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AB-2901 Cleaning Product Right to Know Act of 2017. (2017-2018)

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Assembly Bill No. 2901

CHAPTER 28

An act to amend Sections 108952, 108955, and 108955.5 of the Health and Safety Code, relating to consumer product safety.

[Approved by Governor June 13, 2018. Filed with Secretary of State June 13, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2901, Committee on Environmental Safety and Toxic Materials. Cleaning Product Right to Know Act of 2017.

Existing law, the Cleaning Product Right to Know Act of 2017, requires a manufacturer of a designated product, as defined, that is sold in the state to disclose on the product label and on its Internet Web site information related to chemicals contained in the designated product, as specified. The act authorizes a manufacturer to protect certain chemicals from disclosure by use of a generic name, as specified. The act prohibits the sale in the state of a designated product that does not satisfy these requirements.

This bill would update and correct references to the names of specified substances and entities. This bill would also make technical, nonsubstantive changes to that act.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 108952 of the Health and Safety Code is amended to read:

108952. For purposes of this chapter, the following definitions shall apply:

(a) "Air care product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to enhance or condition the indoor environment by eliminating unpleasant odors or freshening the air.

(b) "Automotive product" means a chemically formulated consumer product 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.

(c) "Chemically formulated consumer product" means a product, excluding home appliances, that is manufactured from chemicals to be used by household, institutional, or commercial consumers without further processing for specific purposes. For the purposes of this subdivision, dilution by the user is not considered further processing.

(d) "Colorant" means ingredients that, alone or in combination with other ingredients, are added to a product for the specific purpose of imparting or altering the color of a product.

(e) "Confidential business information" means any intentionally added ingredient or combination of ingredients for which a claim has been approved by the federal Environmental Protection Agency for inclusion on the Toxic Substances Control Act (TSCA) Confidential Inventory, or for which the manufacturer or its supplier claim protection under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code) as required by Section 108955. Confidential business information shall not include any of the following:

(1) An intentionally added ingredient or combination of ingredients that is on a designated list, as defined in subdivision (g).

(2) A nonfunctional constituent, as defined in subdivision (m).

(3) A fragrance allergen included on Annex III of the EU Cosmetics Regulation No. 1223/2009 as required to be labeled by the EU Detergents Regulation No. 648/2004, or subsequent updates to those regulations, when present in the product at a concentration at or above 0.01 percent (100 ppm).

(f) "Designated product" means a finished product that is an air care product, automotive product, general cleaning product, or a polish or floor maintenance product used primarily for janitorial, domestic, or institutional cleaning purposes. "Designated product" shall not mean any of the following:

(1) Foods, drugs, and cosmetics, including personal care items such as toothpaste, shampoo, and hand soap.

(2) Industrial products specifically manufactured for, and exclusively used in, the following:

(A) Oil and gas production.

(B) Steel production.

(C) Heavy industry manufacturing.

(D) Industrial water treatment.

(E) Industrial textile maintenance and processing other than industrial laundering.

(F) Food and beverage processing and packaging.

(G) Other industrial manufacturing processes.

(3) A trial sample of a designated product that is not packaged for individual sale, resale, or retail and includes a statement indicating that the product is not for sale or resale.

(g) "Designated list" means any of the following, including subsequent revisions when adopted by the authoritative body:

(1) Chemicals known to the State of California to cause cancer or reproductive toxicity that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of Division 20).

(2) Chemicals classified by the European Union as carcinogens, mutagens, or reproductive toxicants pursuant to Category 1A or 1B in Annex VI to Regulation (EC) 1272/2008.

(3) Chemicals included in the European Union Candidate List of Substances of Very High Concern in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(f) for endocrine disrupting properties.

(4) Chemicals for which a reference dose or reference concentration has been developed based on neurotoxicity in the federal Environmental Protection Agency's Integrated Risk Information System.

(5) Chemicals that are identified as carcinogenic to humans, likely to be carcinogenic to humans, or as Group A, B1, or B2 carcinogens in the federal Environmental Protection Agency's Integrated Risk Information System.

(6) Chemicals included in the European Chemicals Agency Candidate List of Substances of Very High Concern in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(d), Article 57(e), or Article 57(f) of Regulation (EC) 1907/2006 for persistent, bioaccumulative and toxic, or very persistent and very bioaccumulative properties.

(7) Chemicals that are identified as persistent, bioaccumulative, and inherently toxic to the environment by the Canadian Environmental Protection Act Environmental Registry Domestic Substances List.

(8) Chemicals classified by the European Union in Annex VI to Regulation (EC) 1272/2008 as respiratory sensitizer category 1.

(9) Group 1, 2A, or 2B carcinogens identified by the International Agency for Research on Cancer.

(10) Neurotoxins that are identified in the federal Agency for Toxic Substances and Disease Registry's Toxic Substances Portal, Health Effects of Exposure to Substances and Carcinogens, Nervous System.

(11) Persistent bioaccumulative and toxic priority chemicals that are identified by the federal Environmental Protection Agency National Waste Minimization Program.

(12) Reproductive or developmental toxicants identified in Monographs on the Potential Human Reproductive and Developmental Effects published by the federal National Toxicology Program, Office of Health Assessment and Translation.

(13) Chemicals identified by the federal Environmental Protection Agency's Toxics Release Inventory as Persistent, Bioaccumulative and Toxic Chemicals that are subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001, et seq.).

(14) The Washington Department of Ecology's Persistent, Bioaccumulative, Toxic (PBT) Chemicals identified in Chapter 173-333 of Title 173 of the Washington Administrative Code.

(15) Chemicals that are identified as known to be, or reasonably anticipated to be, human carcinogens by the 13th Report on Carcinogens prepared by the federal National Toxicology Program. Subsequent revisions to this list shall not be incorporated.

(16) Chemicals for which notification levels, as defined in Section 116455, have been established by the State Department of Public Health or the State Water Resources Control Board.

(17) Chemicals for which primary maximum contaminant levels have been established and adopted under Section 64431 or 64444 of Title 22 of the California Code of Regulations.

(18) Chemicals identified as toxic air contaminants under Section 93000 or 93001 of Title 17 of the California Code of Regulations.

(19) Chemicals that are identified as priority pollutants in the California water quality control plans pursuant to subdivision (c) of Section 303 of the federal Clean Water Act and in Section 131.38 of Title 40 of the Code of Federal Regulations, or identified as pollutants by the state or the federal Environmental Protection Agency for one or more water bodies in the state under subdivision (d) of Section 303 of the federal Clean Water Act and Section 130.7 of Title 40 of the Code of Federal Regulations.

(20) Chemicals that are identified with noncancer endpoints and listed with an inhalation or oral reference exposure level by the Office of Environmental Health Hazard Assessment pursuant to paragraph (2) of subdivision (b) of Section 44360.

(21) Chemicals identified as priority chemicals by the California Environmental Contaminant Biomonitoring Program pursuant to Section 105449.

(22) Chemicals that are identified on Part A of the list of Chemicals for Priority Action prepared by the Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East Atlantic.

(h) "Electronically readable format" means that the information provided is all of the following:

(1) Machine readable by automated systems, including, but not limited to, Web browsers, accessibility software to aid the disabled, automated scripts, and other software programs or applications.

(2) Not restricted from access by search engines.

(3) Not restricted from access by a requirement for registration, the provision of personally identifiable information, or the use of CAPTCHA or similar challenge response test technologies, whether visual, auditory, or otherwise.

(4) Conforms to the most current version of the Web Content Accessibility Guidelines (WCAG) adopted by the Web Content Accessibility Guidelines Working Group of the World Wide Web Consortium.

(i) "Fragrance ingredient" means any intentionally added substance or complex mixture of aroma chemicals, natural essential oils, and other functional ingredient or ingredients for which the sole purpose is to impart an odor or scent, or to counteract an odor.

(j) "General cleaning product" means a soap, detergent, or other chemically formulated consumer product labeled to indicate that the purpose of the product is to clean, disinfect, or otherwise care for fabric, dishes, or other wares; surfaces including, but not limited to, floors, furniture, countertops, showers, and baths; or other hard surfaces, such as stovetops, microwaves, and other appliances.

(k) "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.

(l) "Manufacturer" means either of the following:

(1) A person or entity who manufactures the designated product and whose name appears on the product label.

(2) A person or entity who the product is manufactured for or distributed by, as identified on the product label pursuant to the federal Fair Packaging and Labeling Act.

(m) "Nonfunctional constituent" means one of the following substances, that is an incidental component of an intentionally added ingredient, a breakdown product of an intentionally added ingredient, or a byproduct of the manufacturing process that has no functional or technical effect on the designated product:

(1) 1,4-Dioxane.

(2) 1,1-Dichloroethane.

(3) Acrylic acid.

(4) Benzene.

(5) Benzidine.

(6) 1,3-Butadiene.

(7) Carbon tetrachloride.

(8) Chloroform.

(9) Ethylene oxide.

(10) Nitrilotriacetic acid.

(11) Butyl benzyl phthalate.

(12) Butyl decyl phthalate.

(13) Di(2-ethylhexyl) phthalate.

(14) Diethyl phthalate.

(15) Diisobutyl phthalate.

(16) Di(n-octyl) phthalate.

(17) Diisononyl phthalate.

(18) Dioctyl phthalate.

(19) Butylparaben.

(20) Ethylparaben.

(21) Isobutylparaben.

(22) Methylparaben.

(23) Propylparaben.

(24) Formaldehyde.

(25) 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.

(26) DMDM hydantoin.

(27) Diazolidinyl urea.

(28) Glyoxal.

(29) Imidazolidinyl urea.

(30) Polyoxymethylene urea.

(31) Sodium hydroxymethylglycinate.

(32) 2-Bromo-2-nitropropane-1,3-diol.

(33) N-Nitrosodimethylamine.

(34) N-Nitrosodiethylamine.

(n) "Polish or floor maintenance product" means a chemically formulated consumer product, such as polish, wax, or a restorer, 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.

(o) "Product label" means a display of written, printed, or graphic material that is affixed to a product or its immediate container or wrapper.

SEC. 2. Section 108955 of the Health and Safety Code is amended to read:

108955. (a) To protect confidential business information, this chapter shall not be construed to require a manufacturer to disclose the weight or amount of an intentionally added ingredient, including a fragrance ingredient, or nonfunctional constituent or to disclose how a product is manufactured, and shall not be construed to require intentionally added ingredients or nonfunctional constituents present in a designated product at a concentration below one percent to be listed in any particular order.

(b) (1) A manufacturer may protect and is not required to disclose any intentionally added ingredient, including any fragrance ingredient, or combination of intentionally added ingredients that meet the definition of confidential business information as specified in subdivision (e) of Section 108952.

(2) (A) A manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients as confidential business information by declining to disclose the specific name of the chemical or chemicals being protected shall use the generic name for the intentionally added ingredient or combination of intentionally added ingredients as provided in the federal Toxic Substances Control Act (TSCA) Confidential Inventory.

(B) If the intentionally added ingredient or combination of intentionally added ingredients is not included in the TSCA Confidential Inventory, but the manufacturer claims protection for those ingredients or combination of ingredients as confidential business information under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code), the manufacturer shall use a name for the intentionally added ingredient or combination of intentionally added ingredients that is only as generic as necessary to protect the confidential identity of the intentionally added ingredient or combination of intentionally added ingredients. In developing the generic name, the manufacturer shall use the generic name framework provided by the federal Environmental Protection Agency guidance for the TSCA Confidential Inventory, the European Chemicals Agency guidance for alternative chemical names, the New Jersey Trade Secret Registry Number system, or the Canadian Hazardous Materials Information Review Act Registry Number system, if applicable.

(c) A manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients pursuant to the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code) shall maintain justification for protecting confidential business information consistent with the requirements of the act and provide that justification on request for audit by the Attorney General.

(d) A supplier to a manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients as confidential business information shall follow the guidelines specified in subdivisions (b) and (c) and the manufacturer shall use the generic name provided by the supplier.

SEC. 3. Section 108955.5 of the Health and Safety Code is amended to read:

108955.5. An intentionally added ingredient, fragrance ingredient, or nonfunctional constituent listed or posted pursuant to this chapter, other than an ingredient for which use of a generic name is permitted by Section 108955, shall be listed or posted pursuant to the following nomenclature systems, in the order in which they are listed. If a name is available in either of the first listed systems, that name shall be used. If a name is not available in those systems, then a name from the next listed system shall be used, and so forth.

(a) Household and Commercial Products Association Consumer Product Ingredients Dictionary (HCPA Dictionary) or International Nomenclature of Cosmetic Ingredients (INCI).

(b) International Union of Pure and Applied Chemistry nomenclature (IUPAC).

(c) Chemical Abstracts Index name.

(d) Common Chemical Name.