June __, 2021

The Honorable Richard Pan, Chair
Senate Health Committee
State Capitol, Room 2191
Sacramento, CA 95814

SUBJECT: **AB 1200 (TING) PLANT-BASED FOOD PACKAGING: COOKWARE: HAZARDOUS CHEMICALS**
OPPOSE – AS AMENDED MARCH 29, 2021

Dear Chair Pan:

The undersigned organizations, representing a cross section of manufacturers, retailers, agriculture, food producers, consumer product companies, and others are writing to express our opposition to the proposed product warning labeling requirement contained in **AB 1200 (Ting),** which proposes to establish a parallel warning label requirement to Proposition 65 ("Prop. 65") that would exacerbate the existing "over warning" problem.

NEW WARNING LABEL IN CALIFORNIA FOR COOKWARE THAT GOES BEYOND PROP 65

As currently drafted, **AB 1200** would require manufacturers of cookware products to affix a new warning labeling, much like Prop 65 if the product contains any chemical that appears on the Department of Toxic Substances Control's candidate chemical list[1]. This list is a "list of lists" that currently contains 3,273 chemicals, including many benign everyday substances (e.g., aloe vera, aluminum, aspirin, cellulase, iron, sodium). It is an informational list compiled at the beginning of the green chemistry program to ensure that DTSC could pick from a wide scope of chemicals to further evaluate and regulate

[1] https://calsafer.dtsc.ca.gov/cms/search/?type=Chemical

where needed. It is by its very name, a "candidate" list. It was not compiled, much less reviewed or analyzed, for any potential or actual harm it may cause a California consumer. Instead, it is compiled to be used as an information or "candidate" list for potential study by DTSC. On its website, DTSC states [emphasis is original]: [2]

> The Candidate Chemicals List is NOT a list of Chemicals of Concern.

DTSC is the expert agency designated to determine whether any candidate chemical is in fact a chemical of concern. This bill usurps their delegated authority and requires manufacturers to falsely state on the label:

> This product contains one or more chemicals of concern for human health or the environment as identified by the State of California.

This false warning is clearly contradicted by DTSC's own website which unequivocally states that the candidate chemicals list is **NOT** a list of chemicals of concern.

Similarly, this bill usurps DTSC's authority in requiring a manufacture to "use the least toxic alternative when replacing PFAS chemicals in products". DTSC was delegated the authority to determine the least toxic alternative by the Legislature in 2008. DTSC spent years developing a robust set of regulations that requires detailed alternative analysis to ensure that the basis of selecting the "least toxic alternative" is scientifically sound and to avoid regrettable substitutions.

Though not every signatory has even a specific interest in cookware products or the chemicals that might be present in those products, the undersigned organizations believe public policy must be based on credible scientific principles, including ensuring that any mandate requiring information about the potential safety of a product be conveyed accurately and in the proper context. Unfortunately, **AB 1200** falls short on both accounts. Should this bill be enacted in its current form, the resulting policy would establish a troubling precedent for anyone that manufacturers, sells, or distributes a product in the State of California.

NOT GROUNDED IN SCIENCE, NOT ACCURATE AND UNNECESSARILY SCARES CONSUMERS

As stated above, the bill would require a manufacture to falsely state to consumers that the presence of an intentionally added substance on the candidate chemical list is a "chemical of concern" to human health or the environment when it is in fact there is no scientific basis for such a warning. Notwithstanding the constitutional issues presented by such a requirement, this warning language serves the California consumer no purpose and undermines the validity of other warning programs.

Even under Prop 65, arguably one of the most precautionary labeling regulatory schemes in the world, products with listed chemicals that result in exposures below certain thresholds (e.g. Safe Harbor Levels) are not obligated to provide a warning. These Safe Harbor Levels are either established by the state or proven by businesses. No such provision exists under **AB 1200**. Instead, the new warning label requirements are triggered by the presence of any intentionally added listed chemical regardless of potential exposure, regardless of the levels and regardless of whether there is any risk associated with the chemical as used in the product.

[2] https://dtsc.ca.gov/scp/what-does-the-candidate-chemicals-list-mean-to-me/

Compounding this unscientific approach is the fact that because DTSC's candidate chemicals list is not a list of "banned chemicals" nor does the list indicate these chemicals pose a risk to human health or the environment as used in the specific product applications, companies will be vulnerable to liability under the new toll-free number requirement. DTSC is clear in stating that the candidate chemicals list is not a list of chemicals of concern and the basis for the chemical being included on DTSC's list may have no relevance whatsoever to how it may be used in a cookware product.[3] **AB 1200** nevertheless would force companies to falsely warn and hire additional staff to respond to public inquiries about the health and safety of substances in their product despite neither the state *nor any scientific body* has determined health or environmental risks associated with these substances in cookware products.

HURTS SMALL BUSINESS

A second troubling aspect of **AB 1200** is that both the warning labeling and toll-free number requirements apply to *any sized* business selling cookware products. Even Prop. 65 exempts small businesses of less than 10 employees-- **AB 1200** does not. Small businesses still reeling from the COVID-19 pandemic cannot afford to create new warning labels and hire new staff to respond to public questions about the safety or risks associated with chemicals that have no threshold requirements or scientific basis for the warning in the first place.

NO ENFORCEMENT: COULD CREATE NEW PRIVATE RIGHT OF ACTIONS

Finally, the bill is silent on how this new requirement would be enforced. Would the failure to provide the warning be subject to a Business and Professions Code Section 17200 claim by a local prosecutor or plaintiff's attorney? This begs the question as to why there is no specific enforcement provision included. Is it the intent of the proponents to amend the statute in the future to insert a "private right of action" provision similar to the bounty hunter suits we see under Prop 65? In 2019 the total amount paid for Prop. 65 settlement payments was nearly $30 million, with almost 80% going to attorney's fees. There is serious concern that this legislation is a precursor for similar enforcement scenarios.

AB 1200's proposed labeling requirements would compel manufacturers to inappropriately scare customers into thinking that the cookware product they are about to purchase may pose a potential health and environmental risk. The ramifications for this policy extend well beyond cookware manufacturers. **AB 1200** creates a troubling policy precedent for all product manufacturers, distributors, and retailers. We urge the members of the Senate to reject this proposed labeling provision.

Sincerely,

Adam Regele
Senior Policy Advocate
California Chamber of Commerce

[3] *Id.,* stating: "The Candidate Chemicals List is NOT a list of Chemicals of Concern."

(Signatures added on final letter)

Tim Shestek, Senior Director, States Affairs
American Chemistry Council

Heidi K. McAuliffe, Vice President, Government Affairs
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Abigail Sztein, Director, Government Affairs
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Michael McGuffin, President
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Timothy Sher, Vice President, Business Development
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Kevin Messner, Sr. VP, Policy & Government Relations
Association of Home Appliance Manufacturers

Dawn Koepke, *on behalf of*
California Manufacturers & Technology Association

Katie Hansen, Senior Legislative Director
California Restaurant Association

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Jennifer M. Oblock, Account Executive
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cc: Members, Senate Health Committee
Vince Marchand, Senate Health Committee