

## 1 SENATE BILL NO. 423

2 INTRODUCED BY C. KAUFMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA MERCURY SAFETY AND  
5 PROTECTION ACT; REQUIRING PRESALE NOTIFICATION BEFORE MERCURY-ADDED PRODUCTS MAY  
6 BE SOLD IN MONTANA; PROVIDING RESTRICTIONS ON THE SALE AND USE OF MERCURY AND  
7 CERTAIN MERCURY-ADDED PRODUCTS; PROVIDING FOR LABELING AND CONSUMER INFORMATION;  
8 ENACTING A PHASEOUT ON DISPOSAL OF CERTAIN MERCURY-ADDED PRODUCTS; PROVIDING A  
9 HOUSEHOLD USE EXEMPTION; ~~REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO~~  
10 ~~IMPLEMENT AN EDUCATION PROGRAM CONCERNING MERCURY-ADDED PRODUCTS; REQUIRING THE~~  
11 ~~DEPARTMENT TO OFFER TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS; AUTHORIZING THE~~  
12 DEPARTMENT TO PARTICIPATE IN A MULTISTATE MERCURY INFORMATION CLEARINGHOUSE;  
13 ~~CREATING A MERCURY PRODUCTS REVIEW COMMITTEE; AUTHORIZING CRIMINAL AND CIVIL~~  
14 ~~PENALTIES FOR VIOLATIONS; ALLOWING THE DEPARTMENT TO CONDUCT INSPECTIONS; AND~~  
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
16

17 WHEREAS, mercury is a potent neurotoxin that has been known to cause learning disabilities and  
18 developmental delays in children as it is passed from a mother to a child in the womb or through breast-feeding;  
19 and

20 WHEREAS, mercury poses a threat to human health and the environment in Montana due to high levels  
21 of mercury in fish; and

22 WHEREAS, federal tests of fish caught in eight Montana lakes found that every fish sample tested was  
23 contaminated with mercury and that 54% contained mercury levels that exceeded the federal safe limit for women  
24 of childbearing age; and

25 WHEREAS, the Montana Department of Public Health and Human Services recommends that women  
26 of childbearing age should avoid eating all lake trout, northern pike, and walleye over 15 inches in length and that  
27 they should limit their intake of most other lake fish caught in Montana; and

28 WHEREAS, recreational fishing in Montana contributes nearly \$300 million to the economy each year,  
29 and mercury contamination in Montana's waters is putting this vital part of our economy at risk, including everyone  
30 from outfitters and guides to hotel and restaurant owners who depend on the fishing industry to make a living;

1 and

2 WHEREAS, safer alternatives exist for many mercury-containing products, and studies have found that  
3 there are cost-effective mercury-free alternatives available on the market today for many mercury-containing  
4 products, including thermostats, instruments, measuring devices, switches, and relays.

5

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7

8 NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~4~~ 9] may be cited as the "Montana  
9 Mercury Safety and Protection Act".

10

11 NEW SECTION. **Section 2. Legislative purpose and policy.** It is the purpose of [sections 1 through  
12 ~~4~~ 9] and it is the policy of this state to:

13 (1) restrict the sale and distribution of certain mercury-added products with safer alternatives wherever  
14 feasible;

15 (2) phase out the disposal of certain mercury-containing waste products as solid waste; and

16 (3) promote the proper collection, transportation, recycling, and disposal of certain mercury-containing  
17 products with the emphasis of using existing processes to achieve these ends.

18

19 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~4~~ 9], the following definitions  
20 apply:

21 (1) "Department" means the department of environmental quality provided for in 2-15-3501.

22 (2) (a) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity,  
23 organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a  
24 mercury-added product produced in a foreign country.

25 (b) In the case of a mercury-added multicomponent product in which the only mercury in the product is  
26 contained in a mercury-added component manufactured by a different manufacturer that is intended to be readily  
27 removable and replaceable by the consumer or user, the manufacturer is the entity that produced the  
28 mercury-added component.

29 (c) If the product or component is produced in a foreign country, the manufacturer is the importer or  
30 domestic distributor. However, if a company from whom an importer purchases the product or component has

1 a United States presence or assets, then that company is considered to be the manufacturer.

2 (3) "Mercury-added product" means any of the following items if the item contains mercury intentionally  
3 added during manufacture:

4 (a) a thermostat or thermometer;

5 (b) a switch or other device, individually or as part of another product, used to measure, control, or  
6 regulate gas, other fluids, or electricity;

7 (c) a medical or scientific instrument;

8 (d) an electric relay or other electrical device;

9 (e) an electric lamp;

10 (f) a button cell or ~~mercuric oxide~~ battery;

11 (g) a vehicle component; or

12 (h) a novelty product.

13 (4) "Mercury fever thermometer" means a thermometer that contains mercury for the purpose of  
14 measuring body temperature but does not include a thermometer containing mercury solely within a button cell  
15 battery.

16 (5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or  
17 local governmental entity or any other state, federal, or private entity, whether or not organized for profit.

18

19 **NEW SECTION. Section 4. Presale notification required.** (1) Except as provided in subsection (5),  
20 beginning January 1, 2008, a product to which mercury is intentionally added during formulation or manufacture  
21 or a product containing one or more components to which mercury is intentionally added during formulation or  
22 manufacture may not be offered for final sale or use or distributed for promotional purposes in the state unless  
23 the manufacturer of the product or product component or a trade association representing manufacturers of the  
24 product or component has provided written notice to the department in accordance with this section. The notice  
25 must include the following information on a form provided by the department:

26 (a) a brief description of the product or product component;

27 (b) the purpose for which mercury is used in the product or product component;

28 (c) the amount of mercury in each unit of the product or product component, reported as an exact  
29 number, as an average per product or component with an upper or lower limit, or as falling within a range  
30 approved by the department;

1 (d) the total amount of mercury in all units of the product or product components sold in the United States  
2 during the most recent calendar year for which sales figures are available, reported either for the units or  
3 components sold by the manufacturer or as aggregated by a manufacturer trade association for all units of the  
4 product or components made by the industry; and

5 (e) the name and address of the manufacturer and the name, address, and phone number of a contact  
6 person for the manufacturer.

7 (2) With the approval of the department, the manufacturer may supply the information required in  
8 subsection (1) for a product category rather than an individual product. The manufacturer shall update and revise  
9 the information in the notification whenever there is a significant change in the information or when requested by  
10 the department. The information required under subsection (1)(d) must be updated and provided to the  
11 department every 3 years.

12 (3) Notwithstanding subsection (1)(c), the manufacturer of a product containing one or more  
13 mercury-added components is not required to include information on the amount of mercury in the component  
14 in the notice to the department if the component manufacturer has provided that information to the department  
15 and the manufacturer of the product that contains the component identifies the component and component  
16 manufacturer in the notice.

17 (4) (a) Except as provided in subsections (4)(b) and (5), an importer of a product or product component  
18 from a foreign country may not sell, use, or distribute the product or product component in the state unless the  
19 manufacturer of the product or product component is in compliance with this section.

20 (b) The prohibition in subsection (4)(a) does not apply to retailers for whom importing is not a primary  
21 business.

22 (5) The provisions of this section do not apply to:

23 (a) a mercury-added product or product component for which federal law governs notice in a manner that  
24 preempts state authority; and

25 (b) drugs approved by the United States food and drug administration.

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27 **NEW SECTION. Section 5. Restrictions on sale and distribution of mercury in various products**

28 -- **exemptions.** (1) Beginning January 1, 2008, a person may not sell or supply a mercury fever thermometer to  
29 consumers and patients except by prescription. With each mercury fever thermometer sold by prescription, the  
30 manufacturer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and

1 on proper cleanup should breakage occur.

2 (2) Beginning January 1, 2008, a mercury-containing manometer of the type used in milking machines  
3 on dairy farms may not be sold or offered for sale or distributed for promotional purposes in the state.  
4 Manufacturers of these manometers shall notify wholesalers and retailers about this ban and shall instruct them  
5 on how to properly dispose of the remaining inventory.

6 (3) Beginning January 1, 2008, bulk elemental or chemical mercury or mercury compounds may not be  
7 sold for use in a primary or secondary classroom in this state. Manufacturers of these materials shall notify  
8 wholesalers and retailers about this ban and shall instruct them on how to properly dispose of the remaining  
9 inventory. Mercury-added products used by schools are not subject to this ban.

10 (4) (a) Except as provided in subsection (4)(b), beginning January 1, 2008, a person may not sell or offer  
11 to sell or distribute for promotional purposes a mercury-added thermostat in this state, except for a thermostat  
12 used by a blind or visually impaired person.

13 (b) Prior to January 1, 2009, a manufacturer of mercury-added thermostats may apply to the department  
14 for an exemption from this subsection (4) for one or more specific uses of a mercury-added thermostat. The  
15 department may grant an exemption with or without conditions upon finding that:

16 (i) the manufacturer has demonstrated that a system exists for the proper collection, transportation, and  
17 processing of the mercury-added thermostat at the end of its life; and

18 (ii) the specific use or uses of the mercury-added thermostat provide a net benefit to the environment,  
19 public health, or public safety when compared to available nonmercury alternatives.

20 (5) Beginning January 1, 2009, a person may not sell or offer to sell or distribute the following  
21 mercury-added products:

22 (a) a barometer;

23 (b) an esophageal dilator, bougie tube, or gastrointestinal tube;

24 (c) a flow meter;

25 (d) a hydrometer;

26 (e) a hygrometer or psychrometer;

27 (f) a manometer, other than a manometer prohibited from sale under subsection (2);

28 (g) a pyrometer;

29 (h) a sphygmomanometer;

30 (i) a thermometer, other than a thermometer prohibited from sale under subsection (1).

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2           NEW SECTION. Section 6. Labeling and consumer information. (1) Beginning January 1, 2008,  
3 a manufacturer may not sell at retail or to a retailer in this state a mercury-added product unless the item is  
4 labeled pursuant to this section.

5           (2) The label must clearly inform the purchaser or consumer that mercury is present in the item and that  
6 the item ~~may not be disposed of or placed in a waste stream destined for disposal until the mercury is removed~~  
7 ~~and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater~~  
8 MUST BE DISPOSED OF IN ACCORDANCE WITH APPLICABLE STATE LAWS.

9           (3) The department may work with a multistate mercury information clearinghouse as provided in [section  
10 ~~44 9]~~ to ensure consistency with labeling programs in other states.

11           (4) A MANUFACTURER OF A PRODUCT CONTAINING A MERCURY-ADDED BUTTON CELL BATTERY SHALL PRINT A  
12 NOTICE ON THE PRODUCT PACKAGE THAT THE BUTTON CELL BATTERY INCLUDES MERCURY IS EXEMPT FROM THE  
13 REQUIREMENTS OF THIS SECTION.

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15           NEW SECTION. Section 7. Disposal phaseout -- notification. (1) Beginning January 1, 2012, and  
16 except as provided in [section 8], a person may not knowingly place a product restricted under [section 5] or a  
17 mercury-containing lamp in solid waste for disposal in a solid waste disposal facility regulated by Title 75, chapter  
18 10, part 1.

19           (2) An owner or operator of a solid waste disposal facility regulated by Title 75, chapter 10, part 1, shall  
20 implement appropriate notification and inspection procedures that are designed to prohibit mercury-added  
21 products from being disposed at the facility. At a minimum, the owner or operator of a solid waste disposal facility  
22 regulated by Title 75, chapter 10, part 1, shall:

23           (a) post signs at the facility providing notice of the prohibition of the disposal of mercury-added products;

24           (b) provide written notification to or enter into contractual agreements with the facility's customers  
25 regarding the prohibition of the disposal of mercury-added products; and

26           (c) implement any procedures approved by the department to periodically monitor incoming wastes to  
27 detect the presence of mercury-added products and to provide for separation of observed mercury-added  
28 products.

29           (3) This section may not be construed to affect existing laws, rules, or regulations governing disposal of  
30 mercury-added products prior to January 1, 2012.

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 2           **NEW SECTION. Section 8. Household waste exemption.** An individual who uses mercury-added  
 3 products in that individual's home is not subject to the provisions of [section 7] with respect to those products used  
 4 in the individual's home and is not subject to fines or penalties for noncompliance with [section 7] with respect  
 5 to those products used in the individual's home.

6  
 7 ~~———— **NEW SECTION. Section 9. Education program.** The department shall implement an education  
 8 program relating to mercury-added products. The program must provide information to the public about labeled  
 9 mercury-added products and information on recycling and appropriate disposal of mercury-added products that  
 10 are available to the public.~~

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 12 ~~———— **NEW SECTION. Section 10. Technical assistance to local governments.** The department shall  
 13 assist interested local governments in developing collection programs for mercury-added products.~~

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 15           **NEW SECTION. Section 9. Interstate clearinghouse.** The department may participate in a multistate  
 16 mercury information clearinghouse to:

- 17           (1) assist in carrying out the requirements of [sections 1 through 43 9];  
 18           (2) help coordinate consistency with labeling programs in other states under [section 6]; and  
 19           (3) assist in education and outreach activities and other activities related to the administration of [sections  
 20 1 through 43 9].

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 22 ~~———— **NEW SECTION. Section 12. Mercury products review committee -- composition, appointment,  
 23 and duties.** (1) The director of the department shall appoint a mercury products review committee whose duty  
 24 is to advise the department on strategies for managing mercury waste in Montana. The committee shall make  
 25 recommendations to the department, including setting recycling goals for mercury-added products, creating  
 26 education programs for the public regarding proper disposal of mercury-added products, and reducing the use  
 27 of existing mercury-added products.~~

28 ~~———— (2) The mercury products review committee is composed of at least one representative from:~~

- 29 ~~———— (a) the department;~~  
 30 ~~———— (b) the department of public health and human services;~~

1 ~~\_\_\_\_\_ (c) the department of fish, wildlife, and parks;~~

2 ~~\_\_\_\_\_ (d) a business that manages mercury waste; and~~

3 ~~\_\_\_\_\_ (e) the general public who has an interest in public health and toxins.~~

4 ~~\_\_\_\_\_ (3) Members of the committee are not entitled to compensation or expenses provided in 2-15-122.~~

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6 ~~\_\_\_\_\_ NEW SECTION. **Section 13. Enforcement -- violations -- criminal and civil penalties -- judicial**~~

7 ~~**review -- inspections.** (1) The department shall monitor compliance with and enforce the provisions of [sections~~  
8 ~~1 through 13].~~

9 ~~\_\_\_\_\_ (2) A violation of any of the provisions of [sections 1 through 13] or an order made or issued under~~  
10 ~~[sections 1 through 13] is subject to enforcement provisions of 75-10-227 and 75-10-231 and the penalty~~  
11 ~~provisions of 75-10-228, 75-10-232, and 75-10-233.~~

12 ~~\_\_\_\_\_ (3) The department may conduct inspections subject to the provisions of 75-10-205.~~

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14 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through ~~13~~ 9] are intended to be  
15 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through ~~13~~ 9].

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17 NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
19 the part remains in effect in all valid applications that are severable from the invalid applications.

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21 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

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