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April 5, 2024

The Honorable John Lawn, Jr.
House Chair
Joint Committee on Health Care Financing
Massachusetts State House - Room 236
Boston, MA 02133

The Honorable Cindy Friedman
Senate Chair
Joint Committee on Health Care Financing
Massachusetts State House - Room 313
Boston, MA 02133

RE: Comments of Massachusetts Chemistry and Technology Alliance on H4486 - *An Act to Protect Massachusetts Public Health from PFAS*

Dear Chair Lawn, Chair Friedman, and Members of the Joint Committee on Health Care Financing:

On behalf of our members, the Massachusetts Chemistry & Technology Alliance (MCTA) would like to make the following comments relative to H4486 *An Act to Protect Massachusetts Public Health from PFAS* which is currently in your committee.

MCTA is the professional organization representing manufacturers, users, and distributors of chemistry in the Commonwealth. Our membership ranges from small, multi-generational family-owned businesses operating with a handful of employees to large global companies employing thousands. More than 96% of all manufactured goods – including solar panels, turbine blades, energy efficiency products, microelectronics, and pharmaceutical devices – are touched by chemistry.

PFAS, or per- and polyfluoroalkyl substances, are essential ingredients in the state's climate-tech, health care, construction, electronics, and pharmaceutical industries. PFAS chemistries provide products with strength, durability, stability, and resilience that keep pacemakers from corroding, car brakes from slipping, and asthma inhalers from clotting.

MCTA does not oppose the basic intent of H4486 – banning the use of certain PFAS in food packaging, personal care products and consumer goods. However, H4486 treats all PFAS as a

single class even though available science shows that PFAS (which number in the thousands) have different characteristics and the majority pose no threat to consumers or the environment.

As such, despite its intended focus on PFAS that are a public health concern, MCTA believes sections of H4486 are overly broad and ambiguous and unintentionally impact products that are vital to public health and the Commonwealth's economy.

We urge the committee to work with stakeholders to narrow the bill in order to regulate those areas in need of attention.

Our suggested changes are as follows (Note - we have also added line numbers whenever possible):

- **Definition of PFAS (SECTION 6 [line 202, line 262, line 453]):** H4486 defines PFAS as: *A class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.* By including compounds containing one fluorinated carbon atom or more, the definition is not only inconsistent with other federal and state regulations (including those developed by the U.S. Environmental Protection Agency (EPA) and the Massachusetts Toxic Use Reduction Act (TURA), it also unnecessarily captures products used in climatech, biotech, and pharmaceuticals.

MCTA Suggestion: MCTA suggests that the Committee make the PFAS definition consistent with federal, Massachusetts, or other state regulations. This will satisfy the legislation's intent of regulating those compounds shown to impact human health and the environment while creating a uniform reporting and disclosure format for those manufacturers and retailers faced with compliance with the new regulations.

Option 1 – Consistent with Minnesota PFAS law and proposed in other states.

Perfluoroalkyl and polyfluoroalkyl substances ("PFAS") means non-polymeric perfluoroalkyl substances, saturated polyfluoroalkyl substances, and side-chain fluorinated polymers that contain at least 2 fully fluorinated, sequential carbon atoms, excluding gases and substances that become gases in use that are regulated under various state, federal, and international programs.

This definition includes all the PFAS of concern, including PFOA, PFOS and the list of 29 PFAS of concern identified as part of the Safe Water Drinking Act Rules; the PFAS compounds listed on the EPA's Toxics Release Inventory (TRI) and PFAS typically found in consumers goods that are the subject of H4486 (i.e., textiles, upholstery, leather, apparel, and carpet applications) and which are considered to be a potential source of PFAS exposure to the general public.

This definition excludes gases and substances that become gases and single carbon atom PFAS which are likely to be found in pharmaceutical, biotech and climatech applications.

Option 2 - Consistent with Massachusetts TURA program.

PFAS NOL (not otherwise listed): a perfluoroalkyl moiety with three or more carbons or a perfluoroalkylether moiety with two or more carbon atoms.

The TURA program, through the Toxic Use Reduction Institute (TURI), has extensively studied PFAS as part of their listing analysis. Using the TURA definition will allow consistency between the two programs in Massachusetts.

Option 3 – Consistent with U.S. Environmental Protection Agency (EPA) Toxics Substances Control Act (TSCA).

PFAS is defined as including at least one of these three structures:

- R-(CF₂)-CF(R')R'', where both the CF₂ and CF moieties are saturated carbons;
- R-CF₂OCF₂-R', where R and R' can either be F, O, or saturated carbons; and
- CF₃C(CF₃)R'R'', where R' and R'' can either be F or saturated carbons.

- **Definition of Consumer Products (SECTION 6 [line 233]):** In addition to including a list of regulated products, the definition includes a mechanism to ban any “*other article or product category defined by the department* [Department of Public Health (DPH)] [emphasis added], *that to any significant extent, is distributed in commerce for personal use or consumption by individuals*”.

This definition adds uncertainty as the limits of such a ban are unknown and, combined with the expanded definition of PFAS mentioned above, may have unintended consequences. Additionally, “product category,” “significant extent,” and other terms are not defined anywhere, leading to subjective interpretation by the DPH.

MCTA Suggestion: Remove the section that gives DPH this expanded authority.

- **Definition of “Intentionally Added” (SECTION 6 [line 185, line 249]):** The definition of “Intentionally Added” includes PFAS precursors such as “*a processing agent, mold release agent, or the creation of PFAS via chemical reactions.*”

This section incorrectly assumes that a manufacturer, user, or producer of a PFAS containing material or component will have access to that information from OSHA’s Material Safety Data Sheets (SDS) that accompany the product. However, consumer products and precursors are not regulated under the OSHA standard. Additionally, there is no objective threshold for intentionally added, nor is there a *de minimis* exemption as required by OSHA. Because few types of PFAS are regulated on the federal level, unless the manufacturer voluntarily discloses the content of PFAS chemistries in the formulation (very unlikely due to trade secret concerns) it will be almost impossible for any end user to know if a raw material or product contains PFAS or a precursor is used.

Finally, with little in the way of testing available for PFAS, it would likewise be difficult if not impossible for an end user to test for the presence of PFAS. The majority of test methods currently used are for analyzing water samples. Sampling in solid matrices is much more difficult and the levels of detection are much higher, making any data results meaningless. Finally, there are a limited number of labs that can perform testing, and not all are able to run analyses on solid samples.

MCTA Suggestion: MCTA suggest either removing this expanded definition or use a definition similar to the following, which comes from the law recently passed in Minnesota:

“Intentionally added PFAS” means a PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product’s components to perform a specific function in the final product. ”

- **Definition of “Current Unavoidable Use” (SECTION 6 [line 240]):** This definition (which includes standards required to meet the definition) lack certainty and is entirely subjective. It also applies to all uses of PFAS, not just those in food packaging and consumer products.

The definition is used in other sections of SECTION 6, particularly SECTION 6c(1) [line 300] which allow for exemptions to the bans on consumer products. Combined with the ambiguity of other definitions for PFAS and consumer products mentioned above, DPH will be overwhelmed with petitions that will require extremely technical determinations of product design and use, alternatives for PFAS or even the product itself, and whether those alternatives meet strict performance or safety standards. In addition, this definition applies to applicability of fees on SECTION 6(c)(2) and SECTION 6(c)(5) [lines 306 and 317] and labelling for exempted products in SECTION 6(c)(3) [line 312].

MCTA Suggestion: Make changes suggested to the definition of PFAS and definition of Consumer Products mentioned earlier so that this definition only applies to the two categories - food packaging and consumer goods - specified in the earlier part of the legislation.

- **Registration and Public Disclosure (SECTION 6 [line 339]):** The majority of H4486 regulates the uses of PFAS in food packaging, consumer products, and personal care products. The Public Registration and Disclosure requirements in SECTION 6(f)(1) and SECTION 6(f)(2) on the other hand, include virtually all known uses of PFAS, many of which have no direct consumer exposure or use PFAS that have been shown to cause public health issues. Therefore, they present no public health threat.

Not only is this inconsistent with the rest of the bill, but it is also impractical. Safety Data Sheets (SDS) do not often list PFAS, and many manufacturers will not identify legally protected trade secrets or confidential formulas, making any disclosure confusing to the public. Additionally, there is no statutory or regulatory requirement on SDS’s to disclose concentrations below the *de minimis* concentrations.

MCTA suggestion: The registration and public disclosure requirements should only apply to food packaging, personal care products and consumer products specifically regulated under other sections of the bill, with the changes in definitions suggested above.

MCTA understands the impact of certain PFAS on municipal drinking water supplies, cropland, and firefighters and compliments the legislature for addressing this important issue. MCTA’s recommended amendments to H4486 do not alter the Legislature’s strategy for addressing those

identified needs. MCTA's proposed language would provide those protections without hampering the Commonwealth's role in the pharmaceutical, biotech, green energy, electronics, and medical device industries, all of which rely on those PFAS chemistries that do not threaten, but protect, human health and the environment.

Thank you for your consideration of the concerns raised by MCTA and our members. If you have any questions, please do not hesitate to contact me at 508-572-9113 or via email at katherine@masscta.org.

Respectfully,

A handwritten signature in blue ink that reads "Katherine Robertson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katherine Robertson
Executive Director
Massachusetts Chemistry & Technology Alliance

cc: Representative Kate Hogan