

SENATE No. 1758

The committee on Ways and Means, to whom was referred the Senate Bill prohibiting the sale, installation and disposal of mercury thermostats(Senate, No. 388); reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act further regulating mercury management" (Senate, No. 1758)

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 2010
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 a registration fee annually until June 30, 2022, not to exceed \$8,000 per year, into an
13 expendable trust, under section 6 of chapter 6A and any applicable regulations, for the limited
14 purpose of documented department and municipal administration, access, communication,
15 enforcement and education costs for proper mercury-added lamp disposal.

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

26 (e) (1) When an employee or agent of the department has reason to believe that a
27 person has violated subsection (a) of section 6I, that employee or agent of the department shall
28 refer cases to and cooperate with district attorneys, the attorney general and other state law
29 enforcement officials to enforce said subsection (a) of said section 6I.

30 (2) An inspector, as defined by section 1 of chapter 143, may enforce subsection
31 (a) of section 6I. A municipality may, under its authority in section 94 of said chapter 143,
32 institute additional fines and penalties for violations of said subsection (a) of said section 6I. Any
33 municipal employee enforcing this section must refer cases to and cooperate with district

34 attorneys, the attorney general and other state law enforcement officials to enforce said
35 subsection (a) of said section 6I.

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

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

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

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

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

50 "Department", the department of environmental protection.

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

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

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

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

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

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

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

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

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

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

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

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

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

92 (3) A person who demolishes a building shall remove any mercury-added
93 thermostat from the building prior to demolition and shall deliver any removed thermostat to a
94 collection site established under subsection (d) for recycling or by collecting mercury-added

95 thermostats and managing the collected mercury-added thermostats in accordance with
96 applicable federal and state laws governing the disposal of universal waste.

97 (4) A person who removes a mercury-added thermostat from a location that is
98 participating in an energy efficiency or weatherization program supported or administered in
99 whole or in part by a department, agency, authority or political subdivision of the commonwealth
100 or conducted as a result of any statutory requirement, including, but not limited to, demand-side
101 management or least-cost procurement, shall deliver that thermostat to a collection site
102 established under subsection (d) for recycling.

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

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

119 (i) make collection containers available to each thermostat wholesaler, thermostat
120 retailer, qualified contractor and local government authority within the commonwealth that
121 requests a container, ensuring that those containers are accompanied by information regarding
122 the proper management of mercury-added thermostats as universal waste, in accordance with the
123 collection program and the department's rules and regulations;

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

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

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

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

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

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

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

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

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

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

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

157 and house of representatives and the co-chairs of the joint committee on environment, natural
158 resources and agriculture.

159 SECTION 4. Section 6J 1/2 of said chapter 21H, inserted by section 3, is hereby
160 repealed.

161 SECTION 5. For the period beginning on January 1, 2015 through December 31, 2018,
162 each thermostat manufacturer that has distributed, offered for final sale or sold at final sale any
163 mercury-added thermostat within the commonwealth shall, individually or collectively conduct
164 education and outreach efforts including, but not limited to: (i) promoting the availability of
165 collection containers to thermostat wholesalers, thermostat retailers, qualified contractors and
166 units of local government in the commonwealth; (ii) educating contractors, homeowners and
167 other interested persons of the importance of properly managing out-of-service mercury-added
168 thermostats and opportunities for the collection of those thermostats and the availability of
169 manufacturer supported programs; (iii) providing signage to participating collection locations
170 that can be prominently displayed to promote the collection and recycling of out-of-service
171 mercury-added thermostats; and (iv) providing written materials or templates of written materials
172 for reproduction by participating thermostat wholesalers and thermostat retailers to be provided
173 to customers at the time of purchase or delivery of a thermostat. These materials shall include,
174 but not be limited to, information on the importance of properly managing out-of-service
175 mercury-added thermostats and opportunities for the collection of those thermostats. Each
176 annual report required by subsection (e) of section 6J1/2 of chapter 21H of the General Laws
177 shall include a description of the education and outreach efforts conducted under this section.

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

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

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

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

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