

*American Chemistry Council
American Coatings Association
California Chamber of Commerce
California League of Food Processors
California Independent Oil Marketers Association
California Manufacturers and Technology Association
California Paint Council
California Service Station & Auto Repair Association
Chemical Industry Council of California
Consumer Specialty Products Association
National Association of Chemical Distributors
National Federation of Independent Business
Society of Chemical Manufacturers & Affiliates
Toy Industry Association*

April 19, 2013

The Honorable William Monning
Member of the Senate
State Capitol
Sacramento, CA 95814

RE: SB 193 (Monning) – Oppose Unless Amended

Dear Senator Monning:

The above listed organizations, representing many of California's leading employers and manufacturing companies must respectfully oppose your SB 193 as drafted. Workplace and product safety are the top priority for our member companies. However, as drafted the bill raises a number of implementation questions and concerns.

As you know, California employers are required to comply with a variety of state and federal laws to protect employees who come into contact with chemicals in the workplace. In fact, on March 26, 2013, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) issued the final rule to the §1910.1200 Hazard Communication standard, aimed at improving the quality and consistency of information provided to employers and employees regarding chemical hazards in the workplace and associated protective measures. This new standard also requires manufacturers and importers to evaluate the downstream uses of their products, and to disseminate the potential hazards to their users.

These revisions will presumably reduce confusion about chemical hazards in the workplace, facilitate safety training and improve the understanding of those hazards. OSHA's standard classifies chemicals according to their health and physical hazards, (as well as other revised criteria for classification), and establishes consistent labels and safety data sheets for all chemicals manufactured and shipped

domestically and imported into the U.S. The provisions to the new rules are currently under voluntary compliance and will be fully implemented by 2016. California OSHA is also in the process of harmonizing its hazard communication program to communicate potential hazards in the workplace in a manner similar to these federal regulations.

Presuming this bill becomes law, DIR could theoretically on January 1, 2015 issue requests to thousands of businesses requesting customer information on thousands of chemicals without any clear indication as to how this information would be used and to what extent the information will help address a potential public health threat in the workplace. The bill also specifies that DIR can request other “information related to those shipments” of commercial products yet provides no definition indicating the type of “information” that could be requested.

Depending upon the products in question and industries targeted, this bill could result in an enormous cascade of information and data that could easily overwhelm DIR, raising the question of how DIR could put this information to meaningful use in actually enhancing workplace safety.

We offer the following recommendations to focus the scope of this measure in a way that would ensure DIR is concentrating on substances they believe may pose a potential risk in the workplace, and for which current workplace hazard communication may be inadequate:

- Notify regulated businesses in a written request that DIR is seeking information on a specific chemical, the specific reason(s) why this chemical has been identified, information on the specific public health concern that DIR seeks to evaluate, an explanation as to how obtaining customer list information will help address the potential health concern, and how the issue cannot be addressed through existing health and safety regulations.
- Make reasonable attempts to consult with manufacturers, formulators, suppliers, distributors, and importers and respective trade associations so that DIR can obtain relevant information held by these entities that may not be publicly available but could be potentially helpful in addressing DIR questions or concerns.
- If DIR feels it is necessary to provide information about this identified chemical to affected businesses and employees, it shall first make a request for manufacturers, formulators, suppliers, distributors, and importers to distribute DIR materials to its customers within 30 days.
- If after 30 days DIR makes a determination that it is unsatisfied with the distribution of information, it may only then request access to customer lists.

As the bill correctly notes, customer information is often of great competitive significance and must be held as highly confidential. A list of current and past customers is an extremely sensitive piece of information for businesses. Though the bill contains provisions to protect information from being publically disclosed, the open-ended authority that DIR is granted, coupled with no language governing when and how DIR will request information results in uneasiness in the regulated community. Further, the bill provides no indication how other State agencies will be allowed to access this information and therefore no assurances that it will be accessed for purposes consistent with the intent under which the authority is being granted. A department that may be overwhelmed with information submittals may have more difficulty protecting this sensitive information. To further ensure the protection of sensitive

information, DIR should only be granted access to customer lists through a clearly defined process and under very specific circumstances.

Thank you for the opportunity to share these comments. We look forward to working with you to address these concerns.

Sincerely,

Tim Shestek
American Chemistry Council
916-448-2581

Marti Fisher
California Chamber of Commerce
916-444-6670

Mike Rogge
California Manufacturers & Technology Association
916-441-5420

Tom Jacob
Chemical Industry Council of California
916-782-1266

Kristin Power
Consumer Specialty Products Association
916-448-3575

Lauren De Valencia y Sanchez
California Paint Council
American Coatings Association
916- 443-5301

Trudi Hughes
California League of Food Processors
916-640-8150

Jennifer Gibbons
Toy Industry Association
646-512-1320

Ken Devore
National Federation of Independent Business
916-448-9904

Jay McKeeman
California Independent Oil Marketers Association
California Service Station & Auto Repair Association
916-646-5999

Bill Almond
Society of Chemical Manufacturers & Affiliates
202-721-4100

Jennifer Gibson
National Association of Chemical Distributors
703-527-6223