



TESTIMONY OF
TOY INDUSTRY ASSOCIATION (TIA)
SUBMITTED TO
SENATE COMMITTEE ON HEALTH AND WELFARE

AMENDMENTS TO SENATE BILL 139
**AMENDDDING THE ACT RELATING TO THE REGULATION OF TOXIC
SUBSTANCES**

MARCH 18, 2015

www.toyassociation.org

Chairman Ayer and members of the Committee on Health and Welfare, the Toy Industry Association (TIA) appreciates this opportunity to provide testimony in opposition to sudden amendments to Senate Bill 139 – revising the 2014 Regulating Toxic Chemicals Act. 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 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. It further will burden the State to implement a chemical assessment, reporting, and restriction system at a time when resources are scarce.

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.

The Amendments Violate the Spirit of Compromise from the 2014 Law

- Nobody was happy with the Law from 2014, and both sides could point to issues that they would like to see fixed. However sudden changes at this time are unwarranted.
- Changing provisions that were hard fought last year undermines decisions that were made collectively by both Chambers of the Legislature.

- Stakeholders and legislators in both Chambers negotiated in good faith last year - these amendments violate any sense of trust from that process.
- The suddenness with which this amendment was introduced without actionable time for consideration and amendments undermines the current Department of Health process and potential for compromise in the future on this law to address real issues.

The 2014 Law is Still Being Implemented

- On Friday, March 20th the Department of Health is holding a hearing on the first rulemaking under the 2014 law.
- Changing the goalposts of this law now would undermine any sense of predictability industry and consumers would hope for under this law.
- The Department of Health has yet to even make decisions under the current constructs of the 2014 law - to be proven or demonstrated to be problematic as currently framed.

Justification for Action Due to Preemption Concerns by Federal S.697 are False

- The proposed amendments to S.139 lower the bar for the Department to take action under the existing law - they do not impact whether or not Vermont would be preempted if S.697 passes federally.
- Under S.697 preemption would not apply to any action Vermont took to prioritize a chemical, require reporting, or labeling. Only a ban under Vermont's law would be preempted if U.S. EPA made a Vermont banned chemical a "high priority" and completed a safety assessment.
- The only way Vermont could avoid preemption of a ban of a chemical under S.697 would be if this law could ban chemicals retroactively before January 1, 2015. These amendments do not do that.
- State laws and regulations *in effect before January 1, 2015*, pertaining to any chemical, including high priority chemicals, will remain in effect.
- State laws and regulations restricting high priority chemicals, or Vermont chemical bans, that were *enacted after January 1, 2015, but before EPA designated the chemical as high priority* will remain intact until either EPA completes a positive safety determination or issues a final rule outlining necessary risk management measures or stating that the chemical will not meet the safety standard.
- *Once EPA establishes the scope of the safety assessment for a high priority chemical*, states will not have the authority to enact new laws or regulations that prohibit or restrict the chemical for uses within that scope.
- Once two states ban a chemical it automatically is designated as a high priority chemical for review by EPA.

- States can continue to enforce labeling laws enacted before *August 31, 2003*
- State regulations restricting high priority chemicals can remain in effect if EPA grants the state a waiver based on unique local circumstances.

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 such a sudden and unjustified series of amendments to a law that has yet to be implemented. **Therefore, we respectfully request that you oppose the passage of the unnecessary amendments to Senate Bill 139.**

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 or pending efforts at the federal level.