SENATE BILL 200 (LRB -0178)

An Act to create 100.275 and 118.07 (4) of the statutes; relating to: products containing mercury and granting rule-making authority. (FE)

2009

05-14.	S.	Introduced by Senators **Jauch**, **Coggs**, **Cowles**, **Lassa**, **Lehman**, **Miller**, **Risser**, **Robson**, **Sullivan**, **Taylor** and **Wirch**; cosponsored by Representatives **Danou**, **Black**, **Benedict**, **Berceau**, **Bernard Schaber**, **Dexter**, **Hebl**, **Hilgenberg**, **Hintz**, **Hixson**, **Milroy**, **A. Ott**, **Parisi**, **Pasch**, **Pocan**, **Pope-Roberts**, **Richards**, **Roys**, **Sinicki**, **Smith**, **Spanbauer** and **Steinbrink**.	
05-14.	S.	Read first time and referred to committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection	174
05-18.	S.	Representative Mason added as a cosponsor	177
06-10.	S.	Fiscal estimate received.	
08-13.	S.	Public hearing held.	
08-13.	S.	Senate substitute amendment 1 offered by Senator Jauch **(LRB s0079)**	260
08-31.	S.	Senate amendment 1 to Senate substitute amendment 1 offered by Senator Jauch **(LRB a0633)**	271
09-02.	S.	Fiscal estimate received.	
09-02.	S.	Executive action taken.	
09-03.	S.	Report adoption of Senate Amendment 1 to Senate Substitute Amendment 1 recommended by committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection, Ayes 5, Noes 0	274
09-03.	S.	Report adoption of Senate Substitute Amendment 1 recommended by committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection, Ayes 5, Noes 0	274
09-03.	S.	Report passage as amended recommended by committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection, Ayes 5, Noes 0	274
09-03.	S.	Available for scheduling.	
09-16.	S.	Placed on calendar 9-22-2009 by committee on Senate Organization	308
09-22.	S.	Read a second time.	
09-22.	S.	Senate amendment 1 to Senate substitute amendment 1 **adopted**.	
09-22.	S.	Senate substitute amendment 1 **adopted**.	
09-22.	S.	Ordered to a third reading.	
09-22.	S.	Rules suspended.	
09-22.	S.	Read a third time and **passed**.	
09-22.	S.	Ordered immediately messaged.	
09-22.	A.	Received from Senate.	
09-22.	A.	Read.	
09-22.	A.	Rules suspended and taken up.	
09-22.	A.	Read a second time.	
09-22.	A.	Ordered to a third reading.	
09-22.	A.	Rules suspended.	
09-22.	A.	Read a third time and **concurred in**, Ayes 89, Noes 5, Paired 2.	
09-22.	A.	Ordered immediately messaged.	
09-23.	S.	Received from Assembly concurred in.	

CMD

2009
ENROLLED BILL

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ADOPTED DOCUMENTS:

☐ Orig ☐ Engr S SubAmdt 1 09 S 0079/1

Amendments to above (if none, write "NONE"): SA1 a 0633/1

Corrections - show date (if none, write "NONE"): None

Topic Rel

9-23-09
Date

Enrolling Drafter

[rev: 1/6/09 2009enroll(fm)]

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBs0079/1
CTS&TKK:nwn&jld:jf

SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 SENATE BILL 200

August 13, 2009 – Offered by Senator JAUCH.

1 AN ACT *to create* 118.07 (4) and 299.49 of the statutes; **relating to:** products
2 containing mercury and granting rule–making authority.

Analysis by the Legislative Reference Bureau

This substitute amendment 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 substitute amendment, 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 substitute amendment prohibits the sale of manometers that contain mercury. Under the substitute amendment, 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 substitute amendment 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 substitute amendment authorizes a manufacturer or user of certain mercury–added products to petition the Department of Natural Resources (DNR) for an exemption from the substitute amendment'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 substitute amendment prohibits a public, private, or charter school from knowingly purchasing or using free–flowing elemental mercury for any purpose, or, with certain exceptions, from knowingly purchasing or using a mercury–containing compound or an instrument or measuring device containing mercury. Beginning January 1, 2012, the substitute amendment 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.

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

1 **SECTION 1.** 118.07 (4) of the statutes is created to read:

2 118.07 **(4)** No school board, private school, or charter school may knowingly do
3 any of the following:

4 (a) Purchase or use free–flowing elemental mercury for any purpose.

5 (b) Purchase or use a mercury–containing compound or an instrument or
6 measuring device that contains mercury unless one of the following exceptions
7 applies:

8 1. No reasonably acceptable, mercury–free alternative exists, in which case the
9 school board, private school, or charter school shall use a compound, instrument, or
10 measuring device containing the lowest mercury content available.

2. The purchase or use of the compound, instrument, or measuring device is required under federal law.

3. The only mercury–added component in the instrument or measuring device is a button cell battery.

(c) Beginning January 1, 2012, store free–flowing elemental mercury or, unless one of the exceptions under par. (b) applies, store a mercury–containing compound or an instrument or measuring device that contains mercury.

SECTION 2. 299.49 of the statutes is created to read:

299.49 Products containing mercury. (1) DEFINITIONS. In this section:

(a) "Mercury–added product" means a product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture.

(b) "Mercury–added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air–conditioning equipment. "Mercury–added thermostat" includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process. INSERT SA1-1

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

(d) "Mercury switch" means a mercury–added product or device that opens or closes an electrical circuit or gas valve. "Mercury switch" includes mercury float

switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors. "Mercury switch" does not include a mercury–added thermostat.

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

(b) *Manometers.* No person may sell or distribute a mercury–containing manometer of the type in milking machines on dairy farms. Manufacturers of such mercury–containing manometers shall notify wholesalers and retailers that the sale or distribution of such manometers is prohibited and shall instruct them on the proper disposal of remaining inventory.

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

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

a. A barometer.

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

c. A flowmeter.

d. A hydrometer.

e. A hygrometer or psychrometer.

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

g. A pyrometer.

h. A sphygmomanometer.

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

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

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

a. The larger product is used in manufacturing. INSERT SA1-2

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

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

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

1. A toy or game.

1 2. Jewelry.

2 3. Clothing or shoes.

3 4. An over–the–counter pharmaceutical product for human use.

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

5 **(3)** EXEMPTIONS. (a) The prohibitions under this section do not apply to the sale
6 of a mercury–added product for which the department grants an exemption under
7 this subsection.

8 (b) A manufacturer or user of a product may apply for an exemption from this
9 section by filing a written petition with the department. The department may grant
10 an exemption with or without conditions if it finds that the mercury–added product
11 is reasonable and appropriate for a specific use. The department shall find that a
12 product is reasonable and appropriate for a specific use only if a manufacturer or user
13 establishes all of the following:

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

16 2. One of the following applies:

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

19 b. Technically feasible nonmercury alternatives are not available at
20 comparable cost.

21 (c) Prior to approving an exemption, the department may consult with
22 neighboring states to promote consistency in the regulation of mercury–added
23 products. The department may request a person who is granted an exemption to
24 maintain records and provide reasonable reports to the department that
25 characterize mercury use in the products for which the exemption was granted.

1 Exemptions may not exceed 5 years and may be renewed upon written application
2 if the department finds that the mercury–added product continues to meet the
3 criteria specified in par. (b) and the manufacturer or other persons comply with the
4 conditions of its original approval. The department shall promulgate rules for
5 processing an exemption application that provide for public participation, taking
6 into account the role of the interstate clearinghouse under sub. (4).

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

10 **SECTION 3. Effective date.**

11 (1) This act takes effect on the first day of the 12th month beginning after
12 publication.

13 **(END)**

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa0633/1
CTS:jld:md

SENATE AMENDMENT 1,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 SENATE BILL 200

August 31, 2009 – Offered by Senator JAUCH.

SA1-1

At the locations indicated, amend the substitute amendment as follows:

1. Page 3, line 19: after "process" insert "or in the generating, transmission, or distributing facilities for electric energy, gas, or water".

2. Page 5, line 17: after "manufacturing" insert "or in the generating, transmission, or distributing facilities for electric energy, gas, or water".

(END)

SA1-2