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**SIDLEY**

**Proposition 65 Update**  
2024 Regulatory Summit - American  
Home Furnishings Alliance

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PROP 65 – FURNITURE SAFE HARBOR  
WARNING

# Furniture Safe Harbor Warning

- **“NOTICE:** Some furniture products can expose you to chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm. Please check the product label for warning information.”
  - 8.5 x 11 sign (28 pt font) at each point of entry
  - On each receipt (12 pt font)
- **“WARNING:** This product can expose you to chemicals including [name of **one** or more chemicals known to cause cancer, name of one or more chemicals known to cause reproductive toxicity, or name of one or more chemicals known to cause both cancer and birth defects or other reproductive harm], which is [are] known to the State of California to cause cancer **or** birth defects **or** other reproductive harm. For more information go to [www.P65Warnings.ca.gov/furniture](http://www.P65Warnings.ca.gov/furniture).”
  - On the manufacturer’s label
  - Even if not consumer facing

# Consumer Products Generally

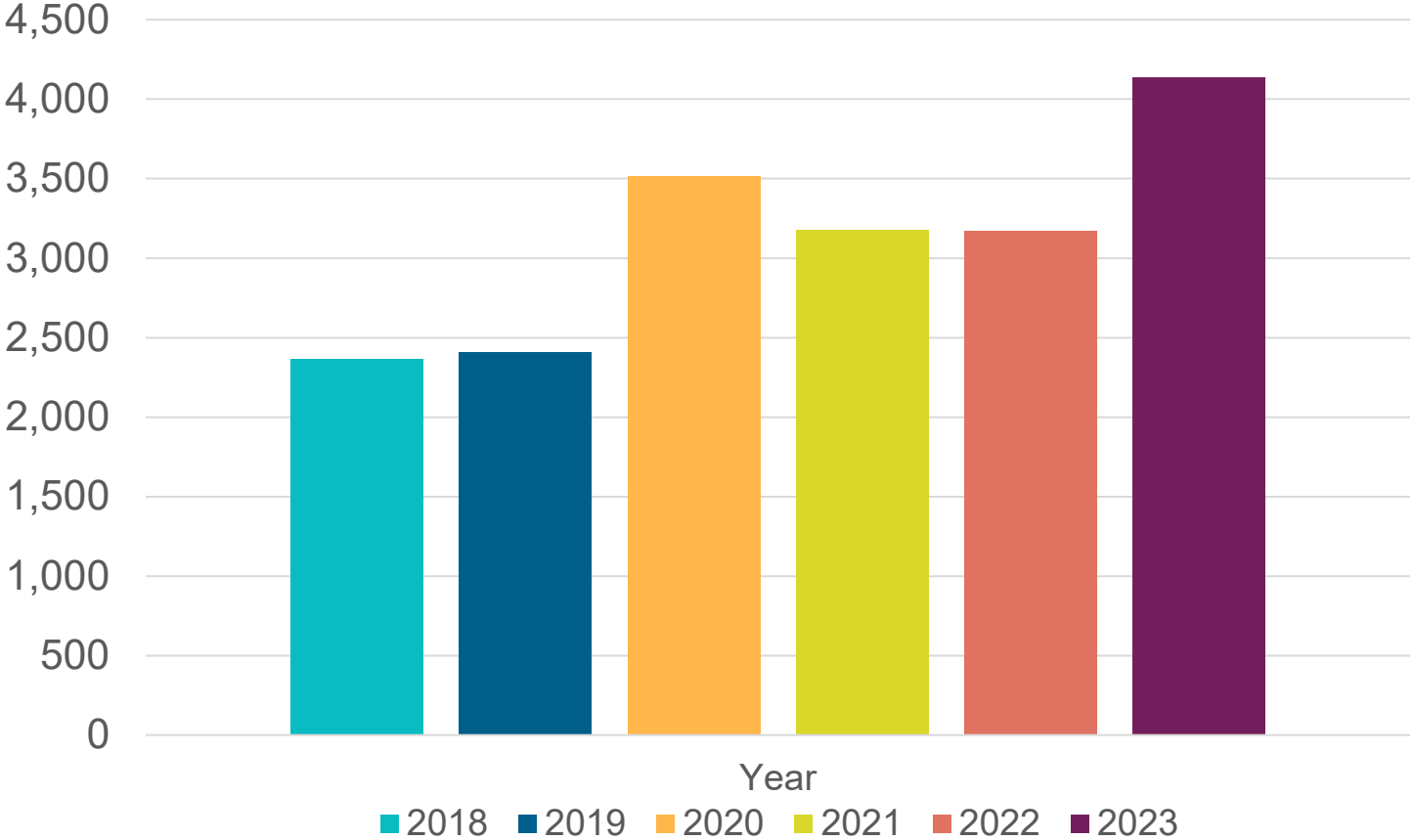
- Placement: At each point of display, on each product label, or prior to purchase at point of sale
- Language:
  - 1 of 4 “long form” warnings depending on the listed end point for the chemical being warned of
  - 1 of 3 “short form” warnings depending on the listed end point for the chemical being warned of



# PROP 65 BY THE NUMBERS – 2023 IN REVIEW

# High Pace of Prop 65 NOVs Continues

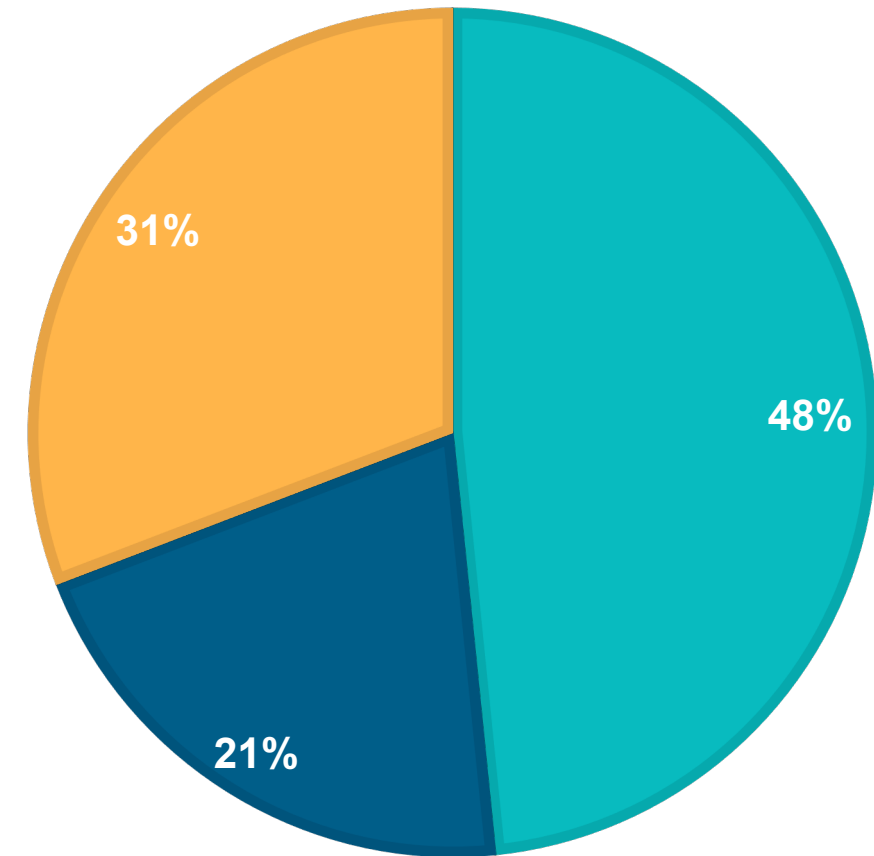
- Notice letters continue to come in well ahead of their pre-pandemic pace.
- This is not necessarily resulting in more monetary exposure for companies.



## Two Chemical Groups Account for Most NOVs

- Lead is listed in the vast majority of all heavy metals NOVs
- DEHP is listed in the majority of all phthalate NOVs
- The 900 other chemicals on the list comprise only about one-third of all NOVs

- Heavy Metals
- Phthalates
- Other (Acrylamide, BPA, PFOA, PFOS, TiO<sub>2</sub>)





## Prop 65 Was a \$50M Business in 2023

- 238 Consent Judgments for \$23,108,072  
Average CJ: \$97,092
- 1,042 Out-of-Court Settlements for \$26,192,237  
Average Settlement: \$25,136





# PROP 65 – 2024 AND BEYOND

# Listed Chemicals of Note

- BPA
  - Listed for female reproductive toxicity since 2015 and developmental toxicity since 2020
  - Original focus on thermal paper and polycarbonate eyewear
  - Recycled fibers in textiles and virgin textiles
  - Other polycarbonate products (e.g., shelf dividers)
  - Safe Harbor: 3 ug/day dermal exposure from solid materials
- BPS
  - Listed for female reproductive toxicity on 12/29/23, actionable 12/29/24
  - No regulatory safe harbor level established
  - Under consideration for listing for developmental and male reproductive toxicity
- Vinyl Acetate – under consideration for listing as a carcinogen

## Wood Dust – OEHHA Information Letter Dated June 14, 2024

Question Presented: Whether a retailer is required to provide a wood dust exposure warning for assembled furniture?

- Proposition 65 warning is not required for all wood and particle board-containing furniture.
- Wood dust is produced by chipping, drilling, sawing, sanding, and woodturning.
- No reason to believe that furniture degradation, without more, would produce wood dust that poses a significant risk of cancer to those using the furniture.
- The same is true for residual wood dust remaining on furniture for purchase.
- Because wood dust will not be produced if customers do not engage in the activities discussed above (*e.g.*, cutting, chipping, sawing) before using the furniture products, OEHHA concluded that it is not aware of a scenario where a retail consumer would be exposed to significant cancer risk from wood dust by using assembled wood furniture.
- A Proposition 65 warning for wood dust on finished furniture therefore generally is not required.

# Short Form Warning Modifications

| Current Short Form Warning Text                                  | Proposed Modified Short Form Warning Text  |
|--|--|
| <p>Cancer –<br/>www.P65Warnings.ca.gov</p>                       | <p>Cancer risk from exposure to [name of chemical]. See www.P65Warnings.ca.gov.</p> <p>Can expose you to [name of chemical], a carcinogen. See www.P65Warnings.ca.gov.</p>   |
| <p>Reproductive Harm –<br/>www.P65Warnings.ca.gov</p>            | <p>Risk of reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov.</p> <p>Can expose you to [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov.</p>  |
| <p>Cancer and Reproductive Harm –<br/>www.P65Warnings.ca.gov</p> | <p>Risk of cancer from exposure to [name of chemical] and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov.</p> <p>Can expose you to [name of chemical], a carcinogen, and [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov.</p> |
| <p>Cancer and Reproductive Harm –<br/>www.P65Warnings.ca.gov</p> | <p>Risk of cancer and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov.</p> <p>Can expose you to [name of chemical], a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.</p>  |

# Questions?

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