
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 44

Session of
2007

INTRODUCED BY RUBLEY, GEORGE, D. O'BRIEN, ADOLPH, CALTAGIRONE,
DePASQUALE, FRANKEL, GOODMAN, GRELL, HENNESSEY, HERSHEY,
KENNEY, LEACH, MOUL, MUNDY, ROSS, SCAVELLO, SCHRODER,
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KILLION, STEIL, MOYER, BENNINGTON, MCGEEHAN, GERBER AND
HARHART, JANUARY 30, 2007

SENATOR M. WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE,
AS AMENDED, SEPTEMBER 23, 2008

AN ACT

1 Prohibiting the sale, installation and disposal of mercury
2 thermostats; and prescribing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Mercury-Free
7 Thermostat Act.

8 Section 2. Legislative findings.

9 The General Assembly finds and declares as follows:

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

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

1 through incineration.

2 (3) Mercury thermostats represent the largest amount of
3 mercury in ordinary household products. A single mercury
4 thermostat contains between three and five grams of mercury.
5 According to the Environmental Protection Agency's 2002
6 estimates, each year about six to eight tons of mercury from
7 discarded thermostats end up in solid waste facilities and
8 between one and two tons are released into the air.

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

14 (5) The Commonwealth supports shared responsibility for
15 all stakeholders including manufacturers, retailers,
16 wholesalers, local and state governments working to resolve
17 those issues and efforts to reduce mercury entering the
18 atmosphere and water supply from all sources in the most
19 cooperative and cost-effective means available.

20 (6) The nonprofit Thermostat Recycling Corporation
21 (TRC), created and supported by thermostat manufacturers, is
22 a voluntary program designed to collect mercury thermostats
23 from wholesalers. The TRC has been operating in this
24 Commonwealth since 2000 and has recycled almost 30,000
25 thermostats, thereby diverting more than 284 pounds of
26 mercury in seven years in Pennsylvania. This Commonwealth has
27 been a consistently high-performing state under the program,
28 with collections higher than all but five other states in
29 2007. Collections in Pennsylvania peaked at 7,019 thermostats
30 in 2006.

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

Section 3. Definitions.

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

"Department." The Department of Environmental Protection of the Commonwealth.

"Manufacturer." The owner of a brand name on a thermostat.

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

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

"Wholesaler." A business that the Department of Environmental Protection determines is primarily engaged in the distribution and wholesale selling of large quantities of heating, ventilation and air conditioning components to contractors who install heating, ventilation and air conditioning components.

1 Section 4. Prohibition on sale and installation of mercury
2 thermostats.

3 Beginning one year after the effective date of this section
4 no person shall sell, offer for sale or install a mercury
5 thermostat in this Commonwealth.

6 Section 5. Prohibiting disposal of mercury thermostats.

7 (a) General rule.--Beginning one year after the effective
8 date of this section, no person, municipality or operator of a
9 solid waste treatment, processing or disposal facility shall
10 knowingly dispose, permit the disposal of, or send to a resource
11 recovery facility for processing, a mercury thermostat from
12 which the mercury has not been removed for reuse, recycling or
13 other methods approved by the department.

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

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

24 Section 6. Collection and recycling programs.

25 (a) Manufacturer programs.--

26 (1) Each manufacturer of mercury thermostats that have
27 been sold in this Commonwealth shall, individually or
28 collectively, establish and maintain a department-approved
29 collection and recycling program for out-of-service mercury
30 thermostats from wholesalers, contractors and retailers,

1 service technicians and homeowners.

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

4 (i) The capture of out-of-service mercury
5 thermostats is maximized.

6 (ii) There is no direct cost to contractors, service
7 technicians or homeowners for participating in the
8 program, except that wholesalers, contractors and
9 retailers may be assessed a nominal administrative fee to
10 offset the cost of each collection bin for each
11 collection location for out-of-service thermostats.

12 (iii) Information and education on proper management
13 and recycling of mercury thermostats are provided to
14 contractors, service technicians, wholesalers, retailers,
15 institutions and homeowners to encourage the return of
16 out-of-service thermostats at established recycling
17 collection points.

18 (iv) The purchase of mercury-free programmable
19 thermostats qualified by the Environmental Protection
20 Agency's Energy Star program as replacements for mercury
21 thermostats is encouraged.

22 (v) Mechanisms are in place to protect against the
23 fraudulent return of thermostats.

24 (vi) The handling and recycling of mercury
25 thermostats is accomplished in a manner compliant with
26 section 5 and all other applicable Federal, State and
27 local requirements.

28 (vii) The program otherwise implements all aspects
29 of the collection program as instructed by the
30 department.

1 (b) Wholesaler and retailer participation.--

2 (1) Beginning one year after the effective date of this
3 section, EXCEPT AS PROVIDED FOR IN PARAGRAPH (4), a <—
4 wholesaler or retailer may not sell a thermostat in this
5 Commonwealth unless the wholesaler, retailer or contractor
6 acts as a collection site for thermostats that contain
7 mercury.

8 (2) A wholesaler, retailer or contractor may meet the
9 requirements of this subsection by participating as a
10 collection site in a manufacturer collection program as
11 described under subsection (a) or by collecting thermostats
12 that contain mercury and managing the collected thermostats
13 in accordance with applicable Federal and State universal
14 waste rules.

15 (3) A wholesaler or retailer acting as a collection site
16 shall provide visible signage at the site about the
17 collection and recycling of mercury thermostats.

18 (4) A ~~wholesaler,~~ retailer or contractor that sells <—
19 ~~mercury~~ thermostats, but chooses not to act as a collection <—
20 site or participate in a manufacturer collection program as a
21 collection site, shall provide notice to consumers that
22 recycling of mercury thermostats is required under
23 Pennsylvania law and the notice shall include the specific
24 names and locations of any collection sites within reasonably
25 close proximity that recycle mercury thermostats.

26 (c) Department oversight.--

27 (1) Each manufacturer shall submit to the department for
28 review and approval the collection and recycling program
29 required under subsection (a) no later than 180 days after
30 the effective date of this section. The proposed collection

1 and recycling program may include appropriate enhancements to
2 an existing program or a new program.

3 (2) Within 30 days after receipt of a manufacturer's
4 proposed collection and recycling program, the department
5 shall issue a public notice of the availability of the
6 proposal and solicit public comment for 30 calendar days.
7 Within 90 days after receipt of a proposal, the department
8 shall approve, conditionally approve or disapprove the
9 proposed collection and recycling program.

10 (3) If the proposed collection and recycling program is
11 approved, with or without conditions, the manufacturer or
12 manufacturers shall begin implementing the program within 90
13 days after receipt of approval.

14 (4) If the entire proposed collection and recycling
15 program is not approved, the department shall inform the
16 manufacturer as to the reasons for the disapproval. The
17 manufacturer shall have 30 days thereafter to submit a
18 revised plan.

19 (5) Within 30 days after receipt of a manufacturer's
20 revised collection and recycling program, the department
21 shall issue a public notice of the availability of the
22 revised proposal and solicit public comments for 30 calendar
23 days. Within 90 days after receipt of a proposal, the
24 department shall approve, conditionally approve or disapprove
25 the proposed collection and recycling program.

26 (6) If the revised collection and recycling program is
27 not approved, the manufacturer shall be considered out of
28 compliance for the purposes of subsection (b) beginning on
29 the date the revised plan is disapproved by the department.

30 (7) In conducting its duties under this subsection, the

1 department shall take into account the experience of
2 thermostat collection programs in other states. The
3 department shall approve a manufacturer's proposed collection
4 and recycling program if it contains terms and conditions
5 sufficient for the department to conclude that the proposed
6 program will substantially improve and sustain mercury
7 thermostat collection and recycling in this Commonwealth.

8 (d) Safe management and recycling program.--The department
9 shall provide education and outreach to business, local
10 government, schools and the public on proper management of
11 mercury thermostats and other products containing mercury,
12 including a listing of department-approved collection sites. A
13 list of department-approved collection sites shall also be
14 distributed to wholesalers, retailers and contractors OR MADE
15 AVAILABLE ON THE DEPARTMENT'S INTERNET WEBSITE. <—

16 (e) Reporting.--

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

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

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

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

30 (iv) Collection goals which shall be established to

1 ensure an increase in the number of mercury thermostats
2 collected each year until 2015 or a time that the
3 department determines that the number of in-service
4 thermostats is steadily declining as a result of the ban
5 on sales and installation.

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

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

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

15 (3) In conjunction with the manufacturer, the department
16 may alter any and all elements of the previously approved
17 manufacturer collection and recycling program, including, but
18 not limited to, the number and location of the collection
19 points and collection goals and means to achieve established
20 goals, provided alterations are not inconsistent with the
21 requirements of this and other applicable laws.

22 (4) The Secretary of Environmental Protection may
23 discontinue the requirement for the annual report pursuant to
24 this subsection on finding that mercury thermostats no longer
25 pose a threat to the environment and to public health.

26 Section 7. Penalties.

27 The department may assess civil penalties for violations of
28 this act. The penalty shall not exceed \$2,500 per day for each
29 violation. Each day of continued violation, and each violation
30 of any provision of this act, any rule or regulations adopted

1 under this act, any order of the department or any condition or
2 term of a collection and recycling program approved pursuant to
3 this act shall constitute a separate offense and violation.

4 Section 8. Effective date.

5 This act shall take effect in 60 days.