# Senate Bill 529

Sponsored by Senator DINGFELDER (Presession filed.)

#### SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires producers of lighting that contains mercury to establish product stewardship programs. Requires producers to establish annual performance goals. Specifies reporting requirements for producers of lighting that contains mercury. Specifies mercury content standards for lighting that contains mercury. Specifies state procure-

Specifies mercury content standards for lighting that contains mercury. Specifies state procurement policy related to lighting that contains mercury. Makes legislative findings regarding lighting that contains mercury.

Imposes civil penalty for disposal of, or knowingly accepting for disposal, lighting that contains mercury. Imposes civil penalties for other violations of provisions related to lighting that contains mercury. Establishes fees. Establishes Product Stewardship Fund. Continuously appropriates moneys in

Establishes fees. Establishes Product Stewardship Fund. Continuously appropriates moneys in fund to Department of Environmental Quality to pay certain costs.

Declares emergency, effective on passage.

1	A BILL FOR AN ACT
2	Relating to product stewardship for lighting that contains mercury; creating new provisions;
3	amending ORS 459.247 and 459.995; appropriating money; and declaring an emergency.
4	Be It Enacted by the People of the State of Oregon:
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6	FINDINGS
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8	SECTION 1. The Legislative Assembly finds that it is in the best interest of this state for
9	producers of lighting that contains mercury that is sold in Oregon:
10	(1) To take responsibility for reducing the environmental and health impacts of this
11	product over its life cycle, from design to management after the end of this product's useful
12	life; and
13	(2) To finance, implement and manage statewide product stewardship programs that
14	serve urban and rural areas in Oregon and that provide free, convenient opportunities for
15	the collection, transportation, recovery and safe management of lighting that contains mer-
16	cury.
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18	DEFINITIONS
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20	SECTION 2. As used in sections 2 to 14 of this 2011 Act:
21	(1) "Brand" means a name, symbol, word or mark that identifies a product and attributes
22	the product to the owner of the brand as the producer.
23	(2) "Covered entity" means any Oregon household or any conditionally exempt hazardous
24	waste generator delivering whole, unbroken items of lighting that contains mercury to a
25	product stewardship program.

1 (3) "Lighting that contains mercury" means lamps, bulbs, tubes or other devices that 2 contain mercury and that provide functional illumination in homes and businesses and out-3 doors, and historical products and orphan products of the same type.

4 (4) "Person" means the United States, this state, a public or private corporation, a local 5 government unit, a public agency, an individual, a partnership, an association, a firm, a 6 trust, an estate or another legal entity.

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(5) "Producer" means a person:

8 (a) Who manufactures lighting that contains mercury and who sells, offers for sale or
9 distributes on or after January 1, 2001, that lighting in Oregon under the manufacturer's own
10 name or brand;

(b) Who is not the manufacturer of the lighting that contains mercury but is the owner
or licensee of a trademark or brand under which the lighting is sold or distributed in Oregon,
whether or not the trademark is registered; or

(c) Who imports the lighting that contains mercury into Oregon for sale or distribution.
(6) "Product stewardship plan" means a statewide plan that describes a program for the
collection, transportation, reuse, recycling and disposal of lighting that contains mercury and
for achieving any related performance goals and that is developed and provided for by a
producer or group of producers.

19 (7) "Product stewardship program" means a statewide program financed, implemented 20 and managed by a producer or group of producers that is based on an approved product 21 stewardship plan and that addresses the environmental or health impacts of lighting that 22 contains mercury over the entire life cycle of that product.

(8) "Retailer" means any person that offers lighting that contains mercury for sale at
retail through any means, including but not limited to remote offerings such as sales outlets,
catalogs or the Internet.

(9) "Sell" or "sale" means any transfer of title for consideration, including but not limited
to remote sales conducted through sales outlets, catalogs or the Internet or any similar
electronic means, but excluding lease arrangements.

(10) "Stewardship organization" means a corporation, nonprofit or other legal entity ap pointed by a producer or group of producers to act as an agent on behalf of the producer to
 administer a product stewardship program.

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## RULES

35 <u>SECTION 3.</u> The Environmental Quality Commission may adopt rules as necessary to 36 implement sections 2 to 14 of this 2011 Act.

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## MERCURY CONTENT STANDARDS

<u>SECTION 4.</u> All lighting that contains mercury that is sold in this state must meet the portions that relate to lighting that contains mercury of Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, on the restriction of certain hazardous substances in electrical and electronic equipment, as amended by the Commission of European Communities on February 13, 2003, in the Official Journal of the European Union, as in effect on the effective date of this 2011 Act.

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1	STATE PROCUREMENT POLICY
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3	SECTION 5. When making procurement decisions on lighting that contains mercury, the
4	Oregon Department of Administrative Services, after consultation with the Department of
5	Environmental Quality, shall request information on mercury content, energy use, lumen
6	output and lighting life from potential suppliers and shall, in accordance with the Public
7	Contracting Code, issue specifications and make procurement decisions that favor lighting
8	that contains mercury that meets the mercury content standards established by section 4
9	of this 2011 Act.
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11	PRODUCT STEWARDSHIP PROGRAMS FOR
12	LIGHTING THAT CONTAINS MERCURY
13 14	SECTION 6. (1) Producers shall establish product stewardship programs. Every producer
14	shall:
16	(a) Operate, either individually or collectively with other producers, a product
17	stewardship program; or
18	(b) Enter into an agreement with one or more stewardship organizations to operate, on
19	the producer's behalf, a product stewardship program.
20	(2) Product stewardship programs must be provided free of charge to covered entities
21	when lighting that contains mercury is sold or collected for reuse, recycling or disposal.
22	Product stewardship programs must accept any branded or unbranded lighting that contains
23	mercury. A program must meet or exceed the requirements for the collection of lighting that
24	contains mercury set forth in the product stewardship plan required by section 8 of this 2011
25	Act.
26	(3) Producers must pay all costs associated with product stewardship programs, including
27	costs of collection, transportation, reuse, recycling and disposal of lighting that contains
28	mercury, and their components. Producers shall provide adequate insurance and financial
29	assurances for the program.
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31	FEES
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33	SECTION 7. (1) The Department of Environmental Quality shall charge the following fees
34	to be paid for implementing sections 2 to 14 of this 2011 Act:
35	(a) \$15,000 when the product stewardship plan specified in section 8 of this 2011 Act is
36	submitted to the department; and
37	(b) \$10,000 each year thereafter.
38	(2) The department may establish a schedule of fees in lieu of the fees specified in sub-
39	section (1) of this section that equals up to 0.5 percent of the costs related to implementing
40	all product stewardship programs.
41	(3) All fees received by the department under this section shall be paid into the Product Stewardship Fund established under section 12 of this 2011 Act
42 43	Stewardship Fund established under section 13 of this 2011 Act.
43 44	PRODUCT STEWARDSHIP PLANS
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<u>SECTION 8.</u> Each producer or stewardship organization shall submit a product stewardship plan to the Department of Environmental Quality that addresses the following:

3 (1) Information about participating producers, including but not limited to relevant con 4 tact information and a description of any stewardship organizations.

5 (2) Financial information, including but not limited to the financing of the product 6 stewardship program and adequate insurance and financial assurances.

(3) Public and stakeholder consultation, including but not limited to the opportunity for
the public and other stakeholders to comment on the product stewardship plan prior to
submission. The plan must also address the involvement of the public and stakeholders
during the implementation and operation of the product stewardship program.

(4) Compliance with handling and recycling requirements specified in rules adopted by the
 Environmental Quality Commission related to large quantity universal waste handlers.

(5) Provisions that mercury recovered from lighting that contains mercury is placed in
 a properly permitted mercury repository when such a facility is available in this state.

(6) Information on how the product stewardship program will provide convenient service
in every county in this state and at least one collection site for any city with a population
of at least 10,000, and one additional collection site for each increase of 25,000 in population.
A collection site for a county may be the same as a collection site for a city in the county.
Collection sites shall be staffed and open to the public at a frequency to meet the needs of
the area being served. A product stewardship program may provide collection service jointly
with another product stewardship program.

(7) How the product stewardship program will inform covered entities of available col lection options.

(8) Information on how the product stewardship program will provide information to
 retailers for distribution to consumers regarding how consumers may make informed decisions regarding lighting that contains mercury.

(9) How the product stewardship program will achieve the performance goals described
in section 10 of this 2011 Act.

29 <u>SECTION 9.</u> (1) All product stewardship plans must be submitted to the Department of 30 Environmental Quality no later than 120 days prior to the sale or offer for sale of lighting 31 that contains mercury in Oregon.

(2) The department shall approve or reject the product stewardship plan within 60 days
 of receiving the plan unless the department requests additional information regarding the
 plan.

(3) If a product stewardship plan is rejected, the producer must resubmit a revised plan
 within 60 days of the date of the letter of rejection.

(4) Product stewardship plans must be updated and submitted to the department for review at least once every two years from the date on which the plan is first approved or more
frequently as needed to ensure compliance with sections 2 to 14 of this 2011 Act.

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#### PERFORMANCE GOALS

43 <u>SECTION 10.</u> (1)(a) Each producer or stewardship organization shall establish annual
 44 performance goals for discarded products collected in a product stewardship program.

45 (b) At a minimum, performance goals must be established for:

(A) Measuring progress regarding consumer awareness of the product stewardship pro-1 2 gram; and 3 (B) The collection of lighting that contains mercury. (c) Annual performance goals established by a producer or stewardship organization for 4 the first two years of the operation of the product stewardship program are not enforceable. 5 (2) Beginning in the third year, the Department of Environmental Quality shall establish 6 enforceable annual performance goals for each product stewardship program. 7 8 9 PRODUCERS AND RETAILERS 10 SECTION 11. (1) A producer or a retailer may not sell or offer for sale lighting that 11 12contains mercury to any person in this state unless the producer is participating in an ap-13 proved product stewardship program and the lighting that contains mercury meets the mercury content standards established by section 4 of this 2011 Act. A retailer is in compli-14 15 ance with this subsection if, on the date the lighting that contains mercury was ordered from the producer or its agent, the website maintained by the Department of Environmental 16 Quality lists the producer, along with the producer's product brand, as participating in an 17 18 approved product stewardship program. 19 (2) At the time of the sale to a consumer, a producer or a retailer selling or offering for sale lighting that contains mercury must provide the consumer with information on available 20end-of-product life management options offered through the product stewardship program 21 22and how consumers can make purchasing decisions that favor the purchase of lighting that 23contains mercury that meets the mercury content standards established by section 4 of this 2011 Act. 94 25REPORTING 2627SECTION 12. Within 15 months of establishing a product stewardship program, and every 2812 months thereafter, producers or stewardship organizations shall submit a report to the 2930 Director of the Department of Environmental Quality that contains: 31 (1) A description of the methods used to collect, transport, recycle and process lighting that contains mercury, including how the product stewardship program complied with the 32requirements of section 8 (4) of this 2011 Act; 33 34 (2) The number and type of lighting that contains mercury collected by the product 35stewardship program in this state; (3) The amount of mercury collected from the lighting; 36 37 (4) The results of an independent audit of the product stewardship program; 38 (5) A description of product stewardship program costs; (6) Samples of educational materials provided to consumers of lighting that contains 39 mercury, and an evaluation of the methods used to disseminate those materials and an as-40 sessment of the effectiveness of education and outreach efforts; and 41 (7) A description of consultations with the public and stakeholders regarding the imple-42 mentation and operation of the product stewardship program. 43 44 **PRODUCT STEWARDSHIP FUND** 45

SB 529

SECTION 13. (1) The Product Stewardship Fund is established separate and distinct from
the General Fund. Interest earned by the Product Stewardship Fund shall be credited to the
fund. Moneys in the fund are continuously appropriated to the Department of Environmental
Quality and may be used only to pay the costs of implementing sections 2 to 14 of this 2011
Act.
(2) The Product Stewardship Fund consists of fees received by the department pursuant
to section 7 of this 2011 Act.
ORDERS AND ACTIONS
SECTION 14. (1) In accordance with the applicable provisions of ORS chapter 183 related to contested case proceedings, the Department of Environmental Quality may issue an order requiring compliance with the provisions of sections 2 to 14 of this 2011 Act. (2) The department may bring an action against any producer or stewardship organiza- tion in violation of the provisions of sections 2 to 14 of this 2011 Act.
DISPOSAL PROHIBITION
SECTION 15. ORS 459.247 is amended to read:
459.247. (1) No person shall dispose of and no disposal site operator shall knowingly accept for
disposal the following types of solid waste at a solid waste disposal site:
(a) Discarded or abandoned vehicles;
(b) Discarded large home or industrial appliances;
(c) Used oil;

25(d) Tires;

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- (e) Lead-acid batteries; [or] 26
- 27(f) Covered electronic devices[.]; or
- (g) Lighting that contains mercury. 28
- (2) As used in this section: 29

30 (a) "Covered electronic device" has the meaning given that term in ORS 459A.305; [and]

31 (b) "Lighting that contains mercury" has the meaning given that term in section 2 of this 2011 Act; and 32

[(b)] (c) "Used oil" has the meaning given that term in ORS 459A.555. 33

34 (3) Nothing in this section shall prohibit a disposal site operator from accepting and storing, for purposes of recycling or recovering, any of the types of solid waste listed in subsection (1) of this 3536 section.

37 (4) The Environmental Quality Commission may postpone the prohibition under subsection (1)(f) 38 or (g) of this section in any area of this state where the commission determines there is an inadequate system for the collection, transportation and recycling of covered electronic devices or 39 40 lighting that contains mercury.

41 (5)(a) Each disposal site operator shall establish and implement, in accordance with any permit 42requirements established by the Department of Environmental Quality, a program reasonably de-43 signed to prevent acceptance of covered electronic devices or lighting that contains mercury for disposal. If an operator operates the disposal site in conformity with the program, the operator is 44 presumed to have complied with the provisions of this section that prohibit knowingly accepting 45

covered electronic devices or lighting that contains mercury for disposal. 1

2 (b) This section does not prevent the disposal site operator from accepting and storing, for purposes of recycling, reusing or refurbishing, covered electronic devices or lighting that contains 3 4 mercury.

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#### PENALTIES

SECTION 16. ORS 459.995, as amended by section 2, chapter 267, Oregon Laws 2009, is 9 amended to read:

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty 10 provided by law: 11

12(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080 or sections 2 to 14 13 of this 2011 Act, or any rule or order of the Environmental Quality Commission pertaining to the 14 15 disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any 16 rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid 17 18 mercury, shall incur a civil penalty not to exceed \$25,000 a day for each day of the violation.

19 (b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty 20 not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a 2122separate violation.

23(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall 24 incur a civil penalty not to exceed \$500 for each violation. 25

(d) Any person who violates the provisions of ORS 459.247 (1)(f) or (g) shall incur a civil penalty 2627not to exceed \$500 for each violation. Each covered electronic device or lighting that contains mercury that is disposed of improperly shall be a separate violation. 28

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 29or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000 30 31 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject 32to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the 33 34 manner provided by ORS 468.135.

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#### **MISCELLANEOUS**

38 SECTION 17. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any 39 legislative intent in the enactment of this 2011 Act. 40

SECTION 18. (1) Section 4 of this 2011 Act applies to lighting that contains mercury that 41 is sold in this state on and after July 1, 2012. 42

(2) Section 5 of this 2011 Act applies to procurement decisions regarding lighting that 43 contains mercury that are made on and after July 1, 2012. 44

(3) The first product stewardship plans required under the provisions of section 9 of this 45

1 2011 Act must be submitted to the Department of Environmental Quality on or before Feb-

2 ruary 1, 2012.

3 (4) The amendments to ORS 459.247 and 459.995 by sections 15 and 16 of this 2011 Act
4 apply to violations occurring on or after on July 1, 2012.

5 <u>SECTION 19.</u> This 2011 Act being necessary for the immediate preservation of the public 6 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect 7 on its passage.

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