

## California To Implement New Warning Regulations For Prop 65

On 30 August 2016, the California Office of Environmental Health Hazard Assessment (OEHHA) announced adoption of new regulations for “**Clear and Reasonable Warnings**” under *Article 6 of Title 27 California Code of Regulations (Proposition 65)*. The new regulations, which clarified responsibility to provide consumer product exposure warnings and provided guidance on preparing and transmitting clear and reasonable warnings for consumer products covered by the Act, will take full effect starting from **30 August 2018**. In the interim period, either the current or the new version of warning labels may be used.

Below is a summary of the major requirements of the new warning regulations.

### Responsibility to Provide Consumer Product Exposure Warnings:

- ✓ Manufacturer, producer, packager, importer, supplier or distributor of a product should provide a warning or affix a warning label to the product, or provide a written notice to the authorized agent for a retail seller, which
  - states that the product may result in an exposure to one or more of listed chemicals under Prop 65;
  - includes the exact name or description of the product or other identification of the product;
  - includes all necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for products sold on the internet.
- If a written notice is provided to the authorized agent of the retail seller,
  - the notice must be renewed and confirmation of receipt of the renewed notice must be received within six months during the first year of this new regulation and then annually afterward;
  - an additional notice is required within 90 days when a different or additional chemical name or endpoint (cancer or reproductive toxicity) is included in the warning.
- ✓ The retail seller shall be responsible for placing and maintaining the warning materials, including warnings for products sold on the internet.
- ✓ The retail seller shall be responsible for providing the warning for consumer product exposure only in any of the following cases:
  - retailer-branded or licensed products;
  - retailer knowingly introduced or caused the creation of a listed chemical into the product;
  - retailer has covered, obscured or altered a warning label on the product;
  - retailer has received a notice and warning materials but sold the product without the warning;
  - retailer has actual knowledge of the potential consumer product exposure requiring the warning and there is no one in the supply chain providing a warning for the product.

### Clear and Reasonable Warnings – Methods and Content:

The new regulations have provided content requirements and specified acceptable methods of transmission for warnings of consumer product exposure and other exposure areas – including environmental exposure; occupational exposure; specific product, chemical and area exposure; food exposure; and others. Only guidance on consumer product exposure warnings is covered here; other details are available from the California OEHHA website (<http://www.propo65warnings.ca.gov/>).

## Consumer Product Exposure Warnings:



**Method of Transmission:** Consumer product exposure warnings must be prominently displayed on a label, labeling, or sign, and must be displayed conspicuously for legibility and easy understanding by ordinary consumers through one or more of the following methods:

- (1) Product specific warning shall be provided
  - On a posted sign, shelf tag, or shelf sign at each point of display of the product;
  - Automatically via any electronic device or process to the purchaser prior to or during the purchase of product;
- (2) For internet purchase, the warning must be provided by including the warning or a clearly marked hyperlink using the word “WARNING” on the product display page, or by other means prior to completing the purchase;
- (3) For catalog purchase, the warning must be provided in the catalog in a manner that clearly associates it with the product;
- (4) Where a warning is placed contains consumer information in a language other than English, the warning must also be provided in that language in addition to English.



**Content:** A consumer product exposure warning should include the name of one or more of the listed chemicals in the consumer product in the text of the warning and contain the following elements:

- (1) A symbol containing a yellow equilateral triangle with a black exclamation point inside. The triangle has to be designed with bold black outline. Black and white symbol can also be accepted when the sign, label or shelf tag of the product is not printed using the color yellow. The symbol should be placed to the left of the warning text with the size larger or same as the word “**WARNING**”;
- (2) The word “**WARNING:**” is all in capital letters and bold printed. Type size of the entire warning message must be at least 6-point and no smaller than the largest type size used for other consumer information on the product.

For product specific warning, a short form without the name of chemicals contained in the product is allowed if it complies with the following content requirements.



For exposure to	Content
Listed carcinogens	 <b>WARNING:</b> Cancer – <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a> .
Listed reproductive toxicants	 <b>WARNING:</b> Reproductive harm – <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a> .

A detailed warning text has to be provided if there is no short-form warning on the product. For example,

For exposure to	Content
Listed carcinogens	 <b>WARNING:</b> This product can expose you to [chemicals including] [ <i>name of one or more chemicals</i> ], which is [ <i>are</i> ] known to the State of California to cause cancer. For more information go to <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a> .
Listed reproductive toxicants	 <b>WARNING:</b> This product can expose you to [chemicals including] [ <i>name of one or more chemicals</i> ], which is [ <i>are</i> ] known to the State of California to cause birth defects or other reproductive harm. For more information go to <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a> .

Examples of special warnings and method of transmission for other products are as follows:

Product	Method of Transmission	Content	
Food	Font size of the text should be larger or same as the type size of other information on the product and no smaller than 6-point.	For exposure to listed carcinogen	<b>WARNING:</b> Consuming this product can expose you to [chemicals including] [ <i>name of one or more chemicals</i> ], which is [ <i>are</i> ] known to the State of California to cause cancer. For more information go to <a href="http://www.P65Warnings.ca.gov/food">www.P65Warnings.ca.gov/food</a> .
		For exposure to listed reproductive toxicant	<b>WARNING:</b> Consuming this product can expose you to [chemicals including] [ <i>name of one or more chemicals</i> ], which is [ <i>are</i> ] known to the State of California to cause birth defects or other reproductive harm. For more information go to <a href="http://www.P65Warnings.ca.gov/food">www.P65Warnings.ca.gov/food</a> .
Alcoholic Beverage	<p>Warning should be provided on a menu or list identifying the alcoholic beverages served on the premises.</p> <p>For alcoholic beverages sold or distributed within California through package delivery services, warning should be provided in the shipping container or delivery package in font size no smaller than both 8-point and the largest type size used for other consumer information.</p>	<b>WARNING:</b> Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to <a href="http://www.P65Warnings.ca.gov/alcohol">www.P65Warnings.ca.gov/alcohol</a> .	
Food and Beverage	Warning must be provided in font size no smaller than the largest type size used for the names of general menu items.	<b>WARNING:</b> Certain foods and beverages sold or served here can expose you to chemicals including acrylamide in many fried or baked foods, and mercury in fish, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to <a href="http://www.P65Warnings.ca.gov/restaurant">www.P65Warnings.ca.gov/restaurant</a> .	

Product	Method of Transmission	Content
<b>Raw Wood</b>	<p>One or both methods below can be used:</p> <ol style="list-style-type: none"> <li>1. A warning has to be provided either at the point of sale or display of the wood product with the size no smaller than 8<sup>1</sup>/<sub>2</sub> by 11 inches and printed in font size no smaller than 20-point.</li> <li>2. A warning may be provided on the invoice or receipt in font size no smaller than 12-point when the product is sold in bulk form.</li> </ol>	<p> <b>WARNING:</b> Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to <a href="http://www.P65Warnings.ca.gov/wood">www.P65Warnings.ca.gov/wood</a>.</p>
<b>Furniture</b>	<p>The Warning has to be affixed to the furniture product by using either of the methods below,</p> <ol style="list-style-type: none"> <li>1. Displayed at each public entrance or point of display in the form of a notice or sign no smaller than 8<sup>1</sup>/<sub>2</sub> by 11 inches and the text printed in font size no smaller than 28-point.</li> <li>2. Printed or stamped on each receipt in font size no smaller than 12-point.</li> </ol>	<p> <b>WARNING:</b> This product can expose you to chemicals including [<i>name of one or more chemicals known to cause cancer, name of one or more chemicals known to cause reproductive toxicity, or name of one or more chemicals known to cause both cancer and birth defects or other reproductive harm</i>], which is [<i>are</i>] known to the State of California to cause cancer or birth defects or other reproductive harm. For more information go to <a href="http://www.P65Warnings.ca.gov/furniture">www.P65Warnings.ca.gov/furniture</a>.</p>

Subsection 25607.30 and 25607.31 about warnings for exposure to Bisphenol A (BPA) from canned and bottled food and beverages has been repealed since 1 July, 2017. The old version which covers warning for BPA (Section 25603.3) still remains in effect until 30 December, 2017.

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