



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5348

by Rep. Naomi D. Jakobsson

SYNOPSIS AS INTRODUCED:

New Act
415 ILCS 5/22.23b

Creates the Mercury Thermostat Collection Act. Requires thermostat manufacturers to establish and maintain a program for the collection and recycling of mercury thermostats. Sets forth requirements for the Program. Requires that mercury thermostats be handled as universal waste. Prohibits wholesalers, retailers, and technicians from selling or distributing non-mercury thermostats if they have not taken certain actions with respect to the disposal of mercury thermostats. Sets forth penalties for violations of the Act. Requires the Environmental Protection Agency to publish certain information and make recommendations to the Governor and General Assembly concerning the collection of mercury thermostats. Contains other provisions. Amends the Environmental Protection Act. Prohibits the sale or distribution of button cell batteries that contains mercury. Prohibits the sale or distribution of certain mercury-added products. Effective immediately.

LRB095 18468 BDD 44554 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning environmental safety.

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

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

6 Section 10. Definitions.

7 "Agency" means the Environmental Protection Agency.

8 "Board" means the Pollution Control Board.

9 "Mercury thermostat" means a product or device that uses a
10 mercury switch to sense and control room temperature through
11 communication with heating, ventilating, or air conditioning
12 equipment. "Mercury thermostat" includes thermostats used to
13 sense and control room temperature in residential, commercial,
14 industrial, and other buildings, but does not include
15 thermostats used to sense and control temperature as a part of
16 a manufacturing or industrial process.

17 "Thermostat manufacturer" means the person who owned or
18 owns the brand name of a thermostat.

19 "Thermostat retailer" means a person who sells thermostats
20 of any kind primarily to consumers.

21 "Thermostat technician" means a person who installs or
22 repairs thermostats, but does not include a person who installs
23 or repairs a thermostat serving his or her own residence.

1 "Thermostat wholesaler" means a person who sells
2 thermostats of any kind primarily for resale.

3 Section 15. Mercury thermostat collection programs.

4 (a) This Section applies to thermostat manufacturers.
5 Thermostat manufacturers must, individually or collectively,
6 establish and maintain an Agency-approved program for the
7 collection and recycling of mercury thermostats that have been
8 removed, replaced, or otherwise taken out of service. The
9 program must:

10 (1) include outreach and education efforts directed
11 towards the following persons to inform them of the program
12 and encourage their participation: thermostat wholesalers,
13 thermostat technicians, thermostat retailers, and
14 homeowners;

15 (2) provide the following persons with containers to be
16 used for the collection of mercury thermostats:

17 (A) each thermostat wholesaler who requests to
18 participate in the program as a mercury thermostat
19 collection point;

20 (B) each thermostat technician that requests to
21 participate in the program as a mercury thermostat
22 collection point; and

23 (C) each thermostat retailer that requests to
24 participate in the program as a mercury thermostat
25 collection point;

1 (3) ensure that mercury thermostats delivered to
2 persons participating in the program as mercury thermostat
3 collection points are properly managed as universal waste
4 in accordance with the Illinois Pollution Control Board's
5 universal waste regulations;

6 (4) be designed to achieve the collection goals in
7 subsection (e) of this Section;

8 (5) include financial or other incentives designed to
9 encourage sufficient participation in the program to
10 achieve the collection goals in subsection (e) of this
11 Section; and

12 (6) not include any fees or other charges to persons
13 participating in the program, except that each thermostat
14 wholesaler, thermostat technician, or thermostat retailer
15 that is provided with one or more collection containers may
16 be charged a program administration fee not to exceed \$75
17 per collection container.

18 (b) No later than January 1, 2009, thermostat manufacturers
19 must, individually or collectively, submit to the Agency a plan
20 for a mercury thermostat collection program. The plan must
21 demonstrate that the collection program meets the requirements
22 of subsection (a) of this Section. In reviewing the plans, the
23 Agency may consider a plan's consistency with other thermostat
24 manufacturer's collection plans in this State and mercury
25 thermostat collection programs in other states. In addition,
26 the Agency may consult with thermostat manufacturers,

1 thermostat wholesalers, thermostat technicians, thermostat
2 retailers, and environmental interest groups. Within 90 days
3 after its receipt of a plan, the Agency must approve or deny
4 the plan in writing. The Agency must approve the plan, with or
5 without modifications, if the thermostat manufacturer's
6 collection program meets the requirements of subsection (a) of
7 this Section. If the Agency denies the plan or approves the
8 plan with conditions, the Agency's decision shall be subject to
9 appeal to the Board in accordance with the procedures of
10 Section 40 of the Environmental Protection Act (415 ILCS 5/40)
11 for appealing permit denials or conditions.

12 (c) No later than July 1, 2009, thermostat manufacturers
13 must, individually or collectively, implement an
14 Agency-approved mercury thermostat collection program,
15 including any modifications required by the Agency.

16 (d) No later than March 1, 2010, and no later than March 1
17 of each year thereafter, thermostat manufacturers must,
18 individually or collectively, submit to the Agency a report on
19 their mercury thermostat collection program that at a minimum
20 contains the following information:

21 (1) the number of mercury thermostats collected under
22 the program during the previous calendar year;

23 (2) the estimated total amount of mercury contained in
24 the mercury thermostats collected under the program during
25 the previous calendar year;

26 (3) an evaluation of the effectiveness of the program,

1 including, but not limited to, the program's contribution
2 to meeting the collection goals set forth in subsection (e)
3 of this Section and the effectiveness of the incentives
4 required under subsection (a) (5) of this Section; and

5 (4) a list of all thermostat wholesalers, thermostat
6 technicians, and thermostat retailers participating in the
7 program as mercury thermostat collection points.

8 (e) The mercury thermostat collection programs required
9 under this Act must be designed to collectively achieve the
10 following collection goals:

11 (1) For calendar years 2011 and 2012, the collection
12 goal for each year is 15% of the estimated number of
13 mercury thermostats in this State that are removed,
14 replaced, or otherwise taken out of service during the
15 calendar year.

16 (2) For calendar years 2013 and 2014, the collection
17 goal for each year is 30% of the estimated mercury
18 thermostats in this State that are removed, replaced, or
19 otherwise taken out of service during the calendar year.

20 (3) For calendar years 2015 and 2016, the collection
21 goal for each year is 50% of the estimated mercury
22 thermostats in this State that are removed, replaced, or
23 otherwise taken out of service during the calendar year.

24 (4) For calendar year 2017 and each calendar year
25 thereafter, the collection goal for each year is 80% of the
26 estimated mercury thermostats in this State that are

1 removed, replaced, or otherwise taken out of service during
2 the calendar year.

3 The estimated number of mercury thermostats in this State
4 that are removed, replaced, or otherwise taken out of service
5 each year must be determined by the Agency in consultation with
6 thermostat manufacturers, thermostat wholesalers, thermostat
7 technicians, thermostat retailers, and environmental interest
8 groups. No later than March 1, 2013, and no later than March 1
9 of each year thereafter, the Agency must publish on its website
10 the estimated number of mercury thermostats that were removed,
11 replaced, or otherwise taken out of service during the previous
12 calendar year.

13 (f) If the collection goals set forth in subsection (e) of
14 this Section are not met for the calendar year 2012, 2014,
15 2016, or 2018, the Agency may require one or more thermostat
16 manufacturers to revise their mercury thermostat collection
17 programs. Thermostat manufacturers required to revise their
18 collection programs must, individually or collectively, submit
19 plans for revised collection programs no later than 90 days
20 after the Agency's written notice that a revised collection
21 program is required. The Agency shall review and approve
22 revised plans in accordance with subsection (b) of this
23 Section. Thermostat manufacturers must, individually or
24 collectively, implement revised plans within 90 days after the
25 Agency approves the revised plans in writing, including any
26 modifications required by the Agency.

1 Section 20. Removal of mercury thermostats. Any person who
2 removes, replaces, or otherwise takes out of service a mercury
3 thermostat must properly manage the mercury thermostat as
4 universal waste in accordance with the Board's universal waste
5 regulations. This Section does not apply to a person who (i)
6 removes, replaces, or otherwise takes out of service a mercury
7 thermostat that serves his or her own residence and (ii)
8 disposes of the thermostat as household waste.

9 Section 25. Certain prohibited activities. On and after
10 July 1, 2009:

11 (1) No thermostat manufacturer that is in violation of
12 this Act may sell, offer to sell, distribute, or offer to
13 distribute a non-mercury thermostat.

14 (2) No thermostat wholesaler may sell, offer to sell,
15 distribute, or offer to distribute a non-mercury
16 thermostat unless the wholesaler participates in one or
17 more collection programs required under this Act as a
18 mercury thermostat collection point.

19 (3) No thermostat technician may remove, replace, or
20 otherwise take out of service a mercury thermostat unless
21 the thermostat technician delivers it to a person
22 participating in a collection program required under this
23 Act as a mercury thermostat collection point.

24 (4) No thermostat retailer may sell, offer to sell,

1 distribute, or offer to distribute a non-mercury
2 thermostat unless the retailer provides educational
3 materials to inform consumers about programs for the
4 collection of mercury thermostats. Educational materials
5 may include, but are not limited to, labels, inserts,
6 brochures, or signs.

7 Section 30. Information regarding the collection and
8 recycling of mercury thermostats. No later than June 1, 2010,
9 and no later than June 1 of each year thereafter, the Agency
10 must post on its website information regarding the collection
11 and recycling of mercury thermostats in this State. The
12 information must include, but is not limited to, the following:

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

15 (2) a report on the thermostat manufacturers' success
16 in achieving the collection goals set forth in Section
17 15(e) of this Act.

18 Section 35. Duty to investigate. The Agency has the duty to
19 investigate violations of this Act.

20 Section 40. Penalties.

21 (a) Any thermostat manufacturer who violates any provision
22 of this Act or fails to perform any duty imposed by this Act
23 (i) is liable for a civil penalty not to exceed \$1,000 for the

1 violation and an additional civil penalty not to exceed \$1,000
2 for each day the violation continues and (ii) is liable for a
3 civil penalty not to exceed \$5,000 for a second or subsequent
4 violation and an additional civil penalty not to exceed \$1,000
5 for each day the second or subsequent violation continues.

6 (b) Any thermostat wholesaler, thermostat technician, or
7 thermostat retailer who violates any provision of this Act or
8 fails to perform any duty imposed by this Act is liable for a
9 civil penalty not to exceed \$250 for the first violation and
10 not to exceed \$500 for a second or subsequent violation.

11 (c) The penalties provided for in this Section may be
12 recovered in a civil action brought by the Attorney General on
13 behalf of the Agency and the People of the State of Illinois,
14 or by the State's Attorney of the county in which the violation
15 occurred. Without limiting any other authority that may exist
16 for the awarding of attorney's fees and costs, a court of
17 competent jurisdiction may award costs and reasonable
18 attorney's fees, including the reasonable costs of expert
19 witnesses and consultants, to the Attorney General or the
20 State's Attorney in a case where he or she has prevailed
21 against a person who has committed a willful, knowing, or
22 repeated violation of this Act. Any funds collected under this
23 Section in an action in which the Attorney General has
24 prevailed must be deposited into the Hazardous Waste Fund
25 established under the Environmental Protection Act. Any funds
26 collected under this Section in an action in which a State's

1 Attorney has prevailed shall be retained by the county in which
2 he or she serves.

3 (d) The Attorney General or the State's Attorney of the
4 county in which the violation occurred may, at the request of
5 the Agency or on his or her own motion, institute a civil
6 action for an injunction, prohibitory or mandatory, to restrain
7 violations of this Act or to require such other actions as may
8 be necessary to address violations of this Act.

9 (e) The penalties and injunctions provided in this Act are
10 in addition to any penalties, injunctions, or other relief
11 provided under any other law. Nothing in this Act bars a cause
12 of action by the State for any other penalty, injunction, or
13 relief provided by any other law.

14 (f) There is no penalty under this Section for a thermostat
15 manufacturer's failure to achieve the collection goals set
16 forth in subsection (e) of Section 15 of this Act.

17 Section 45. Recommendations to the Governor and the General
18 Assembly. On or before January 1, 2010, the Agency shall
19 investigate and make recommendations to the Governor and the
20 General Assembly regarding strategies for improving the
21 collection and proper management of mercury thermostats
22 removed, replaced, or otherwise taken out of service by
23 homeowners. In developing its recommendations, the Agency
24 shall consult with thermostat manufacturers, thermostat
25 retailers, local governments, recycling associations,

1 environmental interest groups, and other appropriate
2 stakeholder groups. The Agency shall identify the best
3 available options for collecting mercury thermostats from
4 homeowners taking into account such considerations as cost and
5 convenience, safety and training, education and outreach
6 needs, and shared responsibilities for implementing the
7 collection and recycling program.

8 Section 90. The Environmental Protection Act is amended by
9 changing Section 22.23b as follows:

10 (415 ILCS 5/22.23b)

11 Sec. 22.23b. Mercury and mercury-added products.

12 (a) ~~No Beginning July 1, 2005,~~ no person shall purchase or
13 accept, for use in a primary or secondary school classroom,
14 bulk elemental mercury, chemicals containing mercury
15 compounds, or instructional equipment or materials containing
16 mercury added during their manufacture. This subsection (a)
17 does not apply to: (i) other products containing mercury added
18 during their manufacture that are used in schools and (ii)
19 measuring devices used as teaching aids, including, but not
20 limited to, barometers, manometers, and thermometers, if no
21 adequate mercury-free substitute exists.

22 (b) Beginning July 1, 2007, no person shall sell, offer to
23 sell, distribute, or offer to distribute a mercury switch or
24 mercury relay individually or as a product component. For a

1 product that contains one or more mercury switches or mercury
2 relays as a component, this subsection (b) is applicable to
3 each component part or parts and not the entire product. This
4 subsection (b) does not apply to the following:

5 (1) Mercury switches and mercury relays used in medical
6 diagnostic equipment regulated under the federal Food,
7 Drug, and Cosmetic Act.

8 (2) Mercury switches and mercury relays used at
9 electric generating facilities.

10 (3) Mercury switches in thermostats used to sense and
11 control room temperature.

12 (4) Mercury switches and mercury relays required to be
13 used under federal law or federal contract specifications.

14 (5) A mercury switch or mercury relay used to replace a
15 mercury switch or mercury relay that is a component in a
16 larger product in use prior to July 1, 2007, and one of the
17 following applies:

18 (A) The larger product is used in manufacturing; or

19 (B) The mercury switch or mercury relay is
20 integrated and not physically separate from other
21 components of the larger product.

22 (c) The manufacturer of a mercury switch or mercury relay,
23 or a scientific instrument or piece of instructional equipment
24 containing mercury added during its manufacture, may apply to
25 the Agency for an exemption from the provisions of subsection
26 (a) or (b) of this Section for one or more specific uses of the

1 switch, relay, instrument, or piece of equipment by filing a
2 written petition with the Agency. The Agency may grant an
3 exemption, with or without conditions, if the manufacturer
4 demonstrates the following:

5 (1) A convenient and widely available system exists for
6 the proper collection, transportation, and processing of
7 the switch, relay, instrument, or piece of equipment at the
8 end of its useful life; and

9 (2) The specific use or uses of the switch, relay,
10 instrument, or piece of equipment provides a net benefit to
11 the environment, public health, or public safety when
12 compared to available nonmercury alternatives.

13 Before approving any exemption under this subsection (c)
14 the Agency must consult with other states to promote
15 consistency in the regulation of products containing mercury
16 added during their manufacture. Exemptions shall be granted for
17 a period of 5 years. The manufacturer may request renewals of
18 the exemption for additional 5-year periods by filing
19 additional written petitions with the Agency. The Agency may
20 renew an exemption if the manufacturer demonstrates that the
21 criteria set forth in paragraphs (1) and (2) of this subsection
22 (c) continue to be satisfied. All petitions for an exemption or
23 exemption renewal shall be submitted on forms prescribed by the
24 Agency.

25 The Agency must adopt rules for processing petitions
26 submitted pursuant to this subsection (c). The rules shall

1 include, but shall not be limited to, provisions allowing for
2 the submission of written public comments on the petitions.

3 (d) No later than January 1, 2005, the Agency must submit
4 to the Governor and the General Assembly a report that includes
5 the following:

6 (1) An evaluation of programs to reduce and recycle
7 mercury from mercury thermostats and mercury vehicle
8 components; and

9 (2) Recommendations for altering the programs to make
10 them more effective.

11 In preparing the report the Agency may seek information
12 from and consult with, businesses, trade associations,
13 environmental organizations, and other government agencies.

14 (e) Mercury switches and mercury relays, and scientific
15 instruments and instructional equipment containing mercury
16 added during their manufacture, are hereby designated as
17 categories of universal waste subject to the streamlined
18 hazardous waste rules set forth in Title 35 of the Illinois
19 Administrative Code, Subtitle G, Chapter I, Subchapter c, Part
20 733 ("Part 733"). Within 60 days of the effective date of this
21 amendatory Act of the 93rd General Assembly, the Agency shall
22 propose, and within 180 days of receipt of the Agency's
23 proposal the Board shall adopt, rules that reflect this
24 designation and that prescribe procedures and standards for the
25 management of such items as universal waste.

26 If the United States Environmental Protection Agency

1 adopts streamlined hazardous waste regulations pertaining to
2 the management of mercury switches or mercury relays, or
3 scientific instruments or instructional equipment containing
4 mercury added during their manufacture, or otherwise exempts
5 such items from regulation as hazardous waste, the Board shall
6 adopt equivalent rules in accordance with Section 7.2 of this
7 Act within 180 days of adoption of the federal regulations. The
8 equivalent Board rules may serve as an alternative to the rules
9 adopted under subsection (1) of this subsection (e).

10 (f) Beginning July 1, 2008, no person shall install, sell,
11 offer to sell, distribute, or offer to distribute a mercury
12 thermostat in this State. For purposes of this subsection (f),
13 "mercury thermostat" means a product or device that uses a
14 mercury switch to sense and control room temperature through
15 communication with heating, ventilating, or air conditioning
16 equipment. "Mercury thermostat" includes thermostats used to
17 sense and control room temperature in residential, commercial,
18 industrial, and other buildings, but does not include
19 thermostats used to sense and control temperature as a part of
20 a manufacturing or industrial process.

21 (g) Beginning July 1, 2011, no person may sell, offer to
22 sell, distribute, or offer to distribute, either individually
23 or as a product component, a button cell battery that contains
24 mercury. For a product that has one or more mercury-containing
25 button cell batteries as a component, this subsection (g)
26 applies to each component part or parts and not to the entire

1 product. For purposes of this subsection (g), "button cell
2 battery" means a battery that is similar to a button or coin in
3 size and shape.

4 (h) Beginning July 1, 2009, no person may sell, offer to
5 sell, distribute, or offer to distribute a mercury-added
6 product if its mercury content exceeds 10 parts per million for
7 formulated mercury products or 10 milligrams for all other
8 mercury-added products. For a product that has one or more
9 mercury-added products as a component: (i) this subsection (h)
10 applies to each component part or parts and not the entire
11 product and (ii) the limits set forth in this subsection apply
12 to each component separately and not to the sum of the mercury
13 in all of the components.

14 This subsection (h) does not apply to the following:

15 (1) Fluorescent lamps, but only through June 30, 2013.

16 (2) High-intensity discharge lamps, including, but not
17 limited to, metal halide, high pressure sodium, and mercury
18 vapor lamps. For high-intensity discharge lamps that are
19 components of a motor vehicle, this item (2) applies only
20 if the motor vehicle is manufactured prior to July 1, 2009.

21 (3) Mercury-added products if the level of mercury
22 contained in the products is required in order to comply
23 with federal or State health, safety, or homeland security
24 requirements, laws, or regulations.

25 (4) Dental amalgam.

26 (5) Pharmaceuticals, pharmaceutical products,

1 biological products, or any substance that may be lawfully
2 sold with a prescription or over-the-counter without a
3 prescription under the federal Food, Drug and Cosmetics Act
4 (21 U.S.C. 301, et seq.). For the purpose of this item (5),
5 "biological product" means a virus, therapeutic serum,
6 toxin, antitoxin, vaccine, blood, blood component or
7 derivative, allergenic product or an analogous product, or
8 asphenamine (a derivative of arsphenamine) or any other
9 trivalent organic arsenic compound used for the
10 prevention, treatment, or cure of a disease or condition of
11 human beings.

12 (6) Mercury switches and mercury relays that are exempt
13 from subsection (b) of this Section.

14 (7) Mercury thermostats that are exempt from
15 subsection (f) of this Section.

16 (8) Mercury fever thermometers and mercury-added
17 products that are exempt from the Mercury-Added Product
18 Prohibition Act (410 ILCS 46/10).

19 The manufacturer of a mercury-added product may file a
20 written petition with the Agency to apply for an exemption from
21 the provisions of this subsection (h) for one or more specific
22 uses of the mercury-added product. The Agency may grant an
23 exemption, with or without conditions, if the manufacturer
24 demonstrates the following:

25 (1) a convenient and widely available system exists for
26 the proper collection, transportation, and processing of

1 the mercury-added product at the end of its useful life;

2 and

3 (2) the specific use or uses of the mercury-added
4 product provides a net benefit to the environment, public
5 health, or public safety when compared to available
6 nonmercury alternatives.

7 Before approving any exemption under this subsection (h),
8 the Agency may consult with other states to promote consistency
9 in the regulation of mercury-added products. Exemptions shall
10 be granted for a period of 2 years. The manufacturer may
11 request renewals of the exemption for additional 2 year periods
12 by filing additional written petitions with the Agency. The
13 Agency may renew an exemption if the manufacturer demonstrates
14 that the criteria set forth in paragraphs (1) and (2) of this
15 subsection (h) (4) continue to be satisfied. All petitions for
16 an exemption or exemption renewal must be submitted on forms
17 prescribed by the Agency. The Agency must adopt rules for
18 processing petitions submitted pursuant to this subsection
19 (h). The rules may, but are not required to, include provisions
20 allowing for the submission of written public comments on the
21 petitions.

22 For purposes of this subsection (h):

23 "Mercury-added product" means a product, commodity,
24 chemical, or component of a product that contains mercury or a
25 mercury compound that is intentionally added for any reason.

26 "Mercury-added product" includes, but is not limited to,

1 formulated mercury-added products and fabricated mercury-added
2 products.

3 "Formulated mercury-added product" means a mercury-added
4 product that is a consistent mixture of chemicals. Formulated
5 mercury-added products include, but are not limited to,
6 laboratory chemicals, cleaning products, cosmetics,
7 pharmaceuticals, and coating materials.

8 "Fabricated mercury-added product" means a mercury-added
9 product consisting of a combination of individual components
10 that combine to make a single unit.

11 (i) If the Agency refuses to grant or grants with
12 conditions an exemption under subsection (c) or (h) of this
13 Section, then the Agency's decision is subject to appeal to the
14 Board in accordance with the procedures of Section 40 of this
15 Act for appealing permit denials or conditions.

16 (Source: P.A. 95-452, eff. 8-27-07.)

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