Product Responsibility – State Regulations

State Regulations

California's Proposition 65 Guidebook
Since its enactment more than 15 years ago, California’s Proposition 65 has distinguished itself as an unusual statute that requires the business community’s careful attention.

State Regs Quick Reference Guide
This easy-to-use guide provided by PPAI will help you determining what regulations you need to look out for by state.

Prop 65

An Orientation To California’s Proposition 65
Also known as the Safe Drinking Water and Toxic Enforcement Act of 1986, the initial purpose of California Proposition 65 was to protect California citizens and the state’s drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm, and to inform citizens about exposures to such chemicals.

However, the “significant risk level” as determined by the state of California is often so low the effects of Prop 65 are significantly more far-reaching than most Californians likely imagined at the time of passage.

Prop 65 requires businesses to notify Californians via warning labels about significant amounts of chemicals – specified in a list of more than 700, such as lead and cadmium– contained in a company’s products. More importantly, many of the compounds identified on the Prop 65 list are permissible under federal regulations.

Even though the same product can be shipped and received in other states, doing so in California without the proper warnings can expose a company to the assessment of significant penalties. Failing to provide warning notices violates Prop 65 and can result in penalties as high as $2,500 per violation per day. And if the shipped products violate the law, all involved– suppliers, distributors and end buyers– are potentially liable depending on the circumstances.

Even when the entire distribution chain is based outside of California, if even one promotional item failing to meet the restrictions imposed by the law ships to California, all involved– suppliers, promotional consultants and end buyers– are potentially liable under the terms of Prop 65 depending on the circumstances.

While this law has been around for 20 years, private sector enforcement has become more aggressive. Private enforcement is entitled to reasonable attorneys’ fees and up to 25 percent of civil penalties. Since the penalties are per violation per day, there is a significant incentive for private enforcers to find multiple violations over a long period of time. As the history of enforcement demonstrates, it is possible for private enforcers to secure some sizable payments, based solely on attorneys’ fees and the percentage of penalties.
Distributors conducting business in California (even if they are headquartered outside of California) have been threatened with penalties, forced to refuse shipments of products and lost business because their clients refuse to accept products that may be in violation of the law. Additionally, suppliers, particularly those that manufacture ceramic and glassware products, have forfeited thousands of dollars in lost business and have been forced to comply with state guidelines and specifications much more restrictive than other states or those of the Federal government.

**What can you do?**
Warning labels, properly worded, do work. Changes in the composition of decorating inks to avoid the offending chemicals may be the better choice, however, as no one wants to “brand” products as being potentially hazardous to the end user. Changes to the manufacturing process—i.e. removing lead from lead crystal products—are clearly less realistic.