

AMENDED IN SENATE JUNE 8, 2004
AMENDED IN SENATE AUGUST 26, 2003
AMENDED IN SENATE AUGUST 18, 2003
AMENDED IN SENATE JULY 22, 2003
AMENDED IN SENATE JULY 1, 2003
AMENDED IN SENATE JUNE 12, 2003
AMENDED IN ASSEMBLY MAY 7, 2003
AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1369

Introduced by Assembly Member Pavley
(Coauthors: Assembly Members Calderon, Hancock, Koretz,
Maze, Mullin, and Vargas)
(Coauthors: Senators Machado, Romero, and Soto)

February 21, 2003

~~An act to add and repeal Section 1569.7 of the Health and Safety Code, relating to residential care facilities for the elderly. An act to add Article 10.2.1(commencing with Section 25214.8.1) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1369, as amended, Pavley. ~~Residential care facilities for the elderly: automatic external defibrillators~~ *Mercury-added thermostats.*

(1) Existing law, the California Mercury Reduction Act of 2001, requires any mercury-containing vehicle light switch that is removed from a vehicle to be subject to the regulations adopted by the Department of Toxic Substances Control regarding the management of universal waste. Existing law prohibits any person, except as specified, from selling at retail or supplying a mercury fever thermometer to a consumer or patient in the state, except by a prescription. Existing law also prohibits any person from manufacturing, offering for sale or use, or distributing for promotional purposes in this state a mercury-added novelty. A violation of the hazardous waste control laws is a crime.

This bill would prohibit, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, a mercury-added thermostat, as defined, unless the mercury-added thermostat is subject to a variance granted by the department or the mercury-added thermostat meets specified criteria.

Since the requirements imposed by the bill would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law authorizes the Emergency Medical Services Authority to establish minimum standards for the training and use of automatic external defibrillators by individuals not otherwise licensed or certified for the use of the device.~~

~~Under existing law, the State Department of Social Services licenses and regulates residential care facilities for the elderly.~~

~~A violation of provisions relating to residential care facilities for the elderly is a crime.~~

~~This bill, commencing July 1, 2005, and until January 1, 2010, would require every residential care facility for the elderly, where the facility's licensed bed capacity exceeds 60 persons, to acquire and maintain, and train personnel in the use of, automatic external defibrillators, as provided in the bill and specified existing law. This bill would also provide that, except as prescribed, when an employee of a residential care facility for the elderly uses or attempts to use an automatic external defibrillator to render emergency care or treatment in a manner consistent with the bill, neither the employee, the facility, nor the board~~



of directors of that facility is liable for civil damages resulting from any acts or omissions in rendering the emergency care or treatment.

~~This bill would prohibit a facility employee with the responsibility to respond to emergencies from using an automatic external defibrillator on a facility resident who has filed a Request to Forego Resuscitative Measures or a Do Not Resuscitate (DNR) form. The bill would also establish procedures to be used by residential care facilities for the elderly with respect to the dissemination of specified information regarding external automatic defibrillators and the maintenance of lists of those residents who have filed a Request to Forego Resuscitative Measures or a DNR form.~~

~~This bill would require the Emergency Medical Services Authority to notify local EMS agencies of the provisions of the bill, and to encourage the local agencies to track the use of automatic external defibrillators in residential care facilities for the elderly.~~

~~This bill would provide that, notwithstanding a specified provision of existing law, violation of the bill shall not constitute a misdemeanor.~~

~~This bill would also apply certain of its provisions to a residential care facility for the elderly with a licensed capacity of 60 or fewer beds that elects to acquire and maintain, and train personnel in the use of, an automatic external defibrillator at the facility.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. — Section 1569.7 is added to the Health and Safety~~
2 *SECTION 1. Article 10.2.1(commencing with Section*
3 *25214.8.1) is added to Chapter 6.5 of Division 20 of the Health and*
4 *Safety Code, to read:*

5
6 *Article 10.2.1. Mercury-Added Thermostats*

7
8 *25214.8.1. (a) The Legislature finds and declares all of the*
9 *following:*

10 *(1) Once mercury is released into the environment it can*
11 *change to methyl mercury, a highly toxic compound. Methyl*
12 *mercury is easily taken up in living tissue and bioaccumulates over*
13 *time, causing serious health effects, including neurological and*
14 *reproductive disorders in humans and wildlife. Since mercury does*



1 *not break down in the environment, it has become a significant*
2 *health threat to humans and wildlife.*

3 *(2) Due to the bioaccumulation of mercury and other*
4 *contaminants in fish, the California Environmental Protection*
5 *Agency has issued a warning advising that adults and women who*
6 *are pregnant or who may become pregnant should limit their fish*
7 *intake from several state waterways.*

8 *(3) Increasingly stringent mercury discharge limits for*
9 *wastewater treatment plants make the identification and*
10 *elimination of unnecessary sources of mercury a critical task,*
11 *because the cost of mercury removal at a wastewater treatment*
12 *plant is far greater than the societal benefits of continuing use of*
13 *mercury containing products, as currently formulated.*

14 *(4) Thermostats are among the largest remaining sources of*
15 *mercury in consumer products that can be legally sold in*
16 *California.*

17 *(5) Mercury thermostats are hazardous waste when discarded,*
18 *and on and after January 1, 2006, all mercury thermostat wastes*
19 *will be prohibited from disposal in a solid waste landfill under the*
20 *regulations adopted pursuant to this chapter.*

21 *(6) Economical alternatives to mercury thermostats are*
22 *available for commercial and residential applications.*

23 *(b) For purposes of this article “mercury-added thermostat”*
24 *means a product or device that uses a mercury switch to sense and*
25 *control room temperature through communication with heating,*
26 *ventilating, or air conditioning equipment. A mercury-added*
27 *thermostat includes thermostats used to sense and control room*
28 *temperature in residential, commercial, industrial, and other*
29 *buildings but does not include a thermostat used to sense and*
30 *control temperature as part of a manufacturing process.*

31 *25214.8.2. (a) On and after January 1, 2006, a person shall*
32 *not sell, offer to sell, or distribute for promotional purposes, a*
33 *mercury-added thermostat, unless the mercury-added thermostat*
34 *is subject to a variance granted pursuant to subdivision (b) or the*
35 *mercury-added thermostat meets either of the following criteria:*

36 *(1) The thermostat will be used for manufacturing or industrial*
37 *purposes.*

38 *(2) The thermostat will be used by a blind or visually impaired*
39 *person.*



1 (b) A manufacturer of a mercury-added thermostat may apply
2 to the department for a variance for a thermostat from the
3 requirements of subdivision (a) for one or more specific uses of the
4 mercury-added thermostat. The department may grant a variance
5 in accordance with the procedures specified in subdivision (c), if
6 the department makes both of the following findings:

7 (1) The manufacturer demonstrates that a system exists for the
8 proper collection, transportation, and processing of the
9 mercury-added thermostat at the end of its life.

10 (2) The specific use or uses of the mercury-added thermostat
11 provide a net benefit to the environment, public health, or public
12 safety when compared to available nonmercury alternatives.

13 (c) (1) The department may impose conditions for the granting
14 of a variance pursuant to subdivision (b).

15 (2) The department shall not grant a variance pursuant to
16 subdivision (b) for a period of more than two years and may renew
17 a variance for one or more additional two-year periods, if the
18 department finds that the variance has not resulted in harm to
19 human health or safety or to the environment and that there has
20 been substantial compliance with the conditions contained in the
21 variance.

22 (3) The department shall issue a public notice at least 30 days
23 before granting a variance pursuant to subdivision (b) to allow an
24 opportunity for public comment. The public notice shall be issued
25 in the California Regulatory Register, and to the department's
26 regulatory mailing list. The department shall, upon request, hold
27 a public meeting prior to granting the variance. In granting the
28 variance and in making the findings required, the department shall
29 consider all public comments received.

30 (4) A variance issued pursuant to subdivision (b) shall be
31 issued on a form prescribed by the department and shall, as
32 applicable, include, but not be limited to, all of the following:

33 (A) Information identifying the manufacturer to which the
34 variance applies, including the name and address of the
35 manufacturer and the model of the thermostat.

36 (B) The time period during which the variance is effective.

37 (C) A specification of the requirements of this chapter from
38 which the variance is granted.

39 (D) A specification of all conditions, limitations, or other
40 requirements to which the variance is subject.



1 (5) On or before 30 days after the date the department grants
2 a variance pursuant to subdivision (b), the department shall issue
3 a public notice in the California Regulatory Register.

4 (d) (1) The department may review a variance issued pursuant
5 to subdivision (b) at any time, at the discretion of the department,
6 and the department may revoke or modify a variance at any time.

7 (2) The department shall revoke or modify a variance issued
8 pursuant to this section if the department finds any of the
9 following:

10 (A) The system or the uses specified in paragraphs (1) and (2)
11 of subdivision (b) do not meet the conditions specified in those
12 paragraphs.

13 (B) The holder of the variance is in violation of one or more of
14 the conditions, limitations, or other requirements of the variance,
15 and, as a result of the violation, the system or the uses specified in
16 paragraphs (1) and (2) of subdivision (b) do not meet the
17 conditions specified in those paragraphs.

18 SEC. 2. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Senate, August 26, 2003 (JR 11)**

