Date of Hearing: April 21, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 2577 (Connolly) – As Amended March 19, 2026

SUBJECT: SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: SETTLEMENTS: ATTORNEY'S FEES

KEY ISSUE: SHOULD THE ATTORNEY GENERAL BE PROVIDED NEW POWERS TO INTERVENE IN PRIVATE PARTY PROPOSITION 65 LITIGATION TO ENSURE THAT SETTLEMENTS TRULY BENEFIT THE PUBLIC INTEREST?

SYNOPSIS

The Safe Drinking and Toxic Enforcement Act of 1986, more commonly referred to as Proposition 65, is designed to ensure that businesses inform consumers of the potential health risks of various products and services. Proposition 65 requires the state to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. If such chemicals are present at a business's physical location or in the products sold by a business, the business must provide the now-ubiquitous Proposition 65 warning to consumers. Proposition 65 was created with a dual enforcement mechanism; state and local prosecutors are given the first right to file a Proposition 65 action, however, if the government does not pursue a claim private parties may do so if the claim is in the public interest.

Unsurprisingly, as with many privately enforced provisions of law, the business community now howls about lawsuit abuse by private parties, even if such "abuse" stems from the businesses actual failure to adhere to the existing law. Nonetheless, the Attorney General has long sought to make sure that private actions to enforce Proposition 65 advance the interests of the public and not private attorneys. To that end, the Attorney General must be given notice of certain actions in private Proposition 65 litigation, and may already intervene in those matters to protect the public interest. This bill furthers the Attorney General's powers by ensuring that the Attorney General can seek to stop unreasonable settlements that award excessive attorney fees. The bill also enhances a judicial officer's duty to find that a settlement advances the public interest.

This measure is supported by Attorney General Rob Bonta who argues that the Department of Justice needs legal clarity to make sure Proposition 65 litigation truly advances the public interest. This measure has no known opposition and was previously approved by the Committee on Environmental Safety & on Toxic Materials on consent.

SUMMARY: Requires a court, in addition to considering the factors enumerated in existing law, to find that a proposed settlement in a Proposition 65 legal challenge provides a public benefit and is in the public interest. Specifically, **this bill**:

1) Requires a court to, when approving a settlement of an action under Proposition 65 brought by a person in the public interest, make the following finding, in addition to the findings in existing law:

   a) The settlement provides a public benefit and is in the public interest. Additionally, if the settlement is for an action for knowingly and intentionally exposing an individual to a

chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning, the settlement must require the defendant to do either of the following:

i. Reduce the exposure to the listed chemical from the level that existed before the settlement; or,

ii. Provide the warning required pursuant to existing law, if that warning was not provided previously.

2) Requires, if the Attorney General objects to the award of attorneys' fees set forth in the settlement of a privately litigated Proposition 65 challenge but the court approves all other elements of the settlement, the court to approve the settlement except for the award of fees, and inform the parties, by written order, that the award of attorney's fees does not appear to be reasonable.

3) Provides that if the court rejects an award of attorney's fees in accordance with 2), within 45 days of receiving notice of the decision a plaintiff may file a declaration or declarations that provide additional information in support of its fee request, including sufficient detail for the court to determine if the fees incurred are reasonable.

4) Provides that upon the filing specified in 3), the defendant, the Attorney General, or both, may file responses or objections to that declaration or those declarations, and after review of the declaration or declarations and any responses or objections thereto, the court may enter an award of attorney's fees, which cannot under any circumstances exceed the amount of the award of attorney's fees that was set forth in the settlement.

EXISTING LAW:

1) Prohibits, as enacted by Proposition 65, a person in the course of doing business from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, except as provided. (Health and Safety Code Section 25249.5.)

2) Prohibits, as enacted by Proposition 65, a person in the course of doing business from knowingly and intentionally exposing 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. (Health and Safety Code Section 25249.6.)

3) Provides that any person who violates the provisions of 1) or 2) is liable for a civil penalty not to exceed $2,500 per day for each violation in addition to any other penalty established by law. Provides that the civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. (Health and Safety Code Section 25249.7 (b)(1).)

4) Provides that an action to seek the civil penalties specified in 3) may be brought by the Attorney General, by a district attorney, by a city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in a city

or city and county having a full-time city prosecutor, or a private individual representing the public interest. (Health and Safety Code Section 25249.7 (c).)

5) Provides that a private individual may bring a private action to seek the penalties specified in 3) so long as neither the Attorney General, a district attorney, a city attorney, nor a prosecutor has commenced and is diligently prosecuting an action against the violation, and it is commenced more than 60 days from the date that the person has given notice of an alleged violation to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. (Health and Safety Code Section 25249.7 (d).)

6) Requires that in assessing the amount of a civil penalty under 3), the court to consider all of the following:

   a) The nature and extent of the violation;

   b) The number of, and severity of, the violations;

   c) The economic effect of the penalty on the violator;

   d) Whether the violator took good faith measures to comply with the law at the time the measures were taken;

   e) The willfulness of the violator's misconduct;

   f) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and

   g) Any other factor that justice may require. (Health and Safety Code Section 25249.7 (b)(2).)

7) Requires, if there is a settlement of an action brought by a person in the public interest under 5), the plaintiff to submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

   a) The warning that is required by the settlement complies with Proposition 65;

   b) The award of attorney's fees is reasonable under California law; and

   c) The penalties reflect the criteria enumerated in 6). (Health and Safety Code Section 25249.7 (f)(4).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The Safe Drinking and Toxic Enforcement Act of 1986, more commonly referred to as Proposition 65, requires the state to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. The law then requires businesses operating in the state to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a Proposition 65-listed chemical. A failure to properly warn of toxic

exposure may result in an enforcement action against the business. Proposition 65 envisioned a dual public and private enforcement scheme, where so long as a private party confirmed that a public entity would not file an enforcement action, the private party may seek to enforce the law.

Unfortunately, in the 40 years since the enactment of Proposition 65, the law has been plagued with abuse by unscrupulous actors filing somewhat frivolous lawsuits against businesses. While related to actual violations of the existing law, many of these suits seek quick settlements with ample attorney's fees. Under existing law, before approving a settlement of a Proposition 65 action, the court must approve a number of conditions in the settlement, including attorney's fees. However, the proponents of this bill contend that the courts are approving unreasonable fee demands in settlements and exacerbating the issues surrounding questionable Proposition 65 lawsuits. This bill would permit the Attorney General to object to such fee awards and trigger a process requiring the plaintiff to further prove the fee level to the court's satisfaction. In support of this bill, the author states:

> AB 2577 strengthens judicial oversight and restores accountability to Proposition 65 enforcement by ensuring settlements deliver meaningful public health benefits. This bill gives courts flexibility in awarding attorneys' fees and ensures manufacturers provide clear warning labels. I am proud to author AB 2577, which promotes public trust in Proposition 65 and ensures better protections for our safety and public health."

Seeking to reduce exposure to known toxins and other carcinogens, the Safe Drinking Water and Toxic Enforcement Act of 1986 requires extensive consumer disclosure. In 1986, California voters, by passing Proposition 65, approved the Safe Drinking Water and Toxic Enforcement Act of 1986. The Act, more commonly referred to as Proposition 65, requires the state to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, currently includes approximately 900 chemicals. Once a chemical is listed, most businesses must post the ubiquitous Proposition 65 warning on their premises, labeling or packaging, or other prominent places to inform consumers of the potential exposure to a known toxin. The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program, including evaluating all currently available scientific information on substances considered for placement on the Proposition 65 list. In the past four decades, abundant litigation has quarreled over the contents of the list and the adequacy of the substance of posted Proposition 65 warnings. In order to better monitor the litigation, existing law requires the Attorney General to actively engage with the pre-litigation process and track all court filings and settlements.

In response to the perceived threat of frivolous litigation, the Attorney General now tracks Proposition 65 claims and provides public data. Since the passage of Proposition 65, recognizing the dual public-private enforcement scheme, the law has required certain notices to be transmitted to the Attorney General prior to the commencement of litigation. In order to ensure that a private party would not pursue a claim that is also being filed by the government, as originally approved by the voters, Proposition 65 required a potential litigant to give notice of a violation to the Attorney General, their local district attorney or city attorney, and the alleged violator 60 days in advance of filing the lawsuit. In the intervening 30 years, responding to concerns about the abuse of the private right of action, the Legislature has expanded the notice requirements to include the submission of factual evidence and data to justify the plaintiff's contention that they have a reasonable and meritorious case for the private action, known as the

Certificate of Merit. Upon receipt of the certificate, the Attorney General is now required to weigh in on the merits of the matter before lawsuits are filed.

In addition to monitoring the merits of private Proposition 65 claims, the Attorney General is also required to be informed of settlements to these cases. The settlement notice, as well as recently enacted appellate brief notices, are designed to ensure that even if the Attorney General did not directly litigate a case it can monitor outcomes to ensure that significantly adverse decisions do not become law. (AB 1123 (Reyes) Chap. 187, Stats, 2019.) Although the Attorney General has some ability to weigh in on settlements that may undermine the statutory requirements of Proposition 65, the Attorney General's authority to object to unreasonable fee shifting provisions in settlements is limited. The proponents of this bill suggest that that limitation undermines the Attorney General's ability to prevent abusive or unreasonable settlement agreements that do not directly undermine the existing law.

In the wake of several questionable Proposition 65 settlements this bill grants new authority to the Attorney General. This bill, which is sponsored by Attorney General Rob Bonta, is in response to several questionable Proposition 65 settlements that may have been approved but for the Attorney General's objections. For example, in 2024, the Attorney General objected to an unreasonably high attorney fee award in *Epps v. Amazon.com, Inc.* (2024) San Francisco County Superior Court, CGC-24-613812. The Attorney General's office has provided the Committee with several other examples of unreasonable fee awards. While the Attorney General notes they were able to successfully intervene in these cases, they do note that the existing law does not explicitly provide an avenue for the Attorney General to intervene when unreasonable settlements do not directly undermine the statutory requirements of Proposition 65. The Attorney General's office also notes that it has had to seek the right to intervene in settlements that may not adequately adhere to the original warning requirements of Proposition 65. (see, e.g. *Blue Water Cosaint, LLC v. Bumble Bee Foods, LLC* (2024) San Diego County Superior Court No. 24CU003388C.)

To ensure that the Attorney General is not forced to adhere to the whims of an individual trial judge on an issue of such statewide impact, this bill seeks to provide the Attorney General new powers to intervene in Proposition 65 settlements. First, this bill would permit the Attorney General to object to an unreasonable attorney fee proposal in a settlement agreement. Should the Attorney General object to a settlement, a plaintiff would be forced to provide the court additional justification for the fee award, and while permitting the court to award the original fee request, the bill prohibits the court from exceeding the original fee as stipulated in the original settlement. Additionally, to ensure that settlements actually produce meaningful benefits to the public, the bill enhances the existing law's requirement that a judge find the settlement in the public interest. Specifically, this bill requires a judge to ensure that a settlement results in an arrangement that reduces the public's exposure to the litigated chemical or improves the notice to the public about the chemical's presence in the lived environment.

Both of these reforms are designed to ensure that when private parties settle Proposition 65 cases, the outcome is truly in the public interest and does not simply benefit the attorneys bringing the matter before the court.

ARGUMENTS IN SUPPORT*:* This bill is sponsored by Attorney General Rob Bonta. In support of the bill the Attorney General writes:

Voters approved Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, to allow Californians to make informed decisions about their exposure to toxic chemicals. It has been effective in encouraging companies to reduce toxins in their products and businesses. Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that can cause cancer, reproductive harm, or both. Proposition 65 enforcement has led to product reformulations that have significantly reduced exposures to lead and other toxic chemicals in foods, beverages, infant formula, children's bounce houses, ceramic tableware, children's jewelry, artificial turf, vitamin supplements, and other products.

Proposition 65 can be enforced by the Attorney General, district attorneys, and some city attorneys, as well as private enforcers bringing actions in the public interest. Private enforcers that filed actions in court are required to submit their settlements to the court for judicial approval, and courts are required to make specified findings in order to approve a settlement. Unfortunately, the court's options are limited to either approving or rejecting the settlement as a whole, which sends parties back into costly and time-consuming further negotiations or litigation. AB 2577 would amend the required statutory findings for court approval of private party settlements to give courts more oversight and flexibility.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General Rob Bonta

Opposition

None on file

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334