



February 14, 2011

The Honorable Ryan Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
Committee on Health
Hawaii State Capitol, Room 329
Honolulu, HI 96813

RE: HB 208– OPPOSE

Dear Chair Yamane, Vice Chair Morikawa and Members of the Committee:

On behalf of the Grocery Manufacturers Association (GMA¹), I am writing to express our opposition to HB 208 because prohibiting bisphenol A (BPA) is an unnecessary food safety risk with no conclusive scientific support.

Prohibiting BPA is an Unnecessary Food Safety Risk

BPA is an ingredient used in many rigid plastics (e.g. bottles, cups) for more than forty years. It is also used in thin linings for cans in which certain foods and beverages are packaged. Can linings are necessary to protect public health. Without them, interactions between the metal and the can contents over time eventually leads to corrosion and contamination of the food by dissolved metals, and to formation of container defects that allow entry into the product of microorganisms that cause spoilage or illness. The use of protective can linings is so effective that even high acid foods like fruits and vegetables, can be

¹ Based in Washington, D.C., the Grocery Manufacturers Association is the voice of more than 300 leading food, beverage and consumer product companies that sustain and enhance the quality of life for hundreds of millions of people in the United States and around the globe.

Founded in 1908, GMA is an active, vocal advocate for its member companies and a trusted source of information about the industry and the products consumers rely on and enjoy every day. The association and its member companies are committed to meeting the needs of consumers through product innovation, responsible business practices and effective public policy solutions developed through a genuine partnership with policymakers and other stakeholders.

In keeping with its founding principles, GMA helps its members produce safe products through a strong and ongoing commitment to scientific research, testing and evaluation and to providing consumers with the products, tools and information they need to achieve a healthy diet and an active lifestyle.

The food, beverage and consumer packaged goods industry in the United States generates sales of \$2.1 trillion annually, employs 14 million workers and contributes \$1 trillion in added value to the economy every year.

GROCERY MANUFACTURERS ASSOCIATION

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counted on to retain their nutrition, quality and consumer acceptability for years under a wide range of environmental and handling conditions.

There is no One-Size Fits all Replacement

Contrary to what some claim, there is no across-the-board replacement for BPA in can linings because every food product formulation has its own set of demands. For example, acidic foods and thermal processing present particular challenges. Assuming, a replacement candidate is identified, its performance must be ascertained over the entire shelf life of the food product, and its safety, regulatory approval and compliance with other applicable regulations must be assured before it can be commercially used. Also, retooling of can manufacturing and food processing equipment may be necessary. Collectively, this would take several years.

BPA is one of the Most Intensively Studied Chemicals and the Science Does Not Support a Ban

HB 208 asserts "there is extensive scientific evidence" about the effects of BPA. What HB 208 fails to mention is the U.S. Food and Drug Administration (FDA) and food regulators around the world (e.g. European Food Safety Authority [EFSA] in EU, Germany, Japan, UK, Canada, Australia-New Zealand) have repeatedly confirmed the safety of BPA and continue to reaffirm the safety of BPA in light of new studies. Furthermore, California's Developmental and Reproductive Toxicant Identification Committee experts reviewed all the scientific evidence on the safety of BPA and determined that BPA should not be listed as a reproductive or developmental toxicant under Proposition 65.

Extensive studies have also looked at the potential for BPA to migrate from can coatings and food containers into various kinds of foods under various conditions. After careful review of available data, and using conservative estimates of dietary exposures based on migration into food under intentionally exaggerated test conditions, experts have concluded that human exposure to these substances from food packaging is minimal and poses no risk.

In February of 2007, the European Food Safety Authority completed its review of new studies published since 2002 and finalized a Tolerable Daily Intake (TDI), or safe daily exposure level, for BPA. The new data included a reproduction study in mice that followed offspring for 2 generations. The EFSA TDI is 0.05 mg/kg bodyweight/day. EFSA found that exposure to BPA in the diet is well below the TDI. This is true for all population groups including infants and children, who have the highest potential dietary exposure relative to body weight of any population group. EFSA found that a 3-month old baby weighing 6 kg (13.2 lb)

would have to consume more than 4 times the normal number of bottles of formula per day to reach the TDI.

Additionally, in July and October of 2008, the EFSA's panel that examines food contact substances concluded, in response to two requests to re-examine BPA's safety and to a recent report in the Journal of the American Medical Association, that there is no need to reestablish new TDI levels. EFSA concluded a causal link between the diseases addressed in the JAMA report and low exposures of adults to BPA cannot be established. EFSA reported that there are significant metabolic differences between humans and rodents, and the fact that people metabolize and excrete BPA far more quickly than rodents reduces the relevance of low-dose studies when considering human TDI for BPA. The EFSA also looked at the U.S. National Toxicology Program's draft brief on BPA and Canada's action on BPA when making their conclusions. Highlighting the scientific inconsistencies with Canada's recent decision on BPA, EFSA's former AFC panel (the panel on additives, flavorings, processing aids and materials in contact with food) reported, "The Canadian risk assessment takes a precautionary approach for these sensitive life stages, taking into account the findings in the low-dose studies, although commenting that these are limited in rigor, consistency and biological plausibility."

The U.S. Centers for Disease Control and Prevention (CDC) recently published biomonitoring data from a large-scale study that represents the entire U.S. population aged 2 months and older. The data show that typical human daily intake of BPA is one million times less than the levels that showed no adverse effects in multi-generation animal studies, and one thousand times less than the very conservative regulatory limits set by the U.S. and European governments.

In January, 2010, the U.S. Department of Health and Human Services (HHS), FDA and the National Institute of Environmental Health Sciences (NIEHS) held conference calls with the media, stakeholders and industry to provide an update on BPA. HHS and FDA shifted their positions slightly, embracing the National Toxicology Program's (NTP) 2008 classification of the available BPA data as posing "some concern" for potential health effects in infants, but stated that "current scientific research cannot yet be fully interpreted for relevance to human health." HHS went on to say that BPA has not been proven to harm children or adults, but that newer data deserve a closer look and that more research needs to be done. FDA is not recommending that families change the use of infant formula or foods because the benefits of stable sources of nutrition outweighs any potential risk.

Based on the entire body of scientific evidence, and the findings of numerous health authorities and researchers, consumers can continue to safely enjoy foods

The Honorable Ryan Yamane, Chair
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Committee on Health
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and beverages in the many forms of packaging provided, including those that contain BPA. As such, the Grocery Manufacturers Association must respectfully oppose HB 208.

Sincerely,

John Hewitt
Western Region Director
Grocery Manufacturers Association



Toy Industry Association, Inc.

www.toyassociation.org

TESTIMONY OF

TOY INDUSTRY ASSOCIATION (TIA)

SUBMITTED TO

HAWAII HOUSE COMMITTEE ON HEALTH

IN OPPOSITION TO HB 208

“RELATING TO TOXIC PRODUCTS”

FEBRUARY 15, 2011

www.toyassociation.org

Chairman Yamane and members of the Committee on Health, the Toy Industry Association (TIA) appreciates this opportunity to provide testimony in opposition to House Bill 208. TIA is a not-for-profit trade association composed of more than five hundred (500) members, both large and small in size, located throughout North America.

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. The U.S.'s risk-based standards are widely used as models around the globe. 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.

TIA would like to specifically address concerns with House Bill 208 that would establish broad restrictions on Bisphenol-A or BPA used in many children's product applications.

BPA is Necessary for Product Safety and Essential Product Characteristics

Polycarbonate is lightweight, highly shatter-resistant, clear, extremely strong, and has high heat resistance, which makes it ideal for use in a wide variety of products. BPA is found in trace amounts in polycarbonate and is not an additive. If you ban BPA, you ban polycarbonate.

BPA as used in polycarbonate plastic *is specifically chosen for the safety it imparts to products, making them shatter-resistant and hygienic.* Some of the products that utilize BPA for these safety properties include protective gear such as bicycle helmets, protective shields used in sporting goods and safety glasses, as well as eyeglass lenses, and contact lenses.

BPA is approved by the U.S. Food and Drug Administration (FDA) for very sensitive applications, including medical and food contact use, and, as such, is used widely in food storage containers and medical equipment. These food applications are far more sensitive than toys; where exposure to BPA containing compounds is limited and occasional.

BPA is used less extensively in children's toys but is utilized when shatter-resistant properties are called for to eliminate the risk of breakage – which can lead to the creation of hazards such as small parts (potential choking hazard) and/or sharp edges in a child's environment which can cause laceration injuries. BPA is also UV-resistant and in a toy application provides strength and durability, reducing breakdown, again, reducing potential small part or sharp edge hazards. Elimination of BPA in these important applications could degrade the safety of toys and other consumer products where no safer alternative has been identified.

Scientific Bodies Have Verified the Safe Use of BPA

There is strong science to support the safe use of BPA in toys and consumer product applications. There is extensive research and testimony from experts on the science demonstrating the very low risk associated with BPA as well as the unique safety benefits it provides. Specifically the following authoritative scientific bodies have found BPA to be safe or to not warrant special restrictions or handling:

- In November of 2010, an international panel of experts convened by the World Health Organization to examine the health risks from exposure to the chemical bisphenol A (BPA) agreed that it would be “premature” to take any public health measures to regulate or ban BPA.
- In September of 2010, the European Food Safety Authority (EFSA) concluded a review of over 800 studies on BPA and reconfirmed current safe levels of BPA in food products.
- In July of 2009, the California Developmental and Reproductive Toxicant Identification Committee voted unanimously against placing BPA on Proposition 65 - a list of chemicals believed to cause cancer, birth defects or other reproductive harm.
- In 2009, the German Federal Institute for Risk Assessment found that BPA is safe for “normal” use in many product applications and should not be banned.
- In 2010, the U.S. Food and Drug Administration re-reviewed its assessment of the safety of BPA and expressed the need for additional research; but did not propose banning the use of BPA in any product category.
- The U.S. Toxicology Program, in September 2008, issued a report with that did not find BPA to warrant any special restrictions.

A ban on BPA in such broad categories of products; as currently proposed by this legislation does not take into consideration the science supporting its safe use -- or its benefits.

BPA is not restricted in toys by any state, federal or national government anywhere in the world. Inconsistency with existing international, federal and all other state requirements, without regard to scientific risk, threatens the viability of toy manufacturers, distributors and retailers in the State. A broad ban of BPA in toys, as currently proposed in ISP 2009-245 could also force toy manufacturers to use less-tested alternative materials, that may not have the benefits that BPA offers and could result in products that do not hold up to the rigors of children’s play.

Federal Regulation of Phthalates in Children’s Products is Preemptive

House Bill 208 proposes to ban di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) or benzyl butyl phthalate (BBP), diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) or di-n-octyl phthalate (DnOp) in products intended for use by children under the age of 3. However, the Consumer Product Safety Improvement Act (CPSIA), (H.R. 4040) was signed into law on August 18, 2008, by President Bush. This law has already restricts the use of these specific phthalates in toys and children's products and has the effect of expressly preempting states and localities from imposing similar restrictions on phthalates in these product categories.

Specifically, the U.S. Consumer Product Safety Commission (CPSC) has issued the following guidance on this topic: "The new lead limits for lead paint and lead content preempt state law as do the new provisions on phthalates and ATVs"^[1] Therefore, these provisions relating to phthalates in House Bill 208 are preempted and are unnecessary to include in this legislation.

Additionally, if these provisions remain in this legislation it would both confuse retailers, consumers and could cause unnecessary disruption in the marketplace, with the worst case scenario of products being mistakenly sent back to manufacturers and retailers.

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 the provisions proposed in this legislation and how this bill will hurt those doing business in Hawaii, and force Hawaiian consumers to source products through other means, at no measurable increase to product safety. Therefore, TIA respectfully urges you **to oppose broad restrictions on BPA such as those contained in House Bill 208**

On behalf of the members of the Toy Industry Association and our approximately 500 member companies, we thank you for consideration of these concerns. If you or the Committee has any questions with regard to our concerns on this legislation please do not hesitate to contact Joe Gregorich, Director of State Affairs for TIA, at 916-454-4281 or jgregorich@toyassociation.org.

^[1] U.S. Consumer Product Safety Commission guidance on CPISA Section 231 – Preemption, <http://www.cpsc.gov/ABOUT/Cpsia/sect231.html>



February 14, 2011

To: The Honorable Ryan Yamane, Chair
Members, Hawaii Senate Committee on Health

From: Tim Shestek, Senior Director
State Affairs

Re: HB 208 – OPPOSE

The American Chemistry Council (ACC) must respectfully oppose HB 208, legislation that proposes to restrict certain chemical ingredients – specifically phthalates and Bisphenol-A (BPA) - that may be used in identified children's products. ACC believes the legislation as drafted conflicts with federal law governing the use of phthalates in products and the proposed restriction on BPA containing products runs contrary to the consensus of the scientific community and international regulatory agencies that have concluded BPA is safe as used.

PHTHALATES

In 2008, the federal government enacted the Consumer Product Safety Improvement Act (CPSIA), (H.R. 4040). The CPSIA is a very broad overhaul of the Consumer Product Safety Act, and it responds, in part, to public concerns about imported toys containing lead. Among the CPSIA's provisions are restrictions on six phthalates in toys and children's products. These restrictions became effective February 10, 2009. The new law preempts state laws that impose similar restrictions on phthalates. (See Consumer Product Safety Commission website at <http://www.cpsc.gov/about/cpsia/summaries/231brief.html>)

The phthalate restrictions of the CPSIA apply to certain specified phthalates in particular products:

- DEHP, DBP, and BBP: there are permanent restrictions on the sale of children's toys and child care articles with concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP). The permanent restriction was effective February 10, 2009.
- DINP, DIDP, and DnOP: there are temporary (interim) restrictions on the sale of children's toys that can be placed in a child's mouth and child care articles that contain more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP). Toys that can be put in the mouth are defined to include toys or parts smaller than five centimeters in dimension. Toys that cannot be put in the mouth but can be licked are not included. The interim restriction was effective February 10, 2009.

For the three "interim restriction" phthalates, the interim ban will be in place until a final rule is issued based on a scientific study conducted by a Chronic Hazard Advisory Panel, or CHAP, convened by the Consumer Product Safety Commission. A previous CHAP that reviewed the safety of DINP concluded that "For the majority of children, the exposure to DINP from DINP-containing toys would be expected to pose a minimal to non-existent risk of injury."

The restrictions on toys apply to toys for children ages 12 and under, and the new law refers to CPSC's 2002 guidelines for additional age determination guidance. The restrictions on child care articles apply to products to facilitate sleep or feeding, or to help with sucking or teething, for children ages 3 and under.



Children's toys and other children's products will require a general conformity certification which certifies that, based on a test of each product or upon a "reasonable testing program," the toys and products comply with applicable standards. According to materials released by the CPSC on October 2, 2008, a general conformity certification will be required when the phthalate restrictions become effective February 10, 2009. (See CPSC's website, <http://www.cpsc.gov/about/cpsia/conformity.pdf>)

As it relates to phthalates, HB 208 as drafted would be in direct conflict with the Federal law.

BISPHENOL-A (BPA)

HB 208 also proposes to restrict the use of BPA in children's products like baby bottles, sippy cups, infant formula and canned foods. The scientific evidence supporting the safety of BPA has been comprehensively examined by many government and scientific bodies worldwide in recent years who have consistently re-affirmed the safety of BPA containing products. I urge you to consider the following.

On January 15, 2010 the US FDA issued a statement regarding the use of BPA in food contact applications, including baby bottles, cups and infant formula cans. When asked if the FDA thought BPA was unsafe, Dr. Joshua Sharfstein of the FDA responded "If we thought it was unsafe, we would be taking strong regulatory action."¹

The FDA did not urge parents to stop using food products that include BPA. "FDA is not recommending that families change the use of infant formula or foods, as the benefit of a stable source of good nutrition outweighs the potential risk of BPA exposure."² Regarding baby bottles, Dr. Sharfstein stated "FDA does support the use of baby bottles with BPA."³

Over the past several years, ten international regulatory bodies have assessed the science on BPA and have determined it is safe for use in food contact applications:

- European Food Safety Authority (EFSA) (September 2010)
- European Union (EU) (June 2008)
- Swiss Federal Office of Public Health (February 2009)
- French Food Safety Authority (February 2010)
- Dutch Food and Consumer Product Safety Authority (November 2008)
- Danish Environmental Protection Agency (October 2008)
- German Federal Institute for Risk Assessment (January 2010)
- Health Canada (October 2008, July 2009, August 2010)
- Food Standards Australia New Zealand (FSANZ) (November 2010)
- Japanese National Institute of Advanced Industrial Science & Technology (Nov 2005)

After reviewing all the latest scientific evidence on BPA, an international panel of experts organized by the World Health Organization and the Food and Agriculture Organization of the United Nations concluded that "initiation of public health measures would be premature."

Despite these studies, more research is currently underway. The National Institutes of Health (NIH) has recently appropriated \$30 million in new research funding. Four new studies conducted in FDA's own research laboratory were published in the scientific literature in 2010 and strongly support their current view that food-contact products containing BPA are safe for use.

¹ "FDA Concerned About Substance in Food Packaging," New York Times, January 15, 2010

² "Update on Bisphenol A for Use in Food Contact Applications", U.S. Food and Drug Administration, January 2010

³ "FDA issues BPA guidelines," Los Angeles Times, January 16, 2010



Some proponents of banning BPA suggest alternatives to BPA based canned food liners are readily available for all applications and products. While some canned food products utilize an alternative epoxy coating, this use is very limited. Recently, the Can Manufacturers Institute said in part, **“There is no readily available, suitable alternative to BPA-based can coatings that meets the essential safety and performance requirements for the broadest spectrum of all foods now packaged in metal containers.”**

Bear in mind that there are more than 15,000 unique epoxy coating specifications in North America alone, each of which would require finding a viable alternative in order to replace epoxy resins

Unlike BPA, what has been proven to harm children and families are food borne pathogens that develop from improperly canned foods. For over 50 years epoxy resin has enabled the high temperature sterilization that eliminates the dangers of food poisoning from microbial contaminants. With recent high profile incidences of food contamination resulting in tragic consequences, these risks to food safety must be considered. Furthermore, utilization of unproven alternatives could jeopardize food safety.

ACC does not believe that a legislative restriction on BPA containing products is supported by the scientific evidence. It is for these and other reasons that we ask that you oppose HB 208.

Thank you in advance for considering our views. If you have any questions or comments, please do not hesitate to contact me or ACC's Hawai'i based representatives Red Morris and/or John Radcliffe at 808-531-4551.

