

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.

1           Section 27. Educational materials. The Agency shall  
2 develop an educational template to be made available to  
3 businesses and consumers to inform consumers about programs for  
4 the collection of mercury thermostats. The materials in this  
5 educational template may include, without limitation, labels,  
6 inserts, 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 50. No rulemaking authority. Notwithstanding any  
9 other rulemaking authority that may exist, neither the Governor  
10 nor any agency or agency head under the jurisdiction of the  
11 Governor has any authority to make or promulgate rules to  
12 implement or enforce the provisions of this Act. If, however,  
13 the Governor believes that rules are necessary to implement or  
14 enforce the provisions of this Act, the Governor may suggest  
15 rules to the General Assembly by filing them with the Clerk of  
16 the House and the Secretary of the Senate and by requesting  
17 that the General Assembly authorize such rulemaking by law,  
18 enact those suggested rules into law, or take any other  
19 appropriate action in the General Assembly's discretion.  
20 Nothing contained in this Act shall be interpreted to grant  
21 rulemaking authority under any other Illinois statute where  
22 such authority is not otherwise explicitly given. For the  
23 purposes of this Section, "rules" is given the meaning  
24 contained in Section 1-70 of the Illinois Administrative  
25 Procedure Act, and "agency" and "agency head" are given the

1 meanings contained in Sections 1-20 and 1-25 of the Illinois  
2 Administrative Procedure Act to the extent that such  
3 definitions apply to agencies or agency heads under the  
4 jurisdiction of the Governor.

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