

What Statutory Changes Would Improve The Operation Of Proposition 65? The View From Business

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Governor Brown Proposes to Reform Proposition 65

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SACRAMENTO – Governor Edmund G. Brown Jr. today proposed reforms to strengthen and restore the intent of Proposition 65, a three decade old law enacted to protect Californians from harmful chemicals, that has been abused by some unscrupulous lawyers driven by profit rather than public health.

The administration, through the California Environmental Protection Agency, will work closely with the Legislature and stakeholders to revamp Proposition 65 by ending frivolous “shake-down” lawsuits, improving how the public is warned about dangerous chemicals and strengthening the scientific basis for warning levels.

“Proposition 65 is a good law that’s helped many people, but it’s being abused by unscrupulous lawyers,” said Governor Brown. “This is an effort to improve the law so it can do what it was intended to do – protect Californians from harmful chemicals.”

The package of reforms will build on legislative efforts already underway, including a proposal to limit frivolous lawsuits.

“Proposition 65 serves a vital public interest. It provides the public with information about carcinogens and toxins that may be present in the products we use in our everyday lives. But for Prop 65 to be effective, this information must be clearly stated and we need to work with the Legislature to prevent groups from exploiting or misconstruing this information for their own personal gain,” said California EPA Secretary Matt Rodriquez.

2013 Press Release (cont'd)

Voters approved Proposition 65 in 1986. The measure requires the Governor to annually publish a list of chemicals known to the state to cause cancer or reproductive toxicity. If a business in California sells a product containing chemicals listed by the state in excess of safe levels, the business must provide a clear warning to the public. Similar provisions apply to California workplaces.

The administration, stakeholders and the Legislature will discuss reforms to:

- Cap or limit attorney's fees in Proposition 65 cases.
- Require stronger demonstration by plaintiffs that they have information to support claims before litigation begins.
- Require greater disclosure of plaintiff's information.
- Set limits on the amount of money in an enforcement case that can go into settlement funds in lieu of penalties.
- Provide the State with the ability to adjust the level at which Proposition 65 warnings are needed for chemicals that cause reproductive harm.
- Require more useful information to the public on what they are being exposed to and how they can protect themselves.

While Proposition 65 has motivated businesses to eliminate or reduce toxic chemicals in consumer products, it is also abused by some lawyers, who bring nuisance lawsuits to extract settlements from businesses with little or no benefit to the public or the environment.

Under provisions of Proposition 65, a private attorney can bring a complaint against a business if the business knowingly exposes consumers to state-noticed chemicals.

Since 2008, nearly 2,000 complaints have been filed by these "citizen enforcers."

In one case, Consumer Defense Group Action brought 45 Proposition 65 notices of violation against banks based on second-hand smoke near bank entrances or ATMs. The group claimed that the banks had failed to post warnings, and alleged that the banks controlled the behavior of smokers in those areas. In responding that there was no basis for the claim and misrepresentations within the notices, the Attorney General warned that the group's notices could "constitute unlawful business practices."

Governor Brown's proposed reform follows a strong record of pursuing regulatory changes to improve the state's business climate. Since taking office in 2011, the Governor has approved legislation to improve the workers' compensation system, the regulatory and fee structure for the timber industry, Americans with Disabilities Act (ADA) compliance requirements and the facility inspection process for the life sciences industry. In addition to these legislative actions, Brown has established the Governor's Office of Business and Economic Development (GO-Biz) to help companies deal with regulatory "red tape."

Governor Brown's Six Areas For Reform

1. Cap or limit attorney's fees in Proposition 65 cases.
2. Require stronger demonstration by plaintiffs that they have information to support claims before litigation begins.
3. Require greater disclosure of plaintiff's information.
4. Set limits on the amount of money in an enforcement case that can go into settlement funds in lieu of penalties.
5. Provide the State with the ability to adjust the level at which Proposition 65 warnings are needed for chemicals that cause reproductive harm.
6. Require more useful information to the public on what they are being exposed to and how they can protect themselves.

CalEPA Email August 28, 2013

From: Stauffacher, Kristin@EPA <Kristin.Stauffacher@calepa.ca.gov>

Sent: Wednesday, August 28, 2013 1:13 PM

To: Stauffacher, Kristin@EPA <Kristin.Stauffacher@calepa.ca.gov>

Subject: Proposition 65 Update

Hello Everyone,

We wanted to take this opportunity to thank you for the work provided in the Administration's efforts to bring about improvements to Proposition 65. We especially would like to recognize Senator Lieu for his interest and willingness to champion comprehensive reforms.

At this point, a consensus is eluding us on the Proposition 65 reforms that we have advanced. Although the protection for small retailers with less than 25 employees from private enforcement and some of the other litigation reforms will not be possible without statutory changes, please be assured that we will continue to work on those that we can do administratively. We look forward to continuing our work with you on these efforts.

Thank you

Kristi