



Personal Care Products Council



Council for Responsible Nutrition
The Science Behind the Supplements

April 17, 2015

TO: Members, Assembly Environmental Safety and Toxic Materials Committee

FROM: California Chamber of Commerce
Advanced Medical Technology Association
Agricultural Council of California
Alhambra Chamber of Commerce
Alliance of Automobile Manufacturers
American Apparel and Footwear Association
American Coatings Association
American Composite Manufacturers Association
American Frozen Foods Institute
American Herbal Products Association
American Home Furnishings Alliance
Associated Roofing Contractors of the Bay Area Counties, Inc.
Association of Home Appliance Manufacturers
Auburn Chamber of Commerce
Automotive Specialty Products Alliance
Breen Color Concentrates
Building Owners and Managers Association of California
California Apartment Association
California Association of Boutique & Breakfast Inns
California Association of Health Facilities
California Association of Realtors
California Association of Winegrape Growers
California Attractions and Parks Association
California Business Properties Association
California Cotton Ginners Association
California Cotton Growers Association
California Farm Bureau Federation
California Furniture Manufacturers Association
California Hospital Association
California Hotel and Lodging Association
California League of Food Processors
California Manufacturers and Technology Association
California Metals Coalition
California Paint Council
California Restaurant Association
California Retailers Association
California Small Business Alliance
California Travel Association
Camarillo Chamber of Commerce
Cerritos Regional Chamber of Commerce
Chamber of Commerce, Mountain View
Chemical Industry Council of California
Commercial Real Estate Development Association
Composite Panel Association
Consumer Electronics Association
Consumer Specialty Products Association
Council for Responsible Nutrition
El Centro Chamber of Commerce
Fashion Accessories Shippers Association
Frozen Potato Products Institute
Fullerton Chamber of Commerce
Gateway Chambers Alliance
Goleta Valley Chamber of Commerce

Greater Riverside Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Grocery Manufacturers Association
Industrial Environmental Association
Information Technology Industry Council
International Council of Shopping Centers
International Franchise Association
International Fragrance Association, North America
ISSA, the Worldwide Cleaning Industry Association
Lonseal
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
National Aerosol Association
National Council of Textile Organizations
National Electrical Manufacturers Association
National Federation of Independent Businesses
National Shooting Sports Foundation
North American Home Furnishings Association
Orange Chamber of Commerce
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Personal Care Products Council
Plumbing Manufacturers International
Printing Industries of California
Redondo Beach Chamber of Commerce
Ripon Chamber of Commerce
Rubber Manufacturers Association
San Diego Regional Chamber of Commerce
San Francisco Chamber of Commerce
Santa Clara Chamber of Commerce and Convention-Visitors Bureau
Santa Maria Valley Chamber of Commerce and Visitors Bureau
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Sporting Arms and Ammunition Manufacturers Institute
Styrene Information Research Center
The Art and Creative Materials Institute, Inc.
The Chamber of Commerce of the Santa Barbara Region
Torrance Area Chamber of Commerce
Toy Industry Association
Travel Goods Association
West Coast Lumber and Building Materials Association
Western Agricultural Processors Association
Western Carwash Association
Western Growers Association
Western Plant Health Association
Writing Instrument Manufacturers Association

**SUBJECT: AB 543 (QUIRK) PROPOSITION 65: EXPOSURE
HEARING SCHEDULED – APRIL 28, 2015
SUPPORT – AS AMENDED APRIL 6, 2015**

The California Chamber of Commerce and the above-listed organizations are pleased to **SUPPORT AB 543 (Quirk)**, which would promote the use of and reliance on a scientific exposure assessment when making decisions about whether or not to warn under the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”).

Proposition 65 requires California businesses with 10 or more employees to provide a clear and reasonable warning before “knowingly and intentionally” exposing individuals to chemicals known to cause cancer and/or reproductive toxicity. Businesses may use a Proposition 65-listed chemical without providing a warning so long as the exposure does not exceed a specified threshold level. Notwithstanding this so-called “safe harbor” from the warning requirement, businesses often provide warnings on their products or facilities out of an abundance of caution, even if no chemical exposure is present or if the chemical exposure is occurring below specified threshold levels. This is because if a business rightfully and lawfully elects not to warn on the basis that its scientific exposure assessment concludes that the exposure does not exceed the threshold level, its risk of being sued is actually greater than if it provides a warning unnecessarily.

This unfortunate reality has resulted in what is often-referred to as the “overwarning” problem, where California consumers are warned about chemical exposures that are either non-existent or that are occurring at infinitesimal levels. The Government, the NGO community, and the business community, have acknowledged that overwarning is a problem. Even the California Supreme Court has noted that “the problems of overwarning are exacerbated if warnings must be given even as to very remote risks.” *Dowhal v. SmithKline Beecham Consumer Healthcare*, 32 Cal.4th 910, 932-35 (2004), quoting *Carlin v. Superior Court*, 13 Cal.4th 1104, 1115 (1997).

AB 543 is a modest improvement that encourages the use of a scientific exposure assessment by providing that a business does not “knowingly and intentionally” expose individuals to Proposition 65-listed chemicals and thus need not provide a warning if the exposure assessment (1) is documented in writing and prepared by or under the supervision of a qualified scientist; (2) is conducted in accordance with existing regulations; and (3) concludes that the business is not exposing an individual to a Proposition 65-listed chemical at a level requiring a warning.

By clarifying the circumstances in which a business would not be deemed to have the requisite knowledge and intent necessary to support an alleged violation, **AB 543** will create an incentive—where none currently exists—for a business to use science as the predicate for a decision to warn or not. Accordingly, **AB 543** will provide businesses with greater confidence in the utility of conducting scientific exposure assessments and, in doing so, will restore meaning to warnings that the law actual requires to advise consumers about chemical exposures exceeding Proposition 65 warning levels. For these reasons, we support **AB 543 (Quirk)**.

cc: Martha Guzman-Aceves, Office of the Governor
The Honorable Assembly Member Bill Quirk
Robert Fredenburg, Assembly Environmental Safety and Toxic Materials Committee
John Kennedy, Assembly Republican Caucus
District Office, Members, Assembly Environmental Safety and Toxic Materials Committee

AS:mm