



PROP 65

FREQUENTLY ASKED QUESTIONS



What is Proposition 65?

Proposition 65 is a California law officially known as the California Safe Drinking Water and Toxic Enforcement Act of 1986. It requires businesses to provide a “clear and reasonable” warning before exposing persons consumers, employees, and the general public to chemicals that are known to the state of California to cause cancer, birth defects, or other reproductive harm (“Listed Chemicals”). The Proposition 65 warning applies to exposures from consumer products, emissions from facilities, and workplace exposures in the State of California. Proposition 65 is a “right to know” law as opposed to a safety law, meaning Proposition 65 does not ban the use of any chemicals, but is intended to ensure the public is informed as to its exposure to Listed Chemicals.

What is/are the chemical(s) involved?

The list of the 800+Prop65 chemicals can be found at:
http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html . This list is periodically updated.

Are workers/employees/consumers at risk using products with a Prop65 warning?

A Prop 65 warning does not mean that the product is unsafe; however, employees and consumers should be made aware of and heed all product handling and use warnings. A Prop 65 warning does not mean that the product will actually cause cancer or other reproductive harm when used in its intended manner. Prop 65 standards for warnings are often very stringent. For example, for reproductive toxicants, the level for warnings is



1000 times lower than the lowest level at which animal studies reported no reproductive health effect.

How is a supplier selling and distributing a product containing a Prop65 Listed Chemical to provide the required warning?

A business must provide a warning with its product if it is reasonably foreseeable that a person in California will buy or receive the product. The regulations provide that the warning may appear (1) on a product, its packaging, or written materials accompanying the product, (2) at the retail outlet through shelf labeling or signs, or (3) appear through a system of signs, public advertising identifying the system, and tollfree information services provided that the warning is “clear and reasonable”. The Attorney General has also advised that the warning must be provided prior to purchase for internet or mail order sales or the supplier must offer free return shipping.

Who is subject to the Proposition 65 Warning Requirement?

Proposition 65 applies to any “person in the course of doing business” with ten or more employees, including companies located outside the State of California. The term “person” is defined broadly to include any individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association. “In the course Recent litigation in California has shown it to be very difficult for producers to defend their product, even if the producer believes it has scientifically valid reasons to defend their position. The legal repercussions outweigh the notice implication.



Who enforces Proposition 65?

Proposition 65 gives authority to the State Attorney General and local governments (district attorneys, city attorneys and county counsel) to take enforcement action against businesses that violate the law. The statute provides for a court to impose penalties of up to \$2500 per day against a business for each day of exposure to a product sold or distributed by that business without a required warning. Proposition 65 further authorizes for injunctive relief requiring warnings be provided on future sales and distribution of products containing listed chemicals and directing market withdrawal of products that do have such warnings.

As noted above, Proposition 65 also permits a private citizen to bring the same enforcement actions against businesses to impose penalties, obtain injunctive relief and recover investigative costs and attorney's fees, provided that the private plaintiff satisfies certain procedural requirements. The vast majority of Proposition 65 litigation in California today is brought by private plaintiffs represented by a handful of law firms that specialize in this type of litigation. These private plaintiffs are commonly called "bounty hunters".

How do I protect myself from the bounty hunters?

Consider consulting a California Prop. 65 knowledgeable lawyer.

I'm uncertain of my next steps. What do I do?

Prop. 65 warnings are common throughout California in a wide range of commercial and other settings- in hospitals, restaurants, bars, hotels,



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schools, grocery stores, amusement parks and on a wide variety of consumer products. People are used to them in California. If you want more information about your specific product, contact your supplier for more information regarding the chemical composition of products, product components and raw materials supplied to you. Check the Material Safety Data Sheet that accompanies any raw materials used in your own processes. If your product can end up in California, then you need a Proposition 65 strategy.

MORE INFORMATION:

Prop 65 Homepage:

<https://p65warnings.ca.gov/>

Prop 65 in Plain Language

<http://oehha.ca.gov/prop65/background/p65plain.html>

List of Prop 65 Chemicals

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html

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