Prohibiting the Sale and Distribution of Mercury-Added Novelties

This Act:
- Prohibits the sale and distribution in a state of mercury-added novelties after July 1, 2003;
- Limits the circumstances under which mercury fever thermometers may be sold or supplied to an individual after July 1, 2003;
- Restricts a public or nonpublic school from using or purchasing a mercury commodity, mercury compounds, or mercury-added instructional equipment and materials after July 1, 2003;
- Provides that a person may sell or provide a mercury commodity to another person after July 1, 2003, only if the person meets certain conditions;
- Requires the state department of environmental management and solid waste management districts to implement mercury education programs;
- Permits local units of government to implement such programs, and
- Requires the state environmental quality service council to review various issues concerning mercury before January 1, 2004.

Submitted as:
Indiana
HB 1901 (enrolled version)

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Prohibit Selling and Distributing Mercury-Added Novelties.”

Section 2. [Definitions.] As used in this Act:
"Antique” refers to a product manufactured before 1980.
“Department” means the [department of environmental protection].
“District” refers to a county solid waste management district, joint solid waste management district, or a regional water, sewage, or solid waste district established under [insert citation].
“Manufacturer” means any individual, corporation, limited liability company, partnership, trust, estate, or unincorporated association that:
(1) produces in the United States a mercury-added product that does not consist of multiple components produced by separate entities;
(2) is the last entity to produce or assemble in the United States a mercury-added product that consists of multiple components produced by separate entities; or
(3) domestically distributes a mercury-added product produced in a foreign country.
“Mercury-Added Novelty” means a mercury-added product intended mainly for personal or household enjoyment or adornment, including:
(1) items intended for use as practical jokes;
(2) figurines;
(3) adornments;
(4) toys;
(5) games;
(6) cards;
(7) ornaments;
(8) yard statues and figurines;
(9) candles;
(10) jewelry;
(11) holiday decorations; and
(12) footwear and other items of apparel.

“Mercury-Added Product” means:

(1) a product that contains:
   (A) elemental mercury;
   (B) metallic mercury in an alloy;
   (C) inorganic mercury salt; or
   (D) organic mercury; intentionally added by the manufacturer in order to provide a specific characteristic, appearance, or quality to the product or to perform a specific beneficial function for the product; or

(2) a product with a component that meets the criteria of subdivision (1).

“Mercury-Added Product“ does not include:

(1) a product in which mercury is a residue from the intentional use of mercury in the manufacturing process, if the mercury residue does not:
   (A) provide a specific characteristic, appearance, or quality to the product; or
   (B) perform a specific beneficial function for the product; or

(2) a mercury commodity.

“Mercury Commodity” means a product that consists of only mercury and its container (such as a container of mercury that is opened and from which mercury is put into a mercury-added product) if the mercury is not performing a specific beneficial function for the product.

“Mercury Fever Thermometer” means a mercury-added product that is a thermometer or another medical or scientific instrument and is used for measuring body temperature.

“Nonpublic School” means any school that is not maintained by a public school corporation. The term includes, but is not necessarily limited to, any private school or any parochial school.

“Person” means an individual, a corporation, a limited liability company, a partnership, a trust, an estate, or an unincorporated association.

“Public School” means any school maintained by a public school corporation.

Section 3. [Mercury Commodities.]
After [July 1, 2003], a person may sell or provide a mercury commodity to another in this state (other than for collection for recycling) only if:

(1) the person selling or providing the mercury commodity provides a material safety data sheet with the mercury commodity; and

(2) the person selling or providing the mercury commodity requires the purchaser or recipient to sign a statement with respect to the mercury in the mercury commodity that the purchaser or recipient:
   (A) will use the mercury only:
      (i) for medical purposes;
      (ii) in dental amalgam dispose-caps;
(iii) for training;
(iv) for research; or
(v) for manufacturing purposes;
(B) understands that mercury is toxic;
(C) will store and use the mercury appropriately so that no individual is exposed
to the mercury under normal conditions of use; and
(D) will not intentionally:
   (i) place or cause to be placed; or
   (ii) allow anyone under the control of the purchaser or recipient to place
   or cause to be placed; the mercury commodity in solid waste for disposal or in a
wastewater disposal system.

Section 4. [Mercury Collection Programs.]
(1) Districts, in cooperation and with the support of the [department], shall implement
mercury collection programs for the public and small businesses.
(2) Local government units, in cooperation and with the support of the [department],
may implement mercury collection programs for the public and small businesses.

Section 5. [Education Programs Concerning Reusing and Recycling Mercury.]
(1) The [department of environmental protection] and districts in cooperation and with
the support of the [department], shall implement education programs to provide information to
the public concerning the reuse and recycling of mercury in mercury commodities and mercury-
added products and collection programs available to the public for mercury commodities; and
mercury-added products.
(2) Local government units, in cooperation and with the support of the [department],
may implement education programs to provide information to the public concerning the reuse
and recycling of mercury in mercury commodities and mercury-added products; and collection
programs available to the public for mercury commodities; and mercury-added products.

Section 6. [Recommendations.]
Before [January 1, 2004], the [department of environmental protection] shall review issues relating too the labeling and disposal of products
that contain mercury, and the notification, restrictions on sales, and limitations on the use of
elemental mercury as added by this Act, and if appropriate, make legislative recommendations
based on the reviews conducted under this Act.

Section 7. [Public and Nonpublic Schools.
After [July 1, 2003], a public school or
nonpublic school may not use or purchase for use in a primary or secondary classroom a
mercury commodity, mercury compounds, or mercury-added instructional equipment or
materials except measuring devices and thermometers for which no adequate substitute exists
for use in laboratories.

Section 8. [Mercury-Added Novelties.]
(1) This Act does not apply to a mercury-added novelty if the novelty uses a mercury-
added button cell battery to function and the only mercury contained in the novelty is found in
the mercury-added button cell battery.
(3) After [July 1, 2003], a mercury-added novelty may not be offered for final sale or
distributed for promotional purposes in this state if the offerer or distributor knows or has reason
to know that the novelty contains mercury.
Section 9. [Mercury Thermometers.]

(1) This Act does not apply to a mercury thermometer or to a thermometer if the
thermometer uses a mercury-added button cell battery and the only mercury contained in the
thermometer is found in the mercury-added button cell battery.

(2) Except as provided in subsection (3), after [July 1, 2003], a person may sell or supply
a mercury fever thermometer to an individual only if the person is a pharmacist or a
pharmacist's assistant working at a pharmacy and the thermometers are stored in such a manner
that the pharmacist or the pharmacist's assistant must obtain the thermometer for the individual.

(3) A licensed practitioner of medicine may sell or supply a mercury fever thermometer
to an individual.

Section 10. [Mercury and Antiques.] This Act does not apply to antiques.

Section 11. [Severability.] [Insert severability clause.]

Section 12. [Repealer.] [Insert repealer clause.]

Section 13. [Effective Date.] [Insert effective date.]