

In Other Words...

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In visiting with members around the state I have discovered that politics and “unfriendly” business legislation has reared its ugly head.

CGA’s advocacy staff address hundreds of legislative and regulatory issues annually. For us, pouring through bill summaries and committee meeting agendas is akin to grocers stocking shelves and bagging groceries. It’s what we all do.

Sometimes though, we forget that in reporting how these laws and regulations impact our members we must do so in language you can understand. The law in “plain English” as my law professors used to call it.

Throughout the year I will use this column to revisit key issues in “plain English” to explain the impact to your business.

Let’s begin with Proposition 65.

In the mid-80s, California voters approved the Safe Drinking Water and Toxic Enforcement Act of 1986, better known as Proposition 65, that requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. The list includes approximately 800 chemicals.

Prop. 65 requires businesses to notify Californians about the presence of any of those chemicals in the products they purchase, or that are released into the environment. It also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water. Grocers are not the only businesses that must comply with Proposition 65. You might have seen similar warnings in airports and restaurants.

The list contains a wide range of naturally occurring and synthetic chemicals. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

The Office of Environmental Health Hazard Assessment (OEHHA), a part of the California Environmental Protection Agency, administers the Prop. 65 program and it is enforced by the California Attorney General’s Office.

In addition to district and city attorneys, any individual may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law. Penalties for violating Prop. 65 can be as high as \$2,500 per violation per day. The inclusion of allowing “individuals” to pursue litigation is the brunt of the lawsuits we see against grocers.

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 workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper.

Businesses with less than 10 employees are exempt from Proposition 65’s requirements.

To guide businesses in determining whether a warning is necessary, OEHHA has developed safe harbor levels. A business has “safe harbor” from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels.

These safe harbor levels consist of No Significant Risk Levels for chemicals listed as causing cancer and Maximum Allowable Dose Levels for chemicals listed as causing birth defects or other reproductive harm. OEHHA has established over 300 safe harbor levels to date and continues to develop more levels for listed chemicals. ■