

ASSOCIATED INDUSTRIES OF VERMONT

REPRESENTING THE VERMONT INDUSTRIAL AND BUSINESS COMMUNITY SINCE 1920

AIV Statement on S. 239 Before the Senate Committee on Economic Development, Housing, and General Affairs

March 12, 2014

As the statewide association dedicated to Vermont's manufacturing and related sectors, AIV opposes S. 239. The bill would create potentially significant uncertainty and burdens for manufacturers – including the creation of regulations that are not consistent with federal rules governing other states – that could discourage investment in manufacturing in Vermont. AIV instead supports the ongoing efforts in Congress to reform federal regulations governing chemicals to help ensure consistency and higher standards for the scientific underpinnings of regulation.

Key Points:

- It is in Vermont's best interests to have chemicals in products regulated at the federal, not the state level. Inconsistencies in regulations, particularly what might be restricted or require labeling, between Vermont and the balance of the states would make Vermont a risky investment for manufacturers. With investment decisions based on assessments of future developments, risk and uncertainty can be sufficient to discourage investment even before specific chemicals or products might be targeted.
- S. 239 does not ensure that regulations will be based on sufficient and credible science, that they will reflect actual exposure to and risk from chemicals in specific products, that confidential business information will be protected, and that adequate resources and personnel will be provided to attempt responsible implementation and administration of the law.
- S. 239 raises serious concerns about legal costs for the state if restrictions or labeling requirements are not based on sufficient scientific merit or if confidential business information is compromised, and legal costs for manufacturers if the private right of action to bring suit is abused.
- Enacting S. 239 is not a rational or legitimate strategy to encourage the adoption of new federal regulations. It is unlikely that Vermont's actions will meaningfully influence Congress on this matter. Moreover, the enactment of S. 239 would only serve to ensure that Vermont has a separate and likely inconsistent regulatory regime even if Congress does enact federal reforms.
- Although there is consensus that TSCA should be reformed, it does still provide protections to consumers in regulating chemicals in products, alongside other existing laws and regulatory regimes and the work of industry itself. In addition, the state retains the ability to address specific chemicals or products of concern through legislative action should evidence support such action. There is not a compelling crisis that warrants the enactment of S. 239.

Overview of Issues and Concerns

Inconsistent and Restrictive Regulations. The bill would create a regulatory regime that could establish chemical and product bans and other regulations that are not consistent with the federal rules governing the majority of states and can be expected to be inconsistent with even the other handful of states developing their own chemical regulations (which, although still in their early stages, are already highly divergent in the chemicals on which they are focused). This would create sale restrictions and labeling re-

quirements unique to Vermont, with the risk of manufacturing restrictions to follow. Given the legislative history of past proposals and the statements of the bill's supporters in the Legislature, the Administration, and advocacy groups, it is reasonable for manufacturers to expect that any rules resulting from the bill's enactment would indeed be more aggressive and restrictive than federal regulations and might not be based on sufficient science or actual exposure and health risks.

Broad Discretion to Ban or Require Labeling without Sufficient Science. Although the bill references the use of scientific evidence to support targeting chemicals and products, the bill leaves to the Department of Health's discretion whether scientific evidence is credible. The debates about banning specific chemicals often involve questionable science and can be highly emotional and political. The bill does not provide criteria or mechanisms for challenging the scientific basis for regulations or requiring specific quality standards (such as peer review, etc.).

No Requirement to Match Regulations to Actual Chemical Exposure and Effects. The bill's focus is on the presence of a chemical in a product. There are no requirements for regulations to be based on whether a chemical is present at a level of concern or whether it is present in a manner that would actually expose humans or the environment to the chemical. This could lead to banning chemicals or products in cases where there are not any practical threats to health or the environment.

Potential Exposure of Confidential Information; Misleading Public Information. Although the bill provides for the application of the state's trade secrets statutes to reporting requirements, it remains in question whether such provisions are sufficient to protect all relevant confidential business information. There is even greater concern about confidentiality in the rulemaking process. There is also concern that the public could form misinformed opinions about the threats posed by specific chemicals and products or categories thereof.

Increased Legal Risk for the State and Manufacturers. The bill could create potentially significant legal exposure for the state in the case of legal challenges to unjustified bans, restrictions, or labeling requirements on specific products and the potential release of or other threat to confidential business information. It could also create legal exposure for manufacturers because of the private right of action the bill would create for citizen lawsuits based on the chemicals present in their products.

Expectation of Broader Scope. Past versions of S. 239 and related legislation in past years have included provisions with much broader scope, including other consumer products, commercial products, and potential bans on manufacturing itself in addition to sale or distribution. Should this bill pass, there would be expectations that proposals to expand the scope of the law would quickly follow. Such proposals could be much more likely to pass should S. 239 be enacted.

Disincentives for Manufacturers to Continue to Invest in Vermont. The issues outlined above affect all manufacturers. However, the uncertainty over inconsistency and insufficient supporting science, coupled with uncertainty over the ultimate scope of regulations, would create disincentives for manufacturers to invest in Vermont given the risks of interference in their manufacturing processes and products.

Conclusion

S. 239 is ultimately unnecessary, costly, and economically and legally risky. The interests of Vermonters would be better served by encouraging federal reform efforts already underway. The Legislature can always remain vigilant should action on specific chemicals or products appear warranted.