

Vote Record

Senate - Committee on Environmental Resources

Date: 3/5/02

Bill Number: SB 435

Moved by: Cowles Seconded by: Hansen

Motion: Adoption of Senate Amendment 1

Committee Member

Sen. Jim Baumgart, Chair

Sen. David Hansen

Sen. Robert Wirsch

Sen. Robert Cowles

Sen. Dale Schultz

Aye

No

Absent

Not Voting

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Totals:

☐ Motion Carried

☐ Motion Failed

Vote Record

Senate - Committee on Environmental Resources

Date: 3/5/02

Bill Number: SR 435

Moved by: Cowles

Seconded by: Hansen

Motion: Recommend for passage as Amended

Committee Member

Sen. Jim Baumgart, Chair

Sen. David Hansen

Sen. Robert Wirth

Sen. Robert Cowles

Sen. Dale Schultz

Aye

No

Absent Not Voting

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Totals:

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☒ Motion Carried

☐ Motion Failed



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: March 5, 2002

TO: Senator James Baumgart, Chair, and Members
Senate Committee on Environmental Resources

FROM: Tom Stoebig, Regulation & Safety Section
Division of Trade and Consumer Protection

RE: Senate Bill 435, related to prohibiting the sale of mercury thermometers

Similar to a Minnesota law that took effect on January 1, 2002, Senate Bill 435 bans the sale of mercury thermometers by manufacturers, wholesalers and retailers, except for certain uses enumerated in the legislation.

DATCP recognizes the importance of reducing mercury emissions and mercury contamination of the solid waste stream for obvious environmental and public health reasons. The Department also recognizes that compliance and enforcement is critical to the success of any mercury-added product regulations. Thus, we urge the Committee to consider the following revisions:

- Revise the bill to prohibit the offering for sale of products subject to the proposed ban. This could be accomplished in several ways, including adding a definition of "sell" or "sell and distribute" which means "to import, consign, sell, offer for sale, solicit orders for sale, or otherwise advertise for sale or use in this state."

Enforcement should not be limited to identifying and counting actual sales. We wish to avoid the need to physically purchase products or to otherwise produce evidence of actual sales in order to demonstrate a violation. To ensure compliance, we would also need clear authority to curtail catalog and e-commerce sales and advertising of prohibited items in the state.

- Revise the bill to provide legal authority to issue holding orders and/or to remove products from sale which are found to be in violation.

Enactment of a product sales ban may presume DATCP authority to order the removal of inventory from sale, but such legal authority is unclear unless explicitly stated. Similarly, current DATCP authority to issue holding orders to temporarily prohibit further sale and distribution of products is limited to specific statutes and intended to provide sufficient time to examine and analyze product samples suspected to be in violation.

- Revise the penalty provision of the bill to increase the maximum civil forfeiture to \$10,000.

The proposed \$200 civil forfeiture per violation may be insufficient to ensure voluntary or regulatory compliance, especially by manufacturers, large retail chains and their distribution networks. The proposed \$200 civil forfeiture maximum may also discourage prosecuting agencies from pursuing enforcement cases referred to them.

Lastly, the Department suggests the option of limiting the proposed product bans to mercury fever thermometers, similar to laws in at least seven other states (New Hampshire, Oregon, Maryland, Indiana, California, Rhode Island and Maine).

The types of thermometers currently banned by Senate Bill 435 encompass a potentially broad range of mercury-containing temperature measurement devices and an array of different user groups. Yet mercury fever thermometers represent the largest number of thermometer sales, and pose the greatest product safety threat and public health concern because of breakage frequency and extensive household use.

Limiting the proposed product bans to mercury fever thermometers would ease potential enforcement costs to the Department because of current voluntary efforts by health care facilities to eliminate usage, and retail chains, such as K-Mart, Target, Toys-R-Us, Walgreens, Wal-Mart and Shopko, to eliminate sales of these specific products.