



Testimony of

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On Behalf of
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In Opposition to S.55
An act relating to the regulation of toxic substances and hazardous materials

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Thank you Chair Pugh, Representative Haas, and members of the House Human Services Committee for the opportunity to provide testimony on behalf of the Juvenile Products Manufacturers Association (JPMA) expressing concerns with the current House amended draft of S.55 - An act relating to the regulation of toxic substances and hazardous materials.

JPMA has concerns with the S.55 with regard to new pre-market reporting requirements, the removal of reliance on "weight of credible scientific evidence", removal of exposure factors when banning a chemical, and removal of the need to have a recommendation of the Act 188 Working Group to require removal of a chemical from a children's product. These were critical factors that were part of the compromise, in 2014, that created Act 188 and these provisions are consistent with other states. While neither side was happy with the elements of Act 188 – it still represents a compromise that goes farther than any other state's children's chemicals regulatory program.

Background of the JPMA

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade association representing 95% of the prenatal industry including the producers, importers, and distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. These products are sold globally and nationally, and consistency of safety regulations is a critical aspect of product development.

JPMA and its members support the goal of children's safety through information sharing, product performance, certifications, and industry standards. JPMA not only represents the interests of the North American juvenile products industry, but also works as an advocate for product safety on behalf of consumers through active participation in voluntary standards setting processes to ensure product safety for juvenile products. In addition, the materials that are used in juvenile products must meet stringent internal product safety requirements and 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),
- The Consumer Product Safety Act (CPSA),
- The Child Safety Protection Act (CSPA),
- The Federal Hazardous Substances Act (FHSA), and
- The Toxic Substances Control Act (TSCA)

Under this network of requirements, it is illegal to sell children's products containing various substances known to be harmful to children and to which children might be exposed. On behalf of JPMA, I sincerely hope that the following comments will assist the Committee in its decision.

1. Pre-market Approval Reporting is Unreasonable Under Act 188

A primary new concern with S.55 has arisen since it was considered last year and since its introduction in the Senate earlier this year. Specifically, a new major substantive

provision was hastily inserted in S.55, just before it was passed by the Senate that adds a new requirement to Act 188, as follows:

(D) requirements for when or how a manufacturer of a children's product that contains a chemical of high concern to children provides the notice required under subsection 1775(a) of this title when the manufacturer intends to introduce the children's product for sale between the required dates for reporting; and

This new provision equates to requiring that any new product introduced for sale, with a chemical requiring reporting, receive a pre-market approval confirmation from the Department of Health. This type of market approval process would require appropriate staff at the Department and equates to a process similar to pesticide registrations, which is not justified under the intent and scope of this program.

Further, this requirement is **not consistent** with any other state that administers similar programs (for children's products). All of the similar states, including Washington, Oregon and Maine, rely on 2-year retrospective reporting process for products on store shelves and that were sold on the preceding two years.

Finally, this also specifically ***conflicts*** with the most recently proposed Chapter 6 Rules, issued by the Department of Health which had a public hearing on February 1, 2019. It also runs counter to public guidance that the Department has provided since August of 2017. Legislating this issue now does an end-run on the Administrative process that has already begun, and which companies have been operating under guidance since 2018.

2. "Weight of Credible Scientific Evidence" is Necessary for Scientific Decision-making

S.55 also specifically removes the need for the Department of Health to rely on the "weight of credible scientific evidence" as the basis for adding a chemical to the chemicals of concern to children list. The weaker term that is now enshrined in the amendment to S.55 is "independent peer-reviewed" scientific evidence; however, this is not a true criterion for making any decision. There are independent peer-reviewed studies published every day that come to conflicting conclusions. This is part of the scientific decision-making process, but it leaves the Department of Health to question which study should be used in this scenario.

Instead, a "weight of credible scientific evidence" approach allows for there to be some consensus of scientific evidence – before a decision to regulate is recommended. In the absence of using such an approach, decisions made to add a chemical to the list of chemicals of high concern to children would be guided by the last study published and are likely to be found arbitrary and capricious if challenged at a later date.

2. Removal of Working Group "Recommendations" for Chemical Bans

As noted earlier, neither side was happy with the final compromise that became Act 188. While the working group has been widely attacked as a hindrance to this law – the

process has yet to even be tested or given a chance to work. Thus far, the Working Group has met once in July of 2017 for an initial discussion of proposed changes to Act 188 rules and to discuss two chemicals that the Department has considered for bans. By my assessment, it was not a contentious meeting but one that offered both sides a constructive means to share priorities and information with the Department. We have yet to see what the next step in the process looks like, but it should be allowed to work before the whole process is made just window-dressing in a rulemaking process.

Banning a chemical is the most restrictive and punitive measure that Act 188 authorizes the Department of Health to proceed with under this law. Having the Department seek a common conclusion with the Working Group is a reasonable step to ensuring that all sides of this potential regulatory step are considered fully and may ultimately result in rules that are better formulated and withstand potential challenges down the road. Until this process is given an opportunity to work, it should not be immediately watered down.

3. Exposure Evaluation Before Chemical Bans

The final sets of amendments that JPMA opposes in S.55 are regarding the removal of the requirements that the Department determine that a children's product "will" expose a child to a chemical and that that such "exposure could cause or contribute to an adverse health effect". These two factors are critical to ensuring that potential chemical bans are justified and will actually improve children's health. These provisions are also consistent with the regulatory approach used in other states like California that ensure that chemical bans are meaningful.

The approach suggested by S.55 creates an arbitrary "may" expose criteria and totally eliminate the threshold that the exposure from a product actually contribute to the health effects, which were the reason for concern with a chemical. Once again this sets up a situation where the Department does not make decisions based upon real world exposure concerns and potential for harm. Such regulatory decisions are not likely to advance the goals of Act 188 in protecting children's health and may not withstand challenges in the future.

Conclusion

JPMA again appreciates the opportunity to provide input on the Senate Bill 55. We continue to believe the original compromise from Act 188 deserves to be fully implemented before such wholesale amendments are considered, such as these. Undermining the scientific thresholds and processes that have not even been fully tested and tried threatens to undermine the ultimate goal of this law.

We hope that the Committee will allow Act 188 to continue to function and be fully implemented and refrain from adopting these amendments. Thank you, again, to the Committee for calling this hearing and allowing JPMA to testify. I look forward to your questions.