

# Buchalter

## CLIENT ALERT

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### **The California Cleaning Product Right to Know Act – Are You Ready for January 1?**

On **January 1, 2020**, the website disclosure requirements of the California Cleaning Product Right to Know Act of 2017 become effective.<sup>1</sup> By that date, “manufacturers” of “designated” products are required to post on their websites information regarding a long list of chemicals that may be in those products. Products covered by the Act include **air fresheners, automotive cleaners and polishes, general cleaning products**, and **polishes and floor maintenance products** used primarily for janitorial, domestic, or institutional cleaning purposes.<sup>2</sup>

The impact of the Act is not limited to manufacturers of covered products, however. Notably, the term “manufacturer” includes distributors and retailers of “private label” products.<sup>3</sup> In addition, some of the disclosure requirements fall directly on California employers, even though the manufacturers of covered products may not have provided the requisite information.

Moreover, because a covered product’s website must comply with the Act, the January 1, 2020 date is significant for both online sales and brick-and-mortar sales, even though the Act’s product-labeling requirements do not take effect for another year.<sup>4</sup> Any sale in California of a product covered by the Act is prohibited if the product’s “manufacturer” has not complied with the website disclosure requirements.

#### **Information is Required to be Posted on the Product’s Website**

The manufacturer (or private-label retailer) must disclose if the product contains one or more of thousands of chemicals on 22 separate lists. The lists are compiled by Federal, State, and international agencies (the EU, IARC, etc.) The lists include chemicals known, likely and reasonably

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<sup>1</sup> The Act does not apply to products manufactured before December 31, 2019 but only if the product is marked with a date or a code verifying the date of manufacture.

<sup>2</sup> Cosmetics and personal care items and products used exclusively in industrial settings or for food processing and manufacturing are exempt. Also, “automotive product” does not include automotive paints or paint repair products.

<sup>3</sup> “Manufacturer” includes a person or entity who the product is manufactured for or distributed by, as identified on the product label.

<sup>4</sup> The Act’s requirements for product labels become effective January 1, 2021.

anticipated to be carcinogens, mutagens, reproductive and developmental toxicants, persistent, bioaccumulative and toxic chemicals, endocrine disruptors, neurotoxins, respiratory sensitizers, toxic air contaminants, and more.

The information that must be posted on the manufacturer's (or private-label retailer's) website includes:

- A list of "intentionally added" ingredients named on any of the 22 lists of chemicals (i.e., those with a functional or technical effect in the product);
- A list of all "nonfunctional constituents" (one of 34 listed chemicals that is a byproduct or which has no functional or technical effect in the product) present at a concentration at or above 0.01 percent (100 parts per million);
- The Chemical Abstracts Service (CAS) number for any listed ingredient;
- The functional purpose served by each intentionally added ingredient;
- Hyperlinks to each of the 22 lists of chemicals naming one or more of the listed ingredients;
- A hyperlink to the SDS for the product.; and
- Information related to fragrance ingredients or allergens.

There are only limited protections for confidential or proprietary information.

### **Website Requirements impact Brick and Mortar Sales**

The website disclosure requirements apply to any product sold in California that contains one of the chemicals on any of the 22 lists. In other words, it is not sufficient to block internet sales into California of products with non-compliant web pages. The manufacturer's (or private-label retailer's) website for any product subject to the Act that is sold at brick and mortar stores in California must be compliant by January 1, 2020, as well.

### **Employers have Obligations, too**

Some of the Acts requirements do not fall solely on manufacturers and private-label distributors and retailers. An employer that is required to make an SDS for a product subject to the Act readily available to employees in the workplace must also make the "printable" information required to be on the manufacturer's website (i.e., exclusive of the hyperlinks) readily available to those employees.

Thus, just as a retailer must make an SDSs for products it sells readily available to its employees, the retailer must also make readily available a list of "intentionally added" ingredients, a list of "nonfunctional constituents," the CAS number for any listed ingredient and the functional purpose served by each intentionally added ingredient. Although the Act requires "manufacturers" to make this information available in an easily printable format, the Act's provisions inserted into the Labor Code do not relieve employers of these obligations for products for which the manufacturer may not have provided the requisite information.

## Enforcement

Like many portions of the Health and Safety Code, the Act does not contain an express enforcement mechanism. An earlier proposal to allow for private enforcement, as exists under Proposition 65, was stripped from the final version of the Act. It is likely the Act will be enforced by public prosecutors, county counsel and city attorneys through Business and Professions Code section 17200, *et seq.*, which prohibits conducting business in an unlawful manner. Penalties up to \$2500 per violation may be assessed.

## Businesses are Unprepared

Although the California Cleaning Product Right to Know Act of 2017 has been on the books for almost two years, the January 1, 2020 deadline is looming and many manufacturers, private-label distributors and retailers, and employers still are not fully prepared to meet the requirements of the Act. Whether public enforcers will allow a grace period remains to be seen.



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