
McKenna & Cuneo, L.L.P.

March 13, 2002

Proposition 65 Advisory 02-IV

Attorney General Proposes Regulations to Implement New Requirements for “Certificates of Merit” and Settlement Review

On March 1, 2002, the Office of the Attorney General proposed new regulations to implement key provisions of Senate Bill No. 471 (“SB 471”), enacted last year to discourage frivolous lawsuits under Proposition 65. SB 471 requires a bounty-hunter plaintiff to file a “certificate of merit” in support of a Notice of Intent to Sue for alleged violations of the Proposition 65 warning requirement and to file settlement agreements and other pleadings with the Attorney General for his review.

The proposed regulations are available on the McKenna & Cuneo website at www.mckennacuneo.com/practice/prop65/Files/proposedregs.pdf. In their present form, they will establish (1) stringent requirements for materials that must accompany and support a “certificate of merit,” in order to set a minimum threshold of validity before a private party may proceed with a claim; (2) changes to the existing reporting requirements, under which plaintiffs in cases that are settled must file and serve upon the Attorney General a motion requesting a court’s approval of the settlement; and (3) guidelines under which Proposition 65 settlements must be developed and approved, including standards for attorneys’ fees and civil penalties, and the form and content of acceptable Proposition 65 warnings.

The proposed regulations are subject to requirements for “notice and comment” under California’s Administrative Procedure Act. The deadline for submitting comments is 5 p.m., April 26, 2002. Given the controversy concerning over 4000 Notices of Intent to Sue filed in December 2001, we expect opposition to the regulations from the activist groups who file Proposition 65 lawsuits, complaining that the proposed regulations go too far to correct that abuse and should not be adopted merely to address that short-term phenomenon. Public hearings on the proposed regulations will be held on April 23, 2002 in Los Angeles, and on April 26, 2002 in Oakland. If you need further information about the proposed regulations, or would like assistance in preparing comments, please contact one of the McKenna & Cuneo attorneys below.

San Francisco**415-267-4000**

Stanley W. Landfair
Ann G. Grimaldi
Chris Volz

Los Angeles**213-688-1000**

Charles H. Pomeroy
Beth S. Dorris
Michael J. Stiles
Ryan S. Landis

Washington, D.C.**202-496-7500**

Charles A. O’Connor, III
Robert A. Matthews
Peter L. Gray

McKenna & Cuneo, L.L.P., distributes its Advisories to clients and friends of the firm free of charge. If you would like to request additions (or deletions) to our distribution list, please call Nina MacLeay at 213-243-6063. For more information, please visit our website at <http://www.mckennacuneo.com>.