January 24, 2023

RE: HB 1855 – OPPOSE

Dear Chair O'Quinn:

The American Chemistry Council (ACC) must respectfully oppose HB 1855, legislation that proposes to prohibit the use of any "PFAS substances" in any "juvenile product." Product 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 use. We 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. While we appreciate the intent of this legislation, we unfortunately have several concerns.

PFAS Background

Per- and polyfluoroalkyl substances (PFAS), or fluorotechnology, are a diverse universe of chemistries that play a critical role in a variety of applications ranging from smart phones, tablets and telecommunications products; clean energy systems such as solar panels, lithium batteries and hydrogen fuel cell bladders; lifesaving medical devices; sterile packaging for vaccines and other pharmaceuticals; aircraft and automotive electrical and safety systems; building and construction products; and weatherproof outdoor equipment and apparel.

It is important to note that not all PFAS chemistries are the same. Individual chemistries have their own unique properties and uses, as well as environmental and health profiles. According to the U.S. Environmental Protection Agency, "approximately 600 PFAS are manufactured (including imported) and/or used in the United States." Among these 600 are substances in the solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) and gaseous (e.g., hydrofluorocarbon refrigerants) forms. The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another and individual PFAS chemistries should be evaluated on this basis.

As drafted, HB 1855 utilizes a general definition of "PFAS" that treats all of these chemistries the same, regardless of their distinct physical and chemical properties or if they are used in a product where potential exposure is minimal to non-existent. These properties define the risk the product poses to the user. A grouping approach is indiscriminate; it ignores potential indicators of health risk and may be cited as justification for use restrictions on many other products regardless of whether those actions would be beneficial or harmful to the public. Such decisions should be grounded in science and evaluation of particular product-chemical combinations.

Other entities have also examined using a grouping approach for regulatory purposes and made some cautionary statements.

- ECOS[1] – the Environmental Council of the States – which represents state and territorial environmental agency leaders, several of whom have implemented regulatory programs in their home states, has said: "Many regulators and subject-matter experts advise against grouping PFAS as an entire class."

- The Vermont Department of Environmental Conservation[2], which was specifically charged by the legislature to develop a class regulation or to explain why such a regulation wasn't possible said, "The Review Team spent over a year deliberating, researching, and discussing the potential to regulate PFAS as a Class. After reviewing the current peer-reviewed literature, as well as the available toxicology data for PFAS, the Review Team determined that at the current time it is not feasible to regulate PFAS as a Class."

- Federal scientists participating in a workshop convened last fall by the National Academies of Science, Engineering, and Medicine (NASEM)[3] to review the federal PFAS research program acknowledged the broad diversity of properties with this group of substances, concluding that "PFAS substances thus present unique challenges for grouping into classes for risk assessment."

Broad Definition of Juvenile Product

Given the extremely broad definition of "juvenile product" the bill has the potential to impact an expansive array of businesses and manufacturers. As noted above, products that may be impacted include electronics such as life-saving medical devices designed for children, smart phones or tablets, outdoor apparel and equipment, toys, healthcare equipment, and even motorcycles that are marketed for children under 12 that may be manufactured with or contain components where "PFAS" or some variation of fluorotechnology may be found. The mere presence of these chemistries does not automatically equate to any risk to human health or the environment. Furthermore, the proposed definition in the bill is inconsistent with existing definitions of "juvenile product" found in California law and federal statutes.

For these reasons, we are opposed to HB 1855. We look forward to continuing the discussion on this bill in hopes of addressing some of these concerns.

Sincerely,

Shawn Swearingen

American Chemistry Council

[1] ECOS. Processes & Considerations for Setting State PFAS Standards (February 2020).

[2] https://dec.vermont.gov/sites/dec/files/PFAS/20180814-PFAS-as-a-Class.pdf.

[3] NASEM. Workshop on Federal Government Human Health PFAS Research, October 26-27. Board on Environmental Studies and Toxicology (2020). https://www.nap.edu/read/26054/chapter/1.