



Assembly Member Bill Quirk, 20th Assembly District

AB XX: SCIENTIFIC BASED EXPOSURE ASSESSMENTS

(UPDATED – 2.17.15)

BACKGROUND

“The Safe Drinking Water and Toxic Enforcement Act of 1986,” most commonly referred to as Proposition 65, was approved via initiative by voters. The goal of Prop 65 is to protect the public by (1) requiring California businesses to warn individuals before knowingly and intentionally exposing them to listed chemicals and (2) prohibiting California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water.

EXISTING LAW

Prop 65 requires California businesses with 10 or more employees to provide a clear and reasonable warning before knowingly and intentionally exposing individuals to chemicals known to cause cancer and/or reproductive toxicity. Prop 65 is administered by the Office of Environmental Health Hazard Assessment (OEHHA), and is enforced exclusively by civil lawsuits by specified public authorities and private persons.

PROBLEM

Over the last 25 years, aspects of the “clear and reasonable” warning have been litigated, discussed and clarified in court decisions and settlements in enforcement cases. OEHHA is currently undertaking a massive regulatory overhaul of Prop 65 related signage. Key objectives of the process are to make the warning more informative and integrate modern technology in how information is providing.

One area that is not being addressed through the regulatory process is “overwarning.” Specifically, businesses commonly provide warnings on their products and facilities even if they do not cause a Prop 65 exposure at levels requiring a warning. Businesses often provide unneeded warnings because the law currently provides little guidance regarding how exposure assessments must be conducted and the role they play in guiding a business’s decision about whether or not to warn.

Due to this uncertainty and the expense involved in defending these determinations, many businesses choose to provide warnings where the law may not require such warnings. While Prop 65 permits this approach, there are significant public health consequences to such overwarning, including the increased likelihood that Californians will overlook, ignore, or give less credence to other warnings where risks to individuals may be more immediate and potential consequences more extreme.

SOLUTION

This bill restores scientific integrity into Prop 65 by (1) promoting (but not requiring) the use of a scientific exposure assessment to support a business’s decision to warn or not to warn and (2) ensuring that such an assessment is conducted by or under the supervision of a qualified scientist. Importantly, nothing in Prop 65 precludes businesses from already relying on an exposure assessment as a basis for warning or not warning. This bill simply provides much needed clarity and guidance on the use of an exposure assessment and, in doing so, does nothing to impede or limit private or public enforcement of the law.

SUPPORT

none at this time

FOR MORE INFORMATION

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