

Introduced by Senator Ducheny

February 20, 2004

An act to add Section 25249.7.3 to the Health and Safety Code, relating to toxic substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1722, as introduced, Ducheny. Proposition 65: enforcement: judgments.

(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. Existing law requires 75% of all civil and criminal penalties collected pursuant to the act be deposited in the Safe Drinking Water and Toxic Enforcement Fund in the State Treasury, which may be expended by the director of the lead agency, who is designated by the Governor to implement the act, to implement and administer the act, upon appropriation by the Legislature. Existing law requires 25% of all civil and criminal penalties collected pursuant to the act be paid to the prosecuting office or the person who brought the action in the public interest. The act requires any person bringing an action in the public interest, or any private person filing an action in which a violation of the act is alleged, to notify the Attorney General that such an action has been filed.

This bill would prohibit a person from filing an action in the public interest or bringing an action that alleges a violation of the act if the defendant has previously entered into a settlement or has been a party to a final judgment in another action brought pursuant to the act, and the person filing or bringing the action alleges the same violation of the act that was settled or adjudicated. The bill would provide that any person who files an action in the public interest or brings an action that alleges a violation against a defendant would be deemed to be in privity with any other person who files an action in the public interest or brings an action that alleges a violation of this chapter against that same defendant.

(2) The bill, in conformance with the requirements of Proposition 65, would make a legislative finding and declaration that this change would further the purposes of the act.

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 25249.7.3 is added to the Health and
2 Safety Code, to read:

3 25249.7.3. (a) (1) Notwithstanding subdivision (d) of
4 Section 25249.7, except as provided in subdivisions (b) and (c), a
5 person may not file an action in the public interest pursuant to
6 subdivision (d) of Section 25249.7 or bring an action that alleges
7 a violation of this chapter if the defendant has previously entered
8 into a settlement or has been a party to a final judgment in another
9 action brought pursuant to this chapter, and the person filing or
10 bringing the action alleges the same violation of this chapter that
11 was settled or adjudicated.

12 (2) For purposes of this subdivision, any person who files an
13 action in the public interest pursuant to subdivision (d) of Section
14 25249.7 or brings an action that alleges a violation of this chapter
15 against a defendant shall be deemed to be in privity with any other
16 person who files an action in the public interest pursuant to
17 subdivision (d) of Section 25249.7 or brings an action that alleges
18 a violation of this chapter against that same defendant.

19 (b) The prohibition specified in subdivision (a) does not bar an
20 action that may be brought by the Attorney General alleging a
21 violation of this chapter in the State of California, by a district



1 attorney alleging a violation of this chapter within the county of
2 the district attorney's jurisdiction, or by a city attorney alleging a
3 violation of this chapter within the city of the city attorney's
4 jurisdiction.

5 (c) A person who files an action in the public interest pursuant
6 to subdivision (d) of Section 25249.7 or brings an action that
7 alleges a violation of this chapter, and who has entered into a
8 settlement, or was a party to a final judgment pursuant to this
9 chapter regarding that same violation, may only file an action for
10 an order to show cause to enforce the terms of the prior settlement
11 or judgment. In an action authorized by this subdivision, the
12 burden of proof that the defendant's conduct violates the original
13 settlement or judgment is on the plaintiff. A private plaintiff
14 bringing an action authorized by this subdivision shall comply
15 with any other requirements imposed by subdivision (d) of Section
16 25249.7.

17 SEC. 2. The Legislature finds and declares that this act
18 furthers the purposes of the Safe Drinking Water and Toxic
19 Enforcement Act of 1986.

