

SENATE No. 2303

The Commonwealth of Massachusetts

—
In the Year Two Thousand Fourteen
—

SENATE, July 23, 2014

Report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments to the Senate Bill further regulating mercury management (Senate, No. 1758) (amended by the House by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 3601, amended),-- reports, a "Bill to further regulating mercury management." (Senate, No. 2303).

For the Committee:

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An Act further regulating mercury management.

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. Section 2 of chapter 21H of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by inserting after the definition of “Public body” the
3 following definition:-

4 “Qualified lamp recycler”, a person who engages in the manual or mechanical separation
5 of spent household mercury-added lamps to recover components and mercury contained therein,
6 and meets the requirements of the commonwealth for handling, transporting and disposal of
7 mercury-added lamps.

8 SECTION 2. Section 6J of said chapter 21H, as so appearing, is hereby amended by
9 striking out subsections (d) and (e) and inserting in place thereof the following 2 subsections:-

10 (d)(1) A manufacturer of mercury-added lamps shall satisfy the requirements of this
11 section if such manufacturer who sells mercury-added lamps in the commonwealth individually
12 pays, until June 30, 2024, an annual registration fee, not to exceed \$10,000 per year, into an
13 expendable trust, under section 6 of chapter 6A and any applicable regulations, for the limited
14 purpose of department and municipal administration, access, communication, enforcement and

15 education costs for proper mercury-added lamp recycling or disposal. For the purposes of this
16 subsection, the aggregate annual registration fees paid by such manufacturers shall be equal to
17 \$300,000 per year; provided, however, that if the aggregate annual registration fees do not equal
18 \$300,000, the department, pursuant to section 18 of chapter 21A, shall adjust the annual
19 registration fee in excess of \$10,000 per year, for the sole purpose of reaching annual aggregate
20 registration fees of \$300,000.

21 (2) A person who sells fluorescent lamps at retail for residential or commercial
22 customers may post the following notice in 24-point type or larger and in a manner clearly
23 visible to a consumer examining fluorescent lamps offered for sale: "Fluorescent bulbs save
24 energy and reduce environmental pollution. Note: Fluorescent bulbs contain a small amount of
25 mercury and must be properly recycled at the end of their use. Contact your municipality or
26 www.lamprecycle.org for bulb recycling options." A retailer may include additional language in
27 the notice in order to promote the sale or in-store recycling of fluorescent lamps, provided that
28 the notice language set forth in this subsection is present. A manufacturer, individually or
29 collectively, shall provide a printed copy of that notice, free of charge, at the request of any
30 retailer of mercury-added lamps for its retail establishment in the commonwealth.

31 (e) (1) An inspector, as defined by section 1 of chapter 143, may enforce subsection
32 (a) of section 6I. A municipality may, under its authority in section 94 of said chapter 143,
33 institute additional fines and penalties for violations of said subsection (a) of said section 6I. Any
34 municipal employee enforcing this section shall refer cases to and cooperate with district
35 attorneys, the attorney general and other state law enforcement officials to enforce said
36 subsection (a) of said section 6I.

37 (2) (a) A qualified mercury-added lamp recycler engaged in the collection and
38 recycling of mercury-added lamps shall issue a certificate of mercury lamp recycling to all
39 customers upon collection. Customers shall keep these certificates on file for not less than 36
40 months and provide access to the department upon request.

41 (b) A qualified mercury-added lamp recycler shall, provide annually,
42 information regarding the recycling of lamps by any person in the commonwealth as requested
43 by the department. The department may establish by rule the information that qualified mercury-
44 added lamp recyclers shall provide.

45 SECTION 3. Chapter 21H of the General Laws is hereby further amended by inserting
46 after section 6J the following section:-

47 Section 6J 1/2. (a) As used in this section, the following words shall have the following
48 meanings unless the context clearly requires otherwise:

49 “Contractor”, a person engaged in the business of installation, service or removal of
50 heating, ventilation and air-conditioning components.

51 "Department", the department of environmental protection.

52 “Local government authority”, a household hazardous waste facility, a solid waste
53 management agency, an environmental management agency or a department of public health.

54 "Manufacturer", an organization or entity that sells or sold a mercury-added thermostat
55 under a brand or label it owns or is or was licensed to use a brand or label for a mercury-added
56 thermostat produced by other suppliers.

57 "Mercury-added thermostat", a product or device that uses a mercury switch to sense and
58 control room temperature through communication with heating, ventilating or air-conditioning
59 equipment, including thermostats used to sense and control room temperature in residential,
60 commercial, industrial and other buildings, but excluding thermostats used to sense and control
61 temperature as part of a manufacturing process.

62 "Person", an individual, trust, firm, joint stock company, corporation, including a
63 government corporation, partnership, association, the federal government or any agency or
64 subdivision thereof, a state, municipality, commission, political subdivision of a state or any
65 interstate body.

66 "Qualified contractor", a person engaged in the business of installation, service or
67 removal of heating, ventilation and air-conditioning components who employs 7 or more service
68 technicians or installers or who is located in an area outside of an urban area, as defined by the
69 United States Bureau of the Census.

70 "Thermostat retailer", a person that sells thermostats of any kind directly to homeowners,
71 other non-professionals or contractors through any selling or distribution mechanism, including,
72 but not limited to, sales using the internet or catalogs.

73 "Thermostat wholesaler", a person engaged in the distribution and wholesale sale of
74 thermostats and other heating, ventilation and air-conditioning components to contractors who
75 install heating, ventilation and air-conditioning components.

76 (b)(1) A thermostat wholesaler shall not offer for final sale, sell at final sale or distribute
77 any thermostat unless that thermostat wholesaler acts as a collection site for mercury-added
78 thermostats.

79 (2) A thermostat wholesaler shall meet the requirements of this section by
80 participating as a collection site in a collection program established pursuant to subsection (d), or
81 by collecting mercury-added thermostats and managing the collected mercury-added thermostats
82 in accordance with applicable federal and state laws governing the disposal of universal waste.

83 (3) A thermostat wholesaler, qualified contractor or thermostat retailer acting as a
84 collection site shall provide visible signage identifying the location as a collection location for
85 waste mercury thermostats.

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

89 (c)(1) Except as otherwise provided in this section, no person shall dispose of a mercury-
90 added thermostat in a manner other than by recycling or disposal as hazardous waste.

91 (2) A contractor who removes a mercury-added thermostat from a building shall
92 deliver that thermostat to a collection site established under subsection (d) for recycling.

93 (3) A person who demolishes a building shall remove any mercury-added
94 thermostat from the building prior to demolition and shall deliver any removed thermostat to a
95 collection site established under subsection (d) for recycling or by collecting mercury-added
96 thermostats and managing the collected mercury-added thermostats in accordance with
97 applicable federal and state laws governing the disposal of universal waste.

98 (4) A person who removes a mercury-added thermostat from a location that is
99 participating in an energy efficiency or weatherization program supported or administered in

100 whole or in part by a department, agency, authority or political subdivision of the commonwealth
101 or conducted as a result of any statutory requirement, including, but not limited to, demand-side
102 management or least-cost procurement, shall deliver that thermostat to a collection site
103 established under subsection (d) for recycling.

104 (5) No municipal or private solid waste hauler or operator of a solid waste
105 disposal facility shall knowingly dispose, or allow to be disposed, a mercury-added thermostat as
106 solid waste unless the mercury has been first removed by recycling or disposed as hazardous
107 waste. A solid waste facility may knowingly accept or collect mercury-added thermostats for
108 proper disposal if the device is segregated from solid waste and stored in an identified recycling
109 container; provided, that the facility participates in a manufacturer's program as a collection site
110 or has established a collection site to collect, manage and dispose of mercury-added thermostats
111 as hazardous waste in accordance with applicable federal and state waste disposal laws and
112 regulations. No operator of a solid waste disposal facility shall be found to be in violation of this
113 section if the operator: (i) makes a good-faith and consistent effort to comply with this section;
114 (ii) posts, in a conspicuous location at the facility, a sign stating that mercury-added thermostats
115 are not accepted at the facility; and (iii) notifies, in writing, any person authorized to deposit
116 solid waste at the facility that mercury-added thermostats are not accepted at the facility.

117 (d) Each thermostat manufacturer that has distributed, offered for final sale or sold at
118 final sale any mercury-added thermostat within the commonwealth shall, individually or
119 collectively:

120 (i) make collection containers available to each thermostat wholesaler, thermostat
121 retailer, qualified contractor and local government authority within the commonwealth that

122 requests a container, ensuring that those containers are accompanied by information regarding
123 the proper management of mercury-added thermostats as universal waste, in accordance with the
124 collection program and the department's rules and regulations;

125 (ii) establish a system to collect, transport and properly manage, which may
126 include, but shall not be limited to, recycling, out-of-service mercury-added thermostats from all
127 collection sites established under this section; and

128 (iii) collect no fees or other charges for participation in the program, except that
129 each thermostat wholesaler, thermostat retailer, qualified contractor and local government
130 authority that is provided with 1 or more collection containers may be charged a 1-time program
131 administration fee not to exceed \$25 per collection container.

132 (e) On or before March 1, each thermostat manufacturer that has distributed, offered for
133 final sale or sold at final sale any mercury-added thermostat within the commonwealth shall,
134 individually or collectively, submit an annual report to the department that shall include, but not
135 be limited to, the following information:

136 (i) the number of mercury-added thermostats collected and recycled by the
137 manufacturer under this section during the previous calendar year;

138 (ii) the estimated total amount of mercury contained in the thermostat components
139 collected by the manufacturer under this section in the previous calendar year;

140 (iii) an evaluation of the effectiveness of the manufacturer's collection program;

141 (iv) an accounting of the administrative costs incurred in the course of
142 administering the collection and recycling program; and

143 (v) a list of all locations to which collection containers have been provided,
144 including any locations which received containers during the year, and the date on which each
145 location received a collection container.

146 (f) The department shall maintain and post on its website a list of all locations that are
147 collection points for mercury-added thermostats.

148 In conjunction with any education and outreach programs implemented by
149 manufacturers, the department may conduct an education and outreach program directed toward
150 thermostat wholesalers, thermostat retailers, contractors and homeowners to promote the
151 collection of out-of-service mercury-added thermostats.

152 (g) The department shall collect and maintain data on the collection and recycling
153 programs established in subsection (d), including the number of mercury-added thermostats
154 collected and recycled and the number of wholesalers, retailers, qualified contractors and local
155 government authorities participating in the program. On or before September 30 of each year,
156 the department shall prepare an annual report detailing the data collected under this subsection
157 during the prior calendar year and shall file copies of those reports with the clerks of the senate
158 and house of representatives and the co-chairs of the joint committee on environment, natural
159 resources and agriculture.

160 SECTION 4. Section 6J 1/2 of said chapter 21H, inserted by section 1, is hereby
161 repealed.

162 SECTION 5. From January 1, 2015 through December 31, 2022, each thermostat
163 manufacturer that has distributed, offered for final sale or sold at final sale any mercury-added
164 thermostat within the commonwealth shall, individually or collectively conduct education and

165 outreach efforts including, but not limited to: (i) promoting the availability of collection
166 containers to thermostat wholesalers, thermostat retailers, qualified contractors and units of local
167 government in the commonwealth; (ii) educating contractors, homeowners and other interested
168 persons of the importance of properly managing out-of-service mercury-added thermostats and
169 opportunities for the collection of those thermostats and the availability of manufacturer
170 supported programs; (iii) providing signage to participating collection locations that can be
171 prominently displayed to promote the collection and recycling of out-of-service mercury-added
172 thermostats; and (iv) providing written materials or templates of written materials for
173 reproduction by participating thermostat wholesalers and thermostat retailers to be provided to
174 customers at the time of purchase or delivery of a thermostat. These materials shall include, but
175 not be limited to, information on the importance of properly managing out-of-service mercury-
176 added thermostats and opportunities for the collection of those thermostats. Each annual report
177 required by subsection (e) of section 6J1/2 of chapter 21H of the General Laws shall include a
178 description of the education and outreach efforts conducted under this section.

179 SECTION 6. Upon the completion of the first calendar year of the collection and
180 recycling program established by section 6J 1/2 of chapter 21H of the General Laws, the
181 department of environmental protection shall conduct an assessment and evaluation of that
182 program, including the number of thermostats collected and proposed measures to increase that
183 number in future years. The department of environmental protection shall, on or before
184 December 31, 2016, file a report of its findings, including any recommendations of legislation,
185 with the clerks of the senate and house of representatives and the co-chairs of the joint committee
186 on environment, natural resources and agriculture.

187 SECTION 7. Notwithstanding any general or special law to the contrary, the regulations
188 adopted by the department of environmental protection to implement subsections (d) and (e) of
189 section 6J of chapter 21H of the General Laws prior to the effective date of this act are hereby
190 repealed, and all prior and future obligations of manufacturers under those regulations and under
191 subsections (d) and (e) of said section 6J of said chapter 21H prior to the effective date of this act
192 are terminated and not enforceable.

193 SECTION 8. Subsections (e) and (g) of section 6J 1/2 of chapter 21H of the General
194 Laws, inserted by section 3, shall take effect on January 1, 2016.

195 SECTION 9. Subsection (f) of section 6J 1/2 of chapter 21H of the General Laws, as so
196 inserted, shall take effect on July 1, 2016.

197 SECTION 10. Section 4 of this act shall take effect on December 31, 2022.