

New & Emerging State Right-to-Know Regulations

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**Household & Commercial Products Association
SCHC Annual Meeting 2021**





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Right to Know Outline

Proposition 65

Short-form Warning

Tailored Warning for Glyphosate

Ingredient Disclosure

California Cleaning Products Right to Know Act


New York Cleansing Product Disclosure

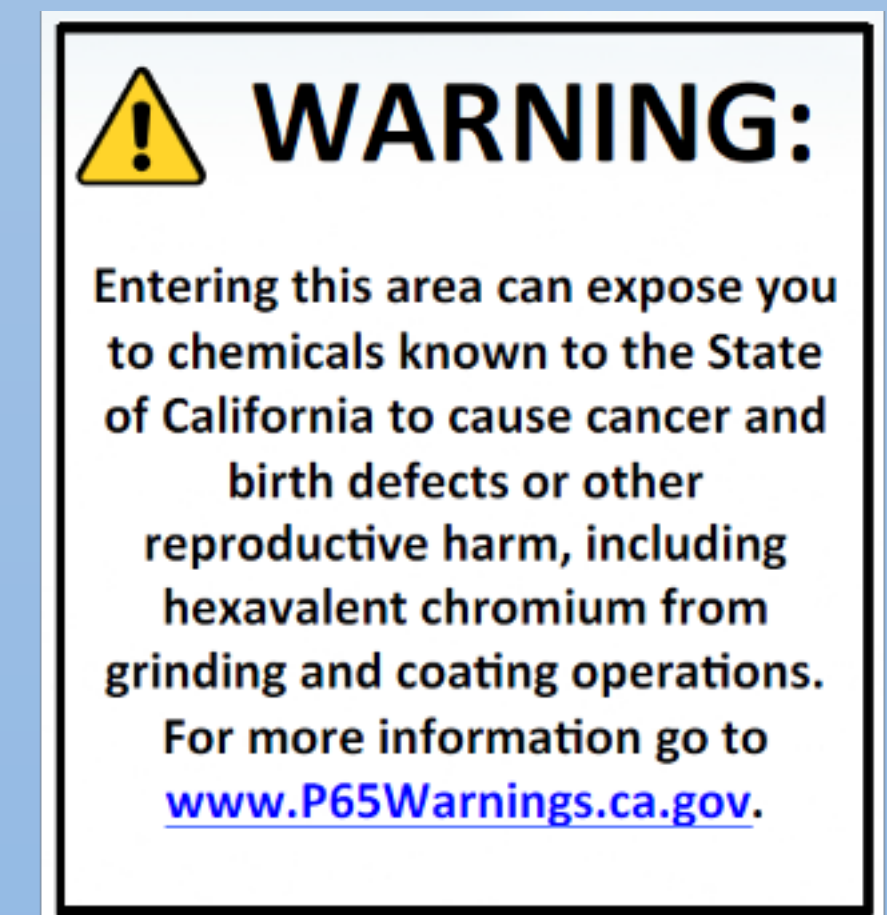
The Next Frontier in RTK

Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)

Clear and Reasonable Warning

“The product contains a chemical known to the state of California to cause cancer (or cause birth defects or other reproductive harm).”

 **WARNING:** This product can expose you to chemicals including arsenic, which is known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov.”



Clear and Reasonable Warnings Changes

The exposure driving the warning must be labeled

Specific warning required to enable the safe harbor provisions

- Consumers

- Internet and catalog sales

- Certain products & businesses


Combined with OEHHA maintained website

Long and Short-form warnings

2-year implementation (August 2018)

Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)

Consumer Product Exposure Warnings

 **WARNING:** This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Short-Form Consumer Product Exposure Warnings

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

Proposition 65 - Short-form Warning Proposal

Concern that short-form warning is not being used as intended

Narrow scope of when short-form is allowed

Required listing of exposure driving labeling

Proposed February 2021, expected to be finalized by early next year

Short-form Proposal - When Can It Be Used?

(4) A short-form warning on the product label that complies with the content requirements in Section 25603(b). The short-form warning may only be used if:

(A) The total surface area of the product label available for consumer information is 5 square inches or less, and;

(B) the package shape or size cannot accommodate the full-length warning described in Section 25603(a), and;

(C) The entire warning is printed ~~must be~~ in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

Short-form Proposal - Warning


§ 25603 - Required listing of exposure driving labeling

Change in warning language

Current

 **WARNING: Reproductive Harm -**
www.P65Warnings.ca.gov.

Proposed

 **WARNING: Risk of Reproductive**
Harm From Toluene Exposure -
www.P65Warnings.ca.gov.

Proposition 65 - Glyphosate

Listed in 2017 via the "Labor Code" listing mechanism

IARC determined "probably carcinogenic to humans" (Group 2A), and that there was "sufficient evidence" of carcinogenicity in experimental animals

European Chemicals Agency (ECHA) concluded that 'There is limited evidence in humans for the carcinogenicity of glyphosate'

The French Agency for Food, Environmental and Occupational Health and Safety (ANSES) determined that the evidence was insufficient for finding glyphosate to be a presumed carcinogen but that the substance could possibly be classified in Category 2, suspected human carcinogen

Conversely

US EPA has concluded that glyphosate is "Not likely to be carcinogenic to humans"

Canada: glyphosate is unlikely to pose a human cancer risk

New Zealand: glyphosate is "unlikely to be genotoxic or carcinogenic to humans"

National Association of Wheat Growers et al. v. Becerra et al.

Listing of glyphosate challenged by National Association of Wheat Growers et al in 2015 in the Federal Court system

in 2020, the court found that “[n]otwithstanding the IARC's determination that glyphosate is a ‘probable carcinogen,’ the statement that glyphosate is ‘known to the state of California to cause cancer’ is misleading” because “[e]very regulator of which the court is aware, with the sole exception of the IARC, has found that glyphosate does not cause cancer or that there is insufficient evidence to show that it does.”


Premised on its finding that the scientific evidence does not support listing glyphosate as “causing cancer” and therefore does not meet the “purely factual and uncontroversial information” component

Currently under appeal in the 9th Circuit of Appeals and stayed until this rulemaking is concluded

In the rulemaking, OEHHA noted

“OEHHA has developed the proposed regulation taking into account the concerns expressed in the District Court decision in that case. OEHHA’s safe harbor regulations are non-mandatory guidance. OEHHA does not have enforcement authority under Proposition 65 and thus cannot require warnings to be given for an exposure to any listed chemical, including glyphosate. The injunction in the National Wheat Growers case is still in effect. Therefore, no enforcement actions can be taken against businesses who do not provide warnings for significant exposures to this chemical. OEHHA does not intend to suggest otherwise by proposing this regulatory action.”

Proposition 65 - Glyphosate

 **CALIFORNIA PROPOSITION 65 WARNING:** Using this product can expose you to glyphosate. The International Agency for Research on Cancer classified glyphosate as probably carcinogenic to humans. Other authorities, including USEPA, have determined that glyphosate is unlikely to cause cancer, or that the evidence is inconclusive. A wide variety of factors affect your personal cancer risk, including the level and duration of exposure to the chemical. For more information, including ways to reduce your exposure, go to www.P65Warnings.ca.gov/glyphosate.

Proposition 65 - Industry and NGO concerns

Inconsistent With OEHHA's Longstanding Approach To Safe Harbor Warnings

Dilute Clear and Reasonable warnings

Potentially differing warnings for consumer and commercial uses

No indication proposed warning will inform consumers

Different regulatory determinations

Inaccurately frames IARC's and EPA's findings as inconsistent, when in fact the two bodies reached conclusions based on different inquiries;

Fails to note that other expert scientific bodies support IARC's finding, including the U.S. Agency for Toxic Substances and Disease Registry (ATSDR), a respected federal public health agency

Failed to consider alternative modifications to the warnings to note EPA's exposure analysis without undermining OEHHA's hazard-based listing

Fails to articulate a principle for when differences of conclusions among scientific bodies should be noted

Ingredient Disclosure - Cleaning Products

Transparency

Consumers want it

Retailers demand it

Many other product categories disclose ingredients

Voluntary ingredient disclosure efforts

HCPA Consumer Product Ingredients Dictionary

CA Cleaning Products Right to Know Act

“Chemically Formulated Consumer Product” sold in California

Household, Institutional, Commercial

Concentrates and Ready to use

NOT industrial use

Designated Products

Air care product

Automotive product

General cleaning product, including antimicrobials (on-line only)

Polish or floor maintenance product

Used primarily for janitorial, domestic or institutional cleaning purposes

Naming/Nomenclature systems

CA Cleaning Products Right to Know Act

108954. (a) A manufacturer of a designated product sold in the state shall disclose on the product label the information specified by either paragraph (1) or (2):

(1)(A) - A list of each intentionally added ingredient that is included on a "designated list"

(1)(B) - Any EU fragrance allergen present at ≥ 100 ppm (0.01%)

(1)(C) - An intentionally added ingredient listed on Prop 65 is not required to be on the label until January 1, 2023

OR

(2)(A) - A list of all intentionally added ingredients

(2)(B) - The statement "Contains fragrance allergens" if any EU fragrance allergen present at ≥ 100 ppm (0.01%)

(2)(C) - Fragrance ingredients may be listed on the product label as "fragrances"

Dye ingredients may be listed on product label as "colorants"

(2)(D) - An intentionally added ingredient listed on Prop 65 is not required to be on the label until January 1, 2023

Non-Functional Constituents

Implementation Deadlines & Enforcement

January 1, 2020: Online disclosure requirements trigger

January 1, 2021: On-label disclosure requirements trigger

January 1, 2023: Intentionally added Prop. 65 ingredients must be listed on-label and online

Enforcement

None to date, Attorney General is enforcing entity

DTSC is charged with monitoring

Other entities are 'assisting' in monitoring

New York Cleansing Products BMP and proposal

Original proposed as *Household Cleansing Product Information Disclosure Program*

Invalidated for failing to follow correct administrative procedure

Repurposed as Best Management Practices

Soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent

Brick Codes within scope provided

Requirements - on-line disclosure and report to New York DEC

Timelines - voluntary currently, will be phased in over 2-3 years if/when implemented

Key Differences between CA and NY

Scope

NY much narrower

List of Lists

CA - 22 lists, ~3000 ingredients

NY - 34 lists, many more ingredients

Non-functional constituents

CA - 31 ingredients to 100 ppm or 10 ppm

NY - 36 non-functional ingredients to 5,000 ppm

Nonfunctional byproducts to Practical Quantitation Level

Nonfunctional contaminants to 100 ppm

1,4-dioxane 350 ppt, PFOA and PFOS combined to 70 ppt

Authority

CA - law without implementing regulatory agency

NY - regulation based upon 1970's phosphate disclosure law

CA Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020

Effective January 1, 2022

Cosmetic products

Requirements

- Fragrance or flavor ingredient on designated list

- Fragrance allergens

- Professional or retail

- CAS number of each disclosed ingredient

- UPC code of product

New York Menstrual Products Right To Know Act

Passed in 2019, effective 2020

Intentionally added ingredients in menstrual products

Encompasses articles

Disclose on packaging

Clean Production Action Principles for Chemical Ingredient Disclosure

Disclose all intentionally added chemical ingredients.

Disclose nonfunctional constituents that are identified on specified lists of chemicals of concern.

Proactively engage supply chains and interested stakeholders—including governments, investors, and non-governmental organizations (NGOs)—to increase full chemical ingredient information disclosure.

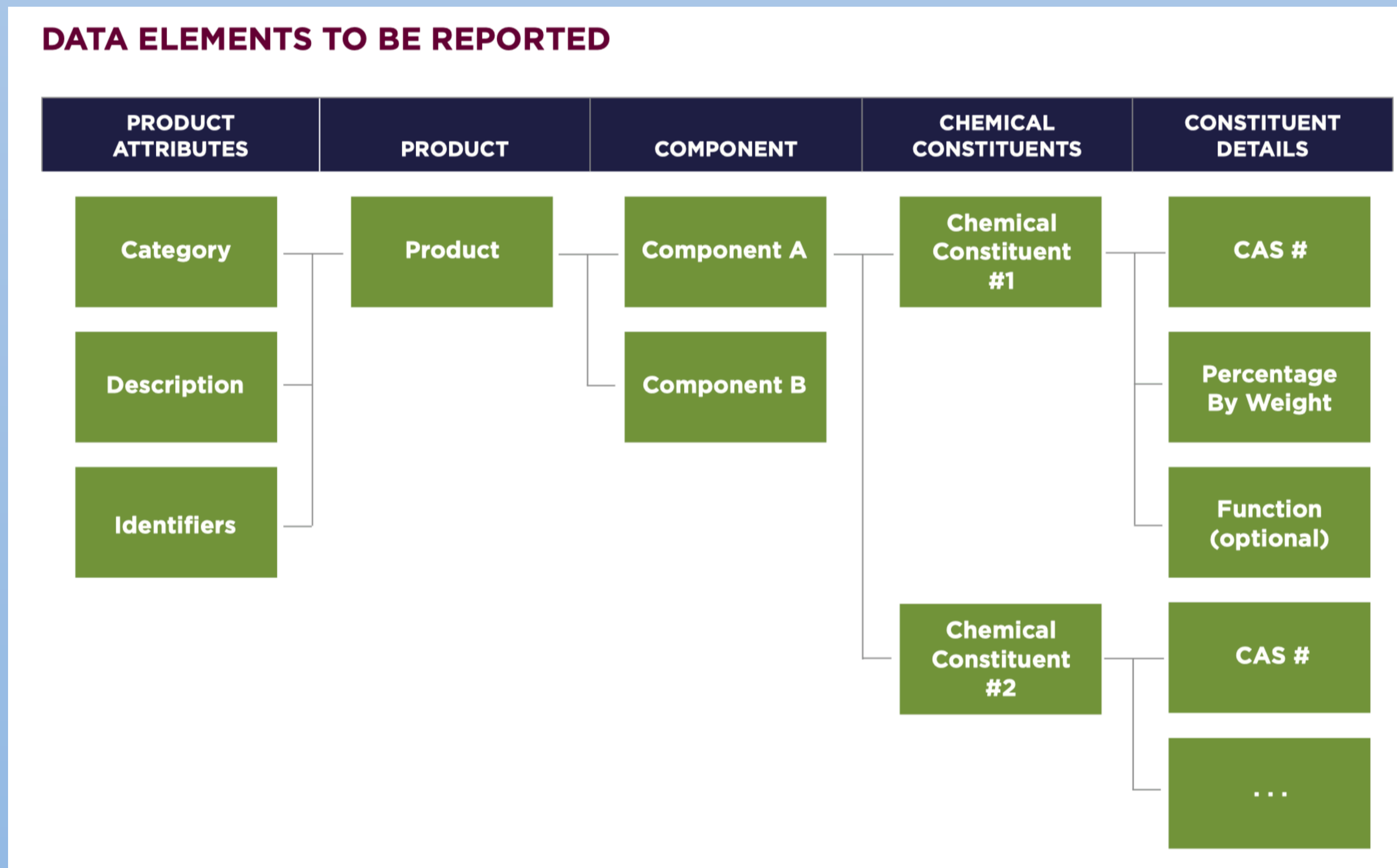
Advocate for filling data gaps to characterize the hazards of chemicals.

Make accurate chemical ingredient information easily accessible to consumers, government agencies, manufacturers, brands, retailers, and others in the supply chain.

Support public policies and industry standards that advance the above Principles.

Green Chemistry & Commerce Council

Recommended Framework for Ingredient Disclosure for Articles



The Next Frontier in Right to Know?

Prop 65

Modified warnings

Additional Listed Chemicals

Increased Ingredient Disclosure

More products

Federal activity

Proposition 65 - The Future?

Intent to list - list perfluorooctanoic acid, or PFOA

DARTIC - perfluorononanoic acid, or PFNA, and perfluorodecanoic acid, or PFDA

CIC - perfluorooctane sulfonic acid, or PFOS, including its salts and transformation and/or degradation precursors

Detectable to very low levels

Widespread contamination

Will this be the next chemical *du jour*?

The Next Frontier in Right To Know?

Additional product categories

Articles

Claims or absence thereof

Post-Consumer Recycled (PCR) content

PFAS - MI E.O. - Reducing State Purchases of Products Containing Intentionally Added PFAS

Bio-based

Electronic label disclosure

SmartLabel™

Mobile apps

Environmental, Social, and Governance (ESG) goals

Moving toward Federal Disclosure Requirements?

California - current *de facto* national ingredient disclosure model

New York - if adopted will become *de facto* national model

Differences between states rapidly become unmanageable

Will require engagement by

Industry

Retailers

NGOs



Innovative Products For **Home. Work. Life.**



Questions?

