**CHAPTER 278**

**HB 1418-FN-LOCAL - FINAL VERSION**

29march00.....3827h

5/18/00.....4456s

31may00.....4696-CofC

2000 SESSION

00-2419

03/09

HOUSE BILL***1418-FN-LOCAL***

AN ACT relative to mercury-containing products.

SPONSORS: Rep. Musler, Straf 6; Rep. B. Hall, Hills 20; Rep. Lynde, Hills 24; Rep. Cobb, Graf 5; Rep. Tuthill, Sull 5; Sen. Wheeler, Dist 21; Sen. Below, Dist 5

COMMITTEE: Environment and Agriculture

AMENDED ANALYSIS

This bill:

I. Prohibits the sale of certain mercury-added products.

II. Establishes notification and disclosure requirements for permissible mercury-containing products.

III. Establishes limitations on the use of elemental mercury.

IV. Authorizes the department of environmental services to participate in the establishment and implementation of a regional, multi-state clearinghouse or manufacturers' notifications of mercury-added products.

V. Amends the duties of the Mercury Study Committee to include assistance in identification of mercury-added, consumer products and health care facility products.

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Explanation: Matter added to current law appears in ***bold italics.***

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand*

AN ACT relative to mercury-containing products.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

278:1 Findings. The general court finds that:

I. Mercury is a persistent and toxic pollutant that bioaccumulates in the environment.

II. According to recent studies, mercury deposition is a significant problem in the northeastern United States.

III. Consumption of mercury-contaminated freshwater fish poses a significant public health threat.

IV. Because of this threat, all of the northeastern states have issued freshwater fish advisories, warning certain individuals against consuming fish from affected water bodies.

V. Studies have documented that exposure to the elevated levels of mercury in the environment has resulted in serious harm to fish-consuming wildlife.

VI. Combustion of municipal and other solid waste is a major source of mercury emissions in the northeastern United States.

VII. Recent studies have raised concern about potential emissions of mercury during the transportation and disposal of solid waste.

VIII. Several state programs have demonstrated that removal of mercury-containing products from the waste stream prior to combustion is an effective way to reduce mercury emissions from solid waste management facilities.

IX. The governors of the New England states and the premiers of the eastern Canadian provinces have endorsed a regional goal of "the virtual elimination of the discharge of anthropogenic mercury into the environment."

X. Manufacturers of certain mercury-added products, such as thermostats, have established successful "take back" programs for properly managing the products at the end of their useful life.

XI. Accidental mercury spills, breakages, and releases have occurred throughout the northeastern United States. These incidences have proven costly to clean up and have exposed students, teachers, and administrators to mercury emissions.

XII. Health care facilities, educational and research institutions, and businesses have also experienced significant employee exposures and incurred significant costs due to accidental mercury releases.

XIII. The intent of this act is to achieve significant reductions in mercury emissions by encouraging the establishment of effective state and local waste reduction, recycling, and management programs while continuing to spur economic development.

XIV. To be effective, this act requires the cooperation of mercury products industries in identifying and quantifying mercury containing products.

278:2 New Subdivision; Mercury Reduction. Amend RSA 149-M by inserting after section 50 the following new subdivision:

Mercury Reduction

149-M:51 Definitions. In this subdivision:

I. "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture which produces a product containing mercury or an importer or domestic distributor of a product containing mercury produced in a foreign country. In the case of a multi-component product containing mercury the manufacturer is the last manufacturer to produce or assemble the product. If the multi-component product is produced in a foreign country, the manufacturer is the importer or domestic distributor.

II. "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, and items of apparel, including footwear.

III. "Mercury-added product" means a product or a product with a component that contains mercury or a mercury compound intentionally added to the product or component in order to provide a specific characteristic, appearance, or quality or to perform a specific function or for any other reason.

IV. "Mercury fever thermometer" means a mercury-added product that is used for measuring body temperature.

V. "Product containing mercury" means any product or any product with a component that contains mercury or a mercury compound from any source or cause, whether intended or unintended, including, but not limited to, a mercury-added product and a product manufactured using mercury.

149-M:52 Notification.

I. Six months after the effective date of this section no mercury-added product shall be offered for final sale or use or distributed for promotional purposes in this state without prior notification in writing by the manufacturer of the product to the department in accordance with the requirements of this section. Such notification shall at a minimum include:

(a) A brief description of the product to be offered for sale, use, or distribution.

(b) The amount of and purpose for mercury in each unit of the product reported as an exact number or average per product with an upper and lower limit unless waived by the department due to confidentiality or practical considerations.

(c) The name and address of the manufacturer, and the name, address, and telephone number of a contact person for the manufacturer.

(d) The total amount of mercury contained in all mercury containing products sold in the United States, provided either by individual manufacturers or aggregated for an industry by a trade group.

II. With the approval of the department, the manufacturer may supply the information required above for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is significant change in the information or when requested by the department. The department may define and adopt specific requirements in accordance with RSA 541-A for the content and submission of the required notification.

III. Any information furnished pursuant to the requirements of this section, which, as certified by the manufacturer, relates to production or sales figures or to processes or production unique to the manufacturer or which would tend to affect adversely the competitive position of the manufacturer, shall be only for the confidential use of the department and the interstate clearing house in the administration of this section, unless the manufacturer shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of such information by the department and the interstate clearinghouse in compiling or publishing analyses or summaries relating to the amount and effect of mercury in products and the environment; provided that the analyses or summaries do not identify any manufacturer or reveal any information otherwise confidential under this section.

IV. This section shall not apply to prescription drugs or any substance that may be lawfully sold over the counter without a prescription under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et. seq.

149-M:53 Restrictions on the Sale of Certain Mercury-Added Products.

I. No later than one year after the effective date of this section, no toy, game, card, ornament, or mercury-added novelty shall be offered for final sale or use or distributed for promotional purposes in this state if the seller knows or has reason to know that the product contains mercury. Manufacturers that produce and sell mercury-added novelties shall notify retailers about the provisions of this section and how to dispose of the remaining inventory properly.

II. Six months after the effective date of this section, a person shall not sell or supply mercury fever thermometers to consumers and patients, except by prescription. The manufacturers of mercury fever thermometers shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur with all mercury fever thermometers sold through prescriptions.

III. As of the effective date of this section, no school in this state shall use or purchase for use in a primary or secondary classroom, elemental mercury, mercury compounds, or mercury-added instructional equipment and materials, except measuring devices and thermometers for which no adequate substitute exists which are used in school laboratories.

149-M:54 Limitations on the Use of Elemental Mercury. As of the effective date of this section, no person shall sell or provide elemental mercury to another person in this state without providing a material safety data sheet, as defined in 42 U.S.C. section 11049, and requiring the purchaser or recipient to sign a statement that the purchaser:

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

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

III. Will not place or allow anyone under the purchaser's control to place the mercury or cause the mercury to be placed in solid waste for disposal or in a wastewater disposal system.

149-M:55 Public Education and Outreach.

I. The department shall implement a public education, outreach, and assistance program for households, hazardous waste generators, local and regional solid waste management agencies, dismantlers, institutions, and schools on the hazards of mercury, the requirements and obligations of individuals, manufacturers, and agencies under this subdivision, and voluntary efforts that individuals, institutions, and businesses can undertake to help further reduce mercury in the environment. The department shall cooperate with manufacturers of mercury-added products and other affected businesses in the development and implementation of public education and technical assistance programs.

II. The department shall cooperate with the neighboring states and provinces and regional organizations in the northeastern United States and Canada on developing outreach, assistance, and education programs, where appropriate.

149-M:56 Interstate Clearinghouse. The department is hereby authorized to participate in the establishment and implementation of a regional, multi-state clearinghouse to assist in carrying out the requirements of this subdivision and to help coordinate reviews of the manufacturers' notifications regarding mercury-added products, applications for phase-out exemptions, reviews of the collection plans, the disclosures of mercury content, applications for alternative labeling, and education and outreach. The clearinghouse may also maintain a list of all products containing mercury, including mercury-added products; a file on all exemptions granted by the states; and a file of all the manufacturers' reports on the effectiveness of their collection systems.

149-M:57 State Review. The department shall, in consultation with the Committee on the Environment of the Conference of New England Governors and Eastern Canadian Premiers, review the effectiveness of this subdivision no later than 4 years after the effective date of this section and shall provide a report based upon that review to the governor and the legislature. The report shall review the effectiveness of the programs required under the subdivision and may contain recommendations for improving them.

278:3 New Paragraph; Mercury Study Committee as Extended by 2000, 87; Duties Amended. Amend 1999, 71:4 by inserting after paragraph II the following new paragraph:

III. Identifying, with the assistance of the department of environmental services and the department of health and human services, and to the greatest extent feasible, all consumer products and products used in health care facilities that contain mercury in amounts greater than one part per billion. The committee shall seek to achieve this goal with voluntary industry cooperation and may otherwise study and make recommendations for future legislative action.

278:4 Applicability. No mercury-added product shall be offered for final sale or use or distributed for promotional purposes in this state nor shipped to an address in this state unless the manufacturer has complied with all relevant requirements of this act, except that a retailer in this state may sell mercury containing products from the retailer's stock as it existed on the effective date of this act.

278:5 Effective Date. This act shall take effect January 1, 2001.

(Approved: June 20, 2000)

(Effective Date: January 1, 2001)

LBAO

00-2419

12/14/99

**HB 1418-FN-LOCAL - FISCAL NOTE**

AN ACT relative to mercury-containing products.

**FISCAL IMPACT:**

The Department of Environmental Services has determined this bill may increase state restricted revenue and expenditures and local revenue and expenditures by an indeterminable amount in FY 2001 and each year thereafter. There will be no fiscal impact on county revenue or expenditures.

**METHODOLOGY:**

The Department stated additional revenue may be received, but the amount cannot be determined at this time as it will depend on negotiated agreements between manufacturers and the state. Revenues collected through these agreements would either be used directly by the state or passed through to municipalities for the purpose of collecting and recycling mercury-added products. The state may also receive revenue through application fees charged to manufacturers that apply for exemptions or waivers from certain provisions of this bill. These revenues will be used to offset the costs of processing the applications for waiver or exemption. The state may incur additional costs from administering the provisions of this bill. The costs cannot be determined at this time because it depends on how many other states enact similar legislation. This legislation was developed as a regional model, with the intention of multiple states enacting it and establishing a regional clearinghouse to deal with the applications for exemptions and waivers. In the case of an established clearinghouse, the Department's cost would be in the form of annual dues to the clearinghouse to perform these functions. Should New Hampshire be the only state to enact this legislation, then it is likely additional staff would be necessary. These costs cannot be estimated at this time.