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Point of View

A Quarterly Newsletter

Spring 2015

CALIFORNIA'S PROPOSITION 65 SUMMARY IN A NUTSHELL

Massachusetts businesses selling goods in California must comply with the requirements of Proposition 65. Proposition 65, officially known as *the Safe Drinking Water and Toxic Enforcement Act of 1986*, prohibits goods which expose the public to chemicals “known to the State to cause cancer or reproductive toxicity” without a warning. The intent of the law is to protect California citizens and the State’s drinking water supply from chemicals known to cause cancer, birth defects or other reproductive harm and to inform citizens about products that contain such chemicals.

The California Office of Environmental Health Hazardous Assessment (“OEHHA”), the agency charged with implementing and enforcing Proposition 65, maintains a list of chemicals that are subject to Proposition 65 warning

requirements, which is regularly updated. The chemical list contains a wide range of naturally occurring and synthetic chemicals that are known to cause cancer or birth defects or other reproductive harm. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents including lead. The chemicals may also be used in manufacturing and construction processes or they may be bi-products of chemical processes such as motor vehicle exhaust.

OEHHA has proposed new warning requirements for Proposition 65 that could substantially increase Proposition 65 litigation risks to businesses operating or selling products in California. The changes proposed are relative to the content of warnings that must be provided to consumers regarding products that contain

chemicals listed as “known” to cause cancer or reproductive toxicity. The most significant of these proposed changes includes new warning label language and a requirement that businesses submit to OEHHA information concerning the chemicals in products that require Proposition 65 warnings.

Businesses are required to provide a “clear and reasonable” warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means such as by labeling a consumer product, posting signs at the work place, or housing complex or publishing notices in a newspaper. Once the chemical is listed, businesses have twelve months to comply with warning requirements. Businesses with less than ten employees and government agencies are exempt from Proposition 65’s warning requirements.

The California Attorney General or local prosecutors may initiate civil action to enforce the law as long as they provide notice to the California Attorney General or local prosecutors. OEHHA has recently undergone a rule-making process to amend the regulations and it plans to adopt final regulations in early summer 2015.

Businesses selling products in California that may be subject to Proposition

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June 2015

65 should seek advice from experienced counsel to understand the full implications of the regulatory process and any efforts such businesses might undertake to affect the outcome.

Doherty, Wallace, Pillsbury and Murphy has significant experience in Proposition 65 matters and can assist businesses in developing strategies to comply with Proposition 65.

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Deborah A. Basile, a shareholder with the firm, is primarily involved in the firm’s intellectual property and business practice. Deborah is registered to practice before the United States Patent and Trademark Office and works in all areas of general business and commercial transactions, with a specialty in intellectual property, including trademark and patent prosecution, copyright and licensing.

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