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OVERSIGHT HEARING

PROPOSITION 65 UPDATE:

TOXIC CHEMICAL EXPOSURE: PROTECTING AND INFORMING THE PUBLIC

To: Members of the Assembly Committee on Environmental Safety & Toxic Materials

From: Assemblymember Bill Quirk, Chair

Subject: Update on Proposition 65 regulations, and how they inform and protect the public

Date: Tuesday, August 22, 2017

Introduction

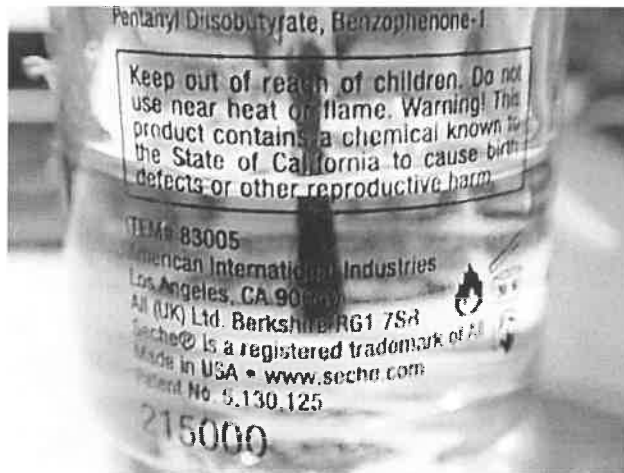
Proposition 65 is intended to inform the public about, and protect the public from, exposure to toxic chemicals. At this hearing, the Assembly Environmental Safety and Toxic Materials Committee (Committee) will examine the challenges to, and potential solutions for, improving public information and industry compliance under Proposition 65. The Committee has asked witnesses to provide an overview of how Proposition 65 works, including a synopsis of the intended benefits of the Proposition. The Committee will also investigate how and whether the Office of Environmental Health Hazard Assessment's (OEHHA's) 2016 amendment to the Proposition 65 warnings regulations better inform the public and make compliance more straightforward for businesses.

Proposition 65: overview of the law

In 1986, California voters approved, by a 63-37 percent margin, a ballot initiative, the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, to address their concern that "hazardous chemicals pose a serious potential threat to their health and well-being, [and] that state government agencies have failed to provide them with adequate protection..." Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, currently includes approximately 850 chemicals. OEHHA implements the Proposition 65

program, including facilitating the scientific and regulatory work associated with identifying and listing chemicals that cause cancer or reproductive toxicity and adopting and maintaining the implementing regulations. The law is enforced by the Attorney General, district attorneys, certain city attorneys, and individuals or groups acting in the public interest.

Under Proposition 65, businesses in California are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a Proposition 65-listed carcinogen or reproductive toxin. Warnings can be made in a variety of ways, including by labeling a consumer product, posting signs, distributing notices, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warnings requirements. Current Proposition 65 warnings are familiar to California consumers.



Proposition 65 also prohibits companies that do business within California from knowingly discharging listed carcinogens and reproductive toxins into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm.

How does Proposition 65 protect the public?

According to the Office of the Attorney General, the provisions of Proposition 65 have been successful at protecting consumers from toxic chemicals by several means, as follows. Proposition 65 has motivated businesses to eliminate or reduce listed, or likely to be listed, toxic chemicals in numerous consumer products. Products that have been reformulated as a result of notices of violation or litigation include ceramic tableware, artificial turf, household faucets, children's jewelry, potato chips, candy, and vitamin supplements. Proposition 65 has also resulted in significant reductions in toxic air pollution – both outdoor (diesel school bus and grocery truck emissions) and indoor (salon worker exposures to formaldehyde, toxic solvents in nail products, and formaldehyde gas released from the building materials in portable classrooms). Proposition 65 has prompted "quiet compliance" without the need for litigation, in which manufacturers voluntarily take steps to comply by providing their suppliers with specifications so that the ingredients in their products avoid, or significantly limit exposure to, listed chemicals. The law has also educated the general public about exposures to specific toxic chemicals, creating both demand and market reward for less-toxic products. Finally, Proposition 65 litigation has identified specific chemical exposure concerns and led to regulatory reforms to benefit public health at the state and national level.

Challenges with Proposition 65


According to OEHHA, although Proposition 65 has benefited Californians, it has come at a cost for companies doing business in the state. Businesses have incurred expenses to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings, and otherwise comply with the law. Recognizing that compliance with Proposition 65 comes at a price, OEHHA asserts that it is working to make the law's regulatory requirements as clear as possible and ensure that chemicals are listed in accordance with rigorous science in an open public process.

New warnings regulations: changes the regulated community and the public can expect

In 2013, Gov. Brown called for changes to Proposition 65 to, "require more useful information to the public on what they are being exposed to and how they can protect themselves."

To make Proposition 65 warnings more meaningful and useful for the public, to reduce "over-warning, in which businesses provide unnecessary warnings, and to give businesses clearer guidelines on how and where to provide warnings, in August 2016, OEHHA adopted amended regulations for the provision of "clear and reasonable" Proposition 65 warnings. The new regulations will be effective on August 30, 2018.

The new regulations require the Proposition 65 warning label to:

1. State the product "can expose you to" a Proposition 65 chemical rather than saying the product "contains" the chemical;
2. Include the name of at least one listed chemical that prompted the warning;
3. Include the Internet address for OEHHA's new Proposition 65 warnings website, www.P65Warnings.ca.gov, which includes additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them; and,
4. Include a triangular yellow warning symbol on most warnings. 


The new regulations also make these changes to Proposition 65 requirements:

1. Require "tailored" warnings that provide more specific information for certain kinds of exposures, products, and places;
2. Provide for website warnings for products purchased over the Internet;
3. Provide for warnings in languages other than English; and,
4. Clarify the roles and responsibilities of manufacturers and retailers in providing warnings.

Under the previous regulations, a typical Proposition 65 warning states:

"WARNING: This product contains a chemical known to the State of California to cause cancer."

A warning under the new regulations would read:

 WARNING: This product can expose you to chemicals including [one or more of the listed chemicals], which [is/are] known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov."