



TESTIMONY OF
TOY INDUSTRY ASSOCIATION (TIA)
SUBMITTED TO
HOUSE COMMITTEE ON FISH, WILDLIFE, AND WATER RESOURCES
SENATE BILL 239
AN ACT RELATING TO THE REGULATION OF TOXIC SUBSTANCES
APRIL 9, 2014

www.toyassociation.org

Chairman Deen and members of the Committee on Fish, Wildlife and Water Resources, the Toy Industry Association (TIA) appreciates this opportunity to provide testimony in on Senate Bill 239. TIA is a not-for-profit trade association composed of approximately 700 members, both large and small in size, located throughout North America and there are 35 small toy companies based in Vermont.

The Toy Industry Association and its members have long been leaders in toy safety. In this role, we develop safety standards for toys, working with industry, government, consumer organizations, and medical experts. TIA commends the bill sponsors for their keen interest in the safety of children. We share that interest, and our industry is founded on the mission of bringing fun and joy to children's lives – and in that pursuit protecting the safety of our young consumers is our top priority.

However, we have serious concerns regarding the current draft of Senate Bill 239 as it does not consider the existing robust safety system for toys sold in this country – including federal regulation and international standards - and will create unnecessary burden on companies doing business in Vermont with arguably no measurable increase in safety.

Toys are Already Highly Reviewed for Safety

Safety is the number-one priority for toy manufacturers. TIA's members perform rigorous safety assessments prior to the marketing of any product and take into consideration potential impacts on a consumer or child. In addition to meeting stringent internal product safety requirements, toys sold in the U.S. must also comply with numerous federal safety and environmental regulations under a variety of laws and regulations including:

- The Consumer Product Safety Improvement Act (CPSIA) signed into law in 2008,
- The Consumer Product Safety Act (CPSA),
- The Child Safety Protection Act (CSPA),
- The Federal Hazardous Substances Act (FHSA),
- The ASTM Safety Specification on Toys (which was adopted as a mandatory federal standard on February 10, 2009), and
- The Toxic Substances Control Act.

Under this network of requirements, it is illegal to sell toys or children's products containing various substances known to be harmful to children and to which children might be exposed. TIA continues to support strong regulations for toys but they must be safety-based and national in scope to allow for consistently safe products across the nation.

Legislation Relies on Flawed Scientific Approach

This legislation is fundamentally flawed in that it lacks the scientific resources and justification to create such a **complex and costly new regulatory system**. Senate Bill 239 would require the Department of Health with the Agency of Natural Resources to identify chemicals of concern and then require manufacturers and distributors of products that contain "priority chemical" compounds to report the presence of a chemical. These chemicals could then be banned in a short timeframe and manufacturers of products containing a priority chemical would be mandated to find and use a "safer alternative," with little time to do a proper assessment on such a replacement. This scenario would

likely result in regrettable substitutions and provides a disincentive to carefully consider all data on alternative chemicals.

This approach to chemicals management is based on the flawed premise that the mere presence of a chemical with certain hazard traits equates to a safety concern. Rather, safety assessments that consider exposure and harm are the key to ensuring that products are safe when used by consumers and children. Safety assessments are necessary to ensure that toys are safe for use and existing federal and international regulatory structures already ensure that toys are reviewed in this manner. Additionally, toy manufacturers have knowledge of their products' use patterns and physical requirements and make safety and protecting human health an essential element of product development and product stewardship.

Policies that seek to restrict the use of certain chemicals or products must be based on credible, safety-based science and should include full consideration of the level of exposure and harm. No clear recognition of safety or exposure is included in this bill. Specifically, there is **no allowance for situations where there is little or no route of exposure** to a "chemical of concern" and the risks from a substance are adequately controlled. Without establishing a clear criterion that prioritizes action to exposure and safety concerns, from a substance, in a product; decisions under this program are likely to result in inflexible chemical bans, and create the potential for regrettable substitutions.

Cost to Businesses and the State of Vermont

Legislation to regulate "chemicals of concern" in consumer products and toys places an immense burden on manufacturers and government agencies. State-based standards that are inconsistent with international, federal or other state requirements make compliance difficult and costly, threatening the viability of toy manufacturers, distributors and retailers in Vermont. In other states that are attempting to implement legislation addressing similar issues, there have been significant costs for both the government and businesses

In California, where similar legislation passed in 2008, it is estimated that **it will cost the State \$7.3 million over the first five years to implement a similar program**¹. In Maine, estimates show that the hidden fiscal burden associated with the implementation of an identical program would be **\$900,000 to \$1.6 million** in initial start-up costs and an additional **\$900,000 to \$2.2 million** annually². In Maryland, the estimated cost of similar legislation considered this year would be more than **\$500,000** per year³ in addition to proposed fees on industry.

Finally, in Washington State, a chemical reporting program will **cost businesses up to \$27.6 million** in the first year and **up to \$69.5 million** over the first 20-years⁴ just for testing data needed to comply with the program. Additionally, Washington State notes that over the course of the program it would only equate to "three (3) avoided cases of CHCC content resulting in recalls, litigation, or children's health impacts of a minor degree."

¹ California State House Appropriations Committee Fiscal Summary, AB 283. Available at: http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080807_131956_sen_comm.html

² *Considerations and Potential Costs Associated with Implementing Maine LD 2048*. Prepared by ICF International, March 31, 2008 for American Chemistry Council.

³ Maryland Department of Legislative Services, *Fiscal and Policy Note – SB 637*. See: <http://mlis.state.md.us/2011rs/billfile/sb0637.htm>

⁴ Washington Council of Ecology, *Preliminary Cost-Benefit and Least Burdensome Alternative Analysis*, Pages 8-11. 10-01-035.

Ensuring compliance with the new requirements of these types of proposals could mandate the creation of extensive data collection and submission systems, by companies and additional product testing, and extensive staff planning. The resource burden of this program would also escalate over time to continually review and certify products for sale in Vermont and could jeopardize the viability of many businesses in Vermont and around the country. For product manufacturers – especially small and medium sized companies – this state-based compliance burden could become costly and *will not* result in measurable improvements to public health.

Lack of Adequate Stakeholder Input & Consistency with other States

Senate Bill 239 also does not provide for adequate stakeholder input into the designation of priority chemicals or the development of this program. The lack of such processes undermines an adequate dialogue and sharing of relevant scientific data, likely resulting in arbitrary and misguided chemical designations and puts in place a framework for elimination of valuable products without justifiable cause. Fully informed decision-making is absolutely essential to ensuring safe products remain on the market and are not unnecessarily stigmatized as a consequence of this program.

Additionally, S.239 is NOT consistent with other states that have taken implemented policies in this areas. Specifically, S.239 is broader than any other state's program in the area of chemicals regulation and proposes reporting for chemicals that is substantially different than Washington State. In particular, Washington State established a reporting program that began accepting data in 2012 for Chemicals of High Concern to Children (referenced above) and S.239 differs in that reporting in several costly ways and dramatically goes beyond the program that Washington State has implemented – which stops at reporting. Dramatic and significant amendments would be needed to S.239 to reduce unnecessary burdens and costs – and to bring this legislation into consistency with other states, like Washington. Specifically, this legislation is not consistent with other states like Washington on the following key issues:

- **Fees** – No other state envisions fees as broadly as required by S.239
- **Bans** – Chemical bans envisioned by S.239 would be some of the most expansive in the country and the State lacks the resources to implement a science-based approach to implement such a broad mandate
- **Labeling** – Labeling provisions in S.239 would likely conflict with
- **Chemical listing** – The Department of Health with the Agency of Natural Resources should look first at the Washington State Chemicals of High Concern to Children's product list and determine truly if there is a need for Vermont to go beyond those 66-chemicals for reporting in Washington.
- **Duplication of Federal Regulation** – S.239 must acknowledge that many chemicals are regulated under federal jurisdictions and programs and should NOT be the subject of regulation under S.239
- **Chemical Reporting Issues** -
 - If a company has reported in Washington State for the same chemical as reporting is required in Vermont that company must deemed in compliance in Vermont.
 - Vermont must exclude inaccessible components from reporting – identically to Washington State

- Vermont Must exclude reporting for contaminants if there is a “Due Diligence system in place to reduce the presence of that chemical” – identically to Washington State.
- Risk Reporting Disclaimer – Vermont must include a risk disclaimer for chemical reporting information – see WA State CSPA Disclaimer.
- Protection of Confidentiality and Trade Secrets – Section 1779 must be modified to prevent disclosure of trade secrets – even in a aggregate format.

At a minimum these issues must be addressed via major and substantive amendments to S.239.

Conclusion

The Toy Industry Association and its members have always recognized the special relationship we have with children, who are our principal consumers; their safety and well-being is always our top priority. As parents ourselves and an industry devoted to bringing joy (and safety) to childhood, we share your interest in the safety of toys and we urge you to carefully consider the unintended consequences of the provisions proposed in this legislation and how this bill will hurt those doing business in Vermont and force Vermont consumers to source products through other means, at no measurable increase to product safety. **Therefore, we respectfully request that you oppose the passage of Senate Bill 239 - in its current form.**

On behalf of the 700 members of Toy Industry Association, including our member companies and the 35 small toy companies in Vermont, we thank you for consideration of these concerns. TIA would be happy to address any questions that you and the members of the Committee might have with regard to our concerns on this legislation.