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The Association of Food, Beverage and Consumer Products Companies

GMA Testimony on Michigan House Bills 4763, 4764, 4765, 4766, 4767, 4768, 4769 – Opposition to a State-based Chemical Management System

Good afternoon. My name is Kevin Fisk. I am Director of State Affairs for the Grocery Manufacturers Association. I am pleased to be here today on behalf of GMA and its member companies and to respectfully register our opposition to House Bills 4763 - 4769, legislation that would create an unnecessary state-specific regulatory scheme for certain chemicals in consumer products.

GMA represents the world's leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. The GMA board of directors is comprised of fifty-two chief executive officers from the Association's member companies. In Michigan, GMA member companies operate 43 facilities with nearly 4,700 employees.

GMA members are committed to thoroughly evaluating their products for human and environmental safety through rigorous safety-based assessments before they are marketed. Our members provide clear and meaningful labeling on consumer products to ensure that consumers use products in accordance with label instructions. Our members routinely apply green chemistry and green engineering principles in their operations and have been honored with awards for their efforts. The consumer products industry develops products that meet or exceed the safety requirements of all state and federal agencies in the United States and Canada charged with regulating those products. These agencies include state agencies, the U.S. Consumer Product Safety Commission, the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the U.S. Food and Drug Administration, Health Canada, and Environment Canada.

We support the basic principle that toxic chemicals use reduction can be achieved by encouraging voluntary efforts and support the goal of working with other states, as in participating in a multi-state chemicals clearinghouse with regard to safer chemical alternatives. California is continuing in the process of a multi-year, multi-stakeholder process to, amongst many other things with regard to its Green Chemistry Initiative, develop such a clearinghouse drawing upon databases existing within the U.S. and other countries, like Canada and the EU. We would encourage the state of Michigan to allow this work to be completed before attempting to undertake such an enormous and costly task.

GMA would also urge you to consider the significant regulatory programs in place to regulate chemicals and consumer products. Beyond the federal Toxics Substances Control Act, manufacturers are already subject to a host of federal rules and regulations, as well as other state controls, including:

- Occupational Safety and Health Act
- Hazardous Materials Transportation Act
- Clean Air Act
- Clean Water Act
- Emergency Planning and Community Right-to-Know Act
- Toxic Release Inventory
- Pollution Prevention Act
- Federal Insecticide, Fungicide and Rodenticide Act
- Consumer Product Safety Act
- Federal Hazardous Substances Act
- Food Quality Protection Act
- Poison Packaging Prevention Act
- Safe Drinking Water Act
- Resource Conservation and Recovery Act
- Food, Drug and Cosmetic Act

Michigan should not and need not proceed on its own with a patchwork approach to chemicals management. There is already a critically important new effort underway to assess and manage chemicals in North America under the Montebello Agreement between Canada, the U.S., and Mexico. Under this international agreement, U.S. EPA will screen, prioritize, and assess nearly all chemicals in U.S. commerce. EPA will develop hazard characterizations, risk characterizations, and risk-based decisions on how to manage approximately 3,000 U.S. High Production Volume (HPV) chemicals (97% of chemicals in commerce in the U.S. by volume), plus hazard characterizations on about 6,000 U.S. Moderate Production Volume (MPV) chemicals by 2012. This trilateral international agreement will produce more information on chemicals and decisions on how to manage them -- all in a much shorter time -- than any other regulatory initiative (including Europe's REACH program).

This legislation will impose unintended costs on the State of Michigan, its citizens, the business community and other consumers across America. The experience of other states is instructive about the large unintended costs that this type of legislation would impose on Michigan. For example, California adopted its Proposition 65 program in 1987. This program lists chemicals of concern and requires the private sector to provide warnings, but does not regulate them for purposes of forcing alternative substitutions on manufacturers. Nonetheless, this chemicals listing program has resulted in enormous costs not only for the State of California, but also for the business community and consumers in California and nationwide. In fact, the costs of Prop 65 have been so significant that no other state in the nation has followed suit.

Between 2000 and 2006, there were 1309 total lawsuit settlements under Prop 65, which cost private sector litigants over $80 million in settlement costs and over $52 million in attorneys' fees. http://ag.ca.gov/prop65/pdfs/Alpert_Report2006.pdf The State of California also incurred significant attorneys' fees because of the involvement of the Attorney General's office. Additionally, the annual budget for the California agency that administers Prop 65 is in excess of $18.3 million, with 122 full time positions to cover its range of responsibilities. The California State budget shows that the annual program expenditures for the agency to administer Prop 65 for fiscal year 2008-09 will be $924,000. http://www.ebudget.ca.gov/pdf/GovernorsBudget/3890/3980.pdf

The precautionary approach this legislation takes would undermine a vast array of products that are essential to our well-being and our quality of life. The assumption that the presence of a chemical in a product at any level, no matter how low, will cause harm and would lead to unintended consequences. It could compel manufacturers to discontinue using familiar chemicals that have been safely used for many years for substitute chemicals about which relatively little may be known and which actually could impose higher risks or not be effective for the intended use. This legislation would raise the costs, or could entirely discourage the marketing, of products that are essential to our well-being.

Even in the absence of legal and self-regulatory incentives, of which there are many, manufacturers have ample incentives to provide products that are safe and without unnecessary risks to their customers. Manufacturers of brands rely on repeat business. Repeat business depends on consumer confidence in the seller. When a customer goes into a market for a favorite brand product, the whole supply chain recognizes that the shopper's trust in the businesses that brought that brand to the market is critical to his or her decision to return repeatedly. In addition, manufacturers have invested hundreds of millions of dollars in safety programs to create consumer confidence, trust and loyalty to their brands. It is, therefore, in the industry's interest to act responsibly when providing products to citizens in order to maintain that trust.

For all these reasons, we must respectfully oppose HB 4763, HB 4764, HB 4765, HB 4766, HB 4767, HB 4768 and HB 4769. Thank you for considering GMA's comments.