

Burton Snowboards is committed to improving our environmental and social impact through an integrated global sustainability program, which includes a team solely dedicated to moving toward safer chemistry in all our products. While we support the broader goals and objectives of state legislation (with the ultimate goal being federal legislation), we have several recommendations that should be included in S.239 before we can support the bill. It's critical that we approach consumer products chemical management in the right way, with an eye toward the experiences of our sister states and nations in order to achieve the most successful long-term outcomes. As currently drafted, S. 239 will increase the regulatory compliance burden for businesses and may impede longer-term efforts to eliminate toxic chemicals. We recommend that S.239 include these concepts:

- **Harmonize Legislation with Other States:** As drafted, S.239 conflicts with the state-level framework developed and in effect in various other states including California, Washington and Maine. The lack of harmonization among these state regulatory schemes will increase internal compliance-related costs for every business which sells consumers products in the State of Vermont. Such costs include, but are not limited to, new headcount, testing costs and IT-related costs required to comply with S.239's requirements. Failure to harmonize S.239 with existing state and global regulatory schemes will undoubtedly put Vermont businesses at a competitive disadvantage in the global marketplace.
- **Phase-In Product Priority By Exposure:** The bill lacks a "Priority Product" concept and definition. The idea with a Priority Product designation is that it would create a phased approach to implementation and compliance with the near-term regulatory focus on products such as (1) cosmetics and beauty products which are ingested, topically applied or exposed directly to the skin; (2) products that may come in contact with the skin; (3) youth/children's products etc. Focusing regulatory efforts on the types of consumer products which are most likely to cause reproductive harm and have negative health effects is a model that has been adopted by other states and countries with similar toxic chemicals legislation and is considered by industry and chemical management experts alike to be a modern legislative approach to the concern being addressed by this Committee. As a result of the lack of any Priority Product or related sub classification designation system, the scope of S.239 exceeds that of any current regulatory program of this type in other states.
- **Include Manufacturing Control Exemption Clause:** The bill lacks a "Manufacturing Control Exemption". A Manufacturing Control Exemption is a mechanism built into consumer products toxic management and safety legislation which is designed to allow sophisticated businesses to rely on their existing internal process and quality control frameworks (such as implementation of Restricted Substance Lists a/k/a "RSLs" and related supply chain control measures) in lieu of reporting or otherwise being obligated to disclose the existence and content levels of chemicals and related substances in a company's products. Washington State's Children's Safe Products Act is an example of a recent state-enacted statute which includes a Manufacturing Control Exemption.
- **Lack of IP Protection:** The bill lacks adequate protections for protection of confidential information and proprietary processes. Certain information that may be made publicly available pursuant to Section 1775(d) of the bill (including performance characteristics, material/chemical content etc.) may be considered proprietary. For many outdoor and sports equipment brands such as Burton, technical performance and material selection represents a competitive advantage and disclosure of this type of information which could be made accessible to a competitor would undermine Burton's position as a marketplace leader in our product categories. Burton vigorously protects its intellectual property and has made significant investments to do so. Public disclosure of trade secrets and related intellectual property would discourage companies from monetizing their intellectual property portfolios and would

hinder long-term R&D and innovation.

- **Remove Private Right of Action:** Finally, Section 1778 of S.239 provides for a private right of action to enforce violations of this legislation. This is akin to the private right of action contained in California's Proposition 65 consumer products regulatory scheme which has created a cottage industry of plaintiff's lawyers incentivized to enhance their law firms' bottom lines and not necessarily act in the public's best interest to reduce and eliminate harmful substances in consumer products. Inclusion of this private right of action will likely increase VT-based companies' cost of doing business in the state as they will be faced with increased legal expenses and a wave of threatened (and often frivolous) lawsuits.

Thank you for the opportunity to provide comments and suggestions.

Sincerely,

/s/ DONNA G. CARPENTER

Donna Carpenter, President and Co-Owner, Burton Snowboards

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