

File - Prop. 65

MAR 16 1987



Calorie Control Council

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TO: PRIMARY CONTACTS

RE: CALIFORNIA PROPOSITION 65

Many food and drug attorneys view Proposition 65 as the most threatening state action to date to the uniform application of the Food, Drug and Cosmetic Act relating to food safety. A summary, of the requirements of Proposition 65 and its implementation and impact, prepared by Covington & Burling, the association's legal counsel, is enclosed for your review. While it is lengthy, the issue is of such magnitude, we strongly encourage detailed review by appropriate individuals in your firm, including legal counsel.

The Governor of California recently initiated a number of follow-up actions required by Proposition 65. (Please see the California Health and Welfare Agency's enclosed press release.) Among the key developments are:

- The publication by the Governor of an initial primary list of 29 chemicals and chemical classes or compounds covered by Proposition 65. (It appears that the Governor responded to strong industry objections to the larger list demanded by consumer groups. Included within that opposition was the Kellen Company letter, provided to you with the February 26 Calorie Control Council member letter, Focus.)
- The publication by the Governor of an extensive list of "candidate chemicals" for which only limited evidence of carcinogenicity in animals and inadequate evidence in humans may be available. The chemicals on this list are to be considered for future transfer to the primary list. (Following the announcement of the initial primary list, a coalition of the AFL-CIO and certain environmental and citizens' groups, which had actively promoted Proposition 65 filed a lawsuit against the Governor asking the court to require inclusion of the entire carcinogenic chemicals lists of the International Agency for Research in Cancer and the National Toxicology Program on the California primary list.)
- The designation of California's Health and Welfare Agency as the lead agency to head an inter-agency group to advise the Governor on the implementation of Proposition 65.

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- The naming of a 12-member Scientific Advisory Panel to review the candidate list of chemicals and determine which of those chemicals should be added to the initial list of chemicals covered by Proposition 65. The panel's duties will also include identification of authoritative bodies which have identified chemicals of concern, and the review or proposal of standards or procedures for determining carcinogenicity or reproductive toxicity. "The work of the Panel will be open and available to the public to the maximum extent possible. Except as otherwise expressly authorized by statute, all meetings of the Panel and all subcommittee meetings shall be open to the public and convened only after reasonable public notice of the time and place of the meeting has been provided." The Panel's charge and a list of the Panel members is a part of the Covington & Burling summary).

Given the pervasive provisions of Proposition 65, it is possible any food or drug may fall within the purview of this new law. The California business community has formed an Ad Hoc coalition that is working with the Governor's office on implementation of the law. Because of the vague nature of many of the definitions and provisions in Proposition 65, the continuing dialogue and ensuing litigation will be critically important to the determination of the final impact of this law.

Proponents of Proposition 65 have announced their intention to promote passage of similar legislation in other states. A legislative initiative identical to Proposition 65 has already been introduced in the Missouri legislature and sympathetic state legislators in New York, Colorado, and Wisconsin are now drafting similar legislation for introduction.

We will continue to monitor developments on Proposition 65 and recommend action, as appropriate.

Sincerely,



Robert C. Gelardi
Executive Director

RCG:cj

Enclosures

cc: Board of Directors
Legal/Regulatory Committee