AN ACT
relating to performance standards for plumbing fixtures sold in
this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 372.001, Health and Safety Code, is
amended to read as follows:
Sec. 372.001. DEFINITIONS. In this chapter:
(1) "Commercial prerinse spray valve" means a handheld
device that is designed and marketed for use with commercial
dishwashing and ware washing equipment and that is used to spray
water on dishes, flatware, and other food service items to remove
food residue before the items are cleaned in a dishwasher or ware
washer or by hand.
(2) "Commission" means the Texas Commission on Environmental Quality.
(3) "Executive director" means the executive
director of the commission.
(4) "Plumbing fixture" means a device that
receives water, waste, or both and discharges the water, waste, or
both into a drainage system. The term includes a kitchen sink,
utility sink, lavatory, bidet, bathtub, shower, faucet, faucet aerator, shower head], urinal, toilet,
[flush valve toilet], or drinking water fountain.
(5) "Plumbing fixture fitting" means a device that
controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, shower head, or bath filler.

(6) "Pressurized flushing device" means a device that contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the proper operation of the fixture and gradually closes to avoid water hammer.

(7) "Toilet" means a water closet [except a wall-mounted toilet that employs a flushometer or flush valve].

(8) "Water closet" means a plumbing fixture that has a water-containing receptor that receives liquid and solid body waste and, on actuation, conveys the waste through an exposed integral trap seal into a drainage system.

(5) "Commercial pre rinse spray valve" means a handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.

SECTION 2. Section 372.002, Health and Safety Code, is amended by amending Subsections (b), (c), and (f) and adding Subsections (g) and (h) to read as follows:
The water saving performance standards for a plumbing fixture are the following standards:

1. For a sink or lavatory faucet or a faucet aerator, the maximum flow may not exceed 2.2 gallons of water per minute at a pressure of 60 pounds per square inch when tested according to the commission's testing procedures.
2. For a shower head, the maximum flow may not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch when tested according to the commission's testing procedures.
3. For a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:
   a. The maximum flow may not exceed an average of one gallon of water per flush when tested according to the commission's hydraulic performance requirements.
   b. The urinal and associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the American Society of Mechanical Engineers Standard A112.19.2-2008 and the Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals".
4. Except as provided by Subsection (g), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:
(A) maximum flow may not exceed an average of 0.5 gallons of water per flush; and
(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
   (i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; or
   (ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals";

(5) for a toilet sold, offered for sale, or distributed in this state before January 1, 2014:
(A) maximum flow may not exceed an average of 1.6 gallons of water per flush (flushing when tested according to the hydraulic performance requirements adopted by the commission); and
(B) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
   (i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and
Equipped With a Dual Flushing Device";

(6) except as provided by Subsection (h), for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) the toilet must be a dual flush water closet that meets the following standards:

(i) the average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(a) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(b) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device"; or

(B) the toilet must be a single flush water closet that meets the following standards:

(i) the average flush volume may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals";
for a wall-mounted toilet that employs a
flushometer or flush valve, maximum flow may not exceed an average
of two gallons of water per flushing or the flow rate established by
the American National Standards Institute for ultra-low flush
toilets, whichever is lower; and
a drinking water fountain must be self-closing.

(c) The commission shall make and maintain a current list of
plumbing fixtures that are certified to the commission by the
manufacturer [or importer] to meet the water saving performance
standards established by Subsection (b). To have a plumbing
fixture included on the list, a manufacturer [or importer] must supply to the commission, in the form prescribed by the commission:
(1) the identification and the performance specifications of the plumbing fixture; and
(2) certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing fixture meets the water saving performance standards established by Subsection (b). [The commission may test a listed fixture to determine the accuracy of the manufacturer's or importer's certification and shall remove from the list a fixture the commission finds to be inaccurately certified.]

(f) This section does not apply to:
(1) a plumbing fixture that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;
(2) a fixture, such as a safety shower or aspirator
faucet, that, because of the fixture's specialized function, cannot
meet the standards provided by this section;

(3) a fixture originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date;

(4) a fixture imported only for use at the importer's domicile;

(5) a nonwater-supplied urinal; or

(6) a plumbing fixture that has been certified by the United States Environmental Protection Agency under the WaterSense Program.

(g) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(3) if the urinal was designed for heavy-duty commercial applications.

(h) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(5) if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:

(1) is mounted on the wall and discharges to the drainage system through the floor;

(2) is located in a correctional facility, as defined by Section 1.07, Penal Code;

(3) is used in a bariatric application;
(4) is used by children at a day-care facility; or

(5) consists of a non-tank type commercial bowl connected to the plumbing system through a pressurized flushing device.

SECTION 3. Chapter 372, Health and Safety Code, is amended by adding Sections 372.0025, 372.0045, and 372.006 to read as follows:

Sec. 372.0025. EXCEPTION: ACTION BY MUNICIPALITY OR COUNTY. The governing body of a municipality or county by ordinance or order may allow the sale in the municipality or county of a urinal or toilet that does not comply with Section 372.002(b)(4) or (6), respectively, if the governing body finds that to flush a public sewer system located in the municipality or county in a manner consistent with public health, a greater quantity of water is required because of the configuration of the drainage systems of buildings located in the municipality or county or the public sewer system.

Sec. 372.0045. PHASE-IN OF WATER SAVING PERFORMANCE STANDARDS. (a) Notwithstanding Sections 372.002(b)(3) and (5), at least the following percentage of the models of urinals and of the models of toilets offered for sale by a manufacturer in this state must meet the requirements of Sections 372.002(b)(4) and (6), respectively:

(1) 50 percent of the models of urinals and of the models of toilets offered for sale on January 1, 2010;

(2) 67 percent of the models of urinals and of the models of toilets offered for sale on January 1, 2011;
(3) 75 percent of the models of urinals and of the models of toilets offered for sale on January 1, 2012; and

(4) 85 percent of the models of urinals and of the models of toilets offered for sale on January 1, 2013.

(b) Not later than January 31 of each year, a manufacturer that offers urinals or toilets for sale in this state shall notify the commission in writing of the percentage of the models of urinals and of the models of toilets offered for sale by the manufacturer in this state that meet the requirements of Sections 372.002(b)(4) and (6), respectively.

(c) This section expires September 1, 2013.

Sec. 372.006. NONWATER-SUPPLIED URINAL PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied urinal for use in this state unless the nonwater-supplied urinal:

(1) meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(A) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals"; or

(B) International Association of Plumbing and Mechanical Officials Standard ANSI Z124.9-2004 "Plastic Urinal Fixtures";

(2) provides a trap seal that complies with the building code of the local government in which the urinal is installed; and

(3) permits the uninhibited flow of waste through the urinal to the sanitary drainage system.
The manufacturer or importer must submit to the commission certified test results from a laboratory accredited by the American National Standards Institute verifying that the nonwater-supplied urinal conforms to the requirements described by Subsection (a)(1).

A person who installs a nonwater-supplied urinal shall install water distribution and fixture supply piping sized to accommodate a water-supplied urinal to an in-wall point immediately adjacent to the nonwater-supplied urinal location so that the nonwater-supplied urinal can be replaced with a water-supplied urinal if desired by the owner or required by a code enforcement officer.

A person who owns a nonwater-supplied urinal shall clean and maintain the nonwater-supplied urinal in accordance with the manufacturer's instructions.

SECTION 4. Section 5.701(q), Water Code, is amended to read as follows:

Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsections (b) and (c), to the extent those fees are collected in connection with water use or water quality permits;

(2) Subsections (h)-(l);
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(3) Section 11.138(g);
(4) Section 11.145;
(5) Section 26.0135(h);
(6) Sections 26.0291, 26.044, and 26.0461; or
(7) Sections 341.041, 366.058, and 366.059, Health and Safety Code;

(8) Section 372.002(d), Health and Safety Code.

SECTION 5. Section 13.506(b), Water Code, is amended to read as follows:

(b) Not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service under Subsection (a), the owner or manager shall:

(1) remove any toilets that exceed a maximum flow of 3.5 gallons of water per flushing; and

(2) install 1.6-gallon toilets that meet the standards prescribed by Section 372.002, Health and Safety Code.

SECTION 6. Sections 372.002(d) and (e) and 372.003(a) and (b), Health and Safety Code, are repealed.

SECTION 7. The change in law made by Section 372.002, Health and Safety Code, as amended by this Act, applies only to a plumbing fixture sold, offered for sale, or distributed in this state on or after September 1, 2009. A plumbing fixture sold, offered for sale, or distributed in this state before that date is governed by the law in effect on the date the sale, offer, or distribution occurred, and that law is continued in effect for that purpose.
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SECTION 8. The change in law made by Section 372.006, Health and Safety Code, as added by this Act, applies only to a nonwater-supplied urinal sold, offered for sale, distributed, or installed in this state on or after September 1, 2009. A nonwater-supplied urinal sold, offered for sale, distributed, or installed in this state before that date is governed by the law in effect on the date the sale, offer, distribution, or installation occurred, and that law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2009.
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President of the Senate
Speaker of the House

I certify that H.B. No. 2667 was passed by the House on April 28, 2009, by the following vote: Yeas 114, Nays 33, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2667 was passed by the Senate on May 21, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: ____________________________

Date

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Governor