



Board Meeting Agenda

Friday, March 26, 2021 • 8:00 am PT

<https://zoom.us/j/92465310648?pwd=TG82ak93cjNyNGU2NUE1OXJzTGJLUT09>

Meeting ID: 924 6531 0648

Passcode: 179306

1. Call to Order/establish quorum Francisco Uribe, Board Chair
2. Approval of the January 29, 2021 Board meeting minutes Larry Carr, Board Secretary
3. New Member report Chelsea Minor, Board Treasurer
4. COVID 19 update Rachel Michelin, President
 - a. Update on County Tier levels
 - b. NEW Green Tier
 - c. Vaccines
5. State of the Association update Rachel Michelin, President
 - a. CalORCA transition to CRA
 - b. Hero/Hazard Pay
 - i. Updated CRA tracker
 - ii. Public Affairs Campaign
 - c. San Francisco Task Force
6. Political Rachel Michelin, President
 - a. State Ballot update
 - b. Recall Election – Nov/Dec 2001
 - c. Initiatives – Recology packaging
7. Legislative Update (see attached update) Steve McCarthy, VP, Policy
 - a. SB 301 On-line marketplace
 - i. Board vote to support the legislation “in concept” as we expect more amendments that will not be in print prior to the board meeting.
 - b. Other CRA priority Legislation (see attached update)
 - c. Legislative Calendar
8. Regulatory Issues (see attached update) Steve McCarthy, VP Policy
 - a. Indirect Source Rule – Warehousing/AQMD
 - b. Prop 65 short form comments
 - c. Predictive Scheduling
 - i. Los Angeles – still in Economic Development Committee; no movement
 - ii. San Diego – Fall timeline, in conversations with San Diego Chamber
 - d. CA Energy Commission – Luminary issues
 - e. Paid Sick Leave
9. Other Issues
 - a. CSRA Conference (Aug. 15 – 19, 2021; Baltimore MD)
 - b. DEI (Diversity, Equity & Inclusion) Strategic Plan
 - c. CRA Annual Meeting – IN PERSON or Hybrid
10. Open Forum Francisco Uribe, Board Chair

Next Board Meeting – Friday, May 21, 2021 at 8 am PT via ZOOM.



*****Not approved*****

Minutes of the January 29, 2021 Board Meeting

Item 1 Call to Order

The California Retailers Association Board was called to order by Board Chair, Francisco Uribe at 8:03 am PT on Friday, January 29, 2021 via video conferencing. Quorum was present.

Item 2 Approval of the December 4 Board minutes

Minutes approved at 8:03 am

Item 3 COVID 19 Update

Michelin updated the board on the State's return to the tier system, however, the Governor's administration is now using projected ICU capacity. CRA will continue to monitor all 58 counties and update our members accordingly. CRA met virtually with Senators Caballero and Hurtado regarding vaccine rollout in rural counties and highlighted how retail pharmacy is in an apt position to help with the rollout. Frustration among elected officials over the inadequate vaccine rollout and sign-up systems crashing has been growing, in addition to questions regarding Blue Shield's role as the third-party administrator.

Item 4 State of the Association

- New Members/Finance: CRA welcomed five new members to the association, and we will continue our efforts build membership.
- Western Region SRA: There are standing calls among western state retail associations weekly, and Michelin would like members to participate sometimes, just to have conversations and share quick updates.
- 501(c)(3): CalORCA will be moving under the CalRetail Foundation; CRA will handle the administrative side and support the association's goals to combat organized retail crime. CRA is looking to build a sustainable financial structure, including state funding.
- Legislative Staff Briefing: CRA will be hosting a Zoom on February 4 for legislative staff to meet the CRA team and learn about our priorities.
- Food Equity Association: Asked CRA to join their coalition asking the state to delay implementation of Prop 12 until guidelines and regulations are released.

A motion was made to join the coalition and approved at 8:34 am.

Item 5 Legislative Update

- Bill Tracking: Bill introduction deadline is February 19, and we expect more to come as that deadline approaches.
- Online Marketplaces: CRA had a positive call with Senator Skinner, who committed to including all stakeholders in the conversations.
- Public Safety: CRA is working with Asm. Jones-Sawyer on AB 331, which would indefinitely extend the ORC task force. CRA met with the CHP on January 28 and there is a call scheduled with the Department of Finance January 30 regarding the ORC Task Force funding.
- Hero Pay: Cities and counties around California have been considering ordinances that require retail grocery and pharmacy chains to pay their employees an additional \$3-\$5 per hour. Montebello passed an emergency ordinance on January 27 that took effect immediately. The Grocer's association is suing Long Beach and any other city that passes the ordinance. The bellwether of success for this ordinance will significantly depend on the outcome of the Long Beach lawsuit, scheduled for February 19 or the following week.

Motion to adjourn at 9:09 am PT.

New Member as of January 1, 2021

1. Dollar General
2. Party City
3. Ulta Beauty
4. Living Spaces
5. American Eagle
6. Energy Code -- *EnergyCodeAce.com is a "one-stop shop" offering no-cost tools, training and resources to help decode the requirements of California's building energy code, Title 24, Part 6, and the Title 20 appliance standards. It's funded by utility customers under the auspices of the CPUC and implemented by PG&E, SDG&E, SCE and SoCalGas.*
7. Cozen O'Conner (Law Firm)

A. UPDATE ON COUNTY TIER LEVELS

COUNTY	TIER LEVEL
Alameda County	RED
Alpine County	YELLOW
Amador County	RED
Butte County	RED
Calaveras County	RED
Colusa County	RED
Contra Costa County	RED
Del Norte County	RED
El Dorado County	RED
Fresno County	PURPLE
Glenn County	PURPLE
Humboldt County	RED
Imperial County	RED
Inyo County	PURPLE
Kern County	RED
Kings County	PURPLE
Lake County	RED
Lassen County	ORANGE
Los Angeles County	RED
Madera County	PURPLE
Marin County	ORANGE
Mariposa County	ORANGE
Mendocino County	RED
Merced County	PURPLE
Modoc County	RED
Mono County	RED
Monterey County	RED
Napa County	RED
Nevada County	RED
Orange County	RED
Placer County	RED
Plumas County	ORANGE
Riverside County	RED
Sacramento County	RED
San Benito County	RED
San Bernardino County	RED
San Diego County	RED
San Francisco	ORANGE **50% capacity
San Joaquin County	PURPLE
San Luis Obispo County	RED
San Mateo County	ORANGE
Santa Barbara County	RED
Santa Clara County	ORANGE
Santa Cruz County	RED
Shasta County	RED
Sierra County	ORANGE
Siskiyou County	RED
Solano County	RED
Sonoma County	RED
Stanislaus County	RED
Sutter County	RED
Tehama County	RED
Trinity County	ORANGE
Tulare County	RED
Tuolumne County	RED
Venture County	RED
Yolo County	ORANGE
Yuba County	PURPLE
PURPLE	Retail: 25%; Grocery 50%
RED	Retail: 50%; Grocery no limit
ORANGE	No capacity limits
YELLOW	No capacity limits

B. GREEN TIER

Recently Governor Newsom announced a “GREEN” tier. Currently, there is little to no information on how counties move into this tier, but it is assumed counties will need to have little to no transmission of COVID. Governor Newsom announced that in the “GREEN” tier there will be no restrictions. What is not known is if that will also include retracting the mask mandate.

C. VACCINE UPDATE

Currently California is vaccinating the following groups:

- 65+
- Essential workers in certain categories (Food/Ag, etc.)
- Homeless
- Incarcerated
- 16 – 65 with underlying health conditions

Two counties have moved to vaccinating 50+ - Solano and Contra Costa; it is expected that other counties will follow suit. There are no restrictions on what industry folks work in.

Governor Newsom announced that by the end of April the vaccine should be available to all Californians, 16+, who would like the vaccine.

A. CALORCA TRANSITION TO CRA FOUNDATION

As recently announced, CRA has partnered with the California Organized Retail Crime Association (Cal-ORCA) to expand the organization's efforts to combat organized retail crime throughout the state. This partnership allows for more opportunities to host informative events that bring together policy makers and staff with law enforcement and business community leaders. CRA and Cal-ORCA have partnered with Auror, an online Retail Crime Intelligence platform designed to address ORC both in California and nationwide. The platform enables CRA and CAL-ORCA to build a data network across states and businesses that empowers members to collaborate, share intelligence and resolve more ORC cases.

B. HERO/HAZARD PAY

1. UPDATE ON CRA HAZARD PAY TRACKER
 - a. Hazard pay tracker attached.
2. PUBLIC AFFAIRS CAMPAIGN
 - a. CRA collaboration with the National Association of Chain Drug Stores; retained Swing Strategies (firm who was behind the successful Prop. 15 campaign); in one week secured 25+ coalition partners; focusing on Fresno – digital advertising geocaching members of the city council.
 - i. Website: jobsnotpolitics.com
 - ii. Campaign: Californians for a Safe and Rapid Recovery

C. SAN FRANCISCO TASK FORCE

Rachel was invited by the Mayor's office to join a new task force being formed to look at solutions regarding the business climate in San Francisco. This task force will also include theft and organized retail crime. No date has been set for the first meeting.

A. 2022 Statewide Ballot Initiative Update

- Both the tribal gaming initiative and Recology's recycling initiative did not have a high enough validity rate in the random sample check due on March 9. Now, county elections officials have until April 22 to conduct a full check - that means they have to verify every single signature that was turned into their office.
- The initiative to make California its own country did not qualify for the November 2022 ballot.
- The initiative on jury trials in child custody proceedings received its preliminary analysis from the Legislative Analyst's Office.
- The circulation deadline for the initiative on local government land-use and zoning laws is March 29. Since the proponents never alerted the Secretary of State that they've collected 25% of the signatures needed to qualify, it's safe to assume this measure fails.
- The initiative on jury trials in child custody proceedings will receive its title and summary from the Attorney General's Office on March 31. Then, the proponents can begin signature gathering.

B. Gubernatorial Recall Update

Supporters of the recall targeting California Gov. Gavin Newsom said Wednesday they submitted 2,117,730 signatures by the day's deadline, a number that appears to comfortably exceed the required threshold even if some are invalid. Proponents have registered a validity rate approaching 84 percent, higher than normal for voter-driven campaigns.

The following constitutes key deadlines for the recall process moving forward:

- March 17 — Deadline for submitting petitions. Proponents claim to have submitted 2.1 million signatures, which should give them enough of a cushion to reach the 1,495,709 necessary to qualify after invalid signatures, which currently account for around 20% of the total, are eliminated.
- April 29 — Deadline for Registrars in all 58 Counties to verify signatures.
- May 9 — Deadline for Secretary of State to notify Counties of total signature count.
- May 10 — June 21—Time period for voters to request withdrawal of their name from the recall petitions.
- July 6 — Deadline for the Counties to notify the Secretary of State of the final signature tally after voter withdrawal window.
- August 17 - September 16—Window for the Joint Legislative Budget Committee, chaired by Senator Nancy Skinner, to hold hearings and comment on the Department of Finance's cost analysis.
- September 17—Likely date Secretary of State Dr. Shirley Weber certifies the recall election.
- September 17—Likely date Lieutenant Governor Eleni Kounalakis sets the date for the recall election.
- November 16, 23 or 30—Likely dates for the recall special election.
- 59 days before election—Filing deadline for candidates wishing to run to replace Governor Gavin Newsom should he be recalled.

The recall election could be held in early November of this year, approximately one year out from when Newsom is up for re-election.

C. RECOLOGY/PACKAGING INITIATIVE

Proponents for the packaging initiative submitted over 870,000 signatures on August 11, 2020, as their deadline to gather signatures was extended to September 2020 by a court order. In order for the initiative to qualify for the 2022 ballot, 623,212 signatures need to be verified, so about 71.64% of total signatures submitted. As of March 9, 2021, the Secretary of State (SoS) reported 77.38% of submitted signatures were verified in a random sample, however, now counties are conducting a full check for signature verification since the random sample is based on a small percentage. Counties have until April 22, 2021 to submit their full check to the Secretary of State, which only 15 counties have submitted so far, for a total of 22,612 votes, and 79.22% of those signatures have been verified. Given all of this, we do expect the initiative to qualify for the 2022 ballot, with an official announcement sometime in late April or early May.

A. SB 301 – VOTE TO SUPPORT “IN CONCEPT”

SB 301 (Skinner) has been amended with substantive language on online marketplace transparency.

In summary, the bill will now require online marketplaces to:

- Require specified contact information of their high-volume, third-party sellers, including business name, name of a responsible officer of the business, address, phone, email, and tax ID;
- Require high-volume, third-party sellers to provide this information within 24 hours of meeting the high-volume threshold (200 transactions and \$5,000 in gross revenues in any continuous 12-month period during the last 24 months);
- Verify the above information within three days, and any subsequent changes to the information within three days;
- Maintain that information on a secured server for no less than 5 years;
- Notify sellers at least once per year of their duty to certify the above information with the marketplace;
- Suspend the accounts of sellers who fail to respond to the above notice within three days, or provide updates of any changes to information within three days;
- Provide the above contact information to either a retailer or law enforcement within 10 business days of the request;
- Display clearly and conspicuously on the website the procedures for retailers and law enforcement to make claims related to illegitimate products, as defined, and contact information for persons to make inquiries related to illegitimate products.
- The bill provides for enforcement through the Attorney General, with civil penalties up to \$10,000 per violation. A violation is any incorrect seller information provided to a retailer or law enforcement which was not verified in the prior year.

These requirements would become operative July 1, 2022.

Summary of CRA Member Responses

A majority of responses from members have expressed support or conceptual support for SB 301 as it is currently written. This is consistent with the feedback received at the March 17th Legislative Committee discussion.

Concerns expressed so far:

- Record retention requirement (5 years)
- Excessive fine levels (\$10,000)
- Lack of parity with brick-and-mortar marketplaces
- Lack of protections/procedural safeguards with regard to submission of seller contact information

Staff Notes

SB 301 addresses most of the transparency principles discussed among CRA’s Online Marketplace working group. It requires collection and verification of seller contact information and requires marketplaces to cooperate with law enforcement and retailers to obtain that information. It provides accountability for marketplaces that fail to provide correct information to requestors or to update that information at least every year. It does not require marketplaces to discontinue advertisement of items deemed “illegitimate”.

Among other opposition, we expect significant privacy concerns will be raised with regard to exposure of seller contact information. The bill currently requires that information be submitted upon request by a retailer or law enforcement. It also does not include certain exceptions provided in the INFORM Act, for example where individuals are operating home-based businesses. We also expect opposition from small businesses at-risk of having their accounts suspended if they do not respond to the marketplace with updated information within the brief timelines provided.

Staff Recommendation
Support-in-Concept.

Overall, this measure takes significant strides in establishing first-ever requirements on marketplaces to collect and verify seller information, and to cooperate with law enforcement and retailers investigating organized retail crime, counterfeit items. That said, a majority of CRA members who responded to us have concerns with one or more specific aspects of the bill. We believe it is important to express at least a general support for the efforts of the bill author and the direction of her legislation, particularly given the fact that CRA asked her to introduce such legislation. Therefore, it is our recommendation that CRA take a position of Support-in-Concept.

A. CRA PRIORITY LEGISLATION

- **AB 331** (Jones-Sawyer D) Organized theft. **SUPPORT**

This bill would extend the operation of the crime of organized retail theft indefinitely.

STATUS: ASM. APPROPRIATIONS; PASSED ASM PUBLIC SAFETY ON CONSENT

- **AB 701** (Gonzalez, Lorena D) Warehouse distribution centers. **OPPOSE**

Would require specified employers to provide to each employee, defined as a nonexempt employee who works at a warehouse distribution center, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed, or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

STATUS: ASM LABOR AND EMPLOYMENT

- **AB 1084** (Low D) Gender neutral retail departments. **OPPOSE**

Would require a retail department store with 500 or more employees that sells childcare items, children's clothing, or toys, to maintain undivided areas of its sales floor where the majority of those items being offered are displayed, regardless of whether an item has traditionally been marketed for either girls or for boys.

STATUS: ASM BUSINESS AND PROFESSIONS

- **AB 1182** (Stone D) Product liability: products purchased online. **NEUTRAL**

This bill would, in any strict products liability action, make an electronic place that, by contract or other arrangement with one or more third parties, engages in specified acts strictly liable for all damages proximately caused by a defective product that is purchased or sold through the electronic place to the same extent as a retailer would be liable for selling the defective product in the retailer's physical store, regardless of whether the electronic place ever takes physical possession of, or title to, the defective product.

STATUS: ASM JUDICIARY

- **AB 1287** (Bauer-Kahan D) Price discrimination: gender. **WATCH**

This bill would express the intent of the Legislature to enact legislation that would relate to ensuring that there is no gender-based pricing in California.

STATUS: ASM RULES; WAITING TO BE REFERRED

- **AB 1490** (Chau D) Could be amended to relate to facial recognition. **WATCH**

STATUS: 4/8/21; ASM PRIVACY

- **SB 54** (Allen D) Plastic Pollution Producer Responsibility Act. **WATCH**

Would establish the Plastic Pollution Producer Responsibility Act, which would prohibit producers of single-use, disposable packaging or single-use, disposable food service ware products from offering for sale, selling, distributing, or importing in or into the state such packaging or products that are manufactured on or after January 1, 2032, unless they are recyclable or compostable.

STATUS: 4/12/21; SEN ENVIRONMENTAL QUALITY

- **SB 82** (Skinner D) Petty theft. **OPPOSE**

Would define the crime of petty theft in the first degree as taking the property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury.

STATUS: 4/5/21; SEN APPROPS; PASSED SEN PUBLIC SAFETY

- **SB 289** (Newman D) Recycling: batteries and battery-embedded products. **OPPOSE**

Would make the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004 inoperative as of June 30, 2025, and would repeal those acts as of January 1, 2026. The bill would enact the Battery and Battery-Embedded Product Recycling and Fire Risk Reduction Act of 2021, which would require producers, as defined, either individually or through the creation of one or more stewardship organizations, to establish a stewardship program for batteries and battery embedded products.

STATUS: 4/12/21; SEN ENVIRONMENTAL QUALITY

- **SB 301** (Skinner D) Marketplaces: online marketplaces. **WATCH**

Would, commencing July 1, 2022, require online marketplaces, as defined, to regulate high volume third party sellers, as defined, on the online marketplace by requiring a high-volume third-party seller to provide to the online marketplace specified information, including contact information, a business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number, and keep that information provided by a third-party seller for no less than 5 years on a secured server.

STATUS: 4/6/21; SEN JUDICIARY

- **SB 409** (Caballero D) Pharmacy practice: SARS-CoV-2 and influenza testing. **SUPPORT**

This bill would also authorize a pharmacist or a pharmacy to perform, under specified conditions, any aspect of any FDA-approved or authorized point-of-care test for the presence of SARS CoV-2, the virus that causes COVID-19, or influenza that is classified as waived under CLIA

STATUS: SEN APPROPS; PASSED SEN BUSINESS AND PROFESSIONS

- **SB 792** (Glazer D) Sales and use tax: retailers: reporting. **OPPOSE**

Would require a retailer whose annual sales of tangible personal property transacted online exceeded \$1,000,000 for the previous calendar year to track and report to the department the city or ZIP code where the purchaser resides for each sale within the state that is transacted online, as specified.

STATUS: 3/25/21; SEN GOV'T FINANCE

****PLEASE VISIT THE MEMBER'S ONLY SECTION OF THE WEBSITE FOR THE ENTIRE CRA LEGISLATIVE LIST****

A. INDIRECT SOURCE RULE – WAREHOUSE/AQMD

The draft ISR creates a complicated system of Warehouse Actions and Investments to Reduce Emissions (WAIRE) Points that must be earned by owners and operators of warehouses, via a “mitigation” fee on warehouse operators or by turnover of already regulated mobile sources. This rule is a costly and duplicative effort that fails to achieve demonstrable improvements in air quality in the South Coast basin.

CRA submitted the following letter to the board, which has been shared with CRA members:



March 2, 2021

Sarah Rees, Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Dr.
Diamond Bar, CA 91765

Re: Warehouse Indirect Source Rule (Rule 2305)

Submitted via Email

On behalf of the California Retailers Association (CRA), I write to express our opposition to the adoption of Rule 2305. We believe the pursuit of such a policy is deeply misguided at this time given the enormous pandemic-related challenges already facing California's supply chain and goods movement. It would also create substantial new fees and other costs that will serve only to raise the cost of goods to consumers and displace local jobs.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which prior to the pandemic operated over 400,000 retail establishments with a gross domestic product of \$330 billion annually and employs over 3 million people—one fourth of California's total employment.

Localized emissions related to warehouse operations have fallen over 95% over the last decade. Given these substantial reductions plus the California Air Resources Board's (CARB) clean fleet rule and its stated intent to adopt regulations in the next year to require most warehouse equipment types to operate at zero emissions, we question what marginal additional benefit could be derived from the enormous costs and practical challenges posed by the ISR.

In pursuit of questionable benefits this proposal imposes considerable costs on warehousing. The proposed mitigation fee of \$.90/sf would add up to \$1 billion in new costs on warehouses which will impact which will be felt by everyone throughout the supply chain, including consumers. The ISR further punishes warehouse operators for circumstances out of their control. For instance:

- SCAQMD would implement these rules well before truck manufacturers can make zero or near-zero emission fleets available and affordable. The obligation to accrue substantive WAIRE Points will commence as soon as July 2021, yet these fleets are not anticipated to be widely available until sometime between 2025 and 2030. There is nothing that our retailers or warehouse operators can do to accelerate those timelines in order to comply.

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- The proposed ISR establishes unrealistic timeframes for collecting and reporting of data that retailers and other warehouse owners or operators currently do not have. Under the current draft rule, reporting obligations begin only 60 days from rule adoption, and require reporting of information that either does not currently exist or is held by other entities and not readily accessible. Obtaining and reporting the necessary data will in some cases require significant changes to how facilities operate, particularly at cross-docking facilities where there is little to no storage of freight and drivers may visit multiple times per day. This requirement would be extremely challenging even on a much longer timeline.

This is both an inappropriate time and method for targeting a key part of our state's critical infrastructure. Approximately 18 million people who live in Southern California rely on warehousing as an integral part of the supply chain for items they need like food, medical supplies, and clothing. Warehouses also provide a broad range of jobs for people of every level of education and skillset – a benefit which this ISR would threaten.

Given its high costs, compliance challenges, questionable benefits, the massive challenges currently facing goods movement in our state as well as the current economic uncertainty, CRA urges the Board to reject this costly, duplicative rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve McCarthy".

Steve McCarthy
Vice President, Public Policy
California Retailers Association

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We also met with Board Member Gideon Kracov, who was also just appointed to CARB. It was a productive conversation. He requested additional data to support our concerns with the ISR regulation. The board is set for a final vote on this issue on May 7th. We are also partnering with the CA Truckers Assn as well as NRF on how we can continue to advocate on the unintended consequences from the passage of this new rule.

In addition, multiple parties opposing the ISR are looking at potential litigation avenues should the rule pass on May 7th.

A. PROP 65 SHORT FORM COMMENTS

Jeff Margulies provided verbal comments on behalf of CRA as the recent OEHHA meeting and CRA will provide written comments. The DRAFT letter has already been emailed to members for input and comments.

CRA COMMENTS ON SHORT-FORM RULEMAKING

March 30, 2021

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, CA 95812-4010

Via portal at: <https://oehha.ca.gov/comments>

Re: Comments on Proposed Amendments to Title 27, Article 6, Clear and Reasonable Warnings – Short-Form Warnings

Dear Ms. Vela:

These comments are submitted on behalf of California Retailers Association. CRA appreciates the opportunity to comment on OEHHA's Notice of Proposed Amendments to Title 27, Article 6, Clear and Reasonable Warnings – Short-Form Warnings for consumer products.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, fast food restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA's mission is to provide effective representation of its diverse membership base through legislative and administrative advocacy.

CRA joins in the California Chamber of Commerce Coalition comment letter opposing the proposed amendments. We write separately to address issues specific to retailers.

Under the proposed amendments, retailers will bear a disproportionate share of the burden of compliance for online sales of consumer products. Much of this will occur as a result of the work that will be required in order to change how online warnings are provided. As a practical matter, retailers will not have the ability to take advantage of the one-year grace period after the effective date of the amendments, as they will need to be able to provide the new warnings whenever their suppliers ask them to do so, consistent with the retailer liability scenarios outlined in §29900.2(a)(4) (requiring retailers to post online warnings provided to them by suppliers). Many retailers will have to reprogram their websites in order to accommodate the new warning language, and if they are unable to immediately do so, they may be exposed to liability if they continue to provide warnings that a supplier no longer supports, and which may be challenged by enforcers. In order to minimize the burden on retail sellers (Health & Saf. Code §25240.1(f)), if OEHHA proceeds with this rulemaking it should (i) provide a two-year grace period, as was the case with the 2010 amendments, in order to allow sufficient time for online warnings to be revised, and (ii) clarify that retailers may continue to use the current safe-harbor short-form warning during the grace period, even if their suppliers ask them to change to the new short-form warning.

Retailers may be exposed to enforcement litigation for products that are listed for sale on their online platforms. If suppliers who previously provided short-form warnings for the products do not provide direction on new or different warnings, if a retailer does not obtain new warning language

from a supplier, it will be unable to determine what chemicals to list. In order to avoid enforcement actions, retailers will have to identify all such products, and either (i) remove them from sale in California (assuming that they have the capability of doing so), (ii) leaving the product for sale with the old short-form warning, or (iii) trying to figure out what warning should be given for unknown chemicals in a product. All three scenarios pose a risk of litigation costs and potential liability.

This litigation risk is not speculation. There has been a spate of enforcement litigation against retailers alleging the lack of – or inadequate – online warnings, where products have been labeled with clear and reasonable warnings, and retailers have not been provided with any warning language by their suppliers. The current safe-harbor regulation, which OEHHA has interpreted to require both on-product and online warning, is being treated as a mandatory requirement, and OEHHA should clarify that it is not. An on-product warning complies with Proposition 65 (Health & Saf. Code §25240.1(f)) ("Warning within the meaning of Section 25240.1 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products..."). Further, OEHHA should ensure that any revisions to the proposed short-form warning does not leave retailers holding the bag when they don't hear from their suppliers.

The current proposal restricts short-form warning to on-product use only. The chances for error and potential retailer liability, will undoubtedly increase under the current proposal that requires a different warning for online sale of a product that is labeled with the short-form warning. Particularly where the regulators already allow manufacturers to provide warning materials to retailers for in-store and online sales, retailers should not be forced to have to manage two different warnings for the same product. If OEHHA proceeds with this rulemaking, it should eliminate the prohibition against using the short-form warning for online sales of a product that is labeled with a short-form warning.

OEHHA's predecessor, the Health and Welfare Agency, said over 30 years ago, "[i]n order to require that each business conduct a scientific analysis of all its products. Unless a business has reason to know that the product contains a listed chemical, no testing is needed, and no warning is necessary." (Revised Final Statement of Reasons, 22 California Code of Regulations, Division 2, Section 112001, November 1988, at p. 32.) The effect of the proposed amendments would be to require manufacturers and importers to engage in such testing, in order to protect themselves and their customers from Proposition 65 enforcement litigation. Many of our suppliers are exempt from Proposition 65 or are otherwise very small businesses, and use the current short-form warning to avoid getting themselves and their retailers caught up in litigation that they cannot afford to defend or settle. OEHHA's proposal makes retailers and small suppliers more vulnerable to such lawsuits. The problem that OEHHA is trying to solve – the alleged indiscriminate prophylactic use of short-form warnings – is a direct result of overzealous, economically motivated private enforcers who bring cases with little or no merit to force settlements. The current short-form warning, because it does not require the identification of chemicals, allows small and exempt suppliers to avoid the Hobson's choice of having to either engage in expensive testing that HWA specifically said they did not need to undertake, or to defend or settle indiscriminate cases that are too expensive to litigate. If OEHHA proceeds with this rulemaking, retailers will bear the burden of being left with even more cases that their suppliers cannot afford to litigate or settle than they are already having to deal with.

CRA also disagrees with OEHHA's assertion that there will not be substantial compliance costs associated with the proposed amendments. As noted above, many retailers will have to reprogram their websites in order to accommodate the revised warnings. Many retailers have

designed their online platforms to minimize the risk of mistakes and confusion in providing warnings, including reformatting what warnings can be provided or how information is collected from suppliers. Some retailers receive the current short-form warning due to space, cost, and logistic reasons. If the proposed amendments are adopted, many retailers will incur significant costs in reprogramming in order to accommodate the new short-form warnings.

There will also be substantial costs associated simply with changing warnings for existing products. One of our members estimates that they had approximately 100,000 items on their e-commerce platform that currently carry short-form warnings (about one-third of all items that carry Proposition 65 warnings). Based on a recent project associated with reformatting online Proposition 65 warnings, that member estimates that it will take approximately seven minutes per product to change from the current short-form warning to the proposed revised short-form warning. For this particular retailer, this project would require approximately 12,000 hours, or 1,500 eight-hour days (\$188,000, assuming the current California minimum wage of \$14/hour). Considering the size of the entire retail community serving California consumers with online sales, the costs simply to change the warning for existing products in order to comply with the proposed amendments would be considerable, well into the millions of dollars. And for retailers who cannot determine what warning to provide, or who decide simply to restrict products for sale in California because of the uncertainty about their warning status, that is often a manual and costly process, far more difficult than changing a warning.

CRA supports OEHHA's goals of minimizing unnecessary prophylactic warnings and better informing consumers about potential exposures to listed chemicals. However, we believe that the proposed rulemaking does not materially further either goal, imposes significant costs on retailers and others in the regulated community, and creates more potential liability for retailers from needless enforcement action. For these reasons, CRA joins in the California Chamber of Commerce's request that OEHHA withdraw the proposed amendments.

Very Truly Yours,

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B. PREDICTIVE SCHEDULING

- San Diego City Councilmember Raul Campillo is talking with business and labor representatives about a possible predictive scheduling measure. CRA has spoken with the councilmember's office and urged the measure not be introduced while the pandemic is ongoing. Staff has said that the ordinance will not take effect prior to the end of the pandemic but are looking to pass something this year and are open to input from the business community. The San Diego Regional Chamber, CA Restaurant Assn., and other groups are actively opposing any predictive scheduling measure.
- The City of Los Angeles has a draft ordinance which was shelved last year due to the pandemic. The City Council in January moved the measure to the Economic Development Committee for consideration. It has not yet been set for hearing.

D. CA ENERGY COMMISSION – LUMINARY ISSUES

CRA is working with the California Energy Commission to prioritize an update of appliance standards (Title 20) that would remove a requirement to include a high-efficiency light bulb with the retail sale of portable luminaires, such as floor lamps or table lamps.

Since 2010, this requirement has caused substantial supply-chain complications for suppliers and retailers, resulting in higher costs, limited choice for consumers and unnecessary waste. Now that incandescent specialty bulbs are banned entirely from stores in California, it is also needless.

CRA is compiling member data on how this mandate has affected consumers as part of a petition to the Energy Commission. We will be submitting our letter at the end of this month in order to support prioritization of this item within the Energy Commission's workplan.

E. PAID SICK LEAVE

CRA, along with more than 100 employer organizations, expressed our strong opposition to the Paid Leave bill by Senator Skinner (SB 95). This bill mandates the addition of up to 80 hours of employer paid COVID sick leave and it is retroactive to January 1, 2021, which did pass both houses and has been signed into law by Governor Newsom. Of great concern in the retroactive provisions and the fact any employee who requests retroactive payment must be paid upon request. In addition, the challenge for employers' is the inability to question the request for a retroactive payment. As a reminder, this bill applies to ALL employers with 25 or more employees, whether in the public or private sector and includes an employer liability, again tied to the retroactive mandate, which only opens the door for more litigation in the state.