

New York State Mercury-Added Consumer Product Legislation

Mercury-added consumer product legislation was first adopted in New York State under Chapter 145, Laws of 2004, and became effective on July 12, 2005. Based on issues and concerns, a number of amendments to Chapter 145 were made under Chapter 676, Laws of New York, 2005, effective September 16, 2005. Listed below are the Laws of 2004 and 2005.

Chapter 145, Laws of New York, 2004

An act to amend the environmental conservation law and the state finance law, in relation to the labeling and recycling of mercury-added consumer products and establishing an advisory committee on mercury pollution.

Became a law July 12, 2004, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares that:

- (a) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;
- (b) According to recent studies, mercury deposition is a significant problem in the Northeast;
- (c) The removal of mercury-containing products from the waste stream prior to incineration is a cost-effective means of reducing the generation of mercury from solid waste management facilities; and
- (d) The purpose of this legislation is to create multimedia programs to increase cost-effective consumer education, encourage informed purchasing and bolster participation in programs designed to separate, collect and properly manage or recycle mercury-added products. A conspicuous label on such products or its packaging, in many cases, would increase the effectiveness of such programs.

Section 2. Article 27 of the environmental conservation law is amended by adding a new title 21.

Chapter 676, Laws of New York, 2005

An act to amend the environmental conservation law, in relation to mercury-added consumer products.

Became a law September 16, 2005, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

Chapter 145, Laws of New York, 2004
Chapter 676, Laws of New York, 2005

For readability purposes, the text for both the original Chapter 145 and the associated amendments under Chapter 676 were combined and provided below.

Title 21

Mercury-Added Consumer Products

- 27-2101. Definitions.
- 27-2103. Labeling.
- 27-2105. Disposal.
- 27-2107. Prohibitions.
- 27-2109. Advisory committee on mercury pollution.
- 27-2111. Regulations.
- 27-2113. Exemptions.
- 27-2115. Interstate clearinghouse.

§ 27-2101. Definitions.

As used in this title:

1. "Hazardous waste management facility" shall have the same meaning as "commercial hazardous waste facilities" as defined in section 27-0901 of this article.
2. "Collector" means any person who accepts mercury-added consumer products in order to transfer them to a solid waste management facility, a hazardous waste management facility or another collector.
3. "Consumer" means any person who purchases a mercury-added consumer product for use other than resale.
4. "Dispose" or "disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.
5. "Distributor" means any person who sells mercury-added consumer products to a retailer in this state, including any manufacturer who sells to retailers in the state.
6. "Manufacturer" means any person who manufactures mercury-added consumer products.
7. "Mercury-added consumer product" means any device or material into which elemental mercury or mercury compounds are intentionally added during such device's or material's formulation or manufacture, and in which the continued presence of mercury is required to provide a specific characteristic, appearance or quality, or to perform a specific function. Such term shall include, but not be limited to mercury-containing: (a) thermostats; (b) thermometers; (c) switches, whether individually or as part of another product; (d) medical or scientific instruments; (e) electrical relays and other electrical devices; (f) lamps; and (g) batteries sold to consumers, not including button batteries.

8. "Mercury-added novelty consumer product" means a mercury-added consumer product intended mainly for personal or household enjoyment or adornment. Mercury-added novelty consumer products include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel (including footwear), or similar products. A product is not a mercury-added novelty consumer product solely on the basis that it is a game with a light screen display containing mercury, or includes a removable battery containing mercury.

9. "Mercury fever thermometer" or "mercury body thermometer" means a mercury-added consumer product that is used for measuring body temperature. A product is not a "mercury fever thermometer" or "mercury body thermometer" solely on the basis that it includes a removable battery containing mercury.

10. "Solid waste" means solid waste as defined in section 27-0701 of this article.

11. "Retailer" means any person in this state who sells new mercury-added consumer products to consumers for purposes other than resale.

12. "Solid waste management facility" means a solid waste management facility as defined in section 27-0701 of this article.

13. "Elemental mercury" means the materials represented by the chemical symbol Hg. Elemental Hg is a silvery-white liquid (at room temperature) with an atomic number of 80 and an atomic mass of 200.59.

14. "Mercury barometer" means a mercury-added consumer product used for measuring atmospheric pressure.

15. "Mercury esophageal dilator" or "mercury bougie tube" means a mercury-added consumer product in the form of a long, flexible tube that is passed down a patient's esophagus to dilate a narrowed area.

16. "Mercury flow meter" means a mercury-added consumer product used for measuring the flow or quantity of a moving fluid or gas.

17. "Mercury hydrometer" means a mercury-added consumer product used for measuring the specific gravity of a liquid.

18. "Mercury hygrometer" or "mercury psychrometer" means a mercury-added consumer product used for measuring the water vapor content of air.

19. "Mercury gastrointestinal tube" means a mercury-added consumer product in the form of a tube used for addressing intestinal obstructions.

20. "Mercury manometer" means a mercury-added consumer product used for measuring the pressure of liquids and gases.

21. "Mercury pyrometer" means a mercury-added consumer product used for measuring the temperature of extremely hot materials.

22. "Mercury sphygmomanometer" means a mercury-added consumer product used for measuring blood pressure in the arteries.

23. "Mercury thermometer" means a mercury-added consumer product used for measuring temperature.

24. "Mercury thermostat" means a mercury-added consumer product that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air conditioning equipment. Such term includes thermostats used to sense and control room temperature in residential, commercial, industrial and other buildings, but does not include a thermostat used to control temperature as part of a manufacturing process.

25. "Mercury relay" means a mercury-added consumer product or device that opens or closes electrical contacts to affect the operation of other devices in the same or another electrical circuit. Such term includes mercury displacement relays and mercury contact relays but shall not include mercury wetted reed relays.

26. "Mercury switch" means a mercury-added consumer product or device that opens or closes an electrical circuit or gas valve. Such term includes mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, and mercury temperature switches actuated by a change in temperature but shall not include mercury flame sensors. Mercury switch does not include a mercury thermostat.

27. "Household" means a single or multiple family residence.

§ 27-2103. Labeling.

1. Mercury-added consumer products sold or offered for sale in this state by a distributor or retailer shall be labeled by the manufacturer thereof in accordance with the provisions of this section.

2. Unless alternative labeling is approved by the commissioner pursuant to subdivision four of this section, the labeling of mercury-added consumer products shall: (a) clearly and conspicuously inform the consumer that mercury is present in such product and that such product shall not be disposed of or placed in a waste stream destined for disposal in mixed municipal solid waste until the mercury is removed and reused, recycled or otherwise managed to ensure that the mercury does not become part of solid waste or contaminate wastewater; (b) be conspicuous to the consumer prior to the purchase, and during the installation and removal of such product; (c) be affixed to the product and be composed of a material sufficiently durable to remain legible and so affixed for the useful life of the product; and (d) be printed and affixed to the product by the manufacturer thereof.

3. Automobile manufacturers shall be deemed to meet the labeling requirements of this section, with respect to either original equipment or service parts, if new automobiles bear a label on the doorpost that lists the mercury-added components that may be present in such vehicle. Such label shall, to the largest extent possible, be consistent with labeling provisions of other states. An automobile manufacturer may apply to the commissioner for approval of an alternative to the labeling requirement that would be at least as effective in providing presale notification of mercury content.

4. (a) The commissioner may promulgate rules and/or regulations specifying labeling requirements, provided, however, that any such rules and/or regulations shall allow for the use of labels adopted by other states that meet the requirements of subdivision two of this section. (b) The commissioner shall promulgate rules and/or regulations to authorize alternative labeling, including package labeling, for mercury-added consumer products as defined in this title under the following conditions: (i) a manufacturer must submit a written request for alternative labeling documenting that a product or class of products cannot reasonably be labeled to comply with specific requirements of this title; and (ii) all authorizations for alternative labeling granted under this subdivision shall be valid for four years and may be renewed.

§ 27-2105. Disposal.

1. No person shall knowingly or intentionally dispose of a mercury-added consumer product in solid waste or otherwise dispose of such a product except by separated delivery thereof to a solid waste management facility or hazardous waste management facility permitted or authorized pursuant to title seven or nine of this article.

2. No person or collector shall knowingly or intentionally dispose of any mercury-added consumer product by delivery to a resource recovery facility as permitted pursuant to title seven of this article where waste or hazardous waste is burned as fuel for the purpose of recovering usable energy.

3. No collector, solid waste management facility, or hazardous waste management facility shall knowingly or intentionally store, recycle or dispose of any mercury-added consumer product except in accordance with regulations promulgated pursuant to this article.

4. The department, in consultation with the department of health, shall develop and disseminate informational materials on the dangers of mercury-added consumer products, and the requirements of this section relating to the separation and disposal of mercury-added consumer products.

§ 27-2107. Prohibitions.

1. On and after January first, two thousand five, no person shall sell, offer for sale or distribute free of charge in the state any mercury-added novelty consumer product. A manufacturer that produces or sells mercury-added novelty consumer products shall notify retailers that sell mercury-added novelty consumer products about such product ban and inform such retailers of how to properly dispose of the remaining inventory.

2. On and after January first, two thousand five, no person shall sell, offer for sale or distribute free of charge mercury fever thermometers or mercury body thermometers except by prescription written by a physician. A manufacturer of such thermometers shall provide the buyer or the recipient with notice of mercury content, instructions on proper disposal and instructions that clearly describe how to carefully handle the thermometer to avoid breakage and on proper cleanup should a breakage occur.

3. On or after January first, two thousand five, no person shall sell, offer for sale or distribute free of charge in the state elemental mercury, other than within a mercury-added consumer product, without requiring the final purchaser or recipient to sign a statement that the purchaser will use the mercury only for medical, pre-encapsulated dental amalgam, research, or manufacturing purposes.

4. On or after September fourth, two thousand four, no primary or secondary school in New York state may use or purchase elemental mercury. Mercury-added consumer products which are not otherwise prohibited by this title that are used by schools are not subject to this prohibition.

5. On or after January first, two thousand six, no person shall sell, offer for sale or distribute the following mercury-added consumer products:

- (a) mercury barometers;
- (b) mercury esophageal dilators, mercury bougie tubes or mercury gastrointestinal tubes;
- (c) mercury flow meters;
- (d) mercury hygrometers or mercury psychrometers; and
- (e) mercury pyrometers;

The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand six, or the resale of any mercury-added consumer product delineated in this subdivision manufactured before December thirty-first, two thousand five.

6. On or after January first, two thousand seven, no person shall sell, offer for sale or distribute any mercury hydrometer or mercury manometer. The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand seven, or the resale of any mercury-added consumer product delineated in this subdivision manufactured before December thirty-first, two thousand six.

7. On or after January first, two thousand eight, no person shall sell, offer for sale or distribute any mercury switch or mercury relay individually or as a product component. The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand eight, or the resale of any mercury-added consumer product delineated in this subdivision manufactured before December thirty-first, two thousand seven.

8. On or after January first, two thousand eight, but no later than February twentieth, two thousand eight, and thereafter upon written request, but not more than once a year, the commissioner shall issue a written finding as to whether non-mercury alternatives are comparable in price to, are as effective in performance as, and are as accurate and precise as mercury sphygmomanometers, mercury wetted reed relays, mercury flame sensors, mercury thermometers other than thermometers prohibited from sale pursuant to subdivision two of this section, or mercury thermostats, except for mercury thermostats used by a blind or visually impaired person. Upon making an affirmative finding that a non-mercury alternative is comparable in price to, is as effective in performance as, and is as accurate and precise as any mercury-added consumer product delineated in this subdivision, no person shall sell, offer for sale or distribute such mercury-added consumer product for which the commissioner has made such an affirmative finding. The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision for which the commissioner has made such an affirmative finding, if such product is used to replace a product that is a component in a larger product in use prior to the issuance of such affirmative finding or the resale of any mercury-added consumer product delineated in this subdivision, for which the commissioner has made such an affirmative finding, manufactured prior to the issuance of such affirmative finding.

9. The provisions of subdivisions five, six, seven and eight of this section shall not apply to the sale or distribution of any mercury-added consumer product delineated in those subdivisions if the use of such product is a federal requirement. The department shall develop informational materials on the dangers of mercury-added consumer products, specifically thermometers and barometers, and disseminate such materials to antique dealers and resale establishments.

§ 27-2109. Advisory committee on mercury pollution.

1. There shall be established, within the department, an advisory committee on mercury pollution to examine, evaluate and make recommendations concerning the prevention and cleanup of mercury pollution, and the latest technology for the remediation of mercury pollution.

2. The advisory committee on mercury pollution shall consist of seven members, each appointed member to serve a term of two years, to be appointed as follows: (a) one member appointed by the temporary president of the senate; (b) one member appointed by the speaker of the assembly; (c) the commissioner, or his or her designee; and (d) four members appointed by the governor as follows: (i) one shall be a representative of an industry that manufactures mercury-added consumer products, (ii) one shall be a public health specialist, (iii) one shall be a toxicologist, and (iv) one shall be a scientist who is knowledgeable on matters relating to mercury contamination.

3. The members of such committee shall be broadly representative of the geographic areas of the state. The commissioner, or his or her designee, shall serve as the chair of the committee. Vacancies in the membership of the committee shall be filled in the manner provided for original appointments.

4. The members of the advisory committee on mercury pollution shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this section.

5. To the maximum extent feasible, the advisory committee on mercury pollution shall be entitled to request and receive data from any department, division, board, bureau, commission or agency of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

6. On or before February first, two thousand six, the advisory committee on mercury pollution shall submit a report to the governor and the legislature relating to: (a) the extent of mercury contamination in the soil, waters and air of the state; (b) the extent of any health risk from mercury contamination in the state, especially to pregnant women, children and people that use fish as a major source of food; (c) the methods available to minimize the risk of further contamination or increased health risks to the public; (d) the potential costs of minimizing further risk and recommendations on how to acquire the funds necessary to reduce contamination and minimize the risk of mercury-related health problems; (e) the effectiveness of the provisions of this title in reducing mercury contamination and mercury-related health problems; and (f) any necessary coordination with other states to effectively address mercury issues.

§ 27-2111. Regulations.

The department shall promulgate and enforce any regulations necessary to implement the provisions of this title. Such regulations shall provide for the proper storage, recycling and disposal of mercury-added consumer products at facilities regulated pursuant to titles seven and nine of this article.

§ 27-2113. Exemptions.

1. The provisions of this title shall not apply to photographic film and paper, pharmaceutical products, biological products or any substance that may be lawfully sold over the counter without a prescription under the federal Food, Drug and Cosmetic Act, 21 USC 301 et seq. For the purposes of this subdivision, "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, treatment or cure of a disease or condition of human beings.

2. The provisions of subdivision one of section 27-2105 of this title shall not apply to mercury-containing lamps discarded by households.

3. The provisions of subdivision one of section 27-2105 of this title shall not apply to mercury-containing lamps discarded by a small business if such small business discards no more than fifteen mercury-containing lamps per month. For the purposes of this subdivision "small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and employing not more than one hundred individuals.

§ 27-2115. Interstate clearinghouse.

1. (a) The department is authorized to participate in the regional, multi-state clearinghouse to assist in carrying out the requirements of this title. The department is authorized to collect the following information from product manufacturers or trade associations representing manufacturers of a product or component to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture:

- (i) a brief description of the product or product component;
- (ii) the purpose for which mercury is used in the product or product component;
- (iii) the amount of mercury in each unit of the product or component;
- (iv) the total amount of mercury contained in all units of the product or product components; and
- (v) the name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer.

(b) Every mercury-added consumer product or product component for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this subdivision.

(c) With the approval of the department, a manufacturer may supply the information required by paragraph (a) of this subdivision for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is a significant change in the information or when requested by the department.

(d) A product or product component shall not be offered for final sale, use or distributed for promotional purposes unless the manufacturer of the product or product component or a trade association representing manufacturers of the product or component has provided the information required in paragraph (a) of this subdivision.

2. The clearinghouse is authorized to maintain information on behalf of New York state, including, but not limited to: (a) a list of all products containing mercury, including mercury-added consumer products; and (b) a file on all exemptions granted by the states.

§ 3. The environmental conservation law is amended by adding a new section 71-2724 to read as follows:

§ 71-2724. Enforcement of title 21 of article 27.

1. Any person who knowingly or intentionally violates any provision of or fails to perform any duty pursuant to title twenty-one of article twenty-seven of this chapter, except subdivision one of section 27-2105 of this chapter, shall upon the first finding of such a violation be liable for a civil penalty not to exceed one hundred dollars. Any person convicted of a second or subsequent violation shall be liable for a civil penalty not to exceed five hundred dollars for each violation.

2. Any person who knowingly or intentionally violates or fails to perform any duty imposed by subdivision one of section 27-2105 of this chapter shall upon the first finding of such a violation be provided with educational materials describing the requirements for mercury disposal and the effects of improper mercury disposal, and be warned that future violations shall result in the imposition of a fine. Any person convicted of a second violation shall be liable for a civil penalty not to exceed fifty dollars. Any person convicted of a third violation shall be liable for a civil penalty not to exceed seventy-five dollars. Any person convicted of a fourth or subsequent violation shall be liable for a civil penalty not to exceed one hundred dollars for each violation.

3. Penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, and, in addition thereto, any person found to have violated title twenty-one of article twenty-seven of this chapter may by similar process be enjoined from continuing such violation.

4. All civil penalties and fines collected for any violation of title twenty-one of article twenty-seven of this chapter shall be paid over to the commissioner for deposit in the environmental protection fund established by section ninety-two-s of the state finance law.

§ 4. Subdivision 3 of section 92-s of the state finance law, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-l of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section [thirteen] one hundred twenty-four of [the] chapter three hundred nine of the laws of nineteen hundred ninety-six [which enacted this provision], provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent

order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision five of this section.

§ 5. This act shall take effect immediately; provided that: (a) all members of the advisory committee on mercury pollution, established by section 27-2109 of the environmental conservation law as added by section two of this act, shall be appointed and such committee shall meet within ninety days of such effective date; (b) the department of environmental conservation shall promulgate all regulations required by section 27-2111 of the environmental conservation law, as added by section two of this act, within one hundred eighty days of such effective date; and (c) sections 27-2103 and 27-2105 of the environmental conservation law, as added by section two of this act, and section 71-2724 of the environmental conservation law as added by section three of this act shall take effect one year after it shall have become a law.