NEW CALIFORNIA LAW REQUIRES ON-PACKAGE LABEL AND ONLINE INGREDIENT DISCLOSURES FOR CLEANING PRODUCTS

On October 15, 2017, Governor Brown signed into law SB 258, known as the “Cleaning Product Right to Know Act of 2017” (“Cleaning Product Right to Know Act”). The Act requires manufacturers of cleaning products sold in California to disclose the ingredients of those cleaning products to consumers on the product label and also online. California is the first state to require ingredient labeling of cleaning products. There are currently no federal requirements requiring such disclosure to consumers.

The Cleaning Product Right to Know Act goes into effect January 1, 2018. Specifically, the law requires ingredient disclosure on the labels of “designated products” such as air care, automotive, or general cleaning products, polishes or floor maintenance products, used primarily for janitorial, domestic, or institutional cleaning purposes. It applies to: (1) persons or entities who manufacture a “designated product” and whose name appears on the product label; and (2) persons or entities who the product is manufactured for or distributed by, as identified on the product label pursuant to the federal Fair Packaging and Labeling Act.

The Cleaning Product Right to Know Act requires (1) online ingredient listing by January 1, 2020; and (2) on-package disclosure by January 1, 2021. It does not require disclosure of the concentration of those ingredients, how the product is formulated, or how the product is processed.

Product Labels

“Manufacturers” must disclose the following information on their product labels:

- "Intentionally added ingredients" contained in the product that are also included on a "designated list";
- "Intentionally added ingredients" contained in the product unless deemed confidential business information;
- Disclosure of fragrance allergens; and
- A manufacturer’s toll-free telephone number, website address, and a statement directing consumers to the manufacturer’s website to obtain more information on product ingredients.

An "intentionally added ingredient” means "a chemical that a manufacturer has intentionally added to a designated product and that has a functional or technical effect in the designated product, including, but not limited to, the components of intentionally added fragrance ingredients and colorants and intentional breakdown products of an added chemical that also have a functional or technical effect in the designated product." A “designated list” is any of the more than 20 state, federal, or international lists, including: Prop 65, chemicals included in the European Union Candidate List of Substances of Very High Concern, and toxic air contaminants pursuant to Sections 93000 or 93001 under Title 17 of the California Code of Regulations. Finally, when any of the criteria lists are updated, “manufacturers” have 18 months to update their labels.
Online Disclosures

In addition to label disclosures, manufacturers websites must disclose the following information:

- "Intentionally added ingredients" contained in the product, except for ingredients deemed as confidential business information;
- Fragrance allergens included on a designated list;
- Nonfunctional ingredients present in the product at a concentration at or above 0.01% (100 ppm);
- The Chemical Abstract Service number for each intentionally added or nonfunctional ingredients in the product;
- The functional purpose served by each intentionally added ingredient;
- Electronic links to designated lists; and
- A link to the safety data sheet for the product.

When any of the criteria lists are updated, manufacturers have 6 months to update their online ingredient information.

Business Considerations

As an initial matter, manufacturers of cleaning products should evaluate whether their products are implicated by this new law. The Cleaning Product Right to Know Act does not require ingredient listing for: personal care products such as toothpaste, shampoo, and hand soap; trial samples of designated products that are not packaged for individual sale, resale, or retail; and industrial products specifically manufactured for, and exclusively used in, oil and gas production, steel production, heavy industry manufacturing, industrial water treatment, industrial textile maintenance and processing other than industrial laundering, food and beverage processing and packaging; and other industrial manufacturing processes.

Additionally, manufacturers are not required to disclose confidential business information ("CBI"), which means any "intentionally added ingredient" or combination of ingredients for which a claim has been approved by the EPA for inclusion on the Toxic Substances Control Act Confidential Inventory, or for which the manufacturer or supplier claim protection under the Uniform Trade Secrets Act. Note that CBI does not include "intentionally added ingredients" on a "designated list," a nonfunctional constituent (34 identified substances), and fragrance allergens present at or above 100 ppm, as required to be labeled by the EU Detergents Regulation.

Manufacturers should use the phased implementation of the Cleaning Product Right to Know Act to evaluate their cleaning product and consider best practices to ensure compliance moving forward. For example, as is frequently the case with other California consumer notification laws, it may be most effective and cost-efficient to include the ingredient disclosure requirements of the Cleaning Product Right to Know Act on all product packaging, rather than print separate labels for California only. This is especially true given that New York has launched a similar initiative, called the Household Cleansing Product Information Disclosure Program, which would also require public disclosure of chemical ingredients in household cleaning products. Connecticut, Massachusetts, Minnesota, Oregon, Rhode Island, and Washington are also considering similar legislation. Thus, it may be prudent to preemptively and uniformly change product labels to include specific ingredients. Alternatively, where possible, manufacturers may consider reformulating products and removing harmful chemicals to comply with the new law.

Impacts to California Employers
The Act also adds section 6398.5 to the California Labor Code and requires certain employers to make print copies available of the information that product manufacturers provide online regarding intentionally added ingredients, fragrance allergens, as well as a print copy of all designated products used in the workplace. All businesses in California should examine the Labor Code to determine whether they must provide the safety data sheets from the cleaning product manufacturers and make them available in the workplace. The California environmental lawyers at Bick Law LLP continue to monitor coverage on the Cleaning Product Right to Know Act and similar legislation in other states.