June 14, 2017

Standing Senate Committee on Social Affairs, Science and Technology
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Submitted via Email: soci@sen.parl.gc.ca

Re: Bill S228 – Child Health Protection Act

On behalf of the Retail Council of Canada (“RCC”) and our member companies, thank you for the opportunity to comment on Bill S228 – the proposed Child Health Protection Act.

Retail is Canada’s largest employer with over 2.1 million Canadians working in our industry, which annually generates over $73 billion in wages and employee benefits. Core retail sales (excluding vehicles and gasoline) were $353 billion in 2016. Retail Council of Canada (RCC) members’ represent more than two-thirds of core retail sales in the country. RCC is a not-for-profit industry-funded association and represents small, medium and large retail business in every community across the country. As the Voice of Retail™ in Canada, we proudly represent more than 45,000 storefronts in all retail formats, including department, grocery, specialty, discount, independent retailers and online merchants.

RCC grocery members represent over 95% of the market in Canada. They provide essential services and are an important source of employment in large and small communities across the country. They have strong private label programs and sell products in every food category.

Generally speaking, our members’ marketing activities do not focus on children. From traditional means such as flyers, to new technologies such as reward and shopping list mobile apps, our members’ marketing activities are predominantly aimed at the primary household shopper. We believe that in most cases, where our members’ activities engage children, they are consistent with the spirit of the legislation – such as cooking classes and store tours. To that end, our comments are focused on those elements in the proposed legislation which we believe will cause unintended consequences for the retail sector.
S. 7.6 – Prohibition on Sale:

S. 7.6 stipulates that no one may sell a product that has been advertised in contravention of the law. This places an impossible and unreasonable burden on grocery retailers, and makes grocery retailers the de facto enforcement mechanism. Grocery retailers cannot, and should not, be held responsible for their suppliers’ compliance with the legislation. It is simply not possible for a retailer to comprehensively monitor the advertising of any supplier – let alone the thousands represented on store shelves. Grocery retailers cannot be expected to monitor the television, print digital and other advertising mechanisms captured by this bill for every one of their suppliers – and they have no way to do so. This section would leave grocery retailers liable for actions outside of their control, and for which they have no ability to monitor.

Indeed, grocery retailers are not held responsible for their suppliers’ compliance with other elements of the Food and Drugs Act; the obligations in this bill should be no different. Grocery retailers should only be responsible for ensuring that their own operations are in line with the legislation – such as private label product packaging.

Finally, the removal of this section does not affect the intended outcome of the legislation in any way.

RCC strongly recommends that s. 7.6 be removed.

Retail Activities Not Captured:

While we understand that the scope of marketing activities as it pertains to the proposed legislation will be detailed in regulation, we would like to clarify at this stage that the intention would not be to prevent in-store retail programs that engage children – such as store tours and cooking classes.

Preventing these activities would run counter to the spirit of the legislation, and Health Canada’s Healthy Eating Strategy. Store tours, which are often lead by dieticians, focus on teaching kids about nutrition basics tailored to their age group – from the importance of fresh fruits and vegetables, to the food guide and reading Nutrition Facts tables. Furthermore, store tours also teach kids about important food skills that have been identified previously by Health Canada as critical for food literacy, such as how to make and shop with a grocery list. Similarly, cooking classes engage children in developing key food skills – such as cleaning and preparing foods, food safety, and the joy and satisfaction that come from enjoying a meal that they created themselves.

In light of comments that the bill may be amended to shift more details to the regulations, the regulatory authority must provide for the ability to accommodate activities such as store tours and cooking classes for children.

Holiday and Seasonal Products:

One category which we believe may be unintentionally captured by the proposed legislation is products such as confectionary sold around holidays. For example, there should be a continued ability to sell chocolate Easter bunnies, with depictions of the Easter Bunny on the package. Many Canadian families expect to be able to purchase these products as a part of their family
traditions. Enjoying treats in moderation at holidays fits within a healthy diet. We are concerned that the proposed legislation would limit retailers’ abilities to sell products that consumers expect at these times of year.

Again, in light of comments that the bill may be amended to shift more details to the regulations, the regulatory authority must provide for flexibility to address particular situations such as packaging on some holiday and seasonal products.

**Implementation:**

From a product packaging perspective, the implementation timelines are not feasible, and they also need to be considered in the broader context of ongoing regulatory work on food labels at Health Canada. Health Canada is currently undertaking sweeping changes to food labels, including finalized changes to the Nutrition Facts table, which come into effect in 2021, and ongoing consultations regarding new front-of-package nutrition labels. Beyond that, the Food Label Modernization initiative, which is currently in the third round of pre-consultations, will bring changes to every part of the product label. As Bill S228 may trigger package redesign of some private label products, we would ask that implementation be consistent with all other label changes.

It is also important to note that even in the absence of these other elements, one year is simply not enough time to make the required packaging changes. We would be pleased to provide further details on the process for product packaging redesign on your request.

Given the breadth of the changes, the government must provide an aligned implementation date for all label changes. A five-year, coordinated implementation date would significantly reduce the cost to industry of making the necessary changes, as each redesign triggers new investments.

**Definition of “Healthy”/“Unhealthy” Foods**

We understand from Committee proceedings to date that there is an intention to amend the draft legislation such that only “unhealthy” foods would be captured by the requirements.

While we appreciate that this would provide the ability to promote foods that support a healthy diet, we are concerned with the viability of such a definition. It is difficult to conceive of any system that could categorize foods into this dichotomy; healthy and unhealthy can be accurately used as descriptors of dietary patterns, but not as a way to categorize individual foods. To that end, we believe that there must be significant consultation on this definition that includes industry. It would be incumbent upon Health Canada to demonstrate the scientific underpinning of any such definition. Furthermore, it must be clear for industry to implement and abide by. For the reasons stated above, we would also recommend that the terms “healthy” or “unhealthy” not be used in the definition, but rather “foods allowed to be marketed” and/or “foods not allowed to be marketed” or something similar.
Conclusion:

We thank you for the opportunity to comment on Bill S228 – the proposed Child Health Protection Act. We trust that our comments will be constructive in improving the bill and we look forward to further discussions and consultations on this important topic. Please do not hesitate to contact us should you have any questions with respect to our submission.

Sincerely,

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