

ALERTS

Litigation Law Alert - California Adds BPA To List Of Unsafe Chemicals

May 18, 2015 | [Atlanta](#) | [Chicago](#) | [Los Angeles](#) | [Columbus](#) | [Delaware](#) | [Elkhart](#) | [South Bend](#) | [Grand Rapids](#) | [Indianapolis](#) | [Minneapolis](#) | [Fort Wayne](#)

The State of California has added [bisphenol A \(BPA\)](#) to the [California Proposition 65](#) list of chemicals “known to the State of California to cause Cancer or Birth defects.” BPA has been used to make certain plastics and resins, reaching the public spotlight about a decade ago when “BPA free” became a common advertising line with respect to plastic water bottles. The listing was made effective by California’s Office of Environmental Health Hazard Assessment (OEHHA) on May 11, 2015.

As of May 11, 2016, notices of violation will be served in earnest by private plaintiffs upon businesses that have ten or more employees, and that sell, distribute, or manufacture a product containing BPA that does not have a warning. There currently is no “safe harbor” level of exposure established by the state for BPA, and thus merely having BPA present in a product or otherwise exposing consumers to BPA at any level without providing a required warning may result in liability.

Businesses should evaluate their products and supply chains to ensure that products manufactured, sold or distributed in California after May 11, 2016, either (1) contain no BPA, or, (2) are sold with the requisite warning. If reformulation is the chosen approach, the business should verify that products containing BPA will sell through retail outlets before May 11, 2016. Alternatively, if the business chooses to provide a warning, both new and current inventories should be labeled.

Simply reformulating products before May 11, 2016, is not enough to avoid liability. To avoid liability, no end user should be able to acquire BPA containing products or purchase services which expose them to BPA without a required warning after May 11, 2016.

For more information, contact the Barnes & Thornburg attorney with whom you normally work, or one of the following attorneys: Levi Heath at levi.heath@btlaw.com or 310-284-3890; or Mike Scanlon at michael.scanlon@btlaw.com or 317-231-7387.

© 2015 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.

Visit us online at www.btlaw.com and follow us on Twitter [@BTLawNews](https://twitter.com/BTLawNews).

RELATED PEOPLE



Michael T. Scanlon

Partner
Indianapolis

P 317-231-7387
F 317-231-7433
michael.scanlon@btlaw.com

RELATED PRACTICE AREAS

Commercial Litigation
Toxic Substances and Other Torts