

California Bill Would Require Manufacturers and Retailers to Combat Human Trafficking

by Greg L. Johnson, Deborah S. Thoren-Peden and Amy L. Pierce

Senate Bill 657 proposes that, except for those having less than \$2 million in annual sales, “[e]very retail seller and manufacturer doing business in this state shall develop, maintain, and implement a policy setting forth its efforts to comply with federal and state law regarding the eradication of slavery and human trafficking from its supply chain.”

On February 27, 2009, Senator Darrell Steinburg introduced Senate Bill 657, an act to add Section 1714.43 to California’s Civil Code and to add Chapter 4.5 (commencing with Section 8305) to Division 1 of Title 2 of California’s Government Code relating to human trafficking.¹ As currently drafted, Section 1714.43 will apply to “[e]very retail seller and manufacturer doing business in this state,” except those having “less than two million dollars (\$2,000,000) in annual sales.” The bill would require the retail sellers and manufacturers subject to Section 1714.43 to comply with federal and state law “regarding the eradication of slavery and human trafficking from its supply chain.”

Every retail seller and manufacturer subject to Section 1714.43 would be required to “develop, maintain, and implement a policy setting forth its efforts to comply with federal and state law regarding the eradication of slavery and human trafficking from its supply chain.” The required policy “shall be posted on the retail seller’s or manufacturer’s Internet Web site, and shall be made available in writing upon request by a consumer.” The required policy “shall, at a minimum, include both of the following elements:

1. That the company and all the suppliers in its supply chain, including the suppliers of the raw materials incorporated into the product, will comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
2. That the company will make a good faith effort to eradicate slavery and human trafficking in its existing supply chain rather than only stop doing business in the area where it discovers that its supply chain is tainted by slavery or human trafficking.”²

This likely means, among other things, that affected retail sellers and manufacturers will have to fully understand the details of their supply chains, the laws of the countries that are involved in their supply chains, and obtain confirmation from supply chain participants of their compliance with the laws regarding

slavery and human trafficking of the country or countries in which they are doing business. Important terms are undefined in Senate Bill 657, such as what actually constitutes “doing business in this state,” the “supply chain” and “good faith effort to eradicate.”

Under Subdivision (f) of Section 1714.43, the “exclusive remedy” for violation of Section 1714.43 will be an action brought by the Attorney General for injunctive relief.³ It is unclear whether the Attorney General will have jurisdiction to obtain injunctive relief to the extent that it affects interstate or international commerce.

If Senate Bill 657 is passed, Section 1714.43 would take effect on **January 1, 2011**.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this advisory.

Greg L. Johnson **(bio)**
Sacramento
+1.916.329.4715
greg.johnson@pillsburylaw.com

Deborah S. Thoren-Peden **(bio)**
Los Angeles
+1.213.488.7320
deborah.thoren-peden@pillsburylaw.com

Amy L. Pierce **(bio)**
Sacramento
+1.916.329.4765
amy.pierce@pillsburylaw.com

 ¹ As amended on June 1, 2009, Senate Bill 657 is limited to adding Section 1714.43.

² Subdivision (e) of Section 1714.43 confirms that nothing in Section 1714.43 “shall require a manufacturer to reveal a trade secret.”

³ Existing state law makes human trafficking a crime and permits a victim of human trafficking to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief.