

**From:** [Jack Molodanof](#)  
**To:** [P65Public Comments](#); [P65Public Comments](#); [Fernandez, Mario@OEHHA](#); [Vela, Monet@OEHHA](#); [Vela, Monet@OEHHA](#)  
**Cc:** [Jack Molodanof](#)  
**Subject:** Prop 65--Clear and Reasonable Warning Regulations  
**Date:** Thursday, April 02, 2015 10:00:08 AM

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Dear Ms. Vela;

On behalf of the Automotive Service Councils of California and the California Autobody Association we appreciate the opportunity to comment on the Prop 65 Clear and Reasonable Warning Regulations.

One of the biggest challenges facing small businesses is dealing with unnecessary litigation and frivolous lawsuits. We are respectfully requesting that these regulations be revised to ensure that they do not create an incentive for filing more of these type of shake down lawsuits. These frivolous lawsuits are generally filed on behalf of a someone who never had any business dealings with the repair shop. But are done simply by driving by the facility and looking for posted signs, such as as ADA signs, Prop 65 warning signs, etc. That is why it's so important that these regulations provide small businesses an opportunity to cure and correct an innocent mistake or oversight. Otherwise, these new regulations have the potential to create a whole new Prop 65 "cottage industry" for filing frivolous drive by lawsuits against repair facilities.

1. Under Section 25600.2 (d) (5) (C)-Product Exposure Warnings, the retailer shall not be deemed to have actual knowledge of any product exposure that is alleged in the notice until two business days after the retailer receives the notice. This provision provides the retailer an opportunity to correct and cure a problem that may have been caused by a simple innocent mistake. We think the intent is fair and reasonable and consistent with the applicable statute. However, the provision is limited and only applies to product exposure warnings and not environmental exposure warnings, which repair facilities fall under. We believe that it's unfair to limit the provision to only product exposure and believe that the provision should apply equally to environmental warnings. It appears that the regulations are drafted in such a way to pick winners and losers. We recommend that the regulations be amended so that this cure provision also apply to environmental exposure warnings. Without an opportunity to cure, small businesses may be subjected to potential frivolous drive by lawsuits. We also recommend that you consider extending the 2 day time period (to provide extra days) and that any notice of a violation be provided to the repair facility ownership.

2. Section 25600.1 Definitions (i) the definition "retailer" means a person or business that sells products, including foods, directly to purchasers by any means, including via Internet. However, this is vague and ambiguous as to whether the definition would include a vehicle repair facility. Vehicle repair facilities perform retail labor services and sell various products and parts in conjunction with the repair of the vehicle. The definition is not clear whether a repair facility would be considered a retailer. The definition should be clarified. We recommend that the retailer definition be amended to also include persons or business that sell products in conjunction with providing services.

3. Sections 25608.25 Service Station and Vehicle- Repair Facilities Warnings (Environmental Exposures)- Content. The content appears to have been developed and primarily designed for service and gas stations in mind, not necessarily stand alone automotive repair dealers that do not sell gasoline. We would be willing to work with OEHHA staff to first determine if Prop 65 environmental exposure warnings are really necessary and/or applicable for repair facilities and if so, develop language that applies to repair facilities rather than gas and service stations.

Thank you for your consideration.

If you have any questions please feel free to contact me.

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