



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1690

Introduced 2/19/2009, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

New Act

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. Effective immediately.

LRB096 09346 JDS 19501 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 Illinois Environmental Protection
8 Agency.

9 "Board" means the Illinois Pollution Control Board.

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

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

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

22 "Thermostat technician" means a person who installs or
23 repairs thermostats, but does not include a person who installs

1 or repairs a thermostat serving his or her own residence.

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

4 Section 15. Mercury thermostat collection programs.

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

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

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

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

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

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

1 collection point;

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

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

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

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

19 (b) No later than January 1, 2010, thermostat manufacturers
20 must, individually or collectively, submit to the Agency a plan
21 for a mercury thermostat collection program. The plan must
22 demonstrate that the collection program meets the requirements
23 of subsection (a) of this Section. In reviewing the plans, the
24 Agency may consider a plan's consistency with other thermostat
25 manufacturer's collection plans in this State and mercury
26 thermostat collection programs in other states. In addition,

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

14 (c) No later than July 1, 2010, thermostat manufacturers
15 must, individually or collectively, implement an
16 Agency-approved mercury thermostat collection program,
17 including any modifications required by the Agency.

18 (d) No later than March 1, 2011, and no later than March 1
19 of each year thereafter, thermostat manufacturers must,
20 individually or collectively, submit to the Agency a report on
21 their mercury thermostat collection program that at a minimum
22 contains the following information:

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

25 (2) the estimated total amount of mercury contained in
26 the mercury thermostats collected under the program during

1 the previous calendar year;

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

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

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

13 (1) For calendar years 2012 and 2013, the collection
14 goal for each year is 15% of the estimated number of
15 mercury thermostats in this State that are removed,
16 replaced, or otherwise taken out of service during the
17 calendar year.

18 (2) For calendar years 2014 and 2015, the collection
19 goal for each year is 30% of the estimated mercury
20 thermostats in this State that are removed, replaced, or
21 otherwise taken out of service during the calendar year.

22 (3) For calendar years 2016 and 2017, the collection
23 goal for each year is 50% of the estimated mercury
24 thermostats in this State that are removed, replaced, or
25 otherwise taken out of service during the calendar year.

26 (4) For calendar year 2018 and each calendar year

1 thereafter, the collection goal for each year is 80% of the
2 estimated mercury thermostats in this State that are
3 removed, replaced, or otherwise taken out of service during
4 the calendar year.

5 The estimated number of mercury thermostats in this State
6 that are removed, replaced, or otherwise taken out of service
7 each year must be determined by the Agency in consultation with
8 thermostat manufacturers, thermostat wholesalers, thermostat
9 technicians, thermostat retailers, and environmental interest
10 groups. No later than March 1, 2015, and no later than March 1
11 of each year thereafter, the Agency must publish on its website
12 the estimated number of mercury thermostats that were removed,
13 replaced, or otherwise taken out of service during the previous
14 calendar year.

15 (f) If the collection goals set forth in subsection (e) of
16 this Section are not met for the calendar year 2013, 2015,
17 2017, or 2019, the Agency may require one or more thermostat
18 manufacturers to revise their mercury thermostat collection
19 programs. Thermostat manufacturers required to revise their
20 collection programs must, individually or collectively, submit
21 plans for revised collection programs no later than 90 days
22 after the Agency's written notice that a revised collection
23 program is required. The Agency shall review and approve
24 revised plans in accordance with subsection (b) of this
25 Section. Thermostat manufacturers must, individually or
26 collectively, implement revised plans within 90 days after the

1 Agency approves the revised plans in writing, including any
2 modifications required by the Agency.

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

11 Section 25. Certain prohibited activities. On and after
12 July 1, 2011:

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

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

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

1 Act as a mercury thermostat collection point.

2 Section 27. Educational materials. The Agency shall
3 develop an educational template to be made available to
4 businesses and consumers to inform consumers about programs for
5 the collection of mercury thermostats. The materials in this
6 educational template may include, without limitation, labels,
7 inserts, brochures, or signs.

8 Section 30. Information regarding the collection and
9 recycling of mercury thermostats. No later than June 1, 2011,
10 and no later than June 1 of each year thereafter, the Agency
11 must post on its website information regarding the collection
12 and recycling of mercury thermostats in this State. The
13 information must include, but is not limited to, the following:

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

16 (2) a report on the thermostat manufacturers' success
17 in achieving the collection goals set forth in Section
18 15(e) of this Act.

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

21 Section 40. Penalties.

22 (a) Any thermostat manufacturer who violates any provision

1 of this Act or fails to perform any duty imposed by this Act
2 (i) is liable for a civil penalty not to exceed \$1,000 for the
3 first violation and an additional civil penalty not to exceed
4 \$1,000 for each day the first violation continues and (ii) is
5 liable for a civil penalty not to exceed \$5,000 for a second or
6 subsequent violation and an additional civil penalty not to
7 exceed \$1,000 for each day the second or subsequent violation
8 continues.

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

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

1 prevailed must be deposited into the Hazardous Waste Fund
2 established under the Environmental Protection Act. Any funds
3 collected under this Section in an action in which a State's
4 Attorney has prevailed shall be retained by the county in which
5 he or she serves.

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

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

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

20 Section 45. Recommendations to the Governor and the General
21 Assembly. On or before January 1, 2011, the Agency shall
22 investigate and make recommendations to the Governor and the
23 General Assembly regarding strategies for improving the
24 collection and proper management of mercury thermostats
25 removed, replaced, or otherwise taken out of service by

1 homeowners. In developing its recommendations, the Agency
2 shall consult with thermostat manufacturers, thermostat
3 retailers, local governments, recycling associations,
4 environmental interest groups, and other appropriate
5 stakeholder groups. The Agency shall identify the best
6 available options for collecting mercury thermostats from
7 homeowners taking into account such considerations as cost and
8 convenience, safety and training, education and outreach
9 needs, and shared responsibilities for implementing the
10 collection and recycling program.

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