



California law requires Prop 65 settlements to have 'public benefit'

Measure also gives courts greater flexibility to review attorney fee awards

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California has enacted a law modifying how courts review and approve certain Proposition 65 settlements, adding new public benefit requirements and establishing a procedure for resolving disputes over plaintiffs' attorney fees.

The legislation (AB 2577) could lead to closer judicial scrutiny of Prop 65 settlements and the fees granted to private enforcers' attorneys, although some experts are sceptical that the law will significantly alter the state's [right-to-know scheme](#).

Signed by Governor Gavin Newsom (D) on 27 September, AB 2577 makes targeted changes to Prop 65, the California law that requires warnings for exposures to chemicals determined by the state to cause cancer or reproductive harm.

Prop 65 also allows private parties to pursue [enforcement actions](#) against companies for allegedly failing to provide those warnings and gives the state attorney general (AG) an opportunity to review and object to potential settlements

before a court signs off on an agreement.

As enacted, AB 2577 requires courts to determine whether proposed private enforcement settlements serve the public interest and provide a public benefit before approving the agreements. Effectively, the provision requires that settlements must result in the use of Prop 65-compliant warnings or a reduction in chemical exposure.

The measure also allows courts to approve a settlement while maintaining the ability to evaluate and modify a disputed attorney fee award where the AG objects to the proposed fee amount. Previously, courts had to approve or reject a settlement as a whole, including the proposed amount of attorney fees awarded to the private enforcer.

While these changes may give California's AG greater leverage over Prop 65 settlements, two attorneys who spoke to Chemical Watch News & Insight questioned the degree to which it will affect the broader private enforcement landscape.

AB 2577 details

Under [AB 2577](#), courts reviewing Prop 65 settlements must find that a plaintiff's attorney fee award is "reasonable and appropriate" under California law before approving the agreement. Courts must also determine that the settlement is in the public interest and provides a public benefit.

The law creates a presumption that a settlement satisfies the public interest and public benefit standards if it requires a defendant either to reduce exposure to a listed chemical or to provide a warning that was not previously given. Plaintiffs seeking approval must provide sufficient evidence to support each required finding.

AB 2577 also establishes a separate procedure for reviewing fees awarded to plaintiff's attorneys where the AG lodges an objection to the amount. If the AG objects to a proposed fee award, but a court otherwise finds that a settlement satisfies Prop 65's approval requirements, the court may approve the settlement while reserving the fee issue for further review.

In those instances, the private enforcer plaintiffs may submit additional briefing and evidence supporting the proposed award, while the defendant, AG, or both may respond. Any fee award ultimately approved by the court may not exceed the amount specified in the original settlement.

AB 2577 is due to take effect on 1 January 2027.

'Targeted' change, limited effect?

Greg Berlin, a partner at Alston & Bird, described AB 2577 as a "targeted procedural amendment" to California's right-to-know scheme rather than a significant overhaul.

He said the law addresses a specific problem that has frustrated the AG's office for "several years": that courts could agree with the AG's objections that attorney fee awards in some settlements were disproportionate to the work performed, but could not modify them if they approved the broader settlement.

By allowing courts to review fee awards separately from approving the settlements, Berlin said AB 2577 "creates an additional point of leverage during settlement negotiations because plaintiffs now face a greater risk that a court could reduce a fee award" if the AG objects.

Because of that, he said plaintiffs may place greater emphasis on documenting litigation activity and explaining the basis for significant fee requests in settlement approval papers.

However, Berlin noted that the AG does not routinely challenge proposed attorney fee awards.

As a result, he expects the law to "influence settlement dynamics at the margins rather than fundamentally alter the Prop 65 enforcement landscape".

AG leverage, unanswered questions

Dennis Raglin, a lawyer at Carlton Fields, said that AB 2577's public interest and public benefit requirements may not have much practical effect because courts already consider these concepts when reviewing settlements.

The legislature may have wanted to make sure this language "was also included within the Prop 65 statute, but either way it restates existing law", Raglin said.

That said, he noted the measure could strengthen the AG's role in settlement reviews.

Under the law, settlements requiring defendants to reduce exposure to a listed chemical may qualify for a presumption that they provide a public benefit. Disputes over whether companies have achieved those reductions could strengthen "the AG's ability to object to settlements and possibly force defendants to litigate, raising costs", according to Raglin.

Disagreements could also arise over how parties demonstrate that exposure to a listed chemical has been reduced, he said, particularly in food cases where chemical concentrations may vary between production lots and different testing methods may yield different results.

And he questioned how AB 2577's language that exposure reductions be measured against "the level that existed before the settlement" would be determined in practice.

"How do we determine 'the level that existed before'? What test method do we use? Can the defendant rely on averaging to get to the level of exposure?" Raglin asked. "This likely strengthens the hand of the AG's office to impose its will and kill averaging exposure in food settlements."

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