

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 1309

4
5 By: Representative Lendall
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7

For An Act To Be Entitled

8
9 AN ACT TO REDUCE THE INCIDENCE OF MERCURY
10 POISONING IN ARKANSAS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT TO REDUCE THE INCIDENCE OF
14 MERCURY POISONING.
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 15, Chapter 60, is amended to add an
20 additional subchapter to read as follows:

21 15-60-201. Title.

22 This act shall be known and may be cited as the "Mercury Poisoning
23 Reduction Act".
24

25 15-60-202. Findings and purpose.

26 (a) The General Assembly finds that:

27 (1) Mercury is a persistent and toxic pollutant that accumulates
28 in the environment;

29 (2) Accidental mercury spills, breakages, and releases have
30 occurred throughout the United States;

31 (3) Healthcare facilities, educational and research
32 institutions, and businesses have experienced significant employee exposures
33 and have incurred significant costs due to accidental mercury releases;

34 (4) Consumption of mercury-contaminated fish poses a significant
35 public health threat and, because of this threat, numerous states have issued
36 fish advisories;



1 (5) Studies have documented that exposure to elevated levels of
 2 mercury in the environment over time has resulted in serious harm to humans
 3 and fish-consuming wildlife;

4 (6) Several state programs have demonstrated that removal of
 5 mercury-containing products from the waste stream prior to combustion is an
 6 effective way to reduce mercury emissions from solid waste management
 7 facilities; and

8 (7) Manufacturers of certain mercury-added products, such as
 9 thermostats, have established successful "take back" programs for properly
 10 managing the products at the end of their useful life;

11 (b) This act is intended to protect the health and welfare of citizens
 12 by reducing mercury emissions through restrictions on the manufacture, sale,
 13 and distribution of mercury containing goods, and the establishment of
 14 effective state and local waste reduction, recycling, and management
 15 programs.

16
 17 15-60-203. Definitions.

18 As used in this section:

19 (1) "Department" means the Arkansas Department of Environmental
 20 Quality;

21 (2)(A) "Manufacturer" means any person, firm, corporation, or
 22 governmental entity that produces a product containing mercury, or an
 23 importer or domestic distributor of a product containing mercury, produced in
 24 a foreign country.

25 (B)(i) In the case of a multi-component product containing
 26 mercury the manufacturer is the last manufacturer to produce or assemble the
 27 product.

28 (ii) If the multi-component product is produced in a
 29 foreign country, the manufacturer is the importer or domestic distributor;

30 (3)(A) "Mercury-added novelty" means a mercury-added product intended
 31 mainly for personal or household enjoyment or adornment;

32 (B) Mercury-added novelties include, but are not limited to,
 33 items intended for use as practical jokes, figurines, adornments, toys,
 34 games, cards, ornaments, yard statues and figures, candles, jewelry, holiday
 35 decorations, and items of apparel, including footwear;

36 (4) "Mercury-added product" means a product that contains mercury or a

1 mercury compound intentionally added to the product;

2 (5) "Mercury fever thermometer" means a mercury-added product that is
3 used for measuring body temperature; and

4 (6) "Product containing mercury" means any product that contains
5 mercury or a mercury compound from any source or cause, whether intended or
6 unintended, including, but not limited to, a mercury-added product and a
7 product manufactured using mercury.

8
9 15-60-204. Notification.

10 (a)(1) Six (6) months after the effective date of this subchapter, no
11 mercury-added product shall be offered for final sale, use, or distribution
12 for promotional purposes in this state without prior notification in writing
13 by the manufacturer of the product to the Arkansas Department of
14 Environmental Quality in accordance with the requirements of this subchapter.

15 (2) The notification shall include at least the following:

16 (A) A brief description of the product to be offered for
17 sale, use, or distribution;

18 (B) The amount of, and purpose for, mercury in each unit
19 of the product, reported as an exact number or average per product, with an
20 upper and lower limit unless waived by the department due to practical
21 considerations; and

22 (C) The name and address of the manufacturer, and the
23 name, address and telephone number of a contact person for the manufacturer.

24 (b)(1) With the approval of the department, the manufacturer may
25 supply the information required in subdivision (a)(2)(A) for a product
26 category rather than an individual product.

27 (2) The manufacturer shall update and revise the information in
28 the notification whenever there is significant change in the information, or
29 when requested by the department.

30 (3) The department may define and adopt specific requirements in
31 accordance with state law for the content and submission of the required
32 notification.

33 (c)(1) Any information furnished pursuant to the requirements of this
34 section, which, as certified by the manufacturer, relates to production or
35 sales figures, or to processes or production unique to the manufacturer, or
36 which would tend to affect adversely the competitive position of the

1 manufacturer, shall be only for the confidential use of the department and
 2 the interstate clearinghouse in the administration of this section, unless
 3 the manufacturer shall expressly agree to their publication or availability
 4 to the public.

5 (2) The information may be used by the department and the
 6 interstate clearinghouse in compiling or publishing analyses or summaries
 7 relating to the amount and effect of mercury in products and the environment,
 8 but the analyses or summaries shall not identify any manufacturer or reveal
 9 any information otherwise confidential.

10 (d) This section does not apply to prescription drugs or any substance
 11 that may be lawfully sold over the counter without a prescription under the
 12 Federal Food, Drug and Cosmetic Act.

13
 14 15-60-205. Restrictions on mercury distribution.

15 (a)(1) No later than one (1) year after the effective date of this
 16 subchapter, no mercury-added novelty shall be offered for final sale or use,
 17 or distributed for promotional purposes in this state if the seller knows or
 18 has reason to know that the product contains mercury.

19 (2) Manufacturers that produce and sell mercury-added novelties
 20 shall notify retailers about the provisions of this subchapter and about
 21 methods for disposing of the remaining inventory properly.

22 (b)(1) Six (6) months after the effective date of this subchapter, a
 23 person may not sell or supply mercury fever thermometers to consumers or
 24 patients, except by prescription.

25 (2) The manufacturers of mercury fever thermometers shall supply
 26 clear instructions on the careful handling of thermometers to avoid breakage
 27 and proper cleanup, should a breakage occur.

28 (c) As of the effective date of this subchapter, no school in this
 29 state shall use or purchase for use in a primary or secondary classroom,
 30 elemental mercury, mercury compounds, or mercury-added instructional
 31 equipment and materials, except measuring devices and thermometers that are
 32 used in school laboratories, and for which no adequate substitute exists.

33 (d)(1) A manufacturer or wholesaler may not sell and a retailer may
 34 not knowingly sell any of the items listed in subsection (a) of this section,
 35 unless the item is labeled to clearly inform the purchaser or consumer that
 36 mercury is present in the item and that the item may not be disposed of or

1 placed in a waste stream destined for disposal until the mercury is removed
 2 and reused, recycled or otherwise managed to ensure that it does not become
 3 part of solid waste or wastewater.

4 (2) The following items must be labeled if they contain mercury:

- 5 (A) A thermostat or thermometer;
- 6 (B) A switch, individually or as part of another product;
- 7 (C) A medical or scientific instrument;
- 8 (D) An electric relay or other electrical device; and
- 9 (E) A lamp or bulb.

10 (e) The Arkansas Department of Environmental Quality shall adopt rules
 11 to establish standards for affixing labels, in compliance with federal law,
 12 either to the product or to its package.

13 (f) As of the effective date of this subchapter, no person shall sell
 14 or provide elemental mercury in this state without providing a material
 15 safety data sheet, as defined in § 8-7-1003, and requiring the purchaser or
 16 recipient to sign a statement that they:

17 (1) Use the mercury only for medical, dental amalgam dispose-
 18 caps, research, or manufacturing purposes;

19 (2) Understand that mercury is toxic, and will store and use it
 20 appropriately so that no person is exposed to the mercury; and

21 (3) Will not place or allow anyone under their control to place
 22 the mercury or cause the mercury to be placed in solid waste for disposal or
 23 in a wastewater disposal system.

24 (g)(1) The department shall develop, in consult with the Arkansas
 25 State Board of Dental Examiners, a plan for reducing mercury pollution from
 26 dental procedures.

27 (2) The department shall adopt rules by July 1, 2004, to
 28 implement mandatory source reduction of mercury from dental procedures.

29
 30 15-60-206. Proper disposal of mercury.

31 (a) After January 1, 2004, a person, retailer or manufacturer may not
 32 knowingly dispose of a labeled mercury-added consumer product in a landfill,
 33 incineration facility or other solid waste disposal facility.

34 (b)(1) Except as otherwise provided in this subchapter, a person,
 35 retailer or manufacturer who disposes of solid waste within the state shall
 36 separate labeled mercury-added consumer products from that solid waste.

1 (2) A contractor who replaces or removes labeled mercury-added
 2 consumer products shall ensure the proper separation and disposal of any
 3 discarded mercury-added consumer product.

4 (3) A person, retailer or manufacturer shall dispose of
 5 separated mercury-added consumer products only as part of a collection
 6 program established under this section.

7 (c)(1) By October 1, 2004, every municipal and regional association
 8 solid waste disposal facility shall develop a program for the collection of
 9 mercury-added consumer products.

10 (2) The program must ensure that mercury is removed from a
 11 product and reused, recycled or otherwise managed.

12 (3) The program must include an informational effort to advise
 13 the public about labeled mercury-added products.

14 (d)(1) A solid waste disposal facility shall implement a collection
 15 program developed pursuant to this section by July 1, 2004.

16 (2) A manufacturer of a mercury-added consumer product listed in
 17 § 15-60-105 shall establish and maintain a manufacturer-based reverse
 18 distribution system for the proper collection, transportation and management
 19 of the product from purchasers in this state, and clearly inform each
 20 purchaser of the product of the available systems for proper collection and
 21 disposal of the product.

22 (3) A manufacturer of a mercury-added consumer program may not
 23 charge a fee for collecting and managing its products.

24
 25 15-60-207. Public education and outreach.

26 (a)(1) The Arkansas Department of Environmental Quality shall
 27 implement a public education, outreach, and assistance program for
 28 households, hazardous waste generators, local and regional solid waste
 29 management agencies, dismantlers, institutions, and schools on the hazards of
 30 mercury, the requirements and obligations of individuals, manufacturers, and
 31 agencies under this subdivision, and voluntary efforts that individuals,
 32 institutions, and businesses can undertake to help further reduce mercury in
 33 the environment.

34 (2) The department shall cooperate with manufacturers of
 35 mercury-added products and other affected businesses in the development and
 36 implementation of public education and technical assistance programs.

1 (b)(1) The department shall assist municipalities and regional
 2 associations in developing collection programs, and in disseminating
 3 information for the public about labeled mercury-added products, the
 4 requirements of the law regarding the source separation of waste mercury-
 5 added products and the collection programs that are available to the public,
 6 including any manufacturer-based reverse distribution system.

7 (2) A component of this information program shall be directed
 8 specifically at large public and private institutions that use and discard
 9 substantial numbers of waste mercury-added products and at any other large
 10 users of those products.

11
 12 15-60-208. Interstate cooperation.

13 (a) The Arkansas Department of Environmental Quality shall cooperate
 14 with neighboring states and provinces and regional organizations in the
 15 United States and Canada on developing outreach, assistance, and education
 16 programs, where appropriate.

17 (b)(1) The department may participate in the establishment and
 18 implementation of a regional, multi-state clearinghouse to assist in carrying
 19 out the requirements of this subchapter and to help coordinate reviews of the
 20 manufacturer notifications regarding mercury-containing products,
 21 applications for phase-out exemptions, reviews of the collection plans, the
 22 disclosures of mercury content, applications for alternative labeling, and
 23 education and outreach.

24 (2) The clearinghouse may also maintain a list of all products
 25 containing mercury, including mercury-added products, a file on all
 26 exemptions granted by the states, and a file of all the manufacturer reports
 27 on the effectiveness of their collection systems.

28
 29 15-60-209. State review.

30 (a) The Arkansas Department of Environmental Quality shall, in
 31 consultation with cooperating states and provinces, report annually by July 1
 32 to the Legislative Council:

33 (1) The extent of mercury contamination in the state's
 34 environment and the extent of any health risk from mercury contamination in
 35 the state;

36 (2) A survey of sources and quantities of mercury discharged to

1 or deposited into the state’s environment, including both in-state and out-
2 of-state sources and estimates of relative contribution;

3 (3) Methods for minimizing risk of further contamination and
4 risk of mercury-related health problems and the potential costs of reducing
5 such risks;

6 (4) The effectiveness of established programs for in-state
7 collection, transportation and recycling of mercury from waste mercury-added
8 products and recommendations for making the programs more effective; and

9 (5) Further coordination developed with other states and
10 Canadian provinces to effectively address mercury issues.

11
12 15-60-210. Enforcement.

13 A person, manufacturer, or retailer who violates any provision of this
14 act is guilty of a misdemeanor and on conviction is subject to a fine not
15 exceeding one hundred dollar (\$100) for each product in violation of this
16 subchapter.

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