

Proposition 65 Developments for Alcoholic Beverage Industry

September 21, 2020

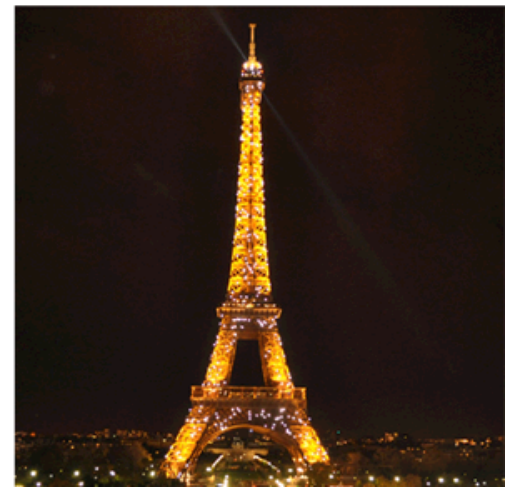
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- Background on Alcoholic Beverage Warnings
- Enforcement Trends
- Proposed Rulemaking for Online Ordering and Delivery



Relevant Listings



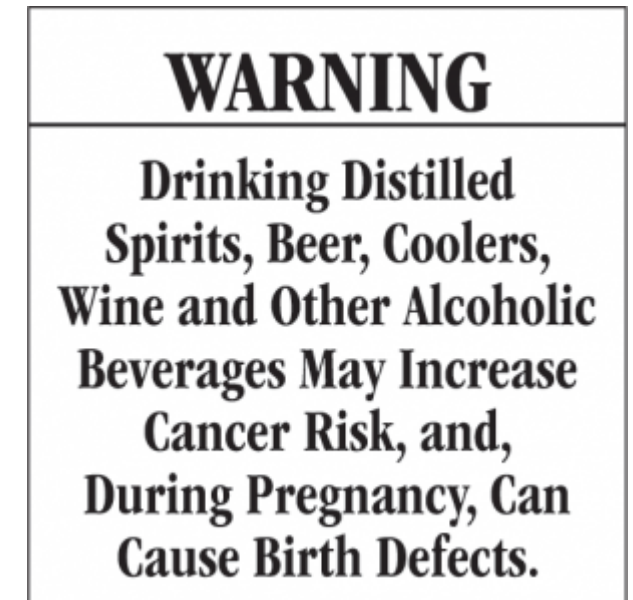
- Alcoholic beverages: Listed April 29, 2011 for cancer
- Alcoholic beverages (when associated with alcohol abuse):
Listed July 1, 1988 for cancer
- Ethyl alcohol in alcoholic beverages: Listed October 1, 1987 for
dev. toxicity
- No state-issued safe harbors
- 609 60-Day Notices filed



Federal Preemption of Prop. 65 Warning



- Section 216 of Alcohol Administration Act
 - Warnings other than the Surgeon General's warning not permitted
- Lack of warnings challenged in 2014
 - Result: Retail Signage
 - Opt-In Provisions
- Rulemaking allows restaurants to cure a failure to warn within 14 days for first violation



New Warning As of 2016 Rulemaking



WARNING: Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to www.P65Warnings.ca.gov/alcohol.

- Only difference is the link to Lead Agency Website
- Consent judgment warning, which may still be used by parties


Lead Agency Website




CA.gov

Proposition 65
Your right to know!

About Listed Chemicals Fact Sheets Products & Places For Businesses



 Alcoholic Beverages

New Warning (effective 8/30/14)

WARNING: Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to www.P65Warnings.ca.gov/alcohol.

Fact Sheets

- ▶ [Alcohol and Fetal Alcohol Spectrum Disorders \(FASDs\)](#)
- ▶ [Alcohol and Cancer](#)
- ▶ [El alcohol y el cáncer](#)
- ▶ [El alcohol y los trastornos del espectro alcohólico fetal \(TEAF\)](#)

- 13 Companies received 60-day notices for failure to warn for alcoholic beverages ordered online or via mobile applications
- The Attorney General took over these cases in March 2019 and entered into a consent judgment
 - Injunctive Relief: Providing warning before purchase and warning at delivery (e.g., printed on receipt or delivered electronically)



Proposed Article 6, Section 25607.3



- On January 31, OEHHA proposed amendments to Article 6 warnings
- Proposed amendments include unique proposed methods for online alcohol orders and deliveries consistent with consent judgment
- After reviewing comments, on September 11 OEHHA made additional changes to the proposal not related to Section 25607.3





THANK YOU

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