

PUBLIC CHAPTER NO. 840

SENATE BILL NO. 2403

**By Southerland, Crowe, Yager, Faulk, Tracy, Overbey, Black, Ketron,
Woodson**

Substituted for: House Bill No. 3218

By Hawk, Towns, Coley, Hardaway, Maddox

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 211, relative to waste disposal.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 211, is amended by adding the following Sections 2 through 8 as a new, appropriately designated part:

SECTION 2. This part shall be known and may be cited as the "Mercury Product Disposal Control Act".

SECTION 3. The general assembly finds and declares that:

(1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;

(2) According to recent studies, mercury deposition is a significant problem in the Southeast; and

(3) The removal of mercury-containing products from solid wastes that are collected and disposed of in landfills or through incineration is a means of reducing the deposition of mercury into the environment and mercury's threat to public health and the environment.

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or an analogous product, or arsphenamine or any other trivalent organic arsenic compound used for the prevention or treatment of a disease or condition of human beings or animals;

(2) "Board" means, unless otherwise indicated, the solid waste disposal control board established by § 68-211-111;

(3) "Commissioner" means the Commissioner of Environment and Conservation or the commissioner's authorized representative;

(4) "Covered generator" means any generator that:

(A) Employs ten (10) or more employees;

(B) Owns or maintains a building, excluding private residences, of at least three thousand (3,000) square feet;

(C) Owns or maintains electrical distribution systems;

(D) Owns or operates a business that demolishes buildings, excluding private residences; or

(E) Owns or operates a tanning bed salon business;

(5) "Department" means the Department of Environment and Conservation;

(6) "Discarded mercury-added consumer product" means a mercury-added consumer product that can, or will, no longer be used for its intended purpose as determined by its generator;

(7) "Disposed of" means originally placed in a solid waste container whose contents are destined for delivery to a solid waste landfill for disposal or to an incinerator, boiler, or industrial furnace for burning;

(8) "Generator" means the person who owns or otherwise controls the fate of a discarded mercury-added consumer product;

(9) "Hazardous waste" shall have the same meaning as provided in Rule 1200-01-11-.02(1)(c);

(10) "Hazardous waste management facility" means:

(A) All contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, transporting, or disposing of hazardous waste. A facility may consist of several treatment, storage, transportation, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) For the purpose of implementing corrective action under Rule 1200-01-11-.06(6)(l) or § 68-212-111, all contiguous property under the control of the owner or operator seeking a permit under the Hazardous Waste Management Act, compiled in Title 68, Chapter 212, Part 1; and

(C) Notwithstanding subdivision (B), a remediation waste management site if such site is located within a facility that is subject to Rule 1200-01-11-.06(6)(l);

(11)(A) "Mercury-added consumer product" means any material, device, or part of a device including, but not limited to, those materials, devices, or parts listed in subdivision (B):

(i) Into which elemental mercury or mercury compounds are intentionally added during the formulation or manufacture of such material or device; and

(ii) In which the continued presence of mercury is required to provide a specific characteristic, appearance or quality, or to perform a specific function;

(B) "Mercury-added consumer product" includes, but is not limited to:

(i) Thermostats;

(ii) Thermometers;

(iii) Switches (whether individually or as part of another product);

(iv) Medical or scientific instruments;

(v) Electrical relays and other electrical devices;

(vi) Lamps and light bulbs; and

(vii) Batteries other than those defined as mercury-containing excluded products;

(12) "Mercury-containing excluded product" means:

(A) Photographic film and paper;

(B) Pharmaceutical products;

(C) Biological products;

(D) Any substance that can lawfully be sold over the counter without a prescription under the Federal Food, Drug and Cosmetics Act, 21 U.S.C. § 301, et seq.;

(E) Any device or material from which the elemental mercury or mercury compounds have been removed;

(F) Button batteries used in hearing aids, radios, cameras, and other devices;

(G) Medical devices; or

(H) Restorative dental materials;

(13) "Person" means any and all persons, natural or artificial, including any individual, firm or association, or municipal or private corporation organized or existing under the laws of this state or any other state, and any governmental

agency or county of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government;

(14)(A) "Solid waste" means:

(i) Garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities; or

(ii) Without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal.

(B) "Solid waste" does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act codified as 33 U.S.C. § 1342;

(15) "Universal waste" means any of the hazardous wastes listed in Rule 1200-01-11-.12(1)(a) that are managed under the universal waste requirements of Rule 1200-01-11-.12;

(16)(A) "Universal waste handler" means:

(i) Any person, by site, whose act or process produces universal waste or whose act causes universal waste to become subject to regulation; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a universal waste destination facility, or to a foreign destination;

(B) "Universal waste handler" does not include:

(i) A person who treats, except under the provisions of Rules 1200-01-11-.12(2)(d)1 or 3, or Rules 1200-01-11-.12(3)(d)1 or 3, disposes of, or recycles universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility; and

(17) "Universal waste destination facility" means a facility that treats, disposes of, or recycles universal waste, except those management activities described in Rules 1200-01-11-.12(2)(d)1 and 3 and Rules 1200-01-11-.12(3)(d)1 and 3. For the purpose of managing universal waste, "universal waste

destination facility" does not include a facility at which universal waste is only accumulated.

SECTION 5. (a) On or after January 1, 2011:

(1) No covered generator shall dispose of a mercury-added consumer product as non-hazardous solid waste under Rule 1200-1-7; and

(2) A covered generator shall ensure that its discarded mercury-added consumer products are:

(A) Shipped for recycling, treatment, or disposal to either a universal waste destination facility or a hazardous waste management facility that has been permitted to manage such materials by the federal Environmental Protection Agency ("EPA") pursuant to the federal Resource Conservation and Recovery Act ("RCRA"), by a state program that has been authorized by the EPA to implement the pertinent portions of RCRA in the state, or by a foreign government; and

(B) Managed prior to receipt at such universal waste destination facility or hazardous waste management facility in accordance with, as applicable, either:

(i) The hazardous waste management requirements of Rules 1200-1-11-.03 through 1200-1-11-.07; or

(ii) The universal waste management requirements of Rule 1200-1-11-.11.

(b) Any person who separates and collects from a municipal solid waste stream either mercury-added consumer products from generators that are not covered generators, or mercury-containing excluded products shall be subject to the same requirements as covered generators as provided in subsection (a).

SECTION 6. The department may develop and publish educational materials on the requirements of this part relative to discarded mercury-added consumer products and the effects of improper mercury disposal. For purposes of this section, publication shall include, but is not limited to, prominently posting the content of such materials on the department's Web site.

SECTION 7. (a) When making an inspection of any structure pursuant to § 62-3-128; § 62-4-127; Title 68 or Title 69, the inspector shall make the following inquiry to the owner of the structure, or, if the owner is not present at the time of an inspection, any other person with the authority to exercise control over the structure who is present at such structure at the time of the inspection:

Are you aware that, if any of the following criteria apply to your business and your business utilizes mercury-added consumer

products, such as fluorescent light bulbs, the Mercury Product Control Act applies to your business:

(1) Employs ten (10) or more employees;

(2) Owns or maintains a building of at least three thousand (3,000) square feet, excluding private residences;

(3) Owns or maintains one (1) or more electrical distribution systems;

(4) Engages in the demolition of buildings, excluding private residences; or

(5) Owns or operates a tanning bed salon?

The Mercury Product Control Act requires proper recycling of mercury-added consumer products rather than disposing of such products in the solid waste stream. Do you have a plan for recycling mercury-added consumer products?

(b) Any governmental entity or contractor that is required to update a form, whether in paper or electronic format, or both, in order to add the question required by subsection (a), shall only do so upon the occasion of the next regularly scheduled printing of such form or software update of a Web site, which immediately follows the effective date of this bill.

SECTION 8. The Department of Revenue shall establish and maintain a link on the Department of Revenue's Web site to information concerning the Mercury Product Disposal Control Act on the department's Web site. The link shall appear on a prominent page on the Department of Revenue's Web site in a location that the Department of Revenue determines is likely to direct taxpayers to such information. The department shall provide information to the Department of Revenue that is necessary to establish and maintain the link, including any necessary updates.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 15, 2010



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 30th day of April 2010



PHIL BREDESEN, GOVERNOR