

By: Burnam

H.B. No. 129

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the sale and use of products containing mercury; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 6, Health and Safety Code, is amended by adding Chapter 508 to read as follows:

CHAPTER 508. MERCURY REDUCTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 508.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Interstate clearinghouse" means a regional, multistate clearinghouse as provided in Subchapter C.

(4) "Manufacturer" means a person that produces a product containing mercury or an importer or domestic distributor of a product containing mercury produced in a foreign country.

(5) "Mercury-added product" means a product or a component of a product containing mercury or a mercury compound intentionally added to the product or component.

(6) "Pharmacist" has the meaning assigned by Section 481.002.

(7) "Practitioner" has the meaning assigned by Section 481.002.

(8) "Product containing mercury" means a product or a

1 component of a product that contains:

2 (A) mercury; or

3 (B) a mercury compound from any source, including  
4 a mercury-added product and a product manufactured using mercury.

5 Sec. 508.002. RULES. (a) The board shall adopt rules to  
6 administer this chapter.

7 (b) In administering this chapter, the board shall seek  
8 voluntary industry cooperation.

9 Sec. 508.003. EXEMPTION. This chapter does not apply to a  
10 prescription drug or any substance sold over the counter without a  
11 prescription under the Federal Food, Drug, and Cosmetic Act (21  
12 U.S.C. Section 301 et seq.).

13 Sec. 508.004. DEPARTMENTAL REVIEW OF CHAPTER. (a) The  
14 department shall:

15 (1) review the effectiveness of this chapter not later  
16 than May 1, 2008; and

17 (2) provide a report on the effectiveness of this  
18 chapter to the governor, the lieutenant governor, and the speaker  
19 of the house of representatives not later than November 1, 2008.

20 (b) The report required by Subsection (a)(2) shall examine  
21 the effectiveness of the programs administered under this chapter.  
22 The report may contain recommendations for improving the programs  
23 and recommendations for legislative action and may identify, with  
24 the assistance of the Texas Department of Human Services, consumer  
25 products and products used in health care facilities that contain  
26 mercury in amounts greater than one part per billion.

27 (c) This section expires February 1, 2009.

1 [Sections 508.005-508.050 reserved for expansion]

2 SUBCHAPTER B. MERCURY REGULATION

3 Sec. 508.051. NOTIFICATION. (a) A manufacturer may not  
4 use, distribute, or offer for sale a mercury-added product in this  
5 state without filing a notification form with the department and  
6 paying the fee required by Section 508.053.

7 (b) The notification form must include:

8 (1) a brief description of the product to be used,  
9 distributed, or offered for sale;

10 (2) the amount of mercury in each product unit  
11 reported as an exact number or an average within an upper and lower  
12 limit and the purpose for the mercury in the product;

13 (3) the name and address of the manufacturer;

14 (4) the name, address, and telephone number of a  
15 contact person for the manufacturer; and

16 (5) other information the department may require.

17 (c) On approval from the department, the manufacturer may  
18 supply the information required by Subsection (b) for a product  
19 category rather than an individual product.

20 (d) The manufacturer shall update and revise the  
21 information required in the notification on a change in the  
22 information or at the department's request.

23 (e) The department may waive the information required by  
24 Subsection (b)(2) as the department considers necessary to protect  
25 the confidentiality of the trade secrets of the manufacturer or for  
26 other practical reasons.

27 Sec. 508.052. DETERMINATION OF MANUFACTURER OF

1 MULTICOMPONENT PRODUCT. For the purposes of this chapter, for a  
2 multicomponent product containing mercury, the manufacturer is the  
3 last manufacturer to produce or assemble the product. If the  
4 multicomponent product is produced in a foreign country, the  
5 manufacturer is the importer or domestic distributor.

6 Sec. 508.053. FEE. The board by rule shall charge a fee for  
7 each notification required under Section 508.051 in an amount  
8 necessary to cover the department's costs for administering this  
9 chapter.

10 Sec. 508.054. CONFIDENTIALITY. (a) Except as provided by  
11 this section, information collected by the department under this  
12 chapter is available to the public. The department shall maintain  
13 information as confidential and may not release the information to  
14 the public if the department determines that:

15 (1) the information relates to:

16 (A) production or sales figures; or

17 (B) processes or production unique to the  
18 manufacturer; or

19 (2) release of the information may adversely affect  
20 the competitive position of the manufacturer.

21 (b) A manufacturer may expressly agree to the publication of  
22 information collected under this chapter.

23 (c) The department may release confidential information to  
24 the interstate clearinghouse. The clearinghouse may use  
25 information obtained under this subsection only for the purposes  
26 described by Subchapter C and shall maintain the information as  
27 confidential.

1       Sec. 508.055. RESTRICTIONS ON SALE OF MERCURY-ADDED  
2 PRODUCTS. A person may not distribute or offer for sale in this  
3 state a mercury-added product intended for personal or household  
4 enjoyment or adornment, if the person knows or has reason to know  
5 the product contains mercury, including an item intended for use as  
6 a practical joke, figurine, adornment, toy, game, card, ornament,  
7 yard statue, candle, piece of jewelry, holiday decoration, or item  
8 of apparel or footwear.

9       Sec. 508.056. RESTRICTION ON SALE OF MERCURY FEVER  
10 THERMOMETERS. (a) A person may not sell or distribute mercury  
11 fever thermometers used for measuring body temperature in this  
12 state except as provided by this section.

13       (b) A pharmacist may dispense a mercury fever thermometer  
14 to a person only under a valid prescription.

15       (c) A manufacturer may not sell a mercury fever thermometer  
16 to a person except to a pharmacy, school, practitioner, or other  
17 person as provided by this chapter and board rule. A manufacturer  
18 of mercury fever thermometers shall include with each thermometer  
19 instructions describing:

20           (1) the proper care and handling of the thermometer to  
21 prevent breakage; and

22           (2) the proper procedures for cleaning up and  
23 disposing of mercury.

24       Sec. 508.057. RESTRICTIONS ON MERCURY IN SCHOOLS.

25       (a) Except as provided by Subsection (b), a primary or secondary  
26 school may not use or purchase for use in the school elemental  
27 mercury, mercury compounds, or mercury-added instructional

1 equipment and materials.

2 (b) A primary or secondary school may use or purchase for  
3 use in the school measuring devices and fever and other  
4 thermometers that contain mercury as provided by board rule only  
5 if:

6 (1) the equipment is used in a school laboratory; and

7 (2) no adequate substitute for the mercury-added  
8 equipment exists.

9 Sec. 508.058. LIMITATIONS ON USE OF ELEMENTAL MERCURY. (a)

10 A person may not sell or distribute elemental mercury to a purchaser  
11 or recipient in this state unless the person provides to the  
12 purchaser or recipient a material safety data sheet, as defined in  
13 42 U.S.C. Section 11049, and the purchaser or recipient signs a  
14 statement indicating the purchaser or recipient:

15 (1) understands mercury is toxic and should be stored  
16 and used appropriately to prevent the exposure of any person to the  
17 mercury; and

18 (2) should not place or allow anyone under the  
19 purchaser's or recipient's control to place the mercury or cause the  
20 mercury to be placed in solid waste for disposal or in a wastewater  
21 disposal system.

22 (b) A purchaser or recipient may only use elemental mercury  
23 for medical, dental, research, or manufacturing purposes.

24 Sec. 508.059. PUBLIC EDUCATION AND OUTREACH. (a) The

25 department shall implement a public education, outreach, and  
26 assistance program for households, hazardous waste generators,  
27 local and regional solid waste management agencies, dismantlers,

1 institutions, and schools on:

2 (1) the hazards of mercury;

3 (2) the requirements and obligations of individuals,  
4 manufacturers, and agencies under this chapter; and

5 (3) the voluntary actions that individuals,  
6 institutions, and businesses may take to reduce mercury in the  
7 environment.

8 (b) The department shall cooperate with manufacturers of  
9 mercury-added products and other affected businesses in the  
10 development and implementation of public education and technical  
11 assistance programs.

12 (c) The department shall cooperate with neighboring states  
13 and regional organizations in the development of outreach,  
14 assistance, and education programs.

15 [Sections 508.060-508.100 reserved for expansion]

16 SUBCHAPTER C. INTERSTATE CLEARINGHOUSE

17 Sec. 508.101. INTERSTATE CLEARINGHOUSE. (a) The department  
18 may participate in the establishment and implementation of an  
19 interstate clearinghouse to assist the department in:

20 (1) administering this chapter;

21 (2) coordinating reviews of:

22 (A) the manufacturers' notifications regarding  
23 mercury-added products;

24 (B) collection plans; and

25 (C) the disclosures of mercury content; and

26 (3) providing education and outreach programs.

27 (b) The clearinghouse may also maintain:

1           (1) a list of all products containing mercury,  
2 including mercury-added products;

3           (2) a file on all exemptions granted by the states; and

4           (3) a file of all the manufacturers' reports on the  
5 effectiveness of collection systems.

6           Sec. 508.102. PUBLICATION. The department and the  
7 interstate clearinghouse may compile or publish analyses or  
8 summaries relating to the amount and effect of mercury in products  
9 and in the environment. The analyses or summaries may not identify  
10 any manufacturer or reveal any information that is confidential  
11 under this chapter.

12           [Sections 508.103-508.150 reserved for expansion]

13                           SUBCHAPTER D. CRIMINAL PENALTY

14           Sec. 508.151. CRIMINAL PENALTY. (a) A person commits an  
15 offense if the person violates this chapter or a rule adopted by the  
16 board under this chapter.

17           (b) An offense under this section is a Class C misdemeanor.

18           SECTION 2. (a) A person may not offer for sale or  
19 distribute in this state any mercury-added product unless the  
20 person has complied with Chapter 508, Health and Safety Code, as  
21 added by this Act, except that a retailer in this state may sell  
22 until September 1, 2004, products containing mercury from the  
23 retailer's stock as it existed on the effective date of this Act.

24           (b) The Texas Board of Health shall adopt rules to  
25 administer Chapter 508, Health and Safety Code, as added by this  
26 Act, not later than July 1, 2004.

27           SECTION 3. A manufacturer that sells a mercury-added

1 product prohibited under Section 508.055, Health and Safety Code,  
2 as added by this Act, shall notify retailers of the requirements of  
3 Chapter 508, Health and Safety Code, as added by this Act, and the  
4 proper method to dispose of remaining inventory.

5 SECTION 4. This Act takes effect May 1, 2004.