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May 17, 2021

Senator Stacy Brenner, Chair
Representative Ralph Tucker, Chair
Members of the Environment and Natural Resources Committee

RE: Testimony in SUPPORT of LD 1662, An Act to Update Maine's Sales Prohibition on Upholstered Furniture Treated with Flame-retardant Chemicals

Dear Senator Brenner, Representative Tucker and members of the Environment and Natural Resources Committee,

My name is Curtis Picard and I am the President and CEO of the Retail Association of Maine. I am a resident of Topsham. We have more than 350 members statewide and represent retailers of all sizes. Maine's retailers employ more than 85,000 Mainers. I am here today to testify in support of LD 1662.

First, thank you to Representative Dillingham for sponsoring this bill. It is important that we have an open conversation about this bill because the current Maine law is starting to have some unintended consequences that will make it hard, if not impossible, for any Maine retailer to sell upholstered furniture in Maine.

The genesis of this bill goes back to LD 182 from the 128th Legislature. That bill proposed eliminating a wide range of flame retardants from upholstered furniture. When that bill came out, we sent it out to our members who sell furniture and none of them raised any concerns. All of them said that furniture is manufactured to California standards these days and does not include intentionally added flame retardants. I even spoke with Senator Dana Dow who owns Dow Furniture and he also told me the same thing. So, because of that feedback, we did not weigh in on LD 182, and simply monitored its progress. Shortly after Maine passed LD 182 into law, a similar bill was introduced and passed in New Hampshire¹.

¹ http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=241&txtFormat=pdf&v=current

I mention New Hampshire, because ultimately, that may be the solution we are looking for in LD 1662.

The Maine DEP has been working on rulemaking and compliance with the law, and in December 2020, I participated in a stakeholder discussion organized by the Maine DEP to talk through some of the challenges they encountered. The participants included Rebecca Graham of ME Municipal Association; Sarah Woodbury and Patrick MacRoy of Defend Our Health; Margaret Gorman, Ben Gann, Harry Hechehouche, and Erin DeSantis of American Chemistry Council; Chris Jackson of Mitchell Tardy Jackson, Maine DEP staff and me. Michael Crouse and Ron Green of Professional Firefighters of Maine were invited but did not attend the meeting.

The Maine DEP purchased and tested a typical piece of upholstered furniture. Because itemized chemical compounds are not specified in law, the agency pursued lab analysis methods that would confirm the presence of broad categories of chemical compounds most commonly used as flame retardants in furniture. Because Maine's law specifies a limit of "0.1% of a mixture" but does not give a definitive list of chemicals to test for, it is likely that every piece of furniture in Maine will exceed this threshold. This is not only impractical, but it would be prohibitively expensive and difficult for the Maine DEP to determine whether or not the presence of an unlimited list of chemicals were intentionally added flame retardants or are simply present for another manufacturing process.

Here's our ask. All furniture is manufactured to California standards that prohibit flame retardants and is labeled as such. New Hampshire's law is very similar to Maine's in a number of respects but also allows for the California label to serve as a method of compliance. It reads:

II. Products that meet the following requirements shall be deemed in compliance with this chapter:

(a) Upholstered furniture bearing a label or accompanied by a certificate indicating compliance with California BPC section 19101, as amended.

(b) Upholstered furniture bearing a label, as prescribed by California BPC section 19094 (2014), indicating that the product's upholstery materials "contain NO added flame retardant chemicals."

Additionally, we understand that other states, which include New Hampshire, Massachusetts, Rhode Island, California and Maryland, who have a law similar to this have an exemption for electronic components of upholstered furniture. Language that could be considered:

38 MRSA §1609-A, sub-§3, as enacted by PL 2017, c. 311, §1, is amended to include an exemption for electronic components of upholstered furniture, or any associated casing for those electronic components.

In conclusion, we stand ready to work with Maine DEP on language and amendments to LD 1662 that will bring Maine in synchronicity with other states.

When I was younger, I spent five years working as a volunteer firefighter in my town. I understand the concerns of firefighters and know that structure fires, car fires or other fires can expose first responders to a whole host of chemical exposures. This is not watering down or weakening Maine's law. It is simply making it workable.

Thank you for the opportunity to testify on LD 1662.

Sincerely,

Curtis Picard, CAE
President and CEO