

February 13, 2020

The Honorable Delores Kelley
Chair, Senate Finance Committee
3 East Wing
Miller Senate Office Building
Annapolis, Maryland 21401

RE: Oppose SB 447

Dear Chairwoman Kelley:

The undersigned organizations, representing a cross section of consumer product companies, manufacturers, and retailers are respectfully opposed to SB 447, legislation that would restrict the sale of any “flame retardant chemical” used in juvenile products and upholstered furniture.

Safety is a top priority for our industries, and we believe consumers deserve to have confidence that the products they buy are safe for their intended uses. Our members invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of the products we produce and sell. Though this legislation may be well intentioned, we have the following concerns:

- A presumption that the presence of any substance meant to suppress ignition or the spread of a fire in these applications means the product is somehow harmful;
- The definition of “flame retardant chemical” is so broad that it would essentially restrict chemistries not even invented regardless of the compound’s human health/environmental profile and its evaluation by competent regulatory authorities;
- The bill does not recognize the important role certain chemistries play in protecting consumers from a variety of hazards, including the risk from fire; and,
- The bill does not take into consideration the current flame retardant evaluation work underway by the U.S. Environmental Protection Agency (EPA) and the U.S. Consumer Product Safety Commission (CPSC).

The Importance of Science in Chemical Regulation --- Presence Does Not Equal Harm

The bill undercuts the integrated nature of hazard and exposure by presuming that the mere presence of a chemical in a product indicates that using the product will automatically result in a level of exposure sufficient to cause harm. The mere presence of a chemical in a product cannot be a surrogate for “exposure” without any notion of whether or to what extent there may be an actual exposure at a level sufficient to cause harm.

That a product contains a “flame retardant chemical” does not necessarily mean that the product is harmful to human health or the environment or that there is any violation of existing safety standards or laws. Risks associated with a chemical in a product are dependent upon the potency of the chemical and the magnitude, duration, and frequency of exposure to the chemical.

EPA, the Centers for Disease Control (CDC), and some states make it clear that the mere presence of a chemical in a product or in our bodies is insufficient information to determine whether that chemical or product poses a risk. For example, Washington State’s Department of Ecology clearly states on its website:

“The presence of a chemical in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws.”¹

Unsupported Assumption that Consumer Products Contain Harmful Substances

Bear in mind that more than a dozen federal laws are in place to regulate the safety of chemicals in commerce, including the Consumer Product Safety Improvement Act (CPSIA) and the Federal Hazardous Substances Act (FHSA).

The FHSA gives the CPSC authority to ban by regulation a hazardous substance if it determines that the product is so hazardous that the cautionary labeling required by the act is inadequate to protect the public. Any toy or other article that is intended for use by children and that contains a hazardous substance is also banned under the FHSA if a child can gain access to the substance. In addition, the act gives the Commission authority to ban by regulation any toy, or other article intended for use by children which presents a mechanical, electrical, or thermal hazard.

Flame Retardant Definition is Overly Broad

The chemicals subject to the proposed restriction are defined so broadly that virtually any chemical or chemical compound that exists now or one that may be invented in the future would be prohibited. Water arguably would be restricted if its functional use was to “resist or inhibit the spread of fire.” Innovation among manufacturers and raw material suppliers is common practice as businesses seek to identify newer, environmentally friendlier, and more cost effective products. SB 447 stifles any attempt at innovation.

Flame Retardant Evaluation Work at EPA and CPSC

EPA is currently conducting rigorous scientifically based safety assessments of four flame retardant chemistries used in a variety of applications – textiles, furniture foams, paints, and electronics. At a minimum, any new policy regarding these chemistries should be informed by this review.²

¹ Washington Administrative Code 173-334-010. <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-334-010>

² <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-assessing-risks-flame-retardants#what>

Additionally, the proponents of SB 447 may allege that the CPSC recently moved to restrict the use of these chemistries in various applications pursuant to a petition filed by some interest groups. That allegation is false. Please consider the following facts:

- The National Academy of Sciences, Engineering, and Medicine (NAS) Study Report that was commissioned by the CPSC and released in May 2019 concluded that additive, non-polymeric organohalogen flame retardants (OFRs) are so different that a single class approach is scientifically inappropriate, since the grouping of chemicals as OFRs glosses over differences in chemical structure, physicochemical properties, and predicted biological effects.³
- As part of its Fiscal Year 2020 Operating Plan, the CPSC is considering withdrawing the Guidance Document related to additive, non-polymeric organohalogen flame retardants in certain consumer products.
- The CPSC's own staff concluded that it is not appropriate to group all organohalogen flame retardants together and that the CPSC could not make the determination that all OFRs were "hazardous substances."

Fire Safety Should Not Be Overlooked

Great progress has been made over the years with respect to fire safety. However, fire remains a safety challenge. The National Fire Protection Association (NFPA) reports that fire fighters responded to nearly 1.32 million fires in 2018, which resulted in 3,655 civilian fire fatalities, 15,200 civilian fire injuries, and an estimated \$12.4 billion in property loss.

Fire also affects some of our most vulnerable populations. Fires and burns are the third leading cause of unintentional death among children 14 and under.⁴ According to the NFPA, children under five years old are 10% more likely to die in a home fire as the average person.⁵ In 2015, adults age 65 or older represented 15 percent of the United States population but suffered 40 percent of all fire deaths.⁶ Older adults were more vulnerable in a fire than the general

³ "A Class Approach to Hazard Assessment of Organohalogen Flame Retardants," National Academies of Sciences, Engineering, and Medicine, May 2019.

⁴ ESFI, Holiday Data and Statistics, available at <http://www.esfi.org/resource/holiday-data-and-statistics-359#InjuryAndFatalityStatistics>.

⁵ NFPA. *Characteristics of Home Fire Victims*. March 2014. Available at <https://www.nfpa.org/News-and-Research/Fire-statistics-and-reports/Fire-statistics/Demographics-and-victim-patterns/Characteristics-of-home-fire-victims>.

⁶ U.S. Fire Administration 2017. Fire safety outreach materials for older adults. Available at https://www.usfa.fema.gov/prevention/outreach/older_adults.html.

population due to a combination of factors including mental and physical frailties, greater use of medications, and elevated likelihood of living in a poverty situation.⁷

Flame retardants are an important fire safety tool that help save lives, reduce fires, and limit property damage. This point is reinforced by the fact that SB 447 exempts electrical components from the prohibition presumably because these products may pose a fire risk and that flame retardants can play a role in reducing that risk.

For the reasons stated above, we respectfully oppose SB 447. We look forward to additional opportunities to provide information to the Legislature on the issues of fire safety, chemical safety and product safety.

Concerns Shared by the Following Organizations:

American Chemistry Council

Juvenile Products Manufacturers Association

Maryland Retailers Association

Maryland Industrial Technology Alliance

Single Ply Roofing Industry

The Toy Association

⁷ U.S. Fire Administration National Fire Data Center. Fire Risk to Older Adults in 2010. Topical Fire Report Series Vol. 14, no. 9. August 2013. Available at <https://www.usfa.fema.gov/downloads/pdf/statistics/v14i9.pdf> (accessed Jan. 17, 2018).