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New California Law Reshapes Court Approval of Proposition 65 Settlements

KEY TAKEAWAYS

Assembly Bill (“AB”) 2577, a bill enacted by the California Legislature and signed by Governor Newsom on September 27, 2026, will require a court asked to approve an in-court settlement (“Consent Judgment”) of claims brought under the State’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) to find that the settlement is in the public interest and provides a public benefit. Such a finding is presumed only where the settlement requires the defendant to reduce exposure to the listed chemical below the level that existed before the settlement or to provide a compliant warning that was not previously given. Importantly for manufacturers, distributors, suppliers, and retailers of consumer goods, AB 2577 also establishes a procedure by which the injunctive relief in a Consent Judgment may be bifurcated from the stipulated attorneys’ fees award, paving the way for courts to enter remedies that actually benefit California consumers—reformulation and labeling — while leaving a contested fee award for adjudication

on another day. In doing so, AB 2577 provides much needed oversight of private enforcer abuse of Proposition 65 settlement procedures.

This legislation is key relief for defendants who are too often at the mercy of bounty hunter plaintiffs who demand attorneys’ fees that are both untethered from the scope and severity of the alleged violation and grossly disproportionate to the civil penalties meant to benefit the California Attorney General’s Office and the Office of Environmental Health Hazard Assessment (“OEHHA”), the government entity that promulgates Proposition 65 guidelines and protects Californians through scientific evaluations and regulations.

BACKGROUND OF PROPOSITION 65 AND AB 2577

California’s Proposition 65 is a “right-to-know” law requiring businesses to provide clear warnings before exposing individuals to chemicals known to cause cancer or reproductive harm. The state maintains a [list of approximately 900 chemicals](#). Businesses with 10

or more employees must give a “clear and reasonable warning” before exposing people to these chemicals via consumer products, workplaces, or the environment. Private citizens, the Attorney General, and local prosecutors can sue violators, and seek civil penalties of up to \$2,500 per violation per day. Unfortunately, since the law was introduced four decades ago, it has become a cottage industry for plaintiffs’ attorneys to seek enormous fee awards for relatively little work.

[AB 2577](#) was authored by Assembly member Damon Connolly to help reduce such abuse, and reflects concerns the California Attorney General’s Office has pressed for years. The bill allows reviewing judges to unilaterally—over the objection of the settling parties—reduce stipulated awards of attorneys’ fees for lack of true benefit to Californians. While the changes are unlikely to significantly curb the use of Proposition 65 by plaintiffs’ lawyers and private enforcers who annually receive tens of millions of dollars from settling defendants, it may begin to push lower-level enforcers out of the game because their failure to enact true change in reformulation and labeling behavior will curtail the fees courts are willing to award them.

REVISED CONSENT JUDGMENT APPROVAL PROCESS

Most recently, the California Attorney General’s Office has expressed concern with private enforcer abuse during hearings to approve proposed Consent Judgments involving hundreds of retailer and manufacturer defendants in cases alleging bisphenol S (“BPS”), bisphenol A (“BPA”), lead, cadmium, and di-2-ethylhexyl phthalate (“DEHP”) exposure. In particular, the Attorney General has taken issue with the fact that while each settling defendant may not have the wherewithal or incentive to individually investigate or challenge the fees requested by plaintiffs’ firms, in aggregate those fees may, going unchecked, far outweigh the benefits provided by those plaintiffs’ attorneys and their private enforcer clients. While many Consent Judgments do seek reformulation and labeling that reduce the amount of chemical exposure in the product or require warnings that were not implemented

by defendants prior to litigation, “status quo” settlements that do not ultimately mandate warnings or actually reduce alleged exposures to listed chemicals remain rampant and expensive. The new procedures under AB 2577 aim to eliminate such loopholes. For example, judges will be required to assess whether the reformulation thresholds promulgated in the Consent Judgment reduce the chemical exposure below the amounts the product tested for in initially triggering a Notice of Violation.

BIFURCATED PROCEDURE FOR OBJECTIONS ALLOWS INJUNCTIVE RELIEF TO PROCEED WITHOUT THE MONETARY FEE AWARD AND THE TRICKLE DOWN EFFECT TO OUT-OF-COURT SETTLEMENTS

Prior to AB 2577, many judges have overruled Attorney General objections to the monetary component of settlements in an effort to frontload progress on reformulation or warning labels for products used by California citizens. AB 2577 eliminates the competing interests by creating a bifurcated procedure wherein the Attorney General’s objections to awards of attorneys’ fees can be considered on a separate track while the injunctive relief portion of the Consent Judgment is immediately entered for the public benefit. This allows the court to issue an order setting a schedule for plaintiffs, defendants, or the Attorney General to submit additional evidence for or against the proposed fee award, after which the court may adjust the fee award so long as the new amount does not exceed the amount originally proposed.

For settling defendants and the Attorney General, this is a welcome development, as private enforcers are likely to temper their attorneys’ fees demands to more accurately reflect the public benefit obtained and bear a more reasonable relationship to the civil penalties. On the other hand, this could create more significant compliance costs for defendants as Consent Judgment provisions are more likely to incorporate lower warning or reformulation thresholds to avoid Attorney General objections that defendants are already in compliance.

Moreover, in what could be both a boon and a bane for defendants, the new provisions have already led to increased Attorney General involvement in the review of proposed in- and out-of-court settlements. We have seen the Attorney General's Office request revisions to already executed pre-litigation settlements posted on its Proposition 65 website and demand stricter reformulation commitments, additional testing requirements, or other injunctive terms before plaintiffs can consummate settlement payment terms.

WHAT THIS MEANS FOR COMPANIES FACING PROPOSITION 65 CLAIMS

AB 2577's new approval requirements take effect January 1, 2027, and will govern Consent Judgments submitted for approval with a court on or after that date. The Attorney General's Office, however, has already begun applying the bill's logic to the settlements it is reviewing today.

AB 2577 will not end or even slow the pace of private enforcement of Proposition 65, nor was it meant to. What it does is make the size of a fee demand a risk for the plaintiff rather than simply the price of peace for the defendant. Companies that come to the settlement table with documented pre-litigation compliance, and a clear account of what the proposed injunctive relief actually changes, will be best positioned to benefit from that shift.

For more information or assistance, please contact [Cheryl S. Chang](#), [Jessica A. McElroy](#), [Brittany Wei](#), or another member of Blank Rome's [Product Liability or California Proposition 65](#) teams.

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