



*California New Car Dealers Association*

# **Proposition 65 Compliance Handbook**

# CALIFORNIA NEW CAR DEALERS ASSOCIATION

## PROPOSITION 65 COMPLIANCE HANDBOOK

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# CALIFORNIA NEW CAR DEALERS ASSOCIATION

## PROPOSITION 65 HANDBOOK

### PROPOSITION 65: A COMPLIANCE GUIDE FOR NEW CAR DEALERSHIPS

The Proposition 65 Compliance Handbook has been prepared for California New Car Dealers Association (“CNCDA”) members to standardize compliance with the Safe Drinking Water and Toxic Enforcement Act (“Proposition 65”) among its members throughout the State. Proposition 65 does not mandate specific warnings or require that a specific warning scheme be followed, only that the warnings be “clear and reasonable.” In developing this standardized Proposition 65 compliance program, CNCDA is mindful that each member-dealer is unique. CNCDA recommends that its members tailor this compliance program to their individual needs.

This Handbook has four parts: 1) a brief overview of Proposition 65 Statute; 2) a summary of how Proposition 65’s warning provision applies to car dealerships; 3) directions for documenting and implementing your Proposition 65 compliance program; 4) a brief list of laws and regulations that are related to Proposition 65; and 5) exemplars of a consumer product warning for motor vehicles, a Proposition 65 area warning sign for environmental and occupational exposures at dealerships, and an subcontractor indemnity agreement.

#### **I. OVERVIEW OF PROPOSITION 65 AND ITS REQUIREMENTS**

Proposition 65 requires any person “in the course of doing business” who exposes an individual in California to *any detectible* amount of a chemical “known to the state” to cause cancer or reproductive toxicity to give a “clear and reasonable” warning. The state currently maintains a list of about 800 chemicals and chemical families that are subject to the provisions of Proposition 65. Under this unique law, if a warning has not been given, the defendant can avoid liability if at trial *the defendant proves* that the exposure is below certain risk-based exposure levels. Although primary jurisdiction is vested in the Attorney General and certain designated city and county prosecutors, *anyone* may sue to enforce the Act, as long as the putative plaintiff first gives written notice to the alleged violator and designated public prosecutors, and the public prosecutors fail to commence a civil action within 60 days. Under new requirements, plaintiffs must also execute a “certificate of merit” stating that they have consulted with experts and have a reasonable belief that their claims have merit. Under Proposition 65 the Attorney General cannot stop a private plaintiff from filing a lawsuit, so there is little to prevent a private plaintiff from forming “a reasonable belief” on the slimmest of evidence.

Even where a defendant has commissioned an exposure assessment and could prove at trial that a warning is not required, Proposition 65 cases rarely proceed to trial because of the high cost of litigation and defense. Of the tens of thousands of companies that have been sued, fewer than ten cases have gone to final judgment at trial. At this writing, only five of those cases involved litigating the question of whether a warning was actually required. In the view of many, Proposition 65 permits legalized extortion of the business community by private plaintiffs, who retain twenty-five percent of any civil penalty and can also recover attorneys' fees and costs.

Regulations implementing the private enforcer provisions of Proposition 65 have been adopted that make it harder for private plaintiffs to obtain reimbursement of their legal fees and costs.

Among other things, when a defendant, who has received a 60-day notice of intent to sue agrees in writing or does provide a warning prior to the private plaintiff filing the lawsuit, the private plaintiff may not be able to collect his or her attorneys' fees and costs to litigate. Although the plaintiff may be reimbursed for the cost of the investigation and pretrial negotiations, if the underlying claim proves meritorious.

Because of the way that Proposition 65 is drafted, the fact that a warning is given is not an admission that the level of exposure exceeds the mandatory warning threshold. As a legal matter, the warning simply indicates that a detectable amount of a listed chemical is present. Businesses should realize, however, that many warning recipients may be unaware of the unique character of Proposition 65, and because the word "warning" is included in the text may assume that significant level of a listed chemical is present. Nevertheless, by providing warnings, businesses greatly reduce their risk of being sued. We provide an overview of the law in outline form below.

**A. Origins**

1. The Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") was adopted overwhelmingly by California voters in November 1986.
2. Proposition 65 was a response to perceived governmental mismanagement of toxics issues.
3. Public attention during campaign focused on drinking water aspects of Proposition 65. It is not only a "clean water" law. The greatest economic impact of Proposition 65 has been the requirement to warn of exposures to listed chemicals.
4. Proposition 65 is also an outgrowth of the continuing movement to privatize enforcement of environmental laws.
  - a. Liability under Federal and State superfund statutes has turned purchasers and lenders into governmental regulators.
  - b. Proposition 65 expands on this trend.
    - 1) "Bounty Hunter" provision, which allows anyone to enforce the act.
    - 2) The statute regulates in absence of governmental action.

**B. Summary of Proposition 65**

1. Proposition 65 only applies to chemicals listed by the Governor as carcinogens or reproductive toxins.
  - a. If it's not on the list, Proposition 65 does not apply.
  - b. But, the list is big and growing. There are now over 800 chemicals on the list, including many that are normally found in building products and in commercial environments.
    - 1) List includes many common chemicals including:
      - Lead and lead compounds
      - Asbestos
      - Tobacco smoke

- Engine exhaust
- Alcoholic beverages
- Formaldehyde
- Urethane
- Benzene
- Toluene
- Phthalates
- Most pesticides
- Engine oils and lubricants
- Mercury and mercury compounds
- Wood dust

2) And many chemicals that may be used as constituents of common materials, such as:

- Di-2 (hexylehtyl) phthalate (DEHP) and Bis(8-methylnonyl) (“DIDP”) Diisononyl-phthlate (DINP) and other phthalates are used in PVC and other plastics
- Crystalline silica (sand)

2. Two basic requirements of Proposition 65:

- a. Businesses must warn individuals of any exposure to a listed chemical; and
- b. A prohibition on the discharge of listed chemicals where they may pass to a “source of drinking water.”

**C. Proposition 65 Statute**

**1. “Right to Know” Warning Requirement**

- a. No person in the course of doing business shall knowingly and intentionally expose any individual to [listed chemicals] without first giving clear and reasonable warning to such individual. (California Attorney General Position: Do not need to know the exposure exceeds warning level, just that an exposure is occurring.)
- b. Warning requirement goes into effect 12 months after the chemical is listed as a carcinogen or reproductive toxin.

**2. “No Discharge Unless Safe” Prohibition**

- a. “No discharge unless safe” prohibition bans any knowing discharge or release of a listed chemical in the course of doing business where such chemical probably will pass into any source of drinking water. (California Attorney General Position: Do not need to know the discharge exceeds threshold level, just that the discharge is occurring.)
- b. “No discharge unless safe” prohibition goes into effect 20 months after the listing of a chemical.

**3. Exceptions to Proposition 65 Warning Requirements**

- a. Exposures by businesses with less than 10 employees.

- 1) “Employee” defined broadly. It may include: 1) employees of other divisions or companies owned by same entity; and 2) contract employees performing work under the supervision of manager.
- 2) Courts are reluctant to dismiss cases on grounds of "less than 10" exemption without allowing plaintiff to complete discovery.
- b. Exposures by governmental agencies.
- c. Preemption by Federal law. (Extremely narrowly construed.)
- d. Exposure that poses no significant risk assuming lifetime exposure (carcinogen).
  - 1) General standard is  $1 \times 10^{-5}$  risk of cancer (one excess cancer case per 100,000 exposed population).
  - 2) California’s Office of Environmental Health Hazard Assessment (“OEHHA”) has established very conservative “no significant risk” levels.
- e. Exposure that poses “no observable effect” assuming exposure 1,000 times level in question (reproductive toxin). (This is an ultra conservative standard).

#### 4. **Proposition 65 Enforcement**

- a. Violations of Proposition 65 are subject to stiff enforcement, potentially resulting in civil penalties of up to \$2,500 per day for each violation.
  - 1) To calculate potential penalty, multiply number of persons exposed, times each day of exposure, times number of chemicals.
  - 2) Proposition 65 also expanded penalties for violations of hazardous waste laws, up to \$100,000 per day.
- b. Enforcement actions may be brought by **any** private party.
  - 1) No causation or standing requirements in Proposition 65.
    - (a) Actions might even be brought by disgruntled contractors, current or past owners and/or employees.
    - (b) Cottage industry of Proposition 65 “private plaintiffs” who bring lawsuits to “extort” settlements from defendants who will settle to avoid litigation cost.
- c. “Bounty Hunter” provision encourages “enforcement” by “private plaintiffs.”
  - 1) 25% of penalty collected is awarded to individuals bringing a successful enforcement action.
  - 2) California Code of Civil Procedure § 1021.5 provides that “successful” plaintiffs who obtain a public benefit may be reimbursed their reasonable attorneys’ fees. It is customary for

plaintiffs to negotiate with a defendant to pay plaintiffs' attorney's fees as part of any settlement. Regulations adopted by the Attorney General provide that any time a warning is given the litigation is deemed to confer a public benefit.

- d. Insurance generally does not cover Proposition 65 because there is no "physical injury." In some rare cases, if tort or personal injury claims are asserted by plaintiffs, insurance defense may be available; however, expect a fight from your carrier. Plaintiffs count on high cost of defending a claim to obtain quick settlement from defendants.
- e. Legislation adopted Oct 2001 (SB471) purports to make it more difficult for private plaintiffs to bring meritless lawsuits, by requiring that a putative plaintiff sign a "certificate of merit" and send it to the Attorney General stating that the plaintiff has consulted an expert and determined that an exposure is occurring. (The certificate AND the expert information on which it allegedly is based, is not available to the defendant.) In practice, the law has had little deterrent effect because it is always possible for a private plaintiff to find "an expert" to certify. Even if the Attorney General determines that the claims are meritless, no one can prevent the private plaintiff from filing a lawsuit. Thus, defendants are forced to choose between litigation and a settlement on plaintiff's terms.

## II. PROPOSITION 65 AND THE CAR DEALERSHIP

### A. Warning Obligations

- 1. Essence of the "right to know" warning requirement is that businesses provide a "clear and reasonable warning" to any person who may be exposed to a Proposition 65 listed chemical.
- 2. "Mandatory" warning levels for listed chemicals are very low.
  - a. Asbestos: 100 fibers per day or .000005 fibers per cubic centimeter
  - b. Lead: .5 micrograms/day
- 3. For many listed chemicals, the State of California has not determined the level at which a warning is mandatory. If sued, the defendant must determine the level and prove to the court that the exposure at issue is below the mandatory warning threshold.
- 4. The "right to know" warning requirement only applies to "knowing and intentional" exposures. Regulations implementing Proposition 65 indicate that knowledge is only required of the facts that an exposure to a listed chemical is occurring. Knowledge that the exposure is unlawful is not required.
  - a. Courts are likely to interpret "knowledge" to include "constructive knowledge" (*i.e.*, Are sufficient facts are available to alert the "prudent person").
  - b. Regulations indicate that accidental exposures "without evil design, intention or negligence . . ." will not be deemed to have violated Proposition 65 even if the exposure would otherwise be considered a knowing one.
- 5. Neither the law nor the regulations define "intentionally."

- a. Plaintiffs argue that an “intentional exposure” occurs when a defendant has simply intended to engage in an activity that entails some risk of exposing others to listed chemicals. (This view has been espoused by the Office of the Attorney General.)
6. “Exposed” is defined as “to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a chemical.”
    - a. An individual may come into contact with a chemical through water, air, food, consumer products and any other environmental exposure, as well as, occupational or workplace exposures.

**B. Proposition 65’s “Clear and Reasonable Warning” Requirement**

1. General Rule: The warning method must be reasonably calculated to make the warning message available to the potentially exposed individual *prior* to exposure.
  - a. Warning message must clearly communicate that:
    - 1) The chemical in question is known to the State to cause cancer, if it is listed as a carcinogen; or
    - 2) The chemical is known to the State to cause birth defects or other reproductive harm, if it is listed as a reproductive toxin.
  - b. The warning message will be deemed clear and reasonable as long as it meets the above general criteria. Notwithstanding this provision in the regulations, private plaintiffs have sued, claiming warnings were unclear and therefore defective, over: “and/or”, missing commas, singular warnings where there are multiple chemicals, and failing to include both cancer and reproductive toxicity warnings where appropriate. Although regulations implementing SB471 make it more difficult for private plaintiffs to obtain reimbursement of their attorneys’ fees for filing “frivolous” lawsuits, suits of little merit continue to be filed and defendants continue to settle them to avoid the high cost of mounting a defense.
  - c. Best policy:
    - 1) Use safe harbor warnings where appropriate (not all circumstances are covered by safe harbor regulations). See 27 Cal. Code Regs §25601
    - 2) Have your legal counsel review your compliance program and write an opinion on use of warnings. (May not always protect against lawsuit, but may create an “unintentional” defense.)
    - 3) Where warnings are not believed to be necessary, get an exposure assessment and consider applying to the State for a Safe Use Determination (“SUD”) The Office of Health Hazard Assessment (“OEHHA”) has recently undertaken an initiative to strengthen the SUD process and to direct courts to accord them deference in litigation. However, OEHHA may take years to complete the SUD process and has recently begun to charge the public for staff time to review the application – making the process costly.



2. Definition of exposure types. The regulations identify three distinct types of warnings: consumer products exposure, occupational exposures and environmental exposures. They are defined as follows:
  - a. A **consumer product exposure** is an exposure caused by a consumer product or a service.
  - b. An **occupational exposure** is an exposure in the workplace to any employee.
  - c. **Environmental exposures** are all exposures that are not occupational exposures or consumer product exposures.
3. Approved “safe harbor” warnings. Regulations set forth alternative methods and content of warnings that are deemed clear and reasonable for each of the three types of exposures. There are separate “safe harbor” warnings for each of the three types of exposures.
  1. Consumer product warnings. Regulations provide safe harbor warnings for consumer products.
    - 1) A warning that appears on the labels of products or substances provided it is likely that the warnings will be read and understood by individuals prior to exposure.
    - 2) Posting signs in a conspicuous location under conditions that make them likely to be read and understood by individuals.
  2. Occupational safe harbor warnings. Regulations established three alternative safe harbor warning methods for occupational exposures. (*See also California Code Regs Tit. 8, §5194*)
    - 1) Placing the warning on the labels of products or substances provided it is likely that the warnings will be read and understood by the employees prior to exposure.
    - 2) Posting signs in the workplace in a conspicuous location under conditions that make them likely to be read and understood by employees.
    - 3) Providing warnings that comply with requirements of the federal hazard communication standard.
  3. Environmental exposures. Regulations establish three alternative safe harbor warning methods for environmental exposures.
    - 1) Posting a sign in the affected area(s). (This means in the IMMEDIATE AREA WHERE AN EXPOSURE MAY OCCUR, not just at the entrance.) This is the preferred method.
    - 2) Mailing the warning at least once in any 3-month period to each occupant in the effected area. (May not be sufficient to warn “guests” or visitors to the property.)
    - 3) Providing a warning by public media announcements at least once in any 3-month period.

4. Regulations identify specific warning messages that are deemed to satisfy warning requirements. However, any warning that is “clear and reasonable” is acceptable.

“WARNING: THIS AREA CONTAINS A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER.”

“WARNING: THIS AREA CONTAINS A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.”

### **III. PROPOSITION 65 WARNING PROGRAM FOR LISTED CHEMICALS CONTAINED IN OR EMITTED FROM DEALERSHIP FACILITIES.**

*There are three types of exposures that require warnings.* State regulations set forth separate “safe harbor” warning methods for consumer product, occupational, and environmental exposures. These safe harbor warnings, however, were intended to apply in simple cases, where individuals are exposed to only one or two chemicals from a single source. Motor vehicles and dealerships are complex sources of exposures. Although we contend that each of the many exposures fall below Proposition 65’s “mandatory” exposure levels, to avoid bounty-hunter lawsuits, dealers should provide all warnings discussed below. All the following warnings and signs are available from CNCDA Form Source at 800/559-3676.

1. A *consumer product exposure* is an exposure caused by a consumer product or a service. In the case of car dealers, motor vehicles, automotive parts and accessories, and repair services all fall into the “consumer product exposure” category. In each case, consumers may be exposed to *detectible* amounts of numerous listed chemicals. We recommend using two different warnings to cover these exposures at dealerships:

- o For cars, a sticker should be placed on the driver window just above the lock mechanism.
- o For auto parts and repair services, a sign should be posted at the parts department and/or printed on invoices for service and parts.

In the case of exposures from motor vehicles, the nature of the exposure will depend upon whether the consumer is operating, cleaning, maintaining or servicing the vehicle. The following warning addresses each of these activities (See exemplar #1.)

#### **WARNING**

Motor vehicles contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. These chemicals are contained in many vehicle components and replacement parts, vehicle fluids, and paints and materials used to maintain vehicles, including, but not limited to, fuel, oil, batteries, brakes, and wheel balancing weights. In addition, motor vehicles emit engine exhaust and fumes, and when serviced, cleaned, or maintained generate used oil, waste fluids, fumes, grease, grime, and particulates from component wear, which contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

(Posted in accordance with Proposition 65 in Cal. Health & Safety Code §25249.5 *et seq.*) For further information about Proposition 65: <http://www.oehha.org/prop65.html>.

In the case of exposures from replacement parts and automotive services, the principal exposure is from the grease, grime, and particulates from component wear that the consumer will be exposed to when he/she performs the servicing and/or handles the used parts. This is true regardless of whether the replacement or used part contains a Proposition 65 chemical. In theory, the new part manufacturer should provide a warning for exposures to chemicals contained in new parts, but since the principal source of exposure is from the “dirty” motor vehicle and “dirty” used parts, rather than the “replacement” part, dealers should provide a warning to every customer. This warning is not only appropriate, but should protect the dealer from Proposition 65 liability in the event that the part manufacturer has failed to provide a Proposition 65 warning on the label of a replacement part or component. The following warning is recommended (see exemplar #2):

### WARNING

Motor vehicles contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. These chemicals are contained in many vehicle components and replacement parts, vehicle fluids, and paints and materials used to maintain vehicles, including, but not limited to, fuel, oil, batteries, brakes, and wheel balancing weights. When you service, clean or maintain your car, you will be exposed to listed chemicals contained in used oil, waste and replacement fluids, fumes, grease, grime, touch-up paint, certain replacement parts, and particulates from component wear. When we service your car, we will return used components to you upon request. Used parts and components contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

**To minimize your exposure when servicing, maintaining or cleaning your vehicle: 1) work in a well ventilated area; 2) do not smoke, drink or eat while working; 3) wash your hands when finished or when taking a break; and 4) follow all manufacturer instructions pertaining to proper use and maintenance of motor vehicles and vehicle components.**

(Posted in accordance with Proposition 65 in Cal. Health & Safety Code §25249.5 *et seq.*) For further information about Proposition 65: <http://www.oehha.org/prop65.html>.

2. An **occupational exposure** is an exposure in the workplace to any employee. Proposition 65 has been subsumed into California’s Hazard Communication requirement for Cal OSHA - (California Code Regs Tit. 8, §5194). Although dealerships may comply with both Cal OSHA and Proposition 65 obligations to warn employees by posting signs in areas where exposures occur, we recommend that dealers additionally provide a comprehensive warning to each employee. When each employee is hired, and once a year thereafter, the dealership should provide the warning and have the employee acknowledge that he or she has read and understood it. The employee should sign and date the warning, a copy should be given to the employee and a copy should be put in the employee’s file. See exemplar #4 for an example of a Proposition 65 employee warning.

3. ***Environmental exposures*** are all exposures that are not occupational exposures or consumer product exposures. In a dealership, environmental exposures include any exposure in the workplace to non-employees such as visitors, the general public, neighbors, and independent contractors. At dealerships we recommend that 10 x 10 signs be posted at the entrance to every building, in customer waiting areas and in any location where the dealer believes that a significant exposure may occur. (E.g. in service bays – recall these signs are also intended to warn employees, vendors and independent contractors, not just customers and visitors.) See exemplar #3 for an example of a Proposition 65 environmental warning.

4. ***Subcontractor compliance and notification.*** Dealerships often hire subcontractors to perform facility maintenance, landscaping and other services on the dealership property. In the course of performing these services, the subcontractor may use chemicals, pesticides, paints, or other products that may expose your employees and the general public to Proposition 65 listed chemicals. As appropriate, we recommend that dealers make sure that all subcontractors and/or vendors have their own Proposition 65 compliance programs, and that they indemnify the dealership in the event that they expose the dealers, customers, employees and guests to Proposition 65 chemicals during the course of their work for and on behalf of the dealership. (See exemplar #5)

5. ***Caution: Post your warnings and leave them up!! The exemplars that we have provided, especially the employee and subcontractor exemplars should be reviewed and revised as required to reflect business operations at your individual dealership.***

#### **IV. RELATED LEGAL REQUIREMENTS**

##### **A. California OSHA (California Code Regs Tit. 8, §5194)**

1. Proposition 65 has been subsumed into California's Hazard Communication Standard.

##### **B. Health and Safety Code § 25359.7**

1. Requires owners of non-residential real property, prior to the sale, lease or rental of that property, to give written notice of any release of hazardous substances to any buyer, lessee or renter.
2. Failure to give written notice subjects the owner to “actual damages and any other remedies provided by law.”
3. If the owner has actual knowledge of any “release of any material amount of a hazardous substance” that owner may be liable for a civil penalty not to exceed \$5,000.

##### **C. AB 3713 (Health and Safety Code § 25915)**

1. Imposes Special Asbestos Warning Requirements on owners of public and commercial buildings – constructed before 1979.
2. Warning applies to buildings containing asbestos-containing materials (“ACM”) that contain more than one-tenth of 1 percent asbestos.
3. Warning required to be provided to “employees.”
4. Warning Contents:

- a. Information from survey of ACM.
  - b. Locations of ACM.
  - c. Handling procedures to minimize exposure.
  - d. Results of bulk sample analysis or air monitoring.
  - e. Potential health risks.
5. Abbreviated warning for encapsulated or bonded ACM.

**D. Statutes that apply to gifts, clothing and promotional items**

- 1. California Toxic Toys (AB1108, 2007)
  - a. January 1, 2009 bans phthalates (chemicals that make plastics soft) in children's toys and products intended for children's use.
- 2. California Lead-Containing Jewelry & Clothing Decorations (Health & Safety Code 25214.1 – 25214.4)
  - a. Sets strict limits for lead in plastic, metal, and other substrates used for jewelry and clothing.
  - b. See California Department of Health Services facts sheet: [www.dtsc.ca.gov/upload/HWMP\\_F5\\_lead\\_in\\_jewelry1.pdf](http://www.dtsc.ca.gov/upload/HWMP_F5_lead_in_jewelry1.pdf)

## **EXAMPLE #1**

### **Proposition 65 Warning for Automobiles**

This is a sticker that should be placed on the driver's side window directly above the door lock. The sticker should be put on each car that is offered for sale or lease at the dealership. It should be placed on the vehicle as soon as the dealer takes delivery and remain on the vehicle until the vehicle is sold or leased. The new owner may remove the sticker, and it is not intended to be permanent.

It is not necessary to post the warning in dealership-owned vehicles that are used to operate the business, although we understand that some dealers have decided to do so. Employee warnings and Parts and Service Notices, as well as the ubiquitous notices on cars offered for sale are intended to cover any exposure from dealership vehicles.

The sticker may be ordered from CNCDA Form Source, form number F435, telephone number 800-559-3676.

## **WARNING**

Motor vehicles contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. These chemicals are contained in many vehicle components and replacement parts, vehicle fluids, and paints and materials used to maintain vehicles, including, but not limited to, fuel, oil, batteries, brakes, and wheel balancing weights. In addition, motor vehicles emit engine exhaust and fumes, and when serviced, cleaned, or maintained generate used oil, waste fluids, fumes, grease, grime, and particulates from component wear, which contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

(Posted in accordance with Proposition 65 in Cal. Health & Safety Code §25249.5 *et seq.*) For further information about Proposition 65: <http://www.oehha.org/prop65.html>.

## EXAMPLE #2

# Proposition 65 Warning for Auto Parts & Service

We recommend that this warning be provided both as a sign and printed on receipts and/or service order documents.

**Wall sign:** 10"x10" is recommended. (8 ½" x 11" is also acceptable) Use 1" margins on all sides. It does not matter if the text is justified or not, as long as the sign is easy to read. The word "WARNING" should be all caps, in a larger typeface, and centered over the body of the warning. The body of the warning should be in a typeface that fills the remainder of the sign without crowding. The last sentence, the citation to the statute, may be in a smaller type, as this is optional information. We suggest black print on a white background. Proposition 65 regulations do not require specific colors, and some dealers may want to choose their own backgrounds. However, it is important that dealers do not color-coordinate their signs to the point that the sign would blend into the background and not be seen.

The wall sign should be posted at all locations where after market parts are sold and where service orders are written and paid for.

In addition to wall signs, some dealers may want to put the notice on the back of the cash register, either as a sticker or a sign sized to fit on this device. In this case, the notice can be reduced so it will fit the available space but should not be smaller than 50 square inches (e.g. 5" x 10").

**Auto Parts and Service Receipts:** The warning should also appear on the receipts for parts and service. (In some cases, this may be two different receipts.) The best placement is on the front, in typeface that is at least as large as any other warning or cautionary information on the invoice. However, it is OK if the Prop 65 warning is placed on the reverse, if other legally mandated warnings are provided on the reverse. In this case, the warning **MUST** be at least as prominent as any other warnings or notices (e.g. the warrantee notices) on the invoice. If on the reverse, we recommend putting a box around the warning for emphasis. If you do not use a printed form when you sell after market parts, this warning may be printed on receipts and/or provided as a flier to customers when used parts are returned or new parts are ordered. When printing the warning on receipts, it may be reduced in size, but must be easy to read and printed in a type at least as large as other print on the document. You may choose to put a box around the warning for emphasis.

The 10" x 10" wall sign may be ordered from CNCDA Form Source, form number P439, telephone number 800-559-3676.



# WARNING

Motor vehicles contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. These chemicals are contained in many vehicle components and replacement parts, vehicle fluids, and paints and materials used to maintain vehicles, including, but not limited to, fuel, oil, batteries, brakes, and wheel balancing weights. When you service, clean or maintain your car, you will be exposed to listed chemicals contained in used oil, waste and replacement fluids, fumes, grease, grime, touch-up paint, certain replacement parts, and particulates from component wear. When we service your car, we will return used components to you upon request. Used parts and components contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

**To minimize your exposure when servicing, maintaining or cleaning your vehicle: 1) work in a well ventilated area; 2) do not smoke, drink or eat while working; 3) wash your hands when finished or when taking a break; and 4) follow all manufacturer instructions pertaining to proper use and maintenance of motor vehicles and vehicle components.**

(Posted in accordance with Proposition 65 in Cal. Health & Safety Code §25249.5 *et seq.*) For further information about Proposition 65: <http://www.oehha.org/prop65.html>.

## **EXAMPLE #3**

# **Proposition 65 Warning for Dealership Facilities & Operations**

We recommend that the environmental warning signs be posted at the entrance to every building, in customer waiting areas and in any location where the dealer believes that a significant exposure may occur. (E.g. in service bays – recall these signs are also intended to warn employees, vendors and independent contractors, not just customers and visitors.)

**Wall Sign:** We recommend that signs be 10"x10." (8 ½" x 11" is also acceptable.) Use 1" margins on all sides. It does not matter if the text is justified or not, as long as the sign is easy to read. The word "WARNING" should be all caps, in a larger typeface, and centered over the body of the warning. The body of the warning should be in a typeface that fills the remainder of the sign without crowding. The last sentence, the citation to the statute, may be in a smaller type, as this is optional information. We suggest black print on a white background. Proposition 65 regulations do not require specific colors, and some dealers may want to choose their own backgrounds. However, it is important that dealers do not color-coordinate their signs to the point that the sign would blend into the background and not be seen.

The 10" by 10" wall sign may be ordered from CNCDA Form Source, form number F440, telephone number 800-559-3676.

# **WARNING**

**ALL AREAS OF THIS DEALERSHIP CONTAIN CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM. THESE CHEMICALS ARE CONTAINED IN VEHICLES AND PARTS AND ACCESSORIES OFFERED FOR SALE AND IN SOME OF THE PRODUCTS AND MATERIALS USED TO MAINTAIN THE PROPERTY, AND IN EMISSIONS, FUMES, AND SMOKE FROM BUSINESS OPERATIONS, EMPLOYEE AND GUEST ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, THE OPERATION AND SERVICING OF MOTOR VEHICLES, AND THE USE OF TOBACCO PRODUCTS.**

**(POSTED IN ACCORDANCE WITH PROPOSITION 65, CALIFORNIA HEALTH AND SAFETY CODE §25249.5 *ET SEQ.*)**

## **EXAMPLE #4**

### **Proposition 65 Employee Notice**

Although dealerships may comply with both Cal OSHA and Proposition 65 obligations to warn employees by posting signs in areas where exposures occur, we recommend that dealers additionally provide a comprehensive warning to each employee. When each employee is hired, and once a year thereafter, the dealership should provide the warning and have the employee acknowledge that he or she has read and understood it. The employee should sign and date the warning, a copy should be given to the employee and a copy should be put in the employee's file.

The following warning may be printed on your letterhead.

Name of Dealership

## **ANNUAL PROPOSITION 65 NOTICE TO EMPLOYEES**

Like all businesses in California, our business is subject to the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65. The key provisions of this law: 1) require businesses exposing any individual to listed chemicals to warn the individual; and 2) prohibit discharging listed chemicals into any source of drinking water. For more detailed information about Proposition 65, please contact California's Office of Environmental Health Hazard Assessment website: [www.oehha.org](http://www.oehha.org). A complete and current list of the approximately 800 chemicals that are listed can be downloaded from the site.

**Proposition 65 Exposure Warning.** While many chemical exposures are associated with industrial activities, everyday items, even the air we breathe and the food we eat, routinely contain Proposition 65-listed chemicals. These chemicals are listed for one or more hazard characteristics: chemicals known to the State of California to cause cancer, and chemicals known to the state of California to cause birth defects or other reproductive harm. This notice provides information and warnings specific to exposures that you will encounter at this dealership. In many instances, we do not have information specific to this dealership. Instead, we have relied upon experts in this field to tell us where Proposition 65 exposures may occur. For other exposures to listed chemicals, enough is known to identify specific areas where exposures occur.

Motor vehicle – related exposures. Gasoline and diesel engine exhaust contain many Proposition 65-listed chemicals including benzene and carbon monoxide. Enclosed or partially enclosed spaces, such as service bays, garages, parking structures, can concentrate exhaust fumes, increasing exposure to these chemicals. At this dealership, exposure to engine exhaust is likely in all areas, both indoor and out, due to the presence of engine exhaust in the ambient air from dealer operations, adjacent streets and parking areas. In addition, many vehicle components and replacement parts, vehicle fluids, touch-up paints and materials used to service vehicles, contain listed chemicals, including, but not limited to, fuel, oil, batteries, brakes, and wheel balancing weights. When you operate, service, clean, or maintain a motor vehicle you will generate and be exposed to listed chemicals contained in used oil, waste fluids, fumes, grease, grime, and particles from component wear.

Second Hand Tobacco Smoke. Tobacco smoke is a listed chemical and it also contains many chemicals that are known to cause cancer and/or birth defects or other reproductive harm. Smoking is permitted in certain areas of the dealership.

Furnishings, Office Supplies and Electrical Components. Office furnishings, including furniture, carpeting, power cords, computers, printers, copiers, and carbonless paper, contain a number of Proposition 65 listed chemicals, including lead, formaldehyde and acetaldehyde. These listed chemicals are known to the State of California to cause cancer and/or birth defects and other reproductive harm. In addition, various common items made of brass (such as keys) or plastic may expose you to listed chemicals.

First-Aid Supplies. Certain first aid supplies, such as pain relievers and stomach coating medications, that contain aspirin, pink bismuth, attapulgit, and/or petroleum jelly, will expose you to Proposition 65 listed chemicals.

Food and Beverages (vending machines and company events). Food and snacks are sold in vending machines and may be provided from time-to-time at company-sponsored events. Frying or baking at high temperatures produces acrylamide in certain foods, such as chips and French fries. Broiling or barbecuing meats and fish produces Proposition 65-listed chemicals that can cause cancer. Chocolate and other natural ingredients of foods contain listed chemicals including lead. Drinking alcoholic beverages may increase cancer risk and, during pregnancy, can cause birth defects.

Vehicle Service Exposures. Service technicians and mechanics are exposed to solvents, fluids, oils, fuel, worn car components, engine exhaust, batteries, brakes and brake pads, lead wheel balancing weights, grease, grime and other items that contain many chemicals known to the state of California to cause cancer and birth defects and other reproductive harm. Employees should consult the material safety data sheets and package instructions and follow recommended handling and safety procedures.

As a daily reminder of Proposition 65 exposures at this dealership, we have posted the following sign at the prominent locations throughout our facilities.

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**To minimize your exposure to Proposition 65 chemicals, we urge you to follow all manufacturer instructions pertaining to proper use of motor vehicles, vehicle components, materials and supplies. If you have a question about a particular activity, please contact your supervisor for a material safety data sheet or other information. Always wash your hands before eating.**

For additional information concerning this notice, please contact (insert name of supervisor/manager) at [Telephone]. Your cooperation and effort is required.

\_\_\_\_\_  
Type name of Supervisor  
Title

Received and Understood By: \_\_\_\_\_  
(Name of employee)

Dated: \_\_\_\_\_

## **EXAMPLE #5**

### **Proposition 65 Subcontractor Compliance/Indemnity**

Dealerships often hire subcontractors to perform facility maintenance, landscaping and other services on the dealership's property. In the course of performing these services, the subcontractor may use chemicals, pesticides, paints, or other products that may expose your employees and the general public to Proposition 65 listed chemicals. As appropriate, we recommend that dealers make sure that all subcontractors and/or vendors have their own regulatory compliance programs that include Proposition 65. We also recommend that subcontractors acknowledge that they have such compliance programs and that subcontractors indemnify the dealership in the event that they violate the law or expose the dealers, customers, employees and guests to Proposition 65 chemicals during the course of their work for and on behalf of the dealership.

The follow warning may be added to your subcontracts or may be printed on your letterhead and added to subcontracts as an addendum.

## SUBCONTRACTOR WARNING & INDEMNITY

This agreement is entered into this \_\_\_\_ day of \_\_\_\_, 200\_, between \_\_\_\_\_ (“Dealership”) and \_\_\_\_\_ (“Subcontractor”). As a condition of performing work for and on the behalf of Dealership, Subcontractor agrees to comply with all terms and conditions set forth below.

Comply with All Applicable Laws. During the performance of all work performed on behalf of Dealership, Subcontractor agrees to strictly comply with all federal, state and local laws, and shall take appropriate steps to become informed about the legal and regulatory requirements that apply to activities that Subcontractor performs on Dealership’s behalf. Subcontractor shall also comply with the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), whether or not Subcontractor itself is independently subject to the provisions thereof. Among other things, such compliance shall include posting Proposition 65 warning signs, if appropriate, and taking care not to expose persons to Proposition 65-listed chemicals.

Duty to Notify. Subcontractor shall immediately notify Dealership in writing if Subcontractor, or any of Subcontractor’s employees, agents, subcontractors, customers, invitees, or suppliers, brings a chemical that has been listed on the Governor’s list pursuant to Proposition 65 (“listed chemical”) onto the Dealership premises. Upon request, Subcontractor shall provide Dealership with copies of all warning labels on products Subcontractor and said persons are using prior to any use.

Subcontractor shall immediately notify Dealership of any spill, release or discharge of any listed chemical caused by or brought to the attention of Subcontractor or any of Subcontractor’s partners, employees, agents, subcontractors, customers, invitees or suppliers, whether such spill, release or discharge is the result of an intentional act, negligence, accident or misfortune.

Duty to Abate Spills and Discharges. Subcontractor shall immediately take all reasonable and necessary actions to prevent the further spread of any spill, release or discharge of a listed chemical that is brought to the attention of Subcontractor. As to any spill, release or discharge of a listed chemical which is caused by Subcontractor or any of Subcontractor’s partners, employees, agents, subcontractors, customers, invitees or suppliers, whether caused intentionally, negligently or accidentally.

Subcontractor shall take immediate action to clean up said spill, release or discharge in full compliance with all applicable laws and regulations and any directions from Dealership. All work, labor, services or materials necessary to comply with this Section will be furnished by subcontractor as part of his normal service without any additional compensation. Subcontractor may be released from its obligation hereunder to post the warning signs required by Proposition 65, and only that obligation, only with the express written permission of Dealership.

Cleaning Up and Waste Disposal: Neither Subcontractor nor any of Subcontractor’s partners, employees, agents, subcontractors, customers, invitees or suppliers shall clean any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of Proposition 65, or any other state, federal or local law regarding the discharge or disposal of hazardous material or hazardous waste. All residue and waste materials resulting from any such cleaning action shall be collected and gathered up by Subcontractor and removed from the Project and disposed of in accordance with all applicable laws and regulations.

Indemnification of Dealership: Subcontractor agrees to hold Dealership respectively, free and, harmless of and from and defend and indemnify them against all liability, loss, claims, demands, damages, expense and costs, including, without limitation, attorney’s fees, of every kind or nature arising out of any failure of Subcontractor to perform and observe the requirements of all or any part of any law, regulation, rule, contractual obligation or otherwise arising out of or in connection with Subcontractor’s performance of work hereunder, except for such loss or damage which was caused solely by the negligence of Dealership.

Received and Agreed To: \_\_\_\_\_ Company

By: \_\_\_\_\_ Dated: \_\_\_\_\_







***California New Car Dealers Association***

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