

Proposition 65

No matter your industry, if you sell in California or your product is sold there, Proposition 65 compliance is more important than ever.

About

Consumers increasingly demand information about the substances in the foods they eat, the clothing they wear, the bottle they give their baby, and all the many products they use on a regular basis.

By requiring businesses to provide a warning before exposing consumers in California to any one of the 900-plus substances listed by the state, California's Proposition 65 was ahead of the curve in focusing the attention of companies and the public on the chemicals that are in products manufactured, used, consumed, and purchased every day.

The Global Impact of Prop 65

Today, Prop 65 remains the single most consequential state-level environmental, public health regulatory program in the United States—and a significant source of liability for every manufacturer, distributor, and retailer that introduces products into the state.

The reach of Prop 65 is global, touching businesses well beyond California's borders, particularly with the exponential growth of product sales online.

Given the ever-growing number of chemicals currently listed—including widely used substances such as phthalates, bisphenols, and PFAS, as well as numerous naturally occurring elements, such as lead—the scope of affected products is enormous. Almost any product made with plastics or metals—and almost any food consumed—potentially contains a listed Prop 65 chemical.

Prop 65 Enforcement is Growing—We Can Help

Prop 65 enforcement—particularly by private plaintiff groups—is growing at a rapid pace, with the number of actions initiated tripling over the last decade.

While private enforcers collect tens of millions of dollars annually in penalties, these amounts are a fraction of the compliance costs that companies incur to defend themselves in these actions.

Using our broad experience in environmental law, health and safety, food and drug regulation, and litigation, we guide you in developing appropriate Prop 65 compliance programs, tailored to your business and supply chain.

We have resolved dozens of Prop 65 cases—ranging from quick settlements to successful dismissals to multi-year litigation—for clients across a wide range of industries, including clothing and fashion accessories, food and nutritional supplements, cosmetics, automotive products, and metal products.

So, when you do receive a “60-day notice of violation,” we can help you navigate the enforcement process to a cost-effective resolution.

Experience

- Defended clients and negotiated numerous settlements of Proposition 65 complaints, including cases involving clothing retailers, automotive products and cosmetics.
- Provided advice on implementation of new Proposition 65 warning requirements.
- Extensive experience addressing toxicity, risk and associated labeling issues under Proposition 65 and numerous other federal and state regulatory programs.
- Advised a global beverage company on significant Proposition 65 strategy matters.
- Monitored, analyzed and reported on Proposition 65 developments concerning food ingredients and implications for a trade association representing U.S. chewing gum manufacturers.
- Successfully petitioned California OEHHA to amend the Proposition 65 listings for chromium and nickel.
- Drafted comments on proposed Proposition 65 regulatory amendments.
- Represented clients in Proposition 65 litigation matters involving FDA-related federal preemption issues.
- Contributed to a case in which a food industry trade association challenged the California interpretation of the exemption for naturally occurring substances in food.

Related Services

Environmental Litigation
Environmental Regulation
Fashion and Retail

Contacts

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