

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 935

Introduced by Assembly Members Feuer and ~~Ruskin~~ and Jones
(Principal coauthor: Assembly Member Bonnie Lowenthal)
(Coauthors: Assembly Members Hill, Huffman, Lieu, Monning, Price,
Ruskin, and Yamada)
(Coauthors: Senators DeSaulnier, Wiggins, and Wolk)

February 26, 2009

An act to amend Section ~~25503.5~~ 1417.2 of the Health and Safety Code, relating to ~~hazardous materials~~ *long-term health care facilities*.

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as amended, Feuer. ~~Hazardous materials: business plans and inventories: nanomaterials.~~ *Long-term health care facilities.*

Existing law provides for the licensure of long-term health care facilities by the State Department of Public Health. Under existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, the department may assess penalties for violation of prescribed state and federal requirements. Moneys collected as a result of the penalties imposed pursuant to these provisions are required to be deposited into either the State Health Facilities Citation Penalties Account or the Federal Health Facilities Citation Penalties Account, and used, upon appropriation by the Legislature, for the protection of health or property of residents of long-term health care facilities, including reimbursing residents for personal funds lost and costs associated with informational meetings.

Existing law establishes the Office of the State Long-Term Care Ombudsman in the California Department of Aging. Under existing law, the office is responsible for, among other things, investigating and resolving complaints and concerns communicated by or on behalf of patients, residents, or clients of long-term care facilities, as defined. Existing law authorizes the California Department of Aging to allocate all federal and state funds for local ombudsman programs according to a specified distribution schedule.

This bill would require at least 1/2 of the funds in the State Health Facilities Citation Penalties Account and the Federal Health Facilities Citation Penalties Account be used to fund local ombudsman programs pursuant to the aforementioned distribution schedule.

~~(1) Existing law generally requires a business that handles a hazardous material to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material, with specified exceptions. Existing law specifies the contents of the business plan, including an inventory, and requires it to be submitted to the administering agency, as defined. A knowing violation of those requirements, upon reasonable notice of the violation, is a crime.~~

~~This bill would add to those businesses that are required to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material a business that handles a hazardous material or a mixture containing a hazardous material that has any quantity of a substance that is a manufactured nanomaterial, as defined. By adding to the businesses subject to the business plan requirements, the bill would create a new crime, thereby imposing 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:~~

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

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

- 1 *SECTION 1. Section 1417.2 of the Health and Safety Code is*
- 2 *amended to read:*

1 1417.2. (a) Notwithstanding Section 1428, moneys collected
2 as a result of state and federal civil penalties imposed under this
3 chapter or federal law shall be deposited into accounts that are
4 hereby established in the Special Deposit Fund created pursuant
5 to Section 16370 of the Government Code. These accounts are
6 titled the State Health Facilities Citation Penalties Account, into
7 which moneys derived from civil penalties for violations of state
8 law shall be deposited, and the Federal Health Facilities Citation
9 Penalties Account, into which moneys derived from civil penalties
10 for violations of federal law shall be deposited. Moneys from these
11 accounts shall be used, notwithstanding Section 16370 of the
12 Government Code, upon appropriation by the Legislature, *as*
13 *follows:*

14 (1) *At least one-half of the funds in the accounts shall be used*
15 *to fund the local ombudsman programs pursuant to the distribution*
16 *schedule in Section 9719.5 of the Welfare and Institutions Code.*

17 (2) *The remaining funds in the accounts that are not used*
18 *pursuant to paragraph (1) shall be used in accordance with state*
19 *and federal law for the protection of health or property of residents*
20 *of long-term health care facilities, including, but not limited to,*
21 *the following:*

22 ~~(1)~~

23 (A) Relocation expenses incurred by the department, in the event
24 of a facility closure.

25 ~~(2)~~

26 (B) Maintenance of facility operation pending correction of
27 deficiencies or closure, such as temporary management or
28 receivership, in the event that the revenues of the facility are
29 insufficient.

30 ~~(3)~~

31 (C) Reimbursing residents for personal funds lost. In the event
32 that the loss is a result of the actions of a long-term health care
33 facility or its employees, the revenues of the facility shall first be
34 used.

35 ~~(4)~~

36 (D) The costs associated with informational meetings required
37 under Section 1327.2.

38 (b) Notwithstanding subdivision (a), the balance in the State
39 Health Facilities Citation Penalties Account shall not, at any time,
40 exceed ten million dollars (\$10,000,000).

1 (c) Moneys from the Federal Health Facilities Citation Penalties
 2 Account, in the amount not to exceed one hundred thirty thousand
 3 dollars (\$130,000), may also be used, notwithstanding Section
 4 16370 of the Government Code, upon appropriation by the
 5 Legislature, in accordance with state and federal law for the
 6 improvement of quality of care and quality of life for long-term
 7 health care facilities residents pursuant to Section 1417.3.

8 (d) The department shall post on its Internet Web site, and shall
 9 update on a quarterly basis, all of the following regarding the funds
 10 in the State Health Facilities Citation Penalties Account and the
 11 Federal Health Facilities Citation Penalties Account:

- 12 (1) The specific sources of funds deposited into the account.
- 13 (2) The amount of funds in the account that have not been
 14 allocated.
- 15 (3) A detailed description of how funds in the account have
 16 been allocated and expended, including, but not limited to, the
 17 names of persons or entities that received the funds, the amount
 18 of salaries paid to temporary managers, and a description of
 19 equipment purchased with the funds. However, the description
 20 shall not include the names of residents.

21 ~~SECTION 1. Section 25503.5 of the Health and Safety Code~~
 22 ~~is amended to read:~~

23 ~~25503.5. (a) (1) A business, except as provided in subdivisions~~
 24 ~~(b), (c), and (d), shall establish and implement a business plan for~~
 25 ~~emergency response to a release or threatened release of a~~
 26 ~~hazardous material in accordance with the standards prescribed in~~
 27 ~~the regulations adopted pursuant to Section 25503, if the business~~
 28 ~~handles a hazardous material or a mixture containing a hazardous~~
 29 ~~material that has a quantity at any one time during the reporting~~
 30 ~~year that is any of the following:~~

- 31 ~~(A) Equal to, or greater than, a total weight of 500 pounds or a~~
 32 ~~total volume of 55 gallons:~~
- 33 ~~(B) Equal to, or greater than, 200 cubic feet at standard~~
 34 ~~temperature and pressure, if the substance is compressed gas.~~
- 35 ~~(C) If the substance is a radioactive material, it is handled in~~
 36 ~~quantities for which an emergency plan is required to be adopted~~
 37 ~~pursuant to Part 30 (commencing with Section 30.1), Part 40~~
 38 ~~(commencing with Section 40.1), or Part 70 (commencing with~~
 39 ~~Section 70.1), of Chapter 1 of Title 10 of the Code of Federal~~

1 Regulations, or pursuant to any regulations adopted by the state
2 in accordance with those regulations.

3 (D) (i) Any quantity of a substance that is a manufactured
4 nanomaterial.

5 (ii) For purposes of this subparagraph, the following definitions
6 apply:

7 (I) “Manufactured nanomaterial” means a nanomaterial that is
8 intentionally produced by a manufacturing process.

9 (II) “Nanomaterial” means a material that is either a nano-object
10 or is an aggregation or agglomeration of nano-objects.

11 (III) “Nano-object” means a material confined in one, two, or
12 three dimensions at the nanoseale.

13 (IV) “Nanoseale” means a size range between 1 nanometer and
14 300 nanometers.

15 (2) In meeting the requirements of this subdivision, a business
16 may, if it elects to do so, use the format adopted pursuant to Section
17 25503.4.

18 (b) (1) Oxygen, nitrogen, and nitrous oxide, ordinarily
19 maintained by a physician, dentist, podiatrist, veterinarian, or
20 pharmacist, at his or her office or place of business, stored at each
21 office or place of business in quantities of not more than 1,000
22 cubic feet of each material at any one time, are exempt from this
23 section and from Section 25505. The administering agency may
24 require a one-time inventory of these materials for a fee not to
25 exceed fifty dollars (\$50) to pay for the costs incurred by the
26 agency in processing the inventory forms.

27 (2) (A) Lubricating oil is exempt from this section and Sections
28 25505 and 25509, for a single business facility, if the total volume
29 of each type of lubricating oil handled at that facility does not
30 exceed 55 gallons and the total volume of all types of lubricating
31 oil handled at that facility does not exceed 275 gallons, at any one
32 time.

33 (B) For purposes of this paragraph, “lubricating oil” means any
34 oil intended for use in an internal combustion engine, or the
35 transmission, gearbox, differential, or hydraulic system of an
36 automobile, bus, truck, vessel, plane, heavy equipment, or other
37 machinery powered by an internal combustion or electric powered
38 engine. “Lubricating oil” does not include used oil, as defined in
39 subdivision (a) of Section 25250.1.

1 ~~(e) (1) Hazardous material contained solely in a consumer~~
2 ~~product for direct distribution to, and use by, the general public is~~
3 ~~exempt from the business plan requirements of this chapter unless~~
4 ~~the administering agency has found, and has provided notice to~~
5 ~~the business handling the product, that the handling of certain~~
6 ~~quantities of the product requires the submission of a business~~
7 ~~plan, or any portion thereof, in response to public health, safety,~~
8 ~~or environmental concerns.~~

9 ~~(2) In addition to the authority specified in paragraph (4), the~~
10 ~~administering agency may, in exceptional circumstances, following~~
11 ~~notice and public hearing, exempt from the inventory provisions~~
12 ~~of this chapter a hazardous substance specified in subdivision (p)~~
13 ~~of Section 25501 if the administering agency finds that the~~
14 ~~hazardous substance would not pose a present or potential danger~~
15 ~~to the environment or to human health and safety if the hazardous~~
16 ~~substance was released into the environment. The administering~~
17 ~~agency shall specify in writing the basis for granting an exemption~~
18 ~~under this paragraph. The administering agency shall send a notice~~
19 ~~to the office within five days from the effective date of an~~
20 ~~exemption granted pursuant to this paragraph.~~

21 ~~(3) The administering agency, upon application by a handler,~~
22 ~~may exempt the handler, under conditions that the administering~~
23 ~~agency determines to be proper, from a portion of the business~~
24 ~~plan, upon a written finding that the exemption would not pose a~~
25 ~~significant present or potential hazard to human health or safety~~
26 ~~or to the environment or affect the ability of the administering~~
27 ~~agency and emergency rescue personnel to effectively respond to~~
28 ~~the release of a hazardous material, and that there are unusual~~
29 ~~circumstances justifying the exemption. The administering agency~~
30 ~~shall specify in writing the basis for an exemption under this~~
31 ~~paragraph.~~

32 ~~(4) The administering agency, upon application by a handler,~~
33 ~~may exempt a hazardous material from the inventory provisions~~
34 ~~of this chapter upon proof that the material does not pose a~~
35 ~~significant present or potential hazard to human health and safety~~
36 ~~or to the environment if released into the workplace or~~
37 ~~environment. The administering agency shall specify in writing~~
38 ~~the basis for an exemption under this paragraph.~~

39 ~~(5) An administering agency shall exempt a business operating~~
40 ~~a farm for purposes of cultivating the soil or raising or harvesting~~

1 ~~an agricultural or horticultural commodity from filing the~~
2 ~~information in the business plan required by subdivisions (b) and~~
3 ~~(c) of Section 25504 if all of the following requirements are met:~~

4 ~~(A) The handler annually provides the inventory of information~~
5 ~~required by Section 25509 to the county agricultural commissioner~~
6 ~~before January 1 of each year.~~

7 ~~(B) Each building in which hazardous materials subject to this~~
8 ~~chapter are stored is posted with signs, in accordance with~~
9 ~~regulations that the office shall adopt, that provide notice of the~~
10 ~~storage of any of the following:~~

11 ~~(i) Pesticides.~~

12 ~~(ii) Petroleum fuels and oil.~~

13 ~~(iii) Types of fertilizers.~~

14 ~~(C) Each county agricultural commissioner forwards the~~
15 ~~inventory to the administering agency within 30 days from the~~
16 ~~date of receipt of the inventory.~~

17 ~~(6) The administering agency shall exempt a business operating~~
18 ~~an unstaffed remote facility located in an isolated sparsely~~
19 ~~populated area from the hazardous materials business plan and~~
20 ~~inventory requirements of this article if the facility is not otherwise~~
21 ~~subject to the requirements of applicable federal law, and all of~~
22 ~~the following requirements are met:~~

23 ~~(A) The types and quantities of materials onsite are limited to~~
24 ~~one or more of the following:~~

25 ~~(i) Five hundred standard cubic feet of compressed inert gases~~
26 ~~(asphyxiation and pressure hazards only).~~

27 ~~(ii) Five hundred gallons of combustible liquid used as a fuel~~
28 ~~source.~~

29 ~~(iii) Two hundred gallons of corrosive liquids used as~~
30 ~~electrolytes in closed containers.~~

31 ~~(iv) Five hundred gallons of lubricating and hydraulic fluids.~~

32 ~~(v) Twelve hundred gallons of flammable gas used as a fuel~~
33 ~~source.~~

34 ~~(B) The facility is secured and not accessible to the public.~~

35 ~~(C) Warning signs are posted and maintained for hazardous~~
36 ~~materials pursuant to the California Fire Code.~~

37 ~~(D) A one-time notification and inventory is provided to the~~
38 ~~administering agency along with a processing fee in lieu of the~~
39 ~~existing fee. The fee shall not exceed the actual cost of processing~~

1 the notification and inventory, including a verification inspection
2 if necessary.

3 (E) If the information contained in the initial notification or
4 inventory changes and the time period of the change is longer than
5 30 days, the notification or inventory shall be resubmitted within
6 30 days to the administering agency to reflect the change, along
7 with a processing fee, in lieu of the existing fee, that does not
8 exceed the actual cost of processing the amended notification or
9 inventory, including a verification inspection, if necessary.

10 (F) The administering agency shall forward a copy of the
11 notification and inventory to those agencies that share responsibility
12 for emergency response.

13 (G) The administering agency may require an unstaffed remote
14 facility to submit a hazardous materials business plan and inventory
15 in accordance with this article if the agency finds that special
16 circumstances exist such that development and maintenance of the
17 business plan and inventory is necessary to protect public health
18 and safety and the environment.

19 (d) Onpremise use, storage, or both, of propane in an amount
20 not to exceed 300 gallons that is for the sole purpose of heating
21 the employee working areas within that business is exempt from
22 this section, unless the administering agency finds, and provides
23 notice to the business handling the propane, that the handling of
24 the onpremise propane requires the submission of a business plan,
25 or a portion thereof, in response to public health, safety, or
26 environmental concerns.

27 (e) The administering agency shall provide all information
28 obtained from completed inventory forms, upon request, to
29 emergency rescue personnel on a 24-hour basis.

30 (f) The administering agency shall adopt procedures to provide
31 for public input when approving an application submitted pursuant
32 to paragraph (3) or (4) of subdivision (c).

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

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