

HOUSE No. 01170

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 bill:

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

PETITION OF:

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

HOUSE No. 01170

By Ms. Marty Walz of Boston, petition (accompanied by bill, House, No. 01170) of Stephen Kulik and others relative to prohibiting the sale, installation and disposal of mercury thermostats. Joint Committee on 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 forthwith 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:

- 1 SECTION 1. The General Laws are hereby amended by inserting after Chapter 25C the
- 2 following chapter:-
- 3 Chapter 25D.
- 4 Section 1. Short title. This act shall be known and may be cited as the Mercury-Free Thermostat
- 5 Act.
- 6 Section 2. Legislative findings. The General Court finds and declares as follows:

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

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

11 (3) Mercury thermostats represent the largest amount of mercury in ordinary household products.
12 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 to eight
14 tons of mercury from discarded thermostats end up in solid waste facilities and between one and
15 two tons are released into the air.

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

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

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

28 legislation and formal implementation and participation will only increase the amount of diverted
29 mercury.

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

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

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

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

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

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

44 "Retailer", a business that sells thermostats of any kind directly to homeowners, other
45 nonprofessionals or contractors through any selling or distribution mechanism, including, but not
46 limited to, sales using the Internet or catalogs. A retailer may also be a wholesaler if the retailer
47 meets the definition of wholesaler.

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

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

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

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

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

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

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

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

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

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

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

81 (b) Wholesaler and contractor participation.--

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

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

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

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

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

102 (d) Department oversight.--

103 (1) Each manufacturer shall submit to the department the collection and recycling program
104 required under subsection (a) no later than 180 days after the effective date of this section. The
105 proposed collection and recycling program may include appropriate enhancements to an existing
106 program or a new program.

107 (2) If the revised collection program is not submitted by the applicable date, the manufacturer
108 shall be considered out of compliance for the purposes of subsection (b) beginning on the date
109 the revised plan is due to the department.

110 (e) Safe management and recycling program.--The department, in cooperation with
111 manufacturers, shall provide education and outreach to business, local government, schools and
112 the public on proper management of mercury thermostats and other products containing mercury,
113 including a listing of department-approved collection sites. A list of department-approved
114 collection sites shall also be distributed to wholesalers, retailers and contractors or made
115 available on the department's internet website.

116 (f) Reporting.--

117 (1) Each manufacturer with an approved collection and recycling program shall submit an annual
118 report to the department by June 1 of each year that includes:

119 (i) The number of mercury thermostats collected and recycled by the manufacturer pursuant to
120 this act during the previous year.

121 (ii) The estimated total amount of mercury contained in the mercury components collected by the
122 manufacturer pursuant to this act during the previous year.

123 (iii) An evaluation of the effectiveness of the manufacturer's collection and recycling program
124 and any recommendations for improvements, including modifications to the program.

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

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

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

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

134 (3) In conjunction with the manufacturer, the department may alter any and all elements of the
135 17 manufacturer collection and recycling program, including, but not limited to, the number and
136 location of the collection points and collection goals and means to achieve established goals,
137 provided alterations are not inconsistent with the requirements of this and other applicable laws.

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