
HOUSE BILL 2686

State of Washington

57th Legislature

2002 Regular Session

By Representatives Hunt, Rockefeller, Linville, Dunshee, Kirby, Sullivan, Upthegrove, Chase, Campbell, Romero, Lantz, Wood, Simpson and Kagi

Read first time 01/23/2002. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to mercury reduction and education; adding a new
2 chapter to Title 70 RCW; prescribing penalties; and providing effective
3 dates.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

6 (1) Mercury is a persistent and toxic pollutant that bioaccumulates
7 in the environment.

8 (2) Consumption of mercury-contaminated fish poses a significant
9 public health threat.

10 (3) Mercury is a potent neurotoxin and exposure to it can cause
11 severe damage to a developing fetus. Mercury negatively impacts the
12 nervous system and can lead to blindness, deafness, behavioral
13 problems, and death.

14 (4) Mercury is present in a variety of products that are used in
15 this state and is emitted from many industrial sources that are located
16 in Washington.

17 (5) The state department of ecology has released a plan to reduce
18 and eliminate persistent bioaccumulative toxics in the state, including
19 mercury.

1 (6) Numerous states, including California, Oregon, Vermont, New
2 Hampshire, Maine, Michigan, Minnesota, and Rhode Island have passed
3 legislation to restrict mercury pollution and many other states are
4 considering similar legislation.

5 (7) Cost-effective and readily available alternatives exist for
6 mercury-added products.

7 (8) The intent of this chapter is to achieve significant reductions
8 in environmental mercury, improve public awareness of mercury pollution
9 and proper disposal of mercury, and improve the collection, removal,
10 and disposal of mercury products to improve public health and the
11 environment.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Department" means the department of ecology.

15 (2) "Director" means the director of the department of ecology.

16 (3) "Health care facility" means a hospital, nursing home, extended
17 care facility, long-term care facility, clinical or medical laboratory,
18 state or private health or mental institution, clinic, physician's
19 office, or health maintenance organization.

20 (4) "Manufacturer" means any person, firm, association,
21 partnership, corporation, governmental entity, organization, or joint
22 venture that produces a mercury-added product or an importer or
23 domestic distributor of a mercury-added product produced in a foreign
24 country. In the case of a multicomponent product containing mercury,
25 the manufacturer is the last manufacturer to produce or assemble the
26 product. If the multicomponent product or mercury-added product is
27 produced in a foreign country, the manufacturer is the importer or
28 domestic distributor.

29 (5) "Mercury thermometer" means a mercury-added product that is
30 used for measuring temperature.

31 (6) "Mercury-added button-cell battery" means a button-cell battery
32 to which the manufacturer intentionally introduces mercury for the
33 operation of the battery.

34 (7) "Mercury-added novelty" means a mercury-added product intended
35 mainly for personal or household enjoyment or adornment. Mercury-added
36 novelties include, but are not limited to, items intended for use as
37 practical jokes, figurines, adornments, toys, games, cards, ornaments,

1 yard statues and figures, candles, jewelry, holiday decorations, items
2 of apparel, and other similar products.

3 (8) "Mercury-added product" means a product, commodity, or
4 chemical, or a product with a component that contains mercury or a
5 mercury compound intentionally added to the product, commodity, or
6 chemical in order to provide a specific characteristic, appearance, or
7 quality, or to perform a specific function, or for any other reason.
8 Mercury-added products include, but are not limited to, mercury
9 thermometers, mercury thermostats, and mercury switches in motor
10 vehicles.

11 (9) "Retailer" means a retailer of a mercury-added product.

12 NEW SECTION. **Sec. 3.** (1) A manufacturer of a mercury-added
13 product that is sold, offered for sale, or distributed in this state
14 must ensure that the mercury-added product is properly collected,
15 transported, and recycled by doing one of the following:

16 (a) Establishing and funding, directly or with the help of a third
17 party, a collection system through which the used mercury-added product
18 can be returned for recycling or disposed of as hazardous waste; or

19 (b) Identifying existing collection systems through which the used
20 mercury-added product can be returned for recycling or disposed of as
21 hazardous waste.

22 (2) Every manufacturer of mercury-added products is financially
23 responsible for the collection and recycling systems established under
24 subsection (1) of this section. All collection and recycling must be
25 conducted in a manner that prevents the release of mercury into the
26 environment. Where a mercury-added product is a component of another
27 product, the collection system must provide for removal and collection
28 of the mercury-added component or collection of both the mercury-added
29 component and the product containing it. All collection and recycling
30 systems are subject to department approval. As part of the approval
31 process, the department must ensure that all Washington residents have
32 access to mercury collection and recycling systems that are convenient,
33 comprehensive, and cost-effective.

34 NEW SECTION. **Sec. 4.** (1) Every manufacturer of mercury-added
35 products must ensure that the products are labeled in a manner to
36 clearly inform purchasers: (a) That mercury is present in the item and
37 that the item may not be disposed of or placed in a waste stream

1 destined for disposal until the mercury is reused, recycled, or
2 properly disposed of as a hazardous waste and does not become mixed
3 with other solid waste or wastewater; and (b) of how to access systems
4 for the collection, transportation, and recycling of mercury-added
5 products. Where a mercury-added product is a component of another
6 product, the product containing the component and the component itself
7 must both be labeled. The label on the product containing a mercury-
8 added component must identify the component with sufficient detail so
9 that the component may be readily located for removal.

10 (2) A manufacturer may apply to the department for an alternative
11 to the requirements of subsection (1) of this section where strict
12 compliance with the requirements is not feasible; or the proposed
13 alternative would be at least as effective in providing presale
14 notification of mercury content and in providing instructions on proper
15 disposal. Applications for an alternative to the requirements of
16 subsection (1) of this section must:

17 (a) Document the justification for the requested alternative;

18 (b) Describe how the alternative ensures that purchasers or
19 recipients of mercury-added products are made aware of mercury content
20 prior to purchase or receipt;

21 (c) Describe how a person discarding the product will be made aware
22 of the need for proper handling to ensure that it does not become part
23 of solid waste or wastewater;

24 (d) Document the readiness of all necessary parties to implement
25 the proposed alternative; and

26 (e) Describe the performance measures to be utilized by the
27 manufacturer to demonstrate that the alternative is providing effective
28 presale notification and predisposal notification.

29 (3) The department may grant, deny, modify, or condition a request
30 for an alternative to the requirements of subsection (1) of this
31 section and approval of an alternative. The approval is for a period
32 of up to two years and may, upon continued eligibility under the
33 criteria of this section and compliance with the conditions of its
34 prior approval, be renewed at two-year intervals.

35 (4) No person may sell, offer for sale, or distribute a mercury-
36 added product, unless the product meets the labeling requirements of
37 subsection (1) of this section. The labeling requirements of
38 subsection (1) of this section do not apply to any mercury-added

1 product for which federal law governs labeling in a manner that
2 preempts state authority.

3 NEW SECTION. **Sec. 5.** (1) A person may not knowingly dispose of
4 mercury-added products in any manner other than by recycling the
5 product or disposing of the product as hazardous waste.

6 (2) A person may not knowingly incinerate used mercury-added
7 products.

8 (3) When a mercury-added product is removed from service, the
9 mercury in the item must be source-separated for reuse or recycling,
10 stabilized for retirement, or otherwise managed to prevent its release
11 into the environment.

12 (4) A person may not knowingly send a multicomponent product
13 containing a mercury-added product, that has been intentionally
14 flattened, crushed, or baled, to a scrap processor, as defined in RCW
15 46.79.010, for recycling without first removing the mercury-added
16 product. A scrap processor may accept a multicomponent product,
17 knowing it contains a mercury-added product, if the processor takes
18 responsibility for removing the mercury-added product. This subsection
19 (4) does not apply to individuals disposing of mercury-added household
20 products.

21 (5) A solid waste collector may not knowingly collect solid waste
22 that contains one or more mercury-added products, unless the solid
23 waste is collected at a permitted household hazardous waste collection
24 facility for the purpose of recycling the waste.

25 (6) A solid waste collector must refuse to collect the contents of
26 a solid waste container containing one or more mercury-added products,
27 unless the solid waste is collected at a permitted household hazardous
28 waste collection facility for the purpose of recycling the waste.

29 (7) An owner or operator of a solid waste management facility may
30 not knowingly accept for disposal solid waste that contains one or more
31 mercury-added products, unless the waste is collected at a permitted
32 household hazardous waste collection facility for the purpose of
33 recycling solid waste. An owner or operator of a solid waste
34 management facility must have appropriate notification and inspection
35 procedures in place designed to prohibit mercury-added products from
36 being disposed of at the facility. An owner or operator of a solid
37 waste management facility must:

1 (a) Post signs at the solid waste management facility providing
2 notice of the prohibition of the disposal and incineration of mercury-
3 added products;

4 (b) Provide written notification to or have contractual agreements
5 with the solid waste management facility's customers, providing notice
6 of the prohibition of the disposal and incineration of mercury-added
7 products; and

8 (c) Implement a procedure approved by the department for
9 periodically monitoring incoming wastes to detect the presence of
10 mercury-added products at the solid waste management facility.

11 (8) An owner or operator of a solid waste management facility must
12 refuse to accept for disposal the contents of a solid waste container
13 containing one or more mercury-added products unless the waste is
14 collected at a permitted household hazardous waste collection facility
15 for the purpose of recycling solid waste.

16 (9) Every two years the department must make available to the
17 public information concerning the amount of mercury diverted from the
18 solid waste stream that would otherwise be sent to solid waste
19 management facilities for disposal or incineration.

20 NEW SECTION. **Sec. 6.** (1) Except as provided under subsections (2)
21 and (3) of this section, no person may sell, offer for sale, or
22 distribute a mercury-added product unless the manufacturer of the
23 product, or its industry trade group, provides notice to the director
24 in writing of the manufacturer's intent to sell, offer for sale, or
25 distribute the product. The notification must include: (a) A
26 description of the product to be offered for sale, use, or
27 distribution; (b) the amount of and purpose for mercury in each unit of
28 the product; (c) the total amount of mercury contained in all products
29 manufactured by the manufacturer; and (d) the name and address of the
30 manufacturer and of a contact. The manufacturer must update and revise
31 the information provided in each notification whenever there is
32 significant change in the information or when requested by the
33 director. The director may by rule define and adopt specific
34 requirements for the content and submission of the notification.

35 (2) With the approval of the director, the manufacturer may supply
36 the notice required under subsection (1) of this section for a product
37 category rather than an individual product.

1 (3) Any mercury-added product for which federal law governs notice
2 in a manner that preempts state authority is exempt from the
3 requirements of this section.

4 (4) The director must review the information received under
5 subsection (1) of this section and must ensure that the information is
6 available for public inspection upon request.

7 NEW SECTION. **Sec. 7.** (1) No person may sell, offer for sale, or
8 distribute a mercury-added novelty. A manufacturer of mercury-added
9 novelties must notify all retailers that sell the product about the
10 provisions of this section and how to properly dispose of any remaining
11 mercury-added novelty inventory.

12 (2)(a) No person may sell, offer for sale, or distribute a
13 thermometer that contains mercury. This subsection (2) does not apply
14 to:

15 (i) An electronic thermometer with a battery containing mercury if
16 the battery is in compliance with section 3 of this act;

17 (ii) A thermometer that contains mercury and that is used for food
18 research and development or food processing, including meat, dairy
19 products, and pet food processing;

20 (iii) A thermometer that contains mercury and that is a component
21 of an animal agriculture climate control system or industrial
22 measurement system until such a time as the system is replaced or a
23 nonmercury component for the system is available; and

24 (iv) A thermometer that contains mercury that is used for
25 calibration of other thermometers, apparatus, or equipment, unless a
26 nonmercury calibration standard is approved for the application by the
27 national institute of standards and technology.

28 (b) A manufacturer of thermometers that contain mercury must notify
29 all retailers that sell the product about the provisions of this
30 section and how to properly dispose of any remaining thermometer
31 inventory.

32 (3) No person may sell, install, or reinstall a thermostat that
33 contains mercury. A manufacturer of thermostats that contain mercury
34 must notify all retailers that sell the product about the provisions of
35 this section and how to properly dispose of any remaining thermostat
36 inventory.

37 (4) No person may sell, offer for sale, or distribute a motor
38 vehicle manufactured after January 1, 2003, if the motor vehicle

1 contains a mercury switch, including mercury switches in antilock brake
2 systems and in high intensity discharge lighting systems.

3 (5) A health care facility may not purchase mercury-containing
4 manometers.

5 NEW SECTION. **Sec. 8.** No school may use or purchase for use in a
6 primary or secondary classroom bulk elemental or chemical mercury or
7 bulk mercury compounds. Manufacturers that produce and sell bulk
8 elemental or chemical mercury or mercury compounds must notify
9 retailers and schools about the provisions of this section and how to
10 dispose of the remaining inventory properly.

11 NEW SECTION. **Sec. 9.** No later than January 1, 2003, the
12 department, in consultation with the Washington hospital association
13 and other interested parties, must develop a mercury phase-out plan to
14 reduce or eliminate the purchase and use of mercury-containing products
15 at licensed health care facilities starting July 1, 2003. The plan
16 must be fully implemented by December 31, 2005.

17 NEW SECTION. **Sec. 10.** (1) The department and the department of
18 health must jointly develop a plan and proposed budget for a
19 comprehensive public education, outreach, and assistance program for
20 households, hazardous waste generators, municipalities, solid waste
21 management districts, small businesses, health care facilities, scrap
22 metal facilities, dismantlers, institutions of higher education,
23 schools, and other interested groups. The plan must: (a) Focus on the
24 hazards of mercury, particularly those associated with the consumption
25 of fresh and saltwater fish, the requirements and obligations of
26 individuals, manufacturers, and agencies under this chapter, and
27 voluntary efforts that individuals, institutions, and businesses can
28 undertake to help further reduce mercury in the environment; (b)
29 include a mechanism for providing information to retailers,
30 wholesalers, and the public on what products contain mercury and
31 information on possible nonmercury alternatives; (c) include a
32 description of how manufacturers of mercury-added products and other
33 affected businesses will be involved in the development and
34 implementation of a public education and technical assistance program;
35 (d) describe how the program will assist the municipalities and solid
36 waste management districts in developing, designing, and disseminating

1 information for the public about labeled mercury-added products, the
2 requirements of section 3 of this act regarding the source separation
3 of waste mercury-added products, and the collection programs that are
4 available to the public under section 3 of this act; and (e) describe
5 how the program will be directed specifically at large public and
6 private institutions that use and discard substantial numbers of waste
7 mercury-added products, and at any other large users of those products.
8 The plan and proposed budget must be submitted to the governor and the
9 legislature by January 1, 2003.

10 (2) The department may develop an awards program to recognize the
11 accomplishments of manufacturers, municipalities, solid waste
12 management facilities, solid waste recycling facilities, household
13 hazardous waste collection facilities, citizens, or entities that go
14 beyond the minimum requirements established under this chapter and
15 excel at reducing or eliminating mercury in air emissions, solid waste,
16 and wastewater discharges.

17 NEW SECTION. **Sec. 11.** (1) Notwithstanding other administrative
18 rules, policies, and guidelines for the procurement of equipment,
19 supplies, and other products, the department of general administration
20 must, by July 1, 2003, revise its rules, policies, and guidelines to
21 implement the purpose of this chapter.

22 (2) The department of general administration must give priority and
23 preference to the purchase of equipment, supplies, and other products
24 that contain no mercury-added compounds or components, unless there is
25 no economically feasible nonmercury-added alternative that performs a
26 similar function. In circumstances where a nonmercury-added product is
27 not available, preference must be given to the purchase of products
28 that contain the least amount of mercury added to the product necessary
29 for the required performance and that are not prohibited from sale or
30 distribution under section 6 of this act.

31 NEW SECTION. **Sec. 12.** The department must review the
32 effectiveness of this chapter and provide a report based upon that
33 review to the governor and the legislature by December 1, 2006. The
34 report must review the effectiveness of the programs required under
35 this chapter and recommend ways to improve the programs.

1 NEW SECTION. **Sec. 13.** A violation of this chapter or any rule
2 adopted under this chapter is punishable by a civil penalty not to
3 exceed one thousand dollars for each violation in the case of a first
4 violation. Repeat violators are liable for a civil penalty not to
5 exceed five thousand dollars for each repeat violation. Penalties
6 collected under this section must be deposited in the state toxics
7 control account created under RCW 70.105D.070.

8 NEW SECTION. **Sec. 14.** The department must adopt rules to
9 implement and enforce this chapter.

10 NEW SECTION. **Sec. 15.** (1) Sections 1, 2, and 9 through 14 of this
11 act take effect July 1, 2002.

12 (2) Sections 3 through 8 of this act take effect January 1, 2003.

13 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
14 constitute a new chapter in Title 70 RCW.

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