

HOUSE No. 3556

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act prohibiting the sale, installation and disposal of mercury thermostats..

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

1 SECTION 1. The General Laws are hereby amended by inserting after Chapter 25 the
2 following chapter:

3 Chapter 25D.

4 Section 1. Short title.

5 This act shall be known and may be cited as the Mercury-Free Thermostat Act.

6 Section 2. Legislative findings.

7 The General Court finds and declares as follows:

8 (1) Waterways throughout this Commonwealth have been placed under fish consumption
9 advisory warnings due to high levels of mercury contamination.

10 (2) Human exposure to mercury from thermostats is primarily through improper disposal
11 of items in landfills or through incineration.

12 (3) Mercury thermostats represent the largest amount of mercury in ordinary household
13 products. A single mercury thermostat contains between three and five grams of mercury.

14 According to the Environmental Protection Agency's 2002 estimates, each year about six
15 to eight tons of mercury from discarded thermostats end up in solid waste facilities and between
16 one and two tons are released into the air.

17 (4) Electronic programmable thermostats that do not contain mercury are readily
18 available and can save consumers considerable money in energy costs when used properly. Snap
19 switch thermostats that function like mercury thermostats, but contain no mercury, are also
20 available.

21 (5) The Commonwealth supports shared responsibility for all stakeholders including
22 manufacturers, retailers, wholesalers, after market users, local and state governments working to
23 resolve those issues and efforts to reduce mercury entering the atmosphere and water supply
24 from all sources in the most cooperative and cost-effective means available.

25 (6) The nonprofit Thermostat Recycling Corporation (TRC), created and supported by
26 thermostat manufacturers, runs a voluntary program designed to collect mercury thermostats
27 from wholesalers. The TRC program has been operating in this Commonwealth since 2000 and
28 has recycled almost 17,500 thermostats, thereby diverting more than 140 pounds of mercury in
29 eight years in Massachusetts. This Commonwealth has been a consistent leader in environmental
30 legislation and formal implementation and participation will only increase the amount of diverted
31 mercury.

32 (7) It is in the public interest to increase the scope and effectiveness of mercury
33 thermostat collection programs through promotion and expansion of recycling efforts and
34 banning the sale, installation and disposal of mercury thermostats in this Commonwealth.

35 Section 3. Definitions.

36 The following words and phrases when used in this act shall have the meanings given to
37 them in this section unless the context clearly indicates otherwise:

38 "After-Market User." A business that the Department of Energy Resources determines is
39 primarily engaged in the installation or removal of heating, ventilation and air conditioning
40 components.

41 "Department." The Department of Energy Resources of the Commonwealth.

42 "Manufacturer." The owner of a brand name on a thermostat.

43 "Mercury thermostat." A product or device that contains mercury or a mercury compound
44 and is used to sense and control room temperature through communication with heating,
45 ventilating or air-conditioning equipment. The term does not include such product or device used
46 to sense and control temperature as part of a manufacturing process.

47 "Retailer." A business that sells thermostats of any kind directly to homeowners, other
48 nonprofessionals or contractors through any selling or distribution mechanism, including, but not
49 limited to, sales using the Internet or catalogs. A retailer may also be a wholesaler if the retailer
50 meets the definition of wholesaler.

51 "Wholesaler." A business that the Department of Energy Resources determines is
52 primarily engaged in the distribution and wholesale selling of large quantities of heating,

53 ventilation and air conditioning components to contractors who install heating, ventilation and
54 air conditioning components.

55 Section 4. Prohibiting disposal of mercury thermostats.

56 (a) General rule.--No person, municipality or operator of a solid waste treatment,
57 processing or disposal facility or after-market user shall knowingly dispose, permit the disposal
58 of, or send to a resource recovery facility for processing, a mercury thermostat from which the
59 mercury has not been removed for reuse, recycling or other methods approved by the
60 department.

61 (b) Exception.--No operator of a solid waste treatment, processing or disposal facility
62 shall be found to have knowingly disposed of a mercury thermostat if the facility has notified
63 customers of the ban in writing and posted signs at the facility clearly noting the prohibition.

64 (c) Construction.--This subsection shall not be construed to affect prior existing laws,
65 rules or regulations more stringent than the provisions under subsection (a) governing the
66 disposal of mercury, mercury thermostats and other products containing mercury.

67 Section 5. Collection and recycling programs.

68 (a) Manufacturer programs.--

69 (1) Each manufacturer of mercury thermostats that have been sold in this Commonwealth
70 shall, individually or collectively, establish and maintain a collection and recycling program for
71 out-of-service mercury thermostats from wholesalers, contractors and retailers, service
72 technicians, after-market users and homeowners.

73 (2) The program shall be developed in a manner that ensures to the maximum extent that:

74 (i) There is no direct cost to contractors, service technicians or homeowners for
75 participating in the program, except that wholesalers, contractors and retailers may be assessed a
76 nominal administrative fee to offset the cost of each collection bin for each collection location
77 for out-of-service thermostats.

78 (ii) Information and education on proper management and recycling of mercury
79 thermostats are provided to contractors, service technicians, wholesalers, retailers, institutions
80 and homeowners to encourage the return of out-of-service thermostats at established recycling
81 collection points.

82 (iii) The purchase of mercury-free programmable thermostats qualified by the
83 Environmental Protection Agency's Energy Star program as replacements for mercury
84 thermostats is encouraged.

85 (iv) The handling and recycling of mercury thermostats is accomplished in a manner
86 compliant with section 4 and all other applicable Federal, State and local requirements.

87 (v) The program otherwise implements all aspects of the collection program as instructed
88 by the department.

89 (b) Wholesaler and retailer participation.--

90 (1) Beginning one year after the effective date of this section, except as provided for in
91 paragraph (4), a wholesaler or retailer may not sell a thermostat in this Commonwealth unless the
92 wholesaler or retailer acts as a collection site for thermostats that contain
93 mercury.

94 (2) The Department may require that a retailer must meet the requirements of this
95 subsection by participating as a collection site in a manufacturer collection program as described
96 under subsection (a) or by collecting thermostats that contain mercury and managing the
97 collected thermostats in accordance with applicable Federal and State universal waste rules.

98 (3) A retailer acting as a collection site shall provide visible signage at the site about the
99 collection and recycling of mercury thermostats.

100 (4) A retailer that sells thermostats but chooses not to act as a collection site or participate
101 in a manufacturer collection program as a collection site shall provide notice to consumers that
102 recycling of mercury thermostats is required under Massachusetts law and the notice shall
103 include the specific names and locations of any collection sites within reasonably close
104 proximity that recycle mercury thermostats.

105 (c) Department oversight.--

106 (1) Each manufacturer shall submit to the department the collection and recycling
107 program required under subsection (a) no later than 180 days after the effective date of this
108 section. The proposed collection and recycling program may include appropriate enhancements
109 to an existing program or a new program.

110 (2) If the revised collection program is not submitted by the applicable date, the
111 manufacturer shall be considered out of compliance for the purposes of subsection (b) beginning
112 on the date the revised plan is received by the department.

113 (3)(d) Safe management and recycling program.--The department, in cooperation with
114 manufacturers, shall provide education and outreach to business, local government, schools and

115 the public on proper management of mercury thermostats and other products containing mercury,
116 including a listing of department-approved collection sites. A

117 list of department-approved collection sites shall also be distributed to wholesalers,
118 retailers and contractors or made available on the department's internet website.

119 (e) Reporting.--

120 (1) Each manufacturer with an approved collection and recycling program shall submit an
121 annual report to the department by June 1 of each year that includes:

122 (i) The number of mercury thermostats collected and recycled by the manufacturer
123 pursuant to this act during the previous year.

124 (ii) The estimated total amount of mercury contained in the mercury components
125 collected by the manufacturer pursuant to this act during the previous year.

126 (iii) An evaluation of the effectiveness of the manufacturer's collection and recycling
127 program and any recommendations for improvements, including modifications

128 to the program.

129 (iv) Collection goals which shall be established to ensure an increase in the number of
130 mercury thermostats collected each year until 2015 or a time that the department determines that
131 the number of in-service thermostats is steadily declining as a result of the ban on sales and
132 installation.

133 (2) Within 90 days after receipt of the manufacturer's annual reports, the department shall
134 publish information in its Internet website about the collection and recycling of mercury
135 thermostats in this Commonwealth. This information shall include:

136 (i) A description of the collection and recycling program established under this act.

137 (ii) Collection goals and data on actual collection rates.

138 (3) In conjunction with the manufacturer, the department may alter any and all elements
139 of the 17 manufacturer collection and recycling program, including, but not limited to, the
140 number and location of the collection points and collection goals and means to achieve
141 established goals, provided alterations are not inconsistent with the requirements of this and
142 other applicable laws.

143 (4) The Secretary of Energy and Environmental Affairs may discontinue the requirement
144 for the annual report pursuant to this subsection on finding that mercury thermostats no longer
145 pose a threat to the environment and to public health.

146 Section 6. Penalties.

147 The department may assess civil penalties for violations of this act. The penalty shall not
148 exceed \$2,500 per day for each violation. Each day of continued violation, and each violation of
149 any provision of this act, any rule or regulations adopted under this act, any order of the
150 department or any condition or term of a collection and recycling program approved pursuant to
151 this act shall constitute a separate offense and violation.