

3485--A

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I N A S S E M B L Y

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Introduced by M. of A. SWEENEY, MAISEL, LAVINE, WEISENBERG, DINOWITZ, JAFFEE, CASTRO, MILLMAN, COLTON, ROSENTHAL, SCHIMEL, KAVANAGH, KELLNER, TITUS, STEVENSON, P. RIVERA, ROBERTS -- Multi-Sponsored by -- M. of A. BOYLAND, CASTELLI, COOK, CRESPO, FARRELL, GABRYSZAK, GALEF, GIBSON, GLICK, GOTTFRIED, HIKIND, HOOPER, LATIMER, LUPARDO, MARKEY, MCENENY, PEOPLES-STOKES, THIELE -- read once and referred to the Committee on Environmental Conservation -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 27-2119 to read as follows:
3 S 27-2119. PHASE-OUT OF MERCURY-CONTAINING THERMOSTATS.
4 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:
5 (A) "MANUFACTURER" MEANS THE ENTITY THAT OWNS A NAME BRAND OF MERCURY-
6 CONTAINING THERMOSTATS.
7 (B) "MERCURY-CONTAINING THERMOSTAT" MEANS A PRODUCT OR DEVICE THAT
8 USES A MERCURY SWITCH TO SENSE AND CONTROL ROOM TEMPERATURE THROUGH
9 COMMUNICATION WITH HEATING, VENTILATING, OR AIR-CONDITIONING EQUIPMENT.
10 "MERCURY-CONTAINING THERMOSTAT" INCLUDES THERMOSTATS USED TO SENSE AND
11 CONTROL ROOM TEMPERATURE IN RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND
12 OTHER BUILDINGS BUT DOES NOT INCLUDE A THERMOSTAT USED TO SENSE AND
13 CONTROL TEMPERATURE AS PART OF A MANUFACTURING PROCESS.
14 (C) "THERMOSTAT RETAILER" MEANS ANY INDIVIDUAL, CORPORATION, PARTNER-
15 SHIP, COOPERATIVE, ASSOCIATION, FIRM, OR OTHER ENTITY THAT SELLS THERMO-
16 STATS OF ANY KIND DIRECTLY TO HOMEOWNERS OR OTHER NONPROFESSIONALS
17 THROUGH ANY SELLING OR DISTRIBUTION MECHANISM, INCLUDING BUT NOT LIMITED

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

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1 TO SALES USING THE INTERNET OR CATALOGUES. A RETAILER MAY ALSO BE A
2 WHOLESALER IF IT MEETS THE DEFINITION OF A WHOLESALER.

3 (D) "THERMOSTAT WHOLESALER" MEANS ANY INDIVIDUAL, CORPORATION, PART-
4 NERSHIP, COOPERATIVE, ASSOCIATION, FIRM, OR OTHER ENTITY THAT IS ENGAGED
5 PRIMARILY IN THE DISTRIBUTION AND WHOLESALE OF HEATING, VENTILATION, AND
6 AIR-CONDITIONING COMPONENTS TO CONTRACTORS WHO INSTALL HEATING, VENTI-
7 LATION, AND AIR-CONDITIONING COMPONENTS.

8 2. MANUFACTURER RESPONSIBILITIES. (A) EACH MERCURY-CONTAINING THERMO-
9 STAT MANUFACTURER THAT HAS OFFERED FOR FINAL SALE, SOLD AT FINAL SALE,
10 OR HAS DISTRIBUTED MERCURY-CONTAINING THERMOSTATS IN NEW YORK SHALL,
11 INDIVIDUALLY OR COLLECTIVELY, AND NOT LATER THAN JUNE FIRST, TWO THOU-
12 SAND THIRTEEN, SUBMIT A PLAN TO THE DEPARTMENT FOR APPROVAL THAT
13 DESCRIBES A COLLECTION PROGRAM FOR OUT-OF-SERVICE MERCURY-CONTAINING
14 THERMOSTATS FROM CONTRACTORS, SERVICE TECHNICIANS AND HOMEOWNERS. THE
15 COLLECTION PROGRAM SHALL NOT INVOLVE ANY DIRECT COST TO CONTRACTORS,
16 SERVICE TECHNICIANS OR HOMEOWNERS FOR PARTICIPATING IN THE PROGRAM. THE
17 COLLECTION PROGRAM MAY INCLUDE A FINANCIAL INCENTIVE FOR THE RETURN OF
18 EACH MERCURY-CONTAINING THERMOSTAT IN THE FORM OF CASH OR COUPONS THAT
19 ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS.

20 THE COLLECTION PROGRAM SHALL AT A MINIMUM INCLUDE:

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

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

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

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

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

37 (B) NOT LATER THAN DECEMBER FIRST, TWO THOUSAND THIRTEEN, MANUFACTUR-
38 ERS OF MERCURY-CONTAINING THERMOSTATS SHALL IMPLEMENT THE COLLECTION
39 PROGRAM OUTLINED IN THEIR PLAN.

40 (C) BEGINNING JUNE FIRST, TWO THOUSAND FOURTEEN, AND ANNUALLY THERE-
41 AFTER, EACH MANUFACTURER OF MERCURY-CONTAINING THERMOSTATS SHALL SUBMIT
42 A REPORT TO THE DEPARTMENT THAT INCLUDES, AT A MINIMUM, THE FOLLOWING
43 INFORMATION:

44 (I) THE NUMBER OF MERCURY-CONTAINING THERMOSTATS COLLECTED AND RECY-
45 CLED BY THE MANUFACTURER DURING THE PREVIOUS CALENDAR YEAR.

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

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

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

53 3. DEPARTMENT RESPONSIBILITIES. (A) WITHIN NINETY DAYS OF RECEIPT OF A
54 COMPLETE MANUFACTURER PLAN REQUIRED BY SUBDIVISION TWO OF THIS SECTION,
55 THE DEPARTMENT SHALL REVIEW AND MAY GRANT, DENY OR APPROVE WITH MODIFI-
56 CATIONS. THE DEPARTMENT SHALL NOT APPROVE A PLAN UNLESS ALL ELEMENTS OF

1 SUBDIVISION TWO OF THIS SECTION ARE ADEQUATELY ADDRESSED. IN REVIEWING A
2 PLAN, THE DEPARTMENT MAY CONSIDER CONSISTENCY OF THE PLAN WITH
3 COLLECTION IN OTHER STATES AND CONSIDER CONSISTENCY BETWEEN MANUFACTURER
4 PROGRAMS. IN REVIEWING PLANS, THE DEPARTMENT SHALL ENSURE THAT EDUCATION
5 AND OUTREACH PROGRAMS ARE UNIFORM AND CONSISTENT TO ENSURE EASE OF
6 IMPLEMENTATION.

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

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

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

22 (E) BY JANUARY FIFTEENTH, TWO THOUSAND FOURTEEN, AND ANNUALLY THERE-
23 AFTER, THE DEPARTMENT SHALL ESTIMATE THE NUMBER OF OUT-OF-SERVICE THER-
24 MOSTATS GENERATED IN NEW YORK ON AN ANNUAL BASIS. BEGINNING JUNE FIRST,
25 TWO THOUSAND FIFTEEN, SHOULD COLLECTION EFFORTS FAIL TO RESULT IN THE
26 COLLECTION AND RECYCLING OF AT LEAST TWENTY-FIVE PERCENT OF THE OUT-OF-
27 SERVICE MERCURY-CONTAINING THERMOSTATS IN THE STATE, THE DEPARTMENT MAY
28 REQUIRE MODIFICATION TO MANUFACTURERS' COLLECTION PLANS TO IMPROVE
29 COLLECTION RATES INCLUDING A REQUIREMENT TO IMPLEMENT A FINANCIAL INCEN-
30 TIVE IN THE FORM OF CASH OR COUPONS NOT LESS THAN FIVE DOLLARS OR NOT
31 GREATER THAN TEN DOLLARS THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOME-
32 OWNERS. BEGINNING JUNE FIRST, TWO THOUSAND SEVENTEEN, SHOULD COLLECTION
33 EFFORTS FAIL TO RESULT IN THE COLLECTION AND RECYCLING OF AT LEAST
34 SIXTY-FIVE PERCENT OF THE OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS
35 IN THE STATE, THE DEPARTMENT SHALL REQUIRE MODIFICATION TO MANUFACTUR-
36 ERS' COLLECTION PLANS TO INCLUDE A FINANCIAL INCENTIVE IN THE FORM OF
37 CASH OR COUPONS NOT LESS THAN FIVE DOLLARS OR GREATER THAN TEN DOLLARS
38 THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS. BEGINNING JANUARY
39 FIFTEENTH, TWO THOUSAND TWENTY-ONE, THE DEPARTMENT MAY ADOPT REGULATIONS
40 SETTING FORTH FUTURE COLLECTION GOALS.

41 S 2. This act shall take effect immediately.