

HOUSE BILL NO. 665
INTRODUCED BY T. HENRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION OF MERCURY-ADDED PRODUCTS; PROVIDING DEFINITIONS; REQUIRING NOTIFICATION BEFORE MERCURY-ADDED PRODUCTS MAY BE SOLD IN MONTANA; PROVIDING RESTRICTIONS ON THE SALE AND USE OF MERCURY; PROVIDING EXEMPTIONS; PROVIDING FOR LABELING AND CONSUMER INFORMATION; ENACTING A BAN ON DISPOSAL OF CERTAIN MERCURY-ADDED PRODUCTS; REQUIRING SOURCE SEPARATION; ENACTING A HOUSEHOLD HAZARDOUS WASTE EXEMPTION; ENACTING REQUIREMENTS APPLICABLE TO DENTAL OFFICES; PROVIDING FOR ADMINISTRATION BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING THE DEPARTMENT TO IMPLEMENT AN EDUCATION PROGRAM CONCERNING MERCURY-ADDED PRODUCTS; REQUIRING THE DEPARTMENT TO OFFER TECHNICAL ASSISTANCE TO MUNICIPALITIES; AUTHORIZING THE DEPARTMENT TO PARTICIPATE IN THE ESTABLISHMENT AND IMPLEMENTATION OF A REGIONAL MULTISTATE CLEARING HOUSE CONCERNING MERCURY-ADDED PRODUCTS; AND REQUIRING THE DEPARTMENT TO ADOPT RULES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana Mercury-Added Products and Services Disclosure Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

- (1) "Amalgam separator system" means the device described in [section 9(6)].
- (2) "Dental amalgam" means a mixture of silver and mercury used to restore dental integrity.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Mercury-added product" means any of the following items if the item contains mercury added during manufacture:
 - (a) a thermostat or thermometer;
 - (b) a switch or other device, individually or as part of another product, used to measure, control, or

regulate gas, other fluids, or electricity;

- (c) a medical or scientific instrument;
- (d) an electric relay or other electrical device; or
- (e) a lamp.

(5) (a) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment.

(b) The term includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

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

(7) (a) "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit.

(b) The term includes mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(8) (a) "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve.

(b) The term includes mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors.

- (c) The term does not include a mercury-added thermostat.

NEW SECTION. Section 3. Presale notification required. (1) Beginning January 1, 2006, a product to which mercury is intentionally added during formulation or manufacture or a product containing one or more components to which mercury is intentionally added during formulation or manufacture may not be offered for final sale or use or distributed for promotional purposes in the state unless the manufacturer of the product or product component or a trade association representing manufacturers of the product or component has provided written notice to the department in accordance with this section. The requirements of this section do not apply to drugs approved by the United States food and drug administration. The notice must include the following information on a form provided by the department or the interstate clearinghouse under [section 12]:

- (a) a brief description of the product or product component;
 - (b) the purpose for which mercury is used in the product or product component;
 - (c) the amount of mercury in each unit of the product or product component, reported as an exact number, as an average per product or component with an upper or lower limit, or as falling within a range approved by the department;
 - (d) the total amount of mercury in all units of the product or product components sold in the United States during the most recent calendar year for which sales figures are available, reported either for the units or components sold by the manufacturer or as aggregated by a manufacturer trade association for all units of the product or components made by the industry; and
 - (e) the name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer.
- (2) A mercury-added product or product component for which federal law governs notice in a manner that preempts state authority is exempt from the requirements of this section.
- (3) With the approval of the department, the manufacturer may supply the information required in subsection (1) for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is a significant change in the information or when requested by the department. The information required under subsection (1)(d) must be updated and provided to the department every 3 years.
- (4) Notwithstanding subsection (1)(c), the manufacturer of a product containing one or more mercury-added components is not required to include information on the amount of mercury in the component in the notice to the department if the component manufacturer has provided that information to the department and the manufacturer of the product that contains the component identifies the component and component manufacturer in the notice.
- (5) An importer of the product or product component from a foreign country may not sell, use, or distribute the product or product component in the state unless the manufacturer of the product or product component is in compliance with this section. However, this prohibition does not apply to retailers for whom importing is not a primary business.

NEW SECTION. Section 4. Restrictions on sale and use of mercury in various products -- exemptions -- rulemaking. (1) Beginning January 1, 2006, a person may not sell or supply a mercury fever thermometer to consumers and patients except by prescription. With each mercury fever thermometer sold by

prescription, the manufacturer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and on proper cleanup should breakage occur.

(2) Beginning January 1, 2006, a mercury-containing manometer of the type used in milking machines on dairy farms may not be sold or offered for sale or distributed for promotional purposes in the state. Manufacturers of these manometers shall notify wholesalers and retailers about this ban and shall instruct them on how to properly dispose of the remaining inventory.

(3) Beginning January 1, 2006, bulk elemental or chemical mercury or mercury compounds may not be sold for use in a primary or secondary classroom in this state. Manufacturers of these materials shall notify wholesalers and retailers about this ban and shall instruct them on how to properly dispose of the remaining inventory. Mercury-added products used by schools are not subject to this ban.

(4) Beginning January 1, 2006, a person may not sell or provide elemental mercury to another person except for manufacturing or recycling purposes without providing that person with a material safety data sheet, as defined in 42 U.S.C. 11049, and without requiring the purchaser or recipient to sign a statement that the purchaser or recipient:

(a) will use the mercury only for medical purposes, in dental amalgam dispose-caps, or for research purposes;

(b) understands that mercury is toxic and that the purchaser or recipient will store and use it appropriately so that no person is exposed to the mercury; and

(c) will not place or allow anyone under the purchaser's or recipient's control to place the mercury or cause the mercury to be placed in solid waste for disposal or in a wastewater treatment and disposal system.

(5) After January 1, 2010, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added thermostat in this state, except for a thermostat used by a blind or visually impaired person. Prior to January 1, 2010, a manufacturer of mercury-added thermostats may apply to the department for an exemption from this subsection for one or more specific uses of a mercury-added thermostat. The department may grant an exemption with or without conditions upon finding that:

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

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

(6) (a) Beginning July 1, 2010, a person may not sell or offer to sell or distribute the following mercury-added products: (i) a barometer;

- (ii) an esophageal dilator, bougie tube, or gastrointestinal tube;
- (iii) a flow meter;
- (iv) a hydrometer;
- (v) a hygrometer or psychrometer;
- (vi) a manometer, other than a manometer prohibited from sale under subsection (2);
- (vii) a pyrometer;
- (viii) a sphygmomanometer; or
- (ix) a thermometer, other than a thermometer prohibited from sale under subsection (1).

(b) Subsection (6)(a) does not apply to the sale of a mercury-added product listed in subsection (6)(a) if use of the product is a federal requirement or if the only mercury-added component in the product is a button cell battery.

(7) (a) Beginning July 1, 2010, a person may not sell, offer to sell, or distribute a mercury switch or mercury relay individually or as a product component. This prohibition does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to July 1, 2010, and one of the following applies:

- (i) the larger product is used in manufacturing; or
- (ii) the switch or relay is integrated and not physically separate from other components of the larger product.

(b) Subsection (7)(a) does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is a federal requirement.

(8) Subsections (6) and (7) do not apply to the sale of a mercury-added product for which an exemption is obtained under this subsection. The manufacturer or user of the product may apply for an exemption by filing a written petition with the department. The department may grant an exemption, with or without conditions, upon finding that:

(a) the exemption is requested because the mercury-added product is required to meet specific advanced technology product specifications identified by the customer or end user of the product; or

(b) the mercury-added product is reasonable and appropriate for a specific use. In this situation, the petitioner shall demonstrate that:

(i) a system exists for the proper collection, transportation, and processing of the product at the end of its life; and

- (ii) one of the following applies:

(A) use of the product provides a net benefit to the environment, public health, or public safety when compared to available nonmercury alternatives; or

(B) technically feasible nonmercury alternatives are not available at comparable cost.

(9) Prior to approving an exemption, the department may consult with neighboring states, by means of the interstate clearinghouse provided for in [section 12] or otherwise, to promote consistency in the way in which mercury-added products are regulated. The department may request persons receiving an exemption to maintain records and provide reasonable reports to the department that characterize mercury use. Exemptions may be granted for a term not to exceed 5 years and may be renewed upon written application if the department finds that the mercury-added product continues to meet the criteria of subsection (8) and the manufacturer or other persons comply with the conditions of its original approval. The department shall adopt rules for processing exemption applications that provide for public participation, taking into account the role of the interstate clearinghouse provided for in [section 12].

NEW SECTION. Section 5. Labeling and consumer information. (1) Beginning January 1, 2006, a manufacturer may not sell at retail or to a retailer in this state and a retailer may not knowingly sell a mercury-added product unless the item is labeled pursuant to this section. The label must clearly inform the purchaser or consumer that mercury is present in the item and that the item may not be disposed of or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater. Manufacturers shall affix to mercury-added products labels that conform to the requirements of this section.

(2) The department shall adopt rules to establish standards for affixing labels to the product and product package. The rules must strive for consistency with labeling programs in other states and provide for approval of alternative compliance plans by the department.

(3) A person who sells mercury-added lamps to the owner or manager of an industrial, commercial, or office building or to any person who replaces or removes from service outdoor lamps that contain mercury shall clearly inform the purchaser in writing on the invoice or in a separate document that the lamps contain mercury, a hazardous substance that is regulated by federal and state law, and that they may not be placed in solid waste destined for disposal. Retail establishments that incidentally sell mercury-added lamps to the specified purchasers are exempt from the requirements of this subsection.

(4) A person who contracts with the owner or manager of an industrial, commercial, or office building or with a person responsible for outdoor lighting to remove from service mercury-added lamps shall clearly inform

the person for whom the work is being done in writing that the lamps being removed from service contain mercury and what the contractor's arrangements are for the management of the mercury in the removed lamps.

NEW SECTION. **Section 6. Disposal ban.** After July 15, 2006, a person may not knowingly place a mercury-added product in solid waste for disposal in a solid waste disposal facility regulated by Title 75, chapter 10, part 1. This section may not be construed to affect existing laws, rules, or regulations governing disposal of mercury-added products prior to July 15, 2006.

NEW SECTION. **Section 7. Source separation.** (1) When a mercury-added product is removed from service, the mercury in the item must be reused, recycled, or managed to ensure compliance with [section 6].

(2) A person who is in the business of replacing or repairing a mercury-added product in households shall ensure or deliver the item to a facility that will ensure that the mercury contained in an item that is replaced or repaired is reused, recycled, or otherwise managed in compliance with [section 6].

(3) (a) A manufacturer of thermostats that contain mercury or a manufacturer of thermostats that may replace thermostats that contain mercury shall, in addition to meeting the requirements under [section 6], provide incentives and sufficient information to purchasers and consumers of the thermostats for the purchasers and consumers to ensure that mercury in thermostats being removed from service is reused, recycled, or managed in compliance with [section 6]. A manufacturer that has complied with this subsection (3)(a) is not liable for improper disposal by purchasers or consumers of thermostats. Manufacturer collection programs conducted in accordance with solid or hazardous waste rules adopted by the department meet the requirements of this subsection.

(b) A wholesaler may not sell a thermostat in the state unless the wholesaler acts as a collection site for thermostats that contain mercury.

(c) A wholesaler may meet the requirements of this subsection (3) by participating as a collection site in a manufacturer collection program as described under subsection (3)(a) or by collecting thermostats that contain mercury and disposing of the collected thermostats in accordance with solid or hazardous waste rules adopted by the department.

(4) "Wholesaler", for the purposes of this section, means a business that the department determines is primarily engaged in the distribution and wholesale selling of large quantities of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components.

NEW SECTION. Section 8. Household hazardous waste exemption. An individual who uses mercury-added products in that individual's home is not subject to the provisions of [section 6] or [section 7] until January 1, 2009, with respect to those products the individual uses in the individual's home and is not subject to fines or penalties for noncompliance with those sections with respect to those products the individual uses in the individual's home.

NEW SECTION. Section 9. Dental procedures. (1) By July 15, 2006, the department shall work with dentists and other interested parties to develop a pollution prevention plan for mercury used in or resulting from dental procedures that provides for reasonable measures to reduce mercury pollution from dental procedures and related sources. The plan must include options and strategies for implementing source reduction.

(2) (a) No later than December 31, 2007, a dental office that, in the course of treating its patients, adds, removes, or modifies dental amalgam shall install an amalgam separator system in the wastewater line in accordance with this subsection (2).

(b) Wastewater containing dental amalgam particles must pass through the amalgam separator system prior to discharge to either a publicly owned treatment works or a private septic or waste disposal system, and waste containing dental amalgam must be collected from the amalgam separator system and disposed of in a manner allowed by the rules of the department.

(c) Once the amalgam separator system has been installed, the dental office shall notify the department in writing of the following:

- (i) the type of system installed;
- (ii) that the system is certified as meeting the standards required by subsection (6);
- (iii) the date on which the system became operational; and
- (iv) the method of disposing of the material after removal from the separator system.

(3) If the amalgam separator system is connected to a publicly owned treatment works, the dental office shall provide the same notification to the director or chief engineer of that facility.

(4) Installation, operation, and maintenance of an approved amalgam separator system by a dentist in accordance with manufacturer's recommendations fulfill the requirements of this section. A dentist shall demonstrate proper operation and maintenance by maintaining, for a period of 3 years, all shipping records for replacement filters sent to licensed recyclers and written documentation that demonstrates that the system has been properly inspected and maintained.

(5) The department, after receiving proper notification of the installation of the amalgam separator system

and after being satisfied that it meets the requirements of this section, shall provide the dentist or the dental office with written confirmation of receipt of evidence of compliance with this section in a format suitable for display by the dentist or dental office.

(6) An amalgam separator system must remove dental amalgam from the waste stream prior to its discharge into either the local public wastewater system or a private septic system located at the dental facility and must meet a minimum removal efficiency of 95% if installed prior to January 1, 2007, or 98% if installed on or after January 1, 2007, as determined through testing in accordance with standards contained in ISO 11143, Dental Equipment -- Amalgam Separators, published by the international organization for standardization.

(7) "Dental office", as used in this section, means a dental clinic or dental office practice but does not include the practice of oral and maxillofacial surgery.

NEW SECTION. Section 10. Education program. No later than January 1, 2006, the department shall implement an education program relating to mercury-added products. The program must provide information to the public about labeled mercury-added products, the requirements of the law regarding the source separation of waste mercury-added products, and collection programs that are available to the public.

NEW SECTION. Section 11. Technical assistance to municipalities. The department shall assist interested municipalities and regional associations in developing collection programs for mercury-added products.

NEW SECTION. Section 12. Interstate clearinghouse. The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of [sections 1 through 12], help coordinate reviews of applications for alternative labeling under [section 5], and assist in education and outreach activities and other activities related to the administration of [sections 1 through 12]. Notwithstanding other law to the contrary, the department may provide the interstate clearinghouse with product information submitted to the department pursuant to [section 3], and the department and the interstate clearinghouse may compile or publish analyses or summaries of information, but the analyses or summaries may not identify a manufacturer or reveal confidential information.

NEW SECTION. Section 13. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 12].

NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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