



March 22, 2021

Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings

Promotional Products Association International (PPAI) supports the intent of Proposition 65, which is to ensure that consumers can make cogent and knowledgeable decisions when they purchase consumer products or enter businesses. Recently, OEHHA released proposed changes to the Prop 65 warning requirements that pose additional undue burdens on businesses.

However, OEHHA's proposed changes to the Proposition 65 warning requirements are being presented just a short time after companies spent millions of dollars revamping their Proposition 65 warning initiatives to comply with the new requirements that went into effect on August 30, 2018.

Those new requirements gave companies two options for complying with the newly updated regulations. Companies relied on those standards and dedicated countless resources to complying with the new regulations. Those efforts were based on the agency's written feedback to the business community about sizing requirements, language and placement of the warnings.

Just two years after the last round of significant Proposition 65 changes, OEHHA proposes to implement even more restrictive requirements, purportedly to rectify the problem of over-warning. Unfortunately, the proposed changes will not sufficiently address the over-warning problem, because apparently OEHHA based their reasoning for the new proposal on the incorrect belief that businesses are over-warning due to the short-form warning having been provided as an option.

If OEHHA modifies the current Proposition 65 requirements, the results will involve additional financial effects and unavoidable legal liability for companies at a time when they are already struggling to survive the ongoing impacts of the coronavirus pandemic.