

INVESTOR'S BUSINESS DAILY®

October 28, 2016

Small Business Regulatory Relief In California Starts With Prop 65

BY: ALFREDO ORTIZ

lection Day this November marks the 30th anniversary of California's Proposition 65, the posterchild of bad government regulation.

Passed by ballot initiative in 1986, this law requires all businesses that operate in California to put warning labels on products that have a one in 100,000 chance of causing cancer over a 70-year period. Because this definition is so broad, nearly all products in the state from umbrellas to Disneyland include the label.

For businesses that operate in the state, it's a sad anniversary. They have had to pay hundreds of millions of dollars in settlements for so-called violations of this regulation over the past three decades. And recently released data shows that in 2015, businesses paid \$26 million in Prop 65 settlements.

How is that figure so high? Violating Prop 65 does not come with a simple fine. The law allows trial attorneys to launch massive lawsuits against violators — up to \$25,000 per violation per day. This can quickly add up to massive payouts. Policymakers need to pursue common sense tort law reform to protect small businesses from such predatory lawsuits.

Because lawyers know that it is in businesses' interest to settle rather than face an expensive trial, an industry of bounty hunter attorneys who specialize in trying to make a quick buck off Prop 65 violations has sprung

up. Some of them go from business to business looking for products with missing labels. Others take products home to test for trace amounts of Prop 65 chemicals.

It's been happy hunting. The vast majority of settlement payouts go to trial attorneys. In 2015, \$18 million — or 68% of the total collected — went to law firms. California's Attorney General indicates that more than 70% of Prop 65 settlements has gone to attorneys over the last 30 years.

Such lawsuits hit small businesses, which do not have the resources or the capital to defend themselves against bounty hunters, the hardest. Settlements can severely hamper their business operations or even put them out of business altogether.

These are businesses like health supplement company Super Nutrition, which has had to pay over \$3 million in Prop 65 settlements. They're businesses like golf accessory manufacturer West Coast Trends, whose golf club cover was hit with a Prop 65 violation. They're businesses like Durascoop, whose revolutionary pooper scooper was hit with a Prop 65 lawsuit. In other words, they're the type of small businesses that are the heart of Main Street.

But if Prop 65 is keeping Californians safe, then maybe the compliance hurdles faced by small businesses are acceptable consequences. However, studies show that Prop 65 has had no effect on state cancer rates or public

health. That's largely because products have only trace amounts of chemicals — often less than what naturally occurs in a serving of vegetables.

In other words, Prop 65 is a regulation that's been all pain and no gain (except for trial lawyers, of course). And Prop 65 is just one of many regulations that trial lawyers take advantage of to extract payouts from small businesses. Tort reform that protects them from such frivolous lawsuits is needed.

While lawsuits may be an existential threat to small businesses, the regulations themselves pose a death by a thousand cuts. According to a national poll of small business owners commissioned earlier this year by the Job Creators Network, regulations are cited as one of the biggest hurdles that respondents face. In fact, three out of five respondents said that they impede their ability to thrive. Prop 65 is a textbook example of one of the type of burdensome regulations they are facing.

Governor Jerry Brown has already called for Prop 65 reform to address the bounty hunter aspects of it. But to make its 30th anniversary something to truly celebrate, more substantive reform to ensure that it only applies to products with a clear health risk is needed. Policymakers looking to bring small businesses regulatory relief should start with Prop 65.

Ortiz is the president and CEO of the Job Creators Network.