



April 10, 2018

The Honorable Sam Kito, Chair
Alaska House Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

RE: CS HB 27 – OPPOSE

Dear Representative Kito:

The undersigned organizations, representing a cross section of consumer product companies, manufacturers, and retailers are respectfully opposed to CS HB 27, amended legislation that would restrict the use of specified flame retardants in a variety of products and impose new labeling requirements on manufacturers.

Safety is a top priority for 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 these flame retardant chemistries in a consumer product means the product is somehow harmful;
- The scope of potentially impacted products is so broad that it could include any consumer product sold in the State of Alaska;
- The bill does not recognize the important role certain chemistries play in protecting consumers from a variety of hazards, including the risk from fire;
- The bill does not take into consideration the current flame retardant evaluation work underway by the United States Environmental Protection Agency (USEPA) and the Consumer Product Safety Commission; and
- The bill would add to a patchwork of state-based chemical and product reporting and regulatory requirements, resulting in regulatory uncertainty for the business and retail community.

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 indicates that when it is used or disposed it will likely result in a level of exposure sufficient

to cause harm. 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.

A consumer product that 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. Any 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.”

<http://www.ecy.wa.gov/programs/swfa/cspa/search.html>

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 Consumer Product Safety Commission 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 Evaluation Work Underway at USEPA and CPSC

The USEPA is currently conducting rigorous scientifically based safety assessments of several 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.¹

Additionally, the proponents of CS HB 27 may allege that the Consumer Product Safety Commission (CPSC) recently moved to restrict the use of organohalogen chemistries in various applications pursuant to a petition filed by some interest groups. That allegation is false. Please consider the following facts:

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 of these chemicals were “hazardous substances.”

- As outlined in the CPSC staff report, the commission cannot, consistent with the Federal Hazardous Substances Act (FHSA), determine that a broad and diverse class of consumer

¹ <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-assessing-risks-flame-retardants#what>

products, including children's products are "hazardous substances" just because they might contain a flame retardant.

- Flame retardants are a diverse set of substances with differing characteristics, structures, and intended uses, so it is not appropriate to make broad conclusions or impose a one-size fits all regulatory approach on these substances or the products that contain them.

The CPSC commissioners voted to convene a panel of scientists to study the health and safety of these chemicals and we believe that work should be completed before Alaska or any other state imposes use restrictions prematurely.

Overly Broad Definition of Consumer Product

The current definition of "consumer product" could be interpreted so broadly as to essentially including any product contained in one's home, including some products that could pose a potential fire hazard. For example, the bill could be interpreted to prohibit the use of an important industrial fire retardant used primarily in polyurethane foam building insulation. This flame retardant helps an extremely energy efficient building product meet building code requirements and reduces the risk of fire.

Labeling Requirement Poses Compliance Challenges for Manufacturers

CS HB 27 requires any consumer product that contains a flame a chemical that "inhibits flame production" to be labeled that the product "contains a chemical flame retardant." One molecule of a chemical flame retardant in an internal component of a product could trigger this labeling provision. Attempting to track each and every component of a product throughout the supply chain that may contain any level of chemical flame retardant creates onerous compliance challenges for manufacturers.

Fire Safety Should Not Be Overlooked

While we have made great gains over the years, fires are still a real threat to life and property, and they need to be considered in the evaluation of product safety. The National Fire Protection Association (NFPA) reports that fire fighters responded to nearly 1.35 million fires in 2015, which resulted in 3,280 civilian fire fatalities, 15,700 civilian fire injuries and an estimated \$14.3 billion in property loss.

NFPA also reports that young children and people over 65 face the highest risk of fire death. Fires and burns are the third leading cause of unintentional death among children 14 and under.² According to the NFPA, children under five years old are 10% more likely to die in a home fire as the average person.³ In 2015, adults age 65 or older represented 15 percent of the United States population but suffered 50 percent of all fire deaths.⁴ Older adults were more vulnerable in a fire than the general 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.⁵ Flame retardants are an important fire safety tool that help save lives, reduce fires and limit property damage.

² ESFI, Holiday Data and Statistics, available at <http://www.esfi.org/resource/holiday-data-and-statistics-359#InjuryAndFatalityStatistics> (accessed Jan. 4, 2016).

³ 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> (accessed Jan. 17, 2018).

⁴ U.S. Fire Administration 2017. Fire safety outreach materials for older adults. Available at https://www.usfa.fema.gov/prevention/outreach/older_adults.html (accessed Jan. 17, 2018)

⁵ 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).

While we appreciate the intent behind CS HB 27, we collectively oppose the bill for the reasons stated above.

Sincerely,

Alaska Chamber of Commerce
American Chemistry Council
American Fuel & Petrochemical Manufacturers
Association of Home Appliance Manufacturers
AutoCare Association
Consumer Technology Association
CropLife America
Household and Commercial Products Association
Juvenile Product Manufacturers Association
Plastics Industry Association
Polyurethane Manufacturers Association
Responsible Industry for a Sound Environment
Single Ply Roofing Association
Specialty Graphic Imaging Association
Structural Insulated Panel Association
The Toy Association