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HOUSE . . . . . No. 4204

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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:

SECTION 1. The General Laws are hereby amended by inserting after section 6J of chapter 21H the following section:-

Section 6J½ (a) Any manufacturer that has sold or distributed a mercury-added thermostat in the Commonwealth shall, individually or collectively as a group with other manufacturers, establish and maintain a collection and recycling program for the proper discarding of mercury-added thermostats in accordance with the provisions of this subsection. Each such manufacturer shall be financially responsible for its collection and recycling program.

A manufacturer's collection and recycling program shall include:

(1) Transportation and recycling of mercury-added thermostats at no cost from participating collection site locations in the Commonwealth; provided that a program may require that a manufacturer's supplied collection container be utilized for such transportation. Notwithstanding any other provision to the contrary, a manufacturer may assess a one-time fee not to exceed $25 for each manufacturer supplied collection container that is requested by a collection site participant. A manufacturer may meet the requirement to transport at no cost mercury-added thermostats from a collection site for recycling, if the manufacturer establishes a process for transportation by common carrier or contract carrier and has pre-arranged for the shipping charges to be paid to the carrier. If such carrier transportation process is established, a manufacturer may impose reasonable requirements for a participant to ready the mercury-added thermostats for shipping.

(2) That no cost be assessed to any service contractor, plumber, electrician, land owner or other person who disposes of a mercury-added thermostat at a program collection site; except, where a collection container is located at a municipal solid waste facility or hazardous waste

23 event in connection with other disposal services, a municipality may charge a general fee to
24 access the facility or event.

25 (3) Information be available to the public on the manufacturer's internet web-site on the:
26 (i) proper disposal and recycling of mercury-added thermostats, (ii) procedures for the handling
27 and disposal of mercury-added thermostats that leak mercury or from damage pose a risk of
28 leaking, and (iii) identity and addresses of all participating mercury-added thermostat collection-
29 sites in the program.

30 (4) Information for participating collection sites on program requirements and guidelines
31 for the proper handling and managing of mercury-added thermostats;

32 (5) Written educational materials for dissemination at collection sites for service
33 contractors, energy efficiency contractors, plumbers, electricians, land owners or other persons
34 regarding the proper disposal and recycling requirements for mercury-added thermostats;

35 (6) Public advertisements on the proper disposal and recycling of mercury-added
36 products in local media such as newspapers, radio and internet;

37 (7) The management, disposal and recycling of mercury-added thermostats complies
38 with all applicable federal and state laws and regulations.

39 On or before March 1, 2013, each such manufacturer shall submit its collection and
40 recycling plan for mercury-added thermostats for the initial 3 year period to the department; and,
41 thereafter, shall submit to the department an up-dated plan at intervals as set by regulation. All
42 plans shall be in a form and contain the information as prescribed by the department and shall
43 comply with the provisions of this subsection and any applicable regulations. Each such plan
44 submitted shall be subject to approval by the department. Within 60 days of receipt of a plan, the
45 department shall review such plan and make a determination. If a plan is rejected or approved in
46 part, the manufacturer shall, within 30 days after receipt of the determination, submit to the
47 department a modified plan to comply with the requirements of this subsection. In the event the
48 modified plan is not in full compliance with the requirements, the department within 30 days of
49 its receipt shall issue to the manufacturer a notice of non-compliance that effective on August 1,
50 2013, the manufacturer shall be subject to the prohibition of subsection (b); until a complying
51 plan is filed and approved by the department. Notwithstanding such approved plan, a
52 manufacturer or collective group of manufacturers, in addition to the collection of mercury-
53 added thermostats that it or such group, sold or distributed, may at anytime opt to collect any
54 other mercury-added thermostat. By regulation, the department shall adopt procedures of a
55 similar nature for the submission for approval of manufacturer plans to the department after
56 March 1, 2013.

57 Each such manufacturer shall establish a mercury-added thermostat collection and
58 recycling program by August 1, 2013, in accordance with its plan as approved by the department.

59 Notwithstanding, the department after such approval may require modification of a
60 manufacturer's plan if necessary to comply with applicable federal and state laws and
61 regulations.

62 (b) No manufacturer subject to the requirements of this section, shall sell, offer for sale
63 or distribute a non-mercury thermostat in the Commonwealth unless the manufacturer is in
64 compliance with the applicable provisions to establish and maintain a collection and recycling
65 program for mercury-added thermostats.

66 (c) A municipality or solid waste disposal facility may participate as a collection site in a
67 manufacturer's collection and recycling program. Notwithstanding, a manufacturer may
68 terminate a participating collection site for a repeated failure to follow its program requirements,
69 subject to written approval of the department.

70 (d) On or after September 1, 2013, no thermostat vendor with a physical location in the
71 Commonwealth, shall sell, offer for sale, or distribute a thermostat in this state, unless the vendor
72 establishes a collection site and accepts mercury-added thermostats for proper disposal from its
73 customers. In complying with this requirement a thermostat vendor may opt to: (i) participate as
74 a collection site in a manufacturer's mercury–added thermostat collection and recycling program,
75 (ii) participate as a collection site in any other mercury-added thermostat collection and
76 recycling program recognized by the department; or (iii) establish a collection site to collect,
77 manage and dispose of mercury-added thermostats as hazardous waste or as otherwise approved
78 by the department, in accordance with applicable federal and state waste laws and regulations. A
79 manufacturer may terminate a participating thermostat vendor from its mercury-added thermostat
80 collection and recycling program for a repeated failure to follow its program guidelines, subject
81 to written approval by the department. Termination from a program shall not negate the
82 requirement of a thermostat vendor to collect and properly dispose of mercury-added thermostats
83 under this section. Each thermostat vendor shall conspicuously post a sign on the premises where
84 thermostats are displayed and offered for sale or if there is no such display, near the location
85 where customer sales are customarily transacted, to alert customers of the proper disposal and
86 recycling requirements for mercury-added thermostats and the vendor at no cost will accept
87 mercury-added thermostats for proper disposal. Templates of the signage shall be prepared by
88 the department and posted on its public internet web-site, in a form that users may access and
89 print.

90 Notwithstanding, a person who is a thermostat vendor shall not be subject to the
91 provisions of the preceding paragraph and the requirement to establish or participate as mercury
92 thermostat collection site, if such vendor: (i) has fewer than 16 employees; (ii) sells thermostats
93 primarily to consumers at retail who, are homeowners and are not professional service
94 contractors or technicians, energy efficiency contractors, electricians or plumbers providing
95 services to others related to the installation or maintenance of heating, ventilation or air
96 conditioning apparatus, or professional construction contractors; (iii) posts conspicuous signage

97 on the premises where thermostats are displayed and offered for sale or if there is no such
98 display, near the location where customer sales are customarily transacted, to alert customers of
99 the proper disposal and recycling requirements for mercury-added thermostats, and with the
100 identity and address of the nearest collection site where such thermostats will be accepted for
101 proper disposal. General templates of the signage shall be prepared by the department and posted
102 on its public internet web-site, in a form that users may access and print; and (iv) provides
103 written notification to the local board of public health or equivalent authority, of appropriate
104 jurisdiction where such vendor is located, not less than 20 days from the effective date of the
105 notice, that such vendor will not accept mercury added thermostats for disposal.

106 A local board public health board or equivalent board shall without undue delay, notify
107 the department of any known violations of this section.

108 On or after September 1, 2013, a thermostat vendor that does not have a physical location
109 in the Commonwealth shall not sell a thermostat in this state, unless included with the sold
110 thermostat is a written listing of an internet web-site address or toll free telephone number where
111 a pre-paid shipping label of an approved transporter of such item and shipping box may be
112 obtained at no cost to send the replaced mercury-added thermostat to a prearranged collection
113 site for proper disposal and recycling.

114 For the purposes of this section, the term "thermostat vendor" shall mean a person who is
115 in the retail or wholesale business of selling, offering for sale or distributing any brand of
116 thermostats to others; excluding, a person who is a professional service contractor or technician,
117 energy efficiency contractor, electrician, or plumber that performs on-site services related to the
118 installation or maintenance of heating, ventilation or air conditioning apparatus, and who, sells,
119 offers for sale or supplies thermostats only for installation with such on-site services.

120 (e) A person who is a professional service contractor or technician, energy efficiency
121 contractor, electrician or plumber and who provides on-site services related to the installation or
122 maintenance of heating, ventilation or air conditioning apparatus, or a professional construction
123 contractor or demolition contractor, shall be responsible for the proper disposal to a collection
124 site of a mercury-added thermostat, if removed from service by such person. A mercury-added
125 thermostat shall be required to be removed from service if: (i) the mercury-added thermostat is
126 being replaced; (ii) any major component of such apparatus that is controlled by the mercury-
127 added thermostat is removed or replaced; (iii) a permit is required by state law or regulation to
128 service, repair, or replace such apparatus controlled by the mercury-added thermostat; or (iv)
129 prior to the demolition of any portion of a building or structure where such thermostat is located,
130 provided however, the thermostat can be accessed safely for removal. A permit issued under
131 state law or regulation that relates to any activity under clauses (i) through (iv), inclusive, shall
132 require the removal of a mercury-added thermostat as a part of such work to be performed.
133 Respective inspectors of buildings, inspectors of wiring and inspectors of plumbing shall enforce
134 the required removal of mercury-added thermostats in connection with work performed under an

135 issued permit. No charge shall be assessed to a customer by such professional person for the
136 disposal of a mercury-added thermostat to a collection site. A professional person shall inform a
137 prospective customer of the requirement to remove from service and dispose of mercury-added
138 thermostats prior to entering an agreement to perform services that would make necessary such
139 removal.

140 Municipal inspectors of buildings, inspectors of wiring and inspectors of plumbing shall
141 post a clear and conspicuous sign at the location of its public office reception desk or counter
142 regarding the requirements under this section to removal from service and disposal properly
143 mercury-added thermostats. Templates of the signage shall be prepared by the department and
144 posted on its public internet web-site in a form that a user may access and print.

145 (f) No person shall re-install a mercury-added thermostat that has been disconnected or
146 removed from service.

147 (g) No professional service contactor or technician, energy efficiency contractor,
148 electrician, plumber, construction contractor, demolition contractor, landowner or other person,
149 who disposes properly a mercury-added thermostat to a collection site for recycling of a
150 thermostat vendor or municipality shall be found to have unlawfully disposed of such mercury-
151 added product under subsection (a) of section 6I of this chapter.

152 (h) No municipal or private, solid waste hauler or operator of a solid waste facility, shall
153 knowingly, dispose or allow to be disposed, a mercury-added thermostat as solid waste unless
154 the mercury has been first removed by recycling or disposed as hazardous waste. A solid waste
155 facility may knowingly accept or collect mercury-added thermostats for proper disposal, if the
156 device is segregated from solid waste and stored in an identified recycling container in a manner
157 approved by the division, provided the facility participates in a manufacturer's program as a
158 collection site or has established a collection site to collect, manage and dispose of mercury-
159 added thermostats as hazardous waste in accordance with applicable federal and state waste laws
160 and regulations.

161 (i) Each manufacturer that establishes a program shall, annually by the third Wednesday
162 in February, make a report to the department on the total number of mercury-added thermostats
163 collected for recycling for the prior calendar year period. Such report shall be filed in a form and
164 contain the information as prescribed by the department.

165 The department by regulation shall by September 1, 2013 establish initial annual goals
166 for the collection and recycling of mercury-added thermostats for not less than a 5 year period.
167 Every 2 years after said date, the department shall, (i) review all such reported manufacturer
168 collection information against the recycling goal established for such years; and if warranted,
169 may after public hearing adjust by regulation the annual recycling goals and (ii) if necessary,
170 after public hearing establish by regulation successive annual goals for not less than a 5 year
171 period.

172 All established annual recycling goals and manufacturers' annual reports shall be posted
173 on the department's public internet web-site.

174 (j) The department shall promulgate reasonable regulations related to the collection,
175 management and recycling of mercury-added thermostats consistent with this section; and, shall
176 adopt suitable exemptions to allow, without a required manifest, for the transportation,
177 collection, short-term containment of limited quantities of mercury-added thermostats under this
178 section by vendors, homeowners, or professional persons as identified in the first sentence of
179 subsection (e); notwithstanding, the provisions of section 5 of chapter 21C. To comply with
180 federal and state laws or regulations, or when the goal of the law is achieved, or otherwise, as
181 needed, the commissioner of the department of environmental protection shall have the authority
182 to suspend or waive any requirement under this section of a manufacturer or thermostat vendor.

183 SECTION 2. The department of public safety and division of professional licensure shall
184 provide periodic notification of the requirement to remove and properly dispose to a collection
185 site, mercury-added thermostats under section 6J½ of chapter 21H to respective licensees or
186 prospective licenses, for professional trades related to, construction and building, or the servicing
187 of heating, ventilation or air conditioning apparatus. Such notification shall be provided with any
188 licensing or license renewal information and as a part of the curriculum of any educational
189 requirement for professional licensure or renewal.