

Section 25249.7 of the Health and Safety Code is amended to read:

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

(b)(1) Any person who has violated Section 25249.5 or 25249.6 shall be 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 any district attorney, by any 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 any 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 any 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.

(A) 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.

(B) 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.

(C) When the subject of the enforcement action is a consumer product, the factual information provided to the Attorney General under subparagraph (B) must include information from the product manufacturer or test data that indicate that users of the product will likely be exposed to a listed chemical.

(D) If the notice alleges exposures to a listed chemical by dermal contact, then the factual information must demonstrate that the chemical is present in the product and that the chemical will likely come off the product upon contact.

(E) When the subject of the enforcement action is an environmental or occupational exposure, the factual information provided to the Attorney General must include information or test data that indicate that persons within the area or workplace will likely be exposed to a listed chemical.

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

(e) Any person bringing an action in the public interest pursuant to subdivision (d) and any person filing any 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 (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether any person filing any action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d)

(f)(1) Any person filing an action in the public interest pursuant to subdivision (d), any private person filing any action in which a violation of this chapter is alleged, or any private person settling any 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 any judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or any 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) Any person bringing an action in the public interest pursuant to subdivision (d), or any 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 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) Any warning that is required by the settlement complies with this chapter.

(B) Any award of attorney's fees is reasonable under Code of Civil Procedure section 1021.5 and in light of the totality of the circumstances. To assist the court in making this finding, the plaintiff shall describe in its supporting papers the circumstances of the case, including, but not limited to,

(i) the novelty of the alleged violation;

(ii) the amount of attorney's fees the plaintiff's attorney or attorneys have received in the preceding four years in settlements of cases in which a person has alleged exposures to the same listed chemical or chemicals at issue in the action; and

(iii) the amount of litigation that occurred after the alleged violator corrected the violation, and the reason for the additional litigation, including any motion practice and discovery.

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

(D) Any payments in lieu of a civil penalty, which include all payments in the settlement that are not a civil penalty or reimbursement of attorneys' fees and costs, meet all of the following requirements:

(i) The total amount of payments in lieu of penalty do not exceed the penalty amount.

(ii) The settlement document describes with specificity a clear and substantial nexus between the activities to be funded by the payment and the violation. For purposes of this section, a substantial nexus does not include attorney's fees for past or future enforcement of Proposition 65.

(iii) Any recipient of a payment in lieu of penalties in the settlement has committed to maintain adequate records documenting how the funds were spent and to make those records available to the public upon request.

(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 any proceeding without intervening in the case.

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

(6) Subdivision (f) shall not affect the requirements imposed by statute or a court decision in existence on January 1, 2014.

(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) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable.

(2) Where the recipient of a notice in which a violation of section 25249.6 is alleged tenders to the party that served the notice all documents, including test data, in its possession or control that relate to the content of, or exposures to, the listed chemical that is the subject of the notice, the party that served the notice shall provide to the alleged violator all documents, including test data, in its possession or control that relate to the content of, or exposures to, the listed chemical that is the subject of the notice. The same information shall be provided to the Attorney General upon request. The information exchanged shall remain confidential, and the exchange of information shall not constitute a waiver of any privilege by any of the parties.

~~(3) However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.~~

(4) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any 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 has occurred or was threatened, then the action shall be deemed frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action. 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 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action.

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit to a court for *in camera* review or, on request, to any 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. 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 any 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 any party who provides a notice pursuant to subdivision (d) and who renders assistance in that action.