

October 23, 2023

## New California Law on Baby Food Testing and Disclosures<sup>1</sup>

By [Steve Armstrong](#), [Suzie Trigg](#) and [Kristi Weisner](#)

This summary provides an overview of California Assembly Bill 899 (AB 899), which was signed into law by Governor Gavin Newsom on October 11, 2023.<sup>2</sup> This legislation represents the first of its kind in the nation in implementing the recommendations of the U.S. House of Representatives Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy (the “Subcommittee”) by requiring that manufacturers test for toxic heavy metals in commercial baby foods and make the results publicly available.<sup>3</sup>

### What is the purpose of the Law?

In its 2021 report on toxic heavy metals in baby foods, the Subcommittee found that significant levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury, posed a danger to infant neurological development and long-term brain function.<sup>4</sup> To address this concern, AB 899, now the law, requires baby food manufacturers to test their products for certain toxic heavy metals and post the test results on their websites.<sup>5</sup> Since California is the largest consumer market in the nation, AB 899 advances the Food and Drug Administration’s (FDA) initiative to reduce children’s exposure to cadmium, lead, mercury, and inorganic arsenic in their diets.<sup>6</sup>

### To what and to whom does the Law apply?

**The new law will require both in-state and out-of-state manufacturers of baby food to test their products for the possible presence of four “toxic elements” - arsenic, cadmium, lead, and mercury.<sup>7</sup>** AB 899 defines “baby food” as food, other than infant formula, that is packaged in jars, pouches, tubs, and boxes and intended specifically for children less than two years of age.<sup>8</sup> Under AB 899, manufacturers must test a “production aggregate,” defined as a quantity of product intended to have uniform composition, character, and quality and produced according to a master manufacturing order; “final baby food product” is defined as the finished product of baby food with a unique Universal Product Code (UPC) and not the constituent ingredients.<sup>9</sup> AB 899 will require testing of both production aggregate and final baby food product. CAL. HEALTH & SAFETY CODE §§ 110962(b)(1)(A)-(C).

### What are the requirements of the Law?

Beginning January 1, 2024, both in-state and out-of-state manufacturers of baby food for sale or distribution in California must test representative samples of each production aggregate of the manufacturer’s final baby food product for lead, mercury, cadmium, and arsenic.<sup>10</sup> Testing may be done prior to the packaging of individual units of baby food for sale or distribution but must be completed under the following conditions:<sup>11</sup>

- A representative sample of production aggregate of a final baby food product must be tested before packaging; the manufacturer may also test the final baby food product (i.e., product having a unique UPC) before packaging into individual units. CAL. HEALTH & SAFETY CODE § 110962(b)(1)(A)-(B).
- Testing must be carried out at a proficient laboratory, defined as a laboratory that meets the following criteria:<sup>12</sup>

# HAYNES BOONE

- (1) Is accredited under the standards of the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) 17025:2017 regarding the general requirements for the competence of testing and calibration laboratories.<sup>13</sup>
  - (2) Uses an analytical method that is at least as sensitive as that described in the FDA Elemental Analysis Manual 4.7.<sup>14</sup>
  - (3) Demonstrates proficiency in quantifying each toxic element to at least six micrograms of the toxic element to kilogram of food (g/kg) through an independent proficiency test, meaning that the laboratory achieves a z-score that is less than or equal to plus or minus two ( $\leq \pm 2$ ).<sup>15</sup>
- Testing of each final baby food product must also be done at least once a month.<sup>16</sup>
  - The test results must be provided to any authorized agent of the California State Department of Public Health upon request.<sup>17</sup>

Beginning January 1, 2025, manufacturers of baby food sold, offered for sale, manufactured, delivered, or held must also provide the following disclosures to consumers:

- The name and level of each toxic heavy metal present in each product aggregate of the final baby food product must be listed on the company's internet website for the duration of the product's shelf life plus one month, including, but not limited to product name, UPC, size, lot or batch numbers;<sup>18</sup>
- If the product is one for which the Food and Drug Administration (FDA) has established an action level, regulatory limit, or tolerance, the product label must contain the following:
  - (1) A quick response (QR) code on the product label that links to the manufacturer's internet website address disclosing the following:<sup>19</sup>
    - The test results for the toxic heavy metal;<sup>20</sup>
    - Information about the health implications of the toxic heavy metal in children;<sup>21</sup> and
    - Information on FDA guidance related to the toxic heavy metal.<sup>22</sup>
  - (2) The statement: "For information about toxic heavy metal testing on this product, scan the QR code."<sup>23</sup>

Without the required testing and disclosures, the baby food may not be sold, offered for sale, manufactured, delivered, or held in California.<sup>24</sup>

## **What are the consequences of noncompliance?**

While AB 899 provides that no person or entity shall sell in California or manufacture, deliver or hold or offer for sale a baby food that does not comply with its testing and disclosure provisions, the new law, which will become part of California's Sherman Food, Drug, and Cosmetic Law, does not specify how it is to be enforced.

Other provisions of the Sherman Food, Drug and Cosmetic Law empower local health officers to conduct inspections in retail outlets and take samples of food for testing. Cal. Health & Safety Code, Article 11 ("Local Enforcement"). Proceedings to enforce the Sherman, Food, Drug, and Cosmetic Law may be brought by the California Attorney General, any district attorney, or any city attorney. Cal. Health & Safety Code § 111840. Violations are punishable by a fine of no more than \$1,000 or a year in a county jail, or both. Cal. Health & Safety Code § 111825.

---

<sup>1</sup> Prepared by Suzie Trigg and Kristi Weisner as of October 23, 2023, based on California Assembly Bill 899 requiring baby food manufacturers to test their products for toxic heavy metals. Our review was limited to California Assembly Bill 899. Please refer to the text of California Assembly Bill 899 (available at [https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill\\_id=202320240AB899&showamends=false](https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=202320240AB899&showamends=false)) for more detailed information to ensure compliance.

# HAYNES BOONE

---

<sup>2</sup> See *California Bill Requiring Baby Food Manufacturers to Test Their Product for Toxic Heavy Metals Signed Into Law*, Al Muratsuchi, Assembly Member District 66 (Oct. 11, 2023), <https://a66.asmdc.org/press-releases/20231011-california-bill-requiring-baby-food-manufacturers-test-their-product-toxic#:~:text=About-California%20Bill%20Requiring%20Baby%20Food%20Manufacturers%20to%20Test%20Their%20Product,Heavy%20Metals%20Signed%20Into%20Law&text=Torrance%2C%20CA%20%E2%80%93%20Assembly%20Bill%20899,today%20by%20Governor%20Gavin%20Newsom..>

<sup>3</sup> *Id.*

<sup>4</sup> “Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury,” Staff Report, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, U.S. House of Representatives, February 4, 2021, <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf>.

<sup>5</sup> CAL. HEALTH & SAFETY CODE §§ 110962..

<sup>6</sup> See Statement of Assembly Member Al Muratsuchi, *supra* note 2.

<sup>7</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE §§ 110962(a)(9), (b).

<sup>8</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(a)(1).

<sup>9</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(a)(2).

<sup>10</sup> Assemb. B. 899 (Cal. 2023),

[https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=202320240AB899&showamends=false](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202320240AB899&showamends=false).

<sup>11</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE §§ 110962(b)(1)(B).

<sup>12</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE §§ 110962(b)(1), (c)(1–3).

<sup>13</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(c)(1).

<sup>14</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(c)(2).

<sup>15</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(c)(3).

<sup>16</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(1)(C).

<sup>17</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(1)(D).

<sup>18</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(2)(A)(i)-(ii).

<sup>19</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(2)(B)(i).

<sup>20</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(2)(B)(i)(I).

<sup>21</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(2)(B)(i)(II).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*; see also CAL. HEALTH & SAFETY CODE § 110962(b)(2)(B)(ii).

<sup>24</sup> CAL. HEALTH & SAFETY CODE § 110963