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California supply chain disclosure requirement for retailers and manufacturers triggered by income/franchise tax filing

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In September 2010, [California Senate Bill 657](#) - the California Transparency in Supply Chains Act of 2010 (the "Act") - was signed into law. Under the Act, beginning January 1, 2012, any company that 1) is a retail seller or manufacturer; 2) has more than \$100,000,000 in annual worldwide gross receipts; and 3) is subject to a California income/franchise tax return filing requirement must disclose its efforts to eradicate slavery and human trafficking from its supply chains.

The scope of the Act includes business entities with retail trade or manufacturing as their principal business activity code, as reported on the entity's California income/franchise tax return. However, the disclosure is **not** made on the California tax return; rather, the disclosure "shall be posted on the retail seller's or manufacturer's Internet Web site with a conspicuous and easily understood link to the required information placed on the business' homepage." The Act provides that the Franchise Tax Board (FTB) shall make available to the Attorney General a list of retail sellers and manufacturers required to make the disclosure, based on tax returns filed for taxable years beginning on or after January 1, 2011. The list shall be submitted by the FTB to the Attorney General by November 30, 2012, and annually each November 30 thereafter.



Under the Act, companies must disclose whether, and to what extent, they:

- engage in supply chain assessment for slavery and human trafficking risks and whether the verification was conducted by a third party;
- perform supplier audits to ensure compliance, and whether the audits are independent and unannounced;
- require direct suppliers to certify that the materials incorporated into products comply with local relevant regulations;
- maintain accountability standards and procedures to address employee or supplier non-compliance with company policies; and
- provide training to relevant employees on slavery and human trafficking.

What does "direct supply chain" mean?

The Act is intended to cover the direct supply chain of all products a retailer is selling or a manufacturer is making -- thus, tangible goods offered for sale. For instance, a clothing retailer would be required to disclose information about the dresses it is selling, but not the cash registers it uses or the flooring in its buildings.

What are the potential penalties?

The California Attorney General has an exclusive legal recourse under the Act for failure to disclose and can seek injunctive relief. There are no monetary penalties specified for failure to disclose. Potentially, a company could disclose that it is not doing anything in relation to these issues and be compliant. This may, however, damage reputation with key customers (business-to-consumer/business-to-business) and business partners, and disengage employees.

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