
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, SHAPIRO, SIPTROTH, STERN, SURRA, TANGRETTI, VEREB, VITALI, WALKO, WATSON, YOUNGBLOOD, MELIO, GALLOWAY, FABRIZIO, MURT, KILLION, STEIL, MOYER, BENNINGTON, McGEEHAN, GERBER AND HARHART, JANUARY 30, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JULY 4, 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
15 through incineration.

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

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

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

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

30 (7) It is in the public interest to increase the scope

1 and effectiveness of mercury thermostat collection programs
2 through promotion and expansion of recycling efforts and
3 banning the sale, installation and disposal of mercury
4 thermostats in this Commonwealth.

5 Section 3. Definitions.

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

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

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

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

18 "RETAILER." A BUSINESS THAT SELLS THERMOSTATS OF ANY KIND
19 DIRECTLY TO HOMEOWNERS, OTHER NONPROFESSIONALS OR CONTRACTORS
20 THROUGH ANY SELLING OR DISTRIBUTION MECHANISM, INCLUDING, BUT
21 NOT LIMITED TO, SALES USING THE INTERNET OR CATALOGS. A RETAILER
22 MAY ALSO BE A WHOLESALER IF THE RETAILER MEETS THE DEFINITION OF
23 WHOLESALER. ←

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

30 Section 4. Prohibition on sale and installation of mercury

1 thermostats.

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

5 Section 5. Prohibiting disposal of mercury thermostats.

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

13 (B) EXCEPTION.--NO OPERATOR OF A SOLID WASTE TREATMENT, <—
14 PROCESSING OR DISPOSAL FACILITY SHALL BE FOUND TO HAVE KNOWINGLY
15 DISPOSED OF A MERCURY THERMOSTAT IF THE FACILITY HAS NOTIFIED
16 CUSTOMERS OF THE BAN IN WRITING AND POSTED SIGNS AT THE FACILITY
17 CLEARLY NOTING THE PROHIBITION.

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

23 Section 6. Collection and recycling programs.

24 (a) Manufacturer programs.--

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

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

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

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

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

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

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

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

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

30 (b) Wholesaler and retailer participation.--

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

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

13 (3) A wholesaler or retailer acting as a collection site
14 shall provide ~~public notice~~ VISIBLE SIGNAGE at the site about <—
15 the collection and recycling of mercury thermostats.

16 (4) A WHOLESALER, RETAILER OR CONTRACTOR THAT SELLS <—
17 MERCURY THERMOSTATS, BUT CHOOSES NOT TO ACT AS A COLLECTION
18 SITE OR PARTICIPATE IN A MANUFACTURER COLLECTION PROGRAM AS A
19 COLLECTION SITE, SHALL PROVIDE NOTICE TO CONSUMERS THAT
20 RECYCLING OF MERCURY THERMOSTATS IS REQUIRED UNDER
21 PENNSYLVANIA LAW AND THE NOTICE SHALL INCLUDE THE SPECIFIC
22 NAMES AND LOCATIONS OF ANY COLLECTION SITES WITHIN REASONABLY
23 CLOSE PROXIMITY THAT RECYCLE MERCURY THERMOSTATS.

24 (c) Department oversight.--

25 (1) Each manufacturer shall submit to the department for
26 review and approval the collection and recycling program
27 required under subsection (a) no later than 180 days after
28 the effective date of this section. The proposed collection
29 and recycling program may include appropriate enhancements to
30 an existing program or a new program.

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

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

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

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

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

29 (7) In conducting its duties under this subsection, the
30 department shall take into account the experience of

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

7 ~~(e)~~ (D) Safe management and recycling program.--The <—
8 department shall provide education and outreach to business,
9 local government, schools and the public on proper management of
10 mercury thermostats and other products containing mercury, <—
11 INCLUDING A LISTING OF DEPARTMENT-APPROVED COLLECTION SITES. A
12 LIST OF DEPARTMENT-APPROVED COLLECTION SITES SHALL ALSO BE
13 DISTRIBUTED TO WHOLESALERS, RETAILERS AND CONTRACTORS.

14 ~~(f)~~ (E) Reporting.-- <—

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

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

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

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

28 (iv) Collection goals which shall be established to
29 ensure an increase in the number of mercury thermostats
30 collected each year until 2015 or a time that the

1 department determines that the number of in-service
2 thermostats is steadily declining as a result of the ban
3 on sales and installation.

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

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

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

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

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

24 Section 7. Penalties.

25 The department may assess civil penalties for violations of
26 this act. The penalty shall not exceed ~~\$10,000~~ \$2,500 per day ←
27 for each violation. Each day of continued violation, and each
28 violation of any provision of this act, any rule or regulations
29 adopted under this act, any order of the department or any
30 condition or term of a collection and recycling program approved

1 pursuant to this act shall constitute a separate offense and
2 violation.

3 Section 8. Effective date.

4 This act shall take effect in 60 days.