
SUBSTITUTE SENATE BILL 6538

State of Washington

62nd Legislature

2012 Regular Session

By Senate Environment (originally sponsored by Senators Pridemore and Nelson)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to authorizing producers of mercury-containing
2 lights to include an environmental handling assessment to finance
3 mercury-containing light stewardship programs; amending RCW 70.275.030;
4 and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that additional
7 flexibility may be needed for manufacturers who are selling mercury-
8 containing lights for residential use in Washington to comply with the
9 requirements of chapter 70.275 RCW in order to provide a sustainable
10 funding mechanism and provide effective state protections to producer-
11 operated programs under chapter 70.275 RCW.

12 (2) The legislature declares that collaboration among producers,
13 groups of producers, product stewardship organizations operated by the
14 producers, or product stewardship organizations contracted by the
15 department of ecology, or the mercury-containing light retailers, is
16 necessary and is in the best interest of the public in order to provide
17 a sustainable funding mechanism and otherwise comply with the
18 requirements of chapter 70.275 RCW. The legislature therefore intends
19 to exempt from state antitrust laws, and to provide immunity from

1 federal antitrust laws through the state action doctrine, for the
2 specific activities undertaken pursuant to efforts designed and
3 implemented under chapter 70.275 RCW that might otherwise be
4 constrained by such laws. The legislature does not intend and does not
5 otherwise authorize any person or entity to engage in activities or to
6 conspire to engage in activities that would constitute per se
7 violations of state and federal antitrust laws including, but not
8 limited to, agreements among competitors as to the final pricing of any
9 wholesale or retail product.

10 **Sec. 2.** RCW 70.275.030 and 2010 c 130 s 3 are each amended to read
11 as follows:

12 (1) Every producer of mercury-containing lights sold in or into
13 Washington state for residential use must fully finance and participate
14 in a product stewardship program for that product, including the
15 department's costs for administering and enforcing this chapter.

16 (2) Every producer must:

17 (a) Participate in a product stewardship program approved by the
18 department and operated by a product stewardship organization
19 contracted by the department. All producers must finance and
20 participate in the plan operated by the product stewardship
21 organization, unless the producer obtains department approval for an
22 independent plan as described in (b) of this subsection; or

23 (b) Finance and operate, either individually or jointly with other
24 producers, a product stewardship program approved by the department.

25 (3)(a) A producer, group of producers, product stewardship
26 organization operated by producers, or product stewardship organization
27 contracted by the department is authorized to include financing
28 provisions that may include an environmental handling assessment that
29 is collected by the producer and remitted to the product stewardship
30 organization. Producers selling mercury-containing lights for
31 residential use may add an environmental handling assessment to the
32 cost of mercury-containing lights sold to wholesalers, retailers, and
33 distributors, who may add the environmental handling assessment to the
34 purchase price of mercury-containing lights sold in or into the state.
35 Funds collected using an environmental handling assessment may not
36 exceed the cost of the product stewardship program, but may include

1 reasonable reserves for mercury-containing lights that are projected to
2 be recycled in the state.

3 (b) A product stewardship organization must provide an annual
4 financial audit to the department when the product stewardship
5 organization implements an environmental handling assessment.

6 (4) A producer, group of producers, or product stewardship
7 organization funded by producers must pay all administrative and
8 operational costs associated with their program or programs, except for
9 the collection costs associated with curbside and mail-back collection
10 programs. For curbside and mail-back programs, a producer, group of
11 producers, or product stewardship organization shall finance the costs
12 of transporting mercury-containing lights from accumulation points and
13 for processing mercury-containing lights collected by curbside and
14 mail-back programs. For collection locations, including household
15 hazardous waste facilities, charities, retailers, government recycling
16 sites, or other suitable locations, a producer, group of producers, or
17 product stewardship organization shall finance the costs of collection,
18 transportation, and processing of mercury-containing lights collected
19 at the collection locations.

20 ((+4)) (5) Product stewardship programs shall collect unwanted
21 mercury-containing lights delivered from covered entities for reuse,
22 recycling, processing, or final disposition, and not charge a fee when
23 lights are dropped off or delivered into the program.

24 ((+5)) (6) Product stewardship programs shall provide, at a
25 minimum, no cost services in all cities in the state with populations
26 greater than ten thousand and all counties of the state on an ongoing,
27 year-round basis.

28 ((+6)) (7) All product stewardship programs operated under
29 approved plans must recover their fair share of unwanted covered
30 products as determined by the department.

31 ((+7)) (8) The department or its designee may inspect, audit, or
32 review audits of processing and disposal facilities used to fulfill the
33 requirements of a product stewardship program.

34 ((+8)) (9) No product stewardship program required under this
35 chapter may use federal or state prison labor for processing unwanted
36 products.

1 (~~(9)~~) (10) Product stewardship programs for mercury-containing
2 lights must be fully implemented by January 1, 2013.

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