

**HOUSE . . . . . No. 251**

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**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 adoption of the accompanying bill:

An Act relative to mercury added thermostats.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/13/2011</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/3/2011</i>
<i>Susan C. Fargo</i>		<i>2/3/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/3/2011</i>
<i>James B. Eldridge</i>		<i>2/4/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/28/2011</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/28/2011</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>1/18/2011</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/18/2011</i>
<i>William N. Brownsberger</i>		<i>1/19/2011</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/19/2011</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/20/2011</i>
<i>Michael O. Moore</i>		<i>1/26/2011</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>2/2/2011</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>2/4/2011</i>

**HOUSE . . . . . No. 251**

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By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 251) of Frank I. Smizik and others for legislation to further regulate the sale and disposal of mercury added thermostats. Environment, Natural Resources and Agriculture.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 831 OF 2009-2010.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
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An Act relative to mercury added 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           Whereas, the Mercury Management Act, Chapter 190 of the Acts of 2006, prohibited the  
2 sale of mercury-added thermostats as of May 1, 2008 and prohibited their disposal.

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

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

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

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

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

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

20           SECTION 1. Section 2 of chapter 21H of the General Laws, as appearing in the 2008  
21 Official Edition, is hereby amended by inserting, after the definition of “Tipping fee” the  
22 following definitions:-

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

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

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

33           SECTION 2. Section 6D of chapter 21H of the General Laws, as appearing in the 2008  
34 Official Edition, is hereby amended by inserting, after paragraph (c) the following paragraphs:-

35           (d) Not later than July 1, 2012, every thermostat manufacturer shall, individually or as a  
36 group, develop and file with the department and implement a plan that describes the proper  
37 collection of mercury-added thermostats in accordance with chapter 21C and the department’s  
38 regulations concerning hazardous waste.

39           (e) Said plans shall accomplish the following:

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

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

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

48           (4) Collection systems shall be provided to all collection points. Collection systems may  
49 include individual product mail-back or multiple collection containers. The cost to registered

50 collection points shall be limited to an initial, reasonable one time fee per container as specified  
51 in the plan.

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

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

62 (f) Beginning in 2013, every thermostat manufacturer shall submit an annual report to  
63 the department by April 1 of each year that includes, at a minimum, the following information:

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

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

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

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

72 (g) Department responsibilities.

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

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

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

89 (4) Report. Not later than January 15, 2013, and annually thereafter, the department shall  
90 submit a report on the collection and recycling of mercury-added thermostats in the state to the  
91 joint committee on the environment, natural resources and agriculture. The first annual report

92 shall include a description and discussion of the financial incentive plan established under this  
93 section and recommendations for any statutory changes concerning the collection and recycling  
94 of mercury-added thermostats. Subsequent reports must include an evaluation of the  
95 effectiveness of the thermostat collection and recycling programs established under this section,  
96 information on actual collection rates, and recommendations for any statutory changes needed to  
97 improve the collection and recycling of mercury-added thermostats. These reporting  
98 requirements may be combined with other reports on mercury that the department is required to  
99 provide to the legislature.

100 (5) Rate of collection. By July 1, 2012, the department shall estimate the number of out  
101 of service thermostats generated in Massachusetts on an annual basis, in consultation with  
102 interested persons, including representatives from thermostat manufacturers, thermostat  
103 wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and  
104 solid waste districts. Beginning July 1, 2013, should collection efforts fail to result in the  
105 collection and recycling of at least 65 percent of the out-of-service mercury-added thermostats in  
106 the state, the department shall, in consultation with interested persons, require modifications to  
107 manufacturers' collection plans in an attempt to improve collection rates in accordance with  
108 these goals.

109 (6) The department shall evaluate the compliance of all persons subject to this section by  
110 conducting audits, inspections or implementing other compliance measures it considers  
111 appropriate.

112 (h) After the plan is approved by the department, each thermostat manufacturer shall  
113 certify to the department, in writing on an annual basis, that it is implementing the plan in  
114 accordance with this section.

115 (i) Not later than January 1, 2012, thermostat manufacturers shall provide the department  
116 with the number of mercury-added thermostats in the commonwealth in calendar year 2010 and  
117 the projected numbers in the commonwealth for each calendar year thereafter until 2030.

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

120 (k) Thermostat wholesaler and thermostat retailer responsibilities.

121 (1) Not later than July 1, 2012, a thermostat wholesaler shall not offer for final sale, sell  
122 at final sale, or distribute thermostats unless the wholesaler:

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

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

128 (2) Not later than July 1, 2012, a thermostat retailer shall not offer for final sale, sell, or  
129 distribute thermostats in the state unless the thermostat retailer participates in an education and  
130 outreach program to educate consumers about the collection program for mercury thermostats.

131 (l) Sales prohibition. Beginning July 1, 2012, the following sales prohibitions shall  
132 apply to manufacturers, thermostat wholesalers, and thermostat retailers:

133           (1) A manufacturer not in compliance with this section shall be prohibited from offering  
134 any thermostat for final sale in the commonwealth, selling any thermostat at final sale in the  
135 commonwealth, or distributing any thermostat in the commonwealth. A manufacturer not in  
136 compliance with this section shall provide the necessary support to thermostat wholesalers and  
137 thermostat retailers to ensure the manufacturer's thermostats are not offered for final sale, sold at  
138 final sale, or distributed in the commonwealth.

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