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Legislative Document

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S.P. 371

In Senate, March 24, 2015

**An Act To Modify the Laws Regarding the Collection and Recycling
of Mercury-added Thermostats**

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Representative MARTIN of Eagle Lake and
Senator: DAVIS of Piscataquis, Representatives: BLACK of Wilton, BUCKLAND of
Farmington, DUCHESNE of Hudson, HILLIARD of Belgrade.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §1665-B**, as amended by PL 2013, c. 315, §1, is further
3 amended to read:

4 **§1665-B. Mercury-added thermostats**

5 **1. Definitions.** For purposes of this section, unless the context otherwise indicates,
6 the following terms have the following meanings.

7 A. "Manufacturer" means a person who owns or owned a brand of mercury-added
8 thermostats sold in the State before January 1, 2006.

9 B. "Mercury-added thermostat" or "mercury thermostat" means a product or device
10 that uses a mercury switch to sense and control room temperature through
11 communication with heating, ventilating or air conditioning equipment. "Mercury-
12 added thermostat" or "mercury thermostat" includes a thermostat used to sense and
13 control room temperature in residential, commercial, industrial and other buildings
14 but does not include a thermostat used to sense and control temperature as part of a
15 manufacturing process.

16 C. "Retailer" means a person who sells thermostats of any kind directly to
17 homeowners or other nonprofessionals through any selling or distribution
18 mechanism, including, but not limited to, sales using the Internet or catalogues.

19 D. "Wholesaler" means a business that the department determines is primarily
20 engaged in the distribution and selling of heating, ventilation and air conditioning
21 components to contractors that install heating, ventilation and air conditioning
22 components.

23 E. "Contractor" means a person engaged in the business of installing, servicing or
24 removing thermostats and other heating, ventilation and air conditioning components.

25 **1-A. Prohibitions.** The following prohibitions apply to the sale or distribution of
26 mercury thermostats in the State.

27 A. A person may not sell or offer to sell or distribute for promotional purposes a
28 mercury thermostat.

29 B. A manufacturer not in compliance with this section is prohibited from offering
30 any thermostat for sale in the State. A manufacturer not in compliance with this
31 section shall provide the necessary support to retailers to ensure the manufacturer's
32 thermostats are not offered for sale in this State.

33 C. A wholesaler or retailer may not offer for sale in this State any thermostat of a
34 manufacturer that is not in compliance with this section.

35 **2. Manufacturer responsibility.** Each manufacturer of mercury-added thermostats
36 that have been sold in this State shall, individually or collectively:

37 A. Establish and maintain a collection and recycling program for out-of-service
38 mercury-added thermostats. The collection and recycling program must be designed
39 and implemented to ensure that:

- 1 (1) A maximum rate of collection of mercury-added thermostats is achieved;
- 2 (2) Handling and recycling of mercury-added thermostats are accomplished in a
3 manner that is consistent with section 1663, with other provisions of this chapter
4 and with the universal waste rules adopted by the board pursuant to section
5 1319-O;
- 6 (3) Authorized bins for mercury-added thermostat collection are made available
7 at a reasonable one-time fee not to exceed \$25 to all heating, ventilation and air
8 conditioning supply, electrical supply and plumbing supply distributor locations
9 that sell thermostats and to all retailers who volunteer to participate in the
10 program; and
- 11 (4) By January 1, 2007, authorized bins for mercury-added thermostat collection
12 are made available at a reasonable one-time fee not to exceed \$25 to
13 municipalities and regions requesting bins for mercury-added thermostat
14 collection at universal waste collection sites or at periodic household hazardous
15 waste collection events, as long as the collection sites or events are approved by
16 the department for mercury-added thermostat collections;
- 17 B. Work cooperatively with the department and others in accordance with subsection
18 4 to establish appropriate systems in order to implement the plan developed pursuant
19 to subsection 4;
- 20 C. Within 3 months after the department develops phase one of the plan required by
21 subsection 4, implement phase one of the plan;
- 22 D. Within 3 months after the department develops phase 2 of the plan required by
23 subsection 4, implement phase 2 of the plan;
- 24 E. ~~Within 3 months after the department develops phase one of the plan required by~~
25 ~~subsection 4, provide~~ Provide a financial incentive with a minimum value of \$5 for
26 the return of each mercury-added thermostat by a contractor or service technician
27 who has removed the mercury-added thermostat from service to an established
28 recycling collection point;
- 29 F. ~~Within 3 months after the department develops phase 2 of the plan required by~~
30 ~~subsection 4, provide~~ Provide a financial incentive with a minimum value of \$5 for
31 the return of each mercury-added thermostat by a homeowner who has removed the
32 mercury-added thermostat from service to an established recycling collection point;
- 33 G. ~~Beginning in 2008, submit~~ Submit an annual report to the department by ~~January~~
34 ~~30th~~ April 1st of each year. The report must be submitted on a form provided by the
35 department and must include ~~at a minimum~~:
- 36 (1) The number of mercury-added thermostats collected and recycled by that
37 manufacturer pursuant to this section during the previous calendar year;
- 38 (2) The estimated total amount of mercury contained in the thermostat
39 components collected by that manufacturer pursuant to this section;
- 40 (3) An evaluation of the effectiveness of the manufacturer's collection and
41 recycling program and the financial incentive provided pursuant to paragraphs E
42 and F;

1 ~~(4) An accounting of the administrative costs incurred in the course of~~
2 ~~administering the collection and recycling program and the financial incentive~~
3 ~~plan developed pursuant to subsection 4;~~

4 (5) A description of the education and outreach strategies employed during the
5 previous calendar year to increase participation and collection rates and examples
6 of education and outreach materials used; and

7 (6) Modifications that the manufacturer is proposing to make in its collection
8 and recycling program; and

9 H. Beginning January 1, 2010, submit a quarterly report to the department within 30
10 days after the end of each quarter that, for each shipment of thermostats received by
11 the manufacturer or manufacturer's agent for recycling during the quarter, provides:

12 (1) The collection location that shipped the thermostats;

13 (2) The date the manufacturer received the shipment;

14 (3) The number of mercury thermostats; and

15 (4) The total amount of mercury collected.

16 This subsection is repealed December 31, 2023.

17 **2-A. Wholesaler responsibility.** A wholesaler may not sell a thermostat in the State
18 unless the wholesaler acts as a collection site for thermostats that contain mercury. A
19 wholesaler may meet the requirements of this subsection by participating as a collection
20 site in a manufacturer collection and recycling program under subsection 2. A wholesaler
21 shall post in a prominent location open to public view a notice about the financial
22 incentive plan developed pursuant to subsection 4. The notice must be approved by the
23 department and supplied by the manufacturer at no cost to the wholesaler.

24 This subsection is repealed December 31, 2023.

25 **2-B. Termination of retailer participation.** A manufacturer may terminate a
26 retailer's participation in the collection program under subsection 2, paragraph A only
27 after complying with the provisions of this subsection.

28 A. The manufacturer must notify the retailer, in writing, of noncompliance with
29 program policies and procedures and provide the retailer an opportunity to comply.

30 B. If the retailer continues to send in significant ineligible materials through the
31 collection program after 2 written notices of noncompliance, the manufacturer may
32 terminate the retailer's participation.

33 C. For termination to occur under this subsection, the manufacturer must notify the
34 retailer and the department in writing.

35 This subsection is repealed December 31, 2023.

36 **4. Financial incentive plan.** The department shall develop a manufacturer financial
37 incentive plan in 2 phases. By January 1, 2007, the department shall develop phase one
38 of the plan, which must address collection of mercury-added thermostats from contractors
39 and service technicians. By August 1, 2007, the department shall develop phase 2 of the

1 plan, which must address collection of mercury-added thermostats from homeowners.
2 The plan must be developed in consultation with a stakeholder group that includes
3 representatives from the thermostat industry, environmental groups, thermostat
4 wholesalers and service contractors. The plan must be developed in a manner that
5 ensures to the maximum extent practical that:

- 6 A. The capture rate of out-of-service mercury-added thermostats is maximized;
- 7 B. Adequate incentives and education are provided to contractors, service
8 technicians and homeowners to encourage return of thermostats to established
9 recycling collection points;
- 10 C. Administrative costs of the plan are minimized;
- 11 D. The plan encourages the purchase of nonmercury thermostats qualified by the
12 United States Environmental Protection Agency's Energy Star program as
13 replacements for mercury-added thermostats; and
- 14 E. Mechanisms are in place to protect against the fraudulent return of thermostats.

15 The plan must include a requirement that manufacturers provide a financial incentive
16 with a minimum value of \$5 for the return of each mercury-added thermostat to an
17 established recycling collection point in accordance with subsection 2, paragraphs E and
18 F. The financial incentive may include, without limitation, cash, rebates, discounts,
19 coupons or other incentives.

20 This subsection is repealed December 31, 2023.

21 **5. Goals.** The goal of the collection and recycling efforts under this section is to
22 collect and recycle at least 125 pounds of mercury per year from mercury-added
23 thermostats within 2 years after the development of phase one of the plan required by
24 subsection 4 and at least 160 pounds of mercury per year within 3 years after the
25 development of phase 2 of the plan required by subsection 4.

26 This subsection is repealed December 31, 2023.

27 **6. Report.** Annually, the department shall submit to the joint standing committee of
28 the Legislature having jurisdiction over natural resources matters a report that includes an
29 evaluation of the effectiveness of the thermostat collection and recycling programs
30 established under this section, information on actual collection rates and
31 recommendations for any statutory changes concerning the collection and recycling of
32 mercury-added thermostats. The report may be included in the report required pursuant
33 to section 1772, subsection 1.

34 This subsection is repealed December 31, 2023.

35 **7. Contractor reporting and record-keeping requirements.** Beginning March 1,
36 2017, and annually thereafter, a contractor shall electronically submit to the department a
37 report, in a format determined by the department, that includes at a minimum the
38 following information:

- 39 A. The contractor's name, mailing address and telephone number;

1 2. It clarifies that the financial incentive provided for the return of a mercury-added
2 thermostat is to be provided to the contractor or homeowner who removed the thermostat
3 from service;

4 3. It changes the due date on the annual manufacturer's report to the Department of
5 Environmental Protection from January 30th to April 1st and removes the requirement
6 that the report contain an accounting of administrative costs;

7 4. It requires contractors to submit annual reports to the department containing
8 information on the contractor and the thermostats removed from service and disposed of
9 during the previous calendar year; and

10 5. It repeals at a future date certain portions of the laws regarding the collection and
11 recycling of mercury-added thermostats.

12 The bill directs the department to review the financial incentive plan under the laws
13 regarding the collection and recycling of mercury-added thermostats and, by February 15,
14 2016, submit a report to the Joint Standing Committee on Environment and Natural
15 Resources addressing certain aspects of the plan and, where applicable, recommending
16 legislation to amend the plan or other relevant laws.