

Enrolled
Senate Bill 1512

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CHAPTER

AN ACT

Relating to lighting that contains mercury; creating new provisions; and amending ORS 646.608.

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

FINDINGS

SECTION 1. The Legislative Assembly finds that it is in the best interest of this state to:

- (1) Reduce the amount of mercury in lighting that contains mercury; and**
- (2) Continue to work with federal, state and local government agencies as well as manufacturers, retailers and others to expand opportunities for consumers to recycle lighting that contains mercury.**

DEFINITIONS

SECTION 2. As used in sections 1 to 4 of this 2012 Act:

(1) "Lighting that contains mercury" means an electric lamp, including compact fluorescent lamps, straight fluorescent lamps and nonlinear fluorescent lamps, to which mercury or mercury compounds are added during the manufacturing process.

(2) "Long lifetime" means 25,000 hours or more when tested on an electronic ballast, including T8 instant start ballasts and T5 programmed start ballasts, and turned off and on every three hours.

(3) "Normal lifetime" means less than 25,000 hours when tested on an electronic ballast, including T8 instant start ballasts and T5 programmed start ballasts, and turned off and on every three hours.

(4)(a) "Producer of lighting that contains mercury" means any person that:

- (A) Manufactures and sells lighting that contains mercury under its own brand;**
- (B) Resells under its own brand lighting that contains mercury produced by other suppliers;**
- (C) Imports or exports lighting that contains mercury on a professional basis; or**
- (D) Serves as the importer or domestic distributor of lighting that contains mercury if the brand name owner is located outside of the United States.**

(b) "Producer of lighting that contains mercury" does not mean a reseller of lighting that contains mercury if the brand of the manufacturer of the lighting that contains mercury appears on the lighting.

(5) "Special purpose lighting" means appliance lighting, black lighting, germicidal lighting, bug lighting, colored lighting, plant lighting, straight fluorescent reflector lighting, reprographic lighting, shatter resistant lighting, cold temperature lighting and three-way lighting.

MERCURY CONTENT STANDARDS

SECTION 3. (1) A producer of lighting that contains mercury may not sell, offer for sale or distribute in this state any electric lamps that contain mercury in an amount exceeding, per lamp, the following mercury content standards:

(a) 4 milligrams for screw-based compact fluorescent lamps less than 25 watts.

(b) 5 milligrams for compact fluorescent lamps equal to or more than 25 watts and less than 40 watts.

(c) 3 milligrams for straight fluorescent T5 lamps with a normal lifetime.

(d) 4 milligrams for straight fluorescent T8 lamps with a normal lifetime.

(e) 5 milligrams for straight fluorescent T5 and T8 lamps with a long lifetime.

(f) 15 milligrams for T12 8-foot straight fluorescent lamps.

(2) The mercury content standard specified in subsection (1)(d) of this section does not apply to 8-foot models of straight fluorescent T8 lamps.

(3) The mercury content standards specified in subsection (1) of this section do not apply to:

(a) High-output, and very high-output, straight fluorescent lamps more than 32 millimeters in diameter.

(b) Mogul bi-pin based lamps.

(c) Preheat straight fluorescent lamps of any size.

(d) Special purpose lighting.

(e) High intensity discharge lamps.

STATE PROCUREMENT POLICY

SECTION 4. When making procurement decisions on lighting that contains mercury, the Oregon Department of Administrative Services, after consultation with the Department of Environmental Quality, shall request information on mercury content, energy use, lumen output and lighting lifetime from potential suppliers and shall, in accordance with the Public Contracting Code and rules adopted under the Public Contracting Code, issue specifications and make procurement decisions that favor lighting that contains mercury that meets the mercury content standards established by section 3 of this 2012 Act.

JANUARY 1, 2014, REPORT TO LEGISLATIVE ASSEMBLY

SECTION 5. On or after January 1, 2014, the Department of Environmental Quality shall report to the Legislative Assembly in the manner provided by ORS 192.245 if the department determines that the State of California has adopted, in whole or in part, the mercury content standards for compact fluorescent lamps contained in the RoHS 2 Directive, Directive 2011/65/EC, adopted by the European Parliament and the Council of the European Union on June 8, 2011, on the restriction of certain hazardous substances in electrical and electronic equipment. The department shall also consider any amendments to the RoHS 2 Directive. The report must also include the department's recommendation on whether the Legislative

Assembly should change the amount of mercury allowed under the mercury content standards established by section 3 of this 2012 Act.

UNLAWFUL TRADE PRACTICES

SECTION 6. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.
- (L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.
- (m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.
- (n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.
- (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.
- (p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.
- (q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.
- (r) Organizes or induces or attempts to induce membership in a pyramid club.
- (s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

- (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.
- (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.
- (w) Manufactures mercury fever thermometers.
- (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:
 - (A) Prescribed by a person licensed under ORS chapter 677; and
 - (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.
- (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.
- (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.
 - (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 - (bb) Violates ORS 646A.070 (1).
 - (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 - (dd) Violates the provisions of ORS 128.801 to 128.898.
 - (ee) Violates ORS 646.883 or 646.885.
 - (ff) Violates ORS 646.569.
 - (gg) Violates the provisions of ORS 646A.142.
 - (hh) Violates ORS 646A.360.
 - (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - (jj) Violates ORS 646.563.
 - (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
 - (mm) Violates ORS 646A.210 or 646A.214.
 - (nn) Violates any provision of ORS 646A.124 to 646A.134.
 - (oo) Violates ORS 646A.095.
 - (pp) Violates ORS 822.046.
 - (qq) Violates ORS 128.001.
 - (rr) Violates ORS 646.649 (2) to (4).
 - (ss) Violates ORS 646A.090 (2) to (4).
 - (tt) Violates ORS 87.686.
 - (uu) Violates ORS 646.651.
 - (vv) Violates ORS 646A.362.
 - (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - (xx) Violates ORS 180.440 (1) or 180.486 (1).
 - (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 - (zz) Violates ORS 87.007 (2) or (3).
 - (aaa) Violates ORS 92.405 (1), (2) or (3).
 - (bbb) Engages in an unlawful practice under ORS 646.648.
 - (ccc) Violates ORS 646A.365.
 - (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 - (eee) Sells a gift card in violation of ORS 646A.276.
 - (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

- (ggg) Violates ORS 646A.430 to 646A.450.
- (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- (iii) Violates a provision of ORS 646A.702 to 646A.720.
- (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
- (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- (nnn) Violates ORS 646A.082.
- (ooo) Violates ORS 646.647.
- (ppp) Violates ORS 646A.115.
- (qqq) Violates a provision of ORS 646A.405.
- (rrr) Violates ORS 646A.092.
- (sss) Violates a provision of ORS 646.644.
- (ttt) Violates a provision of ORS 646A.295.
- (uuu) Violates section 3 of this 2012 Act.**
- (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.
- (4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.
- (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

MISCELLANEOUS

SECTION 7. Section 4 of this 2012 Act applies to procurement decisions regarding lighting that contains mercury that are made on or after the effective date of this 2012 Act.

SECTION 8. The unit captions used in this 2012 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2012 Act.

Passed by Senate February 15, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House February 27, 2012

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

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Kate Brown, Secretary of State