



Megan Byrnett

Bill Analysis
Legislative Service Commission

S.B. 70

126th General Assembly
(As Introduced)

Sens. Hagan, Fedor

BILL SUMMARY

- Prohibits the sale and distribution of mercury-added products, with certain exemptions.
- Requires labeling of all mercury-added products and establishes other requirements concerning mercury and mercury-added products.

CONTENT AND OPERATION

Prohibition against sale or distribution of mercury-added products

(R.C. 3745.50 to 3745.52)

The bill provides that starting June 1, 2005, no person may offer any mercury-added product for sale or distribute any such product for promotional purposes unless the manufacturer¹ provides prior notification in writing to the Director of Environmental Protection. As of June 1, 2007, no person may offer any mercury-added product for sale or distribute any such product for promotional purposes unless the manufacturer has applied for and received an exemption from the prohibition for that product from the Director.

The bill defines "mercury-added product" as a product, commodity, chemical, or component of a product that contains mercury that is intentionally added for any reason.

¹ *The bill defines "manufacturer" as any person that produces a mercury-added product or serve as an importer or domestic distributor of a mercury-added product that is produced outside the United States. In the case of a multicomponent product, "manufacturer" means the last manufacturer to produce or assemble the product, unless the multicomponent mercury-added product is produced outside the United States, in which case "manufacturer" means the importer or domestic distributor.*

2005 prohibition

(R.C. 3745.51)

Beginning June 1, 2005, the bill prohibits any person from offering for sale or distributing for promotional purposes any mercury-added product unless the manufacturer provides prior notification to the Director. The notification must be in writing in the manner and form prescribed by the Director and include all of the following information:

(1) A brief description of the product or category of products, if the Director approves the use of a category of products rather than an individual product;

(2) An identification of each product by its mercury content in one of the following ranges:

- (a) Less than five milligrams;
- (b) Greater than five milligrams to ten milligrams;
- (c) Greater than ten milligrams to fifty milligrams;
- (d) Greater than fifty milligrams to one hundred milligrams;
- (e) Greater than one hundred milligrams to one thousand milligrams;
- (f) Greater than one thousand milligrams.

(3) The actual total amount of mercury in each product;

(4) The name and address of the manufacturer and the position, address, and telephone number of a contact person for the manufacturer.

The bill requires any manufacturer required to provide notification to the Director to revise the information in the notification whenever there is a significant change in the information or when requested by the Director.

Any information submitted to the Director that consists of trade secrets (R.C. 1333.61, not in the bill) or commercial or financial information is not a public record under the Public Records Law (R.C. 149.43, not in the bill).

2007 prohibition

(R.C. 3745.52)

Beginning June 1, 2007, the bill prohibits any person from offering for sale or distributing for promotional purposes any mercury-added product unless the manufacturer has applied for and received an exemption from the prohibition from the Director. The manufacturer seeking exemption must apply for the exemption not later than 180 days prior to June 1, 2007.

Under the bill, within 60 days after receiving an application for exemption, the Director must conduct a public hearing to determine whether to grant the exemption. The Director is required to notify the applicant of the time and place of the hearing, publish at least one notice of the hearing in a newspaper of general circulation in the county where the public hearing is to be held, and provide notice of the public hearing to each person on the mailing list that is maintained by the Director (R.C. 3745.07, not in the bill). Notification must be given not less than 20 days prior to the public hearing.

Within ten days after conducting the public hearing, the Director must make a written determination either approving or denying the exemption and must enter the determination and the basis for it into the record of the hearing. The bill states that all of the following must be met in order for the Director to approve the exemption:

- (1) The mercury-added product that is the subject of the hearing serves an essential purpose in the marketplace.
- (2) There are no comparable products without mercury that could serve the same purpose at a reasonable cost.
- (3) The manufacturer agrees to institute a program to take back the mercury-added product and properly dispose of it after the product has served its useful life. Such a program must be approved by the Director and is required only when the Director determines the program to be feasible.

If the exemption is approved, it is valid for two years and may be renewed. The same administrative procedures apply for an exemption renewal as for an exemption.

Under the bill, the Director is prohibited from exempting any mercury-added novelty from the prohibition. A "mercury-added novelty" is defined in the bill as a product in which mercury is present and that is intended mainly for personal or household enjoyment or adornment, including products intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard

statutes and figures, candles, jewelry, holiday decorations, footwear or other items of apparel, or similar products. "Mercury-added novelty" does not include a product that includes solely a removable button cell battery containing mercury.

Disposal of mercury

(R.C. 3745.53)

The bill prohibits any individual from disposing of mercury or a mercury-added product in any of the following locations:²

(1) A solid waste or infectious waste facility that is regulated under the solid and hazardous waste law (R.C. Chapter 3734.);

(2) A disposal system as defined in and regulated under the water pollution law (R.C. Chapter 6111.);

(3) A construction and demolition debris facility that is regulated under the construction and demolition debris law (R.C. Chapter 3714.);

(4) A hazardous waste facility that is regulated under the solid and hazardous waste law unless the Director has designated the facility as appropriate for mercury disposal and management.

The bill requires the Director to maintain a list of hazardous waste facilities that are approved for the disposal and management of mercury and mercury-added products. This list must be made available to the public and posted on the Environmental Protection Agency's website.

Department of Environmental Protection rulemaking

(R.C. 3745.52 and 3745.54)

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing the form of applications for exemptions and exemption renewals, application procedures, any necessary procedures governing public hearings, and any other requirements or procedures that the Director determines are necessary regarding the prohibitions on the sale and distribution for promotional purposes of mercury-added products.

² *The bill includes in the prohibition the disposal of a thermostat, thermometer, electric switch, appliance, gauge, medical or scientific instrument, fluorescent or high intensity lamp or lighting fixture, electric relay, or other electrical device, from which the mercury has not been removed for reuse, recycling, or proper disposal.*

The bill also requires the Director, within 90 days after the effective date of the bill, to adopt rules that do all of the following:

(1) Establish requirements and procedures governing persons when repairing or replacing household items that are mercury-added products to ensure that any mercury that is present in the household items is handled safely and, if necessary, removed and disposed of properly;

(2) Require appliance recyclers to remove mercury switches and any other items containing mercury prior to the recycling process, and require the proper management and disposal of that mercury;

(3) Require that mercury-added products that are present in buildings and other structures be removed prior to demolition, and establish procedures for the safe management and disposal of the mercury-added products;

(4) Prohibit any person from offering for sale or for distribution for promotional purposes any mercury-added product unless both the product and either its packaging or care and use manual are labeled that mercury is present in the product and that the product must be properly disposed of or recycled in accordance with the laws regarding disposal of mercury or mercury-added products (see "*Disposal of mercury*" above). The rules pertaining to labeling must include all of the following:

(a) A provision specifying that all labeling requirements established in rules take effect not later than July 1, 2005;

(b) Requirements governing the size and content of labels;

(c) Procedures and conditions for issuing variances from the labeling requirements;

(d) Any other requirements concerning labeling that the Director determines are necessary.

Enforcement

(R.C. 3745.55)

The bill provides that on request of the EPA Director or the legislative authority of the appropriate state, county, or city, the Attorney General, the prosecuting attorney of the county, or the city director of law where a violation of the prohibitions on the sale or distribution of mercury-added products or improper disposal of mercury occurs may bring an action for injunction against any person who has violated, is violating, or is threatening to violate those provisions.

The court of common pleas in which the action is filed is required to grant preliminary and permanent injunctive relief on a showing that the person against whom the action is brought has violated, is violating, or is threatening to violate the provisions of the bill or rules adopted under them.

If the Director determines that any person has violated or is violating the provisions of the bill, the Director may request in writing that the Attorney General bring an action for civil penalties. The court may impose a civil penalty of not more than \$10,000 for each day of each violation. Money resulting from civil penalties imposed under the bill are to be deposited in the state treasury to the credit of the Hazardous Waste Clean-up Fund (R.C. 3734.28, not in the bill).

The bill provides that nothing contained in the bill abridges the rights of action or remedies in equity, under common law, or as provided by statute. Also, the bill states that it does not prevent the state or any municipal corporation or person from exercising a right to suppress nuisances or abate or prevent pollution.

Director of Agriculture--manometers

(R.C. 917.30)

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to establish a program encouraging the replacement of manometers that contain mercury with manometers that do not contain mercury.³ The Director must consult with the Director of Environmental Protection to establish procedures and requirements for recycling or proper disposal of the replaced manometers.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-17-05	pp. 183-184

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³ *A manometer is a vacuum gauge that measures pressure in a vacuum line. In particular, dairy manometers are used to measure pressure in a vacuum line transporting milk from the cows' udders to a bulk tank. Dairy manometers are available in both mercury-containing and mercury-free models. State of Ohio Environmental Protection Agency Fact Sheet, "Raising Awareness about Mercury: Mercury Manometers," No. 88, June 2001.*