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112TH CONGRESS
1ST SESSION

H. R. 3457

To require ingredient labeling of certain consumer cleaning products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2011

Mr. ISRAEL (for himself, Mr. GRIJALVA, Mr. RYAN of Ohio, Mr. BISHOP of New York, and Ms. DEGETTE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To require ingredient labeling of certain consumer cleaning products, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Cleaning Product Right to Know Act of 2011''.

SEC. 2. CLEANING PRODUCTS LABELING REQUIREMENT.

(a) LABELING REQUIREMENT.—Beginning 1 year after the date of enactment of this Act, a cleaning product manufactured for sale, offered for sale, distributed in commerce, or imported to the United States after such date

shall bear a label on the product's container or packaging with a complete and accurate list of all the product's ingredients, including the individual ingredients in dyes, fragrances, and preservatives. Ingredients shall be listed in accordance with the following:

(1) Each ingredient shall be listed by the name assigned to it by the International Nomenclature of Cosmetic Ingredients. If there is no such name, by the name assigned to it by the International Union of Pure and Applied Chemistry. If there is no such name, the ingredient may be listed by its common chemical name.

(2) Ingredients shall be listed in descending order of predominance in the product by weight, other than ingredients that constitute less than 1 percent of the product, which may be listed at the end in any order.

(b) EXEMPTIONS.—

(1) EXEMPTION FOR UNDETECTABLE INGREDIENTS.—The Commission may exempt from the labeling requirement an ingredient that is present in a cleaning product at such low levels that detection of the ingredient in the product is not technologically feasible.

(2) EXEMPTION FOR INGREDIENTS CONSTITUTING TRADE SECRETS.—

(A) IN GENERAL.—An ingredient may be exempt from the labeling requirements of this section if the manufacturer demonstrates to the Commission that such ingredient is a trade secret, as determined by the Commission under subparagraph (D), based on a claim submitted by the manufacturer under subparagraph (B). An exemption for an ingredient under this paragraph shall be for a period of 5 years, after which the manufacturer may again submit a claim for an additional 5-year exemption.

(B) CLAIMS OF TRADE SECRECY.—A manufacturer making a claim that an ingredient is a trade secret shall file such claim with the Commission. Such claim shall contain—

(i) the identity of the person making the claim;

(ii) a brief description of the information for which trade secret protection is being claimed;

(iii) the period of time for which trade secret protection is claimed and a justification for the period selected;

(iv) the extent to which the information is known by employees or others involved with the facility or business, and whether or not those individuals with knowledge are bound by non-disclosure agreements;

(v) the extent to which the information is known outside of the facility or business of the person, and whether or not individuals with such knowledge are bound by non-disclosure agreements;

(vi) the measures taken to restrict access to and safeguard the information, and whether or not the person plans to continue utilizing such measures;

(vii) copies of, or references to, any pertinent confidentiality determinations previously made by any public agencies;

(viii) the estimated dollar value of the claimed information to the person's facility or business, and to that person's competitors;

(ix) the amount of effort or money expended by the person's facility or business in developing the information;

(x) the ease or difficulty with which the information could be properly acquired, duplicated or reverse-engineered by others;

(xi) a description of the nature and extent of substantial harm that would be caused if the information were made public, including an explanation of the causal relationship between disclosure and the harmful effects claimed;

(xii) the signature of the person's general counsel or other executive with knowledge of the preparation of the substantiating information certifying under penalty of perjury, based upon the knowledge and belief of the signatory, that—

(I) the substantiating information is true, accurate, and complete;

(II) the information for which trade secret protection is claimed is not otherwise publicly available; and

(III) there is a reasonable basis to assert trade secret protection for the information so claimed; and

(xiii) the name, mailing address, telephone number and email address of the in-

dividual to be contacted if any additional information is needed by the Commission to make a determination.

(C) LIMITATION.—No ingredient may be claimed as a trade secret if such ingredient—

(i) is publicly know to be in the product;

(ii) can be discovered through a standard process of reverse engineering;

(iii) is a hazardous substance within the meaning of section 2(f) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)); or

(iv) is a substance—

(I) meeting the criteria for category 1 or category 2 for any of the toxicity endpoints established by the Globally Harmonized System for the Classification and Labeling of Hazardous Substances that causes an adverse effect that has been demonstrated in humans or other exposed organisms; or

(II) for which the weight of evidence (such as demonstration of an

adverse effect, laboratory studies, or data for a chemical from the same chemical class that exhibits that adverse effect) demonstrates the potential for an adverse effect in humans or other exposed organisms, including actual or potential effects of exposure to the chemical substance or mixture on mortality, morbidity, including carcinogenesis, reproduction, growth and development, the immune system, the endocrine system, the brain or nervous system, other organ systems, or any other biological functions in humans or nonhuman organisms.

(D) CPSC DETERMINATION.—As promptly as practicable after receiving the information submitted by a manufacturer, the Commission shall make a determination on the basis of such information as to whether the ingredient is a legitimate trade secret and shall notify the manufacturer of its determination.

(c) TREATMENT UNDER THE FHSA.—A cleaning product that is not in conformity with the labeling requirements of subsection (a) and not exempt from such require-

ments pursuant to subsection (b) shall be treated as a substance defined in section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) for purposes of such Act.

(d) NO EFFECT ON EXISTING LABELING REQUIREMENTS.—Nothing in this Act shall be interpreted as having any effect on any labeling requirements in effect before the date of enactment of this Act as described in section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)).

(e) RULEMAKING AUTHORITY.—The Commission may issue such regulations it determines necessary to provide for the effective enforcement of this Act, and shall consult with the Administrator of the Environmental Protection Agency as necessary.

SEC. 3. PUBLIC RIGHT TO KNOW PETITION.

(a) PETITION.—Any person may submit a petition to the Commission alleging that a cleaning product available in interstate commerce does not satisfy the labeling requirements of this Act.

(b) ACTION BY THE COMMISSION.—The Commission shall notify a petitioner of the receipt of a petition within 30 days after receipt of such petition. The Commission shall investigate the claims made by the petition and make a determination as to the validity of such claims within

180 days after acknowledging the receipt of such petition. If the Commission sustains the claim or claims made by the petition, the Commission shall initiate the proper enforcement actions required by law.

(c) REGULATIONS.—The Commission may issue such regulations as it determines necessary to require that petitions include a reasonable evidentiary basis for the claims made therein.

SEC. 4. REQUIRED INTERNET DISCLOSURE.

(a) MANUFACTURER DISCLOSURE.—Each manufacturer of a cleaning product shall make available in a clear and conspicuous location on the website of such manufacturer, if the manufacturer maintains a website, a complete list of each of the manufacturer's cleaning products' ingredients not later than 6 months after the date of enactment of this Act.

(b) CONTENT AND REQUIREMENTS OF DISCLOSURE.—The disclosure required by subsection (a) shall—

(1) name and list the product's ingredients in the manner prescribed in section 3;

(2) be reviewed every 120 days and revised as necessary to reflect changes to cleaning products;

(3) include the appropriate Chemical Abstract Services number for each ingredient;

(4) identify any potential adverse health effect of each ingredient in the cleaning product and use the appropriate signal word or hazard descriptor as prescribed in section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)); and

(5) be sortable by product, ingredient, adverse health effect, and other categories as determined by the Commission.

(c) COMMISSION DISCLOSURE.—Promptly after the date set forth in subsection (a), the Commission shall provide on the website of the Commission a web page that aggregates the information made available by manufacturers under such subsection and that allows users to compare products made by different manufacturers. Such web page shall be reviewed every 6 months and revised as necessary to reflect changes to cleaning products.

(d) LANGUAGE ACCESSIBILITY.—The disclosures required to be made on a website or web page subject to this section shall be available in English, Spanish, and any other language the Commission determines necessary to ensure that users of a cleaning product in the United States are informed as to the complete list of the product's ingredients and potential adverse health effects.

SEC. 5. ENHANCED PENALTIES.

Section 5(c)(1) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(1)) is amended by striking ''$15,000,000'' and inserting ''$30,000,000''.

SEC. 6. REPORTING.

Not later than 2 years after the date of enactment of this Act and every 2 years thereafter, the Commission shall prepare a report on compliance with the labeling requirement of this Act and the enforcement activities of the Commission, and shall transmit such report to Congress and make it publicly available on the Internet.

SEC. 7. PREEMPTION.

Nothing in this Act affects the right of a State or political subdivision of a State to adopt or enforce any regulation, requirement, or standard of performance that is different from, or in addition to, a regulation, requirement, liability, or standard of performance established pursuant to this Act unless compliance with both this Act and the State or political subdivision of a State regulation, requirement, or standard of performance is impossible, in which case the applicable provision of this Act shall control.

SEC. 8. DEFINITIONS.

In this Act:

(1) ADVERSE HEALTH EFFECT.—The term ''adverse health effect'' means a chemical or bio-

chemical change, anatomic change, or functional impairment, or a known precursor to such a change or impairment, that—

(A) has the potential to impair the performance of an anatomic structure of a vital system of an organism or progeny of an organism;

(B) causes irreversible change in the homeostasis of an organism;

(C) increases the susceptibility of an organism or progeny of an organism to other chemical or biological stressors or reduces the ability of an organism or progeny of an organism to respond to additional health or environmental challenges; or

(D) affects, alters, or harms the environment such that the health of humans or other organisms is directly or indirectly threatened.

(2) AIR CARE PRODUCT.—The term ''air care product'' means a chemically formulated consumer product designed to clean and freshen air or to deodorize and neutralize unwanted odors in the indoor air, including solid gels, air freshener spray, an outlet or battery operated air freshener, a hanging car air freshener, and a potpourri product.

(3) AUTOMOTIVE PRODUCT.—The term ''automotive product'' means a chemically formulated consumer product designed to maintain the appearance of a motor vehicle, but does not include automotive paint or a paint repair product.

(4) CLEANING PRODUCT.—The term ''cleaning product'' means any product used primarily for commercial, domestic, or institutional cleaning purposes, including an air care product, automotive product, disinfectant (except as provided in subparagraph (B)), and polish or floor maintenance product. Such term shall not include—

(A) any drug or cosmetics, including a personal care items such as toothpaste, shampoo, and hand soap; or

(B) a product labeled, advertised, marketed, and distributed for use only as a pesticide, as defined by section 2(u) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136(u)), including a disinfectant intended for use solely on critical or semi-critical devices as described by such section.

(5) COMMISSION.—The term ''Commission'' means the Consumer Product Safety Commission.

(6) INGREDIENT.—The term ''ingredient'' means a chemical in a cleaning product, including—

(A) a chemical that provides a technical or functional effect;

(B) a chemical that has no technical or functional effect but is present by reason of having been incorporated into the cleaning product as an ingredient of another chemical;

(C) a processing aid that is present by reason of having been added to a cleaning product during the processing of such cleaning product;

(D) any substance that is present by reason of having been added to a cleaning product during processing for its technical or functional effect;

(E) any contaminant that may leach from container materials or form via reactions over the shelf life of a cleaning product and that may be present at levels where detection is technologically feasible;

(F) with respect to a fragrance or preservative, each individual component part of the fragrance or preservative by its individual name; and

(G) any individual component of a petroleum-derived, animal-derived, or other ingredient that the Commission determines be considered an ingredient.

(7) POLISH OR FLOOR MAINTENANCE PRODUCT.—The term ''polish or floor maintenance product'' means a chemically formulated consumer product designed to polish, protect, or maintain furniture, floors, metal, leather, or other surfaces, including polish, wax, and restorer.

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