

## **Important Changes to Proposition 65 - Effective April 1, 2020**

The Safe Drinking Water and Toxic Enforcement Act of 1986, otherwise known as Proposition 65 (Prop 65), is a right-to-know statute that requires the state of California to maintain and update a list of chemicals known to cause cancer, birth defects or other reproductive harm. Prop 65's goal is to protect California's drinking water sources from being contaminated with such chemicals.

### **Amendments to Title 27, California Code of Regulations Section 25600.2 - Responsibilities for Providing Consumer Product Exposure Warnings**

In January 2020, California's Office of Environmental Health Hazard Assessment (OEHHA) adopted its proposed amendments to Prop 65 regulations. [Subsections \(b\), \(c\), \(f\), and \(i\) of section 25600.2](#) were amended, providing further clarification on the responsibilities of parties in the supply chain for providing product exposure warnings to consumers. These amendments take effect on April 1, 2020.

More specifically, the new amendments highlight the circumstances under which a supply chain entity, one with primary Prop 65 responsibility, can shift its burden to a retail seller. In its [Initial Statement of Reasons \(ISOR\)](#), OEHHA, asserts that these clarifications are necessary because "in some situations, the original manufacturer, distributor, importer or others in the chain commerce may not know where or by whom the product will ultimately be sold to a consumer." ISOR, page 4.

Under the amended regulations, once an intermediate party provides the legally required notice to the retail seller, the intermediate party is discharged from their Prop 65 responsibility, provided the intermediate party obtained confirmation of receipt of such notice from the retail seller. When this occurs, it is OEHHA's position that "if a consumer does not receive a warning, enforcement action can be taken against those businesses that were given the notice, and subsequently failed to pass it along to either their customers or the end consumer." OEHHA [Final Statement of Reasons](#), page 5.

Amendments to subsection (f) changed the definition of "actual knowledge" with regard to information that triggers a retail seller's responsibility to warn a consumer. Under the new definition, "actual knowledge" means "the retail seller receives information from any reliable source that allows it to identify the specific product or products that cause the consumer product exposure. Such knowledge must be received by the retail seller, its authorized agent or a person whose knowledge can be imputed to the retail seller."

OEHHA regulatory text and supporting rulemaking documents are available [here](#).

These latest amendments to Prop 65 can be utilized strategically by some businesses and can have important impacts on others. If you would like more information about how the changes to Proposition 65 may affect you or your business, please contact us at [Contact@HartmanKingLaw.com](mailto:Contact@HartmanKingLaw.com).

#Proposition65 #OEHHA #RightToKnow #NoticeOfAmendments

© 2020 – Hartman King PC. All rights reserved. The information in this article has been prepared by Hartman King PC for informational purposes only and does not constitute legal advice.