

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 623

Introduced by Senator Kehoe

February 18, 2011

~~An act to add Chapter 8 (commencing with Section 117140) to Part 12 of Division 104 of the Health and Safety Code, relating to public health. An act to add Article 2.7 (commencing with Section 756) to Chapter 5 of Division 3 of the Harbors and Navigation Code, relating to vessels.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Kehoe. ~~Copper in marine paint. Vessels: marine antifouling paint.~~

Under existing law, the Department of Boating and Waterways regulates the operation and equipment of vessels. The Director of Boating and Waterways administers the department.

This bill would prohibit, on and after January 1, 2015, a manufacturer, wholesaler, retailer, or distributor from selling or offering for sale in California a new recreational vessel, as defined, containing antifouling paint that contains copper. The bill also would prohibit, on and after January 1, 2019, the use or application of antifouling paint that contains copper on recreational vessels, except as provided.

~~Existing law regulates various substances in products, like lead, copper, and mercury, that can lead to public health issues when introduced into the environment.~~

~~This bill, on and after January 1, 2015, would make it unlawful to manufacture, sell, or distribute in commerce in California marine antifouling paints that contain copper. The bill would require~~

~~manufacturers to use the least toxic alternative when replacing the copper in marine antifouling paint.~~

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

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

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Marine antifouling paints are used on vessel hulls to prevent*
4 *the growth of aquatic organisms, such as barnacles and algae.*
5 *Most antifouling paints use copper to prevent the growth of aquatic*
6 *organisms. Copper-containing marine antifouling paints are a*
7 *source of copper releases in marinas within California estuaries*
8 *and along shorelines.*

9 *(b) Copper is toxic to many aquatic organisms and plants. It*
10 *accumulates in water, sediments, and marine plants and animals*
11 *and can impact the food web in the marine environment by*
12 *eliminating certain species. Copper is one of the metals listed in*
13 *the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.) that the*
14 *state is required to regulate. Numerous bays and harbors*
15 *throughout California have water quality impairments due to*
16 *copper, as referenced by the California 2008–2010 303(d) list of*
17 *impaired water bodies. As such, measures must be taken to reduce*
18 *impacts on aquatic environments by reducing copper loads in these*
19 *areas.*

20 *(c) Boating is an important part of the economic and social*
21 *fabric of California. California has approximately 800,000*
22 *recreational boats and more than three million people who*
23 *participate in recreational boating annually. These boaters*
24 *contribute \$1.2 billion to the state's Gross State Product and have*
25 *a direct impact on over 24,000 jobs with labor income of \$750*
26 *million. Any policy affecting boating must ensure that boating*
27 *continues to be a vigorous part of California life. Therefore, it is*
28 *the intent of the Legislature that any policy relating to the*
29 *application or use of paints on vessel hulls be structured in a*
30 *manner that protects these values.*

31 *(d) Due to the inherent conflict between the need for an*
32 *antifouling paint that effectively controls the growth of aquatic*
33 *organisms on vessel hulls and the federal requirements under the*

1 *federal Clean Water Act to protect aquatic environments from*
2 *pollution, it is the intent of the Legislature to promote the use of*
3 *nonbiocide alternative paints in order to balance the needs of these*
4 *conflicting interests.*

5 *SEC. 2. Article 2.7 (commencing with Section 756) is added*
6 *to Chapter 5 of Division 3 of the Harbors and Navigation Code,*
7 *to read:*

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Article 2.7. Marine Antifouling Paint

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11 *756. For purposes of this article, the following definitions shall*
12 *apply:*

13 *(a) "Alternative paint" means paint that does not contain any*
14 *biocide compounds. Alternative paint acts to protect the integrity*
15 *of a vessel's hull by creating a hard barrier or by creating a slick*
16 *finish to aid in foul-release properties.*

17 *(b) "Antifouling paint" means paint for a vessel's hull*
18 *containing compounds to prohibit the attachment and growth of*
19 *aquatic life.*

20 *(c) (1) "Recreational vessel" means a vessel that is either of*
21 *the following:*

22 *(A) Manufactured or used primarily for pleasure.*

23 *(B) Leased, rented, or chartered to a person for the pleasure of*
24 *that person.*

25 *(2) "Recreational vessel" does not include a vessel that is*
26 *subject to United States Coast Guard inspection and that is*
27 *engaged in commercial use or carries paying passengers.*

28 *757. On and after January 1, 2015, a manufacturer, wholesaler,*
29 *retailer, or distributor shall not sell or offer for sale in California,*
30 *any new recreational vessel containing antifouling paint that*
31 *contains copper.*

32 *758. (a) Except as provided in subdivision (b), on and after*
33 *January 1, 2019, it shall be unlawful to use on or apply to a*
34 *recreational vessel antifouling paint containing copper.*

35 *(b) If the director finds that there are no effective, available,*
36 *and affordable alternative paints available by January 1, 2019,*
37 *taking into account durability, lifespan, and cleaning, the*
38 *prohibition on the use or application of antifouling paint containing*
39 *copper on a recreational vessel shall instead be operative on and*
40 *after January 1, 2020 and the director shall publish this finding*

1 *and notice of the delayed operation of the prohibition on the*
2 *department's Internet Web site.*

3 ~~SECTION 1. The Legislature finds and declares all of the~~
4 ~~following:~~

5 ~~(a) Copper is toxic to many aquatic organisms and plants. It~~
6 ~~accumulates in water, sediments, and marine plants and animals~~
7 ~~and can impact the food web in the marine environment by~~
8 ~~eliminating certain species. It particularly builds up in areas like~~
9 ~~marina basins that do not flush well.~~

10 ~~(b) Copper-containing marine antifouling paints used to control~~
11 ~~fouling growth on boat hulls are a significant source of copper~~
12 ~~releases in marinas within California estuaries and along shorelines.~~
13 ~~For example, a major source of copper in the San Diego Bay is~~
14 ~~from the use of copper-containing marine antifouling paints.~~

15 ~~(c) Limits on the copper content of marine antifouling paints~~
16 ~~are essential for California cities, counties, and industries to comply~~
17 ~~with water quality standards and copper total maximum daily loads~~
18 ~~(TMDL) in California's estuaries as required by the federal Clean~~
19 ~~Water Act (33 U.S.C. Sec. 1251 et seq.). For instance, limiting~~
20 ~~copper antifouling paint is a critical part of the TMDL Basin Plan~~
21 ~~Amendment for the Shelter Island Yacht Basin, which mandates~~
22 ~~compliance by 2022.~~

23 ~~(d) Without limits on the use of copper in marine antifouling~~
24 ~~paints, California taxpayers face millions of dollars in federal Clean~~
25 ~~Water Act compliance costs.~~

26 ~~(e) The San Diego Unified Port District has developed a~~
27 ~~multi-faceted approach to deal with copper-containing marine~~
28 ~~antifouling paints, including working with the federal~~
29 ~~Environmental Protection Agency and the State Water Resources~~
30 ~~Control Board on grants to research alternatives to copper in marine~~
31 ~~antifouling paints, working with the public and other interested~~
32 ~~parties on outreach, education, and development of best~~
33 ~~management practices in order to reduce the impacts of~~
34 ~~copper-containing marine antifouling paints, and developing a~~
35 ~~local ordinance and permit systems to regulate in-water hull~~
36 ~~cleaning. However, action is needed on a statewide basis.~~

37 ~~SEC. 2. Chapter 8 (commencing with Section 117140) is added~~
38 ~~to Part 12 of Division 104 of the Health and Safety Code, to read:~~

~~CHAPTER 8. MARINE PAINT~~

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~~117140. (a) On and after January 1, 2015, it shall be unlawful to manufacture, sell, or distribute in commerce in California marine antifouling paints that contain copper.~~
~~(b) Manufacturers shall use the least toxic alternative when replacing copper in marine antifouling hull paint.~~

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