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AMENDED IN SENATE MAY 20, 2004  
AMENDED IN SENATE MAY 11, 2004  
AMENDED IN SENATE MAY 4, 2004  
AMENDED IN SENATE APRIL 16, 2004  
AMENDED IN SENATE APRIL 15, 2004  
AMENDED IN SENATE MARCH 18, 2004

**SENATE BILL**

**No. 1275**

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**Introduced by Senator Ortiz**  
(Coauthor: Assembly Member Goldberg)

February 13, 2004

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An act to add Sections 1264, 1264.5, and 1264.6 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Ortiz. Hospitals: maternity services: infant feeding assistance.

Under existing law, the State Department of Health Services regulates the licensure and operation of health facilities, including general acute care hospitals. Violation of these provisions is a crime.

This bill would recommend that a general acute care hospital provide or arrange for the provision of basic lactation management training, and safe preparation and appropriate bottle feeding techniques of infant



formula for all health care practitioners who are permitted to provide these services and who regularly work the majority of their hours in the hospital maternity unit and nursery.

This bill would require any manufacturer of infant formula that markets infant formula and distributes free infant formula samples in ~~a hospital's maternity unit, nursery, or any other location in the hospital,~~ *the maternity unit, nursery, or any other location in a hospital that allows the marketing and distribution of infant formula* to include a single, readable *disclaimer* notice with specific language affixed prominently and clearly to the discharge bag. The bill would also prohibit the display of these products, or placards or posters concerning these products provided by a manufacturer or distributor of infant formula. The bill would also prohibit a hospital from acting as an agent for distribution of infant formula.

This bill would authorize the department to establish a task force of interested parties to consider models that support breastfeeding, including the "Baby Friendly" model, as defined by the World Health Organization, and to develop plans to effectively transition interested and able hospitals to adapt to these models. This bill would ~~provide that~~ *require* the task force, within 3 years of its establishment, *to* generate a report on its activities and recommendations to the Legislature. This bill would declare legislative intent that the task force operate as a subcommittee of the state Breastfeeding Promotion Advisory Committee. Activities of the task force would be conducted within the existing resources of the department and private resources and funding.

This bill would provide that its provisions do not require the adoption of regulations pursuant to the Administrative Procedure Act.

By expanding the definition of a crime, the bill would impose a state-mandated local program.

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. The Legislature finds and declares as follows:

2 (a) All new mothers deserve to receive evidence-based  
3 information from health care providers that supports their ability  
4 to make an informed infant feeding choice, and the best choice for  
5 themselves and their families.

6 (b) Existing law requires all general acute care hospitals, as  
7 defined in subdivision (a) of Section 1250 of the Health and Safety  
8 Code, and all special hospitals providing maternity care, as defined  
9 in subdivision (f) of Section 1250 of the Health and Safety Code,  
10 to make available a breastfeeding consultant or, alternatively,  
11 provide information to the mother on where to receive  
12 breastfeeding information. However, the policy and its  
13 implementation can be strengthened.

14 (c) The national goals, as set by Healthy People 2010, are for  
15 at least 75 percent of women to initiate breastfeeding, for at least  
16 50 percent to still be breastfeeding at six months, and at least 25  
17 percent by 12 months. The American Academy of Pediatrics  
18 recommends that infants should be exclusively breastfed for  
19 approximately six months before being introduced to  
20 complementary foods and to continue for at least 12 months, and  
21 thereafter for as long as mutually desired.

22 (d) According to the most recent in-hospital breastfeeding data  
23 collected by the State Department of Health Services, 42 percent  
24 of California mothers are exclusively breastfeeding their babies at  
25 the time of hospital discharge. Another 40 percent of California  
26 mothers are breastfeeding combined with infant formula  
27 supplements at the time of hospital discharge, already  
28 compromising breastfeeding efforts and leading to early cessation  
29 of breastfeeding. There are racial and ethnic disparities with regard  
30 to breastfeeding rates. While 64 percent of Caucasian women in  
31 California are exclusively breastfeeding in the hospital, only 39  
32 percent of Asian/Pacific Islanders, 30 percent of  
33 African-American women, and 30 percent of Latinas are doing so.

34 (e) The United States Department of Agriculture (USDA)  
35 estimates that \$2 billion per year are spent by families on infant  
36 formula and that between \$3.6 and \$7 billion health care dollars  
37 could be saved each year in preventable conditions if breastfeeding  
38 rates were increased to the recommended levels.



1 (f) According to the American Academy of Pediatrics 1997  
2 Policy Statement, “(h)uman milk is uniquely superior for infant  
3 feeding and is species-specific; all substitute feeding options differ  
4 markedly from it. The policy statement asserts that there is strong  
5 evidence that human milk feeding decreases the incidence or  
6 severity of diarrhea, lower respiratory infection, ear infection,  
7 bacterial meningitis, and botulism. There are a number of studies  
8 that show a possible protective effect of human milk feeding  
9 against sudden infant death syndrome, obesity, insulin-dependent  
10 diabetes mellitus, lymphoma, allergic diseases, and some chronic  
11 digestive diseases. According to the American College of  
12 Obstetricians and Gynecologists, breastfeeding can impact  
13 maternal health, by lessening the mother’s postpartum blood loss,  
14 allowing bonding with the infant, and decreasing the risk of  
15 ovarian cancer and premenopausal breast cancer.

16 (g) Learning to breastfeed can take time and practice, making  
17 what occurs in the early postpartum period critical to the  
18 establishment of lactation. Though a normal breastfed newborn  
19 will usually readily take a bottle when it is put into its mouth, it is  
20 commonly difficult to get a newborn to accept the breast once  
21 bottle feeding has been initiated. The use of infant formula  
22 supplements has the negative effect of interfering with the baby’s  
23 ability to attach to the breast correctly and undermining the  
24 mother’s confidence in her ability to breastfeed.

25 SEC. 2. Section 1264 is added to the Health and Safety Code,  
26 to read:

27 1264. (a) A general acute care hospital is recommended to  
28 provide or arrange for the provision of basic lactation management  
29 training for all health care practitioners who are permitted to  
30 provide these services and who regularly work the majority of their  
31 hours in the hospital maternity unit and nursery. Training curricula  
32 selected by hospitals should be based on breastfeeding  
33 management guidelines that are evidence-based, consistent,  
34 accurate, and clinically appropriate in order to effectively impact  
35 breastfeeding initiation and duration, and that are based on the  
36 following International Lactation Consultant Association’s  
37 “Evidence-Based Guidelines for Breastfeeding Management  
38 during the First Fourteen Days”:

39 (1) Human milk provides all of the fluid and nutrients  
40 necessary for optimal infant health, growth, and development.



1 (2) Early initiation of breastfeeding facilitates the  
2 establishment of lactation.

3 (3) Exclusive breastfeeding should be encouraged and  
4 facilitated for healthy mothers with healthy, term infants.

5 (4) Use of supplements or pacifiers in the hospital is associated  
6 with a risk for early weaning and should be avoided unless  
7 medically indicated.

8 (5) Attention to early feeding cues facilitates correct latch-on  
9 and effective suckling.

10 (6) Unrestricted breastfeeding (8-12 times per 24 hours)  
11 promotes adequate milk production and enhances infant health.

12 (7) Milk transfer occurs more readily with appropriate  
13 positioning and latch-on.

14 (8) Rooming-in facilitates the breastfeeding process.

15 (9) Assessment is a prerequisite to intervention and should  
16 include recognition of signs of effective and ineffective  
17 breastfeeding.

18 (10) Identification of maternal risk factors for breastfeeding  
19 difficulties allows for appropriate assistance and followup.

20 (11) There are few absolute contraindications to breastfeeding.

21 (12) Providing anticipatory guidance that includes realistic  
22 expectations of the breastfeeding process can prevent premature  
23 weaning.

24 (13) Ensuring that materials and services are appropriately  
25 provided considering the woman's cultural background,  
26 education, and primary language.

27 (b) A general acute care hospital is recommended to provide or  
28 arrange for the provision of training on the safe preparation and  
29 appropriate bottle-feeding techniques of infant formula for all  
30 health care practitioners who are permitted to provide these  
31 services and who regularly work the majority of their hours in the  
32 hospital maternity unit and nursery. Training curricula selected by  
33 hospitals should include the following principles based on  
34 education and training materials developed by the Women,  
35 Infants, and Children Program Branch of the State Department of  
36 Health Services:

37 (1) Formula feeding carries risks and improper use can lead to  
38 hazards.

39 (2) Breastfeeding is the normal standard on which to base  
40 infant feeding patterns.



1 (3) Babies should always be held when bottle-feeding to  
2 maximize bonding and to prevent the risks associated with bottle  
3 propping.

4 (4) Reading and following directions for the preparation of all  
5 types of formula is vitally important to prevent the misuse of  
6 formula and negative impacts on the infant.

7 (5) Proper sanitation of bottles and artificial nipples prevents  
8 rapid bacterial growth.

9 (6) Providing anticipatory guidance on when to discard unused  
10 infant formula in the bottle and in the refrigerator prevents rapid  
11 bacterial growth.

12 (7) The use of infant formula results in an increased cost in  
13 caring for the infant and may vary according to the type of formula  
14 and brand of formula being consumed.

15 (8) Providing anticipatory guidance regarding formula  
16 intolerance may prevent frequent formula switching.

17 (9) Ensuring that materials and services are appropriately  
18 provided considering the woman's cultural background,  
19 education, and primary language.

20 (c) This section does not require the adoption of regulations  
21 pursuant to the rulemaking provisions of the Administrative  
22 Procedure Act (Chapter 3 (commencing with Section 11340) of  
23 Part 1 of Division 3 of Title 2 of the Government Code).

24 SEC. 3. Section 1264.5 is added to the Health and Safety  
25 Code, to read:

26 1264.5. (a) Any manufacturer of infant formula that markets  
27 infant formula and distributes free infant formula samples in a  
28 ~~hospital's maternity unit, nursery, or any other location in the~~  
29 ~~hospital~~ *the maternity unit, nursery, or any other location in a*  
30 *hospital that allows the marketing and distribution of infant*  
31 *formula*, shall include a single *disclaimer* notice affixed to the  
32 marketing discharge bag that reads as follows: "The distribution  
33 of the formula or the marketing materials in a hospital setting does  
34 not necessarily mean that the hospital or its health care providers  
35 endorse the company or the product that is being distributed." This  
36 notice shall be clear, readable, and prominently affixed to the  
37 discharge bag.

38 (b) A hospital's maternity unit and nursery may not be used for  
39 display of products, or placards or posters concerning these



1 products, provided by a manufacturer or distributor of infant  
2 formula.

3 (c) Nothing in this section shall be construed to prohibit a  
4 hospital from receiving or declining donations or low-priced sales  
5 of supplies of infant formula.

6 (d) The following definitions apply for purposes of this  
7 section:

8 (1) “Infant formula” means a breast milk substitute formulated  
9 industrially, according to standards of the federal Food and Drug  
10 Administration, to satisfy the nutritional requirements of infants.

11 (2) “Label” means any tag, brand, mark, pictorial or other  
12 descriptive matter, written, printed, stenciled, marked, embossed  
13 or impressed on, or attached to, a container of any products within  
14 the scope of this section.

15 (3) “Manufacturer” means a ~~corporation or other entity~~  
16 *person, firm, association, partnership, or corporation* in the  
17 public or private sector engaged in the business or function,  
18 whether directly or through an agent or through an entity  
19 controlled by or under contract with it, of manufacturing,  
20 *distributing, or selling* infant formula.

21 (4) “Market” means product promotion, distribution, sales,  
22 advertising, product public relations, and information services.  
23 This definition is limited to infant formula *and* products produced  
24 by a manufacturer, as defined in paragraph (3). ~~For purposes of this~~  
25 ~~definition, “distribution” shall not include the provision of~~  
26 ~~formula permitted under the circumstances described in~~  
27 ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (a).~~

28 (5) “Samples” means single or small quantities of a product  
29 provided without cost.

30 (6) “Supplies” means quantities of a product provided for use  
31 over an extended period, free or at a low price.

32 (7) “Products” means promotional items, aside from the actual  
33 infant formula, that bear an infant formula label. This excludes an  
34 item that can be reasonably interpreted to be medically required or  
35 necessary.

36 (e) A hospital shall not be liable for any violation of this section  
37 by a member of the medical staff or personnel not employed by the  
38 hospital.

39 (f) This section does not require the adoption of regulations  
40 pursuant to the rulemaking provisions of the Administrative



1 Procedure Act (Chapter 3 (commencing with Section 11340) of  
2 Part 1 of Division 3 of Title 2 of the Government Code).

3 SEC. 4. Section 1264.6 is added to the Health and Safety  
4 Code, to read:

5 1264.6. (a) The department is authorized to establish a task  
6 force of interested parties to consider evidence-based models that  
7 support breastfeeding, including the “Baby Friendly” model,  
8 pursuant to the World Health Organization’s definition, and where  
9 possible, the task force shall develop plans to effectively transition  
10 hospitals with an interest and capacity to adapt to these models.  
11 The task force shall provide a report on its activities and  
12 recommendations to the Legislature within three years of its  
13 establishment. It is the intent of the Legislature that this task force  
14 function as a subcommittee of the existing Breastfeeding  
15 Promotion Advisory Committee, convened by the Primary Care  
16 and Family Health Division of the state department. The  
17 leadership and members of this current committee, under the  
18 advice and counsel of the department, shall establish the  
19 membership, activities, and timelines for this task force. The  
20 activities of the task force shall be conducted within the existing  
21 resources of the department. The department is authorized to  
22 accept private resources and funding, including federal Women,  
23 Infants, and Children Supplemental Nutrition Program funds,  
24 when appropriate, approved, and available, and in-kind  
25 contributions and support from philanthropic and other private  
26 organizations, including the American Academy of Pediatrics,  
27 California District, to additionally support the work of the task  
28 force.

29 (b) This section does not require adoption of regulations  
30 pursuant to the rulemaking provisions of the Administrative  
31 Procedure Act (Chapter 3 (commencing with Section 11340) of  
32 Part 1 of Division 3 of Title 2 of the Government Code).

33 SEC. 5. 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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