HOUSE DOCKET, NO. 1172 FILED ON: 1/20/2011

HOUSE . . . . . No. 1170

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	*8th Suffolk*
Cory Atkins	*14th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Stephen Kulik	*1st Franklin*

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By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 1170) of Martha M. Walz and others relative to prohibiting the sale, installation and disposal of mercury thermostats. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to reduce the presence of mercury in the environment, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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. The General Laws are hereby a mended by inserting after Chapter 25C the following chapter:-

Chapter 25D.

Section 1. Short title. This act shall be known and may be cited as the Mercury-Free Thermostat Act.

Section 2. Legislative findings. The General Court finds and declares as follows:

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

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

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

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

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

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

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

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

34 Section 3. Definitions. The following words and phrases when used in this act shall have
35 the meanings given to them in this section unless the context clearly indicates otherwise:

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

39 "Department", the Department of Energy Resources of the Commonwealth.

40 "Manufacturer", the owner of a brand name on a thermostat.

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

45 "Retailer", a business that sells thermostats of any kind directly to homeowners, other
46 nonprofessionals or contractors through any selling or distribution mechanism, including, but not

47 limited to, sales using the Internet or catalogs. A retailer may also be a wholesaler if the retailer
48 meets the definition of wholesaler.

49 "Wholesaler", a business that the Department of Energy Resources determines is
50 primarily engaged in the distribution and wholesale selling of large quantities of heating,
51 ventilation and air conditioning components to contractors who install heating, ventilation and
52 air conditioning components.

53 Section 4. Prohibiting disposal of mercury thermostats. (a) General rule.--No person,
54 municipality or operator of a solid waste treatment, processing or disposal facility or after-market
55 user shall knowingly dispose, permit the disposal of, or send to a resource recovery facility for
56 processing, a mercury thermostat from which the mercury has not been removed for reuse,
57 recycling or other methods approved by the department.

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

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

64 Section 5. Collection and recycling programs. (a) Manufacturer programs.--

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

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

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

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

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

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

83 (b) Wholesaler and contractor participation.--

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

87 (2) The Department may require that a wholesaler or contractor must meet the
88 requirements of this subsection by participating as a collection site in a manufacturer collection
89 program as described under subsection (a) or by collecting thermostats that contain mercury and
90 managing the collected thermostats in accordance with applicable Federal and State universal
91 waste rules.

92 (3) A wholesaler acting as a collection site shall provide visible signage at the site about
93 the collection and recycling of mercury thermostats.

94 (4) A wholesaler or contractor that sells thermostats but chooses not to act as a collection
95 site or participate in a manufacturer collection program as a collection site shall provide notice to
96 consumers that recycling of mercury thermostats is required under Massachusetts law and the
97 notice shall include the specific names and locations of any collection sites within reasonably
98 close proximity that recycle mercury thermostats.

99 (c) A manufacturer that maintains a collection and recycling program may terminate a
100 collection location's participation in the program after two documented instances of the location
101 shipping mercury containing products other than thermostats. The program must first notify the
102 location and the Department in writing for termination to occur. Termination form a
103 manufacturers' program does not reduce, eliminate, or otherwise affect the collector's obligation
104 under subsection (c) to properly dispose of thermostats that contain mercury.

105 (d) 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 due to the department.

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

119 (f) 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 to the program.

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

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

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

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

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

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