

Senate Bill 529

Sponsored by Senator DINGFELDER (Pre-session 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 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 fund to Department of Environmental Quality to pay certain costs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
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:**

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.**

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.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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.

7 (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;

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

14 (c) Who imports the lighting that contains mercury into Oregon for sale or distribution.

15 (6) “Product stewardship plan” means a statewide plan that describes a program for the
 16 collection, transportation, reuse, recycling and disposal of lighting that contains mercury and
 17 for achieving any related performance goals and that is developed and provided for by a
 18 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.

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

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

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

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 33 **RULES**

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

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 38 **MERCURY CONTENT STANDARDS**

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

STATE PROCUREMENT POLICY

SECTION 5. When making procurement decisions on lighting that contains mercury, the Oregon Department of Administrative Services, after consultation with the Department of Environmental Quality, shall request information on mercury content, energy use, lumen output and lighting life from potential suppliers and shall, in accordance with the Public Contracting Code, issue specifications and make procurement decisions that favor lighting that contains mercury that meets the mercury content standards established by section 4 of this 2011 Act.

**PRODUCT STEWARDSHIP PROGRAMS FOR
LIGHTING THAT CONTAINS MERCURY**

SECTION 6. (1) Producers shall establish product stewardship programs. Every producer shall:

(a) Operate, either individually or collectively with other producers, a product stewardship program; or

(b) Enter into an agreement with one or more stewardship organizations to operate, on the producer's behalf, a product stewardship program.

(2) Product stewardship programs must be provided free of charge to covered entities when lighting that contains mercury is sold or collected for reuse, recycling or disposal. Product stewardship programs must accept any branded or unbranded lighting that contains mercury. A program must meet or exceed the requirements for the collection of lighting that contains mercury set forth in the product stewardship plan required by section 8 of this 2011 Act.

(3) Producers must pay all costs associated with product stewardship programs, including costs of collection, transportation, reuse, recycling and disposal of lighting that contains mercury, and their components. Producers shall provide adequate insurance and financial assurances for the program.

FEES

SECTION 7. (1) The Department of Environmental Quality shall charge the following fees to be paid for implementing sections 2 to 14 of this 2011 Act:

(a) \$15,000 when the product stewardship plan specified in section 8 of this 2011 Act is submitted to the department; and

(b) \$10,000 each year thereafter.

(2) The department may establish a schedule of fees in lieu of the fees specified in subsection (1) of this section that equals up to 0.5 percent of the costs related to implementing all product stewardship programs.

(3) All fees received by the department under this section shall be paid into the Product Stewardship Fund established under section 13 of this 2011 Act.

PRODUCT STEWARDSHIP PLANS

1 (A) Measuring progress regarding consumer awareness of the product stewardship pro-
 2 gram; and

3 (B) The collection of lighting that contains mercury.

4 (c) Annual performance goals established by a producer or stewardship organization for
 5 the first two years of the operation of the product stewardship program are not enforceable.

6 (2) Beginning in the third year, the Department of Environmental Quality shall establish
 7 enforceable annual performance goals for each product stewardship program.

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 9 **PRODUCERS AND RETAILERS**

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 11 **SECTION 11.** (1) A producer or a retailer may not sell or offer for sale lighting that
 12 contains 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
 14 mercury content standards established by section 4 of this 2011 Act. A retailer is in compli-
 15 ance with this subsection if, on the date the lighting that contains mercury was ordered from
 16 the producer or its agent, the website maintained by the Department of Environmental
 17 Quality lists the producer, along with the producer's product brand, as participating in an
 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
 20 sale lighting that contains mercury must provide the consumer with information on available
 21 end-of-product life management options offered through the product stewardship program
 22 and how consumers can make purchasing decisions that favor the purchase of lighting that
 23 contains mercury that meets the mercury content standards established by section 4 of this
 24 2011 Act.

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 26 **REPORTING**

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 28 **SECTION 12.** Within 15 months of establishing a product stewardship program, and every
 29 12 months thereafter, producers or stewardship organizations shall submit a report to the
 30 Director of the Department of Environmental Quality that contains:

31 (1) A description of the methods used to collect, transport, recycle and process lighting
 32 that contains mercury, including how the product stewardship program complied with the
 33 requirements of section 8 (4) of this 2011 Act;

34 (2) The number and type of lighting that contains mercury collected by the product
 35 stewardship program in this state;

36 (3) The amount of mercury collected from the lighting;

37 (4) The results of an independent audit of the product stewardship program;

38 (5) A description of product stewardship program costs;

39 (6) Samples of educational materials provided to consumers of lighting that contains
 40 mercury, and an evaluation of the methods used to disseminate those materials and an as-
 41 sessment of the effectiveness of education and outreach efforts; and

42 (7) A description of consultations with the public and stakeholders regarding the imple-
 43 mentation and operation of the product stewardship program.

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 45 **PRODUCT STEWARDSHIP FUND**

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

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

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

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

12 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
 13 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080 **or sections 2 to 14**
 14 **of this 2011 Act**, or any rule or order of the Environmental Quality Commission pertaining to the
 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
 17 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid
 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
 21 violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a
 22 separate violation.

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

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

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

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

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

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

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

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

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 SECTION 19. 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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