

HOUSE No. 831

The Commonwealth of Massachusetts

PRESENTED BY:
Frank I. Smizik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
AN ACT RELATIVE TO MERCURY ADDED THERMOSTATS.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frank I. Smizik	15th Norfolk
William N. Brownsberger	24th Middlesex
Peter v. Kocot	1st Hampshire
Stephen Kulik	1st Franklin
Barbara A. L'Italien	18th Essex
Matthew C. Patrick	3rd Barnstable
Sarah K. Peake	4th Barnstable
Denise Provost	27th Middlesex
Michael F. Rush	10th Suffolk
Tom Sannicandro	7th Middlesex
Joyce A. Spilotis	12th Essex
Ellen Story	3rd Hampshire
John W. Scibak	2nd Hampshire
Thomas M. Stanley	9th Middlesex
Lori Ehrlich	8th Essex
Ellen Story	3rd Hampshire
Marc R. Pacheco	First Plymouth and Bristol

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT RELATIVE TO MERCURY ADDED THERMOSTATS.

Whereas, the Mercury Management Act, Chapter 190 of the Acts of 2006, prohibited the sale of mercury-added thermostats as of May 1, 2008 and prohibited their disposal.

Whereas, according to a 2004 study by the U.S. Environmental Protection Agency, titled “International Mercury Market Study and the Role and Impact of U.S. Environmental Policy,” more than 10 percent of the estimated mercury reservoir in the United States is in thermostats.

Whereas, in 2000, thermostat manufacturers General Electric, Honeywell, and White Rodgers established the Thermostat Recycling Corporation (TRC) that runs the program for collecting mercury-containing thermostat discarded in Vermont. Under the TRC program, thermostat wholesalers volunteer to place bins where heating, ventilation, and air-conditioning (HVAC) contractors can discard thermostats.

Whereas, the June 2008 report by the New England Waste Managers Association (NEWMOA) on thermostat collection in New England found that only about 6% of discarded mercury-added thermostats are recycled in Massachusetts.

Whereas, the cost for collection and recycling of mercury-added thermostats are now borne by cities and towns, who need those funds for other municipal programs.

Wherefore, the Great and General court finds that the collection and recycling of discarded mercury thermostats should be paid for by the manufacturers of these products.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2 of chapter 21H of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, after the definition of “Tipping fee” the following definitions:-

“Thermostat manufacturer” means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that (i) produces a thermostat in the United States of America, or (ii) serves as an importer or domestic distributor of a thermostat produced outside the United States of America.

“Thermostat retailer” means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals in the commonwealth through any selling or distribution mechanism. A retailer may also be a wholesaler if it meets the definition of wholesaler.

“Thermostat wholesaler” means a person that is engaged in the distribution and wholesale sale of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components.

SECTION 3. Section 6D of chapter 21H of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, after paragraph (c) the following paragraphs :-

(d) Not later than July 1, 2010, every thermostat manufacturer shall, individually or as a group, develop and file with the department and implement a plan that describes the proper collection of mercury-added

thermostats in accordance with chapter 21C and the department's regulations concerning hazardous waste.

(e) Said plans shall accomplish the following:-

(1) An effective education and outreach program shall be developed and shall be directed toward wholesalers, retailers, contractors, and homeowners. There shall be no cost to thermostat wholesalers or thermostat retailers for education and outreach materials.

(2) Handling and recycling of mercury-added thermostats shall be consistent with the provisions of the universal waste rules.

(3) Containers for mercury-added thermostat collection shall be provided to all thermostat wholesalers. The cost to thermostat wholesalers shall be limited to an initial, reasonable one-time fee per container as specified in the plan.

(4) Collection systems shall be provided to all collection points. Collection systems may include individual product mail-back or multiple collection containers. The cost to registered collection points shall be limited to an initial, reasonable one-time fee per container as specified in the plan.

(5) A financial incentive shall be established with a minimum value of \$5.00 for the return of each mercury-added thermostat to a thermostat wholesaler by a contractor or service technician. The financial incentive shall be in the form of cash or coupons that are redeemable by the contractor or service technician.

(6) A financial incentive shall be established with a minimum value of \$5.00 to homeowners or nonprofessionals for the return of each mercury-added thermostat to a collection point registered with the department. The financial incentive shall be in the form of cash or in the form of a coupon that may be redeemed for cash from the manufacturer or may be redeemed for a credit toward purchase of general merchandise in the retail location where the thermostat was returned.

(f) Beginning in 2011, every thermostat manufacturer shall submit an annual report to the department by April 1 of each year that includes, at a minimum, the following information:

(1) The number of mercury-added thermostats collected and recycled by that manufacturer during the previous calendar year.

(2) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer in the previous calendar year.

(3) An evaluation of the effectiveness of the manufacturer's collection program and the financial incentive.

(4) An accounting of the administrative costs incurred in the course of administering the collection and recycling program and the financial incentive plan.

(g) Department responsibilities.

(1) Within 60 days of receipt of a complete application from a manufacturer, the department shall review and may grant, deny, or approve with modifications a manufacturer plan required by paragraph (e) of this section. The department shall not approve a plan unless all elements of paragraph (e) are adequately addressed. In reviewing a plan, the department may consider consistency of the plan with collection and financial incentive requirements in other states and consider consistency between manufacturer collection programs. In reviewing plans, the department shall ensure that education and outreach programs are uniform and consistent to ensure ease of implementation by thermostat wholesalers and thermostat retailers.

(2) The department shall establish a process under which a plan submitted by a manufacturer is, prior to plan approval, available for public review and comment for 30 days. The department shall consult with interested persons, including representatives from thermostat manufacturers, environmental groups, thermostat wholesalers, thermostat retailers, service contractors, municipalities, and solid waste districts.

(3) Registered collection points. The department shall maintain and post online a list of municipalities, solid waste districts, and thermostat retailers who wish to register as collection points for mercury thermostats.

(4) Report. Not later than January 15, 2011, and annually thereafter, the department shall submit a report on the collection and recycling of mercury-added thermostats in the state to the joint committee on the environment, natural resources and agriculture. The first annual report shall include a description and discussion of the financial incentive plan established under this section and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates, and recommendations for any statutory changes needed to improve the collection and recycling of mercury-added thermostats. These reporting requirements may be combined with other reports on mercury that the department is required to provide to the legislature.

(5) Rate of collection. By July 1, 2010, the department shall estimate the number of out-of-service thermostats generated in Massachusetts on an annual basis, in consultation with interested persons, including representatives from thermostat manufacturers, thermostat wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and solid waste districts. Beginning July 1, 2011, should collection efforts fail to result in the collection and recycling of at least 65 percent of the out-of-service mercury-added thermostats in the state, the department shall, in consultation with interested persons, require modifications to manufacturers' collection plans in an attempt to improve collection rates in accordance with these goals.

(6) The department shall evaluate the compliance of all persons subject to this section by conducting audits, inspections or implementing other compliance measures it considers appropriate.
(h) After the plan is approved by the department, each thermostat manufacturer shall certify to the department, in writing on an annual basis, that it is implementing the plan in accordance with this section.

(i) Not later than January 1, 2010, thermostat manufacturers shall provide the department with the number of mercury-added thermostats in the commonwealth in calendar year 2005 and the projected numbers in the commonwealth for each calendar year thereafter until 2030.

(j) Thermostat manufacturers who have never sold mercury-added thermostats in Massachusetts shall be exempt from this section.

(k) Thermostat wholesaler and thermostat retailer responsibilities.

(1) Not later than July 1, 2010, a thermostat wholesaler shall not offer for final sale, sell at final sale, or distribute thermostats unless the wholesaler:

(A) acts as a collection site for thermostats that contain mercury; and

(B) promotes and utilizes the collection containers provided by thermostat manufacturers to facilitate a contractor collection program as established by this section, and all other tasks as needed to establish and maintain a cost-effective manufacturer collection and financial incentive program.

(2) Not later than July 1, 2010, a thermostat retailer shall not offer for final sale, sell, or distribute thermostats in the state unless the thermostat retailer participates in an education and outreach program to educate consumers about the collection program for mercury thermostats.

(l) Sales prohibition Beginning July 1, 2010, the following sales prohibitions shall apply to manufacturers, thermostat wholesalers, and thermostat retailers:

(1) A manufacturer not in compliance with this section shall be prohibited from offering any thermostat for final sale in the commonwealth, selling any thermostat at final sale in the commonwealth, or distributing any thermostat in the commonwealth. A manufacturer not in compliance with this section shall provide the necessary support to thermostat wholesalers and thermostat retailers to ensure the

manufacturer's thermostats are not offered for final sale, sold at final sale, or distributed in the commonwealth.

(2) A thermostat wholesaler or thermostat retailer shall not offer for final sale, sell at final sale, or distribute in the commonwealth any thermostat of a manufacturer that is not in compliance with this section.