HOUSE DOCKET, NO. 850 FILED ON: 1/15/2013

HOUSE . . . . . No. 802

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 passage of the accompanying:

An Act relative to mercury added thermostats.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frank I. Smizik	*15th Norfolk*
Peter V. Kocot	*1st Hampshire*
Denise Andrews	*2nd Franklin*
Paul J. Donato	*35th Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Jonathan Hecht	*29th Middlesex*
Cleon H. Turner	*1st Barnstable*
Robert M. Koczera	*11th Bristol*
Denise Provost	*27th Middlesex*
Sarah K. Peake	*4th Barnstable*
William N. Brownsberger	*Second Suffolk and Middlesex*
Louis L. Kafka	*8th Norfolk*
Michael Barrett	*Third Middlesex*
Ruth B. Balser	*12th Middlesex*
Ellen Story	*3rd Hampshire*
Lori A. Ehrlich	*8th Essex*
Michael F. Rush	*Norfolk and Suffolk*
Tom Sannicandro	*7th Middlesex*

Kay Khan	*11th Middlesex*
Mary S. Keefe	*15th Worcester*
Carlos Henriquez	*5th Suffolk*
Cory Atkins	*14th Middlesex*
John J. Mahoney	*13th Worcester*
John W. Scibak	*2nd Hampshire*
Stephen Kulik	*1st Franklin*
Jay R. Kaufman	*15th Middlesex*
Patricia D. Jehlen	*Second Middlesex*
James M. Murphy	*4th Norfolk*
Paul R. Heroux	*2nd Bristol*
Josh S. Cutler	*6th Plymouth*
Danielle W. Gregoire	*4th Middlesex*
Thomas P. Conroy	*13th Middlesex*

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By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 802) of Frank I. Smizik and others for legislation to further regulate the sale and disposal of mercury added thermostats. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *251* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

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

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

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

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

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

16 (d) Not later than July 1, 2014, every thermostat manufacturer shall, individually or as a
17 group, develop and file with the department and implement a plan that describes the proper
18 collection of mercury-added thermostats in accordance with chapter 21C and the department's
19 regulations concerning hazardous waste.

20 (e) Said plans shall accomplish the following:

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

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

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

29 (4) Collection systems shall be provided to all collection points. Collection systems may
30 include individual product mail-back or multiple collection containers. The cost to registered
31 collection points shall be limited to an initial, reasonable one time fee per container as specified
32 in the plan.

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

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

43 (f) Beginning in 2015, every thermostat manufacturer shall submit an annual report to
44 the department by April 1 of each year that includes, at a minimum, the following information:

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

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

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

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

53 (g) Department responsibilities.

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

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

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

70 (4) Report. Not later than January 15, 2015, and annually thereafter, the department shall
71 submit a report on the collection and recycling of mercury-added thermostats in the state to the
72 joint committee on the environment, natural resources and agriculture. The first annual report
73 shall include a description and discussion of the financial incentive plan established under this
74 section and recommendations for any statutory changes concerning the collection and recycling
75 of mercury-added thermostats. Subsequent reports must include an evaluation of the
76 effectiveness of the thermostat collection and recycling programs established under this section,
77 information on actual collection rates, and recommendations for any statutory changes needed to
78 improve the collection and recycling of mercury-added thermostats. These reporting
79 requirements may be combined with other reports on mercury that the department is required to
80 provide to the legislature.

81 (5) Rate of collection. By July 1, 2014, the department shall estimate the number of out
82 of service thermostats generated in Massachusetts on an annual basis, in consultation with
83 interested persons, including representatives from thermostat manufacturers, thermostat
84 wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and

85 solid waste districts. Beginning July 1, 2015, should collection efforts fail to result in the
86 collection and recycling of at least 65 percent of the out-of-service mercury-added thermostats in
87 the state, the department shall, in consultation with interested persons, require modifications to
88 manufacturers' collection plans in an attempt to improve collection rates in accordance with
89 these goals.

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

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

96 (i) Not later than January 1, 2014, thermostat manufacturers shall provide the department
97 with the number of mercury-added thermostats in the commonwealth in calendar year 2010 and
98 the projected numbers in the commonwealth for each calendar year thereafter until 2030.

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

101 (k) Thermostat wholesaler and thermostat retailer responsibilities.

102 (1) Not later than July 1, 2014, a thermostat wholesaler shall not offer for final sale, sell
103 at final sale, or distribute thermostats unless the wholesaler:

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

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

109 (2) Not later than July 1, 2014, a thermostat retailer shall not offer for final sale, sell, or
110 distribute thermostats in the state unless the thermostat retailer participates in an education and
111 outreach program to educate consumers about the collection program for mercury thermostats.

112 (l) Sales prohibition. Beginning July 1, 2014, the following sales prohibitions shall
113 apply to manufacturers, thermostat wholesalers, and thermostat retailers:

114 (1) A manufacturer not in compliance with this section shall be prohibited from offering
115 any thermostat for final sale in the commonwealth, selling any thermostat at final sale in the
116 commonwealth, or distributing any thermostat in the commonwealth. A manufacturer not in
117 compliance with this section shall provide the necessary support to thermostat wholesalers and

118 thermostat retailers to ensure the manufacturer's thermostats are not offered for final sale, sold at
119 final sale, or distributed in the commonwealth.

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