



FASHION ACTION

Current News from the California Fashion Association

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Anti-Proposition 65 Editorial.... In The News **AS SEEN IN.....Los Angeles Business Journal** (Oct 5, 2018)

“What’s Your Sign? Check Again on Prop. 65”

A few years ago, a hardware store owner shared the story of how a group of attorneys traveled from San Diego to Los Angeles to visit his store. They zoomed in on a \$1.29 package of alligator clips to see if they were labeled with Proposition 65 warnings.

For not having the label, the man paid an exorbitant \$60,000-plus to settle the lawsuit that required four attorneys: one for the alligator clip manufacturer, one for the vendor, one for the plaintiff and one for himself. All for a packet of alligator clips that cost the hardware store owner 60 cents.

This is just one example of an abusive Proposition 65 lawsuit. More are coming now that new warnings and signage requirements have taken effect under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, better known as Prop. 65.

The latest iteration, which went into effect Aug. 30, requires business owners to list the full chemical name of one or more of the 900-plus chemicals published by the Office of Environmental Health Hazard Assessment (OEHHA), an agency under the umbrella of the California Environmental Protection Agency. If regulators at OEHHA determine any product contains “a chemical known to the state to cause cancer or reproductive toxicity,” then manufacturers, distributors and retailers all face potential legal exposure. Failure to comply can result in fines of up to \$2,500 a day and legal settlements that often run \$60,000 to \$80,000 for small businesses — simply for not properly displaying a \$40 sign.

This minor, technical violation of the law could result in business closures and job losses, particularly for small businesses.

Citizens Against Lawsuit Abuse encourages business owners to set aside a little time to become familiar with OEHHA requirements as a way to protect themselves against meritless Prop. 65 litigation. Business owners and managers should start by reviewing the chemicals listed on the labels and safety data sheets of products sold or used at the business, then check those against the list available from OEHHA at www.p65warnings.ca.gov. The website allows persons to enter the names of chemicals present in a product or facility and see if those substances match any deemed dangerous by the state. If there is a match, businesses will need to carefully follow the state’s instructions for posting signage.

Along with other requirements, there are two significant mandates that must be followed. While existing signage regulations only oblige a business to warn that dangerous chemicals are present, new signs must list any chemicals from each of two categories: those known to cause cancer and those that cause reproductive harm.

Under the **new regulations**, warning signs are required for the mere presence of a listed substance, even if it poses little risk to consumers. Prop. 65 warnings are required for cars, restaurants, hotels, pharmacies, parking garages and several foods. In just the first few months of 2018 alone, products listed in Prop. 65 litigation have included bread, chocolate, French fries, gingerbread cookies, sunscreen, trampolines, flip-flops and more.

When it was enacted in 1986, Prop. 65 was intended to protect sources of drinking water from chemicals that cause cancer and reproductive harm. In its original version, **the law called on businesses to post signage concerning just 29 substances; it is now over 900.**

Prop. 65 allows for private rights of action, meaning individuals can partner with trial lawyers to sue businesses on behalf of the state. With little focus on consumer protection, **Prop. 65 is now used primarily as a tool to extract settlements from small businesses over technical violations. It's the quintessential shakedown lawsuit.**

As in any business matter, please consult your attorney for guidance for your individual business regarding compliance with Prop. 65. Citizens Against Lawsuit Abuse intends to raise awareness, not provide legal advice.

Maryann Marino is the downtown-based regional director of Citizens Against Lawsuit Abuse.

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