreseeable damage or abuse.

16 (5) "Extremely flammable" means any substance that has a flash point at or below 20 degrees
17 Fahrenheit as determined by the Tagliabue Open Cup Tester.

18 (6) "Flammable" means any substance that has a flash point of above 20 degrees to and includ-
19 ing 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

20 (7) "Hazardous substance" means:

21 (a) Any substance that is toxic, corrosive, an irritant, a strong sensitizer, flammable[,] **or**
22 combustible, or **that** generates pressure through decomposition, heat or other means, if such sub-
23 stance or mixture of substances may cause substantial personal injury, [or] substantial illness, **ir-**
24 **reversible harm or a chronic adverse health effect** during or as a proximate result of any
25 customary or reasonably foreseeable handling or use, **or through prolonged use or exposure**, in-
26 cluding reasonably foreseeable ingestion by children, or any substance that the Director of the
27 Oregon Health Authority finds, pursuant to the provisions of ORS 453.005 to 453.135, comes within
28 the definition of this paragraph.

29 (b) Any radioactive substance, if, with respect to such substance as used in a particular class

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 of article or as packaged, the director determines that the substance is sufficiently hazardous to
 2 require labeling in accordance with ORS 453.005 to 453.135 in order to protect the public health.
 3 However, “hazardous substance” does not include any source material, special nuclear material, or
 4 by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued
 5 pursuant thereto by the Atomic Energy Commission.

6 (c) Any toy or other article intended for use by children that the director determines in ac-
 7 cordance with ORS 453.055 presents an electrical, thermal or mechanical hazard.

8 (d) Any article that is not pesticide within the meaning of the Federal Insecticide, Fungicide,
 9 and Rodenticide Act or regulated under ORS 616.335 to 616.385, but that is a hazardous substance
 10 within the meaning of paragraph (a) of this subsection by reason of bearing or containing pesticide.

11 (e) The following brominated flame retardant chemicals:

12 (A) Pentabrominated diphenyl ether;

13 (B) Octabrominated diphenyl ether; and

14 (C) Decabrominated diphenyl ether.

15 (8) “Highly toxic” means any substance that falls within any of the following categories:

16 (a) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white
 17 rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram
 18 of body weight, when orally administered;

19 (b) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white
 20 rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour
 21 or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor
 22 or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely
 23 to be encountered by humans when the substance is used in any reasonably foreseeable manner; or

24 (c) Produces death within 14 days in one-half or more of a group of 10 or more rabbits tested
 25 in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous
 26 contact with the bare skin for 24 hours or less.

27 (9) “Immediate container” does not include package liners.

28 (10) “Irritant” means any substance not corrosive within the meaning of subsection (3) of this
 29 section, but that on immediate, prolonged, or repeated contact with normal living tissue will induce
 30 a local inflammatory reaction.

31 (11) “Label” means a display of written, printed, or graphic matter upon the immediate container
 32 of any substance, or in the case of an article that is unpackaged or is not packaged in an immediate
 33 container intended or suitable for delivery to the ultimate consumer, a display of such matter di-
 34 rectly on the article involved or on a tag or other suitable material affixed thereto, and a require-
 35 ment made by or under authority of ORS 453.005 to 453.135 that any word, statement, or other
 36 information appearing on the label shall not be considered to be complied with unless such word,
 37 statement, or other information also appears on the outside container or wrapper, if any, unless it
 38 is easily legible through the outside container or wrapper and on all accompanying literature where
 39 there are directions for use, written or otherwise.

40 (12) “Mechanical hazard” means an article that in normal use or when subjected to reasonably
 41 foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its de-
 42 sign or manufacture:

43 (a) From fracture, fragmentation, or disassembly of the article;

44 (b) From propulsion of the article or any part or accessory thereof;

45 (c) From points or other protrusions, surfaces, edges, openings, or closures;

- 1 (d) From moving parts;
- 2 (e) From lack or insufficiency of controls to reduce or stop motion;
- 3 (f) As a result of self-adhering characteristics of the article;
- 4 (g) Because the article or any part or accessory thereof may be aspirated or ingested;
- 5 (h) Because of instability; or
- 6 (i) Because of any other aspect of the article's design or manufacture.

7 (13) "Misbranded hazardous substance" means a hazardous substance that does not meet the
8 labeling requirements of ORS 453.035.

9 (14) "Poison" means:

- 10 (a) Arsenic and its preparations;
- 11 (b) Corrosive sublimate;
- 12 (c) Cyanides and preparations, including hydrocyanic acid;
- 13 (d) Hydrochloric acid and any preparation containing free or chemically unneutralized
14 hydrochloric acid (HCl) in a concentration of 10 percent or more;
- 15 (e) Nitric acid or any preparation containing free or chemically unneutralized nitric acid
16 (HNO₃) in a concentration of five percent or more;
- 17 (f) Strychnine;
- 18 (g) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid
19 (H₂SO₄) in a concentration of 10 percent or more;
- 20 (h) Solution of ammonia, U.S.P. 28 percent; or
- 21 (i) Carboic acid.

22 (15) "Radioactive substance" means a substance that emits ionizing radiation.

23 (16) "Strong sensitizer" means a substance that will cause on normal living tissue, through an
24 allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the
25 same substances and that is designated as such by the director.

26 (17) "Thermal hazard" means an article that, in normal use or when subjected to reasonably
27 foreseeable damage or abuse, because of its design or manufacture presents an unreasonable risk
28 of personal injury or illness because of heat as from heated parts, substances or surfaces.

29 (18) "Toxic substance" means any substance, other than radioactive substance, that has the ca-
30 pacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption
31 through any body surface.

32 **SECTION 2.** ORS 453.015 is amended to read:

33 453.015. ORS 453.005 to 453.135 and 453.990 (2) do not apply to:

34 (1) Articles such as chemical sets which by reason of functional purpose require the inclusion
35 of the hazardous substance involved or necessarily present an electrical, mechanical or thermal
36 hazard, and which bear labeling giving adequate directions and warnings for safe use, and are in-
37 tended for use by children who have attained sufficient maturity and may reasonably be expected
38 to read and heed these directions and warnings.

39 (2) Common fireworks regulated under ORS 480.111 to 480.165.

40 (3) Pesticides subject to the Federal Insecticide, Fungicide and Rodenticide Act or regulated by
41 ORS 616.335 to 616.385.

42 (4) Substances intended for use as fuels when stored in containers and used in the heating,
43 cooking or refrigeration system of a house.

44 (5) Foods or drugs [otherwise regulated by this state]. **However, ORS 453.005 to 453.135 and**
45 **453.990 (2) do apply to substances that come into contact with food and that could contam-**

1 **inate the foods, including but not limited to food packaging.**

2 (6) Poisons sold to the ultimate consumer for agricultural or industrial uses in amounts of 10
3 pounds or more.

4 (7) Any substance for use in a scientific laboratory.

5 **SECTION 3.** ORS 453.035 is amended to read:

6 453.035. (1) The Director of the Oregon Health Authority shall adopt standards for the labeling
7 of hazardous substances **and for the labeling of articles that contain hazardous substances.**

8 **(2)(a) Before requiring labeling of a hazardous substance or an article that contains a**
9 **hazardous substance under this section, the director shall contact the Department of Con-**
10 **sumer and Business Services to determine whether the department requires the labeling of**
11 **the hazardous substance or article pursuant to ORS chapter 654.**

12 **(b) If the department requires the labeling of the hazardous substance or article, the di-**
13 **rector shall adopt standards for the labeling of the hazardous substance or article as pro-**
14 **vided in this section.**

15 **(3) Except as provided in subsection (2) of this section,** the director may [*permit or*] require
16 the use of a recognized generic name, [*or may require*] the common or usual name or, [*the chemical*
17 *name,*] if there is no common or usual name, **the chemical name** of the hazardous substance or of
18 each component [*which*] **that** the director finds contributes substantially to its hazard.

19 [(2)] **(4) Except as provided in subsection (2) of this section,** the director shall require:

20 (a) The word “Danger” on substances [*which*], **or on articles containing substances, that** are
21 extremely flammable, corrosive or highly toxic;

22 (b) The word “Warning” or “Caution” on other hazardous substances **or on other articles**
23 **containing hazardous substances;**

24 (c) An affirmative statement of the principal hazard or hazards, such as “Flammable,”
25 “Combustible,” “Vapor Harmful,” “Causes Burns,” “Absorbed Through Skin,” or similar wording
26 descriptive of the hazard;

27 (d) Precautionary measures describing the action to be followed or avoided, except when modi-
28 fied by rule of the director pursuant to subsection [(4)] **(6)** of this section;

29 (e) Instruction, when necessary or appropriate, for first-aid treatment;

30 (f) The word “Poison” for any hazardous substance [*which*], **or for any article containing any**
31 **hazardous substance, that** is defined as “highly toxic” in ORS 453.005;

32 (g) Instructions for handling and storage of packages [*which*] **that** require special care in han-
33 dling or storage;

34 (h) Adequate directions for the protection of children from the hazard if the article is intended
35 for use by children and is not a banned hazardous substance, or the statement “Keep out of the
36 reach of children,” or its practical equivalent, if the article is not intended for use by children; and

37 (i) The name and place of business of the manufacturer, packer, distributor or seller.

38 [(3)] **(5) Any statement required by subsection (4) of this section must be in the English lan-**
39 **guage, located prominently and in conspicuous and legible type in contrast by typography, layout**
40 **or color with other printed matter on the label.**

41 [(4)] **(6) If the director finds that, because of the size of the package involved or because of the**
42 **minor hazard presented by the substance contained [therein] in the package,** or for other good and
43 sufficient reasons, full compliance with the labeling requirements otherwise applicable under ORS
44 453.005 to 453.135 and 453.990 (2) is impracticable or is not necessary for the adequate protection
45 of the public health and safety, the director may [*authorize the exemption of*] **exempt** such

1 substance, **or article containing such substance**, from the requirements[, *to an extent consistent*
2 *with*] **of subsection (4) of this section to the extent that the exemption still provides** adequate
3 protection of the public health and safety.

4 **SECTION 4.** ORS 453.055 is amended to read:

5 453.055. (1) The Director of the Oregon Health Authority shall declare to be a hazardous sub-
6 stance any substance or mixture of substances [*which*] **that** the director finds to be within the de-
7 finition of “hazardous substance” in ORS 453.005.

8 (2) If the director finds that any hazardous substance is a misbranded hazardous substance **or**
9 **that any article contains a misbranded hazardous substance**, the director shall require such
10 reasonable variations or labeling requirements in addition to those required by ORS 453.035 as the
11 director finds necessary for the protection of the public health and safety. However, if the director
12 finds that any hazardous substance **or article containing a hazardous substance** cannot be labeled
13 adequately to protect the public health and safety, or [*the*] **that the substance or** article presents
14 an imminent danger to the public health and safety, the director may declare the **substance or** ar-
15 ticle to be a banned hazardous substance and require its removal from commerce.

16 (3) If the director finds that a toy or other article intended for use by children is a hazardous
17 substance, bears or contains a hazardous substance in a manner as to be susceptible of access by
18 a child to whom the toy or other article is entrusted or presents an electrical, mechanical or ther-
19 mal hazard, the director shall declare a toy or other article to be a banned hazardous substance and
20 require its removal from commerce.

21 (4) If the director finds that any hazardous substance, **or article containing any hazardous**
22 **substances**, intended, or packaged in a form suitable, for **personal use or** use in a household,
23 notwithstanding cautionary labeling as required under ORS 453.005 to 453.135 and 453.990 (2), in-
24 volves a degree or nature of the hazard by its presence or use [*in households*] **such** that the pro-
25 tection of the public health and safety can be adequately served only by keeping the substance **or**
26 **article** out of the channels of commerce, the director shall declare the hazardous substance to be
27 a banned hazardous substance, **or shall declare the article containing the hazardous substance**
28 **to be a banned article**, and require its removal from commerce.

29 (5) Any hazardous substance, **or article containing any hazardous substance**, intended, or
30 packaged in a form suitable for use in the household or by children, [*which*] **that** fails to bear a label
31 in accordance with ORS 453.035 and the standards of the director shall be deemed to be a mis-
32 branded hazardous substance **or an article that contains a misbranded hazardous substance**.

33 (6) Any hazardous substance contained in a reused food, drug or cosmetic container is a mis-
34 branded hazardous substance.

35 (7) **In adopting rules under this section pursuant to ORS 453.095, the director shall review**
36 **scientific data, which may include laboratory findings, epidemiologic studies and public sur-**
37 **veillance, and shall consider whether the weight of the scientific evidence supports a finding**
38 **that a substance is a hazardous substance.**

39 **SECTION 5.** (1) **For purposes of ORS 30.492 (1), the amendments to ORS 453.005 by sec-**
40 **tion 1 of this 2015 Act apply only to causes of action that arise on or after the effective date**
41 **of this 2015 Act.**

42 (2) **For purposes of ORS 31.610 (6)(a), the amendments to ORS 453.005 by section 1 of this**
43 **2015 Act apply to violations related to the spill, release or disposal of a hazardous substance**
44 **occurring on or after the effective date of this 2015 Act.**

45 (3) **For purposes of ORS 646A.350, the amendments to ORS 453.005 by section 1 of this**

1 **2015 Act apply to conduct occurring on or after the effective date of this 2015 Act.**

2
