

Senate Bill 742

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes legislative findings regarding lighting that contains mercury. Requires Department of Environmental Quality to collaborate with certain parties to implement statewide product stewardship system for lighting that contains mercury. Requires producers of lighting that contains mercury to establish product stewardship programs and to submit product stewardship plans to department. Requires department to establish annual performance goals for lighting that contains mercury.

Authorizes Environmental Quality Commission to adopt rules to implement provisions related to lighting that contains mercury.

Allows Department of Environmental Quality to establish schedule of fees to be paid by producers. Establishes Product Stewardship Fund. Continuously appropriates moneys in fund to department to pay costs of implementing provisions related to lighting that contains mercury.

Imposes civil penalty for disposal of, or knowingly accepting for disposal, lighting that contains mercury. Imposes civil penalties for other violations of provisions related to lighting that contains mercury.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to product stewardship; creating new provisions; amending ORS 459.247 and 459.995; ap-
3 propriating money; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

FINDINGS

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8 **SECTION 1. The Legislative Assembly finds that it is in the best interest of this state for**
9 **producers of lighting that contains mercury to finance and manage a statewide product**
10 **stewardship system that serves urban and rural areas in Oregon and provides free, conven-**
11 **ient opportunities for the collection, transportation, recovery and safe management of**
12 **lighting that contains mercury.**

13 **SECTION 2. As used in sections 2 to 12 of this 2009 Act:**

14 (1) "Brand" means a name, symbol, word or mark that identifies a product and attributes
15 the product to the owner of the brand as the producer.

16 (2) "Covered entity" means any Oregon household, a business with 10 or fewer employees,
17 a not-for-profit organization exempt from taxation under section 501(c)(3) of the Internal
18 Revenue Code with 10 or fewer employees or any person delivering 10 or fewer whole, un-
19 broken items of lighting that contains mercury to a product stewardship program.

20 (3) "Environmentally sound management practices" means policies as defined by rules
21 adopted pursuant to section 3 of this 2009 Act that are implemented by a producer or a
22 stewardship organization to ensure compliance with applicable laws and that address issues
23 such as adequate record keeping, tracking and documenting the fate of materials within this
24 state and beyond, on-site operations, security of facilities and materials, worker health and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 safety requirements, environmental protection, closure plans, adequate insurance and fi-
2 nancial assurances.

3 (4) "Historical product" means any lighting that contains mercury that is not currently
4 marketed or sold by the producer.

5 (5) "Lighting that contains mercury" means lamps, bulbs, tubes or other devices that
6 contain mercury and that provide functional illumination in homes and businesses and out-
7 doors, and historical products and orphan products of the same type.

8 (6) "Orphan product" means lighting that contains mercury that lacks a brand, for which
9 the producer is no longer in business and has no successor in interest or for which the De-
10 partment of Environmental Quality cannot identify a producer.

11 (7) "Performance goal" means a metric established by a producer or the Department of
12 Environmental Quality to measure on an annual basis the performance of a product
13 stewardship program in addressing recycling, safe disposal, environmental impacts or health
14 impacts related to lighting that contains mercury.

15 (8) "Person" means the United States, this state, a public or private corporation, a local
16 government unit, a public agency, an individual, a partnership, an association, a firm, a
17 trust, an estate or another legal entity.

18 (9) "Producer" means a person:

19 (a) Who manufactures lighting that contains mercury and who sells, offers for sale or
20 distributes that lighting in Oregon under the manufacturer's own name or brand;

21 (b) If paragraph (a) of this subsection does not apply, who is not the manufacturer of the
22 lighting that contains mercury but is the owner or licensee of a trademark or brand under
23 which the lighting is sold or distributed in Oregon, whether or not the trademark is regis-
24 tered; or

25 (c) If paragraphs (a) and (b) of this subsection not apply, who imports the lighting that
26 contains mercury into Oregon for sale or distribution.

27 (10) "Product stewardship plan" means a statewide plan that describes a program for the
28 collection, transportation, reuse, recycling and disposal of lighting that contains mercury and
29 any related performance goals and that is developed and provided for by a producer or group
30 of producers.

31 (11) "Product stewardship program" means a statewide program financed and managed
32 by a producer or group of producers that is based on an approved product stewardship plan
33 and that addresses the environmental or health impacts of lighting that contains mercury
34 over the entire life cycle of that product.

35 (12)(a) "Recycling" means any process by which collected lighting that contains mercury,
36 components and by-products are transformed into new, usable or marketable materials in a
37 manner in which the original lighting that contains mercury may lose its identity.

38 (b) "Recycling" does not include energy recovery or energy generation by means of
39 combusting lighting that contains mercury, components and by-products with or without
40 other waste products.

41 (13) "Retailer" means any person that offers lighting that contains mercury for sale at
42 retail through any means, including but not limited to remote offerings such as sales outlets,
43 catalogs or the Internet.

44 (14) "Sell" or "sale" means any transfer of title for consideration, including but not lim-
45 ited to remote sales conducted through sales outlets, catalogs or the Internet or any similar

1 electronic means, but excluding lease arrangements.

2 (15) "Statewide product stewardship system" means the statewide system of product
3 stewardship programs established and managed by producers or stewardship organizations
4 that are overseen by the Department of Environmental Quality.

5 (16) "Stewardship organization" means a corporation, nonprofit or other legal entity ap-
6 pointed by a producer or group of producers to act as an agent on behalf of the producer to
7 administer a product stewardship program.

8 9 RULES

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11 **SECTION 3.** The Environmental Quality Commission may adopt rules as necessary to
12 implement sections 2 to 12 of this 2009 Act.

13 14 PRODUCT REGULATION

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16 **SECTION 4.** (1) The Department of Environmental Quality shall develop and implement
17 a statewide product stewardship system for lighting that contains mercury.

18 (2) In developing and implementing the statewide product stewardship system under this
19 section, the department shall collaborate to the extent practicable with interested parties.
20 Furthermore, to the extent practicable, the department shall coordinate with other states
21 to achieve consistency in the implementation of the statewide product stewardship system.

22 (3) The department shall adopt rules to address the implementation of a statewide prod-
23 uct stewardship system for lighting that contains mercury. The rules must address envi-
24 ronmentally sound management practices, performance goals, implementation dates for the
25 statewide product stewardship system, administrative fees, compliance with applicable waste
26 rules and any other requirement relevant to the management of lighting that contains mer-
27 cury under a statewide product stewardship system.

28 (4) All lighting that contains mercury collected by product stewardship programs must
29 be recycled unless provided otherwise in department rules. Mercury and mercury-bearing
30 residuals from recycling of lighting that contains mercury must be retorted in properly
31 permitted facilities. Mercury recovered from retorting must be recycled or placed in a
32 properly permitted hazardous waste landfill. When a facility is available, mercury recovered
33 from retorting must be placed in a properly permitted mercury repository.

34 35 PRODUCT STEWARDSHIP PROGRAMS

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37 **SECTION 5.** (1) Producers of lighting that contains mercury shall establish product
38 stewardship programs. Every producer shall:

39 (a) Operate, either individually or collectively with other producers, a product
40 stewardship program; or

41 (b) Enter into an agreement with one or more stewardship organizations to operate, on
42 the producer's behalf, a product stewardship program.

43 (2) Product stewardship programs must be provided free of charge to covered entities
44 when lighting that contains mercury is sold or collected for reuse, recycling or disposal.
45 Product stewardship programs must accept any branded or unbranded lighting that contains

1 mercury. A program must meet or exceed the requirements for the collection of lighting that
 2 contains mercury set forth in the product stewardship plan required by section 6 of this 2009
 3 Act.

4 (3) Producers must pay all costs associated with product stewardship programs, including
 5 costs of collection, transportation, reuse, recycling and disposal of lighting that contains
 6 mercury and their components. Producers shall provide adequate insurance and financial
 7 assurances for the program.

8 (4) Product stewardship programs must meet or exceed the environmentally sound
 9 management practices provided in any applicable rules as well as any other applicable re-
 10 quirements regarding the management of lighting that contains mercury.

11 (5) A producer may not sell or offer for sale in Oregon any lighting that contains mer-
 12 cury unless it or, where appropriate, the product package or container is labeled with a
 13 brand that is permanently affixed and readily visible and the brand is included in an approved
 14 product stewardship plan.

15 (6) All product stewardship programs must operate in accordance with:

16 (a) The approved product stewardship plan; and

17 (b) Sections 2 to 12 of this 2009 Act and any applicable rules.

18 (7) Product stewardship programs must promote the use of the program and inform
 19 covered entities of available collection options. This information must be provided to covered
 20 entities, retailers and other interested parties.

21 22 PRODUCT STEWARDSHIP PLANS

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24 **SECTION 6.** (1) A producer must submit a product stewardship plan to the Department
 25 of Environmental Quality that addresses the following:

26 (a) Information about participating producers, including but not limited to relevant con-
 27 tact information, a description of any stewardship organizations and the products and brands
 28 covered by the product stewardship program and product stewardship plan.

29 (b) Implementation of performance goals, including but not limited to a description of
 30 annual performance goals and compliance with the goals.

31 (c) Collection information, including but not limited to the availability and convenience
 32 of the product stewardship program to covered entities in urban and rural areas statewide,
 33 and collection options in all counties in the state and all cities with populations of at least
 34 10,000.

35 (d) Implementation of environmentally sound management practices for the collection,
 36 transportation, reuse, recycling and disposal of lighting that contains mercury.

37 (e) Management of lighting that contains mercury, including but not limited to recycling
 38 or proper disposal of collected lighting that contains mercury, retorting of recovered mer-
 39 cury in a properly permitted mercury repository and the management of all residuals that
 40 cannot be reused or recycled.

41 (f) Financial information, including but not limited to the financing of the product
 42 stewardship program and adequate insurance and financial assurances.

43 (g) Outreach and education to covered entities as well as the provision of information to
 44 collectors, retailers and other interested parties.

45 (h) Public and stakeholder consultation, including but not limited to the opportunity for

1 the public and other stakeholders to comment on the product stewardship plan prior to
2 submission as well as on the implementation and operation of the product stewardship pro-
3 gram.

4 (2) If the department determines that a proposed product stewardship plan complies with
5 sections 2 to 12 of this 2009 Act and any applicable rules and is in the public interest, the
6 department shall approve the product stewardship plan.

7 (3) All product stewardship plans submitted and approved by the department must be
8 available to the general public through the website of the producer or the stewardship or-
9 ganization.

10 (4) The department shall maintain a website listing of producers and brands covered by
11 approved product stewardship plans and product stewardship programs, updated by the first
12 day of each month.

13 **SECTION 7.** (1) All product stewardship plans must be submitted to the Department of
14 Environmental Quality no later than 120 days prior to the sale or offer for sale of lighting
15 that contains mercury in Oregon.

16 (2) The department shall approve or reject the product stewardship plan within 60 days
17 of receiving the plan unless the department requests additional information regarding the
18 plan.

19 (3) If a product stewardship plan is rejected and the producer wishes to submit a revised
20 plan, the producer must do so within 60 days of the date of the letter of rejection.

21 (4) Product stewardship plans must be updated and submitted to the department for re-
22 view at least once every four years from the date on which the plan is first approved or more
23 frequently as needed to ensure compliance with sections 2 to 12 of this 2009 Act.

24 **SECTION 8.** (1) A producer, retailer or other person may not sell lighting that contains
25 mercury or offer lighting that contains mercury for sale to any person in this state unless
26 the producer is participating in an approved product stewardship program. A retailer or
27 other person complies with this section if, on the date the lighting that contains mercury is
28 ordered from the producer or its agent, the website of the Department of Environmental
29 Quality lists the producer as operating or participating in an approved product stewardship
30 program.

31 (2) At the time of sale to a consumer, a producer, retailer or other person selling lighting
32 that contains mercury or offering lighting that contains mercury for sale must provide the
33 consumer with information on where and how to recycle or dispose of the lighting through
34 a product stewardship program.

35 **SECTION 9.** A producer must annually prepare and submit to the Department of Envi-
36 ronmental Quality a written report that describes how a product stewardship program was
37 implemented in accordance with sections 2 to 12 of this 2009 Act and any applicable rules.

38 39 PERFORMANCE GOALS

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41 **SECTION 10.** By the third year of the operation of a statewide product stewardship sys-
42 tem for lighting that contains mercury, the Department of Environmental Quality shall es-
43 tablish an annual performance goal. A producer must meet or exceed this goal. Producers
44 must continue to fully implement a product stewardship program even after an enforceable
45 annual performance goal is achieved.

FEES

SECTION 11. The Department of Environmental Quality may establish a schedule of fees to be paid by producers. Fees may be established in amounts to cover, but not exceed, costs incurred by the department in providing product stewardship plan review, approval, program development, oversight and compliance for any lighting that contains mercury for which a producer is responsible. Fees collected by the department under this section shall be deposited in the State Treasury to the credit of the Product Stewardship Fund established under section 12 of this 2009 Act.

PRODUCT STEWARDSHIP FUND

SECTION 12. The Product Stewardship Fund is established, separate and distinct from the General Fund. Interest earned by the Product Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of implementing sections 2 to 12 of this 2009 Act.

DISPOSAL PROHIBITION

SECTION 13. ORS 459.247, as amended by section 15, chapter 302, Oregon Laws 2007, is amended to read:

459.247. (1) No person shall dispose of and no disposal site operator shall knowingly accept for disposal the following types of solid waste at a solid waste disposal site:

- (a) Discarded or abandoned vehicles;
- (b) Discarded large home or industrial appliances;
- (c) Used oil;
- (d) Tires;
- (e) Lead-acid batteries; [or]
- (f) Covered electronic devices[.]; **or**

(g) Lighting that contains mercury.

(2) As used in this section:

(a) "Covered electronic device" has the meaning given that term in ORS 459A.305; [and]

(b) "Lighting that contains mercury" has the meaning given that term in section 2 of this 2009 Act; and

[(b)] (c) "Used oil" has the meaning given that term in ORS 459A.555.

(3) Nothing in this section shall prohibit a disposal site operator from accepting and storing, for purposes of recycling or recovering, any of the types of solid waste listed in subsection (1) of this section.

(4) The Environmental Quality Commission may postpone the prohibition under subsection (1)(f) **or (1)(g)** of this section in any area of this state where the commission determines there is an inadequate system for the collection, transportation and recycling of covered electronic devices **or lighting that contains mercury.**

(5)(a) Each disposal site operator shall establish and implement, in accordance with any permit requirements established by the Department of Environmental Quality, a program reasonably de-

1 signed to prevent acceptance of covered electronic devices **or lighting that contains mercury** for
 2 disposal. If an operator operates the disposal site in conformity with the program, the operator is
 3 presumed to have complied with the provisions of this section that prohibit knowingly accepting
 4 covered electronic devices **or lighting that contains mercury** for disposal.

5 (b) This section does not prevent the disposal site operator from accepting and storing, for
 6 purposes of recycling, reusing or refurbishing, covered electronic devices **or lighting that contains**
 7 **mercury**.

8 9 PENALTIES

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11 **SECTION 14.** ORS 459.995, as amended by section 17, chapter 302, Oregon Laws 2007, is
 12 amended to read:

13 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
 14 provided by law:

15 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
 16 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080 **or sections 2 to 12**
 17 **of this 2009 Act**, or any rule or order of the Environmental Quality Commission pertaining to the
 18 disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any
 19 rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS
 20 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid
 21 mercury, shall incur a civil penalty not to exceed \$10,000 a day for each day of the violation.

22 (b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty
 23 not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate
 24 violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a
 25 separate violation.

26 (c) For each day a city, county or metropolitan service district fails to provide the opportunity
 27 to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall
 28 incur a civil penalty not to exceed \$500 for each violation.

29 (d) Any person who violates the provisions of ORS 459.247 (1)(f) **or (1)(g)** shall incur a civil
 30 penalty not to exceed \$500 for each violation. Each covered electronic device **or lighting that**
 31 **contains mercury** that is disposed of improperly shall be a separate violation.

32 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665
 33 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000
 34 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject
 35 to additional penalties under subsection (1) of this section.

36 (3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the
 37 manner provided by ORS 468.135.

38 39 MISCELLANEOUS

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41 **SECTION 15.** The unit captions used in this 2009 Act are provided only for the conven-
 42 **ience of the reader and do not become part of the statutory law of this state or express any**
 43 **legislative intent in the enactment of this 2009 Act.**

44 **SECTION 16.** The Department of Environmental Quality shall evaluate any federal law
 45 **that establishes a national program to manage lighting that contains mercury as defined in**

1 section 2 this 2009 Act through a product stewardship approach. If the department deter-
 2 mines that the federal law substantially meets or exceeds the requirements and intent of
 3 sections 2 to 12 of this 2009 Act, the department shall include information on the federal law
 4 in a report in the manner provided by ORS 192.245, to the session of the Legislative Assembly
 5 that next follows the enactment of the federal law.

6 SECTION 17. Sections 2 to 12 of this 2009 Act do not supersede any authority under ORS
 7 chapter 459 or 459A for cities and counties to regulate the collection of solid waste.

8 SECTION 18. Except as provided in section 19 of this 2009 Act, sections to 1 to 12, 16 and
 9 17 of this 2009 Act and the amendments to ORS 459.247 and 459.995 by sections 13 and 14 of
 10 this 2009 Act become operative on July 1, 2011.

11 SECTION 19. The Environmental Quality Commission may adopt rules before the opera-
 12 tive date specified in section 18 of this 2009 Act or take any action before that date that is
 13 necessary to carry out the provisions of sections 1 to 12, 16 and 17 of this 2009 Act and the
 14 amendments to ORS 459.247 and 459.995 by sections 13 and 14 of this 2009 Act.

15 SECTION 20. No later than January 1, 2012, the Department of Environmental Quality
 16 shall develop and implement the statewide product stewardship system described in section
 17 4 of this 2009 Act.

18 SECTION 21. This 2009 Act being necessary for the immediate preservation of the public
 19 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 20 on its passage.

21 _____