

AMENDED IN SENATE AUGUST 26, 2009

AMENDED IN SENATE JUNE 30, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 737

**Introduced by Committee on Environmental Safety and Toxic
Materials (Chesbro (Chair), Miller (Vice Chair), Davis, Feuer,
Monning, Ruskin, and Smyth)**

February 26, 2009

An act to amend Sections 25251, 25257, 116450, 116455, and 116470 of the Health and Safety Code, relating to environmental safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 737, as amended, Committee on Environmental Safety and Toxic Materials. Environmental safety: public water systems: public notification: Toxics Information Clearinghouse.

Existing law, known as the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adoption of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law requires every public water system to notify users when certain monitoring or other requirements have not been complied with, to notify customers when a failure to comply with a primary drinking water standard represents an imminent danger, to notify consumers of

confirmation of detected contaminants, and to annually deliver a prescribed consumer confidence report to each consumer.

This bill would, in addition, require posting of the notices and reports on the public water system's Internet Web site, if the public water system maintains an Internet Web site. The bill would permit the public water system to ~~remove or amend~~ *supplement* the posted information when certain conditions are met.

Existing law requires the Department of Toxic Substances Control to establish a Toxics Information Clearinghouse for the collection, maintenance, and distribution of specific chemical hazard traits and environmental and toxicological end-point data and defines "consumer product" for purposes of these provisions.

This bill would correct spelling errors and make other technical conforming changes to these provisions.

This bill would incorporate additional changes to Section 116450 of the Health and Safety Code proposed by AB 1540 that would become operative only if AB 1540 and this bill are both chaptered and become effective on or before January 1, 2010, and this bill is chaptered last.

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

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

- 1 SECTION 1. Section 25251 of the Health and Safety Code, as
- 2 added by the first version of Section 1 of Chapter 560 of the
- 3 Statutes of 2008, is amended to read:
- 4 25251. For purposes of this article, the following definitions
- 5 shall apply:
- 6 (a) "Clearinghouse" means the Toxics Information
- 7 Clearinghouse established pursuant to Section 25256.
- 8 (b) "Council" means the California Environmental Policy
- 9 Council established pursuant to subdivision (b) of Section 71017
- 10 of the Public Resources Code.
- 11 (c) "Office" means Office of Environmental Health Hazard
- 12 Assessment.
- 13 (d) "Panel" means the Green Ribbon Science Panel established
- 14 pursuant to Section 25254.
- 15 (e) "Consumer product" means a product or part of the product
- 16 that is used, bought, or leased for use by a person for any purposes.
- 17 "Consumer product" does not include any of the following:

1 (1) A dangerous drug or dangerous device as defined in Section
2 4022 of the Business of Professions Code.

3 (2) Dental restorative materials as defined in subdivision (b) of
4 Section 1648.20 of the Business and Professions Code.

5 (3) A device as defined in Section 4023 of the Business of
6 Professions Code.

7 (4) A food as defined in subdivision (a) of Section 109935.

8 (5) The packaging associated with any of the items specified in
9 paragraph (1), (2), or (3).

10 (6) A pesticide as defined in Section 12753 of the Food and
11 Agricultural Code or the Federal Insecticide, Fungicide and
12 Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

13 (7) Mercury-containing lights defined as mercury-containing
14 lamps, bulbs, tubes, or other electric devices that provide functional
15 illumination.

16 (f) This section shall remain in effect only until December 31,
17 2011, and as of that date is repealed, unless a later enacted statute,
18 that is enacted before December 31, 2011, deletes or extends that
19 date.

20 SEC. 2. Section 25251 of the Health and Safety Code, as added
21 by the second version of Section 1 of Chapter 560 of the Statutes
22 of 2008, is amended to read:

23 25251. For purposes of this article, the following definitions
24 shall apply:

25 (a) "Clearinghouse" means the Toxics Information
26 Clearinghouse established pursuant to Section 25256.

27 (b) "Council" means the California Environmental Policy
28 Council established pursuant to subdivision (b) of Section 71017
29 of the Public Resources Code.

30 (c) "Office" means Office of Environmental Health Hazard
31 Assessment.

32 (d) "Panel" means the Green Ribbon Science Panel established
33 pursuant to Section 25254.

34 (e) "Consumer product" means a product or part of the product
35 that is used, bought, or leased for use by a person for any purposes.
36 "Consumer product" does not include any of the following:

37 (1) A dangerous drug or dangerous device as defined in Section
38 4022 of the Business of Professions Code.

39 (2) Dental restorative materials as defined in subdivision (b) of
40 Section 1648.20 of the Business and Professions Code.

1 (3) A device as defined in Section 4023 of the Business of
2 Professions Code.

3 (4) A food as defined in subdivision (a) of Section 109935.

4 (5) The packaging associated with any of the items specified in
5 paragraph (1), (2), or (3).

6 (6) A pesticide as defined in Section 12753 of the Food and
7 Agricultural Code or the Federal Insecticide, Fungicide and
8 Rodenticide (7 U.S.C. Sec. 136 et seq.).

9 (f) This section shall become effective on January 1, 2012.

10 SEC. 3. Section 25257 of the Health and Safety Code is
11 amended to read:

12 25257. (a) A person providing information pursuant to this
13 article may, at the time of submission, identify a portion of the
14 information submitted to the department as a trade secret and, upon
15 the written request of the department, shall provide support for the
16 claim that the information is a trade secret. Except as provided in
17 subdivision (d), a state agency shall not release to the public,
18 subject information supplied pursuant to this article that is a trade
19 secret, and that is so identified at the time of submission, in
20 accordance with Section 6254.7 of the Government Code and
21 Section 1060 of the Evidence Code.

22 (b) This section does not prohibit the exchange of a properly
23 designated trade secret between public agencies, if the trade secret
24 is relevant and necessary to the exercise of the agency's jurisdiction
25 and the public agency exchanging the trade secrets complies with
26 this section. An employee of the department that has access to a
27 properly designated trade secret shall maintain the confidentiality
28 of that trade secret by complying with this section.

29 (c) Information not identified as a trade secret pursuant to
30 subdivision (a) shall be available to the public unless exempted
31 from disclosure by other provisions of law. The fact that
32 information is claimed to be a trade secret is public information.

33 (d) (1) Upon receipt of a request for the release of information
34 that has been claimed to be a trade secret, the department shall
35 immediately notify the person who submitted the information.
36 Based on the request, the department shall determine whether or
37 not the information claimed to be a trade secret is to be released
38 to the public.

39 (2) The department shall make the determination specified in
40 paragraph (1), no later than 60 days after the date the department

1 receives the request for disclosure, but not before 30 days following
2 the notification of the person who submitted the information.

3 (3) If the department decides that the information requested
4 pursuant to this subdivision should be made public, the department
5 shall provide the person who submitted the information 30 days'
6 notice prior to public disclosure of the information, unless, prior
7 to the expiration of the 30-day period, the person who submitted
8 the information obtains an action in an appropriate court for a
9 declaratory judgment that the information is subject to protection
10 under this section or for a preliminary injunction prohibiting
11 disclosure of the information to the public and promptly notifies
12 the department of that action.

13 (e) This section does not authorize a person to refuse to disclose
14 to the department information required to be submitted to the
15 department pursuant to this article.

16 (f) This section does not apply to hazard trait submissions for
17 chemicals and chemical ingredients pursuant to this article.

18 SEC. 4. Section 116450 of the Health and Safety Code is
19 amended to read:

20 116450. (a) When any primary drinking water standard
21 specified in the department's regulations is not complied with,
22 when a monitoring requirement specified in the department's
23 regulations is not performed, or when a water purveyor fails to
24 comply with the conditions of any variance or exemption, the
25 person operating the public water system shall notify the
26 department, shall give notice to the users of that fact, and shall, if
27 ~~the public water system has an Internet Web site, post that notice~~
28 ~~on the public water system's Internet Web site, fact~~ in the manner
29 prescribed by the department, *and, if the public water system has*
30 *an Internet Web site, shall post the notice on that Internet Web*
31 *site*. When a variance or an exemption is granted, the person
32 operating the public water system shall give notice to the users of
33 that fact.

34 (b) When a person operating a public water system determines
35 that a significant rise in the bacterial count of water has occurred
36 in water he or she supplies, the person shall provide, at his or her
37 expense, a report on the rise in bacterial count of the water, together
38 with the results of an analysis of the water, within 24 hours to the
39 department and, where appropriate, to the local health officer.

1 (c) When the department receives the information described in
2 subdivision (b) and determines that it constitutes an immediate
3 danger to health, the department shall immediately notify the
4 person operating the public water system to implement the
5 emergency notification plan required by this chapter.

6 (d) In the case of a failure to comply with any primary drinking
7 water standard that represents an imminent danger to the health
8 of water users, the operator shall notify each of his or her
9 customers, ~~and shall, if the public water system has an Internet~~
10 ~~Web site, post that notice on that Internet Web site, as provided~~
11 *customers, as provided* in the approved emergency notification
12 *plan, and, if the public water system has an Internet Web site, post*
13 *the notice on that Internet Web site.*

14 (e) In addition, the same notification requirement shall be
15 required in any instance in which the department or the local health
16 department recommends to the operator that it notify its customers
17 to avoid internal consumption of the water supply and to use bottled
18 water due to a chemical contamination problem that may pose a
19 health risk.

20 (f) The content of the notices required by this section shall be
21 approved by the department. Notice shall be repeated at intervals,
22 as required by the department, until the department concludes that
23 there is compliance with its standards or requirements. Notices
24 may be given by the department.

25 In any case where public notification is required by this section
26 because a contaminant is present in drinking water at a level in
27 excess of a primary drinking water standard, the notification shall
28 include identification of the contaminant, information on possible
29 effects of the contaminant on human health, and information on
30 specific measures that should be taken by persons or populations
31 who might be more acutely affected than the general population.

32 (g) Whenever a school or school system, the owner or operator
33 of residential rental property, or the owner or operator of a business
34 property receives a notification from a person operating a public
35 water system under any provision of this section, the school or
36 school system shall notify school employees, students, and parents
37 if the students are minors, the owner or operator of a residential
38 rental property shall notify tenants, and the owner or operator of
39 business property shall notify employees of businesses located on
40 the property.

(1) The operator shall provide the customer with a sample notification form that may be used by the customer in complying with this subdivision and that shall indicate the nature of the problem with the water supply and the most appropriate methods for notification that may include, but are not limited to, the sending of a letter to each water user and the posting of a notice at each site where drinking water is dispensed.

(2) The notice required by this subdivision shall be given within 10 days of receipt of notification from the person operating the public water system.

(3) Any person failing to give notice as required by this subdivision shall be civilly liable in an amount not to exceed one thousand dollars (\$1,000) for each day of failure to give notice.

(4) If the operator has evidence of noncompliance with this subdivision the operator shall report this information to the local health department and the department.

(h) An operator that is required to post a notice on the public water system's Internet Web site pursuant to subdivision (a) or (d) may, upon ~~rectifying~~ *resolving* the problem or complying with the standard that required notification, ~~do either of the following:~~

~~(1) Remove the notice from the public water system's Internet Web site.~~

~~(2) Amend~~ *supplement* the notice posted on the public water system's Internet Web site to ~~include~~ *provide additional information, including, but not limited to,* the date on which the problem was ~~rectified~~ *resolved* or compliance was achieved.

SEC. 4.5. Section 116450 of the Health and Safety Code is amended to read:

116450. (a) When ~~any~~ *a* primary drinking water standard specified in the department's regulations is not complied with, when a monitoring requirement specified in the department's regulations is not performed, or when a water purveyor fails to comply with the conditions of any variance or exemption, the person operating the public water system shall notify the ~~department and department,~~ shall give notice to the users of that fact in the manner prescribed by the department, *and, if the public water system has an Internet Web site, post that notice on that Internet Web site.* When a variance or an exemption is granted, the person operating the public water system shall give notice to the users of that fact.

(b) When a person operating a public water system determines that a significant rise in the bacterial count of water has occurred in water he or she supplies, the person shall provide, at his or her expense, a report on the rise in bacterial count of the water, together with the results of an analysis of the water, within 24 hours to the department and, where appropriate, to the local health officer.

(c) When the department receives the information described in subdivision (b) and determines that it constitutes an immediate danger to health, the department shall immediately notify the person operating the public water system to implement the emergency notification plan required by this chapter.

(d) In the case of a failure to comply with ~~any~~ a primary drinking water standard that represents an imminent danger to the health of water users, the operator shall notify each of his or her customers, as provided in the approved emergency notification plan, *and, if the public water system has an Internet Web site, post that notice on that Internet Web site.*

(e) In addition, the same notification requirement shall be required in any instance in which the department or the local health department recommends to the operator that it notify its customers to avoid internal consumption of the water supply and to use bottled water due to a chemical contamination problem that may pose a health risk.

(f) The content of the notices required by this section shall be approved by the department. Notice shall be repeated at intervals, as required by the department, until the department concludes that there is compliance with its standards or requirements. Notices may be given by the department.

~~In any case where~~

When public notification is required by this section because a contaminant is present in drinking water at a level in excess of a primary drinking water standard, the notification shall include identification of the contaminant, information on possible effects of the contaminant on human health, and information on specific measures that should be taken by persons or populations who might be more acutely affected than the general population.

(g) Whenever a school or school system, the owner or operator of residential rental property, or the owner or operator of a business property receives a notification from a person operating a public water system under any provision of this section, the school or

1 school system shall notify school employees, students, and parents
2 if the students are minors, the owner or operator of a residential
3 rental property shall notify tenants, and the owner or operator of
4 business property shall notify employees of businesses located on
5 the property.

6 (1) The operator shall provide the customer with a sample
7 notification form that may be used by the customer in complying
8 with this subdivision and that shall indicate the nature of the
9 problem with the water supply and the most appropriate methods
10 for notification that may include, but ~~is~~ *are* not limited to, the
11 sending of a letter to each water user and the posting of a notice
12 at each site where drinking water is dispensed.

13 (2) The notice required by this subdivision shall be given within
14 10 days of receipt of notification from the person operating the
15 public water system.

16 (3) Any person failing to give notice as required by this
17 subdivision shall be civilly liable in an amount not to exceed one
18 thousand dollars (\$1,000) for each day of failure to give notice.

19 (4) If the operator has evidence of noncompliance with this
20 subdivision the operator shall report this information to the local
21 health department and the department.

22 *(h) An operator that is required to post a notice on the public*
23 *water system's Internet Web site pursuant to subdivision (a) or*
24 *(d) may, upon resolving the problem or complying with the*
25 *standard that required notification, supplement the notice posted*
26 *on the public water system's Internet Web site to provide additional*
27 *information, including, but not limited to, the date on which the*
28 *problem was resolved or compliance was achieved.*

29 *(i) If user notification is required pursuant to this section, the*
30 *department shall make a reasonable effort to ensure that*
31 *notification is given.*

32 SEC. 5. Section 116455 of the Health and Safety Code is
33 amended to read:

34 116455. (a) A public water system shall comply with the
35 requirements of this section within 30 days after it is first informed
36 of a confirmed detection of a contaminant found in drinking water
37 delivered by the public water system for human consumption that
38 is in excess of a maximum contaminant level, a notification level,
39 or a response level established by the department.

(1) If the public water system is a wholesale water system, then the person operating the wholesale water system shall notify the wholesale water system's governing body and the water systems that are directly supplied with that drinking water. If the wholesale water system is a water company regulated by the California Public Utilities Commission, then the wholesale water system shall also notify the commission. The commission, in the exercise of its general and specific powers to ensure the health, safety, and availability of drinking water served by the utilities subject to its jurisdiction, may order further action that is not inconsistent with the standards and regulations of the department to ensure a potable water supply.

(2) If the public water system is a retail water system, then the person operating the retail water system shall notify the retail water system's governing body and the governing body of any local agency whose jurisdiction includes areas supplied with drinking water by the retail water system. If the retail water system is a water company regulated by the California Public Utilities Commission, then the retail water system shall also notify the commission. The commission, in the exercise of its general and specific powers to ensure the health, safety, and availability of drinking water served by the utilities subject to its jurisdiction, may order further action that is not inconsistent with the standards and regulations of the department to ensure a potable water supply.

(b) The notification required by subdivision (a) shall identify the drinking water source, the origin of the contaminant, if known, the maximum contaminant level, response level, or notification level, as appropriate, the concentration of the detected contaminant, and the operational status of the drinking water source, and shall provide a brief and plainly worded statement of health concerns. The notice shall, if the public water system has an Internet Web site, also be posted on the public water system's Internet Web site.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Drinking water source" means an individual groundwater well, an individual surface water intake, or, in the case of water purchased from another water system, the water at the service connection.

(2) "Local agency" means a city, county, or a city and county.

(3) “Notification level” means the concentration level of a contaminant in drinking water delivered for human consumption that the department has determined, based on available scientific information, does not pose a significant health risk but warrants notification pursuant to this section. Notification levels are nonregulatory, health-based advisory levels established by the department for contaminants in drinking water for which maximum contaminant levels have not been established. Notification levels are established as precautionary measures for contaminants that may be considered candidates for establishment of maximum contaminant levels, but have not yet undergone or completed the regulatory standard setting process prescribed for the development of maximum contaminant levels and are not drinking water standards.

(4) “Response level” means the concentration of a contaminant in drinking water delivered for human consumption at which the department recommends that additional steps, beyond notification pursuant to this section, be taken to reduce public exposure to the contaminant. Response levels are established in conjunction with notification levels for contaminants that may be considered candidates for establishment of maximum contaminant levels, but have not yet undergone or completed the regulatory standard setting process prescribed for the development of maximum contaminant levels and are not drinking water standards.

(5) “Retail water system” means a public water system that supplies water directly to the end user.

(6) “Wholesale water system” means a public water system that supplies water to other public water systems for resale.

(d) An operator that is required to post a notice on the public water system’s Internet Web site pursuant to subdivision (b), may, upon ~~rectifying~~ *resolving* the problem or complying with the standard that required notification, ~~do either of the following:~~

~~(1) Remove the notice from the public water system’s Internet Web site.~~

~~(2) Amend~~ *supplement* the notice posted on the public water system’s Internet Web site to ~~include~~ *provide additional information including, but not limited to*, the date on which the problem was ~~rectified~~ *resolved* or compliance was achieved.

SEC. 6. Section 116470 of the Health and Safety Code is amended to read:

1 116470. (a) As a condition of its operating permit, every
2 public water system shall annually prepare a consumer confidence
3 report and mail or deliver a copy of that report to each customer,
4 other than an occupant, as defined in Section 799.28 of the Civil
5 Code, of a recreational vehicle park. The report shall, if the public
6 water system has an Internet Web site, also be posted on the public
7 water system's Internet Web site. A public water system in a
8 recreational vehicle park with occupants as defined in Section
9 799.28 of the Civil Code shall prominently display on a bulletin
10 board at the entrance to or in the office of the park, and make
11 available upon request, a copy of the report. The report shall
12 include all of the following information:

13 (1) The source of the water purveyed by the public water
14 system.

15 (2) A brief and plainly worded definition of the terms
16 "maximum contaminant level," "primary drinking water standard,"
17 and "public health goal."

18 (3) If any regulated contaminant is detected in public drinking
19 water supplied by the system during the past year, the report shall
20 include all of the following information:

21 (A) The level of the contaminant found in the drinking water,
22 and the corresponding public health goal and primary drinking
23 water standard for that contaminant.

24 (B) Any violations of the primary drinking water standard that
25 have occurred as a result of the presence of the contaminant in the
26 drinking water and a brief and plainly worded statement of health
27 concerns that resulted in the regulation of that contaminant.

28 (C) The public water system's address and the telephone
29 number to enable customers to obtain further information
30 concerning contaminants and potential health effects.

31 (4) Information on the levels of unregulated contaminants, if
32 any, for which monitoring is required pursuant to state or federal
33 law or regulation.

34 (5) Disclosure of any variances or exemptions from primary
35 drinking water standards granted to the system and the basis
36 therefor.

37 (b) On or before July 1, 1998, and every three years thereafter,
38 public water systems serving more than 10,000 service connections
39 that detect one or more contaminants in drinking water that exceed

1 the applicable public health goal, shall prepare a brief written report
2 in plain language that does all of the following:

3 (1) Identifies each contaminant detected in drinking water that
4 exceeds the applicable public health goal.

5 (2) Discloses the numerical public health risk, determined by
6 the office, associated with the maximum contaminant level for
7 each contaminant identified in paragraph (1) and the numerical
8 public health risk determined by the office associated with the
9 public health goal for that contaminant.

10 (3) Identifies the category of risk to public health, including,
11 but not limited to, carcinogenic, mutagenic, teratogenic, and acute
12 toxicity, associated with exposure to the contaminant in drinking
13 water, and includes a brief plainly worded description of these
14 terms.

15 (4) Describes the best available technology, if any is then
16 available on a commercial basis, to remove the contaminant or
17 reduce the concentration of the contaminant. The public water
18 system may, solely at its own discretion, briefly describe actions
19 that have been taken on its own, or by other entities, to prevent
20 the introduction of the contaminant into drinking water supplies.

21 (5) Estimates the aggregate cost and the cost per customer of
22 utilizing the technology described in paragraph (4), if any, to reduce
23 the concentration of that contaminant in drinking water to a level
24 at or below the public health goal.

25 (6) Briefly describes what action, if any, the local water
26 purveyor intends to take to reduce the concentration of the
27 contaminant in public drinking water supplies and the basis for
28 that decision.

29 (c) Public water systems required to prepare a report pursuant
30 to subdivision (b) shall hold a public hearing for the purpose of
31 accepting and responding to public comment on the report. Public
32 water systems may hold the public hearing as part of any regularly
33 scheduled meeting.

34 (d) The department shall not require a public water system to
35 take any action to reduce or eliminate any exceedance of a public
36 health goal.

37 (e) Enforcement of this section does not require the department
38 to amend a public water system's operating permit.

39 (f) Pending adoption of a public health goal by the Office of
40 Environmental Health Hazard Assessment pursuant to subdivision

(c) of Section 116365, and in lieu thereof, public water systems shall use the national maximum contaminant level goal adopted by the United States Environmental Protection Agency for the corresponding contaminant for purposes of complying with the notice and hearing requirements of this section.

(g) This section is intended to provide an alternative form for the federally required consumer confidence report as authorized by 42 U.S.C. Section 300g-3(c).

(h) A public water system that is required to ~~include in its consumer confidence report the information described in paragraph (3) of subdivision (a), and that is required to post its consumer confidence report on its Internet Web site pursuant to subdivision (a), may, upon rectifying the problem or complying with the standard that required inclusion of the information described in paragraph (3) of subdivision (a), do either of the following:~~

~~(1) Remove the information required by paragraph (3) of subdivision (a), from the consumer confidence report that is posted on the public water system's Internet Web site.~~

~~(2) Amend the consumer confidence report posted on the public water system's Internet Web site to include the date on which the problem identified in the information required pursuant to paragraph (3) of subdivision (a) was rectified or compliance was prepare a consumer confidence report pursuant to paragraph (3) of subdivision (a) and that is required to post its consumer confidence report on its Internet Web site pursuant to subdivision (a), may, if following the publication of the consumer confidence report, it has resolved the problem identified in the consumer confidence report or complied with a standard that the consumer confidence report showed that it failed to meet, provide supplementary information on its Internet Web site to show the date on which the problem was resolved or compliance was achieved.~~

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 116450 of the Health and Safety Code proposed by both this bill and AB 1540. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2010, (2) each bill amends Section 116450 of the Health and Safety

- 1 *Code, and (3) this bill is enacted after AB 1540, in which case*
- 2 *Section 4 of this bill shall not become operative.*

O