SB 258 (LARA) CLEANING PRODUCT RIGHT TO KNOW ACT OF 2017
HEARING SCHEDULED – APRIL 26, 2017
OPPOSE UNLESS AMENDED – AS AMENDED MARCH 20, 2017

April 20, 2017

TO: Members, Senate Labor and Industrial Relations Committee

FROM: Louinda V. Lacey, California Chamber of Commerce
Alliance of Automobile Manufacturers

American Chemistry Council
American Coatings Association
American Petroleum and Convenience Store Association
Auto Care Association
California Apartment Association
California Grocers Association
California Hospital Association
California Manufacturers & Technology Association
California Paint Council
California Retailers Association
Can Manufacturers Insitute
CAWA – Representing the Automotive Parts Industry
Chemical Industry Council of California
Greater Bakersfield Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Grocery Manufacturers Association
International Fragrance Association, North America
International Franchise Association
Lodi Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Oxnard Chamber of Commerce
Plastics Industry Association
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce & Tourist Bureau
Responsible Industry for a Sound Environment (RISE)
Ripon Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest CA Legislative Council
Specialty Equipment Market Association
Torrance Chamber of Commerce
Vacaville Chamber of Commerce
Valley Industry & Commerce Association

SUBJECT: SB 258 (LARA) CLEANING PRODUCT RIGHT TO KNOW ACT OF 2017
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The California Chamber of Commerce and the organizations listed above must respectfully **OPPOSE UNLESS AMENDED SB 258** (**Lara**) as amended March 20, 2017, which would "require an employer to identify a cleaning product and list the name of the cleaning product, the ingredients or contaminants of concern of the product," and a pictogram of potential health impacts of any ingredients in the cleaning product on any secondary container into which the product is transferred. This proposed requirement flows from another requirement in the bill, which provides that the manufacturer of "cleaning products" must disclose every ingredient or contaminant of concern, a pictogram communicating potential health impacts relating to the ingredients or contaminants of concern, and websites where additional information may be found by posting that information on the product label and on the manufacturer's Internet Web site. As explained herein, there are significant concerns regarding the proposed secondary container labeling requirement.

At the outset, it is critical to note that our organizations do not oppose the concept of ensuring that workers are adequately informed about the products they use. However, the products that **SB 258** seeks to regulate are already subject to a multitude of state and federal labeling and disclosure laws that, collectively, provide

information to ensure that workers are informed about potential risks the product poses. With this in mind, if products must, on top of these requirements, provide all ingredients (including fragrances and coloring agents) on product labels, the impact of existing labeling requirements will be undermined and diluted, and may not provide meaningful information for the majority of workers. Some of our specific concerns are outlined below.

SB 258 Conflicts with and Undermines OSHA Policies, Guidance, and Requirements and Creates an "Overwarning" Problem

SB 258 requires communication of *every* ingredient in a cleaning product on the label, regardless of the ingredient's relevance to worker protection. The bill further requires that the product label contain a pictogram which communicates the potential health impacts of any ingredient or contaminants of concern in the product that appear on the list of candidate chemicals or among the allergenic fragrances that appear on the list of Annex III of EU Cosmetics Regulations 1223/2009. With respect to such ingredients and contaminants of concern, the product label must also include a statement that information about potential health impacts of the ingredients may be obtained on the company's website. Some products have hundreds of ingredients in *de minimis* amounts currently communicated in functional groups such as "fragrances."

In March 2012, the Occupational Safety and Health Administration (OSHA) revised its Hazard Communication Standard (HCS) to align it with the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS), Revision 3. (https://www.osha.gov/Publications/OSHA3844.pdf at p. 1.) The HCS is designed to protect against chemical-source injuries and illnesses by ensuring that employers and workers are provided with sufficient information to anticipate, recognize, evaluate, and control chemical hazards and take appropriate protective measures. (*Id.* at p. 3.) This information is provided through safety data sheets (SDSs), labels, and employee training – which are effective based on the scientific review and analysis of chemicals in the hazard classification process. (*Ibid.*) This method of disclosure provides employers and workers with "more consistent classification of hazards" "in a form that is more consistent and presented in a way that facilitates the understanding of hazards of chemicals." (*Id.* at pp. 3-4.)

The hazard classification process includes evaluation of physical and health hazards. While there are certain "chemicals" excluded from the evaluation and labeling process (*id.* at pp. 6-8), it is for good reason (e.g., such chemicals are regulated under other laws). A "health hazard" means "a chemical that is classified as posing one of the following hazardous effects: acute toxicity (any route of exposure); skin corrosion or irritation; serious eye damage or eye irritation; respiratory or skin sensitization; germ cell mutagenicity; carcinogenicity; reproductive toxicity; specific target organ toxicity (single or repeated exposure); or aspiration hazard." (*Id.* at p. 8.) The concerns raised in **SB 258** with regard to "cleaning products" clearly fall within the ambit of OSHA's health hazards classification process and procedure. (See, e.g., Section 1 (b) "Cleaning products contain thousands of chemicals, many of which have been associated in scientific studies with cancer, asthma and other respiratory damage, skin allergies, and reproductive, developmental, and hormonal changes"; Section 1 (e) "The cleaning workforce, in particular low-income and minority workers, is disproportionately impacted by exposure to unsafe chemicals in cleaning products. Janitorial workers and domestic cleaners have higher rates of asthma and respiratory illnesses, and, in the case of pregnant workers, higher rates of birth defects"; Section 1 (g) "Knowing what chemicals are included in a product is an important factor in helping consumers, workers, and employers select cleaning products that minimize public health impacts, particularly for vulnerable populations such as children, pregnant women, cancer survivors, and individuals with health conditions such as asthma, allergies, or other sensitivities.")

It appears that the employer labeling and disclosure requirement contemplated by **SB 258** runs in direct contradiction of OSHA's intent to harmonize and clarify hazard communication in the workplace – which is specifically why OSHA revised its HCS in 2012 to provide disclosure "in a form that is more consistent and presented in a way that facilitates the understanding of hazards of chemicals." (*Id.* at pp. 3-4, underlining added.) The requirement would merely contribute to the "overwarning" problem, which detracts the workers' attention away from the important information.

SB 258 Incorrectly Presumes the Presence of a Chemical Equals Harm

As drafted, the **SB 258** incorrectly presumes that the presence of an identified chemical in a cleaning product means the product is somehow harmful. Modern analytical techniques allow for the detection of chemicals in the parts per billion and parts per trillion levels range. As drafted, **SB 258** imposes new labeling requirements – including the inclusion of a warning "pictogram" - based on the mere presence of an identified chemical, not through any determination that the product is harmful. This requirement undercuts the science-based approach to assessing both hazard and exposure by presuming that the mere presence of a chemical indicates it will likely result in exposure, or more specifically, exposure leading to harm. The presence of a particular chemical in a product does not necessarily mean that the product is harmful to human health or the environment or that there is any violation of existing safety standards or laws. Risks associated with a chemical in a product depend upon the potency of the chemical and the magnitude, duration, and frequency of exposure to the chemical.

Practical Implementation/Application Concerns

SB 258 puts the onus of identifying a "cleaning product" on the employer. The term "cleaning product" under **SB 258** is very expansive, defined as meaning "any product used primarily for commercial, domestic, or institutional cleaning purposes, including an air care product, automotive product, general cleaning product, or a polish or floor maintenance product." (See SB 258, § 108952(e).) The term "cleaning product" and the terms used in the definition are vague and ambiguous, and placing such a significant obligation on the employer is unreasonable. It is further unclear what liability would attach to an employer who mistakenly fails to classify a product as a "cleaning product."

Other practical implementation/application concerns include: How will an employer comply with this mandate? How will an employer transfer the ingredients/contaminants of concern and pictograms to secondary containers? What if an employee uses a labeled bottle for a different purpose with a different cleaning solution (or another solution entirely)? What if an employee affixes the incorrect label on a bottle? What liability and litigation may arise from this provision? How would an employer comply with the secondary container labeling requirement when it purchases products from wholesale warehouses (like Costco or Sam's Club) where it has no direct relationship with the manufacturer? Given the broad language in the bill, taken to its logical conclusion, the Labor Code provision could require an employer, who buys a gallon of Simple Green and then dilutes it with water in a bucket to mop the floors and wipe down the counters, to label the bucket with all ingredients, constituents of concern, and pictograms associated with the Simple Green.

If manufacturers are required to provide secondary containers or labels, it will likely lead to additional disposal of unused and unnecessary containers/labels, which flies in the face of California's goal to reduce waste and the state's recycling mandate. Moreover, if the manufacturer changes the ingredients, employers may need to discard secondary containers previously used, which merely increases waste into California's waste stream and increases cost on the employer – with no seeming corresponding benefit to employees given the extent and scope of OSHA's regulation in this field.

The forgoing are only some of the concerns raised by the labor provision in **SB 258.**

For these reasons, we must **OPPOSE SB 258 UNLESS AMENDED**. Please feel free to contact me if you have any questions or wish to discuss this further.

cc: The Honorable Ricardo Lara
Catalina Hayes-Bautista, Office of the Governor
Maya Van Peebles, Senate Labor & Industrial Relations Committee
Morgan Branch, Senate Republican Caucus
Senate Office of Floor Analyses
District Office, Members, Senate Labor & Industrial Relations Committee

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