

NEW WARNING REQUIREMENTS UNDER CALIFORNIA PROPOSITION 65

GOING INTO EFFECT ON AUGUST 30, 2018

International product manufacturers distributing in the United States should be aware of evolving regulatory and liability factors that may be different in their home countries. Depending on the product, compliance may be necessary with both federal and differing state regulations. Moreover, United States litigation rules are dependent on jurisdiction and can also vary greatly from those of other countries.

In this alert, we address new government-mandated chemical warning requirements that will be effective in California on August 30, 2018. Manufacturers, wholesalers and retailers should be aware of and comply with the new warning requirements to avoid fines and penalties.

Key issues:

1. Violation of the new warning requirements may result in a fine of \$2,500.00 per day per violation
2. The new regulations will go into effect on August 30, 2018

The official name of Proposition 65 is the Safe Drinking Water and Toxic Enforcement Act of 1986.^[1] Proposition 65 mandates a “clear and reasonable warning” in case of use of a chemical known to the state to cause cancer or reproductive toxicity.” The California Office of Environmental Health Hazard Assessment (the “OEHHA”) website maintains a list of carcinogenic and reproductively toxic chemicals.[2] Products sold in the State of California containing a chemical on that list must bear a conspicuous warning.

The amended regulations,^[2] operative on August 30, 2018, require that Proposition 65 warnings will need to identify at least one Proposition 65 chemical by name and expressly inform consumers that the product may “expose” the consumer to the chemical. The common general warning that a product “contains” an unidentified Proposition 65 chemical will no longer be sufficient. It is strongly recommended that any business selling products in California consult with experienced counsel so that chemicals on the Proposition 65 list may be identified, and any necessary Proposition 65 warning signs be prepared prior to the new regulations going into effect.

If a business fails to comply with the new warning requirements, there will be a penalty. Under California law, a person who has violated Section 25249.5 or 25249.6 of the Health and Safety Code is liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) per day for each violation in addition to any other penalty established by law. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

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1. Office of Environmental Health Hazard Assessment (“OEHHA”).
 2. <https://oehha.ca.gov/media/downloads/crn/p65single07072017.pdf>.