



June 8, 2018

The Honorable Bob Wieckowski
Chair, Senate Committee on Environmental Quality
State Capitol
Sacramento, CA 95814

RE: **AB 2998 (Bloom) – OPPOSE**

Dear Chairman Wieckowski:

The undersigned organizations, representing a cross section of consumer product companies, manufacturers, and retailers are respectfully opposed to AB 2998, legislation that would restrict the sale of any “flame retardant chemical” used in juvenile products, mattresses, or upholstered furniture.

Safety is a top priority for our industries, and we believe consumers deserve to have confidence that the products they buy are safe for their intended uses. Our members invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of the products we produce and sell. Though this legislation may be well intentioned, we have the following concerns:

- A presumption that the presence of any substance meant to suppress ignition or the spread of a fire in these applications means the product is somehow harmful;
- The definition of “flame retardant chemical” is so broad that it would essentially restrict chemistries not yet even invented regardless of the compounds human health/environmental profile and its evaluation by competent regulatory authorities;
- The bill does not recognize the important role certain chemistries play in protecting consumers from a variety of hazards, including the risk from fire;
- The legislation sidesteps the state’s existing Safer Consumer Products (SCP) program currently being implemented by the Department of Toxic Substances Control (DTSC); and
- The bill does not take into consideration the current flame retardant evaluation work underway by the United States Environmental Protection Agency (USEPA) and the Consumer Product Safety Commission (CPSC).

The Importance of Science in Chemical Regulation --- Presence Does Not Equal Harm

The bill undercuts the integrated nature of hazard and exposure by presuming that the mere presence of a chemical in a product indicates that using the product will automatically result in a level of exposure sufficient to cause harm. The mere presence of a chemical in a product cannot be a surrogate for “exposure” without any notion of whether or to what extent there may be an actual exposure at a level sufficient to cause harm.

That a product contains a “flame retardant chemical” does not necessarily mean that the product is harmful to human health or the environment or that there is any violation of existing safety standards or laws. Risks associated with a chemical in a product are dependent upon the potency of the chemical and the magnitude, duration, and frequency of exposure to the chemical.

USEPA, the Centers for Disease Control (CDC), and some states make it clear that the mere presence of a chemical in a product or in our bodies is insufficient information to determine whether that chemical or product poses a risk. For example, Washington State’s Department of Ecology clearly states on its website:

“The presence of a chemical in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws.”

<http://www.ecy.wa.gov/programs/swfa/cspa/search.html>

Unsupported Assumption that Consumer Products Contain Harmful Substances

Bear in mind that more than a dozen federal laws are in place to regulate the safety of chemicals in commerce, including the Consumer Product Safety Improvement Act (CPSIA) and the Federal Hazardous Substances Act (FHSA).

The FHSA gives the Consumer Product Safety Commission authority to ban by regulation a hazardous substance if it determines that the product is so hazardous that the cautionary labeling required by the act is inadequate to protect the public. Any toy or other article that is intended for use by children and that contains a hazardous substance is also banned under the FHSA if a child can gain access to the substance. In addition, the act gives the Commission authority to ban by regulation any toy, or other article intended for use by children which presents a mechanical, electrical, or thermal hazard.

Flame Retardant Definition is Overly Broad

The chemistries subject to the proposed restriction are defined so broadly that virtually any chemical or chemical compound that exists now or one that may be invented in the future would be prohibited. Water arguably would be restricted if its functional use was to “resist or inhibit the spread of fire.” Innovation among manufacturers and raw material suppliers is common practice as businesses seek to identify newer, environmentally friendlier, and more cost effective products. AB 2998 stifles any attempt at innovation.

Safer Consumer Products Program

The bill sidesteps the implementation of the Safer Consumer Products (SCP) regulation (e.g. “green chemistry”) by the Department of Toxic Substances Control (DTSC). As you know, the 2008 law passed by the Legislature requires DTSC to establish a process to identify, prioritize, and, as necessary, evaluate chemicals of concern in consumer products and their potential alternatives.

DTSC states “the regulations provide for a four-step continuous, science-based, iterative process to identify safer consumer product alternatives.” This process includes creating a list of candidate chemicals; identifying priority product/candidate chemical combinations; requiring manufacturers to conduct alternative assessments; and, if warranted, imposing a wide array of regulatory responses – *including imposing bans.*

DTSC's first formal rulemaking was the identification of the chemical flame retardant TDCPP that may be used in children's foam padded sleeping mats. DTSC's 2018-2020 Priority Product Work Plan¹ identifies a number of product categories that may be subject to regulatory evaluation and further rulemaking is expected in 2018.

Flame Retardant Evaluation Work Underway at USEPA and CPSC

The USEPA is currently conducting rigorous scientifically based safety assessments of several flame retardant chemistries used in a variety of applications – textiles, furniture foams, paints and electronics. At a minimum, any new policy regarding these chemistries should be informed by this review.²

Additionally, the proponents of AB 2998 may allege that the Consumer Product Safety Commission (CPSC) recently moved to restrict the use of these chemistries in various applications pursuant to a petition filed by some interest groups. That allegation is false. Please consider the following facts:

The CPSC's own staff concluded that it is not appropriate to group all organohalogen flame retardants together and that the CPSC could not make the determination that all of these chemicals were "hazardous substances."

- As outlined in the CPSC staff report, the commission cannot, consistent with the Federal Hazardous Substances Act (FHSA), determine that a broad and diverse class of consumer products, including children's products are "hazardous substances" just because they might contain a flame retardant.
- Flame retardants are a diverse set of substances with differing characteristics, structures, and intended uses, so it is not appropriate to make broad conclusions or impose a one-size fits all regulatory approach on these substances or the products that contain them.

The CPSC action is not a ban. Rather, the CPSC has opted to further study this broad class of chemicals. The commissioners voted to convene a panel of scientists to study the health and safety of these chemicals. The CPSC decision to further evaluate these chemicals is not a restriction or ban.

Fire Safety Should Not Be Overlooked

While we have made great gains over the years, the recent devastation caused by fires in California are a stark reminder of the threat to life and property. The National Fire Protection Association (NFPA) reports that fire fighters responded to nearly 1.35 million fires in 2015, which resulted in 3,280 civilian fire fatalities, 15,700 civilian fire injuries, and an estimated \$14.3 billion in property loss.

Fire also affects some of our most vulnerable populations. Fires and burns are the third leading cause of unintentional death among children 14 and under.³ According to the NFPA, children under five years old are 10% more likely to die in a home fire as the average person.⁴ In 2015, adults age 65 or older

¹ http://www.dtsc.ca.gov/SCP/upload/Draft_2018-2020_Priority_Product_Work_Plan.pdf

² <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-assessing-risks-flame-retardants#what>

³ ESFI, Holiday Data and Statistics, available at <http://www.esfi.org/resource/holiday-data-and-statistics-359#InjuryAndFatalityStatistics> (accessed Jan. 4, 2016).

⁴ NFPA. *Characteristics of Home Fire Victims*. March 2014. Available at <https://www.nfpa.org/News-and-Research/Fire-statistics-and-reports/Fire-statistics/Demographics-and-victim-patterns/Characteristics-of-home-fire-victims> (accessed Jan. 17, 2018).

represented 15 percent of the United States population but suffered 50 percent of all fire deaths.⁵ Older adults were more vulnerable in a fire than the general population due to a combination of factors including mental and physical frailties, greater use of medications, and elevated likelihood of living in a poverty situation.⁶

Flame retardants are an important fire safety tool that help save lives, reduce fires, and limit property damage. This point is reinforced by the fact that AB 2998 exempts electrical components from the prohibition presumably because these products may pose a fire risk and that flame retardants can play a role in reducing that risk. As the Legislature considers other policies to improve fire prevention strategies, is now the time to pass legislation that is arguably increasing fire risk?

For the reasons stated above, we respectfully oppose AB 2998.

Sincerely,



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American Chemistry Council



Dawn Koepke
California Manufacturers & Technology Association



Shawn Lewis
National Federation of Independent Business



Brian Rose
Retail Industry Leaders Association



Kelly Mariotti
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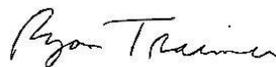
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⁵ U.S. Fire Administration 2017. Fire safety outreach materials for older adults. Available at https://www.usfa.fema.gov/prevention/outreach/older_adults.html (accessed Jan. 17, 2018)

⁶ U.S. Fire Administration National Fire Data Center. Fire Risk to Older Adults in 2010. Topical Fire Report Series Vol. 14, no. 9. August 2013. Available at <https://www.usfa.fema.gov/downloads/pdf/statistics/v14i9.pdf> (accessed Jan. 17, 2018).