

4345

2011-2012 Regular Sessions

I N S E N A T E

March 30, 2011

Introduced by Sen. GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the collection of mercury-containing thermostats

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The environmental conservation law is amended by adding a
2 new section 27-0721 to read as follows:

3 S 27-0721. COLLECTION OF MERCURY-CONTAINING THERMOSTATS.

4 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE
5 THE FOLLOWING MEANINGS:

6 (A) "CONTRACTOR" MEANS A PERSON ENGAGED IN THE BUSINESS OF INSTALLA-
7 TION, SERVICE OR REMOVAL OF HEATING, VENTILATION AND AIR-CONDITIONING
8 COMPONENTS.

9 (B) "MANUFACTURER" MEANS THE ORGANIZATION OR ENTITY THAT SELLS OR SOLD
10 A MERCURY-CONTAINING THERMOSTAT UNDER A BRAND OR LABEL IT OWNS, OR IS OR
11 WAS LICENSED TO USE A MERCURY-CONTAINING THERMOSTAT PRODUCED BY OTHER
12 SUPPLIERS.

13 (C) "MERCURY-CONTAINING THERMOSTAT" MEANS A PRODUCT OR DEVICE THAT
14 USES A MERCURY SWITCH TO SENSE AND CONTROL ROOM TEMPERATURE THROUGH
15 COMMUNICATION WITH HEATING, VENTILATING, OR AIR-CONDITIONING EQUIPMENT.
16 MERCURY-CONTAINING THERMOSTAT INCLUDES THERMOSTATS USED TO SENSE AND
17 CONTROL ROOM TEMPERATURE IN RESIDENTIAL, COMMERCIAL, INDUSTRIAL, AND
18 OTHER BUILDINGS, BUT DOES NOT INCLUDE A THERMOSTAT USED TO SENSE AND
19 CONTROL TEMPERATURE AS PART OF A MANUFACTURING PROCESS.

20 (D) "PERSON" MEANS AN INDIVIDUAL, TRUST, FIRM, JOINT STOCK COMPANY,
21 CORPORATION (INCLUDING A GOVERNMENT CORPORATION), PARTNERSHIP, ASSOCI-
22 ATION, THE FEDERAL GOVERNMENT OR ANY AGENCY OR SUBDIVISION THEREOF, A
23 STATE, MUNICIPALITY, COMMISSION, POLITICAL SUBDIVISION OF A STATE, OR
24 ANY INTERSTATE BODY.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10551-02-1

(E) "THERMOSTAT RETAILER" MEANS A PERSON WHO SELLS THERMOSTATS OF ANY KIND DIRECTLY TO HOMEOWNERS OR OTHER NONPROFESSIONALS THROUGH ANY SELLING OR DISTRIBUTION MECHANISM, INCLUDING, BUT NOT LIMITED TO, SALES USING THE INTERNET OR CATALOGUES. A RETAILER MAY ALSO BE A WHOLESALER IF IT MEETS THE DEFINITION OF WHOLESALER.

(F) "THERMOSTAT WHOLESALER" MEANS A PERSON THAT IS ENGAGED IN THE DISTRIBUTION AND WHOLESALE SALE OF THERMOSTATS AND OTHER HEATING, VENTILATION, AND AIR-CONDITIONING COMPONENTS TO CONTRACTORS.

2. MANUFACTURERS SHALL ESTABLISH AND MAINTAIN A COLLECTION PROGRAM FOR OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS. MANUFACTURERS SHALL:

(A) ON OR AFTER OCTOBER FIRST, TWO THOUSAND ELEVEN, MAKE COLLECTION CONTAINERS AVAILABLE TO ALL THERMOSTAT WHOLESALERS IN THIS STATE. MANUFACTURERS SHALL PROVIDE COLLECTION CONTAINERS TO ANY THERMOSTAT RETAILER IN THIS STATE THAT REQUESTS A CONTAINER. EACH THERMOSTAT MANUFACTURER SHALL WITH EACH CONTAINER, INCLUDE INFORMATION REGARDING THE PROPER MANAGEMENT OF MERCURY-CONTAINING THERMOSTATS IN ACCORDANCE WITH FEDERAL AND STATE LAW.

(B) ESTABLISH A SYSTEM TO COLLECT, TRANSPORT, AND PROPERLY MANAGE OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS FROM ALL COLLECTION SITES.

(C) DISPOSE OF MERCURY-CONTAINING THERMOSTATS PURSUANT TO TITLE TWENTY-ONE OF THIS ARTICLE.

(D) CHARGE A ONE-TIME PROGRAM ADMINISTRATION FEE TO WHOLESALERS AND RETAILERS NOT TO EXCEED TWENTY-FIVE DOLLARS PER COLLECTION CONTAINER.

(E) FROM JANUARY FIRST, TWO THOUSAND TWELVE THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, CONDUCT EDUCATION AND OUTREACH EFFORTS INCLUDING, BUT NOT LIMITED TO:

(1) PROMOTING THE AVAILABILITY OF COLLECTION CONTAINERS TO THERMOSTAT WHOLESALERS AND RETAILERS;

(2) EDUCATING CONTRACTORS, HOMEOWNERS AND OTHER INTERESTED PERSONS ON THE IMPORTANCE OF PROPERLY MANAGING OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS AND OPPORTUNITIES FOR THE COLLECTION OF THOSE THERMOSTATS AND THE AVAILABILITY OF MANUFACTURER SUPPORTED PROGRAM(S);

(3) PROVIDING SIGNAGE TO PARTICIPATING COLLECTION LOCATIONS THAT CAN BE PROMINENTLY DISPLAYED TO PROMOTE THE COLLECTION AND RECYCLING OF OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS TO CONTRACTORS AND CONSUMERS; AND

(4) PROMULGATING WRITTEN MATERIALS OR TEMPLATES OF MATERIALS FOR REPRODUCTION BY PARTICIPATING THERMOSTAT WHOLESALERS AND RETAILERS TO BE PROVIDED TO CUSTOMERS AT THE TIME OF PURCHASE OR DELIVERY OF A THERMOSTAT. THESE MATERIALS SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION ON THE IMPORTANCE OF PROPERLY MANAGING OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS AND OPPORTUNITIES FOR THE COLLECTION OF THOSE THERMOSTATS.

(F) BEGINNING IN THE YEAR TWO THOUSAND THIRTEEN, SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT BY MARCH FIRST OF EACH YEAR THAT INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING INFORMATION:

(1) THE NUMBER OF MERCURY-CONTAINING THERMOSTATS COLLECTED AND RECYCLED BY THAT MANUFACTURER PURSUANT TO THIS SECTION DURING THE PREVIOUS CALENDAR YEAR;

(2) THE ESTIMATED TOTAL AMOUNT OF MERCURY CONTAINED IN THE THERMOSTAT COMPONENTS COLLECTED BY THAT MANUFACTURER PURSUANT TO THIS SECTION IN THE PREVIOUS CALENDAR YEAR;

(3) AN EVALUATION OF THE EFFECTIVENESS OF THE MANUFACTURER'S COLLECTION PROGRAM;

(4) AN ACCOUNTING OF THE ADMINISTRATIVE COSTS INCURRED IN THE COURSE OF ADMINISTERING THE COLLECTION AND RECYCLING PROGRAM; AND

1 (5) A LIST OF LOCATIONS THAT REQUESTED AND MAINTAIN COLLECTION
2 CONTAINERS SITES.

3 3. ANY THERMOSTAT WHOLESALER THAT MAINTAINS A PHYSICAL LOCATION IN THE
4 STATE SHALL ACT AS A COLLECTION LOCATION FOR OUT-OF-SERVICE MERCURY-CON-
5 TAINING THERMOSTATS.

6 4. (A) ANY PERSON OR CONTRACTOR WHO REPLACES A MERCURY-CONTAINING
7 THERMOSTAT FROM A BUILDING SHALL DISPOSE OF SUCH THERMOSTAT PURSUANT TO
8 TITLE TWENTY-ONE OF THIS ARTICLE, OR DELIVER THE MERCURY-CONTAINING
9 THERMOSTAT TO AN APPROPRIATE WHOLESALER OR RETAILER FOR COLLECTION.

10 (B) ANY PERSON OR CONTRACTOR WHO DEMOLISHES A BUILDING SHALL REMOVE
11 ANY MERCURY-CONTAINING THERMOSTATS FROM THE BUILDING PRIOR TO DEMOLITION
12 AND SHALL DISPOSE OF SUCH THERMOSTATS PURSUANT TO TITLE TWENTY-ONE OF
13 THIS ARTICLE OR SHALL DELIVER THE MERCURY-CONTAINING THERMOSTATS TO AN
14 APPROPRIATE WHOLESALER OR RETAILER FOR COLLECTION.

15 (C) ANY PERSON OR CONTRACTOR WHO REPLACES A MERCURY-CONTAINING THERMO-
16 STAT FROM ANY LOCATION IN THE STATE THAT IS PARTICIPATING IN AN ENERGY
17 EFFICIENCY AND/OR WEATHERIZATION PROGRAM SUPPORTED OR ADMINISTERED IN
18 WHOLE OR IN PART BY ANY DEPARTMENT, AGENCY, INSTRUMENTALITY, OR POLI-
19 TICAL SUBDIVISION OF THE STATE OR CONDUCTED AS A RESULT OF ANY STATUTORY
20 REQUIREMENT, SHALL DELIVER THE MERCURY-CONTAINING THERMOSTATS TO AN
21 APPROPRIATE WHOLESALER OR RETAILER FOR COLLECTION.

22 5. A THERMOSTAT WHOLESALER OR THERMOSTAT RETAILER IS PROHIBITED FROM
23 OFFERING, SELLING OR DISTRIBUTING ANY THERMOSTAT FOR FINAL SALE WHERE
24 THE MANUFACTURER OF SUCH THERMOSTAT IS NOT IN COMPLIANCE WITH THIS
25 SECTION.

26 6. (A) THE DEPARTMENT SHALL MAINTAIN AND POST ON ITS WEBSITE A LIST OF
27 WHOLESALERS AND RETAILERS THAT PARTICIPATE IN THE COLLECTION OF MERCU-
28 RY-CONTAINING THERMOSTATS PURSUANT TO THIS SECTION.

29 (B) IN CONJUNCTION WITH THERMOSTAT MANUFACTURERS, THE DEPARTMENT SHALL
30 PROVIDE EDUCATIONAL INFORMATION ON THE IMPORTANCE OF PROPER DISPOSAL OF
31 MERCURY-CONTAINING THERMOSTATS. SUCH OUTREACH SHALL BE DIRECTED TO
32 WHOLESALERS, RETAILERS, CONTRACTORS AND CONSUMERS.

33 S 2. The department of environmental conservation shall review the
34 provisions of section 27-0721 of the environmental conservation law, as
35 added by section one of this act, no later than September 1, 2019 to
36 determine the appropriate date for the repeal of such section. The
37 department of environmental conservation shall make such determination
38 based on the best available data pertaining to the remaining number of
39 out-of-service mercury-containing thermostats and the collection rates
40 achieved under the provisions. The department of environmental conserva-
41 tion shall report to the legislature no later than January 1, 2020 as to
42 the determination made by the department. If the department of environ-
43 mental conservation determines that the provisions of such section
44 27-0721 shall continue, the department shall subsequently review the
45 provisions of said section no later than September 1, 2022 and every two
46 years thereafter until such provisions are no longer required and the
47 department shall report such findings to the legislature for purposes of
48 repealing such section 27-0721.

49 S 3. This act shall take effect on the first of January next succeed-
50 ing the date on which it shall have become a law.