

Modernizing Proposition 65: New Approaches to Warnings

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Agenda

- ☐ **Internet Warnings**
- ☐ **Environmental Warnings**
- ☐ **QR Code Warnings**
- ☐ **Questions**

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Internet Warnings: Regulatory References

17 Cal Code Regs section 25602(b)

(1) For **internet** purchases, a warning meets the requirements of this subarticle if it complies with the content requirements of Section 25603 and the warning must also be provided using one or more of the following methods:

- (A) a warning on the product display page, or
- (B) a clearly marked hyperlink using the word **“WARNING”** or the words **“CA WARNING”** or **“CALIFORNIA WARNING”** on the product display page that links to the warning, or
- (C) an otherwise prominently displayed warning provided to the purchaser prior to completing the purchase. If the warning is provided using the short-form warning label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this subsection, the warning is not prominently displayed if the purchaser must search for it in the general content of the website.

(2) For internet purchases made before January 1, 2028, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section 25603(c) with content compliant with Section 25603(b).

Internet Warnings: References

Health & Safety Code section 25249.6

No person in the course of doing business shall knowingly and intentionally **expose** any individual to a chemical known to the state to cause cancer or reproductive toxicity without **first** giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

Health & Safety Code section 25249.11(f)

... In order to **minimize the burden on retail sellers** of consumer products including foods, regulations implementing Section 25249.6 shall **to the extent practicable** place the obligation to provide any warning materials such as labels on **the producer or packager** rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

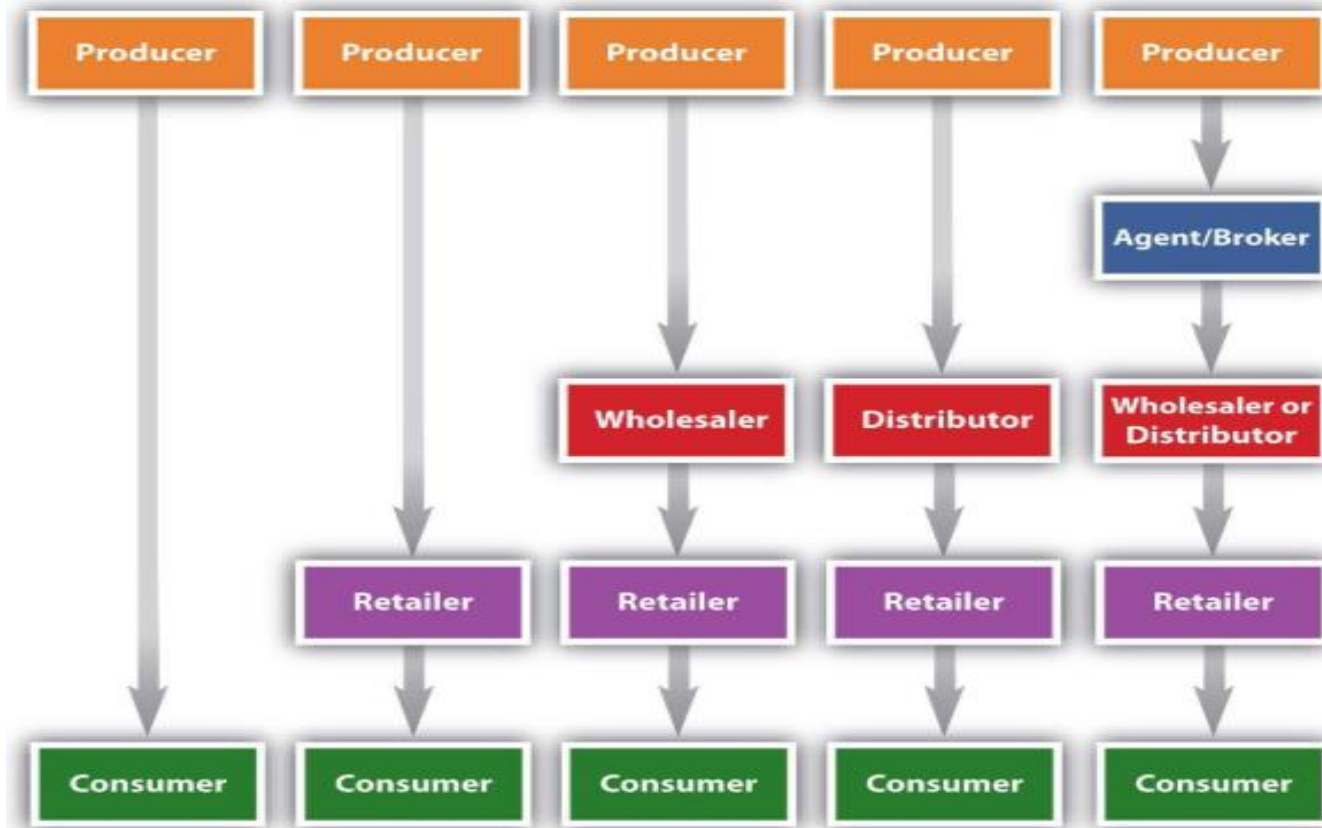
OEHHA FAQ for businesses

OEHHA, as the lead agency, has determined that providing a warning to a person who makes a purchase via the internet only after purchasing the product online and potentially exposing the person upon delivery of the product, is **inconsistent with the purposes of Proposition 65**. Additionally, a person would then have to choose between keeping an item that exposes them to a listed chemical or repackaging and returning the item while potentially incurring shipping costs and/or restocking fees depending on the return policy of the online vender.

CalChamber v. Bonta, No. 2:19-cv-02019-KJM (Mar. 30, 2021)

“If the seas beyond the safe harbor are so perilous that no one risks a voyage”

Internet Warnings: Distribution Complexity



Qualifications to Internet Warnings Provisions: Adequate protection in today's e-commerce marketplaces?

EXAMPLE 1

2.3.4 Internet Warnings. If, after the Compliance Date, Settling Defendant **directly sells Products**, that are not Reformulated Products, **to consumers located in California via the internet**, Settling Defendant shall additionally prominently display the warning to customers on the internet website prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning using the word “WARNING” and given in conjunction with the sale of the Products via the internet, shall appear either: (a) on the same web page the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. If Settling Defendant sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces that Settling Defendant **knows or should know** sell or distribute Products into California, Settling Defendant will advise them of the internet warning requirements under this Agreement as a condition of sale of the Products.

EXAMPLE 2

(c) Internet Warnings

Settling Defendant shall also provide the warning statement in Section 2.2(a) and 2.2(b) by prominently displaying, or requesting the warning to be prominently displayed on **authorized third-party websites** or by **authorized downstream retailers or distributors** with e-commerce platforms, to the consumer during the purchase of any of the Products without requiring customers to seek out the warning. However, **Settling Defendant shall not assume any duty to monitor any third-party websites for compliance**. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of Products via the internet shall appear (i) on the same web page on which each Product is displayed; (ii) on the same web page as the virtual cart displaying each Product; (iii) on the same page as the price for each Product; or (iv) on one or more web pages displayed to a purchaser during the checkout process. For third-party websites where Settling Defendant knows the Products will be sold in or into California, Settling Defendant will provide such online sellers of the Products with the warning content and transmission methods as set forth under Section 2.3. To comply with this Section, Settling Defendant shall (a) post the Warning above on any website it owns and from which consumers in California can directly purchase the Covered Product and, if it has the ability to do so, on the websites of its **known third-party internet sellers**; and (b) if it does not have the ability to post the Warning on the websites of **its known third-party internet sellers**, provide such sellers, that sell the Covered Product to consumers in California from their websites with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2, subdivisions (b) and (c). Third-party internet sellers of the Covered Products that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

EXAMPLE 3

(c) Internet Warnings.

Where Settling Defendant (i) has actual knowledge of any third-party retailers or e-commerce marketplaces that sell, ship, or distribute Products post-dating the date of this Agreement; and (ii) Settling Defendant has a direct business relationship with those third-party retailers or e-commerce marketplaces, but no control over the third-party retailers or e-commerce marketplaces, then on or after the date of this Agreement Settling Defendant will advise such third-party retailers and/or e-commerce marketplaces in writing of the internet warning requirements under this Agreement as a condition of sale of the Products.

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- ❑ Internet Warnings
- ❑ **Environmental Warnings**
- ❑ QR Code Warnings
- ❑ Questions



Environmental Warning Methods

- Sign
- Mailed Notice
- Published in Newspaper



Newspaper Warnings

PUBLIC NOTICE

The Sacramento-Sierra Hospital Conference, acting on behalf of its member hospitals set forth below, is publishing this notice as required by the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) and the implementing Regulations under such Act. The Act, and the recently adopted Regulations, require proper warning of the discharge or release of chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

WARNING

Ethylene oxide (EIO) has been identified as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. EIO, used by hospitals to sterilize equipment, instruments and linens, is considered the most effective way to destroy bacteria and germs that cause infection. The used EIO is released into the air by a vent.

In keeping with Proposition 65 Regulations, it is our responsibility to inform you, our community, that the hospitals and facilities listed below, use EIO in order to control possible infection and for certain laboratory applications. Our primary concern is to provide the highest quality of patient care. To that end, we will continue to responsibly use EIO and other products that protect our patients from infection.

**Auburn Faith
Community Hospital**
11815 Education Street
Auburn, 985-7201
Barton Memorial Hospital
P.O. Box 9578
So. Lake Tahoe, 541-3420
Fremont Medical Center
970 Phumas Street
Yuba City, 671-2220
**Kaiser Foundation
Hospitals**
2025 Morse Ave.,
Sac., 973-5000
6600 Bruceville Rd.
Sac., 688-2000
Marshall Hospital
Marshall Way
Placerville, 622-1441

**Mercy American
River Hospital**
4747 Engle Road
Carmichael, 484-2222
Mercy Hospital of Folsom
1650 Crookside Drive
Folsom, 983-7400
Mercy General Hospital
4001 J Street
Sacramento, 453-4545
Mercy San Juan Hospital
6501 Coyle Avenue
Carmichael, 537-5000
**Methodist Hospital
of Sacramento**
7500 Timberlake Way
Sacramento, 423-3000
Roseville Hospital
333 Sunrise Avenue
Roseville, 781-1000

**Sierra Nevada
Memorial Hospital**
P.O. Box 1029
Grass Valley, 274-6000
Sutter Davis Hospital
P.O. Box 1617
Davis, 756-6440
Sutter General Hospital
2801 L Street
Sacramento, 454-2222
Sutter Memorial Hospital
52nd and F Streets
Sacramento, 454-3333
U.C.D. Medical Center
2315 Stockton Boulevard
Sacramento, 734-2011
**Woodland Memorial
Hospital**
1325 Cottonwood Street
Woodland, 662-3961

Denison Smith
Corporation emits chromium
at its Edgewood facility.

Persons within the
approximate area shown in white
below are exposed to chromium at
a level determined by the State
to require a warning.

Chromium is a chemical known
to cause cancer.

PROP 65 WARNING



Denison Smith

5981 Edgewood Blvd.
916-423-4411

Possible Environmental Warning Methods

Fixed location
Constantly
emitting

- Sign
- QR Code

Fixed location
Occasionally
emitting

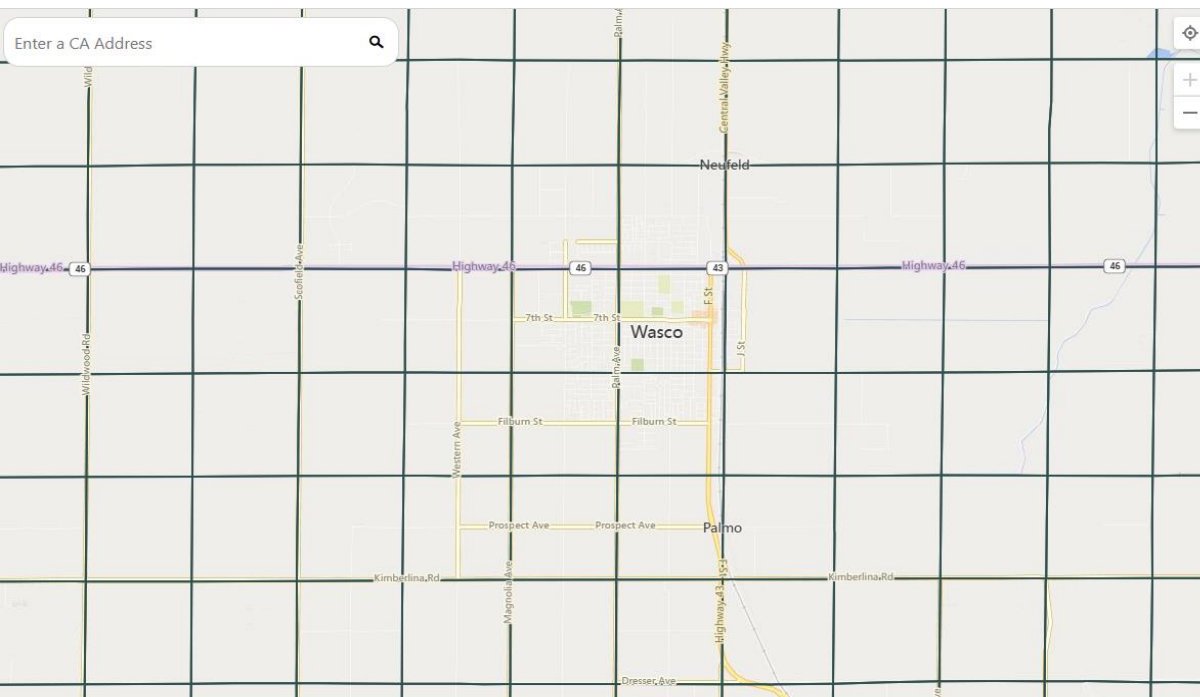
- Text Message
- Website

Spray –
Large Area

- Spray Days



California DPR Spray Days Website



Map Key

- The boxed number refers to the **upcoming applications** occurring in this one square mile section.
- The dotted pattern indicates a **recent application** may have occurred in this one square mile section.

Scheduled restricted material pesticide applications in this area:

Notifications are provided for specific applications intended to start on a certain date and time. Applications may not start for up to four days after the intended date listed here. Applications may not occur for a variety of reasons, including a decrease in the pest presence, changes in weather conditions that may cause an application to drift, or if the application is not approved by the county agricultural commissioner.

County: KERN

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QR Codes: References

Health & Safety Code section 25249.11(f)

“Warning” within the meaning of Section 25249.6 **need not be provided separately to each exposed individual** and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable.

27 Cal Code Regs 25600(d)

A person is not required to provide separate warnings to each exposed individual.

27 Cal Code Regs 25600.1

(j) “Labeling” means any written, printed, graphic, or **electronically provided communication** that accompanies a product, such as a package insert.

(m) “Sign” means a physical presentation of written, printed, graphic, or **electronically provided communication**, including shelf signs, other than a label or labeling, posted in a conspicuous manner that is associated with the exposure for which the warning is being provided under the Act and is clearly visible under all lighting conditions normally encountered during business hours and under such conditions as to make it likely to be seen, read, and understood by an ordinary person.

QR Codes: *Ingredient Communication Council v. Lungren*

8 ½ x 11 sign on entrance door: “Proposition 65 requires that California consumers be warned about products containing chemicals known to the State to cause cancer or other reproductive harm or birth defects. To obtain this information on consumer products sold in California, please call 1-800-431-6565. A public service of the Ingredient Communication Council, Inc.”

Similar statement in quarter-page ads in 105 daily newspapers

800 number: “A caller dialing the 24-hour number is connected to a West Telemarketing facility located in Omaha, Nebraska. Trained operators ask callers which product they wish information about, verify the correct product spelling, and activate a computer to generate the appropriate taped message. At the conclusion of the taped message, the caller is requested to stay on the line for further information or information regarding other products. The operator can then refer the caller to a manufacturer's phone number for additional information or repeat the process for additional products. It takes approximately one minute for a caller to inquire and audit the message for each product.”

“Between 7,000 and 8,000 products were registered in the ICC warning system. However, in the first year of operation, only about 400 products carried required warning messages. Although the system was designed to handle up to a million calls per year, only about 26,000 calls reached the toll-free number in the first year of operation. In response to these calls, only 488 warning messages were played.”

“An invitation to inquire about possible warnings on products is not equivalent to providing the consumer a warning about a specific product.”

“There was expert testimony that so few warnings in a state with 10-15 million households indicated the ICC system was a complete failure.”

2 Cal. App. 4th 1480 (1992)

QR Codes: References

27 Cal Code Regs 25602

(a) Unless otherwise specified in Section 25607 et seq., a consumer product exposure warning meets the requirements of this subarticle if it complies with the content requirements in Section 25603 and is provided using one or more of the following methods:

(1) A product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.

(2) A product-specific warning provided **via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning**. This subsection does not apply to internet purchases, which are subject to the provisions of subsection (b).

OEHHA FSOR (2024): Proposition 65 requires that the consumer is warned **prior to purchase** so they can make an informed decision about the products they purchase and use. Using electronic means to provide a warning is allowed under existing subsection 25602(b)(2), if the warning is product-specific and “provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning” (italics Office of Environmental Health Hazard Assessment October 2024 Final Statement of Reasons Page 13 Title 27, California Code of Regulations, Amendments to Article 6 added). **To give an example, for warnings provided on or with a product, requiring a consumer to scan a QR or bar code, when such scanning is not required to complete the purchase, forces the consumer to seek out or take several steps to find the warning for that product.** Using these methods presumes consumers will notice the code, have immediate access to a smart phone or other device that can read the code, and know how to use it to access information about the product. This delivery method is not automatic and would not comply. However, if a purchase could not be completed without a consumer seeing an electronic warning, rather than requiring the consumer to take additional actions before encountering the warning, then it is possible that the electronic warning could be “automatically” provided before or during purchase.

QR Codes as a warning method

Goal is to modernize Prop 65 methods for warning.

Example:

Proposition 65 warning for lead. For more information, scan the QR code.



QR Codes – Concepts to Think About

Section 25601 Safe Harbor Clear and Reasonable Warnings — Methods and Content.

(c) Consumer product exposure warnings must be prominently displayed on a label, labeling, or sign, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.

QR Codes – Concepts to Think About

Timing of the
warning

Definition

Placement

Accompanying
text

Where does it
lead to?



Consumer Access

QR Codes Have Gone Mainstream



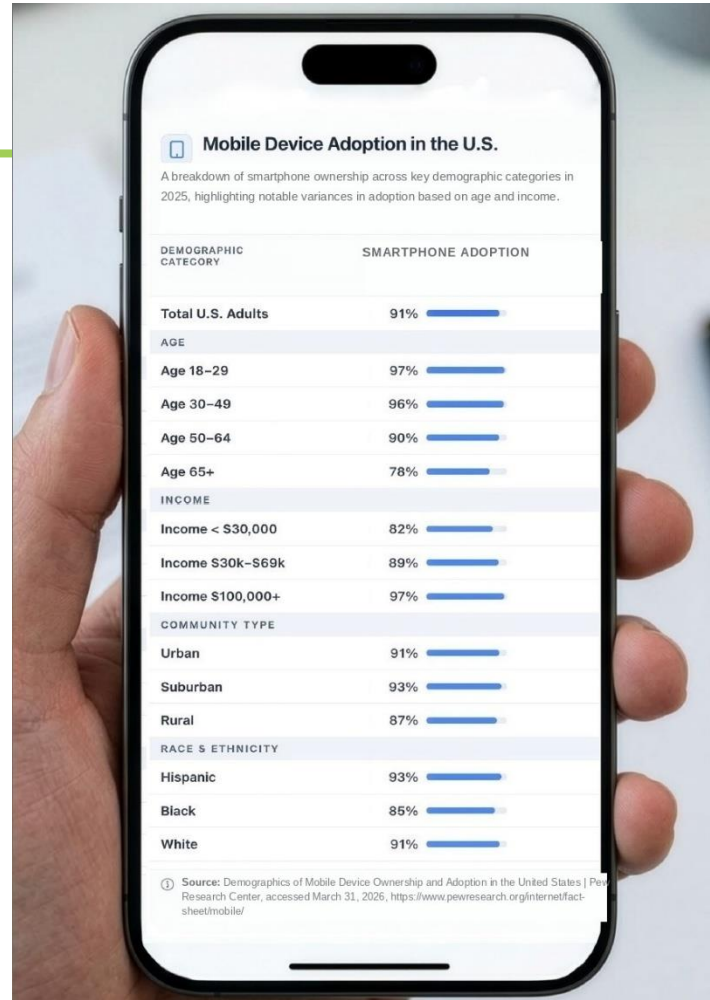
100M+

Americans have used a QR code



believe QR codes are easy to use

Consumers are scanning — and they find it effortless.



As of mid-2025, an overwhelming 98% of Americans own a cellphone of some kind, and smartphone ownership has surged to 91%, up drastically from just 35% in 2011.

Digital Disclosure for Compliance: Louisiana SB 14

Intermediate Menu

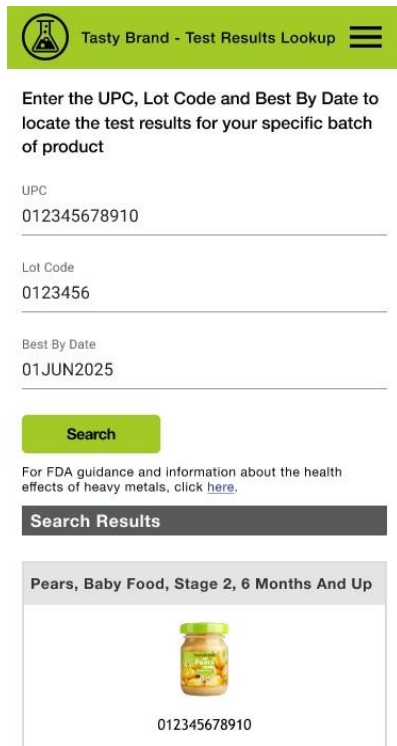
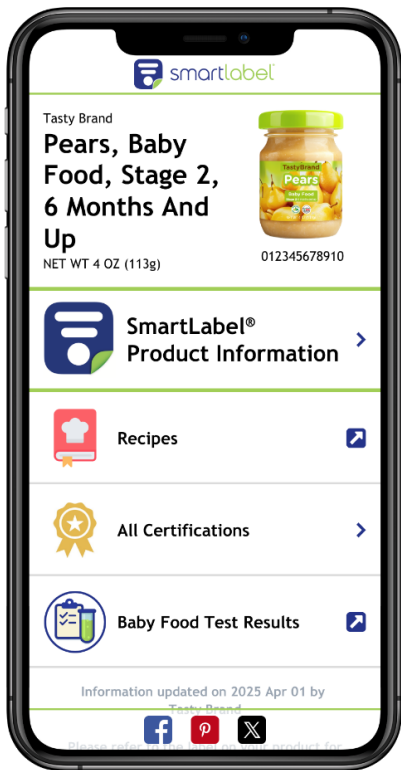


SmartLabel Landing Page

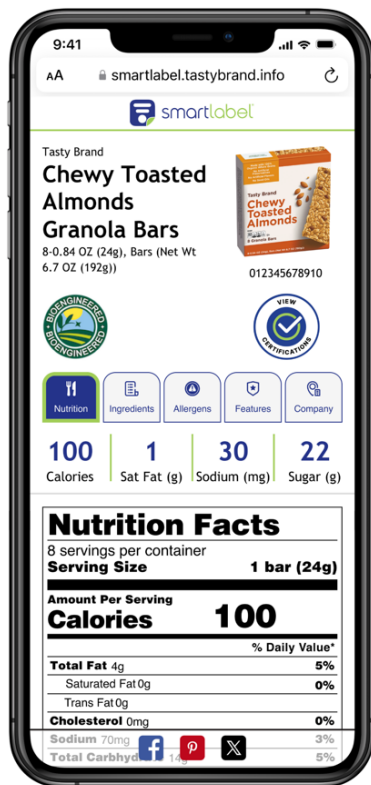


- Meets the SB 14 requirement for prominent disclosure on the website
- Meets the SB 14 requirement to link to the FDA Food Chemical Safety page
- Vetted for accessibility and readability
- Accommodates multiple states' ingredient digital disclosures

Digital Disclosure for Compliance: Baby Food Testing



Digital Disclosure for Compliance: Prop 65 for F&B



Scan here for more food information and Prop 65 disclosure

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