

# Federal Court Curbs California's Proposition 65, Giving Some Relief to Businesses Selling Products in California

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California's Proposition 65 ("Prop 65"), is well-known to companies selling consumer products, including food and beverage items in California. It is common to see Prop 65 warning labels on everything from household appliances to food and other products where there is the potential for exposure to chemicals from ingestions, inhalation, or dermal contact. What is far less common, however, is a federal court weighing in on the validity of a Prop 65 warning and striking down a key regulation as unsupported by scientific studies. That is what has occurred with respect to acrylamide in a recent case *California Chamber of Commerce v. Bonta*.

## Proposition 65 and Acrylamide

Enacted in 1986, Prop 65 is a unique law that requires businesses to warn Californians of exposures to substances that cause cancer, birth defects, or other reproductive harms. California regulators publish and update a list of carcinogens or reproductive toxins and exposure levels that trigger a warning requirement. Typical chemicals include those naturally occurring and synthetic chemicals common in household products, food, drugs, dyes, or solvents. The list has increased to include over 900 carcinogens or reproductive toxins since its initial publication in 1987.

Prop 65 authorizes the State of California to enforce its provisions, including a fine of \$2,500 per offense which is calculated based on each exposure. While public enforcers are authorized to bring a civil action, most of litigation of Prop 65 cases are brought by private parties (often termed "bounty hunters" because they receive portion of any penalty and attorney fees) who seek to enforce the law "in the public interest" after providing a 60-day notice and certificate of merit to the alleged violator.

California first added acrylamide to the Prop 65 list in 1990. Acrylamide is a chemical that can form in certain foods during high-temperature cooking from sugars and an amino acid called asparagine. After the addition of acrylamide to the Prop 65 list, subsequent years saw numerous lawsuits stemming from the inclusion of acrylamide in products,

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including notable early cases involving potato products and coffee roasters. Private actions involving acrylamide have also multiplied in recent years.

## California Chamber of Commerce v. Bonta

In 2019, the California Chamber of Commerce (“the Chamber”) sued the State of California in the Eastern District of California contesting the validity of California’s required acrylamide warnings under Prop 65. The suit—*California Chamber of Commerce v. Bonta*—contended that requiring companies to warn consumer that acrylamide might cause cancer violated First Amendment rights by compelling companies to make statements with which they disagreed, and which are subject to intense scientific debate.

In 2020, the Chamber requested a preliminary injunction preventing California from requiring a Prop 65 warning for acrylamide. The court granted the Chamber’s motion, concluding that there was an “unresolved scientific debate” over the carcinogenicity of acrylamide in food. The Ninth Circuit affirmed in 2022. In 2024, the Chamber moved for summary judgment, reiterating its contention that Prop 65’s warning requirement “coerces [the Chamber’s members] to provide a cancer ‘warning’ with which it vehemently disagrees and that ignores the robust debate on whether dietary acrylamide poses a risk of cancer in humans.”

On May 2, 2025, District Court Judge Daniel Calabretta granted the Chamber’s motion for summary judgment and permanently enjoined California from requiring Prop 65 warnings for acrylamide.

## Lack of Scientific Consensus

In determining that acrylamide exposure did not pose a credible cancer risk sufficient to qualify for listing under Prop 65, the court placed particular emphasis on the lack of scientific consensus regarding acrylamide’s carcinogenic properties. The court observed that numerous scientific studies on animals suggested a link between acrylamide consumption and cancer. The court acknowledged expert medical testimony proffered by the State that these animal studies comprised “strong evidence that acrylamide is a human carcinogen.” The court also conceded that some epidemiological testimony suggested “an association between dietary exposures to acrylamide and some cancers and cancer subtypes.”

But the court also noted the Chamber’s substantial countervailing evidence. For instance, the court quoted expert testimony that “mechanisms that drive tumor formation in experimental animals are not relevant to humans at real-world levels of exposure to acrylamide through the diet because . . . humans process acrylamide differently than rodents and in ways that detoxify acrylamide more readily than in rodents.” The court also noted statements from the FDA that it is “not clear exactly what risk acrylamide poses to humans,” and observed that the FDA has accordingly, “been reticent to advise consumers against consuming foods containing acrylamide.” The court also quoted

testimony from an epidemiologist retained by the Chamber concluding that “there is no consistent or reliable epidemiologic evidence to support a finding that dietary exposure to acrylamide increases the risk of any type of cancer in humans.” Studies from the National Cancer Institute and the American Cancer Society “also acknowledged the limit of available epidemiological data.”

In assessing the constitutionality of the Prop 65 warning requirement for acrylamide, the court deployed two tests. The first test, set forth in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985) is a “less stringent test.” Under *Zauderer*, the government may compel commercial speech so long as it is reasonably related to a substantial governmental interest, and the compelled speech is (1) purely factual, (2) noncontroversial, and (3) not unjustified or unduly burdensome.” Applying this test, the court concluded that the Prop 65 acrylamide warnings “are neither uncontroversial nor purely factual as the warnings espouse a one-sided view that dietary acrylamide poses a human cancer risk *despite a lack of scientific consensus on that point*.” Judge Calabretta additionally concluded that “misleading statements about acrylamide’s carcinogenicity do not advance the State’s interest in protecting the health of its citizens and that the state has less burdensome alternatives to achieve its goals.” Put simply, “saying that something is carcinogenic or has serious deleterious health effects—without a strong scientific consensus that it does—[is] controversial” and forces businesses “to convey a message fundamentally at odds with their businesses.” Accordingly, the court determined that the “one-sided” warnings contravened the First Amendment under the *Zauderer* test.

The second test, set forth under *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), allows the government to restrict or prohibit commercial speech that is not misleading as long as the restriction directly advances a substantial governmental interest and is not more extensive than necessary. As to the acrylamide warnings, the court concluded that “misleading statements about acrylamide’s carcinogenicity do not advance the State’s interests in protecting the health of its citizens and that the State has less burdensome alternatives to achieve its goals.” The Court said, “California has options available to inform consumers of its determination that acrylamide in food is a carcinogen without burdening the free speech of businesses, including advertising campaigns or posting information on the internet.” Accordingly, the court concluded that the Prop 65 warnings failed under the *Central Hudson* test as well.

## Conclusion

This case follows in the wake of other successful litigation challenging Prop 65 labeling requirements, including *Nat’l Ass’n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1266 (9th Cir. 2023) (in which plaintiffs made a similarly successful First-Amendment argument regarding glyphosate) and *CERT v. Starbucks Corporation*, 300 Cal. Rptr. 3d 729 (Cal Ct. App. 2022) (in which the California Court of Appeals granted summary judgment to defendants based on a regulatory carve out exempting coffee from Prop 65 acrylamide warning requirements). The implications of this ruling are broad. Not only does the Court Order reduce prospective liability for products containing acrylamide, it also calls into

question the constitutional viability of other Prop 65 requirements for listed chemicals in other food and consumer products that are subject to spirited scientific debate. We anticipate continued court interventions, especially at the intersection of science and the law where courts are no longer required to give absolute deference to the conclusions reached by agencies, and where there is a lack of scientific consensus sufficient to support the restriction of constitutional protections under the First Amendment. Consequently, vendors of products subject to Prop 65 requirements should take note and continue to closely follow new developments in the law.