

CONSENT

Bill No: AB 2577
Author: Connolly (D)
Amended: 6/8/26 in Senate
Vote: 27

SENATE JUDICIARY COMMITTEE: 11-0, 6/16/26

AYES: Umberg, Niello, Allen, Caballero, Durazo, Laird, Reyes, Stern,
Valladares, Wahab, Wiener

NO VOTE RECORDED: Ashby, Weber Pierson

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 7-0, 7/1/26

AYES: Blakespear, Valladares, Allen, Dahle, Gonzalez, Hurtado, Menjivar

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 77-0, 5/14/26 - See last page for vote

SUBJECT: Safe Drinking Water and Toxic Enforcement Act of 1986:
settlements: attorney's fees

SOURCE: Attorney General, Rob Bonta

DIGEST: This bill requires a court to find that a private party settlement under Proposition 65 is in the public interest and provides a public benefit before approving the settlement. The bill also requires the court to find that the award of attorney's fees is appropriate under California law, in addition to the existing requirement that the fees are reasonable.

ANALYSIS: Existing law:

- 1) Prohibits 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 specified. (Health & Safety (Saf.) Code § 25249.5.¹)

- 2) Prohibits a person from knowingly and intentionally, in the course of doing business, 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. (§ 25249.6.)
- 3) Provides that any person who violates the provisions of 1) or 2), above, 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. The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. (§ 25249.7(b)(1).)
- 4) Authorizes the Attorney General (AG), a district attorney, a city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, a city prosecutor in a city or city and county having a full-time city prosecutor, or a private individual representing the public interest to bring an action to seek civil penalties. (§ 25249.7(c).)
- 5) Authorizes a private individual to bring a private action so long as neither the AG, a district attorney, a city attorney, nor a prosecutor has commenced and is diligently prosecuting an action against the violation. (§ 25249.7(d).)
- 6) Requires a private individual bringing an action in the public interest pursuant to 6) to notify the AG that the action has been filed. (§ 25249.7(e)(2).)
- 7) Requires that in assessing the amount of a civil penalty under 3), the court is 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;

¹ All further references are to the Health and Safety Code unless specified otherwise.

- 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. (§ 25249.7(b)(2).)
- 8) Requires the plaintiff, if there is a settlement of an action brought by a person in the public interest under 5), 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 7). (§ 25249.7(f)(4).)
- 9) Authorizes, pursuant to the California Constitution, that the Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors, unless the initiative statute permits amendment or repeal without their approval. (Cal. Const., art. II, Sec. 10.) Proposition 65 from the November 4, 1986, general election provides that it may be amended by statute to further its purposes if passed in each house by a two-thirds vote.

This bill:

- 1) Requires the court, in addition to the findings under 8), above, to find that the settlement is in the public interest and provides a public benefit.
- a) A settlement is presumed to be in the public interest and provide a public benefit if it does either of the following:
 - i) reduces the exposure to the listed chemical from the level that existed before the settlement; or
 - ii) provide the warning required pursuant to Section 25249.6, if that warning was not provided previously.

- 1) Requires the court, in addition to finding that the award of attorney's fee is reasonable under 8), above, to find that the award is appropriate under California law.
- 2) Provides that if a settlement is submitted to the court and the AG objects to the award of attorney's fees but the court has found all other findings have been met, the court is to approve the settlement except for the award of attorney's fees.
 - a) The court is to set a schedule by which the plaintiff may submit additional briefing and evidence supporting the proposed fee award and the defendant, the AG, or both, may file responses or objections to the plaintiff's submission.
 - b) After review of the submissions, the court may order an award of attorney's fees which shall not under any circumstances exceed the award of attorney's fees that was set forth in the settlement.

Comments

Proposition 65, a state initiative measure, was approved on November 4, 1986, and became effective on January 1, 1987. It added the Safe Drinking Water and Toxic Enforcement Act of 1986 ("the Act"), Health and Safety Code Section 25249.5 et seq., to state law. The Act places two main requirements on businesses. The first is a prohibition on knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity (hereinafter "chemical") into water or onto land where the chemical has a certain likelihood of passing into a source of drinking water. The second is the more well-known warning requirement. It prohibits any person, in the course of doing business, to knowingly and intentionally expose any individual to a chemical without first giving clear and reasonable warning to such individual. Both have exemptions enumerated in the Act and neither applies to persons employing fewer than 10 employees in the person's business or to most governmental entities. The Act is administered by the Office of Environmental Health Hazard Assessment (OEHHA).

The Act provides a cause of action to enforce its provisions and to seek certain specified remedies, including injunctive relief and civil penalties. The AG, a district attorney, a city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, a city prosecutor in a city or city and

county having a full-time city prosecutor, can bring an action against a person who has violated or threatens to violate the Act. In addition, a person can also bring an action in the public interest pursuant to the Act if the AG or a local prosecutor has not already commenced and is diligently litigating claims based on the alleged violation.

Under existing law, the AG reviews all settlements in private party actions under the Act to ensure they meet the statutory criteria for judicial approval and can file objections to a settlement when it believes the criteria has not been met. The criteria is that: (1) the warning that is required by the settlement complies with Proposition 65; (2) the award of attorney's fees is reasonable under California law; and (3) the penalties are reasonable under the statutory criteria.

The AG points to two issues this bill is trying to address. First, under existing law if the AG objects to an unreasonable attorney's fee award under a settlement and the objection is approved by the court, the settlement cannot be approved during the time the parties renegotiate the fee award. Delay of the implementation of the settlement leads to continued harms to the public health and environment. This bill would allow the settlement to be approved separate of the attorney's fees if there is an objection to the fee award and would require a hearing on the fee award to be conducted separately from the rest of the settlement.

The AG also points to several settlements in which it intervened due to the settlements inadequately providing proper warning to consumers or leading to a decrease of exposure to the offending chemical. In *Blue Water Cosaint, LLC v. Bumble Bee Foods, LLC* (2024, San Diego County Superior Court No. 24CU003388C), the AG argues the settlement actually allowed exposure to the chemical to significantly increase without requiring a warning to be provided to consumers. This bill addresses this issue by requiring the court to find that a settlement is in the public interest and provides a public benefit. Under the bill, a settlement is presumed to be in the public interest and provide a public benefit if it either: (1) reduces the exposure to the listed chemical from the level that existed before the settlement; or (2) requires the Proposition 65 warning be made to consumers, if that warning was not provided previously.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/4/26)

Rob Bonta, Attorney General (source)

OPPOSITION: (Verified 8/4/26)

None received

ARGUMENTS IN SUPPORT: The author writes:

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.

The Attorney General, Rob Bonta, the sponsor of the bill, 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.

The Attorney General is proud to sponsor AB 2577 to empower courts with stronger judicial oversight over private Proposition 65 settlements in order to promote public trust in Proposition 65 and protect the environment and public health.

ASSEMBLY FLOOR: 77-0, 5/14/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Arambula, Flora, Celeste Rodriguez

Prepared by: Amanda Mattson / JUD. / (916) 651-4113
8/5/26 15:12:51

**** END ****