

Date of Hearing: April 14, 2026

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Damon Connolly, Chair

AB 2577 (Connolly) – As Amended March 19, 2026

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

SUMMARY: Requires a court, when approving settlements under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) to find, in addition to the findings in existing law, that the settlement provides a public benefit and is in the public interest. Additionally, establishes a procedure for awarding attorneys' fees under Proposition 65 if the Attorney General (AG) objects to the award of attorney's fees within a settlement. 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: 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 shall require the defendant to do either of the following:
 - a) Reduce the exposure to the listed chemical from the level that existed before the settlement; or,
 - b) Provide the warning required pursuant to existing law, if that warning was not provided previously.
- 2) Requires the court to, if a settlement under Proposition 65 is submitted to the court and the AG objects to the award of attorneys' fees, and the court finds that the settlement meets all of the criteria required under the law, except for the finding that the attorneys' fees are reasonable, approve the settlement except for the award of attorneys' fees and inform the parties that the award of attorney's fees does not appear to be reasonable. Additionally, establishes a process for the parties to respond to the courts finding that the award of attorney's fees may not be reasonable and for the court to enter an award of attorneys' fees upon hearing from the parties.

EXISTING LAW:

- 1) Prohibits, under 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 chemicals pass or probably will pass into any source of drinking water. (Health and Safety Code (HSC) § 25249.5)
- 2) Prohibits a person, in the course of doing business, from 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 to such individual. (HSC § 25249.6)

- 3) Provides that any person who violates the above provisions may be enjoined in any court of competent jurisdiction and be liable for a civil penalty not to exceed \$2,500 per day for each violation, in addition to any other penalty established by law. (HSC § 25249.7)
- 4) Authorizes a person to bring an action, acting in the public interest, if both of the following requirements are met: the private action is commenced more than 60 days after the person filing the action has provided the notice of the alleged violation to the AG, local district attorney, and the alleged violator including the certificate of merit and the factual information sufficient to establish the basis of the certificate of merit; and neither the AG nor district attorney has commenced prosecuting an action against the violation. (HSC § 25249.7 (d))
- 5) Authorizes a court, when approving a settlement of an action under Proposition 65 brought by a person in the public interest, to approve the settlement 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 penalty amount is reasonable based on the criteria set forth in existing law. (HSC § 25249.7 (f)(4))
- 6) Authorizes amendments to Proposition 65, provided that they are passed in each house of the Legislature by a two-thirds vote and further the purposes of Proposition 65. (Initiative Measure, Proposition 65, Sec. 7, Nov. 4, 1986)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "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 protection for our safety and public health."

Proposition 65: In 1986, California voters approved a ballot initiative, the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, to address their concern that "hazardous chemicals pose a serious potential threat to their health and well-being, [and] that state government agencies have failed to provide them with adequate protection..." 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. The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program, including an evaluation of all currently available scientific information on substances considered for placement on the Proposition 65 list.

Under Proposition 65, businesses in California are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a Proposition 65-listed

chemical. Warnings can be made in many ways, including labeling a consumer product, posting signs, distributing notices, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements.

Changes to Proposition 65 warning requirements: The original warning requirements took effect in 1988 and initially, most Proposition 65 warnings simply stated that a chemical is present that causes cancer or reproductive harm. The warning did not identify the chemical or provide specific information about how a person may be exposed or ways to reduce or eliminate exposure to it. OEHHA regulations, adopted in August 2016 and that took full effect in August 2018, changed the warning requirements in several important ways. The new warnings for consumer products need to: include the verbiage that the product "can expose you to" a Proposition 65 chemical rather than saying the product "contains" the chemical; name at least one chemical present in the product that is listed on the Proposition 65 list; provide the internet address for OEHHA's new Proposition 65 warnings website which provides additional information about the health effects of the chemicals on the Proposition 65 list; and, include a triangular yellow warning symbol. The goal of these changes was to provide the consumer with better information about the potential exposure to toxic chemicals and to aid businesses with compliance with Proposition 65.

Multiple avenues of enforcement of Proposition 65: Proposition 65 authorizes the AG, as well as any district attorney or city attorney (for cities whose population exceeds 750,000), to enforce Proposition 65. In addition, a person may bring an action acting in the public interest if both of the following requirements are met: 1) the private action is commenced more than 60 days after the person filing the action has provided the notice of the alleged violation to the AG, local district attorney and the alleged violator, including the certificate of merit and factual information sufficient to establish the basis of the certificate of merit, and 2) neither the AG nor district attorney has commenced prosecuting an action against the violation.

If a settlement of an action is brought by a person in the public interest, the court is authorized to approve the settlement 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 penalty amount is reasonable based on the criteria set forth in existing law.

The intent of Proposition 65 is twofold: to warn consumers of harmful chemicals in consumer products (so that consumers could make informed choices) and to reduce exposure to harmful chemicals in products (when businesses reduce the chemical below the warning threshold or eliminate it from the product). However, some settlements have not resulted in warnings or a reduction in chemical exposure. Additionally, there have been some concerns raised by the AG that some of the attorneys' fees in these settlements may not be reasonable.

Concerns raised by AG on Proposition 65 settlements: Over the past couple of decades, the AG has objected to some of the settlements reached under Proposition 65. Below are a few examples of AG objections to Proposition 65 settlements:

- 1) Blue Water Cosaint, LLC v. Bumble Bee Foods, LLC (2024, San Diego County Superior Court No. 24CU003388C) - the AG objected to a private party settlement on the grounds that the settlement allowed exposure to mercury to increase without the company having to

provide a warning to consumers. The court approved the settlement over the AG's objections;

- 2) Proposition 65 Propane Gas Cases (2012, LA Superior Court, Judicial Council Coordination Proceeding No. 4564) – the AG objected to the settlements' method for providing warnings regarding exposure to benzene gas from propane gas tanks because the warnings would never actually reach the consumer. The court approved the settlement over the AG's objections;
- 3) Anthony E Held v. Almar Sales Co, Inc. (2014, Alameda County Superior Court Case No. HG12633575) – the AG objected to the settlement based on attorneys' fees, and the court approved the settlement over the AG's objection even after the court's tentative ruling stated the proposed attorneys' fees "appear to be excessive"; and,
- 4) Epps v. Amazon.com, Inc. (2024, San Francisco County Superior Court, CGC-24-613812) – the AG objected to the settlement based on attorneys' fees and the court granted the AG's objection and did not approve the settlement. Parties had to renegotiate fees, which delayed implementation of the rest of the settlement.

This bill: AB 2577 seeks to address the concerns raised by the AG regarding settlements of Proposition 65 cases. Specifically, this bill requires settlements brought under Proposition 65 to provide a public benefit and be in the public interest. Additionally, this bill establishes a process, where the AG can object to attorneys' fees under Proposition 65 and the court can approve the Proposition 65 settlement, but also require the parties to renegotiate the attorneys' fees.

Arguments in Support: According to the California Attorney General,

"The Attorney General is pleased to sponsor your Assembly Bill 2577, which would strengthen judicial oversight over private party Proposition 65 settlements to ensure that private enforcement benefits public health and safety.

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."

Arguments in Opposition: None on file.

Double referral: Should the Assembly Committee on Environmental Safety and Toxic Materials approve this bill, it will be referred to the Assembly Judiciary Committee.

Related legislation:

- 1) AB 1123 (Reyes, Chapter 187, Statutes of 2019). Requires certain notice to be provided to the AG before certain proceedings involving Proposition 65 are filed in the Supreme Court, court of appeal, or the appellate division of the superior court.
- 2) AB 1583 (Chau, Chapter 510, Statutes of 2017). Requires the AG, after reviewing the certificate of merit filed under an action under Proposition 65, to, if they find that there is not

merit to the action, serve a letter to the noticing party and the alleged violator that the AG believes there is not merit to the action. Requires the Governor's Office of Business and Economic Development to post on its internet website information relating to a business' obligations under Proposition 65.

- 3) AB 471 (Sher, Chapter 578, Statutes of 2001). Makes changes to Proposition 65 including: requiring any person filing any action in which a violation of the Proposition 65 is alleged to notify the AG that such an action has been filed and would require any private person filing an action in which a violation of Proposition 65 is alleged, to submit a reporting form to the AG that includes the results of any settlement or judgment and the final disposition of the case; requires a plaintiff, if there is a specified settlement in an action brought by a person in the public interest, to submit the settlement to the court for approval; and, requires the court to make specified findings and requires the plaintiff to have the burden of producing evidence to support those findings.

REGISTERED SUPPORT / OPPOSITION:**Support**

Rob Bonta, State of California Attorney General (sponsor)

Opposition

None on file.

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