

February 14, 2012

# Why Your Business Will Need to Comply with California's Transparency in Supply Chains Act

*Originally published in The San Diego Daily Transcript, and reprinted with their permission.*

By: William W Eigner, Esq. & Brian Headman

619.515.3210 | [william.eigner@procopio.com](mailto:william.eigner@procopio.com)

*Wireless Week* reported Feb. 9 that protesters "bearing a petition of 250,000 signatures prepared to march on Apple retail stores in pursuit of a commitment by the iPhone maker 'to clean up its supply chain.'"

Companies all over the world are being pressured by consumers to eradicate various unsavory modes of operation from their supply chains, but California legislation is bringing the issue to the public's attention faster than anticipated.

The California Transparency in Supply Chains Act of 2010 became effective on Jan. 1, 2012. The act requires all applicable retail sellers and manufacturers to disclose what efforts they have taken to eradicate slavery and human trafficking from their supply chain for tangible goods offered for sale. By compelling the disclosure of this information, the act seeks to inform and educate consumers on the issue of human trafficking and slavery in the retail and manufacturing context, and promote the purchase of goods produced by companies that have taken steps to responsibly manage their supply chains and eliminate the problem.

This article will provide a basic understanding of the act, and what it requires of large retailers and manufacturers doing business in California. Additionally, this article will explain how the act will likely impact small to mid-size companies all over the world and how these companies can prepare to respond to requests by larger companies necessitated by the act in a cost-effective manner.

## Who is Affected

The act applies directly to any company that is a retail seller or manufacturer; does business in California as defined in Section 23101 of the California Revenue and Taxation Code; and has annual worldwide gross receipts that exceed \$100 million. Although the act was intended to target only large retailers and manufacturers doing business in California, its expansive disclosures discuss supplier audits and supplier certifications that are likely to affect smaller companies as well, regardless of how big they are and where they are located.

The act requires that each applicable company disclose information about its own policies and those of its entire supply chain. As a result, companies of all sizes, both in California and elsewhere, which operate within the supply chain of a large retailer or manufacturer that does business in California, may be affected by this new law. Those companies not reached directly by the act may still be required by their large customers to comply. Thus, it is important that companies of all sizes, wherever located, understand the act and prepare to respond accordingly.

---

*Although the information contained herein is provided by professionals at Procopio, the content and information should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.*

## What Disclosures are Required

Every company that is required to comply with the act must, at a minimum, disclose to what extent, if any, the company:

1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party;
2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit;
3. 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;
4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and
5. Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The above required disclosures must be posted on the applicable retail seller's or manufacturer's website with a conspicuous and easily understood link to the required information placed on the company's homepage. Any company that does not have a website must provide a written disclosure within 30 days of receiving a written request from a consumer.

## What to Expect

The act is a disclosure law, and although it does not impose any affirmative duties or substantive regulations on supply chain functions, it does place significant pressure on large retailers and manufacturers with a California presence to comply. In our culture of corporate social responsibility, instituting the auditing, verification, and accountability measures called for by the act are likely preferable to publicly disclosing a lack of supply chain control measures.

This means that small and mid-sized companies within the affected supply chains, regardless of their locations, should expect downward pressure from their large purchasers. Even companies that are not directly reached by the act may be forced by their large customers to conform to the act's provisions. Therefore, small and mid-size suppliers of larger companies should be up-to-date and in compliance with all applicable laws regarding slavery and human trafficking. Additionally, suppliers should be prepared to respond to increased audits, and be ready to answer questions regarding their internal controls and those in place within their own supply chain.

Ultimately, large retailers and manufacturers doing business in California are likely to seek compliance verification from their entire supply chain, a process that will undoubtedly result in increased costs for every participant. Taking preemptive measures will allow companies to minimize their costs and maintain strong business relationships.

---

*Mr. Eigner's practice emphasizes venture capital, angel financing, seed capital, and the financing, governing, operating, buying, selling and merging (M&A) of growing technology and other businesses. He can be reached at [william.eigner@procopio.com](mailto:william.eigner@procopio.com) or 619.515.3210.*

*Headman is an intern at Procopio, Cory, Hargreaves & Savitch and a student at the University of San Diego School of Law.*