

HOUSE BILL NO. 779
INTRODUCED BY B. HANDS

A BILL FOR AN ACT ENTITLED: "AN ACT BANNING THE FUTURE SALE OR INSTALLATION OF MERCURY-ADDED THERMOSTATS; REQUIRING MANUFACTURERS OF MERCURY-ADDED THERMOSTATS SOLD IN MONTANA TO ESTABLISH COLLECTION AND RECYCLING PROGRAMS; REQUIRING INCENTIVES FOR RECYCLING MERCURY-ADDED THERMOSTATS; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF ENVIRONMENTAL REVIEW; AND PROHIBITING THE SALE OF THERMOSTATS BY MANUFACTURERS THAT DO NOT ESTABLISH A COLLECTION AND RECYCLING PROGRAM."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the board of environmental review provided for in 2-15-3502.
- (2) "Department" means the department of environmental quality provided for in 2-15-3501.
- (3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country.
- (4) (a) "Mercury-added 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 in residential, commercial, industrial, or other buildings.
(b) The term does not include a thermostat used to sense and control temperature as part of a manufacturing process.
- (5) "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, governmental agency, or other entity.
- (6) "Retailer" means a person that sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including but not limited to catalogues or the internet.
- (7) "Wholesaler" means a person, including a retailer, that is engaged in the distribution and wholesale

selling of large quantities of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components.

NEW SECTION. **Section 2. Rulemaking authority.** The board shall adopt rules to implement the provisions of [sections 1 through 9].

NEW SECTION. **Section 3. Manufacturer collection and recycling program -- requirements.** (1) A manufacturer of a mercury-added thermostat sold in Montana before or after [the effective date of this act] shall, individually or in cooperation with other manufacturers, establish and maintain a department-approved collection and recycling program for out-of-service mercury-added thermostats.

(2) The collection and recycling program must:

- (a) maximize the capture rate of out-of-service mercury-added thermostats;
 - (b) provide incentives, including financial incentives, to contractors, service technicians, and households to encourage the return of mercury-added thermostats to established recycling collection points;
 - (c) educate contractors, service technicians, and households regarding the benefits of capturing and recycling mercury-added thermostats;
 - (d) protect against the fraudulent return of mercury-added thermostats;
 - (e) ensure that the handling and recycling of mercury-added thermostats are performed in accordance with applicable law;
 - (f) be divided into two phases, with the first phase targeting recycling by contractors and service technicians and the second phase targeting recycling by households;
 - (g) address how the manufacturer would enlist wholesalers and retailers to participate in the program;
- and
- (h) include the maximum fee, if any, that the manufacturer would charge anyone who participates in the program or recycles a mercury-added thermostat.

(3) Collection bins must be provided to all wholesaler locations and to all household hazardous waste and waste facility locations approved by the department.

NEW SECTION. **Section 4. Financial incentives.** A financial incentive required by [section 3] must have a minimum value of \$4, to be delivered to the recycler by the manufacturer, for the return of each mercury-added thermostat. The financial incentive may include cash, rebates, discounts, coupons, or other

incentives.

NEW SECTION. Section 5. Education. (1) The collection and recycling program required by [section 3] must identify mechanisms for providing necessary information regarding the collection and recycling of mercury-added thermostats to contractors, service technicians, households, and local governments on an initial and ongoing basis and identify the appropriate persons for developing and using those mechanisms.

(2) The proposed collection and recycling program addressing households may include more than one complementary collection mechanism, such as household hazardous waste collection or a mail-back system.

NEW SECTION. Section 6. Stakeholder involvement. Prior to the submission of initial proposals required by [section 7], the department shall consult with manufacturers, wholesalers, contractors, retailers, service technicians, and environmental groups regarding the implementation of [sections 1 through 9].

NEW SECTION. Section 7. Submission and implementation requirements -- department approval. (1) The portion of the collection and recycling program required by [section 3] applicable to contractors and service technicians must be submitted to the department within 90 days of [the effective date of this act] and be operational within 1 year of [the effective date of this act].

(2) (a) The portion of the collection and recycling program required by [section 3] applicable to households must be submitted to the department within 9 months of [the effective date of this act] and be operational within 18 months of [the effective date of this act].

(b) Within 30 days after receipt of a manufacturer's collection and recycling program proposal, the department shall issue a public notice of the availability of the proposal and solicit public comment.

(3) (a) Within 90 days after receipt of a proposal, the department shall approve, conditionally approve, or disapprove the entire proposal.

(b) If the proposal is approved, with or without conditions, the manufacturer or manufacturers shall begin implementing the collection and recycling program within 30 days after receipt of approval.

(c) If the proposal is disapproved, the department shall inform the manufacturer as to the reasons for the disapproval. The manufacturer shall submit a revised plan within 30 days following the disapproval.

(d) The revised proposal must be examined pursuant to the requirements of this section.

(4) The department shall evaluate proposals submitted pursuant to this section based on the requirements of [sections 1 through 9] and whether the proposal represents the best available approach to

substantially improve mercury-added thermostat collection in Montana.

(5) In consultation with the manufacturer, the department may specify minimum safety training, operating conditions, and other requirements to ensure the safe and efficient collection of mercury-added thermostats at household hazardous waste and universal waste facilities.

NEW SECTION. Section 8. Sales and installation prohibited -- compliance. (1) The sale or installation of mercury-added thermostats in Montana is banned 1 year after [the effective date of this act].

(2) A manufacturer not in compliance with [sections 1 through 9] is prohibited from offering any thermostat for sale in this state and shall provide the necessary support to wholesalers and retailers to ensure that the manufacturer's thermostats are not offered for sale in this state.

(3) One year after [the effective date of this act], a wholesaler is forbidden from selling a thermostat in the state unless the wholesaler:

(a) acts as a collection site for mercury-added thermostats and ensures that the mercury-added thermostats are recycled in accordance with applicable laws and regulations; or

(b) participates in a manufacturer collection and recycling program approved pursuant to [section 7].

NEW SECTION. Section 9. Annual reports. (1) For each collection and recycling program approved pursuant to [section 7], the manufacturer or manufacturers associated with that program shall submit an annual report to the department, by a date to be determined by the department, that includes at a minimum:

(a) the number of mercury-added thermostats collected and recycled by that manufacturer during the previous year;

(b) the estimated total amount of mercury contained in the mercury-added thermostats collected;

(c) an evaluation of the effectiveness of the manufacturer's collection and recycling program and any incentives provided; and

(d) an accounting of the administrative costs incurred in the course of administering the collection and recycling program.

(2) (a) Within 90 days after receipt of the manufacturer's annual report, the department shall publish information on its internet website about the collection and recycling of mercury-added thermostats in the state.

(b) Information published pursuant to subsection (2)(a) may include:

(i) an estimate of how many mercury-added thermostats go out of service in the state each year;

(ii) a description of the collection programs established;

(iii) data on collection rates; and

(iv) any recommendations for changes concerning the collection and recycling of mercury-added thermostats.

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 9].

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