
SENATE BILL 5658

State of Washington

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By Senators Ericksen, McAuliffe, and Hobbs

Read first time 02/07/13. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to mercury-containing lights; amending RCW
2 70.275.060, 70.275.070, 70.275.090, 70.275.100, 70.275.110, and
3 70.275.140; reenacting and amending RCW 70.275.020; adding a new
4 section to chapter 70.275 RCW; and repealing RCW 70.275.030,
5 70.275.040, 70.275.050, 70.275.120, and 70.275.130.

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

7 **Sec. 1.** RCW 70.275.020 and 2010 c 130 s 2 are each reenacted and
8 amended to read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

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

14 (2) "Collection" or "collect" means, except for persons involved in
15 mail-back programs:

16 (a) The activity of accumulating any amount of mercury-containing
17 lights at a location other than the location where the lights are used
18 by covered entities, and includes curbside collection activities,

1 household hazardous waste facilities, and other registered drop-off
2 locations; and

3 (b) The activity of transporting mercury-containing lights in the
4 state, where the transporter is not a generator of unwanted mercury-
5 containing lights, to a location for purposes of accumulation.

6 (3) "Covered entities" means(~~(+~~

7 ~~(a+)) a single-family or a multifamily household generator ((and
8 persons)) that delivers no more than fifteen mercury-containing lights
9 ((to registered collectors for a product stewardship program during a
10 ninety day period; and~~

11 ~~(b) A single family or a multifamily household generator and
12 persons that utilize a registered residential curbside collection
13 program or a mail-back program for collection of mercury-containing
14 lights and that discards no more than fifteen mercury-containing lights
15 into those programs during a ninety day period)).~~

16 (4) "Department" means the department of ecology.

17 (5) "Final disposition" means the point beyond which no further
18 processing takes place and materials from mercury-containing lights
19 have been transformed for direct use as a feedstock in producing new
20 products, or disposed of or managed in permitted facilities.

21 (6) "Hazardous substances" or "hazardous materials" means those
22 substances or materials identified by rules adopted under chapter
23 70.105 RCW.

24 (7) "Mail-back program" means the use of a prepaid postage
25 container with mercury vapor barrier packaging that is used for the
26 collection and recycling of mercury-containing lights from covered
27 entities ((as part of a product stewardship program)) and ((is))
28 transported by the United States postal service or a common carrier.

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

32 (9) "Mercury vapor barrier packaging" means sealable containers
33 that are specifically designed for the storage, handling, and transport
34 of mercury-containing lights in order to prevent the escape of mercury
35 into the environment by volatilization or any other means, and that
36 meet the requirements for transporting by the United States postal
37 service or a common carrier.

1 (10) "Orphan product" means a mercury-containing light that lacks
2 a producer's brand, or for which the producer is no longer in business
3 and has no successor in interest, or that bears a brand for which the
4 department cannot identify an owner.

5 (11) "Person" means a sole proprietorship, partnership,
6 corporation, nonprofit corporation or organization, limited liability
7 company, firm, association, cooperative, or other legal entity located
8 within or outside Washington state.

9 (12) "Processing" means recovering materials from unwanted products
10 for use as feedstock in new products. Processing must occur at
11 permitted facilities.

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

13 (a) Has or had legal ownership of the brand, brand name, or cobrand
14 of a mercury-containing light sold in or into Washington state, except
15 for persons whose primary business is retail sales;

16 (b) Imports or has imported mercury-containing lights branded by a
17 producer that meets the requirements of (a) of this subsection and
18 where that producer has no physical presence in the United States;

19 (c) If (a) and (b) of this subsection do not apply, makes or made
20 an unbranded mercury-containing light that is sold or has been sold in
21 or into Washington state; or

22 (d)(i) Sells or sold at wholesale or retail a mercury-containing
23 light; (ii) does not have legal ownership of the brand; and (iii)
24 elects to fulfill the responsibilities of the producer for that
25 product.

26 (14) (~~"Product stewardship" means a requirement for a producer of~~
27 ~~mercury-containing lights to manage and reduce adverse safety, health,~~
28 ~~and environmental impacts of the product throughout its life cycle,~~
29 ~~including financing and providing for the collection, transporting,~~
30 ~~reusing, recycling, processing, and final disposition of their~~
31 ~~products.~~

32 (~~15) "Product stewardship plan" or "plan" means a detailed plan~~
33 ~~describing the manner in which a product stewardship program will be~~
34 ~~implemented.~~

35 (~~16) "Product stewardship program" or "program" means the methods,~~
36 ~~systems, and services financed and provided by producers of mercury-~~
37 ~~containing lights generated by covered entities that addresses product~~

1 ~~stewardship and includes collecting, transporting, reusing, recycling,~~
2 ~~processing, and final disposition of unwanted mercury-containing~~
3 ~~lights, including a fair share of orphan products.~~

4 ~~(17))~~ "Recovery" means the collection and transportation of
5 unwanted mercury-containing lights under this chapter.

6 ~~((18))~~ (15)(a) "Recycling" means transforming or remanufacturing
7 unwanted products into usable or marketable materials for use other
8 than landfill disposal or incineration.

9 (b) "Recycling" does not include energy recovery or energy
10 generation by means of combusting unwanted products with or without
11 other waste.

12 ~~((19))~~ (16) "Reporting period" means the period commencing
13 January 1st and ending December 31st in the same calendar year.

14 ~~((20))~~ (17) "Residuals" means nonrecyclable materials left over
15 from processing an unwanted product.

16 ~~((21))~~ (18) "Retailer" means a person who offers mercury-
17 containing lights for sale at retail through any means including, but
18 not limited to, remote offerings such as sales outlets, catalogs, or
19 the internet, but does not include a sale that is a wholesale
20 transaction with a distributor or a retailer.

21 ~~((22))~~ (19)(a) "Reuse" means a change in ownership of a mercury-
22 containing light or its components, parts, packaging, or shipping
23 materials for use in the same manner and purpose for which it was
24 originally purchased, or for use again, as in shipping materials, by
25 the generator of the shipping materials.

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

28 ~~((23))~~ (20) "Stakeholder" means a person who may have an interest
29 in or be affected by ~~((a product stewardship program))~~ this chapter.

30 ~~((24) "Stewardship organization" means an organization designated~~
31 ~~by a producer or group of producers to act as an agent on behalf of~~
32 ~~each producer to operate a product stewardship program.~~

33 ~~(25))~~ (21) "Unwanted product" means a mercury-containing light no
34 longer wanted by its owner or that has been abandoned, discarded, or is
35 intended to be discarded by its owner.

36 NEW SECTION. Sec. 2. A new section is added to chapter 70.275 RCW
37 to read as follows:

1 (1) Every producer of mercury-containing lights sold in Washington
2 must individually pay a registration fee, annually until December 31,
3 2025, not to exceed ten thousand dollars per year, to the department
4 for the limited purpose of reimbursing documented costs for recycling
5 and transportation of unwanted product from covered entities. The
6 registration fee must be deposited into the mercury-containing light
7 recycling account created in this section.

8 (2) Every producer of mercury-containing lights sold in Washington
9 must individually pay an administration fee not to exceed five thousand
10 dollars annually until December 31, 2025, to the department for its
11 administration and enforcement costs. The administration fee must be
12 deposited into the mercury-containing light recycling account created
13 in this section.

14 (3) The mercury-containing light recycling account is created in
15 the custody of the state treasurer. All funds received from producers
16 under this chapter and penalties collected under this chapter must be
17 deposited in the account. Expenditures from the account may be used
18 only for administering this chapter. Only the director of the
19 department or the director's designee may authorize expenditures from
20 the account. The account is subject to the allotment procedures under
21 chapter 43.88 RCW, but an appropriation is not required for
22 expenditures.

23 **Sec. 3.** RCW 70.275.060 and 2010 c 130 s 6 are each amended to read
24 as follows:

25 (1) All mercury-containing lights collected in the state (~~by~~
26 ~~product stewardship programs or other collection programs~~) must be
27 recycled and any process residuals must be managed in compliance with
28 applicable laws.

29 (2) Mercury recovered from retorting must be recycled or placed in
30 a properly permitted hazardous waste landfill, or placed in a properly
31 permitted mercury repository.

32 **Sec. 4.** RCW 70.275.070 and 2010 c 130 s 7 are each amended to read
33 as follows:

34 ~~((1))~~ Except for persons involved in registered mail-back
35 programs, a person who collects unwanted mercury-containing lights in

1 the state, receives funding (~~((through a product stewardship program for~~
2 ~~mercury-containing lights))~~ from the department under this chapter, and
3 who is not a generator of unwanted mercury-containing lights must:

4 ~~((a))~~ (1) Register with the department as a collector of unwanted
5 mercury-containing lights. Until the department adopts rules for
6 collectors, the collector must provide to the department the legal name
7 of the person or entity owning and operating the collection location,
8 the address and phone number of the collection location, and the name,
9 address, and phone number of the individual responsible for operating
10 the collection location and update any changes in this information
11 within thirty days of the change;

12 ~~((b))~~ (2) Maintain a spill and release response plan at the
13 collection location that describes the materials, equipment, and
14 procedures that will be used to respond to any mercury release from an
15 unwanted mercury-containing light;

16 ~~((c))~~ (3) Maintain a worker safety plan at the collection
17 location that describes the handling of the unwanted mercury-containing
18 lights at the collection location and measures that will be taken to
19 protect worker health and safety; and

20 ~~((d))~~ (4) Use packaging and shipping material that will minimize
21 the release of mercury into the environment and minimize breakage and
22 use mercury vapor barrier packaging if mercury-containing lights are
23 transported by the United States postal service or a common carrier.

24 ~~((2) A person who operates a curbside collection program or owns~~
25 ~~or operates a mail-back business participating in a product stewardship~~
26 ~~program for mercury-containing lights and uses the United States postal~~
27 ~~service or a common carrier for transport must register with the~~
28 ~~department and use mercury vapor barrier packaging for curbside~~
29 ~~collection and mail-back containers.))~~

30 **Sec. 5.** RCW 70.275.090 and 2010 c 130 s 9 are each amended to read
31 as follows:

32 As of January 1, ~~((2013))~~ 2014, no producer, wholesaler, retailer,
33 electric utility, or other person may distribute, sell, or offer for
34 sale mercury-containing lights for residential use to any person in
35 this state unless the producer (~~(is participating in a product~~
36 ~~stewardship program under a plan approved by the department)) of the~~

1 mercury-containing light has paid the registration fee and the
2 administration fee as required by section 2 of this act.

3 **Sec. 6.** RCW 70.275.100 and 2010 c 130 s 10 are each amended to
4 read as follows:

5 (1) The department shall send a written warning and a copy of this
6 chapter and any rules adopted to implement this chapter to a producer
7 (~~(who is not participating in a product stewardship program approved by~~
8 ~~the department and)~~) whose mercury-containing lights are being sold in
9 or into the state and is not in compliance with the requirements of
10 section 2 of this act.

11 (2) A producer (~~(not participating in a product stewardship program~~
12 ~~approved by the department)~~) who is not in compliance with section 2 of
13 this act and whose mercury-containing lights continue to be sold in or
14 into the state sixty days after receiving a written warning from the
15 department shall be assessed a penalty of up to one thousand dollars
16 for each violation. A violation is one day of sales.

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

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

33 ~~(5))~~ Penalties prescribed under this section must be reduced by
34 fifty percent if the producer complies within thirty days of the second
35 violation notice.

36 ~~((6))~~ (4) A producer may appeal penalties prescribed under this

1 section to the pollution control hearings board created under chapter
2 43.21B RCW.

3 **Sec. 7.** RCW 70.275.110 and 2010 c 130 s 11 are each amended to
4 read as follows:

5 (1) The department shall provide on its web site a list of all
6 producers (~~participating in a product stewardship plan that the~~
7 ~~department has approved and a list of all producers the department has~~
8 ~~identified as noncompliant with this chapter and any rules adopted to~~
9 ~~implement this chapter~~) in compliance with section 2 of this act and
10 any rules adopted to implement that section.

11 (2) Product wholesalers, retailers, distributors, and electric
12 utilities must check the department's web site or producer-provided
13 written verification to determine if producers of products they are
14 selling in or into the state are in compliance with this chapter.

15 (3) (~~No one may distribute or sell mercury-containing lights in or~~
16 ~~into the state from producers who are not participating in a product~~
17 ~~stewardship program or who are not in compliance with this chapter and~~
18 ~~rules adopted under this chapter.~~) A person who sells fluorescent
19 lamps at retail for residential customers may post the following notice
20 in twenty-four point type or larger in a manner clearly visible to a
21 consumer examining fluorescent lamps offered for sale:

22 "Fluorescent bulbs save energy and reduce environmental
23 pollution. NOTE: Fluorescent bulbs contain a small amount of
24 mercury and must be properly recycled at the end of their use.
25 Contact your municipality or www.lamprecycle.org for bulb
26 recycling options."

27 A retailer may include additional language in the notice in order
28 to promote the sale or in-store recycling of fluorescent lamps,
29 provided that the notice language set forth in this subsection (3) is
30 present. A producer, individually or collectively, must provide a
31 printed copy of the notice, free of charge, at the request of any
32 retailer of mercury-containing lights for its retail establishment in
33 the state.

34 (4) The department shall serve, or send with delivery confirmation,
35 a written warning explaining the violation to any person known to be
36 distributing or selling mercury-containing lights in or into the state
37 from producers who are not (~~participating in a product stewardship~~

1 ~~program or who are not~~) in compliance with (~~this chapter~~) section 2
2 of this act and rules adopted (~~under this chapter~~) to implement that
3 section.

4 (5) Any person who continues to distribute or sell mercury-
5 containing lights from a producer that is not (~~participating in an~~
6 ~~approved product stewardship program~~) in compliance with the
7 requirements of section 2 of this act and rules adopted to implement
8 that section sixty days after receiving a written warning from the
9 department may be assessed a penalty two times the value of the
10 products sold in violation of this chapter or five hundred dollars,
11 whichever is greater. The penalty must be waived if the person
12 verifies that the person has discontinued distribution or sales of
13 mercury-containing lights within thirty days of the date the penalty is
14 assessed. A retailer may appeal penalties to the pollution control
15 hearings board.

16 (6) The department shall adopt rules to implement this section.

17 (7) A sale or purchase of mercury-containing lights as a casual or
18 isolated sale as defined in RCW 82.04.040 is not subject to the
19 provisions of this section.

20 (8) A person primarily engaged in the business of reuse and resale
21 of a used mercury-containing light is not subject to the provisions of
22 this section when selling used working mercury-containing lights, for
23 use in the same manner and purpose for which it was originally
24 purchased.

25 (9) In-state distributors, wholesalers, and retailers in possession
26 of mercury-containing lights on the date that restrictions on the sale
27 of the product become effective may exhaust their existing stock
28 through sales to the public.

29 **Sec. 8.** RCW 70.275.140 and 2010 c 130 s 14 are each amended to
30 read as follows:

31 (1) The department may adopt rules (~~necessary to implement,~~
32 ~~administer, and enforce this chapter~~) to equitably scale the
33 producer's registration fee and the administration fee required by
34 section 2 of this act, taking into consideration the producer's
35 estimated sales of mercury-containing lights in the state, and
36 maximizing the aggregate receipts collected for the mercury-containing

1 light recycling account by not discouraging producers of mercury-
2 containing lights from selling their products in the state.

3 ~~(2) ((The department may adopt rules to establish performance~~
4 ~~standards for product stewardship programs and may establish~~
5 ~~administrative penalties for failure to meet the standards.~~

6 ~~(3) By December 31, 2010, and annually thereafter until December~~
7 ~~31, 2014, the department shall report to the appropriate committees of~~
8 ~~the legislature concerning the status of the product stewardship~~
9 ~~program and recommendations for changes to the provisions of this~~
10 ~~chapter.~~

11 ~~(4) Beginning October 1, 2014, the department shall annually invite~~
12 ~~comments from local governments, communities, and citizens to report~~
13 ~~their satisfaction with services provided by product stewardship~~
14 ~~programs. This information must be used by the department to determine~~
15 ~~if the plan operator is meeting convenience requirements and in~~
16 ~~reviewing proposed updates or changes to product stewardship plans.~~

17 ~~(5))~~ Beginning October 1, 2014, the department shall annually
18 invite comments from retailers, consumer groups, electric utilities,
19 the Northwest power and conservation council, and other interested
20 parties regarding the impacts of the requirements of this chapter on
21 the availability or purchase of energy efficient lighting within the
22 state. If the department determines that evidence shows the
23 requirements of this chapter have resulted in negative impacts on the
24 availability or purchase of energy efficient lighting in the state, the
25 department shall report this information by December 31st of each year
26 to the appropriate committees of the legislature with recommendations
27 for changes to the provisions of this chapter.

28 ~~((+6))~~ (3) Beginning October 1, 2014, the department shall
29 annually invite comments from retailers, consumer groups, electric
30 utilities, the Northwest power and conservation council, and other
31 interested parties regarding the availability of energy efficient
32 nonmercury lighting to replace mercury-containing lighting within the
33 state. If the department determines that evidence shows that energy
34 efficient nonmercury-containing lighting is available and achieves
35 similar energy savings as mercury lighting at similar cost, the
36 department shall report this information by December 31st of each year
37 to the appropriate committees of the legislature with recommendations
38 for legislative changes to reduce mercury use in lighting.

1 ~~((7))~~ (4) Beginning October 1, 2014, the department shall
2 annually estimate the overall statewide recycling rate for mercury-
3 containing lights and calculate that portion of the recycling rate
4 attributable to ~~((the product stewardship program))~~ this chapter.

5 ~~((8))~~ (5) The department may require submission of independent
6 performance evaluations and report evaluations documenting the
7 effectiveness of mercury vapor barrier packaging in preventing the
8 escape of mercury into the environment. The department may restrict
9 the use of packaging for which adequate documentation has not been
10 provided. ~~((Restricted packaging may not be used in any product
11 stewardship program required under this chapter.))~~

12 NEW SECTION. Sec. 9. The following acts or parts of acts are each
13 repealed:

14 (1) RCW 70.275.030 (Product stewardship program) and 2010 c 130 s
15 3;

16 (2) RCW 70.275.040 (Submission of proposed product stewardship
17 plans--Department to establish rules--Public review--Plan update--
18 Annual report) and 2010 c 130 s 4;

19 (3) RCW 70.275.050 (Financing the mercury-containing light
20 recycling program) and 2010 c 130 s 5;

21 (4) RCW 70.275.120 (Producers must pay annual fees) and 2010 c 130
22 s 12; and

23 (5) RCW 70.275.130 (Product stewardship programs account) and 2010
24 c 130 s 13.

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