

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 790

Introduced by Hudkins, 21; Stuthman, 22

Read first time January 4, 2006

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to public health; to adopt the Mercury Vaccine
- 2 and Drug Act; to provide a penalty; and to declare an
- 3 emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Mercury Vaccine and Drug Act.

3 Sec. 2. For purposes of the Mercury Vaccine and Drug Act:

4 (1) Drug means: (a) Substances listed in the United
5 States Pharmacopoeia and National Formulary, the Homeopathic
6 Pharmacopoeia of the United States, and any supplement to such
7 documents, as such documents existed on January 1, 2006; (b)
8 substances intended for use in the diagnosis, cure, mitigation,
9 treatment, or prevention of disease in humans or animals; (c)
10 substances, other than food, intended to affect the structure or
11 function of the body of humans or animals; and (d) substances
12 intended for use as a component of any substance specified in
13 subdivision (1) (a), (b), or (c) of this subdivision, not including
14 devices or device components, parts, or accessories that are not
15 otherwise drugs;

16 (2) Person means an individual, partnership, limited
17 liability company, corporation, or other association; and

18 (3) Trace amount of mercury means no more than 0.5
19 micrograms of mercury per 0.25 milliliter or 0.25 gram of vaccine
20 or drug. The mercury may be in the form of a mercury-containing
21 component, including, but not limited to, thimerosal.

22 Sec. 3. Except as provided in sections 4 and 5 of this
23 act:

24 (1) On and after July 1, 2006, no vaccine or other drug
25 administered in the State of Nebraska shall contain more than a

1 trace amount of mercury; and

2 (2) On and after July 1, 2008, no vaccine or other drug
3 administered in the State of Nebraska shall contain any level of
4 mercury.

5 Sec. 4. (1) No vaccine or other drug containing any
6 amount of mercury, including a trace amount of mercury, shall be
7 administered unless the recipient, or his or her legal guardian,
8 has signed a consent form as provided in subsection (2) of this
9 section prior to receiving such vaccine or other drug. The person
10 administering such vaccine or drug shall retain the signed consent
11 form, or a copy thereof, in the recipient's permanent medical
12 record.

13 (2) The Department of Health and Human Services shall
14 create and make available for use a standardized consent form
15 stating that the patient or patient's parent or guardian (a) has
16 been made aware that the vaccine or other drug to be administered
17 to the patient contains mercury, (b) has been advised that (i) all
18 forms of mercury are dangerous toxins, (ii) exposure to even low
19 levels of mercury may result in irreversible systemic damage to the
20 brain, nervous system, and other organs and systems in humans and
21 animals, and (iii) mercury ingestion may cause adverse behavioral
22 and other changes, and (c) consents to the administration of such
23 vaccine or other drug.

24 Sec. 5. The Director of Health and Human Services may
25 exempt a vaccine or other drug that contains mercury from the

1 requirements of section 3 of this act if he or she finds, and the
2 Governor concurs in writing, that an actual or potential incident
3 or public health emergency, including an epidemic or medical supply
4 shortage, makes necessary the administration of such vaccine or
5 other drug. Such exemption shall meet the following conditions:

6 (1) The exemption shall not be issued for an effective
7 period of more than twelve months;

8 (2) Within forty-eight hours after the issuance of the
9 exemption, the director shall provide written notification of the
10 exemption, which shall include an explanation of the findings
11 giving rise to the exemption, to both the Legislature and any other
12 party who requests the exemption in writing;

13 (3) Subsequent exemptions, not to exceed effective
14 periods of twelve months each, may be issued for the same incident
15 or public health emergency if the director determines, and the
16 Governor concurs in writing, that such incident or emergency
17 requires an extension or renewal of the prior exemption. Such
18 extended or renewed exemption shall meet all of the conditions of
19 this section; and

20 (4) The use of the vaccine or drug under the exemption is
21 subject to the requirements of section 4 of this act.

22 Sec. 6. Any insurer authorized to transact the business
23 of insurance in the State of Nebraska that provides insurance
24 coverage for early childhood immunizations pursuant to a fee
25 schedule or on a percentage reimbursement basis shall reimburse

1 for vaccines which do not contain mercury or a mercury-containing
2 additive or preservative on the same fee schedule or at the same
3 percentage rate as for vaccines containing mercury.

4 Sec. 7. The Department of Health and Human Services shall
5 establish procedures for the random testing of vaccines and other
6 drugs in this state to determine the amount of mercury contained
7 therein. The department shall semiannually report its findings, by
8 manufacturer, product name, lot number, lot expiration date, and in
9 micrograms of mercury per milliliter or gram of vaccine or other
10 drug, to the citizens of this state by posting such findings on its
11 web site.

12 Sec. 8. A person who knowingly administers a vaccine
13 or other drug in violation of the Mercury Vaccine and Drug Act
14 is guilty of a Class III misdemeanor. Such person may also be
15 civilly liable under the act. Any person awarded damages in a civil
16 action arising from a violation of the act shall be entitled to
17 reimbursement for reasonable attorney fees and court costs.

18 Sec. 9. Since an emergency exists, this act takes effect
19 when passed and approved according to law.