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

1676--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. GRISANTI, ADDABBO, AVELLA, BOYLE, ESPAILLAT, HOYLMAN, LATIMER, MARTINS, SERRANO, SQUADRON, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing the mercury thermostat collection act; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. This act shall be known and may be cited as the "Mercury thermostat collection act".

S 2. Article 27 of the environmental conservation law is amended by adding a new title 29 to read as follows:

TITLE 29
MERCURY THERMOSTAT COLLECTION ACT

SECTION 27-2901. DEFINITIONS.
27-2903. MERCURY-CONTAINING THERMOSTAT COLLECTION.
27-2905. THERMOSTAT WHOLESALER AND RETAILER REQUIREMENTS.
27-2907. DEPARTMENT RESPONSIBILITIES.
27-2909. DISPOSAL PROHIBITION.

S 27-2901. DEFINITIONS.

1. "COLLECTION PROGRAM" MEANS A SYSTEM FOR THE COLLECTION, TRANSPORTATION, RECYCLING, AND DISPOSAL OF OUT-OF-SERVICE MERCURY THERMOSTATS THAT IS FINANCED AND MANAGED OR PROVIDED BY A THERMOSTAT MANUFACTURER INDIVIDUALLY OR COLLECTIVELY WITH OTHER THERMOSTAT MANUFACTURERS IN ACCORDANCE WITH THIS SECTION.

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

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2. "MERCURY THERMOSTAT" MEANS A PRODUCT OR DEVICE THAT USES A MERCURY SWITCH TO SENSE AND CONTROL ROOM TEMPERATURE THROUGH COMMUNICATION WITH HEATING, VENTILATION, OR AIR-CONDITIONING EQUIPMENT AND 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.

3. "OUT-OF-SERVICE MERCURY THERMOSTAT" MEANS A MERCURY THERMOSTAT THAT IS REMOVED, REPLACED OR OTHERWISE TAKEN OUT OF SERVICE.

4. "QUALIFIED CONTRACTOR" MEANS A PERSON ENGAGED IN THE BUSINESS OF INSTALLATION, SERVICE OR REMOVAL OF HEATING, VENTILATION, AND AIR-CONDITIONING COMPONENTS WHO EMPLOYS SEVEN OR MORE SERVICE TECHNICIANS OR INSTALLERS.

5. "QUALIFIED LOCAL GOVERNMENT AUTHORITIES" MEANS ANY MUNICIPAL CORPORATION OR PLANNING UNIT AS DEFINED IN SECTION 27-0107 OF THIS ARTICLE, OR COUNTY DEPARTMENTS OF HEALTH.

6. "THERMOSTAT MANUFACTURER" MEANS A PERSON WHO OWNS OR OWNED A NAME BRAND OF ONE OR MORE MERCURY THERMOSTATS SOLD IN THE STATE.

7. "THERMOSTAT RETAILER" MEANS A PERSON WHO SELLS THERMOSTATS OF ANY KIND PRIMARILY TO HOMEOWNERS OR OTHER NONPROFESSIONALS THROUGH ANY SALE OR DISTRIBUTION MECHANISM INCLUDING SALES USING THE INTERNET OR CATALOGS.

8. "THERMOSTAT WHOLESALER" MEANS A PERSON WHO IS ENGAGED IN THE DISTRIBUTION AND WHOLESALE SELLING OF HEATING, VENTILATION OR AIR-CONDITIONING COMPONENTS, INCLUDING THERMOSTATS, TO CONTRACTORS, AND WHOSE TOTAL WHOLESALE SALES ACCOUNT FOR EIGHTY PERCENT OR MORE OF ITS TOTAL SALES. A THERMOSTAT MANUFACTURER IS NOT, BY VIRTUE OF MANUFACTURING, A THERMOSTAT WHOLESALER.

S 27-2903. MERCURY-CONTAINING THERMOSTAT COLLECTION.

1. EACH THERMOSTAT MANUFACTURER SHALL, INDIVIDUALLY OR COLLECTIVELY, WITH OTHER THERMOSTAT MANUFACTURERS, ESTABLISH AND MAINTAIN A PROGRAM FOR THE COLLECTION, TRANSPORTATION, RECYCLING, DISPOSAL AND PROPER MANAGEMENT OF OUT-OF-SERVICE MERCURY THERMOSTATS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

2. EACH THERMOSTAT MANUFACTURER SHALL, INDIVIDUALLY OR COLLECTIVELY WITH OTHER THERMOSTAT MANUFACTURERS THROUGH A COLLECTION PROGRAM, DO THE FOLLOWING:

(A) ON AND AFTER JULY FIRST, TWO THOUSAND FOURTEEN, COMPILE A LIST OF THERMOSTAT WHOLESALERS IN THE STATE AND OFFER EACH THERMOSTAT WHOLESALER CONTAINERS FOR THE COLLECTION OF OUT-OF-SERVICE MERCURY THERMOSTATS.

(B) ON AND AFTER JULY FIRST, TWO THOUSAND FOURTEEN, MAKE COLLECTION CONTAINERS AVAILABLE TO ALL QUALIFIED CONTRACTORS, THERMOSTAT WHOLESALERS, THERMOSTAT RETAILERS, AND QUALIFIED LOCAL GOVERNMENT AUTHORITIES THAT REQUEST A CONTAINER. EACH THERMOSTAT MANUFACTURER SHALL WITH EACH CONTAINER INCLUDE INFORMATION REGARDING THE PROPER MANAGEMENT OF OUT-OF-SERVICE MERCURY THERMOSTATS.

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

(D) NOT INCLUDE ANY FEES OR OTHER CHARGES TO CONSUMERS OR PERSONS PARTICIPATING IN THE PROGRAM. EACH THERMOSTAT WHOLESALER, QUALIFIED CONTRACTOR, QUALIFIED LOCAL GOVERNMENT AUTHORITY, OR THERMOSTAT RETAILER THAT IS PROVIDED WITH ONE OR MORE COLLECTION CONTAINERS MAY BE CHARGED A FEE NOT TO EXCEED TWENTY-SIX DOLLARS TO REPLACE ANY COLLECTION CONTAINER THAT IS MISPLACED, STOLEN OR OTHERWISE LOST.

(E) BEGINNING JULY FIRST, TWO THOUSAND FOURTEEN, CONDUCT EDUCATION AND OUTREACH EFFORTS, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

(I) ESTABLISH AND MAINTAIN A PUBLIC WEBSITE FOR THE DISSEMINATION OF EDUCATIONAL MATERIALS TO PROMOTE THE COLLECTION OF OUT-OF-SERVICE MERCURY THERMOSTATS. THIS WEBSITE SHALL INCLUDE TEMPLATES OF THE EDUCATIONAL MATERIALS ON THE INTERNET WEBSITE IN A FORM AND FORMAT THAT CAN BE EASILY DOWNLOADED AND PRINTED. THE LINK TO THIS WEBSITE SHALL BE PROVIDED TO THE DEPARTMENT;

(II) CONTACT THERMOSTAT WHOLESALERS AT LEAST ONCE A YEAR TO ENCOURAGE THEIR SUPPORT AND PARTICIPATION IN EDUCATING CUSTOMERS ON THE IMPORTANCE OF STATUTORY REQUIREMENTS FOR THE COLLECTION AND PROPER MANAGEMENT OF OUT-OF-SERVICE MERCURY THERMOSTATS;

(III) CREATE AND MAINTAIN A WEB-BASED PROGRAM THAT ALLOWS CONTRACTORS AND CONSUMERS TO IDENTIFY COLLECTION SITES FOR OUT-OF-SERVICE MERCURY THERMOSTATS IN THE STATE AND PROVIDE A LIST OF COLLECTION SITES TO THE DEPARTMENT; AND

(IV) DEVELOP INFORMATIONAL ARTICLES, PRESS RELEASES, AND NEWS STORIES PERTAINING TO THE IMPORTANCE OF AND OPPORTUNITIES FOR COLLECTING AND RECYCLING OUT-OF-SERVICE MERCURY THERMOSTATS AND DISTRIBUTE THOSE MATERIALS TO TRADE PUBLICATIONS, LOCAL MEDIA, AND STAKEHOLDER GROUPS.

(F) ON OR BEFORE JULY FIRST, TWO THOUSAND FOURTEEN, DEVELOP AND UPDATE AS NECESSARY EDUCATIONAL AND OTHER OUTREACH MATERIALS FOR DISTRIBUTION TO CONTRACTORS, CONTRACTOR ASSOCIATIONS AND CONSUMERS. THESE MATERIALS SHALL BE MADE AVAILABLE FOR USE BY PARTICIPATING THERMOSTAT WHOLESALERS, THERMOSTAT RETAILERS, CONTRACTORS, AND QUALIFIED GOVERNMENT AUTHORITIES. THE MATERIALS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(I) SIGNAGE, SUCH AS POSTERS AND CLING SIGNAGE, THAT CAN BE PROMINENTLY DISPLAYED TO PROMOTE THE COLLECTION OF OUT-OF-SERVICE MERCURY THERMOSTATS TO CONTRACTORS AND CONSUMERS; AND

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

(G) PROVIDE AN OPPORTUNITY FOR THE DEPARTMENT TO REVIEW AND OFFER FEEDBACK AND SUGGESTIONS ON THE COLLECTION PROGRAM.

3. THE COLLECTION PROGRAMS ESTABLISHED BY THERMOSTAT MANUFACTURERS UNDER THIS SECTION SHALL BE DESIGNED TO ACHIEVE COLLECTIVELY THE FOLLOWING STATEWIDE GOALS:

(A) FOR CALENDAR YEAR TWO THOUSAND FIFTEEN, THE COLLECTION OF NO LESS THAN FIFTEEN THOUSAND FIVE HUNDRED OUT-OF-SERVICE MERCURY THERMOSTATS;

(B) FOR CALENDAR YEARS TWO THOUSAND SIXTEEN THROUGH TWO THOUSAND TWENTY-THREE, THE COLLECTION GOALS SHALL BE ESTABLISHED BY THE DEPARTMENT. THE DEPARTMENT SHALL ESTABLISH COLLECTION GOALS NO LATER THAN OCTOBER FIRST, TWO THOUSAND FIFTEEN. THE COLLECTION GOALS ESTABLISHED BY THE DEPARTMENT SHALL ACHIEVE THE MAXIMUM FEASIBLE NUMBER OF OUT-OF-SERVICE MERCURY THERMOSTATS IN THE STATE. IN DEVELOPING THE COLLECTION GOALS, THE DEPARTMENT SHALL TAKE INTO ACCOUNT, AT A MINIMUM, (I) THE EFFECTIVENESS OF COLLECTION PROGRAMS FOR OUT-OF-SERVICE MERCURY THERMOSTATS IN THE STATE AND OTHER STATES, INCLUDING EDUCATION AND OUTREACH EFFORTS, (II) COLLECTION REQUIREMENTS IN OTHER STATES, INCLUDING THOSE STATES WITH THE HIGHEST COLLECTION GOALS, (III) ANY REPORTS OR STUDIES ON THE NUMBER OF OUT-OF-SERVICE MERCURY THERMOSTATS THAT ARE AVAILABLE FOR COLLECTION IN THIS STATE, OTHER STATES, AND NATIONALLY, AND (IV) OTHER RELEVANT FACTORS. PRIOR TO ESTABLISHING THE COLLECTION GOALS, THE

DEPARTMENT SHALL CONSULT WITH STAKEHOLDER GROUPS THAT INCLUDE, AT A MINIMUM, REPRESENTATIVES OF THERMOSTAT MANUFACTURERS, ENVIRONMENTAL GROUPS, MUNICIPAL RECYCLERS, THERMOSTAT WHOLESALERS, QUALIFIED CONTRACTORS, AND THERMOSTAT RETAILERS.

(C) THERMOSTAT MANUFACTURERS SHALL IMPLEMENT ANY COLLECTION PROGRAM REVISIONS APPROVED BY THE DEPARTMENT WITHIN NINETY DAYS.

4. IF THE COLLECTION PROGRAMS DO NOT COLLECTIVELY ACHIEVE THE COLLECTION GOALS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION FOR CALENDAR YEAR TWO THOUSAND FIFTEEN OR ANY YEAR THEREAFTER THE DEPARTMENT, AFTER CONDUCTING STAKEHOLDER CONSULTATIONS, MAY REQUIRE MODIFICATIONS TO ONE OR MORE COLLECTION PROGRAMS THAT THE DEPARTMENT DETERMINES ARE NECESSARY TO ACHIEVE THE COLLECTION GOALS. MODIFICATIONS REQUIRED BY THE DEPARTMENT MAY INCLUDE IMPROVEMENTS TO OUTREACH AND EDUCATION CONDUCTED UNDER THE COLLECTION PROGRAM, EXPANSION OF THE NUMBER AND LOCATION OF COLLECTION SITES ESTABLISHED UNDER THE PROGRAM, MODIFICATION OF THE ROLES OF PARTICIPANTS, AND A FIVE DOLLAR FINANCIAL INCENTIVE IN THE FORM OF EITHER CASH OR COUPON OFFERED BY THE MANUFACTURER TO CONTRACTORS AND CONSUMERS FOR EACH OUT-OF-SERVICE MERCURY THERMOSTAT RETURNED TO A COLLECTION SITE.

5. NO LATER THAN APRIL FIRST, TWO THOUSAND FIFTEEN, AND NO LATER THAN APRIL FIRST OF EACH YEAR THEREAFTER, EACH THERMOSTAT MANUFACTURER SHALL, INDIVIDUALLY OR COLLECTIVELY WITH OTHER THERMOSTAT MANUFACTURERS, SUBMIT AN ANNUAL REPORT ON ITS COLLECTION PROGRAM TO THE DEPARTMENT COVERING THE ONE-YEAR PERIOD ENDING DECEMBER THIRTY-FIRST OF THE PREVIOUS YEAR. EACH REPORT SHALL BE POSTED ON THE MANUFACTURER'S OR PROGRAM OPERATOR'S RESPECTIVE INTERNET WEBSITE. THE ANNUAL REPORT SHALL INCLUDE THE FOLLOWING:

(A) THE NUMBER OF OUT-OF-SERVICE MERCURY THERMOSTATS COLLECTED AND MANAGED UNDER THIS SECTION DURING THE PREVIOUS CALENDAR YEAR;

(B) THE ESTIMATED TOTAL AMOUNT OF MERCURY CONTAINED IN THE OUT-OF-SERVICE MERCURY THERMOSTATS COLLECTED UNDER THIS SECTION DURING THE PREVIOUS CALENDAR YEAR;

(C) A LIST OF ALL THERMOSTAT WHOLESALERS, CONTRACTORS, QUALIFIED LOCAL GOVERNMENT AUTHORITIES, AND THERMOSTAT RETAILERS PARTICIPATING IN THE PROGRAM AS MERCURY THERMOSTAT COLLECTION SITES AND THE NUMBER OF OUT-OF-SERVICE MERCURY THERMOSTATS RETURNED BY EACH;

(D) AN ACCOUNTING OF THE PROGRAM'S ADMINISTRATIVE COSTS;

(E) A DESCRIPTION OF OUTREACH STRATEGIES EMPLOYED UNDER PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION;

(F) EXAMPLES OF OUTREACH AND EDUCATIONAL MATERIALS USED UNDER PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION;

(G) THE INTERNET WEBSITE ADDRESS OF ADDRESSES WHERE THE ANNUAL REPORT MAY BE VIEWED ONLINE;

(H) A DESCRIPTION OF HOW THE OUT-OF-SERVICE MERCURY THERMOSTATS WERE MANAGED;

(I) ANY MODIFICATIONS THAT THE THERMOSTAT MANUFACTURER IS PLANNING TO MAKE IN ITS COLLECTION PROGRAM; AND

(J) THE IDENTIFICATION OF A COLLECTION PROGRAM CONTACT AND THE BUSINESS PHONE NUMBER, MAILING ADDRESS, AND E-MAIL ADDRESS FOR THE CONTACT.

6. ALL CONTRACTORS, THERMOSTAT WHOLESALERS, THERMOSTAT MANUFACTURERS, AND THERMOSTAT RETAILERS PARTICIPATING IN THE PROGRAM SHALL HANDLE AND MANAGE THE OUT-OF-SERVICE MERCURY THERMOSTATS IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS FOR THE DISPOSAL OF HAZARDOUS WASTE.

7. ON AND AFTER JULY FIRST, TWO THOUSAND FOURTEEN, NO THERMOSTAT WHOLESALER SHALL SELL, OFFER TO SELL, DISTRIBUTE, OR OFFER TO DISTRIBUTE THERMOSTATS UNLESS THE WHOLESALER PARTICIPATES AS A COLLECTION SITE FOR

OUT-OF-SERVICE MERCURY THERMOSTATS OR REQUESTS AND RECEIVES A WAIVER FROM THE DEPARTMENT FOLLOWING A DEMONSTRATION THAT SUCH PARTICIPATION WOULD POSE AN UNDUE BURDEN.

S 27-2905. THERMOSTAT WHOLESALER AND RETAILER REQUIREMENTS.

NO THERMOSTAT WHOLESALER OR THERMOSTAT RETAILER SHALL SELL, OFFER FOR SALE OR DISTRIBUTE ANY THERMOSTAT FOR FINAL SALE UNLESS THE MANUFACTURER OF SUCH THERMOSTAT IS LISTED ON THE DEPARTMENT'S WEBSITE, IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE.

S 27-2907. DEPARTMENT RESPONSIBILITIES.

1. NO LATER THAN JUNE FIRST, TWO THOUSAND FIFTEEN, THE DEPARTMENT SHALL MAINTAIN ON ITS WEBSITE INFORMATION REGARDING THE COLLECTION AND PROPER MANAGEMENT OF OUT-OF-SERVICE MERCURY THERMOSTATS IN THE STATE. THE INFORMATION SHALL INCLUDE THE FOLLOWING:

(A) A DESCRIPTION OF THE COLLECTION PROGRAMS ESTABLISHED UNDER THIS SECTION;

(B) A REPORT ON THE PROGRESS TOWARDS ACHIEVING THE STATEWIDE COLLECTION GOALS SET FORTH IN THIS TITLE; AND

(C) A LIST OF ALL THERMOSTAT WHOLESALERS, CONTRACTORS, QUALIFIED LOCAL GOVERNMENT AUTHORITIES, AND THERMOSTAT RETAILERS PARTICIPATING IN THE PROGRAM AS COLLECTION SITES.

2. NO LATER THAN NOVEMBER FIRST, TWO THOUSAND EIGHTEEN, THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE EFFECTIVENESS OF THE COLLECTION PROGRAMS ESTABLISHED UNDER THIS SECTION, INFORMATION ON THE NUMBER OF OUT-OF-SERVICE THERMOSTATS COLLECTED, HOW THE OUT-OF-SERVICE THERMOSTATS WERE MANAGED, AND AN ESTIMATE OF THE NUMBER OF THERMOSTATS THAT ARE AVAILABLE FOR COLLECTION. THE DEPARTMENT SHALL USE THIS INFORMATION TO RECOMMEND WHETHER THE PROVISIONS OF THIS SECTION SHOULD BE EXTENDED, ALONG WITH ANY OTHER STATUTORY CHANGES. IN PREPARING THE REPORT, THE DEPARTMENT SHALL CONSULT WITH MERCURY THERMOSTAT MANUFACTURERS, ENVIRONMENTAL ORGANIZATIONS, MUNICIPAL RECYCLERS, AND OTHER INTEREST GROUPS.

S 27-2909. DISPOSAL PROHIBITION.

1. NO TRANSPORTER SHALL KNOWINGLY COMMINGLE MERCURY-ADDED THERMOSTATS WITH SOLID WASTE OR RECYCLABLE MATERIALS.

2. NO TRANSPORTER SHALL KNOWINGLY DELIVER MERCURY-ADDED THERMOSTATS OR KNOWINGLY CAUSE SUCH MATERIALS TO BE DELIVERED TO:

(A) AN INCINERATOR;

(B) A LANDFILL;

(C) A TRANSFER STATION; OR

(D) ANYONE WHO THE TRANSPORTER KNOWS OR SHOULD KNOW WILL EITHER COMMINGLE SUCH MATERIALS WITH OTHER SOLID WASTE OR DELIVER SUCH MATERIALS TO AN INCINERATOR OR A LANDFILL FOR DISPOSAL.

3. NO OPERATOR OF AN INCINERATOR OR A LANDFILL SHALL KNOWINGLY ACCEPT MERCURY-ADDED THERMOSTATS FOR DISPOSAL.

4. NO OPERATOR OF A TRANSFER STATION SHALL KNOWINGLY COMMINGLE MERCURY-ADDED THERMOSTATS WITH OTHER SOLID WASTE OR CAUSE SUCH MATERIALS TO BE TRANSFERRED TO AN INCINERATOR OR LANDFILL FOR DISPOSAL.

5. EACH LANDFILL AND TRANSFER STATION SHALL POST, IN A CONSPICUOUS LOCATION AT THE FACILITY, A SIGN STATING THAT MERCURY-ADDED THERMOSTATS ARE NOT ACCEPTED AT THE FACILITY.

S 3. 1. Any person or contractor who replaces a mercury-containing thermostat from a building shall deliver the mercury-containing thermostat to an appropriate collection site.

2. Any person or contractor who demolishes a building shall ensure that all mercury-containing thermostats are removed from the building

prior to demolition and shall dispose of the mercury-containing thermostats at a collection site.

3. Any department, authority, instrumentality, or municipal corporation of the state administering a program that involves the removal or replacement of mercury containing thermostats as a result of any statutory requirement, shall inform contractors of their statutory obligations to deliver the mercury-containing thermostats to a collection site and prohibiting the disposal of such thermostats in a solid-waste facility.

4. Any contractor, organization or subcontractor of such organization, who contracts with or receives funding or financing provided in whole or in part by or through any department, agency, instrumentality, or political subdivision of the state for the installation, service, or removal of heating, ventilation, or air-conditioning components resulting in the removal or handling of out-of-service mercury thermostats, shall ensure the collection, transportation and proper management of out-of-service mercury thermostats in accordance with the provisions of title 29 of article 27 of the environmental conservation law.

S 4. This act shall take effect immediately and shall expire and be deemed repealed January 1, 2024.