

Enrolled Senate Bill 962

Sponsored by Senator MONNES ANDERSON, Representative BERGER; Senators ATKINSON, BATES, BROWN, DEVLIN, GEORGE, MORRISSETTE, MORSE, NELSON, WALKER, Representatives ANDERSON, DALTO, GARRARD, GREENLICK, TOMEI

CHAPTER

AN ACT

Relating to brominated flame retardants; creating new provisions; and amending ORS 453.005, 453.085 and 453.995.

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

SECTION 1. ORS 453.005 is amended to read:

453.005. As used in ORS 453.005 to 453.135 [and 453.990 (2)] unless the context requires otherwise:

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

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

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

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

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

(6) "Flammable" means any substance [which] **that** has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

(7) "Hazardous substance" means:

(a) Any substance [which] **that** is toxic, corrosive, an irritant, a strong sensitizer, flammable, combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or any substance [which] **that** the Director of Human Services finds, pursuant to the provisions of ORS 453.005 to 453.135 [and 453.990 (2)], comes within the definition of this paragraph.

(b) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines that the substance is sufficiently hazardous to require labeling in accordance with ORS 453.005 to 453.135 [and 453.990 (2)] in order to protect the public health. However, [the term] "hazardous substance" does not include any source material,

special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(c) Any toy or other article intended for use by children *[which]* **that** the director determines in accordance with ORS 453.055 presents an electrical, thermal or mechanical hazard.

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

(e) The following brominated flame retardant chemicals:

(A) Pentabrominated diphenyl ether; and

(B) Octabrominated diphenyl ether.

(8) "Highly toxic" means any substance *[which]* **that** falls within any of the following categories:

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

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

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

(9) "Immediate container" does not include package liners.

(10) "Irritant" means any substance not corrosive within the meaning of subsection (3) of this section, but *[which]* **that** on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article *[which]* **that** is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly on the article involved or on a tag or other suitable material affixed thereto, and a requirement made by or under authority of ORS 453.005 to 453.135 *[and 453.990 (2)]* that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

(12) "Mechanical hazard" means an article *[which]* **that** in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its design or manufacture:

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

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

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

(d) From moving parts;

(e) From lack or insufficiency of controls to reduce or stop motion;

(f) As a result of self-adhering characteristics of the article;

(g) Because the article or any part or accessory thereof may be aspirated or ingested;

(h) Because of instability; or

(i) Because of any other aspect of the article's design or manufacture.

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

(14) "Poison" means:

(a) Arsenic and its preparations;

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

(15) "Radioactive substance" means a substance *[which]* **that** emits ionizing radiation.

(16) "Strong sensitizer" means a substance *[which]* **that** will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity *[which]* **that** becomes evident on reapplication of the same substances and *[which]* **that** is designated as such by the Director of Human Services.

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

(18) "Toxic substance" means any substance, other than radioactive substance, *[which]* **that** has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface.

SECTION 2. ORS 453.085 is amended to read:

453.085. *[It shall be unlawful for any person to]* **A person may not** perform any of the following acts:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of a hazardous substance.

(3) The *[doing]* **performance** of any act with respect to a hazardous substance while the substance is in commerce, or while the substance is held for sale or resale after shipment in commerce, *[which]* **that** results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(4) The receipt of or delivery into commerce of any misbranded hazardous substance or banned hazardous substance for pay or otherwise.

(5) The giving of a guarantee or undertaking *[which]* **that** is false, except as a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, a person residing in the United States from whom the person received in good faith the hazardous substance.

(6) The failure to permit entry or inspection as authorized by ORS 453.005 to 453.135 *[and 453.990 (2)]* or to permit access to and copying of any record as authorized by ORS 453.005 to 453.135 *[and 453.990 (2)]*.

(7) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container *[which]* **that**, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification.

(8) The use by any person to the advantage of the person, or the revealing other than to the Director of Human Services or the authorized representative of the director or to a court of any information acquired under authority of ORS 453.005 to 453.135 *[and 453.990 (2)]* concerning any method or process *[which]* **that** is a trade secret entitled to protection.

(9) The sale or delivery of any poison to a minor under 18 years of age without the written order of a person 21 years of age or over, which written order shall be retained in the records of the seller

and the poison register of the seller shall show by the name of the purchaser the fact that the sale or delivery was to a minor on order of an adult and show the adult's name and address.

(10) The sale or delivery of completely denatured alcohol, methyl alcohol (methanol), canned heat or other solidified forms of denatured alcohol, or any preparation containing those substances, to be used for beverage purposes.

(11) The sale or delivery of any poison without making or causing to be made an entry in a poison register of the seller in the manner required by law.

(12) The sale or delivery to any person of any poison without having learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose.

(13) The giving of a fictitious name or making any false representations to the seller or dealer when buying any of the poisons.

(14) The sale or delivery to any person by anyone other than a pharmacist of a poison.

(15) The removal or disposal of any detained or embargoed article without permission of the Director of Human Services or a designated representative.

(16) The introduction or delivery for introduction into commerce of any product containing more than one-tenth of one percent by mass of pentabrominated diphenyl ether or octabrominated diphenyl ether. This subsection does not apply to:

(a) Used products; or

(b) Replacement parts for products introduced into commerce before the effective date of this 2005 Act.

SECTION 3. Section 4 of this 2005 Act is added to and made a part of ORS 453.005 to 453.135.

SECTION 4. (1) The Department of Human Services shall submit a report in January of each even-numbered year to the appropriate interim committee with jurisdiction over natural resources matters. The report shall include:

(a) A summary review of relevant new studies on decabrominated diphenyl ether and recent findings and rulings by the United States Environmental Protection Agency and the European Union; and

(b) Recommendations regarding the disposal of products containing pentabrominated diphenyl ether or octabrominated diphenyl ether.

(2) The Department of Human Services shall make the report required in subsection (1) of this section available to the public and shall request public comment for a period of at least 30 days prior to submitting the report to the appropriate interim committee. Public comments received by the department shall be submitted to the interim committee with the report.

SECTION 5. ORS 453.995 is amended to read:

453.995. (1) In addition to any other liability or penalty provided by law, the Department of Human Services may impose a civil penalty on a person for violation of:

(a) ORS 453.885; or

(b) ORS 453.005 to 453.135 or rules adopted under ORS 453.005 to 453.135 by the department.

(2) A civil penalty imposed under this section may not exceed \$2,000.

(3) ORS 183.745 applies to civil penalties imposed under this section.

SECTION 6. Section 4 of this 2005 Act is repealed on December 31, 2008.

Passed by Senate April 20, 2005

Repassed by Senate June 27, 2005

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Secretary of Senate

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President of Senate

Passed by House June 7, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State