

AMENDED IN SENATE JUNE 24, 2004  
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**

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

February 21, 2003

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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. 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, *in this state* 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.

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

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

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

4

5 Article 10.2.1. Mercury-Added Thermostats

6

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

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



1 reproductive disorders in humans and wildlife. Since mercury  
2 does not break down in the environment, it has become a  
3 significant health threat to humans and wildlife.

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

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

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

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

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

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

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

38 ~~(1)~~—

39 (a) The thermostat will be used for manufacturing or industrial  
40 purposes.



1     ~~(2)–~~  
2     ~~(b) The thermostat will be used by a blind or visually impaired~~  
3     ~~person.~~  
4     ~~(b) A manufacturer of a mercury-added thermostat may apply~~  
5     ~~to the department for a variance for a thermostat from the~~  
6     ~~requirements of subdivision (a) for one or more specific uses of the~~  
7     ~~mercury-added thermostat. The department may grant a variance~~  
8     ~~in accordance with the procedures specified in subdivision (c), if~~  
9     ~~the department makes both of the following findings:~~  
10     ~~(1) The manufacturer demonstrates that a system exists for the~~  
11     ~~proper collection, transportation, and processing of the~~  
12     ~~mercury-added thermostat at the end of its life.~~  
13     ~~(2) The specific use or uses of the mercury-added thermostat~~  
14     ~~provide a net benefit to the environment, public health, or public~~  
15     ~~safety when compared to available nonmercury alternatives.~~  
16     ~~(c) (1) The department may impose conditions for the granting~~  
17     ~~of a variance pursuant to subdivision (b):~~  
18     ~~(2) The department shall not grant a variance pursuant to~~  
19     ~~subdivision (b) for a period of more than two years and may renew~~  
20     ~~a variance for one or more additional two-year periods, if the~~  
21     ~~department finds that the variance has not resulted in harm to~~  
22     ~~human health or safety or to the environment and that there has~~  
23     ~~been substantial compliance with the conditions contained in the~~  
24     ~~variance.~~  
25     ~~(3) The department shall issue a public notice at least 30 days~~  
26     ~~before granting a variance pursuant to subdivision (b) to allow an~~  
27     ~~opportunity for public comment. The public notice shall be issued~~  
28     ~~in the California Regulatory Register, and to the department’s~~  
29     ~~regulatory mailing list. The department shall, upon request, hold~~  
30     ~~a public meeting prior to granting the variance. In granting the~~  
31     ~~variance and in making the findings required, the department shall~~  
32     ~~consider all public comments received.~~  
33     ~~(4) A variance issued pursuant to subdivision (b) shall be issued~~  
34     ~~on a form prescribed by the department and shall, as applicable,~~  
35     ~~include, but not be limited to, all of the following:~~  
36     ~~(A) Information identifying the manufacturer to which the~~  
37     ~~variance applies, including the name and address of the~~  
38     ~~manufacturer and the model of the thermostat.~~  
39     ~~(B) The time period during which the variance is effective.~~



1 ~~(C) A specification of the requirements of this chapter from~~  
2 ~~which the variance is granted.~~

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

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

8 ~~(d) (1) The department may review a variance issued pursuant~~  
9 ~~to subdivision (b) at any time, at the discretion of the department,~~  
10 ~~and the department may revoke or modify a variance at any time.~~

11 ~~(2) The department shall revoke or modify a variance issued~~  
12 ~~pursuant to this section if the department finds any of the~~  
13 ~~following:~~

14 ~~(A) The system or the uses specified in paragraphs (1) and (2)~~  
15 ~~of subdivision (b) do not meet the conditions specified in those~~  
16 ~~paragraphs.~~

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

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

