

Shakedown Artists: How Activists, Lawyers Collude to Threaten Science

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Credit: josephtateart/Wikipedia ^[1]

California is a trendsetter.

It's home to world-class wine, championship basketball teams, beautiful weather, and legendary cities like San Francisco. But my home state, sadly, is also a trendsetter when it comes to wrongheaded public health policy. There's no better example of this than Proposition 65, a law that has cost California businesses close to [\\$300 million](#) ^[2] as of 2016.

Originally approved by voters in 1986, the law empowers the state government to regulate the use of [chemicals](#) ^[3], over 800 and counting, that it deems toxic to human health and the environment. Scientific shortcomings aside, the language of Prop. 65 has exposed California's businesses to an unending onslaught of legal trouble, [because](#) ^[4] anybody can "enforce" the law by filing suit against an allegedly offending business.

The problem, though, isn't just a handful of kooky anti-science groups and "[bounty hunter](#)" ^[5] environmental lawyers. Instead, Prop. 65 has created a self-perpetuating industrial complex of attorneys, consultants, and activists on both sides of the debate who profit at the expense of California businesses and consumers.

The Activist-Legal Complex

The demand for legal and compliance services around the law is so extensive that [Prop. 65 Clearinghouse](#) ^[6] hosts an annual conference at which “stakeholders” keep current on California’s [ever-evolving](#) ^[7] chemical regulations and strategize for the coming year. It’s like an industry trade show for ambulance chasers.

A quick glance at the conference’s list of sponsors confirms this accusation: an odd mix of powerful defense law firms, trade associations, and a nonprofit group that files Prop. 65 lawsuits as a means of fundraising. You may wonder why firms that defend businesses in Prop. 65 lawsuits are co-sponsoring events with an organization that files those lawsuits in the first place. Well, it’s all part of the arrangement.

Businesses sued under Prop. 65 have very few options when mounting a defense. They can fight the lawsuit if they have attorneys, but the associated legal fees are usually unmanageable. The penalty for violating Prop. 65 is \$2,500 for every day the business is out of compliance. Then, of course, the company has to pay their attorneys, as well as the plaintiff’s attorneys if they lose. Add to that the wasted time and lost productivity of a protracted legal battle, and many businesses conclude that fighting back isn’t a realistic option.

As a result, companies often choose a different strategy. They join a [trade group](#) ^[8] in which their entire industry is represented by a large defense firm that specializes in Prop. 65 lawsuits, like the ones [sponsoring](#) ^[9] the conference mentioned above. These “opt-in defendants” pay a retainer to the defense firm and a smaller, negotiated penalty for violating Prop. 65, and the settlement remains open to other businesses in the industry who may be sued under Prop. 65 in the future.

Basically, it’s an insurance racket.

As [one law firm](#) ^[10] says, “Defense attorneys get hired, recruit a lot of other defendants, settle the case and collect fees from everyone involved.” In regard to the opt-in settlements, the firm notes, “Defense counsel and plaintiff’s counsel effectively teamed up against the interests of any new defendant.” Others, including a former California Attorney General, have caught on to this [pattern of collusion](#) ^[11] in Prop. 65 lawsuits.

The Anti-Chemical Crusaders

None of this would be possible without the help of a radical environmentalist community that provides a “science” foundation for this activist-legal complex. The [mission](#) ^[12] of the Center for Environmental Health (CEH), a nonprofit with a pleasant sounding name, is to “protect people from toxic chemicals ... and to demand and support business practices that are safe for human health and the environment.” That’s a lovely sentiment, but in practice, [it means](#) ^[13] that CEH sues any California business that it can get away with.

The group’s “legal action” [webpage](#) ^[14] lists just a few examples of the anti-science quackery it promotes in court. CEH opposes the use of electronic cigarettes, fracking, and so-called endocrine disrupting chemicals like BPA. Not only is there no science to justify the group’s zealous legal crusades, the research we do have tells us that the technologies CEH attacks have benefited all of us.

Electronic cigarettes, for example, are [95 percent safer](#) ^[15] than tobacco, according to the best

evidence available. On a similar note, the EPA says that [fracking](#) [16] has minimal environmental impacts, and the natural gas it yields is a relatively clean source of energy since it releases [less carbon dioxide](#) [17] into the atmosphere than other fossil fuels. BPA, too, has an impressive track record. It is used in the production of vitally important medical devices, food storage containers, eyeglasses, and even DVDs. When used appropriately, [research](#) [18] shows that it has no detrimental effect on human health.

California's legal system is a toxic mess. It was designed this way in order for activists and lawyers to scare consumers and extract money from businesses. If scientists and pro-science activists don't speak up, activists and [lawyers will hijack science](#) [19] in California. That's a trend the rest of the country can do without.

Cameron J. English is Senior Agricultural Genetics and Special Projects Editor at the Genetic Literacy Project.

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[1] [https://en.wikipedia.org/wiki/Sacramento,_California#/media/File:West_Sacramento,_CA,_USA_-_panoramio_\(cropped\).jpg](https://en.wikipedia.org/wiki/Sacramento,_California#/media/File:West_Sacramento,_CA,_USA_-_panoramio_(cropped).jpg)

[2] <http://prop65scam.com/lawsuit-abuse/>

[3] <https://oehha.ca.gov/proposition-65/chemicals>

[4] <https://oehha.ca.gov/proposition-65/general-info/proposition-65-plain-language>

[5] <https://www.forbes.com/forbes/2001/1015/080.html>

[6] <https://www.prop65clearinghouse.com/conference/registration>

[7] <https://oehha.ca.gov/proposition-65/how-chemicals-are-added-proposition-65-list>

[8] https://www.hansonbridgett.com/Publications/pdf/~/_media/3BE98145064D48B0A53185FEE1CB5B23.pdf

[9] <https://oag.ca.gov/system/files/prop65/settlements/2005-00095S184.pdf?>

[10] <http://www.calbizlit.com/Proposition%2065.pdf>

[11] http://cjac.org/assets/Cons_Def_Group_v_Rental_Housing_Ind_G035101_Opinion_24mar06.pdf

[12] <http://www.ceh.org/why-we-are-here/>

[13] <https://www.kcet.org/agenda/vaping-products-under-fire-for-lack-of-warning-label>

[14] <http://www.ceh.org/campaigns/legal-action/>

[15]

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/Ecigarettes_an_evidence_update

[16] https://www.epa.gov/sites/production/files/2015-06/documents/draft_hf_assessment_fs_6_3_15_508_km_0.pdf

[17] <http://www.annualreviews.org/doi/pdf/10.1146/annurev-earth-060313-054843>

[18] <http://www.acsh.org/sites/default/files/Scared-to-Death-How-Chemophobia-Threatens-Public-Health.pdf>

[19] <https://www.acsh.org/news/2017/12/29/will-lawyers-destroy-science-12340>