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Chapter 19: Requiring a Carbon Monoxide Detector in Every Home

Will Melehani

Code Sections Affected

Civil Code §§ 1102.6, 1102.6d (amended); Health and Safety Code §§ 13260-13263, 17926-17926.1, 17926.2 (new).
SB 183 (Lowenthal); 2010 STAT. Ch. 19.

I. INTRODUCTION

New Year's celebrations were cut short for one family in Novato, California, when nausea and dizziness prompted the family of five, including an infant and grandmother, to visit a hospital emergency room.¹ The family's symptoms led local firefighters to suspect carbon monoxide as the culprit.² After investigating their home, firefighters discovered the deadly gas had reached a concentration capable of causing imminent death.³ The source of the lethal gas appeared to be a malfunctioning wall heater.⁴

While this particular Novato family fully recovered, many other families are not so lucky.⁵ The Centers for Disease Control and Prevention estimate that each year carbon monoxide poisoning is responsible for 15,200 injuries and 480 deaths nationally.⁶ They also estimate that at least one Californian dies from carbon monoxide poisoning each year.⁷

Carbon monoxide is invisible, odorless, and can be emitted from vehicles, furnaces, and a wide variety of appliances, threatening nearly all residential buildings.⁸ Chapter 19 requires at-risk residences to have working carbon

1. See Matthew B. Stannard, *2 Families Survive Carbon Monoxide Poisoning*, S.F. CHRON., Jan. 3, 2009, available at http://articles.sfgate.com/2009-01-03/bay-area/17199035_1_carbon-monoxide-monoxide-levels-dizziness-and-nausea (on file with the *McGeorge Law Review*) (describing the emergency room visit of a Novato family, which included both an infant and an elderly woman).

2. *Id.*

3. See *id.* (stating that the house contained carbon monoxide levels "'well over' 400 parts per million, at which death can occur within three to five hours").

4. *Id.*

5. See *id.* (stating the family made a full recovery).

6. Centers for Disease Control and Prevention, *Unintentional Non-Fire-Related Carbon Monoxide Exposures—United States, 2001-2003*, Jan. 21, 2005, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5402a2.htm> (on file with the *McGeorge Law Review*).

7. Centers for Disease Control and Prevention, *Carbon Monoxide—Related Deaths—United States, 1999-2004*, Dec. 21, 2007, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5650a1.htm> (on file with the *McGeorge Law Review*).

8. See Centers for Disease Control and Prevention, *Unintentional Non-Fire-Related Carbon Monoxide Exposures*, *supra* note 6 (describing the properties and sources of carbon monoxide).

monoxide detectors and sets up a process for approving detectors for sale within the state of California.⁹

II. LEGAL BACKGROUND

Establishing a building standard in California requires a unique regulatory process.¹⁰ Some standards, such as the requirement for smoke detectors, have avoided this process through statutory mandates.¹¹

A. Building Standards

Building standards in California must be established in accordance with the California Building Standards Law.¹² This law created the California Building Standards Commission (CBSC) and authorized them to amend the model building codes used in California in accordance with proposals of state agencies, such as the Department of Housing and Community Development (HCD).¹³ While the HCD makes proposals regarding residential buildings,¹⁴ the CBSC has not adopted any of the proposed regulations requiring carbon monoxide detectors.¹⁵ Because newly adopted building standards do not apply to existing structures, Chapter 19 was passed to apply a standard to existing structures.¹⁶

B. Smoke Detectors

Certain statutorily mandated building standards—such as the California residential smoke detector requirement—have been established without going through the CBSC’s regulation-adopting process.¹⁷ California’s requirement for residential smoke detectors mandates that smoke alarms be placed in every new building, as well as in older buildings that undergo alterations costing \$1,000 or

9. See CAL. HEALTH & SAFETY CODE § 17926(a)(1)-(2) (enacted by Chapter 19) (requiring carbon monoxide detectors be installed in covered single family dwellings by July 1, 2011, and in all other covered dwellings by January 1, 2013); *id.* § 13263(a) (enacted by Chapter 19) (requiring the State Fire Marshall to certify and list approved devices).

10. See CAL. HEALTH & SAFETY CODE § 18901 (West 2010) (setting forth the regulatory process for establishing building standards in California).

11. See *id.* § 13113.7 (requiring working smoke detectors in dwellings).

12. *Id.* § 18901.

13. *Id.* § 18930.

14. See *id.* § 17921 (stating the HCD shall propose amendments to building regulations concerning “hotels, motels, lodging houses, apartment houses, and dwellings, and buildings and structures accessory thereto” to the CBSC).

15. See CAL. CODE REGS. tit. 24 (2010) (lacking any requirement for carbon monoxide detectors).

16. See CAL. HEALTH & SAFETY CODE § 18909(a) (stating that building standards apply only to new construction, repairs, alterations, etc.).

17. See *id.* § 13113.7 (requiring dwellings to have working smoke detectors).

more.¹⁸ The owner of the dwelling has a duty to purchase, install, and maintain its smoke detectors.¹⁹ However, the law excuses the owner's duty to repair a dysfunctional smoke detector if he or she lacked notice of the problem.²⁰

Violations of this law are punishable by a fine of two hundred dollars.²¹ For single family dwellings, the law specifically states that no transfer of title will be invalidated by a failure to comply with the smoke detector requirement,²² and that any damages for a failure to comply will be limited to actual damages no more than one hundred dollars.²³ Using these smoke detector laws as a framework, Chapter 19 establishes new rules requiring carbon monoxide detectors.²⁴

III. CHAPTER 19

Chapter 19 enacts the Carbon Monoxide Poisoning Prevention Act of 2010, establishing new housing and manufacturing requirements concerning carbon monoxide detectors.²⁵ It requires the State Fire Marshall to develop a certification process for carbon monoxide detectors and to maintain a list of certified detectors.²⁶ Approved detectors must satisfy several criteria, such as passing performance tests set by nationally-recognized standards²⁷ and creating an audible alarm that is distinct from that of a smoke detector.²⁸ Manufacturers are prohibited from selling any carbon monoxide detectors in California that are not on the State Fire Marshall's certified list.²⁹

Chapter 19 also requires that nearly all dwellings intended for human habitation have carbon monoxide detectors installed by specific deadlines.³⁰ This portion of Chapter 19 largely mirrors the law concerning smoke detectors.³¹

18. *Id.* § 13113.7(a)(1)-(2).

19. *Id.* § 13113.7(c), (e).

20. *Id.* § 13113.7(e).

21. *Id.* § 13113.7(f).

22. *Id.* § 13113.8(g).

23. *See id.* (stating that the exclusive remedy for a failure to comply is actual damages of no more than \$100, as well as court and attorney fees).

24. *See id.* §§ 13113.7, 13113.8 (applying only to smoke detectors, not carbon monoxide detectors).

25. *Id.* § 13260 (enacted by Chapter 19).

26. *Id.* § 13263(a)(1) (enacted by Chapter 19).

27. *See id.* § 13262(a)(4) (enacted by Chapter 19) (requiring carbon monoxide detectors to meet the requirements of "the American National Standards Institute (ANSI) and Underwriters Laboratories Inc. (UL) as set forth in either ANSI/UL 2034 or ANSI/UL 2075, or successor standards, by a nationally recognized testing laboratory listed in the directory of approved testing laboratories established by the Building Materials Listing Program of the Fire Engineering Division of the Office of the State Fire Marshal of the Department of Forestry and Fire Protection").

28. *See id.* § 13262(a)(3)(C) (enacted by Chapter 19) (requiring carbon monoxide detectors that are also smoke detectors to have distinct alarms).

29. *Id.* § 13263(b) (enacted by Chapter 19).

30. *See id.* § 17926(a)(1)-(2) (enacted by Chapter 19) (requiring carbon monoxide detectors be installed in covered single family dwellings by July 1, 2011, and in all other covered dwellings by January 1, 2013).

31. *Compare id.* § 17926 (enacted by Chapter 19) (requiring carbon monoxide detectors), *with id.* §§

Buildings that meet certain risk-related criteria are subject to the requirements in Chapter 19, although some buildings are exempt.³² Failing to install a carbon monoxide detector by the deadline, or failing to maintain the detector thereafter, will result in a thirty-day notice plus a fine of not more than two hundred dollars.³³

Chapter 19 charges the owners of covered dwellings with the duty to install, repair and maintain the carbon monoxide detector in compliance with building standards or the device's instructions.³⁴ Tenants have a duty to inform the owners of any suspected deficiencies in the carbon monoxide detector.³⁵ An owner cannot be held in violation for a deficient carbon monoxide detector when he or she has not received notice of the defect.³⁶

Finally, Chapter 19 allows the HCD to temporarily suspend the enforcement of the Carbon Monoxide Poisoning Prevention Act of 2010 if there is an insufficient supply of approved carbon monoxide detectors.³⁷ Lastly, in the event the CBSC adopts new building standards that would require more carbon monoxide detectors in a dwelling, owners would only be required to install new devices if the dwelling is altered or repaired at a cost of over \$1,000.³⁸

VI. ANALYSIS

Chapter 19 has several benefits, the foremost being that it will reduce the amount of deaths caused by carbon monoxide.³⁹ Concerns exist, however, regarding Chapter 19's effectiveness.⁴⁰

A. *Benefits of the Carbon Monoxide Poisoning Prevention Act of 2010*

Normally, in order to create a building standard that would require carbon monoxide detectors in dwellings, the HCD would have had to propose an

13113.7, 13113.8 (requiring smoke detectors).

32. See *id.* § 17926(a) (enacted by Chapter 19) (requiring carbon monoxide detectors be installed only in covered dwellings that have fireplaces, attached garages, or fuel burning appliances); *id.* § 13262(b) (enacted by Chapter 19) (excluding properties owned or leased by the State, local government agencies, or the Regents of the University of California from the definition of "dwelling unit intended for human occupancy").

33. *Id.* § 17926(c)(1)-(2) (enacted by Chapter 19).

34. *Id.* § 17926.1(a) (enacted by Chapter 19).

35. *Id.* § 17926.1(c) (enacted by Chapter 19).

36. *Id.* Chapter 19 also protects owners by stating Chapter 19 will not have an effect on the rights of parties under other provisions of the law, and cannot be used as a basis for invalidating a title transfer or for seeking tort damages over one hundred dollars. *Id.* § 17926(d) (enacted by Chapter 19)

37. *Id.* § 17926.2(a) (enacted by Chapter 19).

38. *Id.* § 17926.2(b) (enacted by Chapter 19).

39. See Steven S. Yoon et al., *Deaths from Unintentional Carbon Monoxide Poisoning and Potential for Prevention with Carbon Monoxide Detectors*, 279 J. AM. MED. ASS'N 685, 687 (1998) (finding carbon monoxide detectors prevent accidental deaths).

40. See, e.g., INTERNATIONAL CODE COUNCIL, CTC CO RECOMMENDATIONS 1 (2005) (stating that carbon monoxide detectors perform poorly).

amendment to one of the model codes, which the CBSC would then have to approve.⁴¹

The standard process for adopting new building regulations, however, fails to apply new standards to existing buildings.⁴² Chapter 19 prevents carbon monoxide poisoning sooner by requiring detectors in existing buildings, in addition to those required in newly-built buildings.⁴³

Carbon monoxide poisoning presents a threat to public health and welfare that affects approximately 15,000 people each year.⁴⁴ By requiring detectors in existing buildings, Chapter 19 should vastly reduce the number of injuries caused by carbon monoxide.⁴⁵ While carbon monoxide does pose a threat to individuals who are awake and alert, victims of carbon monoxide poisoning are often times asleep, intoxicated, or both.⁴⁶ Additionally, victims of carbon monoxide poisoning are likely to be near or inside running cars or other loud machinery.⁴⁷ For these reasons, an audible alarm is needed to warn potential victims, and such an alarm will likely prevent many potential injuries.⁴⁸ Public safety and rescue personnel agree that Chapter 19 will effectively prevent carbon monoxide related injuries.⁴⁹

In addition, by authorizing the State Fire Marshall to test and certify carbon monoxide detectors, Chapter 19 will likely improve the quality of detectors and protect the public from detectors that remain prone to producing false alarms.⁵⁰

41. See CAL. HEALTH & SAFETY CODE § 18930 (stating that state agencies are required to submit building standards to the CBSC for approval).

42. See *id.* § 18909(a) (stating that building standards apply only to new construction, repairs, alterations, etc.).

43. See *id.* § 17926(a)(1)-(2) (enacted by Chapter 19) (requiring carbon monoxide detectors be installed in covered single family dwellings by July 1, 2011, and in all other covered dwellings by January 1, 2013).

44. Centers for Disease Control and Prevention, *Unintentional Non-Fire-Related Carbon Monoxide Exposures*, *supra* note 6.

45. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 183, at 8 (Apr. 14, 2010) (stating the author's arguments that carbon monoxide detectors in homes would prevent carbon monoxide related injuries); see also CAL. HEALTH & SAFETY CODE § 13260(e) (enacted by Chapter 19) (stating the legislative finding that equipping every home with a carbon monoxide detector would cut accident related costs by 93 percent).

46. See Yoon et al., *supra* note 39, at 686 (stating that 42% of the sample victims had a BAC over .01, and only 51% of the victims were awake when they died in their residences).

47. See *id.* (stating that 68 out of the 136 tested died in or around motor vehicles).

48. See *id.* at 687 (stating that an effective alarm would need to be audible to a sleeping person or person near a car or loud machinery).

49. See Patrick McGreevy, *New Law to Require Home Carbon Monoxide Detectors*, L.A. TIMES, May 7, 2010, available at <http://latimesblogs.latimes.com/lanow/2010/05/new-state-law-requires-carbon-monoxide-detectors-in-homes-beginning-next-summer.html> (quoting the president of the California State Firefighters' Association stating "[Chapter 19] will help put an end to the senseless deaths and injuries Californians suffer due to accidental carbon monoxide poisoning every year").

50. See CAL HEALTH & SAFETY CODE § 13263(a)(1) (enacted by Chapter 19) (requiring the certification of carbon monoxide detectors to include the devices "propensity to record false alarms"); see also Intec Controls, *Carbon Monoxide Detectors Certified to ANSI/UL 2017 & 2075*, PR.COM, July 10, 2010, available at <http://www.pr.com/press-release/247664> (on file with the *McGeorge Law Review*) (describing the stringent ANSI/UL standards for carbon monoxide detectors and stating that an approved detector was "the new standard for CO detection products in the commercial market," and stating that approved devices "have undergone

B. Concerns with Chapter 19

By creating a new building standard by statute, Chapter 19 circumvents the standard agency process for adopting new building standards.⁵¹ The standard agency process has several benefits, including input from the public and information from experts in the field.⁵²

While carbon monoxide detectors may help save lives, they can only warn of dangers that are already present, and their technology remains imperfect.⁵³ A carbon monoxide detector is not a replacement for caution and good appliance maintenance, and Chapter 19 may cause owners to become overly-confident about their protection against carbon monoxide poisoning.⁵⁴

Also, because there are no building standards detailing how many detectors a building requires or where the detectors should be located, Chapter 19 relies on the manufacturer's instructions to provide owners with this information.⁵⁵ These instructions could be biased and may lead owners to purchase more devices than necessary, or cause inconsistent obligations for owners and landlords.⁵⁶ A more direct way to remove inconsistencies would be to require installation according to building standards regulations, which have since been adopted to require carbon monoxide detectors in all new buildings.⁵⁷

However, parties opposing the bill were at least successful in having it amended to require the State Fire Marshall to review the manufacturers' instructions and ensure they are consistent with building regulations.⁵⁸

performance tests including physical endurance, cross sensitivity to other gases, validation for accuracy, provision of interference-free signals, and other stress assessments in extreme lab environments”).

51. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 183, at 8 (June 15, 2010) (quoting the governor as vetoing a similar bill because “[p]lacing building standards in statute rather than regulation circumvents the existing state regulatory adoption process and excludes the input of safety and construction experts”).

52. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 183, at 8 (June 15, 2010)

53. See INTERNATIONAL CODE COUNCIL, *supra* note 40, at 1 (stating that carbon monoxide detectors perform poorly).

54. See *id.* at 2 (quoting the EPA stating that carbon monoxide detectors are no substitute for good appliance maintenance).

55. See CAL. HEALTH & SAFETY CODE § 17926(b) (enacted by Chapter 19) (requiring owners install carbon monoxide detectors in compliance with manufacturer's instructions OR building standards).

56. See *id.* (requiring owners install carbon monoxide detectors with their own funds).

57. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 183, at 4 (June 29, 2010). “Because the California Building Standards Commission has already approved regulations that will require carbon monoxide detectors in all new construction, this bill would only apply to existing structures.” *Id.* Matching the statutory standard to the regulatory standard would ensure that buildings standards are uniform for both existing and new buildings. *Id.*

58. See CAL. HEALTH & SAFETY CODE § 13263(a)(1) (enacted by Chapter 19) (requiring the State Fire Marshall to review instructions as well as devices).

V. CONCLUSION

Chapter 19's carbon monoxide detector certification process will likely ensure the quality of carbon monoxide detectors in California is adequate to protect citizens and avoid technological problems.⁵⁹ Chapter 19 requires carbon monoxide detectors through a statutory mandate, rather than through the Building Standards Code, which makes Chapter 19 applicable only to existing buildings.⁶⁰ Although this circumvents some benefits of the regulatory process, it will likely lead to owners quickly installing detectors in more homes.⁶¹

Chapter 19's main purpose is to save Californians from carbon monoxide poisoning.⁶² Although carbon monoxide detectors are imperfect,⁶³ Chapter 19 provides a necessary step to prevent future accidents from occurring.⁶⁴

59. See *Intec Controls*, *supra* note 50 (stating that achieving certification requires high quality detectors which "have undergone performance tests including physical endurance, cross sensitivity to other gases, validation for accuracy, provision of interference-free signals, and other stress assessments in extreme lab environments").

60. See CAL. HEALTH & SAFETY CODE § 18909(a) (stating that building standards apply only to new construction, repairs, alterations, etc.).

61. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 183, at 8 (June 15, 2010) (quoting the Governor's concerns about circumventing the regulatory process).

62. See CAL. HEALTH & SAFETY CODE § 13260 (enacted by Chapter 19) (naming the chapter the Carbon Monoxide Poisoning Prevention Act, indicating the purpose of the act).

63. INTERNATIONAL CODE COUNCIL, *supra* note 40.

64. See McGreevy, *supra* note 49 (stating Chapter 19 will prevent senseless deaths); CAL. HEALTH & SAFETY CODE § 13260(e) (enacted by Chapter 19) (stating the legislative finding that equipping every home with a carbon monoxide detector would cut accident related costs by 93 percent).