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California's Proposition 65: New Requirements for Alcoholic Beverages Purchased Over the Internet or Through Mobile Apps Effective April 1, 2021

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California's Office of Environmental Health Hazard Assessment (OEHHA) has recently amended Proposition 65. These amendments include substantive changes related to the methods for providing warnings for alcoholic beverages purchased over the internet or through mobile apps. These changes will be effective on April 1, 2021.

Background on Proposition 65

Proposition 65 requires that warnings be provided before persons are exposed to chemicals known to cause cancer or reproductive toxicity. The Code requires the State to publish a list of chemicals known to cause cancer, birth defects or other reproductive harm. The list is updated periodically, and currently includes about 900 chemicals along with a "safe harbor level" for chemicals. The current list may be found at <https://oehha.ca.gov/proposition-65/proposition-65-list>.

Exposure may occur in a wide variety of contexts, including product sales, food and beverage consumption, environmental exposure, and occupational exposure. This means that virtually every company that manufactures, distributes, or sells goods, food or beverages that reach California consumers, along with every company that employs or hosts individuals in its California place of business, must be cognizant of Proposition 65 and how it relates to their business.

If exposure to a listed chemical above the safe harbor level arises, businesses with 10 or more employees must either reformulate to eliminate the offending chemical or, more commonly, provide a "clear and reasonable" warning before exposing anyone to the listed chemical.

Penalties for violations can be up to \$2,500 per day, per violation.

Substantive Changes Related to the Methods for Providing Warnings for Alcoholic Beverages Purchased Over the Internet or Through Mobile Apps

Alcoholic beverages have been on the Proposition 65 list of chemicals known to cause cancer since 1988. The recent amendment does not change the language of the warnings required for alcoholic beverage sales or the method for providing the warning for alcoholic beverages sold at a physical location. The amendment does, however, provide substantive changes related to the method of providing warnings for alcoholic beverages purchased over the internet or through mobile apps. The amendment requires:

- A compliant warning on the internet site, mobile app, or in the catalog; and
- The same warning also provided to the purchaser or delivery recipient prior to or contemporaneously with the delivery of the product by one of the following methods: (a) in the shipping container or delivery package, or (b) by email or text message as part of the electronically delivered receipt or confirmation for the applicable purchase.

Conclusion

Companies that sell alcoholic beverages online should seek advice from qualified legal counsel experienced in Proposition 65 compliance. Enforcers of Proposition 65 have not only targeted stand-alone alcoholic beverage sales, but also companies that sell gift baskets that include alcoholic beverages to California consumers. Hahn Loeser provides Proposition 65 compliance advice to its clients that sell alcoholic beverages online. If you are concerned that your business is or will become subject to Proposition 65, if you want to ensure that your existing procedures remain compliant with the new requirements, or if you receive a 60-Day Notice, we encourage you to contact us.



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