

SENATE BILL NO. 423
INTRODUCED BY C. KAUFMANN

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

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

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

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

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

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

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

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~43~~ 9] may be cited as the "Montana Mercury Safety and Protection Act".

NEW SECTION. **Section 2. Legislative purpose and policy.** It is the purpose of [sections 1 through ~~43~~ 9] and it is the policy of this state to:

- (1) restrict the sale and distribution of certain mercury-added products with safer alternatives wherever feasible;
- (2) phase out the disposal of certain mercury-containing waste products as solid waste; and
- (3) promote the proper collection, transportation, recycling, and disposal of certain mercury-containing products with the emphasis of using existing processes to achieve these ends.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~43~~ 9], the following definitions apply:

- (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- (2) (a) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country.

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

(c) If the product or component is produced in a foreign country, the manufacturer is the importer or domestic distributor. However, if a company from whom an importer purchases the product or component has a United States presence or assets, then that company is considered to be the manufacturer.
- (3) "Mercury-added product" means any of the following items if the item contains mercury intentionally

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;

(e) an electric lamp;

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

(g) a vehicle component; or

(h) a novelty product.

(4) "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.

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

NEW SECTION. Section 4. Presale notification required. (1) Except as provided in subsection (5), beginning January 1, 2008, 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 notice must include the following information on a form provided by the department:

(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) 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.

(3) 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.

(4) (a) Except as provided in subsections (4)(b) and (5), an importer of a 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.

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

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

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

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

NEW SECTION. Section 5. Restrictions on sale and distribution of mercury in various products -- exemptions. (1) Beginning January 1, 2008, 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, 2008, 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, 2008, 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) (a) Except as provided in subsection (4)(b), beginning January 1, 2008, 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.

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

(i) 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

(ii) 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.

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

- (a) a barometer;
- (b) an esophageal dilator, bougie tube, or gastrointestinal tube;
- (c) a flow meter;
- (d) a hydrometer;
- (e) a hygrometer or psychrometer;
- (f) a manometer, other than a manometer prohibited from sale under subsection (2);
- (g) a pyrometer;
- (h) a sphygmomanometer;
- (i) a thermometer, other than a thermometer prohibited from sale under subsection (1).

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

(2) 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 MUST BE DISPOSED OF IN ACCORDANCE WITH APPLICABLE STATE LAWS.~~

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

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

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

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

- (a) post signs at the facility providing notice of the prohibition of the disposal of mercury-added products;
- (b) provide written notification to or enter into contractual agreements with the facility's customers regarding the prohibition of the disposal of mercury-added products; and
- (c) implement any procedures approved by the department to periodically monitor incoming wastes to detect the presence of mercury-added products and to provide for separation of observed mercury-added products.

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

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

~~NEW SECTION. **Section 9. Education program.** 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 and information on recycling and appropriate disposal of mercury-added products that are available to the public.~~

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

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

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

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

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

- ~~(a) the department;~~
- ~~(b) the department of public health and human services;~~
- ~~(c) the department of fish, wildlife, and parks;~~
- ~~(d) a business that manages mercury waste; and~~
- ~~(e) the general public who has an interest in public health and toxins.~~

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

~~NEW SECTION. **Section 13. Enforcement -- violations -- criminal and civil penalties -- judicial review -- inspections.** (1) The department shall monitor compliance with and enforce the provisions of [sections~~

~~1 through 13].—~~

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

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

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

NEW SECTION. **Section 11. 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.

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

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