

1 AN ACT concerning 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 5. Legislative findings. The General Assembly
7 finds that:

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

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

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

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

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

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

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

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

6 Section 10. Definitions.

7 "Agency" means the Illinois Environmental Protection
8 Agency.

9 "Board" means the Illinois Pollution Control Board.

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

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

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

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

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

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

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

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

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

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

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

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

4 Section 15. Mercury thermostat collection programs.

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

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

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

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

1 and Board's rules.

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

5 (4) Not include any fees or other charges to persons
6 participating in the program, except that each thermostat
7 wholesaler, qualified contractor, qualified local
8 government authority, or thermostat retailer that is
9 provided with one or more collection containers may be
10 charged a one-time program administration fee not to exceed
11 \$75 per collection container.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) If the Agency determines the revised collection
15 programs will not collectively achieve the collection
16 goals set forth in Section 25 of this Act, the Agency may
17 require modifications to one or more collection programs
18 that the Agency determines are necessary to achieve the
19 collection goals. Modifications required by the Agency may
20 include improvements to outreach and education conducted
21 under the collection program, expansion of the number and
22 location of collection sites established under the
23 program, modification of the roles of participants, and a
24 \$5 financial incentive in the form of either cash or a
25 coupon offered by the manufacturer to contractors and
26 consumers for each out-of-service mercury thermostat

1 returned to a collection site.

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

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

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

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

19 Section 20. Reporting on collection efforts.

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

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

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

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

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

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

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

26 (5) an accounting of the program's administrative

1 costs;

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

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

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

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

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

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

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

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

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

1 the State during each calendar year.

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

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

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

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

15 Section 35. Thermostat wholesaler and contractor
16 responsibilities.

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

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

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

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

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

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

11 Section 40. Agency responsibilities.

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

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

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

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

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

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

18 Section 45. Penalties.

19 (a) Any thermostat manufacturer that violates any
20 provision of this Act or any rule adopted by the Agency
21 pursuant to this Act, or that fails to perform any duty imposed
22 by this Act shall be liable for a civil penalty not to exceed
23 \$2,500 per day for each violation. Each violation of this Act
24 shall constitute a separate offense and violation.

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

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

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

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

17 Section 50. Disposal prohibition.

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

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

1 Section 55. Repealer. This Act is repealed on January 1,
2 2021.

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