



June 23, 2010

TO: **Members, Assembly Environmental Safety and Toxic Materials Committee**

FROM: **COALITION OPPOSED TO SB 928 (Simitian)**

California Manufacturers and Technology Association (CMTA)  
 CalChamber  
 California League of Food Processors  
 California/Nevada/Arizona Automotive Wholesalers' Association  
 Automotive Aftermarket Industry Association  
 Chemical Industry Council of California  
 American Chemistry Council  
 California Metals Coalition  
 Lumber Association of California and Nevada  
 DuPont  
 Alliance of Automobile Manufacturers  
 Grocery Manufacturers Association  
 Western States Petroleum Association

SUBJECT: **SB 928 (Simitian) Consumer products: content information – OPPOSITION**

SB 928 would prohibit the manufacture, sale or distribution of a designated consumer product (air care, automotive, cleaning, and polish/floor maintenance) unless the manufacturer discloses each ingredient contained in the product. Such disclosure would be provided on the manufacturer's website with a link to the website on the product label.

While there are a number of components that make this bill incredibly onerous, the following are a couple of the most egregious provisions:

**Definitions:**

**“Consumer Product”** – Although the bill focuses on four specific product categories, the definition of consumer product under the bill encompasses the definition included under the Green Chemistry Law. This definition is incredibly broad and suggests that this law will be expanded to include everything under the sun (as provided for under HSC 25251).

**“Hazardous Substances”** – Incredibly broad such that it includes not only chronic results, but it also includes eye and skin irritation, endocrine disruption, and ecotoxicity. Any ingredient that could potentially match one of these hazards cannot be considered a trade secret.

**“Incidental Ingredients”** – Fails to prioritize and focus on those products containing intentionally added chemical ingredients in concentrations above applicable thresholds and products containing chemical ingredients which pose more than a *de minimis* exposure threat. The bill establishes a 0.01% threshold, which is inconsistent with many other state, federal and international systems by which manufacturers are currently regulated (0.1% for intentionally added ingredients).

**“Trade Secrets”** – Although the bill appropriately defines trade secret based on Civil Code section 3426.1, it exempted from that definition hazardous substances and any ingredient that can be reverse engineered. It is impossible for manufacturers to know in advance what is capable of being reversed engineered for the purposes of disclosing ingredients.

### **Identification/Nomenclature:**

The use of CAS numbers for all ingredients as provided under the bill is problematic. Not all chemicals have CAS numbers and yet some have multiple. Furthermore, disclosure of CAS numbers can be problematic from a trade secret perspective as some would reveal the specific chemical structure rather than simply the chemical class.

### **Trade Secrets:**

Disclosure of all chemical ingredients in products may lead to final product manufacturers being placed in an awkward situation of asking suppliers to divulge ingredient information, unique combinations of ingredients, and/or formulas that are patented, proprietary, or considered trade secrets. Many times these formulas are provided to final product manufacturers under confidentiality agreements. The legislation, in those cases, would require manufacturers to violate those confidentiality agreements by disclosing chemical ingredient information.

The process and details associated with claiming a trade secret is unacceptable. Specifically, it requires the manufacturer to identify a trade secret claim in the ingredient disclosure and submit any such claim in advance to DTSC with sufficient justification for the claim. It ultimately places the burden of a preliminary decision regarding thousands of claims on DTSC with an opportunity (incredibly short time frame of 30 days) for judicial review if DTSC decides the basis does not justify the claim. The procedure and time frame for judicial review is completely unworkable.

The bill would also eliminate trade secret protection after six years unless the manufacturer renews its claim. There is no purpose for such a sunset provision on a trade secret claim other than to burden and place additional expense on the manufacturer and DTSC.

### **Ingredient Disclosure – Website Posting**

Our organizations represent small, mid-sized and large manufacturers. Requiring companies, small manufacturers in particular, to establish websites just to comply with this law will add unnecessary increased on-going costs to doing business. For companies that are unable to absorb the cost of creating and maintaining a website, this could limit access to the California market.

### **Third-Party Lawsuits/Enforcement**

It is unclear how the State of California intends to ensure compliance with the proposal and a level playing field for those complying. How will the State monitor and audit worldwide websites? Will there be sampling and verification of testing?

Additionally, the bill provides no protections against private rights of action, including actions that may arise under California Business & Professions Code Sections 17200 and 17500. A manufacturer or wholesaler acting in good faith should not be liable to third party lawsuits.

For all of the reasons discussed above, the coalition of organizations strongly opposes SB 928 (Simitian) as amended on June 17<sup>th</sup>.

cc: Members. Assembly Environmental Safety and Toxic Materials Committee  
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