

WARNING: REGULATIONS LIKELY ON THE HORIZON**> Adoption of proposed amendments to Prop. 65**

by Rohit A. Sabnis



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Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, requires that businesses provide a “clear and reasonable” warning to individuals before exposing them to a chemical listed as known to cause cancer or reproductive harm. The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency that implements Proposition 65.

OEHHA maintains a list of chemicals, currently numbering over 900, subject to Proposition 65 and has the authority to establish and amend regulations to further the purposes of the Act. The existing regulations mandating who must provide warnings and how they may be provided in order to be deemed “clear and reasonable” by the agency were adopted in 1988.

The current proposed changes to OEHHA’s “clear and reasonable” warning regulations follow on the heels of Governor Jerry Brown’s May 2013 initiative to reform Proposition 65 by “improving how the public is warned about dangerous chemicals.” After two years of stakeholder workshops, submission of written comments and a public meeting held in March 2015, OEHHA appears poised to finalize and adopt the proposed regulations. Some critics of the modifications believe they will make compliance more difficult, result in increased Proposition 65 litigation and impose significant new costs on California businesses.

The proposed amendments include:

- **Chemical Names Included in Text of Warning** – The current regulations do not require businesses to specially identify the chemicals present in a product that require a Proposition 65 warning. A company is permitted to utilize a warning stating that a “product contains a chemical known to the State of California to cause” cancer and/or birth defects or other reproductive harm. The proposed regulations would require that certain chemicals be specifically named in the warning. These are (1) Acrylamide, (2) Arsenic, (3) Benzene, (4) Cadmium, (5) Carbon monoxide, (6) Chlorinated Tris, (7) Formaldehyde, (8) Hexavalent Chromium, (9) Lead, (10) Mercury, (11) Methylene Chloride and (12) Phthalate[s].

- **Other Warning Content Changes** – The proposed regulations would add a requirement that a “safe harbor” warning (one that is deemed “clear and “reasonable” by OEHHA) include a symbol consisting of a black exclamation point in an equilateral triangle. The language of the warning would also need to state that a product “can expose you to a chemical...” instead of stating that a product “contains a chemical...” Additionally, a warning would be required to include a URL for a proposed OEHHA website providing the public with supplemental information regarding exposures to listed chemicals.

- **Specific Warnings** – The amendments also provide new warning methods and content requirements for specific types of exposures including for foods, alcoholic beverages, restaurants and non-alcoholic beverages, prescription drugs, dental care, raw wood, furniture, diesel engines, passenger vehicles, enclosed parking facilities, amusement parks, petroleum products, service stations and designated smoking areas.

- **Responsibilities of Retailers** – The proposed regulations seek to reduce the burden on retail facilities relative to manufacturers, producers, packagers, importers or distributors of a product (“upstream business”) by, for the first time, specifically curtailing the circumstances under which a retailer would be required to provide a Proposition 65 warning. A retailer would remain responsible for providing a warning when (1) selling a product under its own private label, (2) introducing a listed chemical into the product, (3) covering, obscuring or altering a warning label, (4) selling a product without a warning after receiving information or warnings from an upstream business or (5) the retailer has actual knowledge of the potential product exposure and there is no upstream business that is subject to or that can be compelled to comply with the statute.

The proposed regulations also permit an upstream business to enter into a written agreement with a retailer to allocate legal responsibility among the parties for providing a Proposition 65 warning. Such agree-

ments would bind the parties and supersede the allocation of responsibility set forth in the regulations.

The state is expected to adopt the proposed regulations relatively soon in advance of its January 2016 deadline. Businesses would have two years from adoption to comply with the new warning requirements. Companies could provide a warning satisfying the proposed regulatory scheme prior to that time.

This article is presented for informational purposes only and is not intended to constitute legal advice. ■

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SALES STRATEGIES & METHODS**> Twelve principles to sales success**

by Joe Diliberto



Joe Diliberto

Most business professionals we talk with tell us it is more challenging than ever to grow their business. There is continuing pressure on price; they continue to experience stalls from their prospects; and new business remains difficult to close. Yet most businesses have done little to significantly alter their prospecting strategies or sales methods and processes. I would like to share with you a collection of 12 simple principles all salespeople should live by to address some of these issues.

1. Being genuinely interested in your prospect’s personal and professional opinions will do more to develop rapport than identifying their personality style or discovering if they are a football, baseball or hockey fan.
2. It’s just as important to disqualify a selling opportunity as it is to qualify it.
3. What the prospect wants and what the prospect actually needs are rarely the same.
4. The prospect’s problem is never what they think it is.
5. It’s more important for the prospect to discover that they have a best – fit problem for your solution than it is to demonstrate that you have the best – fit solution for their problem.
6. When the prospect says “Money is no problem,” it’s guaranteed to become one.
7. A prospect with a budget and a strong reluctance to spend it is no different than a prospect with no budget at all.
8. The objective of each encounter with a prospect is to either pave the way to the next step in the selling process – and eventually a buying decision – or to end the process.
9. When the prospect states that they can’t make a decision, they just did.
10. The financial investment to obtain your product or service is often less significant than the other “investments” the prospect must make to implement it.
11. Identifying how and by when a prospect will make a buying decision is just as important as discovering who is involved in the process.
12. If you wait for your customers to voluntarily provide you with referrals as a reward for the exceptional service you have delivered, you’ll be waiting a long time. ■

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