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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. JAFFEE, SWEENEY -- read once and referred to the
Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to
mercury-added consumer products

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 8 of section 27-2107 of the environmental
2 conservation law, as added by chapter 676 of the laws of 2005, is
3 amended to read as follows:
4 8. On or after January first, two thousand [eight, but no later than
5 February twentieth, two thousand eight, and thereafter upon written
6 request, but not more than once a year, the commissioner shall issue a
7 written finding as to whether non-mercury alternatives are comparable in
8 price to, are as effective in performance as, and are as accurate and
9 precise as] TWELVE, NO PERSON SHALL SELL, OFFER FOR SALE OR DISTRIBUTE
10 ANY mercury [sphygmomanometers] SPHYGMOMANOMETER, mercury wetted reed
11 [relays] RELAY, mercury flame [sensors] SENSOR, mercury [thermometers
12 other than thermometers prohibited from sale pursuant to subdivision two
13 of this section] THERMOMETER, or mercury [thermostats] THERMOSTAT,
14 except for mercury thermostats used by a blind or visually impaired
15 person. [Upon making an affirmative finding that a non-mercury alterna-
16 tive is comparable in price to, is as effective in performance as, and
17 is as accurate and precise as any mercury-added consumer product deline-
18 ated in this subdivision, no person shall sell, offer for sale or
19 distribute such mercury-added consumer product for which the commission-
20 er has made such an affirmative finding.] The provisions of this subdivi-
21 sion shall not apply to the sale or distribution of any mercury-added
22 consumer product delineated in this subdivision [for which the commis-
23 sioner has made such an affirmative finding,] if such product is used to
24 replace a product that is a component in a larger product in use prior

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 to [the issuance of such affirmative finding] JANUARY FIRST, TWO THOU-
2 SAND TWELVE or the resale of any mercury-added consumer product deline-
3 ated in this subdivision[, for which the commissioner has made such an
4 affirmative finding,] manufactured prior to [the issuance of such affir-
5 mative finding] JANUARY FIRST, TWO THOUSAND TWELVE.

6 S 2. Section 27-2107 of the environmental conservation law is amended
7 by adding a new subdivision 10 to read as follows:

8 10. THE DEPARTMENT MAY GRANT A WAIVER FROM THE PROVISIONS OF SUBDIVI-
9 SION EIGHT OF THIS SECTION UPON REQUEST BY THE MANUFACTURER OF A MERCU-
10 RY-ADDED CONSUMER PRODUCT.

11 (A) AN APPLICATION FOR A WAIVER SHALL BE IN THE FORM PRESCRIBED BY THE
12 DEPARTMENT AND DOCUMENT THE BASIS FOR THE REQUESTED WAIVER OR RENEWAL OF
13 A WAIVER AND DESCRIBE HOW THE MANUFACTURER WILL ENSURE THAT A SYSTEM
14 EXISTS FOR THE PROPER COLLECTION, TRANSPORTATION AND PROCESSING OF THE
15 MERCURY-ADDED CONSUMER PRODUCTS AT THE END OF THEIR USEFUL LIFE.

16 (B) THE APPLICATION MUST INCLUDE AT A MINIMUM, INFORMATION THAT DEMON-
17 STRATES:

18 (I) THERE ARE NO NON-MERCURY ALTERNATIVES THAT ARE COMPARABLE IN PRICE
19 TO, ARE AS EFFECTIVE IN PERFORMANCE AS, OR ARE AS ACCURATE AND PRECISE
20 AS THE IDENTIFIED MERCURY-ADDED CONSUMER PRODUCT;

21 (II) THE USE OF THE MERCURY-ADDED CONSUMER PRODUCT PROVIDES A NET
22 BENEFIT TO THE ENVIRONMENT, PUBLIC HEALTH, OR PUBLIC SAFETY WHEN
23 COMPARED TO A NON-MERCURY ALTERNATIVE; OR

24 (III) THERE ARE OTHER FACTORS AFFECTING THE USE OF NON-MERCURY ALTER-
25 NATIVES.

26 (C) THE MANUFACTURER MUST NOTIFY THE REGIONAL MULTI-STATE CLEARING-
27 HOUSE, AS IDENTIFIED IN SECTION 27-2115 OF THIS TITLE, OF ITS REQUEST
28 FOR A WAIVER PURSUANT TO THIS SUBDIVISION AND PROVIDE THE CLEARINGHOUSE
29 WITH THE INFORMATION REQUIRED IN ITS WAIVER APPLICATION.

30 (D) THE DEPARTMENT MAY GRANT OR DENY, IN WHOLE OR IN PART, A REQUEST
31 FOR A WAIVER. IN DETERMINING WHETHER TO GRANT OR DENY A WAIVER OR WAIVER
32 RENEWAL, THE DEPARTMENT MAY CONSULT WITH THE CLEARINGHOUSE, OTHER
33 STATES, OR REGIONAL GOVERNMENTAL ORGANIZATIONS TO PROMOTE CONSISTENCY IN
34 THE IMPLEMENTATION OF THIS SUBDIVISION.

35 (E) WAIVERS SHALL BE GRANTED FOR A PERIOD NOT TO EXCEED TWO YEARS.
36 UPON A REQUEST BY THE MANUFACTURER, THE DEPARTMENT MAY RENEW A WAIVER
37 FOR A PERIOD NOT TO EXCEED TWO YEARS IF THE DEPARTMENT FINDS THAT THE
38 MANUFACTURER CONTINUES TO MEET THE REQUIREMENTS FOR A WAIVER, THAT THE
39 MANUFACTURER HAS COMPLIED WITH ALL CONDITIONS OF THE ORIGINAL WAIVER,
40 AND THE MANUFACTURER DEMONSTRATES THAT REASONABLE EFFORTS HAVE BEEN MADE
41 TO REMOVE MERCURY FROM THE PRODUCT SUBJECT TO THE WAIVER.

42 S 3. This act shall take effect immediately; provided, however, that
43 any written findings of the commissioner of environmental conservation
44 issued pursuant to subdivision 8 of section 27-2107 of the environmental
45 conservation law, as it existed prior to the amendments made by section
46 one of this act, shall remain in full force and effect until January 1,
47 2012 and upon that date shall be deemed repealed.