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Chapter 830: Cleaning Products Are Coming Clean

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Chapter 830: Cleaning Products Are Coming Clean

Elizabeth “Libby” Grotewohl*

Code Sections Affected

Health and Safety Code § 108950 (enacted), § 108952 (enacted),
§ 108954 (enacted), § 108956 (enacted), § 108958 (enacted).
Labor Code § 6398.5 (enacted).
SB 258 (Lara); 2017 STAT. CH. 830.

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I. INTRODUCTION

Toxic chemicals are in what we eat, what we drink, the air we breathe, the clothing we wear,¹ and even in the products we use to eliminate toxins from our environment.² Ninety-six percent of the products that Americans use every day contain toxic chemicals.³ Of the 84,000 chemicals contained in these products,

* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2019; B.A. Journalism and Public Relations, Creighton University, 2016. Thank you to all my friends and family for allowing me to get rid of all your cleaning products and putting up with me talking about them for the past year. Special thanks to my mom and dad for their constant support and love and to my best friend, Carlos, for keeping a smile on my face throughout it all.

1. Ian Johnston, *Toxic Chemicals In Our Food, Plastic and Air Are Poisoning Our Children, Warn Leading Scientists*, INDEP. (July 1, 2016, 15:48 BST), <http://www.independent.co.uk/news/science/toxic-chemicals-poison-warning-food-plastic-air-study-a7114226.html> (on file with *The University of the Pacific Law Review*).

2. Fabian M. Gerster, David Vernez, Pascal P. Wild & Nancy B. Hopf, *Hazardous Substances in Frequently Used Professional Cleaning Products*, 20 INT. J. OCCUP. ENVIRON. HEALTH, no. 1, 2014, at 46, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4096065/> (on file with *The University of the Pacific Law Review*).

3. Lindsay McCormick, *Toxic Exposures: 10 Americans Expose the Toxic Chemicals In Our*

only about one percent of them have undergone Environmental Protection Agency (EPA) testing for safety.⁴ However, even if they had all been tested, their disclosure is not required with respect to cleaning products.⁵ Federal and state laws require food,⁶ drug,⁷ and cosmetic manufacturers⁸ to list active chemicals on the product's label; however, no such requirement exists for cleaning product manufacturers, whose products exist in nearly every American home and workplace.⁹

Meanwhile, researchers have uncovered evidence indicating the chemicals in cleaning products are harmful to humans.¹⁰ Many chemicals in household cleaning products have been linked to certain cancers, birth defects, and the disruption of the endocrine and reproductive systems.¹¹ Studies have linked the presence of more than 200 synthetic chemicals in the umbilical cord of newborns to in utero exposure to pollutants.¹² The risk of exposure to harmful toxins is greatest among janitorial and domestic workers who use cleaning products consistently throughout the workday.¹³ Six out of every 100 janitorial workers

Environment, ENVTL. DEF. FUND (May 10, 2017), <http://blogs.edf.org/health/2017/05/10/toxic-exposures-10-americans-expose-the-toxic-chemicals-in-our-environment/> (on file with *The University of the Pacific Law Review*).

4. *Everyday Chemicals May Be Harming Kids, Panel Told*, CNN (Oct. 26, 2010), <http://www.cnn.com/2010/HEALTH/10/26/senate.toxic.america.hearing/index.html> (on file with *The University of the Pacific Law Review*).

5. *Corporate Whitewash?: Why Do Cleaning Product-Makers Keep Most of Their Ingredients Secret?*, SCI. AM., <https://www.scientificamerican.com/article/toxic-ingredients-cleaning-products/> (last visited July 24, 2017) (on file with *The University of the Pacific Law Review*).

6. Fair Packaging and Labeling Act § 1453, 15 U.S.C.A. § 39 (West 2017).

7. *Id.*

8. CAL. HEALTH & SAFETY CODE § 111792 (West, Westlaw current with urgency legislation through Ch. 248 of 2016-2017 Legis. Sess.) (enacted by Chapter 729).

9. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 5 (May 27, 2017).

10. *See generally Household Chemicals Chart: What's in my House*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/household-chemicals-chart-whats-in-my-house> (last visited March 3, 2014) (on file with *The University of the Pacific Law Review*) (listing the harms presented by everyday household cleaning products); *see also* Amy Westervelt, *Study Highlights Hidden Dangers In Everyday Products—Even the “Green” Ones*, FORBES (Mar. 8, 2012, 12:20 AM), <https://www.forbes.com/sites/amywestervelt/2012/03/08/study-highlights-hidden-dangers-in-everyday-products/#7d1385537136> (on file with *The University of the Pacific Law Review*) (explaining the Silent Spring Institute study which revealed an alarming number of unlabeled chemicals of concern in commonly used household and personal care products).

11. *Cleaning Supplies and Your Health*, ENVTL. WORKING GROUP, http://www.ewg.org/guides/cleaners/content/cleaners_and_health#.WbxkyZOGPq0 (last visited July 24, 2017) (on file with *The University of the Pacific Law Review*) (linking chemicals like boric acid, diethylene glycol monomethyl ether, and formaldehyde to cancer and reproductive problems).

12. JANE HOULIHAN, ENVTL. WORKING GROUP, *BODY BURDEN, THE POLLUTION OF NEWBORNS* (2005) at 13, available at https://noharm-global.org/sites/default/files/documents-files/51/Body_Burden_in_Newborns.pdf (2005) (on file with *The University of the Pacific Law Review*) (detailing the industrial chemicals, pollutants, and pesticides found in human umbilical cord blood and the risks these toxins present in homes and the workplace).

13. Elise Pechter et al., *Reducing Hazardous Cleaning Product Use: A Collaborative Effort*, 124 PUBLIC HEALTH REP., no. 1, 2009, at 45–52 (on file with *The University of the Pacific Law Review*).

will be exposed to chemicals while using cleaning products in the workplace.¹⁴ Further, studies show that of domestic workers who suffer from asthma, the asthma was linked to their use of cleaning products in the course of their work.¹⁵ Because cleaning products contain hazardous ingredients which can cause death or serious bodily injury, and because they are often unsafely stored in most home and workplaces, cleaning products present a substantial danger to human health and the environment.¹⁶

To decrease these risks, Senator Ricardo Lara introduced Senate Bill 258.¹⁷ Invoking the maxim that sunlight is the best disinfectant, Senator Lara asserts that the passage of Chapter 830, the Cleaning Product Right to Know Act of 2017, will “shine a light” on toxic chemicals in the home and workplace.¹⁸

II. LEGAL BACKGROUND

With numerous federal laws regulating product labeling and encouraging consumer and employee safety, many states have acted to build upon these efforts to protect human health and the environment.¹⁹ Part A of this section discusses current federal law and SB 1257, a bill introduced in response to the

14. CLEANING FOR HEALTHY SCH., CLEANING FOR HEALTH SCHOOLS: PRODUCTS AND PRACTICES FOR A SAFER INDOOR ENVIRONMENT, available at <http://www.nationalhealthyschoolsday.org/InventoryCleaningProducts.pdf> (last visited July 8, 2017) (on file with *The University of the Pacific Law Review*) (“A review of workers’ compensation data from Washington state found that 6 out of 100 janitors are injured by chemicals every year; the most common injuries are serious burns to the eyes or skin.”); see generally THOMAS BARRON, CAROL BERG & LINDA BOOKMAN, POLLUTION PREVENTION PROJECT, HOW TO SELECT AND USE SAFE JANITORIAL CHEMICALS at VIII (1999), available at <http://infohouse.p2ric.org/ref/21/20377.pdf> (on file with *The University of the Pacific Law Review*).

15. CAL. WORK-RELATED ASTHMA PREVENTION PROGRAM, CLEANING PRODUCTS AND WORK-RELATED ASTHMA (July 2012), available at <https://archive.cdph.ca.gov/programs/ohsep/Documents/WRA-CleaningProd.pdf> (on file with *The University of the Pacific Law Review*).

16. CLEANING FOR HEALTHY SCH., CLEANING FOR HEALTH SCHOOLS: PRODUCTS AND PRACTICES FOR A SAFER INDOOR ENVIRONMENT, available at <http://www.nationalhealthyschoolsday.org/InventoryCleaningProducts.pdf> (last visited July 8, 2017) (on file with *The University of the Pacific Law Review*).

17. *Senator Lara Introduces Bill to Require Companies ‘Come Clean’ on Cleaning Product Ingredients*, RICARDOLARA (Feb. 8, 2017), <http://sd33.senate.ca.gov/news/2017-02-08-senator-lara-introduces-bill-require-companies-%E2%80%98come-clean%E2%80%99-cleaning-product> (on file with *The University of the Pacific Law Review*).

18. *Id.*

19. See Cynthia Washam, *Legislation: California Enacts Safe Cosmetics Act*, 114 ENVTL. HEALTH PERSP., no. 7, 2006, at A402, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1513294/> (on file with *The University of the Pacific Law Review*) (“Californians frustrated with what they consider the FDA’s loose control over cosmetic safety have taken matters into their own hands with the country’s first state cosmetics regulatory act, which takes effect in January 2007”); see also THE VISION COUNCIL, CALIFORNIA PROPOSITION 65 THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 GUIDE FOR OPHTHALMIC SUPPLIER 4 (2014), available at https://www.thevisioncouncil.org/sites/default/files/VC_CA-Prop-65-Guide-2-2016.pdf (on file with *The University of the Pacific Law Review*) (“the law also seeks to allow California consumers, residents and workers the opportunity to make informed choices about products and environments that contain potentially hazardous chemicals.”)

federal laws, both of which set the stage for Chapter 13.²⁰ Part B explores the California Safe Cosmetics Act of 2005 and the Safe Drinking Water and Toxic Enforcement Act of 1986, both of which have placed regulations on certain consumer product manufacturers.²¹

A. Federal Law

Signed into law by President Ford on October 11, 1976, the Toxic Substances Control Act (TSCA)²² granted the EPA authority to regulate chemical substances in U.S. commerce.²³ Aimed at protecting the environment and overall human health,²⁴ the TSCA requires manufacturers and processors of chemical substances to develop data regarding the chemical substances' human health and environmental effects.²⁵ However, with chemicals constantly entering the market, the EPA has been unable to properly test most chemicals for safety.²⁶ Additionally, manufacturers and processors must conduct tests on chemicals which "may present an unreasonable risk"²⁷ to human health or the environment, or those chemicals which have the potential to expose the environment or humans to its toxicity in large quantities.²⁸ The EPA may use their authority under the TSCA to collect information on existing chemicals,²⁹ keep detailed records,³⁰ and oversee the manufacturing, processing, distributing, and disposal of chemical substances.³¹ The TSCA failed "to generate and provide access to the information needed to identify unsafe chemicals, and to provide EPA with the authority it needed to mitigate harm from chemicals widely known to be

20. *Infra* Part A.

21. *Infra* Part B.

22. Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629 (1976).

23. *Id.* § 2609 (detailing the requirements placed upon manufacturers from the passage of the TSCA); see also LINDA-JO SCHIEROW, CONG. RESEARCH SERV., THE TOXIC SUBSTANCES CONTROL ACT (TSCA): IMPLEMENTATION AND NEW CHALLENGES 1 (2009), available at <https://www.acs.org/content/dam/acsorg/policy/acsonthehill/briefings/tscareform/crs-tsca-implementation-2008.pdf> (on file with *The University of the Pacific Law Review*).

24. JOHN R. WHEELER, TOXIC SUBSTANCES CONTROL ACT COMPLIANCE GUIDE & SERV., INTRODUCTION TO THE TOXIC SUBSTANCES CONTROL ACT 2 (2017), available at <http://www.complywithtsca.com/TSCAOnline/pdfs/vol1/introduction.pdf> (on file with *The University of the Pacific Law Review*).

25. SCHIEROW, *supra* note 23, at 2.

26. Mark Scialla, *It Could Take Centuries for EPA to Test All the Unregulated Chemicals Under a New Landmark Bill*, PBS (June 22, 2016, 11:58 AM), <http://www.pbs.org/newshour/updates/it-could-take-centuries-for-epa-to-test-all-the-unregulated-chemicals-under-a-new-landmark-bill/> (on file with *The University of the Pacific Law Review*) ("Public health and environmental advocates protested for decades that the TSCA was too old and too weak to shield Americans from toxic chemicals. More than 60,000 commercial chemicals were allowed on the market without safety testing.")

27. Toxic Substances Control Act § 4, 15 U.S.C. § 2603 (1976).

28. SCHIEROW, *supra* note 23, at 2–3.

29. *Id.* at 3.

30. *Id.*

31. WHEELER, *supra* note 24.

dangerous.”³²

A long-overdue overhaul of the TSCA came in 2016 when President Obama signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act into law.³³ The bipartisan effort revised EPA chemical evaluation requirements, reformed safety standards, and increased EPA funding.³⁴ The legislation provides the EPA with greater authority to regulate chemicals and requires the EPA to “identify, consider, and regulate the potential and actual risks that chemicals pose to vulnerable subpopulations, including children,”—a requirement not mandated by the TSCA.³⁵ The Act’s impact on regulating harmful substances is unclear because it is “stretched so far into the future and funding so murky that it may do little to prevent the public from exposure to harmful substances for many years to come.”³⁶

In response to a growing number of accidental household product poisonings in 1960, Congress passed the Federal Hazardous Substances Labeling Act (FHSLA) to improve labeling on products intended for household use or by children.³⁷ The FHSLA represented the first Congressional attempt to regulate household cleaning products.³⁸ The FHSLA requires conspicuous labeling on products containing hazardous substances.³⁹ For a product to require labeling, the product must be “toxic, corrosive, flammable or combustible, an irritant, or a strong sensitizer, or it must generate pressure through decomposition, heat, or other means.”⁴⁰ Additionally, the product must have the potential to cause substantial personal injury or human illness.⁴¹ If a product meets such criteria, its label must contain the chemical substance’s common name, the appropriate precautionary term “WARNING,” “CAUTION,” “DANGER,” or “POISON,”

32. RICHARD A. DENISON, EDF HEALTH, A PRIMER ON THE NEW TOXIC SUBSTANCES CONTROL ACT (TSCA) AND WHAT LED TO IT 3 (2017), available at <http://blogs.edf.org/health/files/2017/04/Denison-Primer-on-Lautenberg-Act-FINAL.pdf> (on file with *The University of the Pacific Law Review*).

33. Gregory Korte, *Obama Signs Bipartisan Chemical Safety Bill*, USA TODAY (June 22, 2016, 12:29 PM), <https://www.usatoday.com/story/news/politics/2016/06/22/obama-signs-bipartisan-chemical-safety-bill/86241008/> (on file with *The University of the Pacific Law Review*).

34. H.R. 2576, 114th Cong. (2016) (enacted) (updating the Toxic Substances Control Act).

35. DENISON, *supra* note 32.

36. Barbara Grady, *What the New Chemical Safety Law Means For Business*, GREENBIZ (June 22, 2016, 11:00 AM), <https://www.greenbiz.com/article/what-new-chemical-safety-law-means-business> (on file with *The University of the Pacific Law Review*).

37. The Federal Hazardous Substances Labeling Act, 15 U.S.C. §§ 1261-1278;

Franklin D. Houser, *The Consumer’s Sleeping Giant – The Federal Hazardous Substances Labeling Act*, 14 SANTA CLARA L. REV. 520, 522 (1974), available at <http://digitalcommons.law.scu.edu/lawreview/vol14/iss3/6> (on file with *The University of the Pacific Law Review*).

38. *Id.*

39. *Id.* at 522–523.

40. *Federal Hazardous Substances (FHSA) Requirements*, U.S. CONSUMER PRODUCT SAFETY COMMISSION (Dec. 4, 2012), <https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/FHSA-Requirements> (on file with *The University of the Pacific Law Review*).

41. *Id.*

and “keep out of the reach of children.”⁴² In addition, the labels must contain safe storage instructions and first aid steps should an accident occur.⁴³ Following the FHSLA’s adoption, however, the number of accidental ingestions of household cleaning products, particularly by children, increased.⁴⁴

The Occupational Safety and Health Act became law in 1970,⁴⁵ “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”⁴⁶ To research, create, and monitor workplace safety standards, the Act created the Occupational Safety and Health Administration (OSHA)⁴⁷ and the National Institute for Occupational Safety and Health (NIOSH).⁴⁸ One of the many safety standards set out by the Act requires manufacturers and distributors of hazardous chemicals to create a Safety Data Sheet for each hazardous chemical they create or distribute.⁴⁹ Employers are required to provide these Safety Data Sheets to employees which detail health hazards, a chemical’s physical characteristics, protective measures, and proper storage instructions.⁵⁰ Although this may alert employees to the presence of numerous hazardous substances, the Sheets are difficult to obtain and often omit pertinent information.⁵¹ The Act calls upon States to adopt their own job safety and health programs to further protect employees in the workplace.⁵² In response, California lawmakers passed the California Occupational Safety and Health Act in 1973.⁵³ The Act created the California Occupational Safety and Health Program (Cal/OSHA) and granted it the power to adopt and enforce workplace health and safety standards.⁵⁴ Cal/OSHA requires all employers in

42. Houser, *supra* note 37, at 523.

43. *Id.* at 524.

44. *Id.* at 521.

45. Susan Ann Myers, *The California Occupational Safety and Health Act of 1973*, 9 LOY. L.A. L. REV. 905, 909 (1976), available at <http://digitalcommons.lmu.edu/llr/vol9/iss4/6> (on file with *The University of the Pacific Law Review*).

46. 29 U.S.C. § 651 (1970) (creating OSHA and further regulating the use of chemical substances in consumer products).

47. *Occupational Safety and Health Act (OSHA) of 1970*, SOC’Y FOR HUM. RESOURCE MGMT. (Oct. 7, 2008), [https://shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/OccupationalSafetyandHealthAct\(OSHA\)of1970.aspx](https://shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/OccupationalSafetyandHealthAct(OSHA)of1970.aspx) (on file with *The University of the Pacific Law Review*).

48. *About NIOSH*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 15, 2016), <https://www.cdc.gov/niosh/about/default.html> (on file with *The University of the Pacific Law Review*).

49. *Hazard Communication Standard: Safety Data Sheets*, OSHA, <https://www.osha.gov/Publications/OSHA3514.html> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*).

50. *Id.*

51. Reggie Aqai, *Consumer Groups Demand More Information On Chemicals In Cleaning Products*, ABC 7 (Feb. 26, 2016), <http://abc7news.com/business/consumer-groups-demand-more-information-on-cleaning-product-labels/1221374/> (on file with *The University of the Pacific Law Review*) (“Most of us are used to finding lists of ingredients on food, medicine, even cosmetics, but you might not realize there is no requirement to list all of the ingredients on the labels of cleaning products.”).

52. *Occupational Safety and Health Act (OSHA) of 1970*, *supra* note 49.

53. Myers, *supra* note 45.

54. *Id.*

California to provide and maintain a safe and healthy workplace for their employees through practices like the use of Material Safety Data Sheets (MSDSs) and training employees in safe work practices.⁵⁵

B. California Law

California lawmakers have put significant effort into strengthening chemical regulation, but there remains little room for improvement.⁵⁶ Frustrated by the FDA's inadequate regulation of cosmetics, California lawmakers enacted the California Safe Cosmetics Act of 2005.⁵⁷ The Act requires cosmetics manufacturers to report all potentially hazardous chemicals used in their products to the Department of Health Services (DHS).⁵⁸ "[P]otentially hazardous" chemicals are those "that are known to the state of California to cause cancer, birth defects, or other reproductive harm."⁵⁹ DHS is tasked with conveying the information received from manufacturers to consumers.⁶⁰ This Act, however, has since failed to make any significant change given the "uncooperative cosmetic industry, delayed participation in a database system, and information on chemicals that hasn't been updated for years."⁶¹

The Safe Drinking Water and Toxic Enforcement Act (Proposition 65), enacted in 1986, "requires that consumers in California be informed when products they seek to purchase contain substances that been determined to cause cancer, birth defects, or other reproductive harm."⁶² To inform consumers, the Governor of California, at least once per year, must review and revise the EPA list⁶³ of chemical substances known to cause such harm.⁶⁴ Since the enactment of Proposition 65, numerous hazardous chemicals have been added to the EPA's list

55. OSHA NIOSH, PROTECTING WORKERS WHO USE CLEANING CHEMICALS (2012), available at <https://www.osha.gov/Publications/OSHA3512.pdf> (on file with *The University of the Pacific Law Review*).

56. See generally Kevin Haroff, *California Pursuing New Approach to Chemicals Regulation*, MARTEN L. (Sept. 13, 2012), <http://www.martenlaw.com/newsletter/20120913-california-chemicals-regulation> (on file with *The University of the Pacific Law Review*) (detailing the history of California's legislative efforts to regulate the chemical industry).

57. Washam, *supra* note 19.

58. *Id.*

59. *Id.*

60. *Id.*

61. L.J. Devon, *California's Safe Cosmetics Program Datable Fails to Deliver Due to 'Trade Secrets' Option*, NATURAL NEWS (Feb. 19, 2014), http://www.naturalnews.com/043975_chemical_database_Safe_Cosmetics_Program_trade_secrets.html (on file with *The University of the Pacific Law Review*).

62. THE VISION COUNCIL, *supra* note 19.

63. See generally STATE OF CAL. ENVTL. PROT. AGENCY OFFICE OF ENVTL. HEALTH HAZARD ASSESSMENT, CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER OR REPRODUCTIVE TOXICITY (2017), available at <https://oehha.ca.gov/media/downloads/proposition-65/p65single01272017.pdf> (on file with *The University of the Pacific Law Review*).

64. THE VISION COUNCIL, *supra* note 19.

of chemicals in order to protect California's consumers.⁶⁵ These warning requirements and Proposition 65's (Prop 65) prohibition on discharges into drinking water sources do not apply to businesses with fewer than ten employees and government agencies.⁶⁶ If the chemical exposure creates no significant risk of cancer, birth defects, or other reproductive harm, businesses are exempt from Prop 65's requirements.⁶⁷ While Prop 65 provides warning to consumers, no uniform method to disclose ingredients exist.⁶⁸ Given the lack of a uniform method, and with over 800 chemicals now recorded on the EPA's list, manufacturers have struggled to comply with Prop 65.⁶⁹

In 2008, the California legislature passed and Governor Schwarzenegger signed AB 1879 and SB 509, which created California's Green Chemistry Initiative (CGCI).⁷⁰ This program authorized and required the Department of Toxic Substances Control (DTSC) to establish a process to identify and prioritize toxic chemicals in commonplace consumer products.⁷¹ The DTSC adopted a continuous four-step, science-based, ongoing process to assess chemicals in consumer products, and to determine if their presence is really necessary at all.⁷² Environmentalists fear CGCI's industry reporting and public disclosure requirement "won't remove toxic products from the shelves and will create 'paralysis by analysis,' as industries can litigate against DTSC over unfavorable department decisions."⁷³

65. See *Chemical Listed Effective December 4, 2015 as Known to the State of California to Cause Reproductive Toxicity: 2,5-Hexanedione and Addition of a Reproductive Toxicity Endpoint (Developmental) for Methyl-N-Butyl Ketone*, OEHHA (Dec. 4, 2015), <https://oehha.ca.gov/proposition-65/crn/chemical-listed-effective-december-4-2015-known-state-california-cause> (on file with *The University of the Pacific Law Review*); see also *Chemicals Listed Effective January 27, 2017 as Known to the State of California to Cause Reproductive Toxicity: Pertuzumab and Vismodegib*, OEHHA (Jan. 27, 2017), <https://oehha.ca.gov/proposition-65/crn/chemicals-listed-effective-january-27-2017-known-state-california-cause> (on file with *The University of the Pacific Law Review*).

66. Peter McGraw, *Proposition 65: A National Problem*, ARCHER NORRIS, 2002, available at <https://www.archernorris.com/Templates/media/files/PDFs/PROP65-ANNNews03.pdf> (on file with *The University of the Pacific Law Review*).

67. *Id.*

68. *Id.*

69. K&L Gates, *WARNING: Proposition 65 Warning Requirements Have Changed*, LEXOLOGY (Jan. 4, 2017), <http://www.lexology.com/library/detail.aspx?g=cf262565-d09f-4a69-8426-6605814f367d> (on file with *The University of the Pacific Law Review*).

70. DTSC, CALIFORNIA GREEN CHEMISTRY INITIATIVE: FREQUENTLY ASKED QUESTIONS (2008), available at http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/upload/FAQs_greenchem.pdf (on file with *The University of the Pacific Law Review*).

71. *Id.*

72. *Id.*

73. Michael Collins, *Schwarzenegger's Chemical Romance*, L.A. WEEKLY (Dec. 9, 2010), <http://www.laweekly.com/news/schwarzeneggers-chemical-romance-2168208> (on file with *The University of the Pacific Law Review*) (detailing the Green Chemistry Initiative and activists' view that Governor Schwarzenegger's pandered to the chemical industry).

III. CHAPTER 830

In response to evidence indicating the cleaning products' impact on human health and the environment, Senator Ricardo Lara introduced Senate Bill 258.⁷⁴ Signed into law on October 15, 2017, Chapter 830 enacts the Cleaning Product Right to Know Act of 2017, which places more stringent disclosure requirements on cleaning products manufacturers.⁷⁵ Chapter 830 advocates see it as a "critical first step" towards the betterment of human health and the environment.⁷⁶ Starting July 1, 2018, Chapter 830 requires cleaning products manufacturers to list all potentially hazardous chemicals existing in the product on the product's label.⁷⁷ Any such label must include a pictogram illustrating the potential health impacts that the toxins present⁷⁸ and a statement directing consumers to the product manufacturer's website where they may obtain more information.⁷⁹

In addition, Chapter 830 adds Chapter 13 to Part 3 of Division 104 of the Health and Safety Code, which demands cleaning product manufacturers list all product ingredient information that may be of concern on their Website, including the operative purpose served by each ingredient.⁸⁰ Chapter 830 does not require manufacturers to disclose the weight of a particular ingredient or the amount used in a product in order to protect trade secrets.⁸¹ To classify chemicals, manufacturers must utilize both an ingredient's Chemical Abstracts Service (CAS) number and its name provided in the Consumer Product Ingredients Dictionary, which is published by the Consumer Specialty Products Association (CSPA) or the International Nomenclature Cosmetic Ingredient name.⁸²

Chapter 830 also adds Section 6398.5 to the Labor Code, and requires employers to provide employees with Safety Data Sheets for all cleaning products in the workplace.⁸³

74. Samara Geller, *5 Things to Know About California's Cleaning Products Disclosure Bill*, ENVTL. WORKING GROUP (Feb. 9, 2017), <http://www.ewg.org/enviroblog/2017/02/5-things-know-about-california-s-cleaning-products-disclosure-bill> (on file with *The University of the Pacific Law Review*) ("California State Sen. Ricardo Lara, D-Bell Gardens, introduced a bill on Wednesday to lift the veil of secrecy over potentially hazardous ingredients in cleaning products.").

75. CAL. HEALTH & SAFETY CODE § 108950(a)–(b) (enacted by Chapter 830).

76. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 8 (May 27, 2017).

77. CAL. HEALTH & SAFETY CODE § 108954(a)(1) (enacted by Chapter 830).

78. CAL. HEALTH & SAFETY CODE § 108954(a)(2) (enacted by Chapter 830).

79. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 3 (May 27, 2017).

80. CAL. HEALTH & SAFETY CODE § 108954(b)(2)(B) (enacted by Chapter 830).

81. CAL. HEALTH & SAFETY CODE § 108954(a)(2)(A) (enacted by Chapter 830).

82. CAL. HEALTH & SAFETY CODE § 108954(d)(2)(C)(3) (enacted by Chapter 830).

83. CAL. LAB. CODE § 6414 (enacted by Chapter X).

IV. ANALYSIS

Chapter 830's extensive labeling and disclosure requirements attempt to make consumers and domestic workers aware of the toxic chemicals that exist in commonly-used cleaning products.⁸⁴ This section analyzes whether Chapter 830 can achieve its goals or if the opposition's argument that Chapter 830 does not do enough will reign supreme.⁸⁵

Part A balances the consumer's right to know against the manufacturers' desire to protect their coveted trade secrets.⁸⁶ Part B analyzes Chapter 830's potential for success.⁸⁷ Part C addresses the opposition's concerns that Chapter 830 takes the wrong approach.⁸⁸ Finally, Part D discusses Chapter 830's future and its fiscal impact on California's economy and manufacturers.⁸⁹

A. *Does the Right to Know Outweigh the Protection of Trade Secrets?*

Emblazoned with the title "The Cleaning Product Right to Know Act of 2017," Chapter 830 is premised on the idea that consumers and domestic workers have a right to know what ingredients are in their cleaning products.⁹⁰ By arguing cleaning product formulas are protected trade secrets, cleaning products manufacturers have avoided labeling and disclosure requirements that are mandatory for manufacturers of most other consumer goods.⁹¹ One reason for promoting labeling and disclosure involves the consumer's right to know.⁹² Chapter 830 proponents believe consumers have a right to know what ingredients are in a cleaning product and whether those ingredients are potentially dangerous.⁹³ As a result, these proponents believe that the argument in favor of the protection of trade secrets is meritless.⁹⁴ According to Nancy Buermeyer, a

84. Geller, *supra* note 74.

85. *Infra* Part IV.A–D.

86. *Infra* Part IV.A.

87. *Infra* Part IV.B.

88. *Infra* Part IV.C.

89. *Infra* Part IV.D.

90. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 1 (June 30, 2017).

91. *Cleaning Supplies and Your Health*, ENVTL. WORKING GROUP, http://www.ewg.org/guides/cleaners/content/cleaners_and_health#.WbxkyZOGPq0 (last visited July 24, 2017) (on file with *The University of the Pacific Law Review*) ("The label on a typical cleaning product is a mix of marketing hype and instructions for use. What's missing is a list of what's inside.").

92. *Contra* JONATHAN H. ADLER, PRODUCT SAFETY & CONSUMER PROT., THERE IS NO CONSUMER 'RIGHT TO KNOW' 26 (2016), available at <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2016/9/regulation-v39n3-2.pdf> (on file with *The University of the Pacific Law Review*) (arguing that consumers do not have a "right to know" as disclosure serves no "substantial government interest.")

93. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3 (June 30, 2017).

94. Letter from Christopher Gavigan, Co-Founder & Chief Purpose Officer of The Honest Co., to Senator

Senior Policy Analyst with the Breast Cancer Fund, “[t]he reality is that all their competitors already know what’s in these products because they can use labs to figure out what those chemicals are. So the only people left in the dark are the government, consumers and workers.”⁹⁵ These proponents argue that with current technology, manufacturers can easily determine the ingredients in a competitor’s products, thus, successful protection of trade secrets is nearly impossible.⁹⁶ Large companies like Clorox and SC Johnson have already begun disclosing product ingredients on their websites.⁹⁷ The Honest Company, a manufacturer of non-toxic household products and a staunch supporter of Chapter 830, agrees.⁹⁸ Christopher Gavigan, Co-Founder and Chief Purpose Officer of The Honest Company, explains that “[w]hat we don’t know—and what no one is arguing should be disclosed—is the recipe each of us uses to make our products.”⁹⁹ Chapter X does not require manufacturers to give away the recipes for their products.¹⁰⁰ Thus, proponents do not believe ingredient disclosure threatens manufacturers’ trade secrets.¹⁰¹

The idea that consumers and domestic workers have a “right to know” the ingredients in cleaning products assumes consumers and domestic workers actually understand those ingredients and the dangers associated with their use.¹⁰² While nutrition labeling on food products has been found to impact consumers purchasing decisions,¹⁰³ Chapter 830 opponents do not foresee such a result with most consumers and domestic workers having little to no scientific knowledge regarding the chemicals existing in cleaning products.¹⁰⁴ In 2011, the Women’s Voices for the Earth (WVE) tested 20 popular cleaning products and discovered

Ricardo Lara 2 (Mar. 3, 2017), *available at* https://blog.honest.com/wp-content/uploads/2017/04/Honest-Co_SB-258-Support_FINAL.pdf [hereinafter *The Honest Company March 2017 Letter*] (on file with *The University of the Pacific Law Review*).

95. *Aqui, supra* note 51.

96. *Geller, supra* note 74.

97. Letter from Christopher Gavigan, *supra* note 94 (“Moreover, the actions of many of the biggest companies in the cleaning industry—including Clorox, SC Johnson, and others – show that CBI [confidential business information] concerns are overstated. These companies are already listing ingredients in their cleaning products on their websites or via third parties like Smart Label.”)

98. *See generally Id.*

99. *Id.*

100. CAL. HEALTH & SAFETY CODE § 108955 (b)(2)(B) (enacted by Chapter).

101. Letter from Christopher Gavigan, *supra* note 94.

102. *See Household Cleaning Products May Do More Harm Than Good*, GREEN CLEAN CERTIFIED, <http://www.greencleanertified.com/green-cleaning-facts/HOUSEHOLD-CLEANING-PRODUCTS-MAY-DO-MORE-HARM-THAN-GOOD> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*).

103. *See* B.E.S. Bandara, et al, *Impact of Food Labeling Information on Consumer Purchasing Decision*, 6 *PROCEDIA FOOD SCI.* 309 (2016), *available at* http://ac.els-cdn.com/S2211601X16000626/1-s2.0-S2211601X16000626-main.pdf?_tid=1206c77e-631e-11e7-a04a-00000aacb360&acdnat=1499436826_b9e1d2e8f01de9d1db8f94710864a694 (on file with *The University of the Pacific Law Review*).

104. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 4 (June 30, 2017).

several reproductive toxins and allergens, none of which had not been disclosed on the product's label.¹⁰⁵ While critics assert "the cleaning products that are on shelves today are safe and effective when used as directed," and, as such, endangering protected trade secrets would be fruitless,¹⁰⁶ proponents believe that disclosure is a good place to start.¹⁰⁷

B. Fighting For Healthier Lives and a Healthier Environment

Senator Lara introduced Chapter 830 in response to the green movement.¹⁰⁸ The green movement brought natural and eco-friendly cleaning products into the market,¹⁰⁹ and required bigger companies to decide whether to disclose their product ingredients or lose their hold in the market.¹¹⁰ This most recent legislative effort calls upon cleaning product manufacturers to identify potentially dangerous chemicals and inform users of their product's ingredients.¹¹¹ Consumers have embraced product lines that advertise the use of less toxic chemicals and the industry has seen manufacturers making efforts to develop and market products which are safer for everyday use.¹¹² With the

105. Ben Schiller, *We Have A Right to Know What's In Our Household Sprays, Soaps, and Cleaners*, FAST COMPANY (Jan. 13, 2016), <https://www.fastcompany.com/3055196/we-have-a-right-to-know-whats-in-our-household-sprays-soaps-and-cleaners> (on file with *The University of the Pacific Law Review*) (exploring a study conducted to identify potentially hazardous chemicals in cleaning products and manufacturers' responses to such a study).

106. Aqui, *supra* note 51 (explaining the position that the amount of chemicals existing in cleaning products is minute).

107. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 4 (June 30, 2017).

108. Stephen Joyce, *SC Johnson to Expand Skin Allergen Disclosures in Products*, DAILY ENV'T REP. (May 26, 2017), <https://www.bna.com/sc-johnson-expand-n73014451584/> (on file with *The University of the Pacific Law Review*) ("There is movement across different industries to increase transparency, not as much as we've seen in personal care perhaps.").

109. *12 Natural & Eco-Friendly Cleaning Products For the Conscious Home*, GOOD TRADE, <http://www.thegoodtrade.com/features/natural-eco-friendly-cleaning-products-for-the-conscious-home> (last visited Aug. 22, 2017) (on file with *The University of the Pacific Law Review*) (listing popular natural & eco-friendly cleaning products that have recently entered the market).

110. *Insight: Do You Know the Five Most Important Trends in the Cleaning Products Market?*, SMITHERS APEX (Nov. 2013), <http://www.smithersapex.com/news/2013/november/5-important-trends-in-the-cleaning-products-market> (on file with *The University of the Pacific Law Review*) (explaining the impact that natural cleaning products have on the cleaning product industry, "consumers in developed economies have become more aware of how their everyday activities are affecting our world. They are considering how the extraction, manufacture and disposal of cleaning products has a major effect on their energy and water consumption, and are looking for ways to minimize their wider impact.").

111. Stephen Ashkin, *Green Cleaning: The Journey From Niche to Mainstream*, GREENBIZ (Mar. 7, 2014, 4:30 AM), <https://www.greenbiz.com/blog/2014/03/07/green-cleaning-journey-niche-mainstream> (on file with *The University of the Pacific Law Review*) (providing a timeline of the evolution of the "green" movement. "Today, green cleaning is no longer niche, with an increasing number of certifications and other tools that have pushed it into the mainstream.").

112. Deidre Imus, *The Dirty Truth On Green Cleaning Products*, FOX NEWS (Mar. 11, 2013), <http://www.foxnews.com/health/2013/03/11/dirty-truth-on-green-cleaning-products.html> (on file with *The*

passage of Chapter 830, California became the first state to require cleaning product manufacturers to fully disclose ingredients on the product's label.¹¹³ Chapter 830 advocates see it as a "critical first step" towards the betterment of human health and the environment.¹¹⁴

With support from environmentalists, medical professionals, and employment organizations,¹¹⁵ Chapter 830 aims to make it easier for consumers and domestic workers to obtain knowledge about the products they use every day.¹¹⁶ While using cleaning products, consumers and domestic workers unknowingly encounter hundreds of potentially hazardous chemicals.¹¹⁷ Exposure to toxic chemicals in cleaning products may have even greater impact in minority communities.¹¹⁸ Half of the nation's janitors and two-thirds of maids and housekeepers are Latino or African-American, while nine out of ten maids and housekeepers are women.¹¹⁹ So, with ten percent of all work-related asthma cases linked to chemical exposure from cleaning products, these minorities disproportionately suffer from chemicals which most have no knowledge of.¹²⁰ Formaldehyde, for example, is a human carcinogen that exists in numerous household cleaning products, whose exposure may contribute to the development of asthma and several other serious medical conditions.¹²¹ Similarly, phthalates, a group of chemicals that exist in many cosmetics, insecticides, and cleaning products, have been linked to cancer, birth and developmental defects, and

University of the Pacific Law Review).

113. Geller, *supra* note 74 ("If passed in its current form, this would be the first state or national law known to require full ingredient disclosures for cleaning products.").

114. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 4 (June 30, 2017).

115. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 5–7 (June 30, 2017).

116. Mike Luery, *What You Need to Know About California Cleaning Products Bill*, KCRA 3 (Mar. 29, 2017, 9:59 PM), <http://www.kcra.com/article/what-you-need-to-know-about-californias-cleaning-products-bill/9205709> (on file with *The University of the Pacific Law Review*) ("Our bill would require that all the ingredients be posted in the label in a way that's easy to comprehend, easy to read for folks.").

117. *Household Cleaning Products May Do More Harm Than Good*, *supra* note 102 ("The problem is, most consumers aren't aware of the hidden dangers these popular cleaning products present to our health. Nor are they aware how pervasive these health threats are.").

118. Pechter, *supra* note 13.

119. *Labor Force Statistics from the Current Population Survey*, BUREAU LAB. STAT. (2014), <https://www.bls.gov/cps/cpsaat11.htm> (on file with *The University of the Pacific Law Review*) (detailing the percentage of minorities in domestic working positions).

120. CAL. WORK-RELATED ASTHMA PREVENTION PROGRAM, *supra* note 15.

121. *See Formaldehyde and Cancer Risk*, National Cancer Institute (June 10, 2011), <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/formaldehyde/formaldehyde-fact-sheet> (on file with *The University of the Pacific Law Review*) (linking exposure to formaldehyde to an increased risk of developing leukemia and brain cancer); *see also* M. L. Herdt-Losavio et al., *Maternal Occupation and the Risk of Birth Defects: An Overview from the National Birth Defects Prevention Study*, 67 OCCUPATIONAL & ENV'TL MEDICINE, No. 1, 2009, at 3 (detailing the birth defects of children born to working mothers during the period 1997–2003).

obesity and insulin resistance.¹²² The Environmental Working Group found that 15% of the children in their study, which analyzed the presence of toxic chemicals in a newborn child's blood, had at least one developmental problem.¹²³ The Group linked the developmental problems to the presence of nearly 232 chemicals typically found in household cleaning products in the cord blood of 10 newborns.¹²⁴ It is unclear whether these threats to human health will be lessened or eradicated with the passage of Chapter 830.¹²⁵ Labeling may only inform those consumers and domestic workers who have a background in chemistry, which is likely a very limited segment of the population.¹²⁶ If this is true, and if manufacturers continue to place potentially harmful chemicals in their products, Chapter 830 will likely not positively impact human health.¹²⁷

Just as these chemicals may harm human health, these chemicals have the potential to gravely endanger the environment.¹²⁸ Hazardous chemicals in cleaning products can contaminate groundwater, lakes and oceans, and lead to the formation of algal blooms which threaten marine life.¹²⁹ The United States Geological Survey (USGS) has found traces of the chemicals used in household

122. See *Factsheet: Phthalates*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 23, 2016), https://www.cdc.gov/biomonitoring/Phthalates_FactSheet.html (on file with *The University of the Pacific Law Review*) (listing everyday products which contain harmful toxins like Phthalates); see also CTRS. FOR DISEASE CONTROL & PREVENTION, *FOURTH NATIONAL REPORT ON HUMAN EXPOSURE TO ENVIRONMENTAL CHEMICALS* 371–452 (2017), available at https://www.cdc.gov/exposurereport/pdf/FourthReport_UpdatedTables_Volume1_Jan2017.pdf (on file with *The University of the Pacific Law Review*) (reporting and comparing the traces of phthalates found in certain age groups and in men and women).

123. *Everyday Chemicals May Be Harming Kids, Panel Told*, *supra* note 4, (“The organization’s study found an average of 232 chemicals in the cord blood of 10 babies born in late 2009.”)

124. *Id.* (“They are chemicals found in a wide array of common household products, including shampoos and conditioners, cosmetics, plastics, shower curtains, mattresses and electronic such as computers and cell phones.”)

125. Luery, *supra* note 116.

126. Imus, *supra* note 112.

127. Lindsey Heinz & Bridget Halbur, *Cleaning Product Right to Know Act Appears to be Moving Forward*, DAILY J., July 17, 2017 (on file with *The University of the Pacific Law Review*).

128. Stephen Ashkin, *The Environmental Impacts of Cleaning Products*, FACILITIESNET (May 2009), <http://www.facilitiesnet.com/green/article/The-Environmental-Impacts-of-Cleaning-Products-Facilities-Management-Green-Feature--10796> (on file with *The University of the Pacific Law Review*).

129. See ANNA MCGARAGAN, RAPHAEL KUDELA & KENDRA NEGREY, *JOINT COMM. ON FISHERIES & AQUACULTURE, A PRIMER ON CALIFORNIA HARMFUL ALGAL BLOOMS 2* (2011), available at <http://fisheries.legislature.ca.gov/sites/fisheries.legislature.ca.gov/files/u8/Primer%20on%20HAB%20westcoast.pdf> (on file with *The University of the Pacific Law Review*) (“Nearly all HAB species require nitrogen and phosphorus to grow. While these nutrients are a natural part of the environment, their availability is an important factor in bloom development, distribution, and duration.”); see also *Nutrient Pollution: Harmful Algal Blooms*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/nutrientpollution/harmful-algal-blooms> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*) (“Harmful algal blooms are overgrowths of algae in water. Some produce dangerous toxins in fresh or marine water but even nontoxic blooms hurt the environment and local economies.”); see also *Nutrient Pollution: Sources and Solutions*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*) (detailing the link between the use of common household products and the formation of harmful algal blooms).

cleaning products in North American waterways, causing great concern amongst the environmental community.¹³⁰ Compare this to cleaning products labeled as “green,” which certifies they are “free of ozone-depleting chemicals, less toxic to aquatic life, less likely to build up in the body, have fewer smog-producing chemicals degrade quickly in the environment, and are more concentrated to reduce greenhouse gas emissions from shipping.”¹³¹ The extent to which Chapter 830 will actually improve our planet’s health is largely unclear.¹³² Much like Chapter 830’s impact on human health, consumers and domestic workers must actually understand the chemicals and the resulting environmental impact if any positive change can be made.¹³³ Knowing chemical names is not enough.¹³⁴ For Chapter 830 to achieve its goals, consumers and domestic workers must take the time to research cleaning products and understand their contents before use.¹³⁵

C. It’s All Wrong: The Opposition’s Argument

Chapter 830 opponents do not argue consumers and domestic workers should not be informed about the presence of hazardous chemicals, rather, they contend that Chapter 830 takes the wrong approach.¹³⁶ Some fear the labeling requirement will only further confuse workers and consumers,¹³⁷ causing unnecessary fear.¹³⁸ The opposition, which consists of groups that represent manufacturers and retailers, argue Chapter 830 doesn’t do enough.¹³⁹ Senator Lara’s statement that “[w]e trust Californians to check the labels on food, drugs, and cosmetics, but you have to be a chemist to know what is in the cleaning products that are under

130. *Detergents in Streams May Just Disappear: The Story of 4-n-nonylphenol Biodegradation in Stream Sediments*, USGS, https://toxics.usgs.gov/highlights/detergents_streams.html (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*) (“Environmental professionals are concerned about these compounds because scientists have shown that a class of degradation products known as nonylphenols can disrupt normal hormonal (endocrine) function in fish.”).

131. ENVTL. WORKING GRP. & REG’L ASTHMA MGMT. & PREVENTION, HEALTH AND ENVIRONMENTAL BENEFITS OF GREEN CLEANING PRODUCTS 2, available at <http://www.greenschools.net/downloads/Green%20Cleaning%20Benefits%20112009.pdf> (on file with *The University of the Pacific Law Review*).

132. Letter from Louinda V. Lacey, Cal. Chamber of Commerce, to the California State Senate 3–4 (May 30, 2017), available at <http://blob.capitoltrack.com/17blobs/a4f829bb-f2e7-4bd8-a129-91368cb350f1> [hereinafter Cal. Chamber of Commerce May 2017 Letter] (on file with *The University of the Pacific Law Review*).

133. *Id.*

134. See ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3–4 (June 30, 2017) (detailing the arguments in support of the adoption of SB 258).

135. See *id.* (explaining how SB 258 requires educating consumers and domestic workers about the harms presented by chemicals rather than solely providing them chemical names).

136. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

137. *Id.*

138. Laurel Rosenhall, *In California Battles Over Product Labels, Industry Usually Wins*, DAILY NEWS (Jun. 3, 2017, 11:41 AM), <http://www.dailynews.com/government-and-politics/20170603/in-california-battles-over-product-labels-industry-usually-wins> (on file with *The University of the Pacific Law Review*).

139. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

your kitchen sink,”¹⁴⁰ rings true to these opponents even after Chapter 830 is enacted.¹⁴¹

Opponents argue adding ingredient lists and pictograms will result in overcrowded labels that are nearly incomprehensible to non-chemists.¹⁴² With food products requiring extensive ingredient labeling, studies have found that 67% of consumers “say it is challenging to determine whether a food product meets their needs simply by looking at the package label,” and 48% of consumers “consider themselves ‘not informed at all’ about a food product even after reading the label.”¹⁴³ Just as many consumers and domestic workers are not nutritionists, many, if not most, are not chemists.¹⁴⁴ With such a high percentage of consumers finding food labels confusing and inadequate, it is possible that the same percentage would find cleaning product labels to be the same.¹⁴⁵ This begs the question of whether additional regulation is worthwhile.¹⁴⁶ As such, Chapter 830 opponents predict, with the new labeling requirements, an even greater percentage of consumers will find cleaning product labels nearly incomprehensible.¹⁴⁷ Since cleaning product ingredients consist mostly of chemical substances, it is possible many workers and consumers will not understand these chemical’s environmental and health impact.¹⁴⁸ Because it merely adds more information to an already crowded label, the bill’s ultimate success is entirely dependent on whether consumers read the label.¹⁴⁹ That is, Chapter 830’s effectiveness will be limited by the extent to which consumers read labels.¹⁵⁰ Accordingly, it’s unclear whether Chapter 830 will actually achieve its goals.¹⁵¹ Although Chapter 830’s goal is noble, because it is merely adding more information to an already crowded label, the reading of which is a

140. *Senator Lara Introduces Bill to Require Companies ‘Come Clean’ on Cleaning Product Ingredients*, *supra* note 17.

141. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

142. *Id.*

143. *Study Shows Labeling Often Confuses Consumers*, BRAND PACKAGING (Mar. 30, 2017), <http://www.brandpackaging.com/articles/85789-study-shows-labeling-often-confuses-consumers> (on file with *The University of the Pacific Law Review*).

144. *See generally* COLWICK M. WILSON & LEON C. WILSON, UNIV. OF MICH., DOMESTIC WORK IN THE UNITED STATES OF AMERICA: PAST PERSPECTIVES AND FUTURE DIRECTIONS (2000), *available at*: <http://www.rcgd.isr.umich.edu/prba/perspectives/winter2000/cwilson.pdf> (on file with *The University of the Pacific Law Review*) (explaining that most domestic workers have little less than a high school education).

145. *Study Shows Labeling Often Confuses Consumers*, *supra* note 143.

146. Rosenhall, *supra* note 138.

147. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

148. *See generally*, SEVENTH GENERATION, LABEL READING GUIDE, *available at* https://www.seventhgeneration.com/files/assets/pdf/7thGen_Ingredient_List_01_09.pdf (on file with *The University of the Pacific Law Review*) (listing commonly used ingredients in cleaning products, their purpose, and their effect on human health).

149. Rosenhall, *supra* note 138.

150. *Id.*

151. *Id.*

prerequisite for Chapter 830 to have any effect, it is questionable whether Chapter 830 will actually achieve its goals.¹⁵²

Chapter 830 supporters trust that consumers and domestic workers will seek to understand product labels before they use the product.¹⁵³ The opposition argues Chapter 830 causes consumer confusion and puts manufacturers at risk of constant non-compliance with the regulations Chapter 860 imposes.¹⁵⁴ Many supporters, however, see the requirement that manufacturers update their product labels as a non-issue because “[l]abel updates are part of the standard portfolio management for any product.”¹⁵⁵ So long as manufacturers are given a reasonable period of time from enactment to enforcement of SB 258. . . companies will be able to incorporate ingredient lists into their label updates without bearing any additional costs associated with compliance.¹⁵⁶ Notably, opponents believe Chapter 830 will lead consumers to believe all disclosed chemicals are harmful, when in fact many are not; “[t]his requirement undercuts the science-based approach to assessing both hazard and exposure by presuming that the mere presence of chemical indicates it will likely result in exposure, or more specifically, exposure leading to harm.”¹⁵⁷ This may result in an “over-warning” problem whereby consumers are provided with so much information they become numb to a label’s contents and overlook potentially dangerous consequences of using a particular cleaning product.¹⁵⁸ Tim Shestek, a lobbyist for the American Chemistry Council, argues, “[j]ust because a product might contain a certain chemical, it would be inappropriate to send a message that the product may somehow be harmful to human health and the environment.”¹⁵⁹ Placing too much information on a product’s label reduces the chance that consumers and domestic workers will accurately evaluate the information presented to them.¹⁶⁰

If individuals do not accurately read cleaning product labels, it is possible that Chapter X will not help individuals make informed decisions and will only

152. *Id.*

153. *See*, ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3–4 (June 30, 2017).

154. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

155. Letter from Christopher Gavigan, *supra* note 94.

156. *Id.*

157. Letter from Louinda V. Lacey, Cal. Chamber of Commerce, to the Senate Labor and Industrial Relations Committee 4 (Apr. 20, 2017), available at <http://blob.capitoltrack.com/17blobs/a9b5c6e4-68cb-4d44-b7ac-185691cd7344> (on file with *The University of the Pacific Law Review*).

158. Letter from Louinda V. Lacey, Cal. Chamber of Commerce, *supra* note 132 (“SB 258 exacerbates the ‘overwarning’ problem and undermines existing consumer and worker protection laws.”).

159. Rosenhall, *supra* note 138.

160. ELISE GOLAN, ET AL., U.S. DEP’T OF AGRIC. ECON. RESEARCH SERV., ECONOMICS OF FOOD LABELING 14 (2000), available at https://www.ers.usda.gov/webdocs/publications/41203/18885_aer793.pdf?v=41063 (on file with *The University of the Pacific Law Review*) (“Consumers are more likely to read and understand labels that are clear and concise. A large number of warnings or a large list of detailed product information may cause many consumers to disregard the label completely.”).

further burden manufacturers for no apparent reason.¹⁶¹ One such solution to this concern is placing additional information on manufacturers' websites.¹⁶² But this requirement of Chapter 830 will be beneficial only if consumers and domestic workers take the time to research product information on these websites.¹⁶³ Given the small likelihood that individuals will actually read a product's label, requiring additional labeling of manufacturers may not be worthwhile.¹⁶⁴

D. Will Chapter 830 Achieve Its Goals?

With the public spotlight on the green movement and environmental legislation, Chapter 830 has the potential to positively impact the cleaning product industry, human health, and the environment.¹⁶⁵ The passage of Chapter 830 followed two failed legislative efforts in the past seven years to increase transparency in the cleaning product industry.¹⁶⁶ Many see Chapter 830 as a starting point in California's larger effort to eliminate dangerous chemicals from the market and the workplace.¹⁶⁷ Thus, it is likely that regulations will continue to be promulgated to build upon the work that Chapter 830 has accomplished, just as Senator Lara wrote Chapter 830 to build upon work already done to regulate the chemical industry, protect consumers, and encourage workplace safety.¹⁶⁸ One obstacle to these future regulations is the unknown impact that Chapter 830 will have on manufacturers, consumers, and domestic workers.¹⁶⁹

161. Rosenhall, *supra* note 138.

162. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3 (June 30, 2017).

163. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 4 (June 30, 2017).

164. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3 (June 30, 2017).

165. See Alex Scranton, *Disclosing Ingredients in Cleaning Products? Why All the Fuss?*, WOMEN'S VOICES FOR THE EARTH (Feb. 13, 2017), <http://www.womensvoices.org/2017/02/13/disclosing-ingredients-in-cleaning-products-why-all-the-fuss/> (on file with *The University of the Pacific Law Review*) (listing the chemicals found in common consumer cleaning products and their related CAS registry numbers).

166. See generally AB 708 2015 Leg., 2015–2016 Sess. (Cal. 2015); see also SB 928 2010 Leg., 2009–2010 Sess. (Cal. 2010) (detailing failed legislative efforts to require manufacturers to disclose cleaning product ingredients on the manufacturer's website).

167. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3 (June 30, 2017).

168. See generally ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3 (June 30, 2017) (“These changes will ensure that employees covered by the Occupational Safety and Health Administration will have access to the increased information on ingredients which SB 258 requires.”)

169. See Sonja Haider, *Toxic Secrets Stand in the Way of Effective Chemicals Management*, CHEMSEC (May 29, 2017), <http://chemsec.org/toxic-secrets-stand-in-the-way-of-effective-chemicals-management/> (on file with *The University of the Pacific Law Review*) (“But transparency must spread further. We need to know which ingredients are used, in order to make better choices – and to get rid of hazardous substances in our daily products.”); see also *Key Trends to Drive Boom in Industrial and Institutional Cleaning Products to 2021*, SMITHERS APEX (May 2016), <http://www.smithersapex.com/news/2016/may/cleaning-products-market-news> (on file with *The University of the Pacific Law Review*) (predicting the future of the cleaning product industry)

But even if it has a detrimental effect on these parties, as long as Chapter 830 lowers harmful chemical exposure, it may be a tradeoff worth accepting.¹⁷⁰ Nonetheless, if Chapter 830's success cannot be measured, a different, measurable, approach may ultimately be required.¹⁷¹

The fiscal impact of Chapter 830 is largely unknown.¹⁷² The Senate Appropriations Committee estimates a one-time \$150,000 cost for CalEPA to create and test the pictograms that manufacturers are required to place on their product labels.¹⁷³ The Committee predicts spending up to \$85,000 annually for three years on rulemaking procedures to adopt the pictograms and on developing proper guidelines for manufacturers.¹⁷⁴ It is possible that both manufacturers and consumers could be negatively financially impacted with the passage of Chapter 830.¹⁷⁵ Updating product labels will require manufacturers to significantly invest in research, testing, and development.¹⁷⁶ As a result, the cost of cleaning products could potentially increase, "depending on the magnitude of industry costs and the elasticity of demand and supply."¹⁷⁷ Thus, consumers indifferent to the idea of full disclosure may be forced to pay higher prices producing a "reverse Robin Hood effect."¹⁷⁸

The regulations promulgated by Chapter 830 may result in changes to the structure of the cleaning product industry.¹⁷⁹ Just as the costs associated with Chapter 830 are unknown, so is the future of the cleaning products industry following the passage of Chapter 830.¹⁸⁰ With many consumers interested in the

until 2021).

170. See ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3 (June 30, 2017).

171. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 4 (June 30, 2017).

172. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 1 (June 30, 2017).

173. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 8 (May 27, 2017).

174. *Id.*

175. GOLAN, ET AL., *supra* note 160, at 16 ("Some of the industry costs of labeling will most likely be passed on to consumers in higher prices.")

176. Letter from Louinda V. Lacey, Cal. Chamber of Commerce, *supra* note 132 (detailing the significant efforts manufacturers must undertake to comply with Chapter X).

177. GOLAN, ET AL., *supra* note 160, at 16; and see JOHN DUNHAM, COST IMPACT OF VERMONT'S GMO LABELING LAW ON CONSUMERS NATIONWIDE 2 (2016), available at <https://corn.org/wp-content/uploads/2016/02/Cost-Impact-of-Vermont%E2%80%99s-GMO-Labeling-Law-on-Consumers-Nationwide.pdf> (on file with *The University of the Pacific Law Review*) (explaining that Vermont's labeling requires could cost consumers \$81.9 billion annually.)

178. DRICHOUTIS, ET AL., ACAD. OF SCI. REVIEW, CONSUMERS' USE OF NUTRITIONAL LABELS: A REVIEW OF RESEARCH STUDIES AND ISSUES 8 (Jan. 2006), available at https://www.researchgate.net/publication/228364127_Consumers'_use_of_nutritional_labels_A_review_of_research_studies_and_issues (on file with *The University of the Pacific Law Review*) (explaining how labeling produces a "reverse Robin Hood effect" in which the poor and less educated pay for information they cannot use and do not want).

179. GOLAN, ET AL., *supra* note 160, at 16-17.

180. See generally AM. OIL CHEMISTS' SOC'Y, COLLABORATIVE EFFORTS FOR SUSTAINABILITY IN THE HOME CARE INDUSTRY: A ROADMAP FOR THE FUTURE (2014), available at <http://www.incpa.net/docs/>

use of environmentally friendly products and technology making such products available,¹⁸¹ large companies will need to continue to distinguish themselves from the already existing natural cleaning product companies.¹⁸² Supporters of Chapter 830 believe that product labeling will only improve the cleaning products industry by educating consumers and changing consumption behavior.¹⁸³ With increased transparency, consumers may feel encouraged to purchase these cleaning products, thus, positively impacting the cleaning product industry.¹⁸⁴

V. CONCLUSION

Prior to Chapter 830, consumers and domestic workers were completely unaware of the ingredients contained in most commonly-used household cleaning products.¹⁸⁵ Until now, manufacturers avoided labeling and disclosure requirements for cleaning products.¹⁸⁶ With the passage of Chapter 830, California became the first state to require cleaning product manufacturers to disclose ingredients on product labels.¹⁸⁷ Concerns about the effectiveness of Chapter 830 include the protection of trade secrets, consumers and domestic workers' ability to comprehend product labels, and their willingness to research product information on the manufacturer's website.¹⁸⁸ Despite this, proponents see Chapter 830 as a significant step toward bettering human health and protecting the environment.¹⁸⁹ By placing more stringent disclosure regulations on cleaning product manufacturers, Chapter 830 makes it easier for consumers and domestic workers to obtain information regarding potentially harmful chemicals in cleaning products.¹⁹⁰ However, one question remains: will Chapter 830, in requiring extensive product labeling only further confuse and worry consumers who have little to no background in chemistry?¹⁹¹

Sustainability_Roadmap.pdf (on file with *The University of the Pacific Law Review*) (detailing the future of household care products and the challenges the industry may face).

181. *4 Factors Impacting the Future of the Cleaning Industry*, JOBBER ACADEMY, <https://academy.getjobber.com/articles/4-factors-impacting-future-cleaning-industry/> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*).

182. THE NIELSEN CO., *THE DIRT ON CLEANING: HOME CLEANING/LAUNDRY ATTITUDES AND TRENDS AROUND THE WORLD 19–20* (2016), available at <http://www.nielsen.com/content/dam/niensenglobal/eu/docs/pdf/Nielsen%20Global%20Home%20Care%20Report.pdf> (on file with *The University of the Pacific Law Review*).

183. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3–4 (June 30, 2017).

184. *Id.*

185. *Aqui, supra* note 51.

186. *Id.*

187. Geller, *supra* note 74.

188. *See generally* Letter from Louinda V. Lacey, Cal. Chamber of Commerce, *supra* note 132.

189. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

190. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3–4 (June 30, 2017).

191. SENATE FLOOR, FLOOR ANALYSIS OF SB 258, at 12 (May 27, 2017).

Opponents believe it will;¹⁹² however, supporters trust that consumers and domestic workers will make informed decisions when choosing a cleaning product.¹⁹³ One thing is clear, consumers and domestic workers deserve better than cleaning products that unnecessarily expose them to toxic chemicals without disclosing those chemicals.¹⁹⁴ Whether further regulating the industry is the proper approach has yet to be seen; although, it is possible that Chapter 830 will be the perfect place to start.¹⁹⁵

192. *Id.*

193. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3–4 (June 30, 2017).

194. *See generally* WOMEN’S VOICES FOR THE EARTH, DIRTY SECRETS: WHAT’S HIDING IN YOUR CLEANING PRODUCTS? (2011), available at <http://www.womensvoices.org/wp-content/uploads/2011/11/Dirty-Secrets.pdf> (on file with *The University of the Pacific Law Review*).

195. ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 258, at 3–4 (June 30, 2017).