

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1665

H.P. 1224

House of Representatives, March 15, 2001

An Act to Further Reduce Mercury Emissions from Consumer Products.

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative DUPLESSIE of Westbrook.
Cosponsored by Senator MARTIN of Aroostook and
Representatives: BULL of Freeport, McKEE of Wayne, Senators: SAWYER of Penobscot,
TREAT of Kennebec.

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 38 MRSA §1310-B, sub-§2**, as affected by PL 1989, c.
4 890, Pt. A, §40 and amended by Pt. B, §233, is further amended to
5 read:

6
7 **2. Hazardous waste information and information on**
8 **mercury-added products.** Information relating to hazardous waste
9 submitted to the department under this subchapter or information
10 relating to mercury-added products submitted to the department
11 under chapter 16-B may be designated by the person submitting it
12 as being only for the confidential use of the department, its
13 agents and employees, the Department of Agriculture, Food and
14 Rural Resources and the Department of Human Services and their
15 agents and employees, other agencies of State Government, as
16 authorized by the Governor, employees of the United States
17 Environmental Protection Agency and the Attorney General and
18 employees of the municipality in which the hazardous waste is
19 located. The designation must be clearly indicated on each page
20 or other portion of information. The commissioner shall establish
21 procedures to insure that information so designated is segregated
22 from public records of the department. The department's public
23 records must include the indication that information so
24 designated has been submitted to the department, giving the name
25 of the person submitting the information and the general nature
26 of the information. Upon a request for information, the scope of
27 which includes information so designated, the commissioner shall
28 notify the submitter. Within 15 days after receipt of the notice,
29 the submitter shall demonstrate to the satisfaction of the
30 department that the designated information should not be
31 disclosed because the information is a trade secret, production,
32 commercial or financial information, the disclosure of which
33 would impair the competitive position of the submitter and would
34 make available information not otherwise publicly available.
35 Unless such a demonstration is made, the information must be
36 disclosed and becomes a public record. The department may grant
37 or deny disclosure for the whole or any part of the designated
38 information requested and within 15 days shall give written
39 notice of the decision to the submitter and the person requesting
40 the designated information. ~~Notwithstanding---section---344,~~
41 ~~subsection--4,--a~~ A person aggrieved by a decision of the
42 department may appeal only to the Superior Court in accordance
43 with the provisions of section 346. All information provided by
44 the department to the municipality under this subsection must be
45 confidential and not a public record under Title 1, chapter 13.
46 In the event a request for such information is submitted to the
47 municipality, the municipality shall submit that request to the
48 commissioner to be processed by the department as provided in
49 this subsection.

2 **Sec. 2. 38 MRSA §1661, sub-§1, ¶¶B and D**, as enacted by PL
1999, c. 779, §2, are amended to read:

4 B. ~~An electrical~~ A switch or other device, individually or
as part of another product, used to measure, control or
6 regulate gas, other fluids or electricity;

8 D. An electric relay or other electrical device, ~~excluding~~
~~an electrical device that is in a mercury-added lamp~~; and

10 **Sec. 3. 38 MRSA §§1661-A, 1661-B and 1661-C** are enacted to
12 read:

14 **§1661-A. Notification**

16 **1. Prior written notice required.** Effective January 1,
18 2002, a product to which mercury is intentionally added during
formulation or manufacture, or a product containing one or more
20 components to which mercury is intentionally added during
formulation or manufacture, may not be offered for final sale or
22 use or distributed for promotional purposes in the State unless
the manufacturer of the product or product component or a trade
24 association representing manufacturers of the product or
component has provided written notice to the department in
26 accordance with this section. The notice must include the
following information on a form provided by the department or the
clearinghouse under section 1671:

28 A. A brief description of the product or product component;

30 B. The purpose for which mercury is used in the product or
32 product component;

34 C. The amount of mercury in each unit of the product or
product component, reported either as an exact number or as
36 an average per product or component with an upper and lower
limit;

38 D. The total amount of mercury in all units of the product
40 or product components sold in the United States during the
most recent calendar year for which sales figures are
42 available, reported either for the units or components sold
by the manufacturer or as aggregated by a manufacturer trade
44 association for all units of the product or components made
by the industry; and

46 E. The name and address of the manufacturer, and the name,
48 address and phone number of a contact person for the
manufacturer.

50

2 2. Exemption. A mercury-added product or product component
3 for which federal law governs notice in a manner that preempts
4 state authority is exempt from the requirements of this section.

6 3. Product category information. With the approval of the
7 department, the manufacturer may supply the information required
8 in subsection 1 for a product category rather than an individual
9 product. The manufacturer shall update and revise the
10 information in the notification whenever there is significant
11 change in the information or when requested by the department.

12 4. Confidentiality. Information submitted to the
13 department pursuant to this section may be kept confidential as
14 provided under sections 1310-B and 1671.

16 **§1661-B. Disclosure for mercury-containing products used in**
17 **hospitals**

18 Effective January 1, 2002, the manufacturer of a formulated
19 product that contains mercury or a mercury compound from any
20 source or cause, whether intended or unintended, and that is
21 offered for sale or use to a hospital in the State must provide,
22 upon request of the hospital, a certificate of analysis
23 documenting the mercury content of the product unless the
24 concentration is less than 200 parts per 1,000,000,000. The
25 hospital shall provide a copy of the certificate to the
26 department upon request. For the purpose of this section, a
27 "formulated product" means a consistent mixture of chemicals,
28 including, but not limited to, acids, alkalis, laboratory
29 chemicals, bleach and other products used for cleaning or
30 disinfection, pharmaceuticals, stains, reagents, preservatives,
31 fixatives, buffers and dyes.

32 The certificate of analysis must report the mercury content
33 of the product based on analysis of each batch or lot of the
34 product, and the batch or lot number of the product must be
35 identified clearly on the product and on the certificate of
36 analysis. In lieu of reporting mercury content by batch or lot
37 analysis, the manufacturer of the product may provide a
38 certificate of analysis on representative samples of the product
39 as determined in consultation with the hospital.

40 **§1661-C. Restrictions on sale and use of mercury**

41 1. Fever thermometers. Effective January 1, 2002, a person
42 may not sell or supply a mercury fever thermometer to consumers
43 and patients, except by prescription. With each mercury fever
44 thermometer sold by prescription, the manufacturer shall supply
45 clear instructions on the careful handling of the thermometer to
46 avoid breakage and on proper cleanup should breakage occur. For
47 avoid breakage and on proper cleanup should breakage occur. For
48 avoid breakage and on proper cleanup should breakage occur. For
49 avoid breakage and on proper cleanup should breakage occur. For
50 avoid breakage and on proper cleanup should breakage occur. For

2 purposes of this subsection, a "mercury fever thermometer" means
3 a thermometer that contains mercury for the purpose of measuring
4 body temperature, but does not include a thermometer containing
5 mercury solely within a button-cell battery.

6 2. **Manometers.** Effective January 1, 2002, a
7 mercury-containing manometer of the type used in milking machines
8 on dairy farms may not be sold or offered for sale, or
9 distributed for promotional purposes in the State. Manufacturers
10 of such manometers shall notify wholesalers and retailers about
11 this ban and shall instruct them on how to properly dispose of
12 the remaining inventory. The department, in consultation with
13 the Department of Agriculture, Food and Rural Resources, shall
14 conduct a program to collect and replace mercury-containing
15 manometers already in use on dairy farms in the State.

16 3. **Schools.** Effective January 1, 2002, bulk elemental or
17 chemical mercury or mercury compounds may not be sold for use in
18 a primary or secondary classroom in the State. Manufacturers of
19 such materials shall notify wholesalers and retailers about this
20 ban and shall instruct them on how to properly dispose of the
21 remaining inventory. Mercury-added products used by schools are
22 not subject to this ban.

23 4. **Elemental mercury.** Effective January 1, 2002, no person
24 may sell or provide elemental mercury to another person in the
25 State without providing a material safety data sheet, as defined
26 in 42 United States Code, Section 11049, and without requiring
27 the purchaser or recipient to sign a statement that the purchaser:

28 A. Will use the mercury only for medical, dental amalgam
29 dispose-caps, research or manufacturing purposes;

30 B. Understands that mercury is toxic and that the purchaser
31 will store and use it appropriately so that no person is
32 exposed to the mercury; and

33 C. Will not place or allow anyone under the purchaser's
34 control to place or cause to be placed the mercury in solid
35 waste for disposal or in a wastewater treatment and disposal
36 system.

37 **Sec. 4. 38 MRSA §1665, 2nd ¶,** as enacted by PL 1999, c. 779,
38 §2, is amended to read:

39 By January 1, 2001, automobile manufacturers that sell
40 automobiles at retail in this State or to a retailer in this
41 State shall submit proposed alternative compliance plans to the
42 department. By January 1, 2002, the department shall submit to
43 the joint standing committee of the Legislature having

jurisdiction over natural resources matters a plan for the labeling and source separation of automobile component parts to meet the requirements in sections 1662 and 1664. The plan also must include recommendations as to whether and how manufacturers should be required to reduce or phase out the use of mercury in the production of automobiles. The department shall develop the plan in consultation with automobile manufacturers, automobile dismantlers, automobile recyclers and other interested parties. The plan may provide for alternative compliance plans for labeling and must provide for the safe removal and management of mercury-added parts prior to the shredding of vehicles. The department shall also develop, in consultation with the interested parties, an assessment of whether and how mercury switches or other electrical devices in automobile components should be added to the universal waste rules adopted by the board and submit the assessment with the plan.

Sec. 5. 38 MRSA §1670, sub-§8, ¶D-1 is enacted to read:

D-1. Include in its 2002 or 2003 annual report recommendations as to whether and how manufacturer's should be required to reduce or phase out the use of mercury in consumer products;

Sec. 6. 38 MRSA §1671 is enacted to read:

§1671. Interstate clearinghouse

The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate reviews of the manufacturer notifications under section 1661-B, applications for alternative labeling under section 1662, education and outreach activities and any other activities related to the administration of this chapter. Notwithstanding section 1310-B, subsection 2, the department may provide the interstate clearinghouse with product information submitted to the department under section 1661-A and the department and the interstate clearinghouse may compile or publish analyses or summaries of such information provided the analyses or summaries do not identify any manufacturer or reveal any confidential information.

Sec. 7. Resolve 1997, c. 41, §2 is repealed.

SUMMARY

The purpose of this bill is to reduce the release of mercury into the environment from consumer products, and thereby advance

2 the goals of the Mercury Action Plan adopted in 1998 by the
3 Conference of New England Governors and Eastern Canadian
4 Premiers. That plan, among other things, calls for the virtual
5 elimination of mercury emissions from consumer products and other
6 anthropogenic sources.

7 The bill accomplishes the following:

8
9 1. It requires manufacturers to notify the Department of
10 Environmental Protection if they intend to distribute a
11 mercury-added product in Maine;

12
13 2. It requires product manufacturers to provide
14 information on mercury content to hospitals upon request;

15
16 3. It restricts the sale and distribution of certain
17 mercury-added products, including fever thermometers and
18 manometers used to measure vacuum in milking machines;

19
20 4. It restricts the sale and use of mercury and bans the
21 use of mercury and mercury compounds in schools;

22
23 5. It requires the Mercury Products Advisory Committee, as
24 established under Public Law 1999, chapter 779, to report on
25 whether and how manufacturers should be required to phase out the
26 use of mercury in products;

27
28 6. It requires the Department of Environmental Protection,
29 in consultation with automobile manufacturers, dismantlers,
30 recyclers and other interested parties, to report on whether and
31 how automobile manufacturers should be required to phase out the
32 use of mercury-added components;

33
34 7. It authorizes the Department of Environmental Protection
35 to participate in a regional clearinghouse to coordinate the
36 regulatory actions regarding mercury-added products; and

37
38 8. It repeals a section of a resolve requiring the Land and
39 Water Resources Council to report annually on recommended
40 mercury-reduction initiatives.