

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 17, 2010

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 928

Introduced by Senator Simitian

February 1, 2010

An act to add Article 10.10 (commencing with Section 25219.5) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to consumer product safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 928, as amended, Simitian. Consumer products: content information.

Existing law regulates the labeling and use of various consumer products, including toys and toxic household products.

Existing law, administered by the Department of Toxic Substances Control, prohibits the management of hazardous waste, except in accordance with the hazardous waste laws or the regulations adopted by the department. A violation of these laws is a crime.

This bill would prohibit the manufacture, sale, or distribution of a designated consumer product, as defined, unless the manufacturer discloses each ingredient, as defined, contained in the product, identified in a prescribed manner, by posting that information on the manufacturer's Internet Web site, and provides the Web site and page address on the product label, along with a prescribed statement.

The bill would, under specified circumstances, allow nondisclosure of ingredients defined as trade secrets.

Existing law requires the department to establish the Toxics Information Clearinghouse, to provide a decentralized, Web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data.

This bill would specify that it does not limit, supersede, duplicate, or otherwise conflict with the authority of the department to fully implement prescribed provisions relating to the operation of the clearinghouse.

The bill would declare that its provisions are severable and if any provision of the bill is held invalid, that invalidity would not affect other provisions or applications that can be given effect without the invalid provision or application.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 Consumer Right to Know Act.

3 SEC. 2. The Legislature finds and declares the following:

4 (a) There are currently more than 80,000 chemicals in commerce
5 listed on the United States Environmental Protection Agency's
6 inventory of chemicals under the federal Toxic Substance Control
7 Act.

8 (b) Each day a total of 42 billion pounds of chemical substances
9 are produced in, or imported in to, the United States for commercial
10 and industrial uses.

11 (c) According to a 1997 report published by the State Air
12 Resources Board there are more than 147,274,180 pounds of
13 general purpose cleaners sold in California each day.

14 (d) These substances come in direct contact with people in their
15 workplaces and in their homes.

1 (e) A 2009 biomonitoring report conducted by the federal
2 Centers for Disease Control and Prevention found in measurable
3 amounts 212 chemicals in the blood and urine of a representative
4 sample of the California population.

5 (f) Current federal and state laws do not require manufacturers
6 to disclose to consumers the ingredients contained in all cleaning
7 products.

8 (g) According to the United States Environmental Protection
9 Agency, nearly 20 percent of all chemicals in commerce in the
10 United States are kept secret by manufacturers.

11 (h) There is a growing awareness and concern among consumers
12 about the exposure to chemicals in their homes and workplaces
13 and the lack of transparency about chemical content in the
14 consumer products they purchase and use and the potential adverse
15 health and environmental impacts caused by those products.

16 (i) It is, therefore, the intent of the Legislature in enacting the
17 Consumer Right to Know Act to provide greater transparency to
18 consumers about the ingredients of air care, automotive, cleaning,
19 and polish and floor maintenance products in order to empower
20 consumers to make informed decisions about the products they
21 purchase and use.

22 SEC. 3. Article 10.10 (commencing with Section 25219.5) is
23 added to Chapter 6.5 of Division 20 of the Health and Safety Code,
24 to read:

25
26 Article 10.10. Chemically Formulated Consumer Products
27

28 25219.5. For purposes of this article, the following definitions
29 shall apply:

30 (a) "Chemically formulated consumer product" means a
31 consumer product that is manufactured from chemicals or chemical
32 compounds to be used by household, institutional, commercial,
33 and industrial consumers without further processing for specific
34 purposes. For the purposes of this subdivision, dilution by the
35 consumer is not considered further processing.

36 (b) "Consumer product" has the same meaning as that term is
37 defined in subdivision (e) of Section 25251.

38 (c) "Department" means the Department of Toxic Substances
39 Control.

(d) “Designated consumer product” means any product included in the following categories:

(1) “Air care product” means a chemically formulated consumer product designed, or labeled to indicate that the purpose of the product is, for masking odors, or for freshening, cleaning, scenting, or deodorizing the air.

(2) “Automotive product” means a chemically formulated consumer product designed, or labeled to indicate that the purpose of the product is, to maintain the appearance of a motor vehicle, as defined in Section 670 of the Vehicle Code, including products for washing, waxing, polishing, cleaning, or treating the exterior or interior surfaces of motor vehicles. “Automotive product” does not include automotive paint or paint repair products.

(3) “Cleaning product” means a soap, detergent, or other chemically formulated consumer product designed, or labeled to indicate that the purpose of the product is, to clean or disinfect surfaces, including, but not limited to, floors, furniture, countertops, showers and baths, or other hard surfaces, such as stovetops, microwaves, and other appliances, fabric care, or dish or other ware washing.

(4) “Polish or floor maintenance product” means a chemically formulated consumer product, such as polish, wax, or a restorer, designed, or labeled to indicate that the purpose of the product is, to polish, protect, buff, condition, temporarily seal, or maintain furniture, floors, metal, leather, or other surfaces.

(e) “Hazardous substance” means a chemical, or chemical compound, including breakdown products, identified by a state or federal agency or other governmental body or the World Health Organization as potentially having properties of eye and skin irritation, sensitization, acute or chronic toxicity, carcinogenicity, cytotoxicity, neurotoxicity, developmental or reproductive toxicity, or both, endocrine disruption, or ecotoxicity.

(f) “Incidental ingredient” means a chemical that has no technical or functional effect on the designated consumer product. “Incidental ingredients” are any of the following:

(1) Substances that have no technical or functional effect in the product, but are present by reason of having been incorporated into the product in an amount not greater than 0.01 percent as an ingredient of another product.

(2) Processing aids. Processing aids are either of the following:

1 (A) Substances that are added to a designated consumer product
2 during the processing of the designated consumer product, but are
3 removed from the product in accordance with good manufacturing
4 practices before it is packaged in its finished form.

5 (B) Substances that are added to a designated consumer product
6 during processing for their technical or functional effect in the
7 processing, are converted to substances the same as constituents
8 of declared ingredients, and do not significantly increase the
9 concentration of those constituents.

10 (3) Incidental ingredients do not include substances that are
11 produced as a result of the processing of the designated consumer
12 product.

13 (g) “Ingredient” means a chemical in a designated consumer
14 product. As used in this subdivision, ingredients may be substances
15 or compounds. The term “ingredient” does not include incidental
16 ingredients.

17 (h) “Manufacturer” means a person or entity that manufactures,
18 assembles, produces, packages, repackages, or relabels a designated
19 consumer product that is sold, distributed, or used in this state.

20 (i) “Trade secret” has the same meaning as that term is defined
21 in subdivision (d) of Section 3426.1 of the Civil Code, except as
22 provided by this subdivision.

23 (1) Any ingredient or incidental ingredient that is a hazardous
24 substance shall not be considered a trade secret.

25 (2) Any designated consumer product or ingredient or incidental
26 ingredient of a designated consumer product that ~~can be reverse~~
27 ~~engineered~~ *is readily discoverable by analysis* shall not be
28 considered a trade secret.

29 25219.6. Commencing July 1, 2011, no designated consumer
30 product may be manufactured, sold, or otherwise distributed in
31 this state unless the manufacturer discloses each ingredient
32 contained in the product by posting the product ingredient
33 information on the manufacturer’s Internet Web site and provides
34 the Web site and page address on the label of the designated
35 product along with a statement directing the consumer to the
36 Internet Web site for information concerning ingredients contained
37 in the product.

38 25219.7. (a) Ingredients in a designated consumer product
39 shall be identified by the Chemical Abstract Service (CAS) number
40 and either the Consumer Specialty Products Association Consumer

1 Product Ingredients Dictionary (CSPA dictionary) name, if and
2 when the dictionary is made accessible to the public, or the
3 International Nomenclature Cosmetic Ingredient (INCI) name. If
4 there is not a CSPA dictionary name or INCI name, then the
5 ingredients in a designated consumer product shall be identified
6 by the CAS number and the International Union of Pure and
7 Applied Chemistry (IUPAC) name. If there is ~~not an~~ *no* CSPA
8 dictionary name, INCI name, or IUPAC name, then the product
9 shall be identified by the CAS number and common chemical
10 name.

11 (b) In identifying the ingredient name, the manufacturer shall
12 also identify which of the nomenclature references were used for
13 ingredient identification.

14 25219.8. In the event there is a substitution of an ingredient in
15 a designated consumer product, the disclosure required by this
16 article shall specify alternatives to any ingredients that may be
17 affected. An alternative ingredient shall be declared either:

18 (a) Immediately following the normally used ingredient for
19 which it substitutes, in which case it shall be identified as an
20 alternative ingredient by the word “or” following the name of the
21 normally used ingredient and any other alternative ingredient.

22 (b) Following the declaration of all normally used ingredients,
23 in which case the alternative ingredients in the group so listed shall
24 be identified as alternative ingredients by the phrase “may also
25 contain.”

26 25219.9. For purposes of this article, a manufacturer shall not
27 be required to disclose ingredients falling within the definition of
28 trade secret, unless that information is otherwise required to be
29 publicly disclosed under another law of this state, has been publicly
30 disclosed by the manufacturer, or has been lawfully disclosed by
31 a governmental entity. A manufacturer shall indicate the existence
32 of trade secret information in the disclosure required under Section
33 25219.6 by individually identifying trade secret protected chemicals
34 and chemical compounding using a functional class descriptor
35 name and stating that that ingredient is a trade secret.

36 25219.10. (a) Notwithstanding Section 6254.7 of the
37 Government Code, if a manufacturer believes that disclosure of
38 information pursuant to this section involves the release of a trade
39 secret, the manufacturer shall make written disclosure to the
40 department and substantiate in writing the basis of the trade secret.

1 In its written notice, the manufacturer shall specify the information
2 it is keeping confidential and provide to the department at the time
3 of submission full justification and documentation in writing
4 supporting the trade secrecy claim, including specific explanation
5 and documentation of all of the following:

6 (1) How the information derives independent economic value,
7 actual or potential, from not being known to the general public.

8 (2) The ease or difficulty by which information could be
9 properly acquired or duplicated if disclosure is made.

10 (3) How revealing the chemical identity would expressly reveal
11 the process by which the chemical is made or the portion of a
12 mixture the chemical comprises or the proprietary nature of the
13 chemical itself.

14 (4) What efforts are taken by the manufacturer to maintain its
15 secrecy.

16 (5) The barriers to reverse engineering of the relevant consumer
17 product.

18 (6) The basis of the manufacturer's determination that the
19 ingredient is not a hazardous substance.

20 (b) Subject to this section, the department shall protect from
21 disclosure a trade secret designated as a trade secret by the
22 manufacturer for a period of six years, if that trade secret is not a
23 public record. After that period expires, the manufacturer may
24 resubstantiate the need for trade secrecy protection.

25 (c) Upon either, receipt of a request for the release of
26 information to the public that includes information that the
27 manufacturer has notified the department is a trade secret and that
28 is not a public record, or a determination by the department that
29 information claimed as a trade secret is subject to public disclosure,
30 both of the following procedures apply:

31 (1) The department shall notify the manufacturer that disclosed
32 the information to the department of the request or determination,
33 in writing by certified mail, return receipt requested.

34 (2) The department shall release the information to the public,
35 but not earlier than 30 days after the date of mailing the notice of
36 the request for information or determination, unless, prior to the
37 expiration of the 30-day period, the manufacturer initiates an action
38 in an appropriate court for a declaratory judgment that the
39 information is subject to protection under this section or for a
40 preliminary injunction prohibiting disclosure of the information

1 to the public and promptly notifies the department of that action.
2 In order to prevent the department from releasing the information
3 to the public, the manufacturer shall obtain a declaratory judgment
4 or preliminary injunction within 30 days of filing an action for a
5 declaratory judgment or preliminary injunction.

6 (d) This section does not authorize a manufacturer to refuse to
7 disclose ingredient information to the department.

8 (e) Any information that a court, pursuant to this section,
9 determines is a trade secret and not a public record, or pending
10 final judgment pursuant to subdivision (c), shall not be disclosed
11 by the state agency to anyone, except to an officer or employee of
12 a city or county, the state, or the United States, or to a contractor
13 with a city or county, or the state, and its employees, if, in the
14 opinion of the state agency, disclosure is necessary and required
15 for the satisfactory performance of a contract, for the performance
16 of work, or to protect the health and safety of the employees of
17 the contractor.

18 *25219.11. This article does not limit, supersede, duplicate, or*
19 *otherwise conflict with the authority of the department to fully*
20 *implement Article 14 (commencing with Section 25251), including*
21 *the authority of the department to include products in a product*
22 *registry established pursuant to the regulations adopted in*
23 *accordance with that article, or any testing or labeling*
24 *requirements established pursuant to that article, provided that*
25 *those requirements are more protective of the public health and*
26 *environment than those prescribed by this article. Notwithstanding*
27 *subdivision (c) of Section 25257.1, “designated consumer product”*
28 *shall not be considered as a product category already regulated*
29 *or subject to pending regulation for purposes of Article 14*
30 *(commencing with Section 25251).*

31 ~~25219.11.~~

32 *25219.13.* The provisions of this article are severable. If any
33 provision of this article or its application is held invalid, that
34 invalidity shall not affect other provisions or applications that can
35 be given effect without the invalid provision or application.

36 SEC. 4. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

O