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PERSPECTIVE

Cleaning Product Right to Know Act Appears to be Moving Forward

By Lindsey Heinz and Bridget Halbur

In May, the California Senate passed Senate Bill 258, the Cleaning Product Right to Know Act of 2017. Similar to other consumer product disclosure bills the California Legislature has considered in recent years, the bill requires manufacturers to disclose certain ingredients in designated cleaning products sold in California. The bill also imposes requirements on employers whose employees use designated cleaning products (such as janitorial workers and domestic cleaners). Those impacted by the bill must comply with its requirements by Jan. 1, 2021.

Requirements

Manufacturers of designated cleaning products must include either of the following on each product label:

1. A list of each ingredient, fragrance ingredient, or colorant contained in the product that is included in a designated trait list, and a list of each ingredient that is present at a concentration at or above .01 percent in the product and is a fragrance allergen included on Annex II of the EU Cosmetics Regulation 1223/2009, or
2. A list of each ingredient contained in the product except for fragrance ingredients. The phrase "Contains fragrance allergen(s)" must be included on the product label if an ingredient is a fragrance allergen included on Annex III of the EU Cosmetics Regulation 1223/2009 and is present at a concentration at or above .01 percent.

In addition, manufacturers must provide:

1. A toll-free telephone number and Internet Web site address on the product label that provides product information such as a list of all ingredients contained in the product and the functional purpose served by each ingredient,
2. A product safety data sheet or separate printable list of ingredients contained in the product, and
3. A pictogram on the product's

safety data sheet and label if regulated by the federal Occupational Safety and Health Administration and required by the federal hazard communication standard.

Employers must maintain safety data sheets on the designated cleaning products their employees use in the workplace and ensure they are readily accessible. Like manufacturers, employers must also make available a printable list of ingredients contained in the product.

Proponents

The proponents of SB 258 primarily support the bill because they believe disclosure of designated chemical ingredients is necessary for consumers and businesses to make informed decisions about the products they buy. The bill's supporters maintain that Californians have the "right to know" the chemicals to which they are exposed. Arguably, the disclosure of cleaning products' ingredients enables consumers and users of cleaning products to make more informed, healthier, and environmentally-friendly decisions.

Specifically, proponents believe the bill benefits vulnerable populations. For instance, as the Senate Committee on Environmental Quality noted, janitorial workers and domestic cleaners are disproportionately impacted by exposure to harmful chemicals. The bill encourages employers to acknowledge the impact that cleaning products may have on their employees' health and safety.

Proponents are concerned that no state or federal law requires manufacturers and employers to disclose every ingredient contained in a cleaning product. Existing regulations fail to sufficiently enable consumers to make fully informed decisions because they do not apply to all potentially dangerous chemicals in cleaning products.

Although certain voluntary ingredient disclosure programs exist, proponents argue that these programs are insufficient for promoting uniform health and environmental standards for cleaning products. Several programs allow manufacturers to avoid disclos-

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ing certain ingredients under the guise of "trade secret" protections. For example, the Consumer Specialty Products Association's (CSPA) "Consumer Product Ingredient Communication Initiative" permits limited disclosure of "confidential business information." Proponents assert that any trade secret concerns are addressed within the bill because manufacturers are not required to list the precise weight or amount of an ingredient or disclose how a product is manufactured. Further, the bill authorizes manufacturers to protect confidential business information if the ingredient or combination of ingredients is listed on the federal Toxic Substances Control Act (TSCA) Confidential Inventory List or qualifies for protection under the Uniform Trade Secrets Act.

Finally, proponents dispute that the bill excessively burdens manufacturers. The success of companies with product lines that voluntarily disclose all of their products' ingredients indicates that manufacturers can succeed even with full disclosure.

Opponents

Opponents of SB 258 claim that the bill's requirements will frustrate manufacturers. SB 258 effectively requires all manufacturers of cleaning products sold in California to create new labels for their cleaning products by Jan. 1, 2021 — a considerable expense, especially for smaller and more specialized manufacturers. Even manufacturers that participate in voluntary ingredient disclosure programs, such as the CSPA's "Consumer Product Ingredient Initiative" or EPA's "Safer Choice" program, would still be required to revise their product labels and website to comply with SB 258's requirements.

Opponents remain wary about the effect of ingredient disclosure on a manufacturer's business. They argue that the success of environmentally-friendly and health-conscious products rep-

resents a niche market and distorts the impact that the bill would impose upon all manufacturers.

Finally, opponents argue that the disclosure of all ingredients, even with narrow exceptions, is unnecessarily tedious.

Conclusion

Despite its opposition, SB 258 appears to be moving forward. The Labor and Employment Committee in the California Assembly amended the bill in June to lessen the burden on employers, and the Environmental Safety and Toxic Materials Committee considered and further amended the bill during a hearing in July.

With the end of the year quickly approaching, the fate of the bill will likely be decided in the next few months. Cleaning product companies doing business nationwide are well-advised to voice their opinions now in order to ensure the California Legislature considers their interests.

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