



2009 ASSEMBLY BILL 299

June 2, 2009 – Introduced by Representatives DANOU, BENEDICT, POPE-ROBERTS, POCAN, A. OTT, DEXTER, PARISI, MILROY, BERNARD SCHABER, SINICKI, RICHARDS and MASON, cosponsored by Senators JAUCH, COGGS, COWLES, LASSA, LEHMAN, MILLER, RISSER, ROBSON, SULLIVAN, TAYLOR and WIRCH. Referred to Committee on Natural Resources.

1 **AN ACT** *to create* 100.275 and 118.07 (4) of the statutes; **relating to:** products
2 containing mercury and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture (mercury-added products), including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, switches and relays, and household items.

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and disposal and cleanup if the thermometer breaks. The bill prohibits the sale of manometers that contain mercury. Under the bill, manufacturers of manometers that contain mercury and that are the type in milking machines must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The bill also prohibits the sale of certain products containing mercury, including thermostats, other instruments and switches, and household items such as toys, clothing, and cosmetics.

The bill authorizes a manufacturer or user of certain mercury-added products to petition the Department of Natural Resources (DNR) for an exemption from the bill's prohibitions. DNR may grant such an exemption only if the petitioner establishes certain facts, including that technically feasible nonmercury alternatives are not available at comparable cost.

This bill prohibits a public, private, or charter school from knowingly purchasing or using free-flowing elemental mercury for any purpose, or, with certain

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exceptions, from knowingly purchasing or using a mercury-containing compound or an instrument or measuring device containing mercury. Beginning January 1, 2012, the bill prohibits a public, private, or charter school from knowingly storing free-flowing elemental mercury or, with certain exceptions, from storing a mercury-containing compound or an instrument or measuring device containing mercury.

A public, private, or charter school may purchase, use, or store a mercury-containing compound or an instrument or measuring device containing mercury if one of the following exceptions applies:

1. The purchase or use of the compound, instrument, or measuring device is required under federal law.
2. The only mercury-added component in the instrument or measuring device is a button cell battery.
3. No reasonably acceptable, mercury-free alternative exists, in which case, only a compound, instrument, or measuring device that contains the lowest mercury content available may be used.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.275 of the statutes is created to read:

2 **100.275 Products containing mercury. (1) DEFINITIONS.** In this section:

3 (a) “Mercury-added product” means a product to which mercury is
4 intentionally added during formulation or manufacture, or a product containing one
5 or more components to which mercury is intentionally added during formulation or
6 manufacture.

7 (b) “Mercury-added thermostat” means a product or device that uses a mercury
8 switch to sense and control room temperature through communication with heating,
9 ventilating, or air-conditioning equipment. “Mercury-added thermostat” includes
10 thermostats used to sense and control room temperature in residential, commercial,
11 industrial, and other buildings, but does not include a thermostat used to sense and
12 control temperature as part of a manufacturing process.

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1 (c) “Mercury relay” means a mercury-added product or device that opens or
2 closes electrical contacts to effect the operation of other devices in the same or
3 another electrical circuit. “Mercury relay” includes mercury displacement relays,
4 mercury wetted reed relays, and mercury contact relays.

5 (d) “Mercury switch” means a mercury-added product or device that opens or
6 closes an electrical circuit or gas valve. “Mercury switch” includes mercury float
7 switches actuated by rising or falling liquid levels, mercury tilt switches actuated by
8 a change in the switch position, mercury pressure switches actuated by a change in
9 pressure, mercury temperature switches actuated by a change in temperature, and
10 mercury flame sensors. “Mercury switch” does not include a mercury-added
11 thermostat.

12 **(2) RESTRICTIONS ON SALE AND USE OF MERCURY.** (a) *Fever thermometers.* No
13 person may sell or supply a mercury fever thermometer to a consumer or patient,
14 unless the thermometer has been prescribed for the consumer or patient by a
15 practitioner, as defined in s. 450.01 (17). A mercury fever thermometer
16 manufacturer shall supply with each thermometer clear instructions on the careful
17 handling of the thermometer to avoid breakage, on proper cleanup if the
18 thermometer breaks, and on proper disposal. For purposes of this subsection,
19 “mercury fever thermometer” means a thermometer that contains mercury for the
20 purpose of measuring body temperature, but does not include a thermometer
21 containing mercury solely within a button cell battery.

22 (b) *Manometers.* No person may sell or distribute a mercury-containing
23 manometer of the type in milking machines on dairy farms. Manufacturers of such
24 mercury-containing manometers shall notify wholesalers and retailers that the sale

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1 or distribution of such manometers is prohibited and shall instruct them on the
2 proper disposal of remaining inventory.

3 (c) *Mercury-added thermostats.* No person may sell, or distribute for
4 promotional purposes, a mercury-added thermostat.

5 (d) *Instruments and measuring devices.* 1. No person may sell or distribute any
6 of the following items, if the item contains mercury:

7 a. A barometer.

8 b. An esophageal dilator, bougie tube, or gastrointestinal tube.

9 c. A flowmeter.

10 d. A hydrometer.

11 e. A hygrometer or psychrometer.

12 f. A manometer other than a manometer prohibited from sale under par. (b).

13 g. A pyrometer.

14 h. A sphygmomanometer.

15 i. A thermometer other than a thermometer prohibited from sale under par. (a).

16 2. Subdivision 1. does not apply to the sale of a mercury-added product listed
17 in subd. 1. a. to i. if use of the product is required under federal law or if the only
18 mercury-added component in the product is a button cell battery.

19 (e) *Mercury switches and relays.* 1. No person may sell or distribute,
20 individually or as a product component, a mercury switch or mercury relay. This
21 subdivision does not apply to a switch or relay that is used to replace a switch or relay
22 that is a component in a larger product in use prior to the effective date of this
23 subdivision [LRB inserts date], if one of the following applies:

24 a. The larger product is used in manufacturing.

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1 b. The switch or relay is integrated with, and not physically separate from,
2 other components of the larger product.

3 2. Subdivision 1. does not apply to the sale of a mercury switch or mercury relay
4 if use of the switch or relay is a federal requirement.

5 (f) *Household items.* No person may sell or distribute any of the following items
6 if the item contains mercury, unless the only mercury-added component in the item
7 is a button cell battery:

8 1. A toy or game.

9 2. Jewelry.

10 3. Clothing or shoes.

11 4. An over-the-counter pharmaceutical product for human use.

12 5. A cosmetic, toiletry, or fragrance product.

13 **(3) EXEMPTIONS.** (a) The prohibitions under this section do not apply to the sale
14 of a mercury-added product for which the department of natural resources grants
15 an exemption under this subsection.

16 (b) A manufacturer or user of a product may apply for an exemption from this
17 section by filing a written petition with the department of natural resources. The
18 department of natural resources may grant an exemption with or without conditions
19 if it finds that the mercury-added product is reasonable and appropriate for a
20 specific use. The department of natural resources shall find that a product is
21 reasonable and appropriate for a specific use only if a manufacturer or user
22 establishes all of the following:

23 1. A system exists for the proper collection, transportation, and processing of
24 the product at the end of its life.

25 2. One of the following applies:

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1 a. Use of the product provides a net benefit to the environment, public health,
2 or public safety when compared to available nonmercury alternatives.

3 b. Technically feasible nonmercury alternatives are not available at
4 comparable cost.

5 (c) Prior to approving an exemption, the department of natural resources may
6 consult with neighboring states to promote consistency in the regulation of
7 mercury-added products. The department of natural resources may request a
8 person who is granted an exemption to maintain records and provide reasonable
9 reports to the department that characterize mercury use in the products for which
10 the exemption was granted. Exemptions may not exceed 5 years and may be renewed
11 upon written application if the department of natural resources finds that the
12 mercury-added product continues to meet the criteria specified in par. (b) and the
13 manufacturer or other persons comply with the conditions of its original approval.
14 The department of natural resources shall promulgate rules for processing an
15 exemption application that provide for public participation, taking into account the
16 role of the interstate clearinghouse under sub. (4).

17 **(4) INTERSTATE CLEARINGHOUSE.** The department may participate in the
18 establishment and implementation of a regional, multistate clearinghouse to assist
19 in carrying out the requirements of this section.

20 **SECTION 2.** 118.07 (4) of the statutes is created to read:

21 118.07 **(4)** No school board, private school, or charter school may knowingly do
22 any of the following:

23 (a) Purchase or use free-flowing elemental mercury for any purpose.

