



# Proposition 65: What Cannabis Operators Need to Know

***Presented By:***

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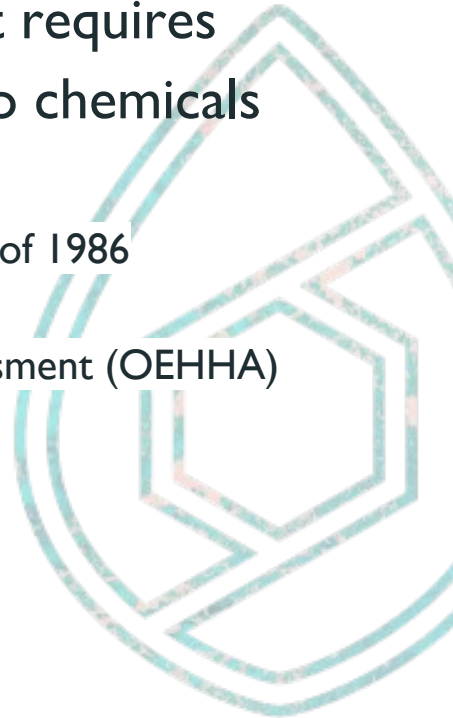
# Overview of Prop. 65

# What is Proposition 65?

- California law, passed as a voter initiative in 1986, that requires businesses to provide warnings regarding exposures to chemicals that cause cancer or reproductive harm.
  - Also known as the Safe Drinking Water and Toxic Enforcement Act of 1986
  - Codified at §§ 25249.5 - 25249.14 of the Health & Safety Code
  - Implemented by the Office of Environmental Health & Hazard Assessment (OEHHHA)

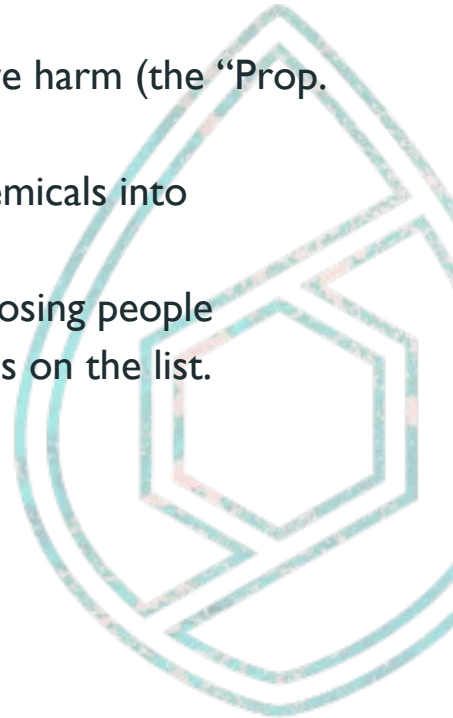


**OEHHHA**  
California Office of Environmental  
Health Hazard Assessment



# What is Proposition 65?

- Main components of Prop. 65:
  - State-created list of chemicals known to cause cancer or reproductive harm (the “Prop. 65 list”).
  - Prohibition on knowingly discharging significant amounts of listed chemicals into waterways.
  - Requirement that businesses provide warnings before knowingly exposing people (customers, employees, or other members of the public) to chemicals on the list.



# The “Prop. 65 List”

- Contains chemicals known by the State of California as carcinogens and reproductive intoxicants.
- Includes naturally-occurring as well as synthetic chemicals.
- Four ways for something to get added to the list:
  1. Findings of independent committees
  2. Identification by an organization designated as an "authoritative body" by the CIC or DART Identification Committee
  3. Requirement of state or federal government agency
  4. Meeting certain criteria in the California Labor Code

<https://oehha.ca.gov/proposition-65/chemicals>



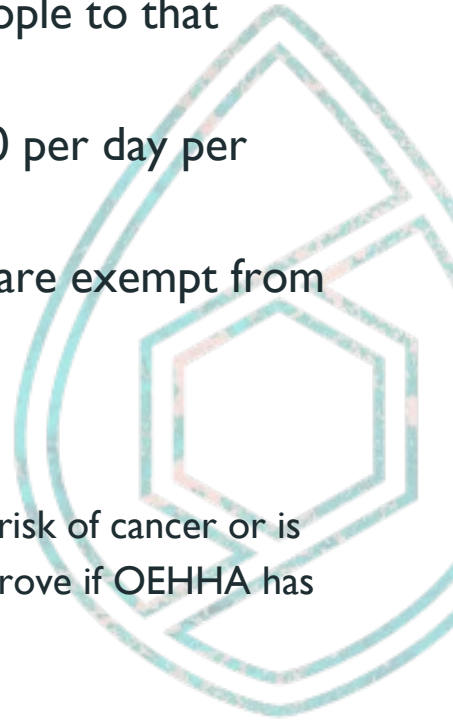
# Common Chemicals on the Prop. 65 List

- Marijuana smoke
- Isoprene (terpene)
- Beta-myrcene (terpene)
- Carbon monoxide
- Carbaryl (pesticide)
- Myclobutanil (pesticide)
- Tobacco smoke
- Heavy metals such as Lead, Arsenic, Mercury
- Chemicals used in plastics
- ...and the list goes on!



# What does Prop. 65 require?

- If a chemical is included on “the list,” then businesses exposing people to that chemical must typically provide a “clear and reasonable” warning.
- Penalties for not providing proper notices can be as high as \$2,500 per day per violation.
- Businesses with less than 10 employees and government agencies are exempt from the Prop. 65 warning requirements.
- A warning is not required if:
  - No exposure to chemicals on “the list”
  - Exposure level to listed chemicals is low enough not to pose a significant risk of cancer or is significantly below levels observed to cause reproductive harm (hard to prove if OEHHA has not already a “safe harbor” level listed for that chemical)





# Who's Responsible for Providing Warnings?

- Primary responsibility to provide warning belongs to the manufacturer, producer, packager, importer, supplier, or distributor. They can comply with this by providing the required warning(s) to the retailer, which can be on-product warnings or information and signage to accompany the products. Retailer is responsible for the placement of the signage.
- Retail seller is responsible for providing the warning if they have knowingly caused exposure; if they're selling something under a trademark that they or an affiliate owns or has licensed; if they obscure warning included on a product or fail to conspicuously display the required signage provided to them by a producer; or they have actual knowledge of exposure and there's no other responsibly party in California who can provide the warning.
- NOTE: New warning regulations allow retailer and producers/suppliers to allocate legal responsibility for providing the required warnings.

# Enforcement of Prop. 65

# Enforcement of Prop. 65

- Proposition 65 is administered by the Office of Environmental Health and Hazard Assessment (OEHHA), which is part of the California Environmental Protection Agency (Cal EPA).
- The California Attorney General's Office enforces Prop. 65, and any district or city attorney (for larger cities) may also enforce this law. Prop. 65 also creates a private right of action that allows any individual acting in the public interest to file a suit against a business alleged to be in violation of this law.
- Possibility of attorney's fees for the party who initiated the action.
- In recent years there has been a spike in the number of cannabis-related Prop. 65 notices sent. Dispensaries in particular are targeted most often.





**XAVIER BECERRA**

*Attorney General*

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## Proposition 65 Enforcement Reporting

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### Proposition 65 Information and Enforcement Reporting

State law requires any person suing "in the public interest" to enforce [Proposition 65](#), "The Safe Drinking Water and Toxic Enforcement Act of 1986", to notify the Attorney General of the lawsuit and outcome of the case.

This site provides an on-line process for reporting Proposition 65 private enforcement actions in compliance with [California Health and Safety Code Section 25249.7 \(d\) \(e\) and \(f\)](#). See "Electronic Filing" on this page for details.

All reports on Proposition 65 private actions must be filed electronically with the Attorney General's

#### Proposition 65

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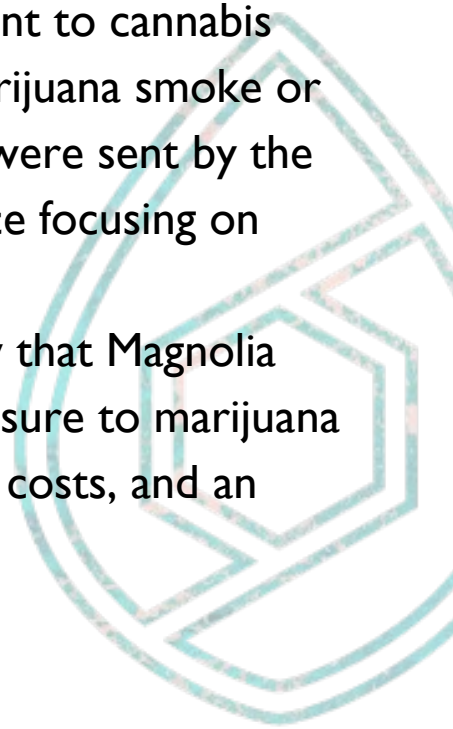
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**Electronic Filing**



# Cannabis-Related Enforcement of Prop. 65

- Over the past few years, a number of 60-day notices have been sent to cannabis companies alleging that they knowingly exposed consumers to marijuana smoke or other listed chemicals (such as pesticides). Many of these notices were sent by the same plaintiffs and law firms, some of whom have an entire practice focusing on trying to catch alleged Prop. 65 violators for monetary gain.
- Settlement amounts can be quite high. For example, records show that Magnolia Wellness recently paid \$67,500 to settle a 2017 allegation of exposure to marijuana smoke. This amount included a civil penalty, attorney's fees, court costs, and an "additional settlement payment."



## Judgment

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**AG Number:** 2017-02558

**Judgment PDF:**  [2017-02558J4141.pdf](#)

**Judgment Date:** 04/18/2019

**Case Name:** Center for Advanced Public Awareness v Mag Wellness, Inc.

**Court Name:** Alameda County Superior Court

**Court Docket Number:** RG17865225

**Plaintiff:** Center for Advanced Public Awareness

**Plaintiff Attorney:** Aqua Terra Aeris Law Group

**Defendant:** Mag Wellness, Inc.

Eureka Management Services, Inc.

**Injunctive Relief:** Warning

**\*Non-Contingent Civil Penalty:** \$ 17,000.00

**Attorney(s) Fees and Costs:** \$ 38,000.00

**Payment in Lieu of Penalty:** \$ 12,500.00 (\$12,500.00 shall be distributed to CAPA as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d), and 3204. CAPA will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support CAPA's overarching goal of reducing use, misuse, and exposure to hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals inherent in consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility. CAPA's activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction of exposure to marijuana smoke and increase informed choices made by patients and consumers before exposure by providing clear and reasonable warnings to California consumers prior to exposure resulting from purchase of the products. CAPA hereby provides the following list of activities CAPA engages in to protect California consumers through Proposition 65 citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities: (1) ENFORCEMENT (70%-80%): investigating, obtaining, shipping, analyzing, and/or

citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities: (1) ENFORCEMENT (70%-80%): investigating, obtaining, shipping, analyzing, and/or testing dispensaries or products that may contain carcinogenic chemicals contained in marijuana smoke and are sold to and expose California consumers to chemicals listed under Proposition 65; continued monitoring and enforcement of past consent judgments and settlements to ensure companies are in compliance with their obligations thereunder, with a specific focus on those judgments and settlements concerning chemicals of concern (which necessarily includes additional work, investigating, purchasing, processing, analyzing and/or testing consumer products; litigating matters that result in settlements, judgments, defaults, bankruptcies, or dismissals); (2) PUBLIC OUTREACH (5%-10%): public outreach programs including maintaining CAPA's blog, website, and social media accounts; (3) SPECIAL PROJECTS (up to 5%): projects including obtaining expert and legal opinions not specific to any one case that are necessary to the continued private enforcement of Proposition 65; and/or (4) PRODUCT DATABASE (up to 5%): maintaining a database with all products sold to California consumers that CAPA has obtained which could cause an exposure to marijuana smoke or other toxic, carcinogenic or reproductive harms. CAPA will maintain adequate records to document that the funds paid as an ASP are spent on the activities described herein. CAPA shall provide the Attorney General, within thirty days of any request, copies of documentation demonstrating how such funds have been spent.)

**Total Payments:** \$ 67,500.00

**Is Judgment Pursuant to Settlement?** Yes

**Contact Name:** Matthew C. Maclear

**Contact Organization:** Aqua Terra Aeris Law Group

**Email Address:** [mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)

**Address:** 490 43rd Street, Ste 108

**City, State, Zip:** Oakland, CA 94609

**Phone Number:** (415) 568-5200

## AG Number 2019-01604 (View Details)

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**Notice PDF:**  [2019-01604.pdf](#)

**Date Filed:** 08/20/2019

**Noticing Party:** Michael DiPirro

**Plaintiff Attorney:** David Bush

**Alleged Violators:** The Airport Collective, Inc.; ShowGrow

**Chemical:** Marijuana smoke

**Source:** Marijuana

Complaint (0) Settlement (0) Judgment (0)

## AG Number 2019-01603 (View Details)

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**Notice PDF:**  [2019-01603.pdf](#)

**Date Filed:** 08/20/2019

**Noticing Party:** Michael DiPirro

**Plaintiff Attorney:** David Bush

**Alleged Violators:** 2083 Group, Inc.; Mojave Jane Brands, Inc.; Mojave Jane Brands (California), Inc.

**Chemical:** Marijuana smoke

**Source:** Marijuana

**Comments:** Supplemental 60-Day Notice for three additional defendants

Complaint (0) Settlement (0) Judgment (0)

## AG Number 2017-01904 (View Details)

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**Notice PDF:**  [2017-01904.pdf](#)

**Date Filed:** 08/07/2017

**Noticing Party:** Micheal Murphy as Manager of Clean Cannabis Initiative, LLC

**Plaintiff Attorney:** Mark Morrison

**Alleged Violators:** LOL Edibles

**Chemical:** Carbaryl, Myclobutanil

**Source:** LOL Watermelon Sour Belts

Complaint (1) Settlement (0) Judgment (0)

## AG Number 2017-01902 (View Details)

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**Notice PDF:**  [2017-01902.pdf](#)

**Date Filed:** 08/07/2017

**Noticing Party:** Micheal Murphy as Manager of Clean Cannabis Initiative, LLC

**Plaintiff Attorney:** Mark Morrison

**Alleged Violators:** Herb's San Jose

**Chemical:** Carbaryl, Malathion

**Source:** Absolute Extracts Girl Scout Cookie Vape Cartridge

Complaint (0) Settlement (0) Judgment (0)

# Types of Exposure Warnings Under Prop. 65



# Types of Exposure Warnings

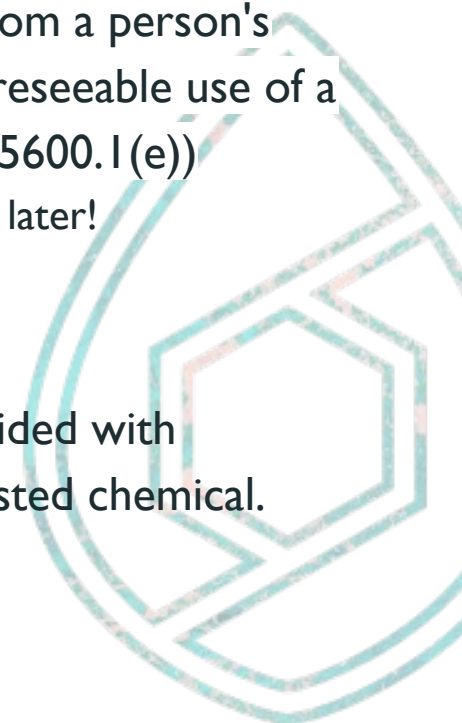
- Consumer Product Exposure Warning
- Occupational Hazard Exposure Warning
- Environmental Exposure Warning
- Special Environmental Exposure Warnings for:
  - Enclosed Parking Facilities
  - Designated Smoking Areas
  - Alcoholic Beverages
  - Diesel Engines
  - Amusement Parks
  - Others



# Consumer Product Exposure Warnings

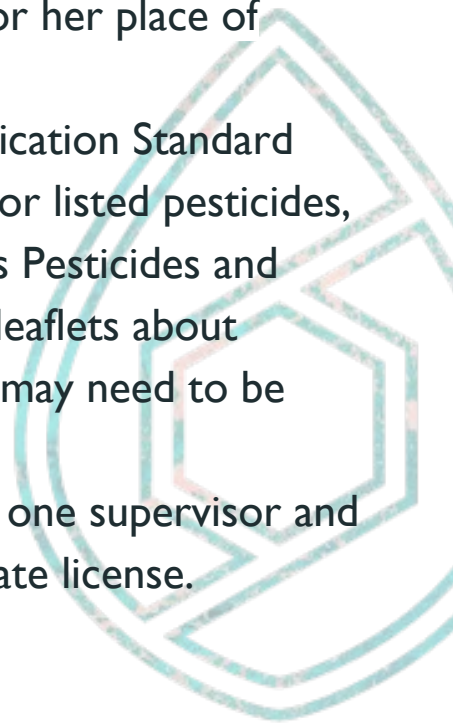
- “Consumer product exposure” means an exposure that results from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer product, including consumption of a food. (27 CCR § 25600.1(e))
  - Main area of focus for today's discussion - we will come back to this later!

Note: Consumer product exposure warnings should also be provided with paraphernalia whose intended use could result in exposure to a listed chemical.



# Occupational Hazard Exposure Warnings

- “Occupational exposure” means an exposure to any employee at his or her place of employment. (27 CCR § 25600.1(k))
- Employers using listed chemicals must follow OSHA Hazard Communication Standard (HCS) methods, including labels, Safety Data Sheets and training; and for listed pesticides, employers must comply with the Department of Pesticide Regulation’s Pesticides and Worker Safety Requirements, which includes providing informational leaflets about pesticides that employees will be handling or working near. Warnings may need to be posted in multiple locations.
- Business & Prof. Code § 26051.5 requires cannabis businesses to have one supervisor and one employee complete OSHA training in order to be eligible for a state license.



# Environmental Exposure Warnings

- “Environmental exposure” means an exposure that occurs as the result of contact with an environmental source, such as ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances or objects, through inhalation, ingestion, or skin or other contact with the body. All exposures that are not consumer product exposures or occupational exposures are environmental exposures. (27 CCR § 25600.1(f))
- Businesses must warn anyone who they have reason to believe may be exposed to a listed chemical somewhere on the businesses’ property. For example, a designated smoking area (for tobacco or cannabis) is a place where environmental exposure warnings should be included.
- Depending on the type of exposure, warning can be provided via signage posted at entrances to the affected area, notices sent out via mail/email, or notices published in a local newspaper.

# Consumer Product Exposure Warnings

# Methods of Transmission

*Unless otherwise specified in Section 25607.1 et seq, a warning meets the requirements of this subarticle if it complies with the content requirements in Section 25603 and is provided using one or more of the following methods:*

- (1) A product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.*
- (2) A product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning.*
- (3) A warning on the label that complies with the content requirements in Section 25603(a).*
- (4) A short-form warning on the label that complies with the content requirements in Section 25603(b). The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.*

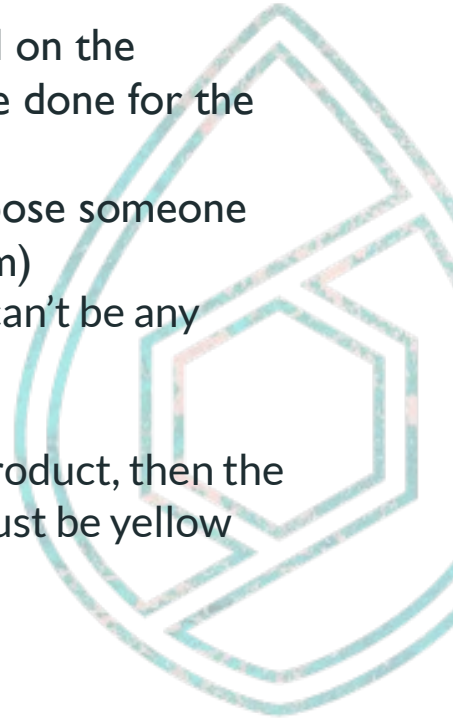
# New Warning Requirements

- Went into effect in August 2018.
- A warning symbol (triangle with exclamation point) is now required.
- New warning language (see following slides).
  - “Long-Form”
  - “Short-Form”
- Warning must be prominently displayed and conspicuous so that it’s likely to be seen by an ordinary person.
- If any of the label information is printed in another language, then the Prop. 65 warning must be written in that language as well.
- New website, must be included in the warning: [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)



# “Long Form” Warning

- Need to include name of any chemicals on the list as they’re spelled on the long-form version of the warning; however this does not need to be done for the short-form warning.
  - Don’t need to list out all chemicals that the product could expose someone to, just one for each type of harm (cancer + reproductive harm)
- “WARNING” must be capitalized and in bold type. Triangle symbol can’t be any smaller than the letter “W” in “WARNING.”
- No specific font size, but must be conspicuous.
- If the color yellow is not used in the sign, label, or shelf tag for the product, then the symbol may be printed in black and white; otherwise, the symbol must be yellow and black.





# “Long Form” Warning



**WARNING:** This product can expose you to chemicals including Lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

# “Short Form” Warning

- As of last year, there’s a new abbreviated Prop. 65 warning that can be included on a product or it’s container or wrapper. The short form warning does not need to identify the chemical on the list, but does need to specify whether the chemical is on the list for cancer, reproductive harm, or both.
- For consumer products only (not environmental or occupational exposure).
- Intended for when there’s not enough room for the long-form warning (but can be used on products even if there is enough room).
- Font can be no smaller than the largest font used for other consumer information on the product, with a minimum of 6-point font.
- As with the long-form warning, the symbol can’t be smaller than the “W” in “WARNING,” and the triangle can be in B&W if no yellow used on packaging.

# “Short Form” Warning



**“WARNING:** Cancer –  
[www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)”



**“WARNING:** Reproductive Harm –  
[www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)”

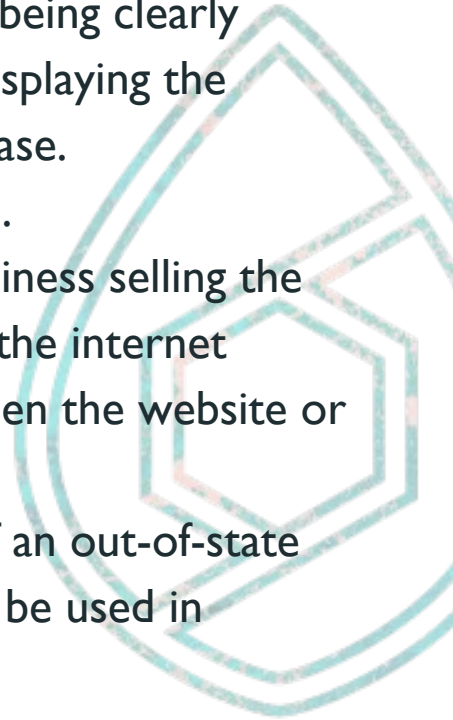


**“WARNING:** Cancer and Reproductive Harm –  
[www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)”



# Internet and Catalog Warnings

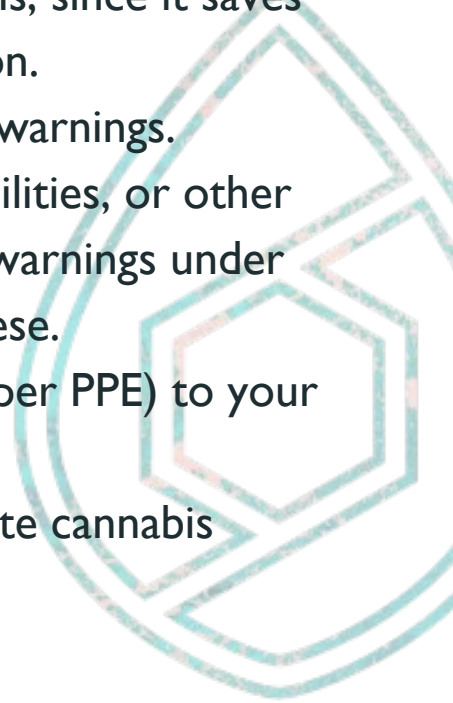
- Warning must be provided on or with the product, in addition to being clearly provided on the product display page or otherwise prominently displaying the warning online before the customer completes the internet purchase.
- Warning must be clearly associated with the item being purchased.
- If a warning label is affixed to the product or its packaging, the business selling the item can use a photograph of the warning label online to serve as the internet warning. If the short-form warning is used on the product label, then the website or catalog warning may use the same content.
- Out-of-state retailers are not exempt from Prop. 65. Therefore, if an out-of-state retailer is selling something containing a listed chemical that might be used in California, a warning must be provided.



# Takeaways and Resources

## Some tips...

- Take advantage of the new “short-form” warning for product labels, since it saves space and does not require you to specify the chemicals in question.
- Entrance signage is not sufficient for consumer product exposure warnings.
- Don’t forget about designated smoking areas, enclosed parking facilities, or other places at your facility that might require environmental exposure warnings under Prop. 65. You won’t be able to use the short-form warning for these.
- Don’t forget to provide occupational exposure warnings (and proper PPE) to your employees when needed.
- Violations of state laws such as Prop. 65 could jeopardize your state cannabis license, so be sure to take this seriously.
- When in doubt, seek legal counsel.



# Resources

Prop. 65 Warnings website: <https://www.p65warnings.ca.gov/>

OEHHA website: <https://oehha.ca.gov/proposition-65>

CA Attorney General's Office Prop. 65 page: <https://oag.ca.gov/prop65>

Prop. 65 Guidelines for Internet and Catalog Warnings:

[https://www.p65warnings.ca.gov/sites/default/files/art\\_6\\_business\\_qa\\_internet\\_warnings.pdf](https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa_internet_warnings.pdf)

Prop. 65 Q&A for Businesses:

[https://www.p65warnings.ca.gov/sites/default/files/art\\_6\\_business\\_qa.pdf](https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa.pdf)



Questions?

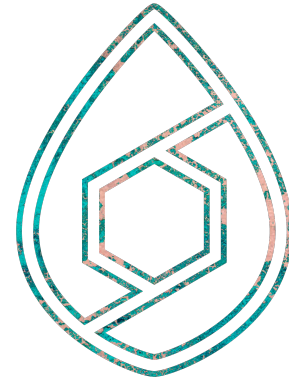


# Thank you!



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