

AMENDED IN ASSEMBLY SEPTEMBER 10, 2001

AMENDED IN ASSEMBLY AUGUST 31, 2001

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY JULY 5, 2001

SENATE BILL

No. 471

Introduced by Senator Sher

February 22, 2001

An act to amend Sections 25249.7 and 116275 of the Health and Safety Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 471, as amended, Sher. Drinking water: standards: Proposition 65: toxic chemicals.

(1) The existing Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified.

The act imposes civil penalties upon persons who violate those prohibitions, and provides for the enforcement of those prohibitions by the Attorney General, a district attorney, or specified city attorneys or prosecutors, and by any person in the public interest, if that private action is commenced more than 60 days after the person has given notice of the violation that is the subject of the action to the Attorney General, the district attorney, any city attorney in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator, and the

violation is not being prosecuted, as specified. The act requires any person bringing an action in the public interest to notify the Attorney General that such an action has been filed, and requires such a person, after the action is either subject to a settlement or a judgment, to submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case.

This bill would require the court, in assessing the amount of a civil penalty for a violation of the act, to consider specified factors, including, among other things, the economic effect of the penalty on the violator, whether the violator took good-faith measures to comply with the act, the willfulness of the defendant's misconduct, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

The bill would provide that if the notice to the Attorney General that is required to be made by a person bringing an action in the public interest alleges a violation of the act's warning requirement, the notice would be required to include a certificate of merit stating that the person executing the certificate has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that, based on that information, the person believes there is a reasonable and meritorious case for the private action. The bill would authorize the trial court to review the basis for the certificate, in specified circumstances, and would deem the action to be frivolous, if the court finds there is no credible factual basis for the certified belief that an exposure to a listed chemical has occurred or was threatened. ~~The bill would also authorize the Attorney General to require the production of all material establishing the basis of the certificate of merit, pursuant to a specified procedure, and would~~ authorize the Attorney General, a district attorney, or a city attorney to seek and recover attorney's fees on behalf of any person who has provided a notice and renders assistance in that action.

The bill would additionally require any person filing any action in which a violation of the act is alleged to notify the Attorney General that such an action has been filed and would require any private person filing an action in which a violation of the act is alleged, to submit a reporting form to the Attorney General that includes the results of any settlement or judgment and the final disposition of the case.

The bill would require 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. The bill would require the court to make specified findings and would require the plaintiff to have the burden of producing evidence to support those findings.

The bill, in conformance with the requirements of Proposition 65, would make a legislative finding and declaration that these changes would further the purposes of the act.

(2) Existing law requires the State Department of Health Services to administer all provisions of law relating to the regulation of drinking water to protect public health. Existing law defines “secondary drinking water standards” as standards that specify maximum contaminant levels and that the department finds necessary to protect the public welfare. Existing law permits secondary drinking water standards to apply to any contaminant in drinking water that may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or that may otherwise adversely affect the public welfare.

This bill would also permit these standards to apply to any contaminant in drinking water that may also affect the taste of the water.

(3) Existing law expressly permits regulations establishing secondary drinking water standards to apply to any contaminant in drinking water that adversely affects the taste, odor, or appearance of the water when the standards are necessary to assure a supply of pure, wholesome, and potable water.

This bill would delete this provision.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25249.7 of the Health and Safety Code
2 is amended to read:

3 25249.7. (a) Any person that violates or threatens to violate
4 Section 25249.5 or 25249.6 may be enjoined in any court of
5 competent jurisdiction.

6 (b) (1) Any person who has violated Section 25249.5 or
7 25249.6 shall be liable for a civil penalty not to exceed two
8 thousand five hundred dollars (\$2,500) per day for each violation
9 in addition to any other penalty established by law. That civil



1 penalty may be assessed and recovered in a civil action brought in
2 any court of competent jurisdiction.

3 (2) In assessing the amount of a civil penalty for a violation of
4 this chapter, the court shall consider all of the following:

5 (A) The nature and extent of the violation.

6 (B) The number of, and severity of, the violations.

7 (C) The economic effect of the penalty on the violator.

8 (D) Whether the violator took good faith measures to comply
9 with this chapter and the time these measures were taken.

10 (E) The willfulness of the violator’s misconduct.

11 (F) The deterrent effect that the imposition of the penalty
12 would have on both the violator and the regulated community as
13 a whole.

14 (G) Any other factor that justice may require.

15 (c) Actions pursuant to this section may be brought by the
16 Attorney General in the name of the people of the State of
17 California, by any district attorney, by any city attorney of a city
18 having a population in excess of 750,000, or, with the consent of
19 the district attorney, by a city prosecutor in any city or city and
20 county having a full-time city prosecutor, or as provided in
21 subdivision (d).

22 (d) Actions pursuant to this section may be brought by any
23 person in the public interest if both of the following requirements
24 are met:

25 (1) The private action is commenced more than 60 days from
26 the date that the person has given notice of an alleged violation of
27 Section 25249.5 or 25249.6 that is the subject of the private action
28 to the Attorney General and the district attorney, city attorney, or
29 prosecutor in whose jurisdiction the violation is alleged to have
30 occurred, and to the alleged violator. If the notice alleges a
31 violation of Section 25249.6, the notice of the alleged violation
32 shall include a certificate of merit executed by the attorney for the
33 noticing party, or by the noticing party, if the noticing party is not
34 represented by an attorney. The certificate of merit shall state that
35 the person executing the certificate has consulted with one or more
36 persons with relevant and appropriate experience or expertise who
37 has reviewed facts, studies, or other data regarding the exposure
38 to the listed chemical that is the subject of the action, and that,
39 based on that information, the person executing the certificate
40 believes there is a reasonable and meritorious case for the private



1 action. *Factual information sufficient to establish the basis of the*
2 *certificate of merit, including the information identified in*
3 *paragraph (2) of subdivision (h), shall be attached to the*
4 *certificate of merit that is served on the Attorney General.*

5 (2) Neither the Attorney General, any district attorney, any city
6 attorney, nor any prosecutor has commenced and is diligently
7 prosecuting an action against the violation.

8 (e) Any person bringing an action in the public interest
9 pursuant to subdivision (d) and any person filing any action in
10 which a violation of this chapter is alleged shall notify the Attorney
11 General that the action has been filed. *Neither this subdivision nor*
12 *the procedures provided in subdivisions (e) to (j), inclusive, shall*
13 *affect the requirements imposed by any other statute concerning*
14 *whether any person filing any action in which a violation of this*
15 *chapter is alleged is required to comply with the requirements of*
16 *subdivision (d).*

17 (f) (1) Any person filing an action in the public interest
18 pursuant to subdivision (d) or any private person filing any action
19 in which a violation of this chapter is alleged, shall, after the action
20 or violation is subject either to a settlement or to a judgment,
21 submit to the Attorney General a reporting form that includes the
22 results of that settlement or judgment and the final disposition of
23 the case, even if dismissed. At the time of the filing of any
24 judgment pursuant to an action brought in the public interest
25 pursuant to subdivision (d), or any action brought by a private
26 person in which a violation of this chapter is alleged, the plaintiff
27 shall file an affidavit verifying that the report required by this
28 subdivision has been accurately completed and submitted to the
29 Attorney General.

30 (2) Any person bringing an action in the public interest
31 pursuant to subdivision (d), or any private person bringing an
32 action in which a violation of this chapter is alleged, shall, after the
33 action is either subject to a settlement, with or without court
34 approval, or to a judgment, submit to the Attorney General a report
35 that includes information on any corrective action being taken as
36 a part of the settlement or resolution of the action.

37 (3) The Attorney General shall develop a reporting form that
38 specifies the information that shall be reported, including, but not
39 limited to, for purposes of subdivision (e), the date the action was
40 filed, the nature of the relief sought, and for purposes of this



1 subdivision, the amount of the settlement or civil penalty assessed,
2 other financial terms of the settlement, and any other information
3 the Attorney General deems appropriate.

4 (4) If there is a settlement of an action brought by a person in
5 the public interest under subdivision (d), the plaintiff shall submit
6 the settlement, other than a voluntary dismissal in which no
7 consideration is received from the defendant, to the court for
8 approval upon noticed motion, and the court may approve the
9 settlement only if the court makes all of the following findings:

10 (A) Any warning that is required by the settlement complies
11 with this chapter.

12 (B) Any award of attorney's fees is reasonable under California
13 law.

14 (C) Any penalty amount is reasonable based on the criteria set
15 forth in paragraph (2) of subdivision (b).

16 (5) The plaintiff subject to paragraph (4) has the burden of
17 producing evidence sufficient to sustain each required finding.
18 The plaintiff shall serve the motion and all supporting papers on
19 the Attorney General, who may appear and participate in any
20 proceeding without intervening in the case. ~~No settlement or
21 judgment entered pursuant to this subdivision prohibits the
22 Attorney General, any district attorney, any city attorney, or any
23 other public prosecutor from bringing any action alleging
24 violations of this chapter, unless that party appears in the
25 proceeding in which the settlement or judgment is approved.~~

26 (6) *Neither this subdivision nor the procedures provided in
27 subdivisions (e) to (j), inclusive, shall affect the requirements
28 imposed by any other statute concerning whether claims raised by
29 any person or public prosecutor not a party to the action are
30 precluded by a settlement approved by the court.*

31 (g) The Attorney General shall maintain a record of the
32 information submitted pursuant to subdivisions (e) and (f) and
33 shall make this information available to the public.

34 (h) (1) Except as provided in paragraph (2), the basis for the
35 certificate of merit required by subdivision (d) is not discoverable.
36 *However, nothing in this subdivision shall preclude the discovery
37 of information related to the certificate of merit if that information
38 is relevant to the subject matter of the action and is otherwise
39 discoverable, solely on the ground that it was used in support of
40 the certificate of merit.*



1 (2) Upon the conclusion of an action brought pursuant to
2 subdivision (d) with respect to any defendant, if the trial court
3 determines that there was no actual or threatened exposure to a
4 listed chemical, the court may, upon the motion of that alleged
5 violator or upon the court’s own motion, review the basis for the
6 belief of the person executing the certificate of merit, expressed in
7 the certificate of merit, that an exposure to a listed chemical had
8 occurred or was threatened. The information in the certificate of
9 merit, including the identity of the persons consulted with and
10 relied on by the certifier, and the facts, studies, or other data
11 reviewed by those persons, shall be disclosed to the court in an
12 in-camera proceeding at which the moving party shall not be
13 present. If the court finds that there was no credible factual basis
14 for the certifier’s belief that an exposure to a listed chemical had
15 occurred or was threatened, then the action shall be deemed
16 frivolous within the meaning of Section 128.5 of the Code of Civil
17 Procedure. The court shall not find a factual basis credible on the
18 basis of a legal theory of liability that is frivolous within the
19 meaning of Section 128.5 of the Code of Civil Procedure.

20 ~~(i) At any time after the receipt of a sixty-day notice pursuant~~
21 ~~to subdivision (d), the Attorney General may require production~~
22 ~~of all materials establishing the basis of the certificate of merit~~
23 ~~required by that subdivision from the person filing the action. The~~
24 ~~materials shall be submitted by the person filing the action within~~
25 ~~five days after a written request from the Attorney General is~~
26 ~~received by that person. The sixty-day period established by~~
27 ~~subdivision (d) shall be tolled during the time between the receipt~~
28 ~~by the person filing the action of a request from the Attorney~~
29 ~~General under this subdivision and receipt of the requested~~
30 ~~materials by the Attorney General.~~

31 (i) The Attorney General may provide ~~these materials~~ *the*
32 *factual information submitted to establish the basis of the*
33 *certificate of merit* on request to any district attorney, city attorney,
34 or prosecutor within whose jurisdiction the violation is alleged to
35 have occurred, or to any other state or federal government agency,
36 but in all other respects the ~~materials shall be considered~~
37 ~~confidential official information within the scope of Attorney~~
38 ~~General shall maintain, and ensure that all recipients maintain,~~
39 *the submitted information as confidential official information to*
40 *the full extent authorized in Section 1040 of the Evidence Code.*



1 (j) In any action brought by the Attorney General, a district
2 attorney, a city attorney, or a prosecutor pursuant to this chapter,
3 the Attorney General, district attorney, city attorney, or prosecutor
4 may seek and recover costs and attorney's fees on behalf of any
5 party who provides a notice pursuant to subdivision (d) and who
6 renders assistance in that action.

7 SEC. 2. Section 116275 of the Health and Safety Code is
8 amended to read:

9 116275. As used in this chapter:

10 (a) "Contaminant" means any physical, chemical, biological,
11 or radiological substance or matter in water.

12 (b) "Department" means the State Department of Health
13 Services.

14 (c) "Primary drinking water standards" means:

15 (1) Maximum levels of contaminants that, in the judgment of
16 the department, may have an adverse effect on the health of
17 persons.

18 (2) Specific treatment techniques adopted by the department in
19 lieu of maximum contaminant levels pursuant to subdivision (j) of
20 Section 116365.

21 (3) The monitoring and reporting requirements as specified in
22 regulations adopted by the department that pertain to maximum
23 contaminant levels.

24 (d) "Secondary drinking water standards" means standards
25 that specify maximum contaminant levels that, in the judgment of
26 the department, are necessary to protect the public welfare.
27 Secondary drinking water standards may apply to any contaminant
28 in drinking water that may adversely affect the taste, odor, or
29 appearance of the water and may cause a substantial number of
30 persons served by the public water system to discontinue its use,
31 or that may otherwise adversely affect the public welfare.
32 Regulations establishing secondary drinking water standards may
33 vary according to geographic or other circumstances.

34 (e) "Human consumption" means the use of water for
35 drinking, bathing or showering, hand washing, or oral hygiene.

36 (f) "Maximum contaminant level" means the maximum
37 permissible level of a contaminant in water.

38 (g) "Person" means an individual, corporation, company,
39 association, partnership, limited liability company, municipality,
40 public utility, or other public body or institution.



1 (h) “Public water system” means a system for the provision of
2 water for human consumption through pipes or other constructed
3 conveyances that has 15 or more service connections or regularly
4 serves at least 25 individuals daily at least 60 days out of the year.

5 A public water system includes the following:

6 (1) Any collection, treatment, storage, and distribution
7 facilities under control of the operator of the system which are used
8 primarily in connection with the system.

9 (2) Any collection or pretreatment storage facilities not under
10 the control of the operator that are used primarily in connection
11 with the system.

12 (3) Any water system that treats water on behalf of one or more
13 public water systems for the purpose of rendering it safe for human
14 consumption.

15 (i) “Community water system” means a public water system
16 that serves at least 15 service connections used by yearlong
17 residents or regularly serves at least 25 yearlong residents of the
18 area served by the system.

19 (j) “Noncommunity water system” means a public water
20 system that is not a community water system.

21 (k) “Nontransient noncommunity water system” means a
22 public water system that is not a community water system and that
23 regularly serves at least 25 of the same persons over 6 months per
24 year.

25 (l) “Local health officer” means a local health officer
26 appointed pursuant to Section 101000 or a local comprehensive
27 health agency designated by the board of supervisors pursuant to
28 Section 101275 to carry out the drinking water program.

29 (m) “Significant rise in the bacterial count of water” means a
30 rise in the bacterial count of water that the department determines,
31 by regulation, represents an immediate danger to the health of
32 water users.

33 (n) “State small water system” means a system for the
34 provision of piped water to the public for human consumption that
35 serves at least five, but not more than 14, service connections and
36 does not regularly serve drinking water to more than an average of
37 25 individuals daily for more than 60 days out of the year.

38 (o) “Transient noncommunity water system” means a
39 noncommunity water system that does not regularly serve at least
40 25 of the same persons over six months per year.



1 (p) “User” means any person using water for domestic
2 purposes. User does not include any person processing, selling, or
3 serving water or operating a public water system.

4 (q) “Waterworks standards” means regulations adopted by the
5 department that take cognizance of the latest available “Standards
6 of Minimum Requirements for Safe Practice in the Production and
7 Delivery of Water for Domestic Use” adopted by the California
8 section of the American Water Works Association.

9 (r) “Local primacy agency” means any local health officer that
10 has applied for and received primacy delegation from the
11 department pursuant to Section 116330.

12 (s) “Service connection” means the point of connection
13 between the customer’s piping or constructed conveyance, and the
14 water system’s meter, service pipe, or constructed conveyance. A
15 connection to a system that delivers water by a constructed
16 conveyance other than a pipe shall not be considered a connection
17 in determining if the system is a public water system if any of the
18 following apply:

19 (1) The water is used exclusively for purposes other than
20 residential uses, consisting of drinking, bathing, and cooking or
21 other similar uses.

22 (2) The department determines that alternative water to achieve
23 the equivalent level of public health protection provided by the
24 applicable primary drinking water regulation is provided for
25 residential or similar uses for drinking and cooking.

26 (3) The department determines that the water provided for
27 residential or similar uses for drinking, cooking, and bathing is
28 centrally treated or treated at the point of entry by the provider, a
29 passthrough entity, or the user to achieve the equivalent level of
30 protection provided by the applicable primary drinking water
31 regulations.

32 (t) “Resident” means a person who physically occupies,
33 whether by ownership, rental, lease or other means, the same
34 dwelling for at least 60 days of the year.

35 (u) “Water treatment operator” means a person who has met
36 the requirements for a specific water treatment operator grade
37 pursuant to Section 106875.

38 (v) “Water treatment operator-in-training” means a person
39 who has applied for and passed the written examination given by
40 the department but does not yet meet the experience requirements



1 for a specific water treatment operator grade pursuant to Section
2 106875.

3 (w) “Water distribution operator” means a person who has met
4 the requirements for a specific water distribution operator grade
5 pursuant to Section 106875.

6 (x) “Water treatment plant” means a group or assemblage of
7 structures, equipment, and processes that treat, blend, or condition
8 the water supply of a public water system for the purpose of
9 meeting primary drinking water standards.

10 (y) “Water distribution system” means any combination of
11 pipes, tanks, pumps, and other physical features that deliver water
12 from the source or water treatment plant to the consumer.

13 SEC. 3. The Legislature hereby finds and declares that
14 Section 1 of this act furthers the purposes of the Safe Drinking
15 Water and Toxic Enforcement Act of 1986.

