
HOUSE BILL 2914

State of Washington 61st Legislature 2010 Regular Session

By Representatives Hunt, Campbell, Chase, Wood, and Rolfes

Read first time 01/18/10. Referred to Committee on Environmental Health.

1 AN ACT Relating to mercury reduction; amending RCW 70.95M.010 and
2 70.95M.050; adding a new chapter to Title 70 RCW; repealing RCW
3 70.95M.090; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Brand" means a name, symbol, word, or mark that identifies a
8 product, rather than its components, and attributes the product to the
9 owner of the brand as the producer.

10 (2) "Covered entity" means the end user of a product, such as a
11 resident or small business, that can use a product stewardship program
12 to discard an unwanted product.

13 (3) "Covered product" means a product designated by this chapter,
14 either individually or as an item within a covered product category,
15 including all materials that make up the covered product.

16 (4) "Covered product category" means a group of similar products
17 covered by this chapter.

18 (5) "Department" means the department of ecology.

1 (6) "Final disposition" means the point beyond which no further
2 processing takes place and materials from a covered product have been
3 transformed for direct use as a feedstock in producing new products or
4 disposed of or managed in permitted facilities.

5 (7) "Hazardous substances" or "hazardous materials" means those
6 substances or materials identified by rules adopted under chapter
7 70.105 RCW.

8 (8) "Mercury-containing lights" means lamps, bulbs, tubes, or other
9 devices that contain mercury and provide functional illumination in
10 homes, businesses, and outdoor stationary fixtures.

11 (9) "Orphan product" means a covered product that lacks a
12 producer's brand, or for which the producer is no longer in business
13 and has no successor in interest, or that bears a brand for which the
14 department cannot identify an owner.

15 (10) "Person" means a sole proprietorship, partnership,
16 corporation, nonprofit corporation or organization, limited liability
17 company, firm, association, cooperative, or other legal entity located
18 within or outside Washington state.

19 (11) "Processing" means recovering materials from unwanted products
20 for use as feedstock in new products.

21 (12) "Producer" means a person that:

22 (a) Has or had legal ownership of the brand, brand name, or cobrand
23 of a covered product sold in or into Washington state;

24 (b) Imports or has imported a covered product branded by a producer
25 that meets the requirements of (a) of this subsection and where that
26 producer has no physical presence in the United States;

27 (c) If (a) and (b) of this subsection do not apply, makes or made
28 an unbranded product that is sold or has been sold in or into
29 Washington state; or

30 (d)(i) Sells or sold at wholesale or retail a covered product; (ii)
31 does not have legal ownership of the brand; and (iii) elects to fulfill
32 the responsibilities of the producer for that product.

33 (13) "Product stewardship" means a requirement for a producer of a
34 covered product to manage and reduce adverse safety, health, and
35 environmental impacts of the covered product throughout its life cycle,
36 including financing and providing for the collection, transporting,
37 reusing, recycling, processing, and final disposition of their
38 products.

1 (14) "Product stewardship plan" or "plan" means a detailed plan
2 describing the manner in which a product stewardship program will be
3 implemented.

4 (15) "Product stewardship program" or "program" means the methods,
5 systems, and services financed and provided by producers of covered
6 products that addresses product stewardship and includes collecting,
7 transporting, reusing, recycling, processing, and final disposition of
8 unwanted products, including a fair share of orphan products.

9 (16)(a) "Recycling" means transforming or remanufacturing unwanted
10 products into usable or marketable materials for use other than
11 landfill disposal or incineration.

12 (b) "Recycling" does not include energy recovery or energy
13 generation by means of combusting unwanted products with or without
14 other waste.

15 (17) "Reporting period" means the period commencing January 1st and
16 ending December 31st in the same calendar year.

17 (18) "Residuals" means nonrecyclable materials left over from
18 processing an unwanted product.

19 (19) "Retailer" means a person who offers covered products for sale
20 at retail through any means including, but not limited to, remote
21 offerings such as sales outlets, catalogs, or the internet, but does
22 not include a sale that is a wholesale transaction with a distributor
23 or a retailer.

24 (20)(a) "Reuse" means a change in ownership of a covered product or
25 its components, parts, packaging, or shipping materials for use in the
26 same manner and purpose for which it was originally purchased, or for
27 use again, as in shipping materials, by the generator of the shipping
28 materials.

29 (b) "Reuse" does not include dismantling of products for the
30 purpose of recycling.

31 (21) "Small school district" means a school district with a student
32 enrollment under two thousand.

33 (22) "Stakeholder" means a person who may have an interest in or be
34 affected by a product stewardship program.

35 (23) "Stewardship organization" means an organization designated by
36 a group of producers to act as an agent on behalf of each producer to
37 operate a product stewardship program.

1 (24) "Unwanted product" means a covered product no longer wanted by
2 its owner or that has been abandoned, discarded, or is intended to be
3 discarded by its owner.

4 NEW SECTION. **Sec. 2.** Covered product and covered product
5 categories designated under this chapter are mercury-containing lights.

6 NEW SECTION. **Sec. 3.** (1) Covered entities are residents in
7 Washington state.

8 (2)(a) All mercury-containing lights collected by product
9 stewardship programs must be recycled. Mercury and mercury-bearing
10 residuals from recycling of mercury-containing lights must be retorted
11 at a facility that has the required permits and licenses.

12 (b) Mercury recovered from retorting must be recycled or placed in
13 a properly permitted hazardous waste landfill. When a facility is
14 available, mercury recovered from retorting must be placed in a
15 properly permitted mercury repository.

16 (3) Product stewardship programs for mercury-containing lights must
17 be fully implemented by January 1, 2012, and may be implemented prior
18 to rule making by the department.

19 (4) Every producer, group of producers, or stewardship organization
20 operating a product stewardship program for mercury-containing lights
21 shall submit an annual report to the department in a format provided by
22 the department, that includes the number and type of lights received in
23 their respective stewardship program from generators in the state.

24 NEW SECTION. **Sec. 4.** Effective January 1, 2013, all government,
25 commercial, industrial, and retail facilities and office buildings must
26 recycle their end-of-life mercury-containing general purpose lights.

27 NEW SECTION. **Sec. 5.** (1) Every producer of a covered product sold
28 in or into Washington state must participate in a product stewardship
29 program for that product.

30 (2) Every such producer must:

31 (a) Operate, either individually or jointly with other producers,
32 a product stewardship program approved by the department; or

33 (b) Enter into an agreement with a stewardship organization to

1 operate, on the producer's behalf, a product stewardship program
2 approved by the department.

3 (3) A producer, group of producers, or stewardship organization
4 must pay all administrative and operational costs associated with their
5 program.

6 (4) Product stewardship programs shall collect, free of charge,
7 unwanted products from covered entities for reuse, recycling,
8 processing, or final disposition.

9 (5) The department, or its designee, may inspect, audit, or review
10 audits of processing and disposal facilities used to fulfill the
11 requirements of a product stewardship program.

12 (6) No product stewardship program required under this chapter may
13 use federal or state prison labor for processing unwanted products.

14 NEW SECTION. **Sec. 6.** (1) As of the implementation date
15 established under this chapter for the covered product, no producer,
16 wholesaler, retailer, or other person may sell or offer for sale that
17 product to any person in this state unless the producer is
18 participating in a product stewardship program under a plan approved by
19 the department.

20 (2) Each product stewardship plan must be approved by the
21 department.

22 (3) A person selling or offering for sale a covered product in this
23 state must receive from the producer of the covered product
24 verification that the producer is participating in an approved product
25 stewardship program prior to selling the product in or into the state.
26 A person is considered to have complied with this subsection if, on the
27 date the person ordered a covered product from a producer or its agent,
28 the producer was listed by the department as participating in an
29 approved product stewardship program or the producer provided written
30 verification on the shipping documents or billing invoice.

31 NEW SECTION. **Sec. 7.** (1) The department shall periodically
32 publish a notice on its web site, and in any other manner it deems
33 appropriate, requesting that stakeholders who are interested in product
34 stewardship programs contact the department. The department shall
35 maintain a list of interested stakeholders, including their mailing
36 address, and make it available in writing upon request.

1 (2) A producer, group of producers, or stewardship organization
2 operating or intending to operate a product stewardship program must,
3 at least sixty days prior to submitting a product stewardship plan to
4 the department under subsection (3) of this section, provide public
5 notice of the plan it is considering for submittal to the list of
6 interested stakeholders maintained by the department under subsection
7 (1) of this section. The producer, group of producers, or stewardship
8 organization must solicit stakeholder comment and input during
9 development of the plan and attempt to address any stakeholder concerns
10 regarding the plan prior to submittal. Documentation of these actions
11 must be submitted to the department at the time of plan submittal.

12 (3) A producer, group of producers, or stewardship organization
13 operating or intending to operate a product stewardship program must
14 submit a product stewardship plan to the department specifying:

- 15 (a) Information, including contact information, regarding:
 - 16 (i) The organization submitting the plan;
 - 17 (ii) A list of all participating producers and their brands,
18 including the trademark, if applicable; and
 - 19 (iii) If the program is to be operated by a stewardship
20 organization, a description of management, administration, and tasks to
21 be performed by the stewardship organization.

- 22 (b) Recovery goals, including:
 - 23 (i) Recovery goals for the first, second, and third years of the
24 program, expressed as pounds per capita, and an explanation of how
25 these goals reflect a significant percentage of an unwanted product
26 relative to the quantity of the unwanted product that may be available
27 for reuse or recycling; and
 - 28 (ii) Plans to maximize reuse or recycling of packaging or shipping
29 materials that may be collected.

- 30 (c) A collection system, including:
 - 31 (i) Location of collection sites and other collection services to
32 be used by the program;
 - 33 (ii) A description of the consideration given to existing curbside
34 collection infrastructure as an appropriate collection mechanism. If
35 the curbside collection infrastructure is not utilized by the plan, a
36 written explanation must be provided citing the reasons that curbside
37 collection services are not included in the plan;

1 (iii) How unwanted products from all covered entities will be
2 collected for all cities in the state with populations greater than ten
3 thousand and in all counties of the state;

4 (iv) How the collection system will be convenient and adequate to
5 serve the needs of all covered entities in both urban and rural areas;
6 and

7 (v) How collected unwanted products will be transported to
8 processing facilities.

9 (d) A processing and disposal system, including:

10 (i) Locations, permit status, and records of any penalties,
11 violations, or regulatory orders received in the previous five years by
12 processing and disposal facilities proposed to be used by the program,
13 including all downstream processing and disposal facilities handling
14 hazardous substances and hazardous materials through final disposition;

15 (ii) A third-party audit of each processing and disposal facility
16 proposed to be used by the program for any unwanted product or
17 residuals containing hazardous substances or hazardous materials,
18 documenting compliance with all applicable laws, regulations, and
19 rules;

20 (iii) Policies and procedures to be followed by persons collecting,
21 transporting, processing, and disposing of unwanted products, including
22 how the program will ensure compliance with all applicable laws,
23 regulations, and rules;

24 (iv) A description of how unwanted products will be processed at
25 each processing facility;

26 (v) How all residuals will be disposed of or managed in permitted
27 facilities, including disposal or management of all hazardous
28 substances and hazardous materials in permitted hazardous waste
29 facilities;

30 (vi) How hazardous substances and hazardous materials will be
31 safely and securely tracked and handled from collection to final
32 disposition in compliance with this chapter, any rules adopted by the
33 department to implement this chapter, and all other applicable laws and
34 rules; and

35 (vii) Management practices that will be used by first processors
36 and their downstream vendors to ensure that hazardous substances and
37 hazardous materials are not released into the environment and will not
38 adversely impact human health.

1 (e) How the program will seek to use businesses within the state,
2 including transportation services, retailers, collection sites and
3 services, existing curbside collection services, and processing
4 facilities.

5 (f) A financing system, including:

6 (i) How the entire product stewardship program will be financed,
7 that may include how costs will be apportioned among and assessed upon
8 producers participating in the program; and

9 (ii) How those providing services for the collection,
10 transportation, and processing systems will be fairly compensated for
11 their services.

12 (g) Education and outreach activities, including:

13 (i) An effective advertising campaign promoting the use of the
14 program to all covered entities that includes a toll-free telephone
15 number and web site, with market saturation sufficient to ensure
16 meeting recovery goals;

17 (ii) A description of how and when information about the program
18 will be provided to retailers, wholesalers, collectors, and other
19 interested parties to disseminate to covered entities; and

20 (iii) The methodology for determining how the effectiveness of the
21 outreach activities will be measured.

22 (h) The stakeholder process described under subsection (2) of this
23 section, including:

24 (i) A description of the process used to solicit stakeholder input
25 during development of the plan; and

26 (ii) A summary of stakeholder comments and how any stakeholder
27 concerns were addressed.

28 (4) All plans submitted to the department must be made available
29 for public review on the department's web site and at the department's
30 headquarters.

31 NEW SECTION. **Sec. 8.** (1) A producer, group of producers, or
32 stewardship organization must submit a proposed product stewardship
33 plan to the department at least one year prior to a covered product's
34 implementation date established under this chapter.

35 (2) Within ninety days after receiving a proposed product
36 stewardship plan, the department shall determine whether the plan
37 complies with this chapter and any rules adopted to implement this

1 chapter. If it approves a plan, the department shall notify the
2 applicant of its approval. If it rejects a plan, the department shall
3 notify the applicant of its decision and its reasons for rejecting the
4 plan. An applicant whose plan has been rejected by the department may
5 submit a revised plan to the department within sixty days after
6 receiving notice of the rejection to maintain compliance with this
7 chapter or may join another plan within sixty days after receiving
8 notice of rejection.

9 (3) At least once every four years, a producer, group of producers,
10 or stewardship organization operating a product stewardship program
11 must update its product stewardship plan and submit the updated plan to
12 the department for review. The department must determine the status of
13 an updated plan within ninety days of its submittal. If the department
14 rejects an updated plan, the department shall provide the reasons it
15 rejected the updated plan. The producer or producers of a covered
16 product participating in the product stewardship program shall continue
17 to operate under the prior approved plan for not more than ninety days
18 or another time period approved by the department and shall submit a
19 revised updated plan for approval within that time period. The prior
20 approved plan remains in effect until the department approves or
21 rejects the revised plan. Failure of a product stewardship program to
22 submit an updated plan within the time period provided under this
23 subsection is deemed to be out of compliance with this chapter, unless
24 the producers in the product stewardship program notify the department
25 of their intention to disband the plan and join an alternate approved
26 plan.

27 NEW SECTION. **Sec. 9.** (1) Any proposed change to a product
28 stewardship plan must have prior approval of the department except for
29 the following:

30 (a) Additions or changes to collection locations for unwanted
31 products; or

32 (b) Additions of producers to a product stewardship program.

33 (2) The product stewardship program must inform the department of
34 changes in subsection (1)(a) and (b) of this section fifteen days prior
35 to the changes occurring.

1 NEW SECTION. **Sec. 10.** (1) On or before April 1st of each year,
2 every producer, group of producers, or stewardship organization
3 operating a product stewardship program must prepare and submit to the
4 department a report for the immediately preceding reporting period
5 describing:

6 (a) Information, including contact information, regarding:

7 (i) The organization submitting the report; and

8 (ii) A list of all participating producers and their brands and
9 trademarks, if applicable;

10 (b) Recovery rates, including:

11 (i) The amount, by weight, of unwanted products collected from
12 covered entities in each county in the state, including documented
13 collection and recycling or disposal of that material; and

14 (ii) How the program attained recovery rates established in the
15 product stewardship plan or set by the department, and, if the program
16 did not attain those recovery rates, what actions it will take during
17 the next reporting period to do so, including how it will increase and
18 improve effective, measurable outreach and education efforts;

19 (c) The collection system, including collection locations and
20 services provided for all cities in the state with populations greater
21 than ten thousand and in all counties in the state;

22 (d) The processing and disposal system, including:

23 (i) A list of processing and disposal facilities used and
24 locations, the weight of unwanted products processed at each processing
25 facility and disposed at each disposal facility, and a description of
26 the methods used at each processing facility;

27 (ii) A list of subcontractors used through final disposition that
28 processed or disposed of unwanted products containing hazardous
29 substances or hazardous materials, and subcontractor facility
30 locations;

31 (iii) Documentation and summary results of annual third-party
32 audits conducted on each processing facility and disposal facility as
33 required in section 7 of this act;

34 (iv) Final disposition of residuals;

35 (v) Any penalties, violations, or regulatory orders received during
36 the reporting period by each processing facility or disposal facility
37 that was used; and

1 (vi) Whether policies and procedures in the product stewardship
2 plan for collecting, transporting, processing, and final disposition of
3 unwanted products were followed during the reporting period, and a
4 description of any noncompliance;

5 (e) The financing system, including a description of how the system
6 met the requirements in section 7 of this act;

7 (f) The education and outreach activities implemented during the
8 reporting period, including an analysis of the effectiveness of the
9 education and outreach activities;

10 (g) How the product stewardship program complied with any other
11 elements in the plan; and

12 (h) Any other information that the department may require.

13 (2) A producer, group of producers, or stewardship organization
14 operating a product stewardship program that attains a ninety percent
15 recovery rate and a recycling rate of eighty percent is only required
16 to report to the department information specified in subsection (1)(a),
17 (b), (c), (g), and (h) of this section.

18 (3) All reports submitted to the department must be made available
19 to the public on the department's web site and at the department's
20 headquarters.

21 NEW SECTION. **Sec. 11.** By June of the third program year for each
22 product or product category, the plan operators shall establish
23 required recovery rates for the fourth and subsequent program years,
24 based on information gained in the first through third years, sales
25 data, anticipated product obsolescence, and anticipated sales growth.
26 Annual planned recovery rates must be submitted to the department for
27 approval by September 1st prior to the program year for which the rates
28 are established. The submittal must include documentation of the
29 calculations and data used to determine the recovery rate. The
30 department shall approve, disapprove, or adjust, in consultation with
31 the plan's operator, the submitted recovery rates based upon its
32 assessment of prior years' data, sales data, and other available
33 information that supports the decision. Sixty days after delivering a
34 written warning, the department shall assess a penalty of up to ten
35 thousand dollars for each violation on each plan operator.

1 NEW SECTION. **Sec. 12.** (1) The department shall send a written
2 warning and a copy of this chapter and any rules adopted to implement
3 this chapter to a producer who is not participating in a product
4 stewardship program approved by the department and whose covered
5 product is being sold in or into the state.

6 (2) A producer not participating in a product stewardship program
7 approved by the department whose covered product continues to be sold
8 in or into the state sixty days after receiving a written warning from
9 the department shall be assessed a penalty of one thousand dollars for
10 each violation. A violation is the sale of one covered product.

11 (3) If any producer fails to implement its approved plan, the
12 department shall assess a penalty of up to five thousand dollars for
13 the first violation along with notification that the producer must
14 implement its plan within thirty days of the violation. After thirty
15 days, any producer failing to implement their approved plan shall be
16 assessed a penalty of up to ten thousand dollars for the second and
17 each subsequent violation. A subsequent violation occurs each thirty-
18 day period that the producer fails to implement the approved plan.

19 (4) The department shall send a written warning to a producer that
20 fails to submit a product stewardship plan, update or change the plan
21 when required, or submit an annual report as required under this
22 chapter. The written warning must include compliance requirements and
23 notification that the requirements must be met within sixty days. If
24 requirements are not met within sixty days, the producer will be
25 assessed a ten thousand dollar penalty per day of noncompliance
26 starting with the first day of notice of noncompliance.

27 (5) Penalties prescribed under this section must be reduced by
28 fifty percent if the producer complies within thirty days of the second
29 violation notice.

30 (6) A producer may appeal penalties prescribed under this section
31 to the pollution control hearings board.

32 NEW SECTION. **Sec. 13.** (1) The department shall provide on its web
33 site a list of all producers participating in product stewardship
34 programs that the department has approved and a list of all producers
35 the department has identified as noncompliant with this chapter and any
36 rules adopted to implement this chapter.

1 (2) Product retailers must check the department's web site or
2 producer-provided written verification to determine if producers of
3 products they are selling in or into the state are in compliance with
4 this chapter. If the retailer is unsure of the status of the producer
5 or believes the producer is not in compliance with this chapter, the
6 retailer shall contact the department to determine the producer's
7 status.

8 (3) The department shall personally serve, or send with delivery
9 confirmation, a written warning explaining the violation along with a
10 copy of this chapter and any rules adopted to implement this chapter to
11 a product retailer known to be selling a product in or into the state
12 from producers who are not participating in a product stewardship
13 program or who are not in compliance with this chapter and rules
14 adopted under this chapter.

15 (4) A product retailer who continues to sell a covered product from
16 a producer that is not participating in an approved product stewardship
17 program sixty days after receiving a written warning from the
18 department may be assessed a penalty two times the value of the
19 products sold in violation of this chapter or five hundred dollars,
20 whichever is greater. This penalty must be waived if the retailer
21 verifies that it has discontinued sale of the covered product within
22 thirty days of the date of the penalty assessment. A retailer may
23 appeal penalties assessed under this section to the pollution control
24 hearings board.

25 (5) A sale or purchase of a used covered product as a casual or
26 isolated sale as defined in RCW 82.04.040 is not subject to the
27 provisions of this section.

28 (6) A person primarily engaged in the business of reuse and resale
29 of a used product is not subject to the provisions of this section when
30 selling used working covered product, for use in the same manner and
31 purpose for which it was originally purchased.

32 (7) In-state retailers in possession of a covered product on the
33 date that restrictions on the sale of the covered product become
34 effective may exhaust their existing stock through sales to the public.

35 NEW SECTION. **Sec. 14.** All producers whose products are included
36 in this chapter shall pay the department ten thousand dollars annually
37 by January 1st of each year for each covered product category sold in

1 or into the state. Producers solely engaged in the retail sales of the
2 covered product shall pay the department one thousand dollars annually.
3 Funds collected under this section must be used to pay for the
4 administration of this chapter.

5 NEW SECTION. **Sec. 15.** The product stewardship programs account is
6 created in the custody of the state treasurer. All funds received from
7 producers under section 14 of this act and penalties collected under
8 this chapter must be deposited in the account. Expenditures from the
9 account may be used only for administering this chapter. Only the
10 director of the department or the director's designee may authorize
11 expenditures from the account. The account is subject to the allotment
12 procedures under chapter 43.88 RCW, but an appropriation is not
13 required for expenditures.

14 NEW SECTION. **Sec. 16.** (1) The department may adopt rules
15 necessary to implement, administer, and enforce this chapter.

16 (2) The department may adopt rules to establish performance
17 standards for product stewardship programs and may establish
18 administrative penalties for failure to meet the standards.

19 (3) By December 31, 2012, the department shall report to the
20 appropriate committees of the legislature concerning the status of the
21 product stewardship program and recommendations for changes to the
22 provisions of this chapter.

23 (4) Beginning October 1, 2012, the department shall annually invite
24 comments from local governments, communities, and citizens to report
25 their satisfaction with services provided by product stewardship
26 programs. This information must be used by the department to determine
27 if the plan operator is meeting convenience requirements and in
28 reviewing proposed updates or changes to product stewardship plans.

29 (5) Beginning October 1, 2012, the department shall annually invite
30 comments from retailers, consumer groups, electric utilities, the
31 Northwest power and conservation council, and other interested parties
32 regarding the impacts of the requirements of this chapter on the
33 availability or purchase of energy efficient lighting within the state.
34 If the department determines that evidence shows the requirements of
35 this chapter have resulted in negative impacts on the availability or
36 purchase of energy efficient lighting in the state, the department

1 shall report this information by December 31st of each year to the
2 appropriate committees of the legislature with recommendations for
3 changes to the provisions of this chapter.

4 (6) Beginning October 1, 2012, the department shall annually invite
5 comments from retailers, consumer groups, electric utilities, the
6 Northwest power and conservation council, and other interested parties
7 regarding the availability of energy efficient nonmercury lighting to
8 replace mercury-containing lighting within the state. If the
9 department determines that evidence shows that energy efficient
10 nonmercury lighting is available and achieves similar energy savings as
11 mercury lighting at similar cost, the department shall report this
12 information by December 31st of each year to the appropriate committees
13 of the legislature with recommendations for legislative changes to
14 reduce mercury use in lighting.

15 NEW SECTION. **Sec. 17.** Nothing in this chapter changes or limits
16 the authority of the Washington utilities and transportation commission
17 to regulate collection of solid waste, including curbside collection of
18 residential recyclable materials, nor does this chapter change or limit
19 the authority of a city or town to provide such service itself or by
20 contract under RCW 81.77.020.

21 NEW SECTION. **Sec. 18.** Nothing in this chapter changes the
22 requirements of any entity regulated under chapter 70.105 RCW to comply
23 with the requirements under that chapter.

24 NEW SECTION. **Sec. 19.** This chapter must be liberally construed to
25 carry out its purposes and objectives.

26 NEW SECTION. **Sec. 20.** Sections 1 through 19 and 21 of this act
27 constitute a new chapter in Title 70 RCW.

28 NEW SECTION. **Sec. 21.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

1 **Sec. 22.** RCW 70.95M.010 and 2003 c 260 s 2 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) (~~"Automotive mercury switch" includes a convenience switch,~~
6 ~~such as a switch for a trunk or hood light, and a mercury switch in~~
7 ~~antilock brake systems)) "Bulk mercury" includes any elemental,
8 nonamalgamated mercury, regardless of volume quantity or weight.~~

9 (2) "Department" means the department of ecology.

10 (3) "Director" means the director of the department of ecology.

11 (4) "Health care facility" includes a hospital, nursing home,
12 extended care facility, long-term care facility, clinical or medical
13 laboratory, state or private health or mental institution, clinic,
14 physician's office, or health maintenance organization.

15 (5) "Manufacturer" includes any person, firm, association,
16 partnership, corporation, governmental entity, organization, or joint
17 venture that produces a mercury-added product or an importer or
18 domestic distributor of a mercury-added product produced in a foreign
19 country. In the case of a multicomponent product containing mercury,
20 the manufacturer is the last manufacturer to produce or assemble the
21 product. If the multicomponent product or mercury-added product is
22 produced in a foreign country, the manufacturer is the first importer
23 or domestic distributor.

24 (6) "Mercury-added button-cell battery" means a button-cell battery
25 to which the manufacturer intentionally introduces mercury for the
26 operation of the battery.

27 (7) "Mercury-added novelty" means a mercury-added product intended
28 mainly for personal or household enjoyment or adornment. Mercury-added
29 novelties include, but are not limited to, items intended for use as
30 practical jokes, figurines, adornments, toys, games, cards, ornaments,
31 yard statues and figures, candles, jewelry, holiday decorations, items
32 of apparel, and other similar products. Mercury-added novelty does not
33 include games, toys, or products that require a button-cell or lithium
34 battery, liquid crystal display screens, or a lamp that contains
35 mercury.

36 (8) "Mercury-added product" means a product, commodity, or
37 chemical, or a product with a component that contains mercury or a
38 mercury compound intentionally added to the product, commodity, or

1 chemical in order to provide a specific characteristic, appearance, or
2 quality, or to perform a specific function, or for any other reason.
3 Mercury-added products include those products listed in the interstate
4 mercury education and reduction clearinghouse mercury-added products
5 database, but are not limited to, mercury thermometers, mercury
6 thermostats, mercury barometers, lamps, and mercury switches (~~in motor~~
7 ~~vehicles~~) or relays.

8 (9) "Mercury manometer" means a mercury-added product that is used
9 for measuring blood pressure.

10 (10) "Mercury thermometer" means a mercury-added product that is
11 used for measuring temperature.

12 (11) "Retailer" means a retailer of a mercury-added product.

13 (12) "Switch" means any device, which may be referred to as a
14 switch, sensor, valve, probe, control, transponder, or any other
15 apparatus, that directly regulates or controls the flow of electricity,
16 gas, or other compounds, such as relays or transponders. "Switch"
17 includes all components of the unit necessary to perform its flow
18 control function. "Automotive mercury switch" includes a convenience
19 switch, such as a switch for a trunk or hood light, and a mercury
20 switch in antilock brake systems. "Utility switch" includes, but is
21 not limited to, all devices that open or close an electrical circuit,
22 or a liquid or gas valve. "Utility relay" includes, but is not limited
23 to, all products or devices that open or close electrical contacts to
24 control the operation of other devices in the same or other electrical
25 circuit.

26 (13) "Wholesaler" means a wholesaler of a mercury-added product.

27 **Sec. 23.** RCW 70.95M.050 and 2003 c 260 s 6 are each amended to
28 read as follows:

29 (1) Effective January 1, 2006, no person may sell, offer for sale,
30 or distribute for sale or use in this state a mercury-added novelty.
31 A manufacturer of mercury-added novelties must notify all retailers
32 that sell the product about the provisions of this section and how to
33 properly dispose of any remaining mercury-added novelty inventory.

34 (2)(a) Effective January 1, 2006, no person may sell, offer for
35 sale, or distribute for sale or use in this state a manometer used to
36 measure blood pressure or a thermometer that contains mercury. This
37 subsection (2)(a) does not apply to:

1 (i) An electronic thermometer with a button-cell battery containing
2 mercury;

3 (ii) A thermometer that contains mercury and that is used for food
4 research and development or food processing, including meat, dairy
5 products, and pet food processing;

6 (iii) A thermometer that contains mercury and that is a component
7 of an animal agriculture climate control system or industrial
8 measurement system or for veterinary medicine until such a time as the
9 system is replaced or a nonmercury component for the system or
10 application is available;

11 (iv) A thermometer or manometer that contains mercury that is used
12 for calibration of other thermometers, manometers, apparatus, or
13 equipment, unless a nonmercury calibration standard is approved for the
14 application by the national institute of standards and technology;

15 (v) A thermometer that is provided by prescription. A manufacturer
16 of a mercury thermometer shall supply clear instructions on the careful
17 handling of the thermometer to avoid breakage and proper cleanup should
18 a breakage occur; or

19 (vi) A manometer or thermometer sold or distributed to a hospital,
20 or a health care facility controlled by a hospital, if the hospital has
21 adopted a plan for mercury reduction consistent with the goals of the
22 mercury chemical action plan developed by the department under section
23 302, chapter 371, Laws of 2002.

24 (b) A manufacturer of thermometers that contain mercury must notify
25 all retailers that sell the product about the provisions of this
26 section and how to properly dispose of any remaining thermometer
27 inventory.

28 (3) Effective January 1, 2006, no person may sell, install, or
29 reinstall a commercial or residential thermostat that contains mercury
30 unless the manufacturer of the thermostat conducts or participates in
31 a thermostat recovery or recycling program designed to assist
32 contractors in the proper disposal of thermostats that contain mercury
33 in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource
34 conservation and recovery act.

35 (4) No person may sell, offer for sale, or distribute for sale or
36 use in this state a motor vehicle manufactured after January 1, 2006,
37 if the motor vehicle contains an automotive mercury switch.

1 (5) Nothing in this section restricts the ability of a
2 manufacturer, importer, or domestic distributor from transporting
3 products through the state, or storing products in the state for later
4 distribution outside the state.

5 (6) Effective June 30, 2012, the sale or purchase and delivery of
6 bulk mercury is prohibited, including sales through the internet or
7 sales by private parties. However, the prohibition in this subsection
8 does not apply to immediate dangerous waste recycling facilities or
9 treatment, storage, and disposal facilities as approved by the
10 department and sales to research facilities, or industrial facilities
11 that provide products or services to entities exempted from this
12 chapter. The facilities described in this subsection must submit an
13 inventory of their purchase and use of bulk mercury to the department
14 on an annual basis, as well as any mercury waste generated from such
15 actions.

16 NEW SECTION. Sec. 24. RCW 70.95M.090 (Crematories--
17 Nonapplicability of chapter) and 2003 c 260 s 10 are each repealed.

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