



**we wear® compliance**

August 30, 2013

Monet Vela  
OEHHA  
1001 I Street  
Sacramento, CA 95814

**RE: Notice of Public Workshop on Concept for Regulation Addressing Proposition 65 Warnings**

Dear Ms. Vela,

On behalf of the American Apparel & Footwear Association (AAFA), I am writing in response to the request for comments by the Office of Environmental Health Hazard Assessment regarding the potential regulatory action to expand Proposition 65 (Prop 65) warnings.

AAFA is the national trade association representing apparel, footwear, and other sewn product companies, and their suppliers, which compete in the global market. Our industry directly employs more than four million U.S. workers, and accounts for more than \$350 billion in retail sales each year. As one of the largest consumer segments in the United States, the apparel and footwear industry is comprised of companies headquartered in California that represent thousands of jobs in the state. Most others, although not headquartered in California, directly employ thousands of Californians in retail, distribution, design, and other roles.

Thank you for this opportunity to submit comments. We agree with California Governor Brown's statement that "Proposition 65 is a good law that's helped many people..."<sup>i</sup> We wish to stress our association's support for the original intent of California Prop 65, which sought to ensure that California's families, workers, and businesses were protected by meaningful product safety protections. AAFA works diligently to educate its members on how to comply with Prop 65. However, we have serious concerns with what has become the extremely litigious nature of Proposition 65, and what Governor Brown described as "the abuse of the law by unscrupulous lawyers."<sup>ii</sup>

AAFA believes any proposed reforms to strengthen and restore the intent of Prop 65 must address the crux of the issue: abuse by unscrupulous lawyers driven by profit rather than public health. However, OEHAA's potential regulatory action of considering a rule that would expand Prop 65 warnings would not better serve Californians, but would lead to more frivolous litigation.

According to the State of California Office of the Attorney General website: *Proposition 65 has been successful in protecting consumers from toxic chemicals. Proposition 65 has motivated businesses to eliminate or reduce toxic chemicals in numerous consumer products. The law has also educated the general public about exposures to specific toxic chemicals in consumer products, buildings, and the environment, creating both demand and market reward for less-toxic products. Proposition 65 has induced "quiet compliance" without the need for litigation, in which manufacturers voluntarily take steps to comply by providing their suppliers with specifications so that the ingredients in their products avoid or significantly limit exposure to listed chemicals. Finally, Proposition 65 litigation has identified specific chemical exposure concerns and led to regulatory reforms to benefit public health at the state and national level.*<sup>iii</sup>

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Based on the above, the State of California has deemed the current Prop 65 regulations a success in protecting California consumers from exposure to toxic chemicals.

In its proposal, OEHHA proposes sweeping changes to a key piece of that regulation, which, by all accounts, would impose immense costs on business. First, businesses would be forced to implement costly changes to their compliance programs to comply with the new rules. Second, the proposed changes would provide a whole new avenue for those “unscrupulous lawyers” cited by Governor Brown to initiate a whole new round of costly litigation against companies who suddenly, from one day to the next, moved from selling compliant product to selling technically “non-compliant” product through no fault of their own.

If OEHHA demonstrated that the tremendous costs that would be imposed by the proposed changes would be significantly outweighed by improvements to the safety of California consumers, those costs might be justified. However, nowhere in the proposal does OEHHA provide a cost-benefit analysis analyzing either the cost of such a proposal or demonstrating how the benefits would outweigh those costs.

As such, the proposed changes to a program that is deemed such a success by the OEHHA are unnecessary, and would only do harm. Not only has OEHHA not clearly demonstrated that the proposed changes would improve public safety, the proposed changes would instead further exacerbate and dramatically expand “the abuse of the law by unscrupulous lawyers” Governor Brown so clearly described in his call out for much-needed reforms to fix what is otherwise a “*successful (law) in protecting consumers from toxic chemicals.*”<sup>iv</sup>

Therefore, we urge OEHHA to withdraw the proposal. We encourage OEHHA to work with AAFA and all other stakeholders to develop and implement reforms to Prop 65 that ensure California's families, workers, and businesses are protected by meaningful product safety protections without fear of erroneous litigation.

Thank you for your time and consideration in this matter. Please contact Danielle Abdul of my staff at 703.797.9039 or by email at [dabdul@wewear.org](mailto:dabdul@wewear.org) if you have any questions or would like additional information.

Sincerely,



Kevin M. Burke  
President & CEO

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<sup>i</sup> <http://gov.ca.gov/news.php?id=18026>

<sup>ii</sup> <http://gov.ca.gov/news.php?id=18026>

<sup>iii</sup> <http://oag.ca.gov/prop65/faq>

<sup>iv</sup> <http://oag.ca.gov/prop65/faq>