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Bill Analysis
Legislative Service Commission

S.B. 323

126th General Assembly
(As Introduced)

**Sens. Spada, Stivers, Austria, Armbruster, Clancy, Jacobson, Niehaus,
Coughlin, Goodman, Hagan, Kearney**

BILL SUMMARY

- Prohibits a school district or educational service center, community school, or nonpublic school for which the State Board of Education prescribes standards and an employee of such a district, center, or school from purchasing mercury or a mercury-added measuring device for classroom use.
- Generally prohibits a manufacturer from offering a mercury-containing thermometer for sale or distribution in Ohio, but creates an exception for the purchase of such a thermometer pursuant to a prescription.
- Prohibits the sale or distribution of mercury-added novelties.
- Prohibits the sale or installation of mercury-containing thermostats in Ohio unless the mercury-containing thermostat is installed in the residence of a visually impaired person or the thermostat is used to sense and control temperatures as a part of a manufacturing process.
- Establishes penalties for violation of the bill.
- Requires the Environmental Protection Agency to administer laws pertaining to products containing mercury, and grants the Director of Environmental Protection the authority to field written complaints from aggrieved or adversely affected persons or from state or local officers regarding alleged violations of the bill.

CONTENT AND OPERATION

Introduction

The bill establishes new statutory requirements regarding certain mercury-containing devices and products. Specifically, the bill establishes provisions governing mercury and mercury-added measuring devices in schools, mercury-containing thermometers, mercury-added novelties, and mercury-containing thermostats. In addition, the bill establishes penalties for violations of its provisions. Finally, the bill requires the Environmental Protection Agency to implement, oversee, and enforce the new statutory requirements.

Prohibition against mercury and mercury-added measuring devices in schools

On and after the bill's effective date, no school district or educational service center, community school, or nonpublic school for which the State Board of Education prescribes standards and no employee of such a school district, educational service center, community school, or nonpublic school (school employee) is permitted to purchase mercury or a mercury-added measuring device for classroom use (sec. 3734.62). Under the bill, "mercury" is defined to mean elemental mercury and mercury compounds, and "mercury-added measuring device" is defined to mean a mercury-added product that is designed to measure an amount or quantity of humidity, pressure, temperature, or vacuum or the force of wind, including, but not limited to, anemometers, barometers, flow meters, hydrometers, hygrometers, manometers, sphygmomanometers, and thermometers (sec. 3734.61(B) and (C)). "Mercury-added product means a product, commodity, chemical, or component of a product that contains mercury that is intentionally added for any reason (sec. 3734.61(E)).

If a school district, educational service center, community school, or nonpublic school or a school employee purchases mercury or a mercury-added measuring device for classroom use on or after the bill's effective date in violation of the bill, but properly recycles or disposes of the mercury or mercury-added measuring device upon learning of or being informed of the violation and creates and implements a mercury reduction plan, the Director of Environmental Protection must consider the recycling or disposal of the mercury or mercury-added measuring device and the implementation of and compliance with the mercury reduction plan as mitigating circumstances for purposes of enforcement of the violation (sec. 3734.62).

Mercury-containing thermometers

Beginning six months after the bill's effective date, no manufacturer may offer a mercury-containing thermometer for sale or distribute a mercury-

containing thermometer for promotional purposes in Ohio unless the sale or distribution of a mercury-containing thermometer is required in order to comply with federal law, a person demonstrates to the Director that a mercury-containing thermometer is the only temperature measuring device that is feasible for a research, quality control, or manufacturing application, or the only component of the thermometer that contains mercury is a button cell battery. The bill specifies, however, that the prohibition does not apply to the sale of a mercury-containing thermometer to a person who purchases a mercury-containing thermometer pursuant to a valid prescription. (Sec. 3734.63(A).)

The bill also requires that beginning six months after the bill's effective date, a manufacturer of a mercury-containing thermometer that lawfully offers for sale or distributes such a thermometer in Ohio do both of the following:

(1) Provide notice in a conspicuous manner on the packaging of the thermometer that the thermometer contains mercury; and

(2) Provide clear instructions with the thermometer regarding careful handling of the thermometer to avoid breakage, proper cleanup of mercury if the thermometer breaks, and proper management and disposal of the thermometer (sec. 3734.63(B)).

The bill defines "manufacturer" to mean any person that produces a mercury-containing thermometer or serves as an importer or domestic distributor of a mercury-containing thermometer that is produced outside the United States. In the case of a multicomponent mercury-containing thermometer, "manufacturer" means the last manufacturer to produce or assemble the thermometer unless the multicomponent mercury-containing thermometer is produced outside the United States, in which case "manufacturer" means the importer or domestic distributor. (Sec. 3734.61(A).)

Mercury-added novelties

Beginning six months after the bill's effective date, the bill prohibits any person from offering a mercury-added novelty for sale or distributing such a novelty for promotional purposes in Ohio unless the only mercury in the mercury-added novelty is a removable button cell battery. However, beginning two years after the bill's effective date, the bill prohibits the offering for sale or distribution of any mercury-added novelty for promotional purposes in Ohio, including novelty products in which the only mercury is a removable button cell battery. (Sec. 3734.64.) The bill defines "mercury-added novelty" to mean a product in which mercury is present and that is intended mainly for personal or household enjoyment or adornment, including, but not limited to, products intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard

statues and figures, candles, jewelry, holiday decorations, footwear, other items of apparel, or similar products. "Mercury-added novelty" does not include a product that solely includes a fluorescent light bulb. (Sec. 3734.61(D).)

Mercury-containing thermostats

Beginning one year after the effective date of the bill, no person may offer a mercury-containing thermostat for sale in Ohio or install a mercury-containing thermostat in Ohio unless the mercury-containing thermostat is installed in the residence of a visually impaired person or the thermostat is used to sense and control temperatures as a part of a manufacturing process (sec. 3734.65.)

Penalties

Current law authorizes the Director of Environmental Protection to request the Attorney General to bring a civil action against any person violating the Solid, Infectious, and Hazardous Waste Law and establishes civil penalties for those violations. Because the bill's provisions that are discussed above are located in that Law, the statute authorizing such civil actions applies to the bill's prohibitions. The bill establishes specific civil penalties that may be imposed for the violation of those prohibitions. Under the bill, a court may impose a civil penalty of not more than \$100 for each violation of the bill's provisions regarding the use of mercury and mercury-added measuring devices in schools. For violation of the bill's provisions regarding mercury-containing thermometers, mercury-added novelties, and mercury-containing thermostats, the bill authorizes a court to impose a civil penalty of not more than \$5,000 for each day of each violation, but the total amount of a civil penalty imposed on a person for such a violation cannot exceed \$25,000. (Sec. 3734.13.)

In addition, under the Solid, Infectious, and Hazardous Waste Law, anyone who recklessly violates a provision of that Law, except specified statutes, is guilty of a felony and must be fined at least \$10,000, but not more than \$25,000, imprisoned for at least two, but not more than four years, or both. Upon a second or subsequent conviction, the offender is guilty of a felony and must be fined at least \$20,000, but not more than \$50,000, imprisoned for at least two, but not more than four years, or both. (Sec. 3734.99, not in the bill.) Because the bill's provisions are located in that Law, those criminal penalties apply to violators of the bill's prohibitions.

Authority of Environmental Protection Agency

Current law grants the Environmental Protection Agency, under the supervision of the Director, the authority to administer certain laws related to the protection of the environment. The bill adds that the Agency must administer laws

pertaining to products containing mercury. (Sec. 3745.01.) The bill also gives the Director the authority to field written complaints from aggrieved or adversely affected persons or from officers of the state or political subdivisions regarding alleged violations of the bill (sec. 3745.08).

HISTORY

ACTION	DATE
Introduced	05-09-06

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