S T A T E O F N E W Y O R K

4833--A

2011-2012 Regular Sessions

I N S E N A T E

April 27, 2011

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The environmental conservation law is amended by adding a new section 27-2119 to read as follows:

S 27-2119. MERCURY-CONTAINING THERMOSTAT COLLECTION PROGRAM.

1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "MANUFACTURER" MEANS THE ENTITY THAT OWNS A NAME BRAND OF MERCURY-CONTAINING THERMOSTATS.

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

(C) "THERMOSTAT RETAILER" MEANS ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, COOPERATIVE, ASSOCIATION, FIRM, OR OTHER ENTITY THAT 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 A WHOLESALER.

(D) "THERMOSTAT WHOLESALER" MEANS ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, COOPERATIVE, ASSOCIATION, FIRM, OR OTHER ENTITY THAT IS ENGAGED PRIMARILY IN THE DISTRIBUTION AND WHOLESALE OF HEATING, VENTILATION, AND

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

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AIR-CONDITIONING COMPONENTS TO CONTRACTORS WHO INSTALL HEATING, VENTILATION, AND AIR-CONDITIONING COMPONENTS.

2. MANUFACTURER RESPONSIBILITIES. (A) EACH MERCURY-CONTAINING THERMOSTAT MANUFACTURER THAT HAS OFFERED FOR FINAL SALE, SOLD AT FINAL SALE, OR HAS DISTRIBUTED MERCURY-CONTAINING THERMOSTATS IN NEW YORK SHALL, INDIVIDUALLY OR COLLECTIVELY, AND NOT LATER THAN JUNE FIRST, TWO THOUSAND FOURTEEN, SUBMIT A PLAN TO THE DEPARTMENT FOR APPROVAL THAT DESCRIBES A COLLECTION PROGRAM FOR OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS FROM CONTRACTORS, SERVICE TECHNICIANS AND HOMEOWNERS. THE COLLECTION PROGRAM SHALL NOT INVOLVE ANY DIRECT COST TO CONTRACTORS, SERVICE TECHNICIANS OR HOMEOWNERS FOR PARTICIPATING IN THE PROGRAM. THE COLLECTION PROGRAM MAY INCLUDE A FINANCIAL INCENTIVE FOR THE RETURN OF EACH MERCURY-CONTAINING THERMOSTAT IN THE FORM OF CASH OR COUPONS THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS.

THE COLLECTION PROGRAM SHALL AT A MINIMUM INCLUDE:

(I) AN EDUCATION AND OUTREACH PROGRAM DIRECTED TOWARD WHOLESALERS, RETAILERS, CONTRACTORS AND HOMEOWNERS. SUCH PROGRAM SHALL BE CONDUCTED AT NO COST TO SUCH ENTITIES.

(II) THE DISTRIBUTION OF CONTAINERS FOR MERCURY-CONTAINING THERMOSTAT COLLECTION. COLLECTION METHODS MAY INCLUDE, BUT ARE NOT LIMITED TO, INDIVIDUAL PRODUCT MAIL RETURN AND/OR MULTIPLE COLLECTION CONTAINERS AND COLLECTION SITES LOCATED AT THERMOSTAT RETAILERS, THERMOSTAT WHOLESALERS, MUNICIPALITIES FOR COLLECTION AT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES OR HOUSEHOLD HAZARDOUS WASTE EVENTS.

(III) MEASURES TO PROTECT AGAINST THE FRAUDULENT RETURN OF MERCURY-CONTAINING THERMOSTATS.

(IV) CRITERIA TO ENCOURAGE THE PURCHASE OF MERCURY-FREE PROGRAMMABLE THERMOSTATS QUALIFIED BY THE ENERGY STAR PROGRAM AS REPLACEMENTS FOR MERCURY-CONTAINING THERMOSTATS.

(V) CRITERIA TO ENSURE THAT THE CAPTURE RATE OF OUT-OF-SERVICE MERCURY THERMOSTATS IS MAXIMIZED AND THE ESTABLISHMENT OF A COLLECTION GOAL.

(B) NOT LATER THAN DECEMBER FIRST, TWO THOUSAND FOURTEEN, MANUFACTURERS OF MERCURY-CONTAINING THERMOSTATS SHALL IMPLEMENT THE COLLECTION PROGRAM OUTLINED IN THEIR PLAN.

(C) BEGINNING JUNE FIRST, TWO THOUSAND FIFTEEN, AND ANNUALLY THEREAFTER, EACH MANUFACTURER OF MERCURY-CONTAINING THERMOSTATS SHALL SUBMIT A REPORT TO THE DEPARTMENT THAT INCLUDES, AT A MINIMUM, THE FOLLOWING INFORMATION:

(I) THE NUMBER OF MERCURY-CONTAINING THERMOSTATS COLLECTED AND RECYCLED BY THE MANUFACTURER DURING THE PREVIOUS CALENDAR YEAR.

(II) THE ESTIMATED TOTAL AMOUNT OF MERCURY CONTAINED IN THE THERMOSTAT COMPONENTS COLLECTED BY THAT MANUFACTURER IN THE PREVIOUS CALENDAR YEAR.

(III) AN EVALUATION OF THE EFFECTIVENESS OF THE MANUFACTURER'S COLLECTION PROGRAM AND ANY FINANCIAL INCENTIVES.

(IV) AN ACCOUNTING OF THE ADMINISTRATIVE COSTS INCURRED IN THE COURSE OF ADMINISTERING THE COLLECTION AND RECYCLING PROGRAM AND ANY FINANCIAL INCENTIVE PLAN.

3. DEPARTMENT RESPONSIBILITIES. (A) WITHIN NINETY DAYS OF RECEIPT OF A COMPLETE MANUFACTURER PLAN REQUIRED BY SUBDIVISION TWO OF THIS SECTION, THE DEPARTMENT SHALL REVIEW AND MAY GRANT, DENY OR APPROVE WITH MODIFICATIONS. THE DEPARTMENT SHALL NOT APPROVE A PLAN UNLESS ALL ELEMENTS OF SUBDIVISION TWO OF THIS SECTION ARE ADEQUATELY ADDRESSED. IN REVIEWING A PLAN, THE DEPARTMENT MAY CONSIDER CONSISTENCY OF THE PLAN WITH COLLECTION IN OTHER STATES AND CONSIDER CONSISTENCY BETWEEN MANUFACTURER PROGRAMS. IN REVIEWING PLANS, THE DEPARTMENT SHALL ENSURE THAT EDUCATION

AND OUTREACH PROGRAMS ARE UNIFORM AND CONSISTENT TO ENSURE EASE OF IMPLEMENTATION.

(B) THE DEPARTMENT SHALL MAINTAIN AND POST ON ITS WEBSITE A LIST OF ENTITIES AND LOCATIONS THAT SERVE AS COLLECTION POINTS FOR MERCURY-CONTAINING THERMOSTATS, INCLUDING BUT NOT LIMITED TO MUNICIPALITIES AND THERMOSTAT RETAILERS AND THERMOSTAT WHOLESALERS.

(C) IN CONJUNCTION WITH THE EDUCATIONAL AND OUTREACH PROGRAMS IMPLEMENTED BY MANUFACTURERS, THE DEPARTMENT MAY CONDUCT AN EDUCATION AND OUTREACH PROGRAM DIRECTED AT WHOLESALERS, RETAILERS, CONTRACTORS, AND HOMEOWNERS TO PROMOTE THE COLLECTION OF DISCARDED MERCURY-CONTAINING THERMOSTATS.

(D) BY DECEMBER FIRST, TWO THOUSAND FIFTEEN, AND ANNUALLY THEREAFTER, THE DEPARTMENT SHALL POST A REPORT ON ITS WEBSITE DETAILING THE COLLECTION AND RECYCLING OF MERCURY-CONTAINING THERMOSTATS IN THE STATE. SUCH REPORT SHALL INCLUDE AN EVALUATION OF THE EFFECTIVENESS OF THE THERMOSTAT COLLECTION AND RECYCLING PROGRAMS, AND INFORMATION ON ACTUAL COLLECTION RATES.

(E) BY JANUARY FIFTEENTH, TWO THOUSAND FIFTEEN, AND ANNUALLY THEREAFTER, THE DEPARTMENT SHALL ESTIMATE THE NUMBER OF OUT-OF-SERVICE THERMOSTATS GENERATED IN NEW YORK ON AN ANNUAL BASIS. BEGINNING JUNE FIRST, TWO THOUSAND SIXTEEN, SHOULD COLLECTION EFFORTS FAIL TO RESULT IN THE COLLECTION AND RECYCLING OF AT LEAST TWENTY-FIVE PERCENT OF THE OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS IN THE STATE, THE DEPARTMENT MAY REQUIRE MODIFICATION TO MANUFACTURERS' COLLECTION PLANS TO IMPROVE COLLECTION RATES INCLUDING A REQUIREMENT TO IMPLEMENT A FINANCIAL INCENTIVE IN THE FORM OF CASH OR COUPONS NOT LESS THAN FIVE DOLLARS OR NOT GREATER THAN TEN DOLLARS THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS. BEGINNING JUNE FIRST, TWO THOUSAND EIGHTEEN, SHOULD COLLECTION EFFORTS FAIL TO RESULT IN THE COLLECTION AND RECYCLING OF AT LEAST SIXTY-FIVE PERCENT OF THE OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS IN THE STATE, THE DEPARTMENT SHALL REQUIRE MODIFICATION TO MANUFACTURERS' COLLECTION PLANS TO INCLUDE A FINANCIAL INCENTIVE IN THE FORM OF CASH OR COUPONS NOT LESS THAN FIVE DOLLARS OR GREATER THAN TEN DOLLARS THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS. BEGINNING JANUARY FIFTEENTH, TWO THOUSAND TWENTY-ONE, THE DEPARTMENT MAY ADOPT REGULATIONS SETTING FORTH FUTURE COLLECTION GOALS.

S 2. This act shall take effect immediately.