

# D R A F T

## SUMMARY

Makes legislative findings regarding lighting that contains mercury. Prohibits sale or offer for sale of lighting that contains mercury in excess of specified amounts. Makes sale or offer for sale of certain lighting that contains mercury unlawful trade practice. Specifies state procurement policy related to lighting that contains mercury. Requires certain reports to Legislative Assembly.

## A BILL FOR AN ACT

Relating to lighting that contains mercury; creating new provisions; and amending ORS 459A.010 and 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. (1) “Lighting that contains mercury” means an electric**

1 **lamp to which mercury or mercury compounds are added during the**  
2 **manufacturing process.**

3 **(2) “Long lifetime” means lighting that contains mercury with a**  
4 **rated lifetime of 24,000 hours or more when tested on a ballast and**  
5 **turned on and off every three hours in accordance with test procedures**  
6 **of the United States Department of Energy in effect on the effective**  
7 **date of this 2012 Act.**

8 **(3) “Normal lifetime” means lighting that contains mercury with a**  
9 **lifetime of less than 24,000 hours when tested on a ballast and turned**  
10 **on and off every three hours in accordance with test procedures of the**  
11 **United States Department of Energy in effect on the effective date of**  
12 **this 2012 Act.**

13 **(4)(a) “Producer of lighting that contains mercury” means any**  
14 **person that:**

15 **(A) Manufactures and sells lighting that contains mercury under its**  
16 **own brand;**

17 **(B) Resells under its own brand lighting that contains mercury**  
18 **produced by other suppliers;**

19 **(C) Imports or exports lighting that contains mercury on a profes-**  
20 **sional basis; or**

21 **(D) Serves as the importer or domestic distributor of lighting that**  
22 **contains mercury if the brand name owner is located outside of the**  
23 **United States.**

24 **(b) “Producer of lighting that contains mercury” does not mean a**  
25 **reseller of lighting that contains mercury if the brand of the man-**  
26 **ufacturer of the lighting that contains mercury appears on the light-**  
27 **ing.**

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29

## MERCURY CONTENT STANDARDS

30

31 **SECTION 3. (1) A producer of lighting that contains mercury may**

1 not sell, offer for sale or distribute in this state any lighting that  
2 contains mercury in an amount exceeding the following mercury con-  
3 tent standards:

4 (a) 3.5 milligrams for compact fluorescent lighting less than 30  
5 watts.

6 (b) 3.0 milligrams for straight fluorescent T5 lighting with a normal  
7 lifetime.

8 (c) 3.5 milligrams for straight fluorescent T8 lighting with a normal  
9 lifetime.

10 (d) 5.0 milligrams for straight fluorescent T5 and T8 lighting with  
11 a long lifetime.

12 (e) 15.0 milligrams for nonlinear fluorescent T5, T8 and T12 lighting  
13 and 8-foot linear fluorescent lighting.

14 (2) The mercury content standard specified in:

15 (a) Subsection (1)(c) of this section does not apply to 8-foot models  
16 of straight fluorescent T8 lighting.

17 (b) Subsection (1)(e) of this section does not apply to high-output  
18 models of nonlinear fluorescent T5, T8 and T12 lighting and high-  
19 output models of 8-foot linear fluorescent lighting.

20

21 **JANUARY 1, 2014, REPORT TO LEGISLATIVE ASSEMBLY**

22

23 **SECTION 4. On or after January 1, 2014, the Department of Envi-**  
24 **ronmental Quality shall report to the Legislative Assembly in the**  
25 **manner provided by ORS 192.245 if the department determines that the**  
26 **State of California has adopted, in whole or in part, the mercury**  
27 **content standards for compact fluorescent lamps contained in the**  
28 **RoHS 2 Directive, Directive 2011/65/EC, adopted by the European Par-**  
29 **liament and the Council of the European Union on June 8, 2011, on the**  
30 **restriction of certain hazardous substances in electrical and electronic**  
31 **equipment. The department shall also consider any amendments to the**

1 **RoHS 2 Directive. The report must also include the department’s rec-**  
2 **ommendation on whether the Legislative Assembly should change the**  
3 **amount of mercury allowed under the mercury content standards es-**  
4 **tablished by section 3 of this 2012 Act.**

5  
6 **STATE PROCUREMENT POLICY**

7  
8 **SECTION 5. When making procurement decisions on lighting that**  
9 **contains mercury, the Oregon Department of Administrative Services,**  
10 **after consultation with the Department of Environmental Quality,**  
11 **shall request information on mercury content, energy use, lumen**  
12 **output and lighting lifetime from potential suppliers and shall, in ac-**  
13 **cordance with the Public Contracting Code and rules adopted under**  
14 **the Public Contracting Code, issue specifications and make procure-**  
15 **ment decisions that favor lighting that contains mercury that meets**  
16 **the mercury content standards established by section 3 of this 2012**  
17 **Act.**

18  
19 **COLLECTION AND RECYCLING**

20  
21 **SECTION 6. ORS 459A.010 is amended to read:**

22 **459A.010. (1) It is the goal of the State of Oregon that:**

23 **(a) For the calendar year 2005, the amount of recovery from the general**  
24 **solid waste stream shall be at least 45 percent;**

25 **(b) For the calendar year 2009, the amount of recovery from the general**  
26 **solid waste stream shall be at least 50 percent;**

27 **(c) For the calendar year 2005 and subsequent years, that there be no**  
28 **annual increase in per capita municipal solid waste generation; and**

29 **(d) For the calendar year 2009 and subsequent years, that there be no**  
30 **annual increase in total municipal solid waste generation.**

31 **(2) In addition to the requirements of ORS 459A.005, the “opportunity to**

1 recycle” shall include the requirements of subsection (3) of this section using  
2 the following program elements:

3 (a) Provision of at least one durable recycling container to each residen-  
4 tial service customer.

5 (b) On-route collection at least once each week of source separated  
6 recyclable material to residential customers, provided on the same day that  
7 solid waste is collected from each customer.

8 (c) An expanded education and promotion program conducted to carry out  
9 the policy set forth in ORS 459.015, to inform solid waste generators of the  
10 manner and benefits of reducing, reusing, recycling and composting material  
11 and to promote use of recycling services, **including those for lighting that**  
12 **contains mercury as defined in section 2 of this 2012 Act.** The city,  
13 county or metropolitan service district responsible for providing an oppor-  
14 tunity to recycle under ORS 459A.005 and this section shall provide the ed-  
15 ucation and promotion program in either of the following two ways:

16 (A) Preparing and implementing an education and promotion plan that  
17 includes actions to effectively reach solid waste generators and all new and  
18 existing collection service customers, as necessary to fulfill the intent of this  
19 paragraph. The plan shall be submitted to the Department of Environmental  
20 Quality the first year that the plan is in effect. Thereafter, the wasteshed  
21 shall submit a summary of activities in the plan to the Department of Envi-  
22 ronmental Quality at the same time the county submits the periodic report  
23 required under ORS 459A.050 (1)(a). The summary shall cover at least the  
24 time period until the next periodic report is due to the department.

25 (B) Implementing all of the following:

26 (i) Provision of recycling notification and education packets to all new  
27 residential, commercial and institutional collection service customers that  
28 include at a minimum the materials collected, the schedule for collection, the  
29 way to prepare materials for collection and the reasons persons should sep-  
30 arate their material for recycling. The educational and promotional materials  
31 provided to commercial collection customers should be targeted to meet the

1 needs of various types of businesses and should include reasons to recycle,  
2 including economic benefits, common barriers to recycling and solutions,  
3 additional resources for commercial generators of solid waste and other in-  
4 formation designed to assist and encourage recycling efforts. The educational  
5 and promotional materials provided to commercial collection customers shall  
6 encourage each commercial collection customer to have a goal to achieve 50  
7 percent recovery from its solid waste stream by the year 2009.

8 (ii) Provision of recycling information in a variety of formats and mate-  
9 rials at least four times a calendar year to collection service customers that  
10 includes at a minimum the materials collected and the schedule for col-  
11 lection.

12 (iii) Provision at least annually to all residential, commercial and insti-  
13 tutional collection service customers, of the information under sub-  
14 subparagraph (i) of this subparagraph.

15 (iv) Targeting of community and media events to promote recycling.

16 (d) Collection of at least four principal recyclable materials or the num-  
17 ber of materials required to be collected under the residential on-route col-  
18 lection program, whichever is less, from each multifamily dwelling complex  
19 having five or more units. The multifamily collection program shall include  
20 promotion and education directed to the residents of the multifamily dwell-  
21 ing units.

22 (e) An effective residential yard debris collection and composting program  
23 that includes the promotion of home composting of yard debris, and that also  
24 includes either:

25 (A) Monthly or more frequent on-route collection of yard debris from  
26 residences for production of compost or other marketable products; or

27 (B) A system of yard debris collection depots conveniently located and  
28 open to the public at least once a week.

29 (f) A commercial recycling program that includes:

30 (A) Weekly, or on a more appropriate regular schedule, onsite collection  
31 of source separated principal recyclable materials from, at a minimum, com-

1 commercial solid waste generators employing 10 or more persons and occupying  
2 1,000 square feet or more in a single location.

3 (B) An education and promotion program conducted to inform all com-  
4 mercial generators of solid waste of the manner and benefits of the com-  
5 mercial recycling program that provides effective promotion of the program  
6 to the generators.

7 (C) In addition to the requirements of subparagraphs (A) and (B) of this  
8 paragraph, a commercial recycling program may also consist of other ele-  
9 ments including but not limited to waste assessments and recycling recogni-  
10 tion programs. A wasteshed is encouraged to involve local business  
11 organizations in publicly recognizing outstanding recycling efforts by com-  
12 mercial generators of solid waste. The recognition may include awards de-  
13 signed to provide additional incentives to increase recycling efforts.

14 (D) Each commercial generator of solid waste shall strive to achieve 50  
15 percent recovery from its solid waste stream by the year 2009.

16 (g) Expanded depots for recycling of at least all principal recyclable ma-  
17 terials and provisions for promotion and education to maximize the use of  
18 the depots. The depots shall have regular and convenient hours and shall be  
19 open on the weekend days and, when feasible, shall collect additional  
20 recyclable materials.

21 (h) Solid waste residential collection rates that encourage waste re-  
22 duction, reuse and recycling through reduced rates for smaller containers,  
23 including at least one rate for a container that is 21 gallons or less in size.  
24 Based on the average weight of solid waste disposed per container for con-  
25 tainers of different sizes, the rate on a per pound disposed basis shall not  
26 decrease with increasing size of containers, nor shall the rates per container  
27 service be less with additional containers serviced.

28 (i) A collection and composting system for food, paper that is not  
29 recyclable because of contamination and other compostable waste from com-  
30 mercial and institutional entities that generate large amounts of such  
31 wastes.

1 (3)(a) Each city with a population of at least 4,000 but not more than  
2 10,000 that is not within a metropolitan service district and any county re-  
3 sponsible for the area between the city limits and the urban growth boundary  
4 of such city shall implement one of the following:

5 (A) The program elements set forth in subsection (2)(a), (b) and (c) of this  
6 section;

7 (B) A program that includes at least three elements set forth in sub-  
8 section (2) of this section; or

9 (C) An alternative method of achieving recovery rates that complies with  
10 rules of the Environmental Quality Commission.

11 (b) Each city that is within a metropolitan service district or that has a  
12 population of more than 10,000 and any county responsible for the area  
13 within a metropolitan service district or the area between the city limits and  
14 the urban growth boundary of such city shall implement one of the following:

15 (A) Program elements set forth under subsection (2)(a), (b) and (c) of this  
16 section and one additional element set forth under subsection (2) of this  
17 section;

18 (B) A program that includes at least five elements set forth under sub-  
19 section (2) of this section; or

20 (C) An alternative method of achieving recovery rates that complies with  
21 rules of the Environmental Quality Commission.

22 (4)(a) Recovery rates shall be determined by dividing the total weight of  
23 material recovered by the sum of the total weight of the material recovered  
24 plus the total weight of solid waste disposed that was generated in each  
25 watershed. It is the policy of the State of Oregon that recovery of material  
26 shall be consistent with the priority of solid waste management in ORS  
27 459.015 (2).

28 (b) Each watershed implementing a waste prevention program shall re-  
29 ceive a two percent credit on the watershed's recovery rate. A waste pre-  
30 vention program shall include:

31 (A) A watershed-wide program to provide general educational materials

1 to residents about waste prevention and examples of things residents can do  
2 to prevent generation of waste; and

3 (B) Two of the following:

4 (i) Reduce the wasteshed annual per capita waste generation by two per-  
5 cent each year;

6 (ii) Conduct a waste prevention media promotion campaign targeted at  
7 residential generators;

8 (iii) Expand the education program in primary and secondary schools to  
9 include waste prevention and reuse;

10 (iv) Household hazardous waste prevention education program;

11 (v) Local governments will conduct waste prevention assessments of their  
12 operations, or provide waste prevention assessments for businesses and in-  
13 stitutions and document any waste prevention measures implemented;

14 (vi) Conduct a material specific waste prevention campaign for businesses  
15 throughout the wasteshed;

16 (vii) Implement a Resource Efficiency Model City program;

17 (viii) Conduct a material-specific waste prevention education campaign  
18 that focuses on a toxic or energy-intensive material;

19 (ix) Local governments will implement programs to buy recycled-content  
20 products for their operations, consistent with procurement guidelines issued  
21 by the United States Environmental Protection Agency; or

22 (x) Local governments will implement programs for new construction and  
23 remodeling of local government buildings that incorporate recycled-content  
24 materials, energy conservation features, water conservation and stormwater  
25 management features and other elements to increase the resource efficiency  
26 and lower the environmental impact of these buildings.

27 (c) Each wasteshed implementing a reuse program shall receive a two  
28 percent credit on the wasteshed's recovery rate. A reuse program shall in-  
29 clude:

30 (A) A promotion and education campaign on the benefits and opportu-  
31 nities for reuse available to the public in the wasteshed; and

1 (B) Two of the following:

2 (i) Operate construction and demolition debris salvage programs with de-  
3 pots;

4 (ii) Promote reuse programs offered by local resale businesses, thrift  
5 stores and equipment vendors, such as computer and photocopier  
6 refurbishers, to the public and businesses;

7 (iii) Identify and promote local businesses that will take back white goods  
8 for refurbishing and resale to the public;

9 (iv) Develop and promote use of waste exchange programs for the public  
10 and private sectors;

11 (v) Site accommodation for recovery of reusable material at transfer  
12 stations and landfills; or

13 (vi) Sidewalk pickup or community fair program in cities over 4,000 pop-  
14 ulation in the wasteshed.

15 (d) Each wasteshed implementing a residential composting program shall  
16 receive a two percent credit on the wasteshed's recovery rate. A residential  
17 composting program shall include:

18 (A) Promotion of the residential composting program through public in-  
19 formation and demonstration sites or sites; and

20 (B) Two of the following:

21 (i) A program to encourage leaving grass clippings generated by lawn  
22 mowing on-site rather than bagging the clippings for disposal or composting;

23 (ii) A composting program for local schools;

24 (iii) An increase in availability of compost bins for residents; or

25 (iv) Another program increasing a household's ability to manage yard  
26 trimmings or food wastes.

27 (e) A wasteshed may receive, upon application to the Department of En-  
28 vironmental Quality, a recovery credit greater than two percent for a resi-  
29 dential composting program. To receive the recovery credit under this  
30 paragraph, the wasteshed must provide quantitatively verifiable documenta-  
31 tion of residential composting tonnage to the department. The documentation

1 must show that more than two percent of the wasteshed's generated tonnage  
2 of solid waste is diverted from the wastestream by residential composting.

3 (f)(A) If there is not a viable market for recycling a material under par-  
4 agraph (a) of this subsection, the composting or burning of the material for  
5 energy recovery may be included in the recovery rate for the wasteshed.

6 (B) If the material is burned for energy recovery and then included in the  
7 recovery rate for Clackamas, Multnomah or Washington Counties in aggre-  
8 gate or for Benton, Lane, Linn, Marion, Polk or Yamhill County wastesheds,  
9 the same material, when burned as part of mixed solid waste, may be in-  
10 cluded in the recovery rate for a wasteshed that burns mixed solid waste for  
11 energy recovery. The amount of the material within the mixed solid waste  
12 that may be included in the recovery rate for energy recovery shall be de-  
13 termined by a waste composition study performed by the wasteshed at least  
14 every four years.

15 (C) Mixtures of materials that are composted or burned for energy re-  
16 covery shall not be included in the recovery rate if more than half of the  
17 mixed materials by weight could have been recycled if properly source sepa-  
18 rated.

19 (D) In its annual report to the department, the county or metropolitan  
20 service district shall state how much composting or energy recovery under  
21 this paragraph is included as recovery and state the basis for the determi-  
22 nation that there was not a viable market for recycling the material.

23 (E) As used in this paragraph, "viable market" means a place within a  
24 wasteshed that will pay for the material or accept the material free of charge  
25 or a place outside a wasteshed that will pay a price for the material that,  
26 at minimum, covers the cost of transportation of the material.

27 (g) Recovery rates shall not include:

28 (A) Industrial and manufacturing wastes such as boxboard clippings and  
29 metal trim that are recycled before becoming part of a product that has en-  
30 tered the wholesale or retail market.

31 (B) Metal demolition debris in which arrangements are made to sell or

1 give the material to processors before demolition such that it does not enter  
2 the solid waste stream.

3 (C) Discarded vehicles or parts of vehicles that do not routinely enter the  
4 solid waste stream.

5 (D) Material recovered for composting or energy recovery from mixed  
6 solid waste, except as provided in paragraph (f) of this subsection.

7 (h) "Solid waste disposed" shall mean the total weight of solid waste  
8 disposed other than the following:

9 (A) Sewage sludge or septic tank and cesspool pumpings;

10 (B) Waste disposed of at an industrial waste disposal site;

11 (C) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar  
12 material if delivered to a municipal solid waste disposal site or demolition  
13 disposal site and if a record is kept of such deliveries and submitted as part  
14 of the annual report submitted under ORS 459A.050;

15 (D) Waste received at an ash monofill from an energy recovery facility;  
16 and

17 (E) Solid waste not generated within this state.

18 (i) The statewide recovery rate shall include the two percent credit for  
19 reuse programs under paragraph (c) of this subsection and the credit for  
20 residential composting under paragraphs (d) and (e) of this subsection, be-  
21 ginning with the statewide recovery rate calculated for the calendar year  
22 2001.

23 (5)(a) Each local government that franchises or licenses the collection of  
24 solid waste and establishes the rates to be charged for collection service  
25 shall either:

26 (A) Include in those rates all net costs incurred by the franchisee or  
27 licensee for providing the "opportunity to recycle" under ORS 459A.005 and  
28 for implementing the requirements of subsection (3) of this section; or

29 (B) Fund implementation of the "opportunity to recycle" under ORS  
30 459A.005 or the requirements of subsection (3) of this section through an al-  
31 ternative source of funding including but not limited to disposal fees.

1 (b) As used in this subsection, “net costs” includes but is not limited to  
2 the reasonable costs for collecting, handling, processing, storing, transport-  
3 ing and delivering recyclable material to market and for providing any re-  
4 quired education and promotion or data collection services adjusted by a  
5 factor to account for proceeds from the sale of recyclable material.

6 (6)(a) Clackamas, Multnomah and Washington counties, in aggregate,  
7 shall achieve a recovery rate of 62 percent for the calendar year 2005 and  
8 64 percent for the calendar year 2009.

9 (b) The wastesheds shall achieve the following recovery rates for the  
10 calendar year 2005:

- 11 (A) Baker County, 25 percent;
- 12 (B) Benton County, 45 percent;
- 13 (C) Clatsop County, 25 percent;
- 14 (D) Columbia County, 28 percent;
- 15 (E) Coos County, 30 percent;
- 16 (F) Crook County, 20 percent;
- 17 (G) Curry County, 30 percent;
- 18 (H) Deschutes County, 32 percent;
- 19 (I) Douglas County, 35 percent;
- 20 (J) Gilliam County, 20 percent;
- 21 (K) Grant County, 19 percent;
- 22 (L) Harney County, 30 percent;
- 23 (M) Hood River County, 25 percent;
- 24 (N) Jackson County, 40 percent;
- 25 (O) Jefferson County, 25 percent;
- 26 (P) Josephine County, 38 percent;
- 27 (Q) Klamath County, 15 percent;
- 28 (R) Lake County, 8 percent;
- 29 (S) Lane County, 45 percent;
- 30 (T) Lincoln County, 19 percent;
- 31 (U) Linn County, 40 percent;

- 1 (V) Malheur County, 21 percent;
- 2 (W) Marion County, 37 percent;
- 3 (X) City of Milton-Freewater, 22 percent;
- 4 (Y) Morrow County, 18 percent;
- 5 (Z) Polk County, 30 percent;
- 6 (AA) Sherman County, 20 percent;
- 7 (BB) Tillamook County, 30 percent;
- 8 (CC) Umatilla County, 20 percent;
- 9 (DD) Union County, 25 percent;
- 10 (EE) Wallowa County, 20 percent;
- 11 (FF) Wasco County, 35 percent;
- 12 (GG) Wheeler County, 20 percent; and
- 13 (HH) Yamhill County, 39 percent.

14 (c) The wastesheds shall achieve the following recovery rates for the  
15 calendar year 2009:

- 16 (A) Baker County, 25 percent;
- 17 (B) Benton County, 50 percent;
- 18 (C) Clatsop County, 25 percent;
- 19 (D) Columbia County, 32 percent;
- 20 (E) Coos County, 30 percent;
- 21 (F) Crook County, 20 percent;
- 22 (G) Curry County, 30 percent;
- 23 (H) Deschutes County, 45 percent;
- 24 (I) Douglas County, 40 percent;
- 25 (J) Gilliam County, 20 percent;
- 26 (K) Grant County, 19 percent;
- 27 (L) Harney County, 40 percent;
- 28 (M) Hood River County, 25 percent;
- 29 (N) Jackson County, 40 percent;
- 30 (O) Jefferson County, 25 percent;
- 31 (P) Josephine County, 38 percent;

- 1 (Q) Klamath County, 20 percent;
- 2 (R) Lake County, 10 percent;
- 3 (S) Lane County, 54 percent;
- 4 (T) Lincoln County, 20 percent;
- 5 (U) Linn County, 40 percent;
- 6 (V) Malheur County, 22 percent;
- 7 (W) Marion County, 54 percent;
- 8 (X) City of Milton-Freewater, 25 percent;
- 9 (Y) Morrow County, 20 percent;
- 10 (Z) Polk County, 35 percent;
- 11 (AA) Sherman County, 20 percent;
- 12 (BB) Tillamook County, 30 percent;
- 13 (CC) Umatilla County, 20 percent;
- 14 (DD) Union County, 25 percent;
- 15 (EE) Wallowa County, 20 percent;
- 16 (FF) Wasco County, 35 percent;
- 17 (GG) Wheeler County, 20 percent; and
- 18 (HH) Yamhill County, 45 percent.

19 (d) Each wasteshed shall prepare an individualized plan that identifies  
20 policies or programs specific to the wasteshed's local conditions to achieve  
21 the required recovery goals. The plan shall be available to the department  
22 upon the department's request by December 31, 2001. The plan shall be up-  
23 dated by December 31, 2006, and updated again by December 31, 2010.  
24 Clackamas, Multnomah and Washington Counties, in aggregate, may meet  
25 this requirement through the programs under ORS 459.340, 459.345, 459.350  
26 and 459A.050.

27 (e) If a wasteshed does not achieve its 2005 or 2009 waste recovery goal,  
28 the wasteshed shall conduct a technical review of existing policies or pro-  
29 grams and determine revisions to meet the recovery goal. The department  
30 shall, upon the request of the wasteshed, assist in the technical review. The  
31 wasteshed may request, and may assist the department in conducting, a

1 technical review to determine whether the wasteshed goal is valid.

2 (7) In calculating the recovery rates set forth in subsection (6) of this  
3 section, commercial, industrial and demolition scrap metal, vehicles, major  
4 equipment and home or industrial appliances that are handled or processed  
5 for use in manufacturing new products and that do not routinely enter the  
6 solid waste stream through land disposal facilities, transfer stations, recycl-  
7 ing depots or on-route collection programs shall not be counted as material  
8 recovery or recycling. The department shall annually conduct an industry  
9 survey to determine the contribution of post-consumer residential scrap  
10 metal, including home appliances, to recycling and recovery levels in a  
11 manner which prevents double counting of material recovered. Information  
12 collected under the provisions of this section, as it relates specifically to  
13 private sector customer lists or specific amounts and types of materials col-  
14 lected or marketed, shall be maintained as confidential by the department  
15 and exempt from disclosure under ORS 192.410 to 192.505. The department  
16 may use and disclose such information in aggregated form.

17

18 **UNLAWFUL TRADE PRACTICES**

19

20 **SECTION 7.** ORS 646.608 is amended to read:

21 646.608. (1) A person engages in an unlawful practice when in the course  
22 of the person's business, vocation or occupation the person does any of the  
23 following:

24 (a) Passes off real estate, goods or services as those of another.

25 (b) Causes likelihood of confusion or of misunderstanding as to the  
26 source, sponsorship, approval, or certification of real estate, goods or ser-  
27 vices.

28 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,  
29 connection, or association with, or certification by, another.

30 (d) Uses deceptive representations or designations of geographic origin in  
31 connection with real estate, goods or services.

1 (e) Represents that real estate, goods or services have sponsorship, ap-  
2 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
3 they do not have or that a person has a sponsorship, approval, status, qual-  
4 ification, affiliation, or connection that the person does not have.

5 (f) Represents that real estate or goods are original or new if they are  
6 deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7 (g) Represents that real estate, goods or services are of a particular  
8 standard, quality, or grade, or that real estate or goods are of a particular  
9 style or model, if they are of another.

10 (h) Disparages the real estate, goods, services, property or business of a  
11 customer or another by false or misleading representations of fact.

12 (i) Advertises real estate, goods or services with intent not to provide  
13 them as advertised, or with intent not to supply reasonably expectable public  
14 demand, unless the advertisement discloses a limitation of quantity.

15 (j) Makes false or misleading representations of fact concerning the rea-  
16 sons for, existence of, or amounts of price reductions.

17 (k) Makes false or misleading representations concerning credit avail-  
18 ability or the nature of the transaction or obligation incurred.

19 (L) Makes false or misleading representations relating to commissions or  
20 other compensation to be paid in exchange for permitting real estate, goods  
21 or services to be used for model or demonstration purposes or in exchange  
22 for submitting names of potential customers.

23 (m) Performs service on or dismantles any goods or real estate when not  
24 authorized by the owner or apparent owner thereof.

25 (n) Solicits potential customers by telephone or door to door as a seller  
26 unless the person provides the information required under ORS 646.611.

27 (o) In a sale, rental or other disposition of real estate, goods or services,  
28 gives or offers to give a rebate or discount or otherwise pays or offers to pay  
29 value to the customer in consideration of the customer giving to the person  
30 the names of prospective purchasers, lessees, or borrowers, or otherwise  
31 aiding the person in making a sale, lease, or loan to another person, if

1 earning the rebate, discount or other value is contingent upon occurrence  
2 of an event subsequent to the time the customer enters into the transaction.

3 (p) Makes any false or misleading statement about a prize, contest or  
4 promotion used to publicize a product, business or service.

5 (q) Promises to deliver real estate, goods or services within a certain pe-  
6 riod of time with intent not to deliver them as promised.

7 (r) Organizes or induces or attempts to induce membership in a pyramid  
8 club.

9 (s) Makes false or misleading representations of fact concerning the of-  
10 fering price of, or the person's cost for real estate, goods or services.

11 (t) Concurrent with tender or delivery of any real estate, goods or ser-  
12 vices fails to disclose any known material defect or material nonconformity.

13 (u) Engages in any other unfair or deceptive conduct in trade or com-  
14 merce.

15 (v) Violates any of the provisions relating to auction sales, auctioneers  
16 or auction marts under ORS 698.640, whether in a commercial or noncom-  
17 mercial situation.

18 (w) Manufactures mercury fever thermometers.

19 (x) Sells or supplies mercury fever thermometers unless the thermometer  
20 is required by federal law, or is:

21 (A) Prescribed by a person licensed under ORS chapter 677; and

22 (B) Supplied with instructions on the careful handling of the thermometer  
23 to avoid breakage and on the proper cleanup of mercury should breakage  
24 occur.

25 (y) Sells a thermostat that contains mercury unless the thermostat is la-  
26 beled in a manner to inform the purchaser that mercury is present in the  
27 thermostat and that the thermostat may not be disposed of until the mercury  
28 is removed, reused, recycled or otherwise managed to ensure that the mer-  
29 cury does not become part of the solid waste stream or wastewater. For  
30 purposes of this paragraph, "thermostat" means a device commonly used to  
31 sense and, through electrical communication with heating, cooling or venti-

- 1 lation equipment, control room temperature.
- 2 (z) Sells or offers for sale a motor vehicle manufactured after January 1,  
3 2006, that contains mercury light switches.
- 4 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 5 (bb) Violates ORS 646A.070 (1).
- 6 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 7 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 8 (ee) Violates ORS 646.883 or 646.885.
- 9 (ff) Violates ORS 646.569.
- 10 (gg) Violates the provisions of ORS 646A.142.
- 11 (hh) Violates ORS 646A.360.
- 12 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 13 (jj) Violates ORS 646.563.
- 14 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 15 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
16 rule adopted pursuant thereto.
- 17 (mm) Violates ORS 646A.210 or 646A.214.
- 18 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 19 (oo) Violates ORS 646A.095.
- 20 (pp) Violates ORS 822.046.
- 21 (qq) Violates ORS 128.001.
- 22 (rr) Violates ORS 646.649 (2) to (4).
- 23 (ss) Violates ORS 646A.090 (2) to (4).
- 24 (tt) Violates ORS 87.686.
- 25 (uu) Violates ORS 646.651.
- 26 (vv) Violates ORS 646A.362.
- 27 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
28 646A.054.
- 29 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 30 (yy) Commits the offense of acting as a vehicle dealer without a certif-  
31 icate under ORS 822.005.

- 1 (zz) Violates ORS 87.007 (2) or (3).
- 2 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 3 (bbb) Engages in an unlawful practice under ORS 646.648.
- 4 (ccc) Violates ORS 646A.365.
- 5 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 6 (eee) Sells a gift card in violation of ORS 646A.276.
- 7 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 8 (ggg) Violates ORS 646A.430 to 646A.450.
- 9 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 10 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 11 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
12 or declaration described in ORS 646A.530 is issued for the children's product,  
13 as defined in ORS 646A.525, that is the subject of the violation.
- 14 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
15 697.682, 697.692 or 697.707.
- 16 (LLL) Violates the consumer protection provisions of the Servicemembers  
17 Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 18 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 19 (nnn) Violates ORS 646A.082.
- 20 (ooo) Violates ORS 646.647.
- 21 (ppp) Violates ORS 646A.115.
- 22 (qqq) Violates a provision of ORS 646A.405.
- 23 (rrr) Violates ORS 646A.092.
- 24 (sss) Violates a provision of ORS 646.644.
- 25 (ttt) Violates a provision of ORS 646A.295.
- 26 **(uuu) Violates section 3 of this 2012 Act.**
- 27 (2) A representation under subsection (1) of this section or ORS 646.607  
28 may be any manifestation of any assertion by words or conduct, including,  
29 but not limited to, a failure to disclose a fact.
- 30 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652,  
31 a prosecuting attorney need not prove competition between the parties or

1 actual confusion or misunderstanding.

2 (4) An action or suit may not be brought under subsection (1)(u) of this  
3 section unless the Attorney General has first established a rule in accord-  
4 ance with the provisions of ORS chapter 183 declaring the conduct to be  
5 unfair or deceptive in trade or commerce.

6 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an  
7 action or suit is brought under subsection (1)(xx) of this section by a person  
8 other than a prosecuting attorney, relief is limited to an injunction and the  
9 prevailing party may be awarded reasonable attorney fees.

10

11 **OCTOBER 1, 2012, REPORT TO LEGISLATIVE ASSEMBLY**

12

13 **SECTION 8. (1) No later than October 1, 2012, the Department of**  
14 **Environmental Quality shall submit a report to the Legislative As-**  
15 **sembly in the manner provided by ORS 192.245 with recommendations**  
16 **regarding:**

17 (a) **The most effective, cost-efficient and convenient method in this**  
18 **state to provide for the proper collection and recycling of lighting that**  
19 **contains mercury.**

20 (b) **Methods to educate consumers about the proper management**  
21 **of, and collection opportunities for, lighting that contains mercury.**

22 (c) **Designations on lighting that contains mercury, and packaging**  
23 **for lighting that contains mercury, that includes information about**  
24 **the proper recycling of lighting that contains mercury.**

25 (2) **In preparing these recommendations, the department may con-**  
26 **sult with representatives of the lighting industry, environmental or-**  
27 **ganizations and the recycling industry, individuals, private sector**  
28 **entities, local governments, public utilities, and retailers that sell or**  
29 **offer for sale lighting that contains mercury.**

30

31 **MISCELLANEOUS**

1       **SECTION 9.** (1) Section 5 of this 2012 Act applies to procurement  
2 decisions regarding lighting that contains mercury that are made on  
3 or after the effective date of this 2012 Act.

4       (2) The amendments to ORS 459A.010 by section 6 of this 2012 Act  
5 apply to:

6       (a) Waste reduction programs accepted by the Department of En-  
7 vironmental Quality under ORS 459.055 on or after the effective date  
8 of this 2012 Act.

9       (b) Certifications by the Department of Environmental Quality, or  
10 demonstrations made to the Department of Environmental Quality by  
11 disposal site operators, under ORS 459.305 on or after the effective date  
12 of this 2012 Act.

13       **SECTION 10.** The unit captions used in this 2012 Act are provided  
14 only for the convenience of the reader and do not become part of the  
15 statutory law of this state or express any legislative intent in the  
16 enactment of this 2012 Act.

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