

AN ACT concerning safety.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Mercury Thermostat Collection Act.

Section 5. Legislative findings. The General Assembly finds that:

(1) many older thermostats used to activate heating and cooling equipment contain mercury as part of a tilt switch component in the thermostat;

(2) the total amount of mercury used in each of those thermostats averages about 4 grams;

(3) millions of mercury-containing thermostats are still in use in homes and businesses in the United States;

(4) mercury in those thermostats poses a risk to human health and the environment if those thermostats are not properly managed at the end of their useful life;

(5) the major thermostat manufacturers have established a voluntary program to facilitate the collection and proper management of mercury thermostats taken out of service;

(6) the annual average of mercury-containing thermostats collected for recycling in Illinois under the existing voluntary collection program from 2006 to 2008 was 4,433;

(7) thousands of mercury-containing thermostats are taken out of service annually in the State;

(8) it is in the public interest to achieve a significant increase in the collection and proper management of mercury thermostats taken out of service in the State.

Section 10. Definitions.

"Agency" means the Illinois Environmental Protection Agency.

"Board" means the Illinois Pollution Control Board.

"Collection program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury thermostats that is financed and managed or provided by a thermostat manufacturer individually or collectively with other thermostat manufacturers in accordance with this Act.

"Contractor" means a person engaged in the business of installation, service, or removal of heating, ventilation, and air-conditioning components.

"Mercury thermostat" means a thermostat that meets the definition of a "mercury thermostat" under subsection (f) of Section 22.23b of the Environmental Protection Act.

"Out-of-service mercury thermostat" means a mercury thermostat that is removed, replaced, or otherwise taken out of service.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company,

corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or its legal representatives, agents, or assigns.

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

"Qualified local government authorities" means household hazardous waste facilities, solid waste management agencies, environmental management agencies, or departments of public health.

"Thermostat manufacturer" means a person who owns or owned a name brand of one or more mercury thermostats sold in the State.

"Thermostat retailer" means a person who sells thermostats of any kind primarily to homeowners or other nonprofessionals through any sale or distribution mechanism, including, but not limited to, sales using the Internet or catalogs. A thermostat retailer that meets the definition of thermostat wholesaler shall be considered a thermostat wholesaler.

"Thermostat wholesaler" means a person who is engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components, including, but not limited to, thermostats, to contractors, and whose total

wholesale sales account for 80% or more of its total sales. A thermostat manufacturer, as defined in this Section, is not a thermostat wholesaler.

Section 15. Mercury thermostat collection programs.

(a) Each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers, establish and maintain a collection program for the collection, transportation, and proper management of out-of-service mercury thermostats in accordance with the provisions of this Act.

(b) Each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers through a collection program, do the following:

(1) On and after January 1, 2011, compile a list of thermostat wholesalers in the State and offer each thermostat wholesaler containers for the collection of out-of-service mercury thermostats.

(2) On and after January 1, 2011, make collection containers available to all qualified contractors, thermostat wholesalers, thermostat retailers, and qualified local government authorities in this State that request a container. Each thermostat manufacturer shall with each container include information regarding the proper management of out-of-service mercury thermostats as universal waste in accordance with the collection program

and Board's rules.

(3) Establish a system to collect, transport, and properly manage out-of-service mercury thermostats from all collection sites established under this Section.

(4) Not include any fees or other charges to persons participating in the program, except that each thermostat wholesaler, qualified contractor, qualified local government authority, or thermostat retailer that is provided with one or more collection containers may be charged a one-time program administration fee not to exceed \$75 per collection container.

(5) From January 1, 2011, through December 31, 2013, conduct education and outreach efforts, including, but not limited to the following:

(A) create a public service announcement promoting collection and proper management of out-of-service mercury thermostats, copies of which shall be provided to the Agency;

(B) establish and maintain a publicly accessible website for the dissemination of educational materials to promote the collection of out-of-service mercury thermostats. This website shall include templates of the educational materials on the Internet website in a form and format that can be easily downloaded and printed. The link to this website shall be provided to the Agency;

(C) contact thermostat wholesalers at least once a year to encourage their support and participation in educating their customers on the importance of and statutory requirements for the collection and proper management of out-of-service mercury thermostats;

(D) develop and implement strategies to encourage participating thermostat retailers to educate their customers on the importance of and opportunities for collecting and recycling out-of-service mercury thermostats;

(E) create and maintain a web-based program that allows contractors and consumers to identify collection sites for out-of-service mercury thermostats by zip code in the State;

(F) prepare and mail to contractor associations a postcard or other notice that provides information on the collection program for out-of-service mercury thermostats; and

(G) develop informational articles, press releases, and news stories pertaining to the importance of and opportunities for collecting and recycling out-of-service mercury thermostats and distribute those materials to trade publications, local media, and stakeholder groups.

(6) On or before January 1, 2011, develop and update as necessary educational and other outreach materials for

distribution to contractors, contractor associations, and consumers. Those materials shall be made available for use by participating thermostat wholesalers, thermostat retailers, contractors, and qualified local government authorities. The materials shall include, but not be limited to, the following:

(A) signage, such as posters and cling signage, that can be prominently displayed to promote the collection of out-of-service mercury thermostats to contractors and consumers; and

(B) written materials or templates of materials for reproduction by thermostat wholesalers and thermostat retailers to be provided to customers at the time of purchase or delivery of a thermostat. The materials shall include, but not be limited to, information on the importance of properly managing out-of-service mercury thermostats and opportunities for the collection of those thermostats.

(7) Provide an opportunity for the Agency and other interested stakeholders to offer feedback and suggestions on the collection program.

(c) If the collection programs do not collectively achieve the collection goals provided for in Section 25 of this Act for calendar year 2013, 2015 or 2017, thermostat manufacturers shall, individually or collectively, submit to the Agency for review and approval proposed revisions to the collection

programs that are designed to achieve the goals in subsequent calendar years. The proposed revisions shall be submitted to the Agency with the annual report required in Section 20 of this Act.

(d) Within 90 days after receipt of the proposed collection program revisions required under subsection (c) of this Section, the Agency shall review and (i) approve, (ii) disapprove, or (iii) approve with modifications the proposed collection program revisions.

(1) The Agency shall approve proposed revisions if the Agency determines that the revised collection programs will collectively achieve the collection goals set forth in Section 25 of this Act.

(2) If the Agency determines the revised collection programs will not collectively achieve the collection goals set forth in Section 25 of this Act, the Agency may require modifications to one or more collection programs that the Agency determines are necessary to achieve the collection goals. Modifications required by the Agency may include improvements to outreach and education conducted under the collection program, expansion of the number and location of collection sites established under the program, modification of the roles of participants, and a \$5 financial incentive in the form of either cash or a coupon offered by the manufacturer to contractors and consumers for each out-of-service mercury thermostat

returned to a collection site.

(3) Prior to issuing any decision under this subsection (d) the Agency shall consult with thermostat manufacturers and other interested groups.

(4) Thermostat manufacturers shall begin the process to implement collection program revisions approved by the Agency, with or without modifications, within 90 days after approval.

(5) If the program revisions are disapproved, the Agency shall notify the thermostat manufacturers in writing as to the reasons for the disapproval. The thermostat manufacturers shall have 35 days to submit a new collection program revision.

(6) Any action by the Agency to disapprove or modify proposed collection program revisions under this subsection (d) shall be subject to appeal to the Board in the same manner as provided for a permit decision under Section 40 of the Environmental Protection Act.

Section 20. Reporting on collection efforts.

(a) No later than September 1, 2011, and no later than September 1 of each year thereafter, each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers, submit a mid-term report on its collection program to the Agency covering the six-month period beginning on January 1st of the year in which the report is

due. The mid-term report shall identify the number of out-of-service mercury thermostats collected under the program and a listing of all collection sites in the State.

(b) No later than April 1, 2012, and no later than April 1 of each year thereafter, each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers, submit an annual report on its collection program to the Agency covering the one-year period ending December 31st of the previous year. Each report shall be posted on the manufacturer's or program operator's respective internet website. The annual report shall include, but not be limited to, the following:

(1) the number of out-of-service mercury thermostats collected and managed under this Act during the previous calendar year;

(2) the estimated total amount of mercury contained in the out-of-service mercury thermostats collected under this Act during the previous calendar year;

(3) an evaluation of the effectiveness of the collection program;

(4) a list of all thermostat wholesalers, contractors, qualified local government authorities, and thermostat retailers participating in the program as mercury thermostat collection sites and the number of out-of-service mercury thermostats returned by each;

(5) an accounting of the program's administrative

costs;

(6) a description of outreach strategies employed under item (5) of subsection (b) of Section 15 of this Act;

(7) examples of outreach and educational materials used under item (6) of subsection (b) of Section 15 of this Act;

(8) the Internet website address or addresses where the annual report may be viewed online;

(9) a description of how the out-of-service mercury thermostats were managed;

(10) any modifications that the thermostat manufacturer has made or is planning to make in its collection program; and

(11) the identification of a collection program contact and the business phone number, mailing address, and e-mail address for the contact.

Section 25. Collection goals. The collection programs established by thermostat manufacturers under this Act shall be designed to collectively achieve the following statewide goals:

(a) For calendar year 2011, the collection of least 5,000 mercury thermostats taken out of service in the State during the calendar year.

(b) For calendar years 2012, 2013, and 2014, the collection of at least 15,000 mercury thermostats taken out of service in

the State during each calendar year.

(c) For calendar years 2015 through 2020, the collection goals shall be established by the Agency. The Agency shall establish collection goals no later than November 1, 2014. The collection goals established by the Agency shall maximize the annual collection of out-of-service mercury thermostats in the State. In developing the collection goals, the Agency shall take into account, at a minimum, (i) the effectiveness of collection programs for out-of-service mercury thermostats in the State and other states, including education and outreach efforts, (ii) collection requirements in other states, (iii) any reports or studies on the number of out-of-service mercury thermostats that are available for collection in this State, other states, and nationally, and (iv) other factors. Prior to establishing the collection goals, the Agency shall consult with stakeholder groups that include, at a minimum, representatives of thermostat manufacturers, environmental groups, thermostat wholesalers, contractors, and thermostat retailers.

(d) The collection goals established by the Agency under subsection (c) of this Section are statements of general applicability under Section 1-70 of the Administrative Procedures Act and shall be adopted in accordance with the procedures of that Act. Any person adversely affected by a goal established by the Agency under subsection (c) of this Section may obtain a determination of the validity or application of

the goal by filing a petition for review within 35 days after the date the adopted goal is published in the Illinois Register pursuant to subsection (d) of Section 40 of the Administrative Procedures Act. Review shall be afforded directly in the Appellate Court for the District in which the cause of action arose and not the Circuit Court. During the pendency of the review, the goal under review shall remain in effect.

Section 30. Management of out-of-service mercury thermostats. All contractors, thermostat wholesalers, thermostat manufacturers, and thermostat retailers participating in the program shall handle and manage the out-of-service mercury thermostats in a manner that is consistent with the provisions of the universal waste regulations adopted by the Board.

Section 35. Thermostat wholesaler and contractor responsibilities.

(a) On and after July 1, 2011, no thermostat wholesaler shall sell, offer to sell, distribute, or offer to distribute thermostats unless the wholesaler:

(1) participates as a collection site for out-of-service mercury thermostats;

(2) uses the containers provided by the collection program to facilitate collection of out-of-service mercury thermostats by contractors;

(3) complies with the requirements of the collection program related to the acceptance of out-of-service mercury thermostats; and

(4) distributes to its customers the educational outreach materials developed under item (6) of subsection (b) of Section 15.

(b) On or after July 1, 2011, no contractor or other person shall remove, replace, or otherwise take out of service a mercury thermostat unless the contractor or person delivers it to a collection site established under this Act.

Section 40. Agency responsibilities.

(a) No later than June 1, 2011, the Agency shall maintain on its website information regarding the collection and proper management of out-of-service mercury thermostats in the State. The information shall include, but is not limited to, the following:

(1) a description of the collection programs established under this Act;

(2) a report on the progress towards achieving the statewide collection goals set forth in Section 25 of this Act; and

(3) a list of all thermostat wholesalers, contractors, qualified local government authorities, and thermostat retailers participating in the program as collection sites.

(b) No later than November 1, 2019, the Agency shall submit a written report to the Governor and General Assembly regarding the effectiveness of the collection programs established under this Act, information on the number of out-of-service thermostats collected, how the out-of-service thermostats were managed, and an estimate of the number of thermostats that are available for collection. The Agency shall use this information to recommend whether the sunset date specified in Section 55 for this Act should be extended, along with any other statutory changes. In preparing the report, the Agency shall consult with mercury thermostat manufacturers, environmental organizations, and other interest groups.

(c) In conjunction with the educational and outreach programs implemented by the thermostat manufacturers under this Act, the Agency shall conduct outreach to promote the collection and proper management of out-of-service mercury thermostats.

Section 45. Penalties.

(a) Any thermostat manufacturer that violates any provision of this Act or any rule adopted by the Agency pursuant to this Act, or that fails to perform any duty imposed by this Act shall be liable for a civil penalty not to exceed \$2,500 per day for each violation. Each violation of this Act shall constitute a separate offense and violation.

(b) Any thermostat wholesaler, contractor, or other person

that violates any provision of this Act, or any rule adopted by the Agency pursuant to this Act, or that fails to perform any duty imposed by this Act shall be liable for a civil penalty not to exceed \$500 per day for each violation. Each violation of this Act shall constitute a separate offense and violation.

(c) The penalties provided for in this Section may be recovered in a civil action brought in the name of the people of the State of Illinois by the State's Attorney of the county in which the violation occurred or by the Attorney General. Any funds collected under this Section in an action in which the Attorney General has prevailed shall be deposited in the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Trust Fund Act.

(d) There shall be no penalty under this Section for a thermostat manufacturer's failure to achieve the statewide collection goals set forth in Section 25 of this Act.

Section 50. Disposal prohibition.

(a) Beginning July 1, 2011, no person may knowingly cause or allow the mixing of an out-of-service mercury thermostat with any other municipal waste that is intended for disposal at a sanitary landfill.

(b) Beginning July 1, 2011, no person may knowingly cause or allow the disposal of an out-of-service mercury thermostat in a sanitary landfill.

Public Act 096-1295

SB3346 Enrolled

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Section 55. Repealer. This Act is repealed on January 1, 2021.

Section 99. Effective date. This Act takes effect upon becoming law.