HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 26275] *(Division 20 enacted by Stats. 1939, Ch. 60.)*

CHAPTER 6.6. Safe Drinking Water and Toxic Enforcement Act of 1986 [25249.5 - 25249.14] *(Chapter 6.6 added November 4, 1986, by initiative Proposition 65, Sec. 2.)*

25249.5. Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity. No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.6. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity. No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.7. (a) A person who violates or threatens to violate Section 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

(b) (1) A person who has violated Section 25249.5 or 25249.6 is liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation in addition to any other penalty established by law. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

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

(A) The nature and extent of the violation.

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

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

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

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

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

(G) Any other factor that justice may require.

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

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

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 25249.5 or 25249.6 that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. If the notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a certificate of merit executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney. The certificate of merit shall state 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 executing the certificate believes there is a reasonable and meritorious case for the private action. Factual information sufficient to establish the basis of the certificate of merit, including the information identified in paragraph (2) of subdivision (h), shall be attached to the certificate of merit that is served on the Attorney General.

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

(e) (1) (A) If, after reviewing the factual information sufficient to establish the basis for the certificate of merit and meeting and conferring with the noticing party regarding the basis for the certificate of merit, the Attorney General believes there is no merit to the action, the Attorney General shall serve a letter to the noticing party and the alleged violator stating the Attorney General believes there is no merit to the action.

(B) If the Attorney General does not serve a letter pursuant to subparagraph (A), this shall not be construed as an endorsement by the Attorney General of the merit of the action.

(2) A person bringing an action in the public interest pursuant to subdivision (d) and a person filing an action in which a violation of this chapter is alleged shall notify the Attorney General that the action has been filed. Neither this subdivision nor the procedures provided in subdivisions (f) to (k), inclusive, affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether a person filing an action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d).

(f) (1) A person filing an action in the public interest pursuant to subdivision (d), a private person filing an action in which a violation of this chapter is alleged, or a private person settling a violation of this chapter alleged in a notice given pursuant to paragraph (1) of subdivision (d), shall, after the action or violation is subject either to a settlement or to a judgment, submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case, even if dismissed. At the time of the filing of a judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or an action brought by a private person in which a violation of this chapter is alleged, the plaintiff shall file an affidavit verifying that the report required by this subdivision has been accurately completed and submitted to the Attorney General.

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

(3) The Attorney General shall develop a reporting form that specifies the information that shall be reported, including, but not limited to, for purposes of paragraph (2) of subdivision (e), the date the action was filed, the nature of the relief sought, and for purposes of this subdivision, the amount of the settlement or civil penalty assessed, other financial terms of the settlement, and any other information the Attorney General deems appropriate.

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

(A) The warning that is required by the settlement complies with this chapter.

(B) The award of attorney’s fees is reasonable under California law.

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

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in a proceeding without intervening in the case.

(6) Neither this subdivision nor the procedures provided in paragraph (2) of subdivision (e) and subdivisions (g) to (k), inclusive, affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether claims raised by a person or public prosecutor not a party to the action are precluded by a settlement approved by the court.

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

(h) (1) The basis for the certificate of merit required by subdivision (d) is discoverable only to the extent that the information is relevant to the subject matter of the action and not subject to the attorney-client privilege, the attorney work product privilege, or any other legal privilege.

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

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit on request to a district attorney, city attorney, or prosecutor within whose jurisdiction the violation is alleged to have occurred, or to any other state or federal government agency, but in all other respects the Attorney General shall maintain, and ensure that all recipients maintain, the submitted information as confidential official information to the full extent authorized in Section 1040 of the Evidence Code.

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

(k) Any person who serves a notice of alleged violation pursuant to paragraph (1) of subdivision (d) for an exposure identified in subparagraph (A), (B), (C), or (D) of paragraph (1) shall complete, as appropriate, and provide to the alleged violator at the time the notice of alleged violation is served, a notice of special compliance procedure and proof of compliance form pursuant to subdivision (l) and shall not file an action for that exposure against the alleged violator, or recover from the alleged violator in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if all of the following conditions have been met:

(1) The notice given pursuant to paragraph (1) of subdivision (d) was served on or after the effective date of the act amending this section during the 2013–14 Regular Session and alleges that the alleged violator failed to provide clear and reasonable warning as required under Section 25249.6 regarding one or more of the following:

(A) An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law.

(B) An exposure to a chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises primarily intended for immediate consumption on or off premises, to the extent of both of the following:

(i) The chemical was not intentionally added.

(ii) The chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

(C) An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

(D) An exposure to chemicals known to the state to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

(2) Within 14 days after service of the notice, the alleged violator has done all of the following:

(A) Corrected the alleged violation.

(B) (i) Agreed to pay a civil penalty for the alleged violation of Section 25249.6 in the amount of five hundred dollars ($500), to be adjusted quinquennially pursuant to clause (ii), per facility or premises where the alleged violation occurred, of which 75 percent shall be deposited in the Safe Drinking Water and Toxic Enforcement Fund, and 25 percent shall be paid to the person that served the notice as provided in Section 25249.12.

(ii) On April 1, 2019, and at each five-year interval thereafter, the dollar amount of the civil penalty provided pursuant to this subparagraph shall be adjusted by the Judicial Council based on the change in the

annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics and Research, for the most recent five-year period ending on December 31 of the year preceding the year in which the adjustment is made, rounded to the nearest five dollars ($5). The Judicial Council shall quinquennially publish the dollar amount of the adjusted civil penalty provided pursuant to this subparagraph, together with the date of the next scheduled adjustment.

(C) Notified, in writing, the person that served the notice of the alleged violation, that the violation has been corrected. The written notice shall include the notice of special compliance procedure and proof of compliance form specified in subdivision (l), which was provided by the person serving notice of the alleged violation and which shall be completed by the alleged violator as directed in the notice.

(3) The alleged violator shall deliver the civil penalty to the person that served the notice of the alleged violation within 30 days of service of that notice, and the person that served the notice of violation shall remit the portion of the penalty due to the Safe Drinking Water and Toxic Enforcement Fund within 30 days of receipt of the funds from the alleged violator.

(l) The notice required to be provided to an alleged violator pursuant to subdivision (k) shall be presented as follows:

* *

NOTICE OF INCOMPLETE TEXT: The Proof of Compliance form
appears in the published bill.
See Sec. 1, Chapter 187 (pp. 7–8), Statutes of 2019.

* *

(m) An alleged violator may satisfy the conditions set forth in subdivision (k) only one time for a violation arising from the same exposure in the same facility or on the same premises.

(n) Nothing in subdivision (k) shall prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action pursuant to subdivision (c) against an alleged violator. In any such action, the amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation pursuant to subparagraph (B) of paragraph (2) of subdivision (k).

(o) If a violation of this chapter is alleged or the application or construction of provisions of this chapter is at issue in a proceeding in the Supreme Court, court of appeal, or the appellate division of the superior court, each party shall serve a copy of the party's brief or petition and brief, on the Attorney General. Service on the Attorney General shall be accomplished by serving the brief, or petition and brief, on the Proposition 65 coordinator at the service address designated on the Attorney General's internet website for Proposition 65 enforcement reporting. A brief shall not be accepted or filed unless the proof of service shows service on the Attorney General. A party failing to comply with this subdivision shall be given a reasonable opportunity to cure the failure before the court imposes sanction, and, in that instance, the court shall allow the Attorney General reasonable additional time to file a brief in the matter.

(Amended by Stats. 2019, Ch. 187, Sec. 1. (AB 1123) Effective January 1, 2020. Note: See published chaptered bill for complete section text. The Proof of Compliance form appears on pages 7 to 8 of Stats. 2019, Ch. 187. Note: This section was added on Nov. 4, 1986, by initiative Prop. 65.)

25249.8. List Of Chemicals Known to Cause Cancer Or Reproductive Toxicity.

(a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d).

(b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of this chapter if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state's qualified experts have not found to have been adequately tested as required.

(d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section.

(e) In carrying out the duties of the Governor under this section, the Governor and his designates shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.9. Exemptions from Discharge Prohibition.

(a) Section 25249.5 shall not apply to any discharge or release that takes place less than twenty months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(b) Section 25249.5 shall not apply to any discharge or release that meets both of the following criteria:

(1) The discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water.

(2) The discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order.

In any action brought to enforce Section 25249.5, the burden of showing that a discharge or release meets the criteria of this subdivision shall be on the defendant.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.10. Exemptions from Warning Requirement.

Section 25249.6 shall not apply to any of the following:

(a) An exposure for which federal law governs warning in a manner that preempts state authority.

(b) An exposure that takes place less than twelve months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(c) An exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.11. Definitions.

For purposes of this chapter:

(a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 116275.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water.

(d) "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.

(e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

(Amended by Stats. 1996, Ch. 1023, Sec. 238. Effective September 29, 1996. Note: This section was added on Nov. 4, 1986, by initiative Prop. 65.)

25249.12. (a) The Governor shall designate a lead agency and other agencies that may be required to implement this chapter, including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement this chapter and to further its purposes.

(b) The Safe Drinking Water and Toxic Enforcement Fund is hereby established in the State Treasury. The director of the lead agency designated by the Governor to implement this chapter may expend the funds in the Safe Drinking Water and Toxic Enforcement Fund, upon appropriation by the Legislature, to implement and administer this chapter.

(c) In addition to any other money that may be deposited in the Safe Drinking Water and Toxic Enforcement Fund, all of the following amounts shall be deposited in the fund:

(1) Seventy-five percent of all civil and criminal penalties collected pursuant to this chapter.

(2) Any interest earned upon the money deposited into the Safe Drinking Water and Toxic Enforcement Fund.

(d) Twenty-five percent of all civil and criminal penalties collected pursuant to this chapter shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7, to that person.

(Amended by Stats. 2003, Ch. 228, Sec. 22. Effective August 11, 2003. Note: This section was added on Nov. 4, 1986, by initiative Prop. 65.)

25249.13. Preservation Of Existing Rights, Obligations, and Penalties. Nothing in this chapter shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987. Note: Sections 25250 to 25259 are in Articles 13 to 17 of Chapter 6.5, following Section 25249.2.)

25249.14. The Governor's Office of Business and Economic Development shall post in a conspicuous location on its Internet Web site, and include with any informational materials provided to businesses relating to a business's obligations under state law, a disclaimer that states the following:

Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, requires businesses to provide a clear and reasonable warning before knowingly and intentionally exposing anyone to chemicals that are known to the state to cause cancer or birth defects or other reproductive harm. It is important to know that a product that receives certification from the United States Food and Drug Administration, or another federal agency or state agency, is not necessarily exempt from California requirements for chemical exposure warnings. Businesses should be aware of the levels of harmful chemicals in their products and of applicable Proposition 65 requirements. For more information on Proposition 65 and how to comply with its requirements, please visit https://oehha.ca.gov.

(Added by Stats. 2017, Ch. 510, Sec. 2. (AB 1583) Effective January 1, 2018.)