



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-080

For business meeting on March 15, 2024

Title

Rules and Forms: Adjustments to Dollar
Amounts of Civil Penalty

Agenda Item Type

Action Required

Effective Date

April 1, 2024

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, Appendix H

Date of Report

February 14, 2024

Recommended by

Judicial Council staff
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Executive Summary

Judicial Council staff recommend that the Judicial Council amend Appendix H of the California Rules of Court to reflect changes in the California Consumer Price Index as required by Health and Safety Code section 25249.7(k)(2)(B)(ii). Appendix H sets out the five-year adjustment to the dollar amount of a civil penalty for an alleged violation of Health and Safety Code section 25249.6.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective April 1, 2024, amend Appendix H of the California Rules of Court to reflect changes in the California Consumer Price Index.

The amended Appendix H is attached at page 4.

Relevant Previous Council Action

The council adopted Appendix H of the California Rules of Court in 2019, which was the first time the adjustment to the amount of civil penalty for an alleged violation of Health and Safety Code section 25249.6 was required under section 25249.7(k)(2)(B)(ii).¹

Analysis/Rationale

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from knowingly discharging or releasing such a chemical into water or any source of drinking water, except as specified. A person may bring an action in the public interest for violation of the act but only after certain notices have been provided to the alleged violator and to the Attorney General.

In 2013, the Legislature amended the statute to require that, when the alleged violations were based on failure to provide certain warnings, a private exemption action is prohibited if the alleged violator, within 14 days after receipt of the required notice, corrects the alleged violation and pays a civil penalty in the amount of \$500 per facility or premises. (See § 25249.7(k).) At the same time, the Legislature mandated that the Judicial Council adjust the amount of that civil penalty every five years, beginning April 1, 2019, based on changes to the California Consumer Price Index over the prior five years. (§ 25249.7(k)(2)(B)(ii).)

Based on the recently published 2023 California Consumer Price Index figure, as set out in the formula in Appendix H of the California Rules of Court, the adjusted dollar amount of the exemptions that will be effective on April 1, 2024, is \$610.² The calculation and adjusted dollar amount are included in the amended Appendix H.³

Policy implications

There are no policy implications of this proposal as the amendment of Appendix H is required by statute.

Comments

This proposal was not circulated for public comment because minor, noncontroversial revisions are being made to implement changes in law and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

¹ Unless otherwise noted, all statutory references hereafter are to the California Health and Safety Code.

² The California Department of Labor has published the figures on its website, at www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF.

³ As adopted in 2019, Appendix H inadvertently cites to section 26249.7(k) instead of section 25249.7(k). This proposal also amends Appendix H to cite to the correct statute.

Alternatives considered

The alternative to amending Appendix H to include the adjusted dollar amount based on changes in the California Consumer Price Index would be to not update it. Staff did not consider this option because section 25249.7(k)(2)(B)(ii) mandates that the council adjust the figures.

Fiscal and Operational Impacts

The implications of this proposal for the trial courts should be minimal. The figure in Appendix H of the California Rules of Court is information for the use of potential litigants, before any case has been filed, and should not impact court processes.

Attachments and Links

1. Cal. Rules of Court, Appendix H, at page 4
2. Link A: 2023 Consumer Price Index–California: All Urban Consumers, State of California, Department of Industrial Relations, www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF

Appendix H of the California Rules of Court is amended, effective April 1, 2024, to read:

Appendix H

Amount of Civil Penalty to Cure Alleged Violation of Proposition 65 for Failure to Provide Certain Warnings (Health & Saf. Code, § ~~26249.7(k)~~ 25249.7(k))

Formula

Under Health and Safety Code section ~~26249.7(k)~~ 25249.7(k), the amount of civil penalty per facility or premises that an alleged violator may agree to pay within 14 days of service of a notice of violation under that section will be computed and adjusted as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. } ~~2018~~ 2023) - \text{annual CCPI (Dec. } ~~2013~~ 2018)}{\text{annual CCPI (Dec. } ~~2013~~ 2018)} + 1 \right] \times \text{Previous dollar amount}$$

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers, as established by the California Department of Industrial Relations.

Calculation and adjustment

Effective April 1, ~~2019~~ 2024, the amount of civil penalty that an alleged violator may agree to pay within 14 days of service of a notice of violation under Health and Safety Code section ~~26249.7(k)(2)(B)(ii)~~ 25249.7(k)(2)(B)(ii) is ~~\$565~~ \$610 per facility or premises where the alleged violation occurred.

The calculation is as follows:

$$\text{\$} ~~563.92~~ 608.79 = \left[\frac{272.51 \text{ } 331.804 - 241.623 \text{ } 272.51}{241.623 \text{ } 272.51} \right] + 1 \times \text{\$} 500$$

Under Health and Safety Code section ~~26249.7(k)(2)(B)(ii)~~ 25249.7(k)(2)(B)(ii), the adjusted penalty amount is rounded to the nearest \$5, so the dollar amount of the adjusted limit is rounded to ~~\$565~~ \$610.