

# Alerts & Publications

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## California Transparency in Supply Chains Act of 2010

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Effective January 1, 2012, certain retailers and manufacturers doing business in California must publicly disclose their efforts to eradicate slavery and human trafficking from their direct supply chains of tangible goods. These reporting obligations are imposed by the California Transparency in Supply Chains Act (“Act”), which was signed into law by then-governor Schwarzenegger in September 2010. Recognizing that other California laws [1] make human trafficking a crime and allow a human trafficking victim to bring a civil action for damages, this new law extends California’s efforts to the business community by requiring that companies audit their supply chains and report the results on company websites.

### Background

As justification for its passage, the Act states that efforts to address the market for goods and products tainted by slavery and trafficking have been lacking. The Act cites a September 2009 report by the United States Department of Labor naming 122 goods from 58 countries that are believed to be produced by forced labor or child labor in violation of international standards. The Act notes that consumers and businesses are inadvertently promoting and sanctioning slavery and trafficking through the purchase of certain tainted goods and products, and advocates public disclosures so that consumers will be able to distinguish companies on the merits of their efforts to supply products not associated with slavery and trafficking.

## Applicability

The Act applies to companies with annual worldwide gross receipts exceeding \$100 million dollars that are “doing business in the state of California.” As defined by Section 23101 of the California Revenue and Taxation Code, “doing business in California” can include any of the following: (1) the business is organized or commercially domiciled in California; (2) sales in California in 2011 exceed the lesser of \$500,000 or 25 percent of the company’s total sales; (3) the value of the company’s real and tangible personal property in California exceeds the lesser of \$500,000 or 25% of its total real and tangible personal property; or (4) the amount paid by the company in California for compensation exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the company.

In addition to these applicability requirements, only those companies that filed a California tax return in 2011 and that checked either “manufacturing” or “retail trade” as their principal business activity code will be required to comply with the Act.

## Required Disclosures

The law requires that certain disclosures be made on the retail seller’s or manufacturer’s internet website. The site’s home page must have a conspicuous and easily understood link to the required slavery and trafficking disclosure. In the event the retail seller or manufacturer does not have an internet website, written requests from consumers must be responded to within 30 days and contain the required disclosure.

The disclosure, at a minimum, must reveal to what extent, if any, the retail seller or manufacturer does each of the following:

- Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure must specify if the verification was not conducted by a third party;
- Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure must specify if the verification was not an independent, unannounced audit;
- Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and
- Provides training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products, to company employees and management who have direct responsibility for supply-chain management.

While the Act is clearly aimed at products affected by slavery or human trafficking, it does not address with specificity what constitutes such actions or products. Nor does the Act define what a “direct supplier” is. At least one group opposing the Act noted that the bill provides no details as to what constitutes compliance with the Act’s requirements. [2] In spite of these shortcomings, which have been noted by the California Attorney General, companies must comply by the January 1, 2012 effective date.

Companies may need to look to other sources of authority to help determine the parameters of their audits and certifications. Likewise, the posting of the information on a company’s website, while not addressed in detail in the Act, should be in alignment with the spirit of the legislation, requiring conspicuous disclosures for the benefit of the consumer.

As a result of the Act, many companies have developed a supplier code of conduct or similar document that requires all suppliers to comply with all applicable labor laws, including laws forbidding the use of labor resulting from slavery or human trafficking. Many companies also maintain the right to audit suppliers for compliance with the Act or with their own codes of conduct.

### Enforcement

The Act authorizes the Attorney General to enforce the law through injunctive relief actions. Although no direct penalties for violations may be levied by the Attorney General, there are other risks for noncompliant companies. Private citizens will be able to seek injunctive relief and attorney fees for alleged violations of the Act by using California’s Unfair Competition Law (Business and Professional Code Section 17200). This private action has been often used by plaintiffs’ attorneys to enforce other California consumer legislation, most notably the Safe Drinking Water and Toxics Enforcement Act (also known as “Proposition 65”). The Section 17200 cause of action will allow a consumer, competitor, non-governmental organization, or any other person to sue a company for alleged noncompliance with the Act or for false statements in its disclosure postings.

### Trickle-Down Effect

It is estimated that about 3,000 retailers and manufacturers will be directly subject to the Act [3]; however, many purchasers of products or materials that do not have a legal obligation to disclose are nonetheless requiring their suppliers to provide certifications and disclosures pursuant to the Act. The Act only imposes self-investigation and public disclosure obligations and does not specifically prohibit the purchase of products affected by trafficking and slavery. However, purchasing agents may choose to avoid those companies that do not take an active role in managing their operations so as to avoid the effects of forced labor.

## Conclusion

The Act has required increased scrutiny of products and suppliers. While the exact parameters of the obligation to investigate and report on products associated with trafficking and forced labor have not been established, it is clear that manufacturers, retailers, and purchasers up and down the supply chain will be requesting information, audits, and certifications, and generally applying closer scrutiny to the manufacturing origin of their products.

[1] O'Melveny & Myers LLP, together with co-counsel from legal services provider Bet Tzedek, is the only firm to have tried to jury verdict a trafficking case under the California Trafficking Victims Protection Act.

[2] Bill Analysis, Senate Rules Committee, 2009-2010 Regular Session.

[3] The Act also makes changes to the Revenue and Taxation Code, requiring the Franchise Tax Board to make available to the Attorney General a list of retail sellers and manufacturers subject to the Act. The list is to be based on tax returns filed for taxable years beginning on or after January 1, 2011.