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California Prop 65 Update Potentially Impacts Electronics Supply Chain



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Last week, an update to California Safe Drinking Water and Toxic Enforcement Act of 1986, often referred to as Proposition 65, went into force. Electronics OEMs, distributors, component makers, and retailers must update their compliance or risk the consequences.

“Violations often ensnare everyone in that supply chain, and at that point you bring in the lawyers and the toxicologists, and the costs mount whether you win or not,” said Don Elario, vice president of Industry Practices at the [Electronic Components Industry Association \(ECIA\)](#) “A sound risk management strategy should focus on claim prevention, not simply claim defense.”

On the face of it, Proposition 65 seems to have little to do with the electronics industry. However, at its heart, Prop 65 is about chemicals—and certainly that has the potential to impact electronics makers. It requires any company doing business in California to warn consumers about significant exposures to chemicals that the state has identified as causing cancer, birth defects, or reproductive harm. The rules apply to components or products available to consumers or exposed to workers in California and require clear labelling if the product contains any covered substances that exceed safe harbor levels (defined by the [Office of Environmental Health Hazard Assessment](#) with complex and technical exposure criteria).

Examples of Acceptable Warning Labels Under the New Regulations

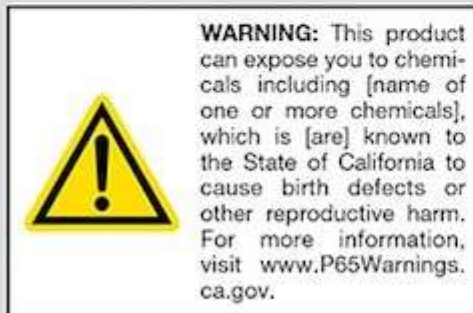
Cancer



Combined Cancer/Birth Defect



Birth Defect



Truncated on Product Warning



Type Size: The warning text must be the same size as other consumer information presented on the package and may not be smaller than 6-point type.

In 2016, the California Office of Environmental Health Hazard Assessment (OEHHA) declared new consumer warning regulations that apply to any products manufactured after on August 30, 2018 (27 Cal. Code Reg. Section 25600 et seq.). As the law evolves, it's important that any company selling, supplying, or distributing products in California, should re-evaluate what they are doing or should be doing in terms of compliance.

Since its inception, the proposition has evolved to include over 900 substances and the list is updated annually. At least 100 of those are found in electronic components and products. "California is uniquely aggressive in requiring labeling and warnings for products that contain any of over 900 listed substances which exceed specific exposure levels," Elario told EBN. "California is also unique in the laws that allow for consumer complaints and the potential for financial penalties and the award of proceeds to consumers and their attorneys."

The cost of litigation are certainly being felt—and those effects are likely to increase. "The law has engendered a substantial increase in litigation among the tort bar in California," the ECIA GIPC said. "Prop 65 has simple claim requirements and shifts the burden of proof to defending companies."

Large organizations may be particularly at risk. "As the litigators target opportunities, they look for products containing listed substances, noncompliant labels, or warnings, and companies with deep pockets," said Elario. "They do not have to prove damages, just label or warning violations. You can settle, you can fight, but either way it will be expensive."

In 2017, \$25 million in settlements were awarded, a figure that is likely to double this year. It will also likely be time consuming as customers come looking for Prop 65 compliance

information. Manufacturers, for example, should identify any Prop 65 substance in their products, develop compliance position statements and create compliance and warning labels as appropriate.

The broader benefits of the legislation may be lost in the noise. “Unfortunately, the total impact may be more negative than positive,” Elario said. “The massive number of warnings, due to the size of the concerned substance list and the risk of litigation, are potentially making consumers numb to the warnings. It’s hard to focus on real health risks when everything is labeled as a risk.”

Although caution is warranted, electronics companies shouldn’t panic. “Electronic components are generally internal to consumer level products so the potential for consumer exposure to component surfaces is low, and potential to reach specified exposure levels for listed substances is even lower,” explained Elario.

“Exceptions might include cables, plugs, touch screens, key switches, enclosures and other outer surface items. Any components or low-level assemblies sold directly to consumers might also be at risk.

This shift points to a general shift in the industry toward more attention to environmental compliance. In Europe, **Restriction of Hazardous Substances (RoHS)** directives moderate lead, cadmium, mercury and other substances. **Registration, Evaluation, Authorization and Restriction of Chemicals (REACH)** directives require disclosure on a few hundred substances. “Similar initiatives are underway in Asia and other parts of the world,” Elario added.

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