

Industry Insights: California Chamber of Commerce Challenges Proposition 65 Acrylamide Warning for Foods

On October 7, 2019, the California Chamber of Commerce ("CalChamber") filed a [lawsuit](#) against California Attorney General Xavier Becerra in the U.S. District Court for the Eastern District of California. The lawsuit seeks to enjoin the Attorney General and private bounty hunter plaintiffs from enforcing Proposition 65 regulations relating to acrylamide in food. Acrylamide is a chemical that forms in nearly all starchy plant-based foods that have undergone high-temperature cooking, including French fries, coffee, cereals, crackers, breads, tortilla chips, dried fruits and many other foods. Acrylamide has been present in food as long as humans have been cooking. The chemical forms from sugars and an amino acid that are naturally present in food—it is not intentionally added to foods, nor does it come from food packaging or the environment. Currently, Proposition 65 requires any business that manufactures, distributes or sells food products containing acrylamide to provide a warning unless the business can prove, with expert evidence, that the amount of acrylamide in the food does not pose a "significant risk" of cancer. To avoid the incredible expense and uncertainty of litigation, however, many businesses have been forced to label their products with scientifically dubious, but state-mandated, cancer warnings for acrylamide. The CalChamber lawsuit argues that cancer warnings for acrylamide are misleading because neither the California Office of Environmental Health Hazard Assessment nor any other governmental entity has determined that acrylamide is a human carcinogen. As such, the lawsuit argues that companies should not be forced to provide unsubstantiated acrylamide warnings or face potentially costly enforcement actions initiated by the Attorney General or private enforcers. Moreover, the CalChamber lawsuit argues that, by mandating warnings for acrylamide in food, Proposition 65 is forcing individuals and businesses to say something false and misleading in violation of the First Amendment. While the CalChamber case progresses, businesses still need to abide by any Proposition 65 settlement agreements or consent judgments relating to acrylamide that are already in place. In the meantime, we will continue to monitor the case and any other Proposition 65 litigation and regulation developments that may be relevant to our clients. Please contact us if you have any questions.

Authors



[Jasmine Wetherell](#)

Partner

JWetherell@perkinscoie.com [310.788.3294](tel:310.788.3294)

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