

**HOUSE . . . . . No. 00251**

The Commonwealth of Massachusetts

PRESENTED BY:

***Frank I. Smizik***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to mercury added thermostats.

PETITION OF:

| NAME:                          | DISTRICT/ADDRESS:              |
|--------------------------------|--------------------------------|
| <i>Jonathan Hecht</i>          | <i>29th Middlesex</i>          |
| <i>James B. Eldridge</i>       | <i>Middlesex and Worcester</i> |
| <i>Cory Atkins</i>             | <i>14th Middlesex</i>          |
| <i>Susan C. Fargo</i>          | <i>Third Middlesex</i>         |
| <i>Frank I. Smizik</i>         | <i>15th Norfolk</i>            |
| <i>Sean Garballey</i>          | <i>23rd Middlesex</i>          |
| <i>Ruth B. Balsler</i>         | <i>12th Middlesex</i>          |
| <i>Stephen Kulik</i>           | <i>1st Franklin</i>            |
| <i>Sarah K. Peake</i>          | <i>4th Barnstable</i>          |
| <i>William N. Brownsberger</i> | <i>24th Middlesex</i>          |
| <i>Peter V. Kocot</i>          | <i>1st Hampshire</i>           |
| <i>Lori A. Ehrlich</i>         | <i>8th Essex</i>               |
| <i>Michael O. Moore</i>        | <i>Second Worcester</i>        |
| <i>Tom Sannicandro</i>         | <i>7th Middlesex</i>           |
| <i>Ellen Story</i>             | <i>3rd Hampshire</i>           |

# HOUSE . . . . . No. 00251

By Mr. Smizik of Brookline, petition (accompanied by Bill, House, No. 00251) of Frank I. Smizik and others for legislation to further regulate the sale and disposal of mercury added thermostats. Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 831 OF 2009-2010.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act relative to mercury added thermostats.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Whereas, the Mercury Management Act, Chapter 190 of the Acts of 2006, prohibited the sale of  
2 mercury-added thermostats as of May 1, 2008 and prohibited their disposal.

3 Whereas, according to a 2004 study by the U.S. Environmental Protection Agency, titled  
4 “International Mercury Market Study and the Role and Impact of U.S. Environmental Policy,”  
5 more than 10 percent of the estimated mercury reservoir in the United States is in thermostats.

6 Whereas, in 2000, thermostat manufacturers General Electric, Honeywell, and White Rodgers  
7 established the Thermostat Recycling Corporation (TRC) that runs the program for collecting  
8 mercury containing thermostat discarded in Vermont. Under the TRC program, thermostat

9 wholesalers volunteer to place bins where heating, ventilation, and air conditioning (HVAC)  
10 contractors can discard thermostats.

11 Whereas, the June 2008 report by the New England Waste Managers Association (NEWMOA)  
12 on thermostat collection in New England found that only about 6% of discarded mercury-added  
13 thermostats are recycled in Massachusetts.

14 Whereas, the cost for collection and recycling of mercury-added thermostats are now borne by  
15 cities and towns, who need those funds for other municipal programs.

16 Wherefore, the Great and General court finds that the collection and recycling of discarded  
17 mercury thermostats should be paid for by the manufacturers of these products.

18 Be it enacted by the Senate and House of Representatives in General Court assembled, and by  
19 the authority of the same, as follows:

20 SECTION 1. Section 2 of chapter 21H of the General Laws, as appearing in the 2008 Official  
21 Edition, is hereby amended by inserting, after the definition of "Tipping fee" the following  
22 definitions:-

23 "Thermostat manufacturer" means any person, firm, association, partnership, corporation,  
24 governmental entity, organization, combination, or joint venture that (i) produces a thermostat in  
25 the United States of America, or (ii) serves as an importer or domestic distributor of a thermostat  
26 produced outside the United States of America.

27 "Thermostat retailer" means a person who sells thermostats of any kind directly to homeowners  
28 or other nonprofessionals in the commonwealth through any selling or distribution mechanism.

29 A retailer may also be a wholesaler if it meets the definition of wholesaler.

30 "Thermostat wholesaler" means a person that is engaged in the distribution and wholesale sale of  
31 heating, ventilation, and air-conditioning components to contractors who install heating,  
32 ventilation, and air-conditioning components.

33 SECTION 2. Section 6D of chapter 21H of the General Laws, as appearing in the 2008 Official  
34 Edition, is hereby amended by inserting, after paragraph (c) the following paragraphs:-

35 (d) Not later than July 1, 2012, every thermostat manufacturer shall, individually or as a group,  
36 develop and file with the department and implement a plan that describes the proper collection of  
37 mercury-added thermostats in accordance with chapter 21C and the department's regulations  
38 concerning hazardous waste.

39 (e) Said plans shall accomplish the following:

40 (1) An effective education and outreach program shall be developed and shall be directed  
41 toward wholesalers, retailers, contractors, and homeowners. There shall be no cost to thermostat  
42 wholesalers or thermostat retailers for education and outreach materials.

43 (2) Handling and recycling of mercury-added thermostats shall be consistent with the provisions  
44 of the universal waste rules.

45 (3) Containers for mercury-added thermostat collection shall be provided to all thermostat  
46 wholesalers. The cost to thermostat wholesalers shall be limited to an initial, reasonable one  
47 time fee per container as specified in the plan.

48 (4) Collection systems shall be provided to all collection points. Collection systems may  
49 include individual product mail-back or multiple collection containers. The cost to registered

50 collection points shall be limited to an initial, reasonable one time fee per container as specified  
51 in the plan.

52 (5) A financial incentive shall be established with a minimum value of \$5.00 for the return of  
53 each mercury-added thermostat to a thermostat wholesaler by a contractor or service technician.  
54 The financial incentive shall be in the form of cash or coupons that are redeemable by the  
55 contractor or service technician.

56 (6) A financial incentive shall be established with a minimum value of \$5.00 to homeowners or  
57 nonprofessionals for the return of each mercury-added thermostat to a collection point registered  
58 with the department. The financial incentive shall be in the form of cash or in the form of a  
59 coupon that may be redeemed for cash from the manufacturer or may be redeemed for a credit  
60 toward purchase of general merchandise in the retail location where the thermostat was returned.

61 (f) Beginning in 2013, every thermostat manufacturer shall submit an annual report to the  
62 department by April 1 of each year that includes, at a minimum, the following information:

63 (1) The number of mercury-added thermostats collected and recycled by that manufacturer  
64 during the previous calendar year.

65 (2) The estimated total amount of mercury contained in the thermostat components collected by  
66 that manufacturer in the previous calendar year.

67 (3) An evaluation of the effectiveness of the manufacturer's collection program and the financial  
68 incentive.

69 (4) An accounting of the administrative costs incurred in the course of administering the  
70 collection and recycling program and the financial incentive plan.

71 (g) Department responsibilities.

72 (1) Within 60 days of receipt of a complete application from a manufacturer, the department  
73 shall review and may grant, deny, or approve with modifications a manufacturer plan required by  
74 paragraph (e) of this section. The department shall not approve a plan unless all elements of  
75 paragraph (e) are adequately addressed. In reviewing a plan, the department may consider  
76 consistency of the plan with collection and financial incentive requirements in other states and  
77 consider consistency between manufacturer collection programs. In reviewing plans, the  
78 department shall ensure that education and outreach programs are uniform and consistent to  
79 ensure ease of implementation by thermostat wholesalers and thermostat retailers.

80 (2) The department shall establish a process under which a plan submitted by a manufacturer is,  
81 prior to plan approval, available for public review and comment for 30 days. The department  
82 shall consult with interested persons, including representatives from thermostat manufacturers,  
83 environmental groups, thermostat wholesalers, thermostat retailers, service contractors,  
84 municipalities, and solid waste districts.

85 (3) Registered collection points. The department shall maintain and post online a list of  
86 municipalities, solid waste districts, and thermostat retailers who wish to register as collection  
87 points for mercury thermostats.

88 (4) Report. Not later than January 15, 2013, and annually thereafter, the department shall submit  
89 a report on the collection and recycling of mercury-added thermostats in the state to the joint  
90 committee on the environment, natural resources and agriculture. The first annual report shall  
91 include a description and discussion of the financial incentive plan established under this section  
92 and recommendations for any statutory changes concerning the collection and recycling of

93 mercury-added thermostats. Subsequent reports must include an evaluation of the effectiveness  
94 of the thermostat collection and recycling programs established under this section, information  
95 on actual collection rates, and recommendations for any statutory changes needed to improve the  
96 collection and recycling of mercury-added thermostats. These reporting requirements may be  
97 combined with other reports on mercury that the department is required to provide to the  
98 legislature.

99 (5) Rate of collection. By July 1, 2012, the department shall estimate the number of out of  
100 service thermostats generated in Massachusetts on an annual basis, in consultation with  
101 interested persons, including representatives from thermostat manufacturers, thermostat  
102 wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and  
103 solid waste districts. Beginning July 1, 2013, should collection efforts fail to result in the  
104 collection and recycling of at least 65 percent of the out-of-service mercury-added thermostats in  
105 the state, the department shall, in consultation with interested persons, require modifications to  
106 manufacturers' collection plans in an attempt to improve collection rates in accordance with  
107 these goals.

108 (6) The department shall evaluate the compliance of all persons subject to this section by  
109 conducting audits, inspections or implementing other compliance measures it considers  
110 appropriate.

111 (h) After the plan is approved by the department, each thermostat manufacturer shall certify to  
112 the department, in writing on an annual basis, that it is implementing the plan in accordance with  
113 this section.

114 (i) Not later than January 1, 2012, thermostat manufacturers shall provide the department with  
115 the number of mercury-added thermostats in the commonwealth in calendar year 2010 and the  
116 projected numbers in the commonwealth for each calendar year thereafter until 2030.

117 (j) Thermostat manufacturers who have never sold mercury-added thermostats in Massachusetts  
118 shall be exempt from this section.

119 (k) Thermostat wholesaler and thermostat retailer responsibilities.

120 (1) Not later than July 1, 2012, a thermostat wholesaler shall not offer for final sale, sell at final  
121 sale, or distribute thermostats unless the wholesaler:

122 (A) acts as a collection site for thermostats that contain mercury; and

123 (B) promotes and utilizes the collection containers provided by thermostat manufacturers to  
124 facilitate a contractor collection program as established by this section, and all other tasks as  
125 needed to establish and maintain a cost effective manufacturer collection and financial incentive  
126 program.

127 (2) Not later than July 1, 2012, a thermostat retailer shall not offer for final sale, sell, or  
128 distribute thermostats in the state unless the thermostat retailer participates in an education and  
129 outreach program to educate consumers about the collection program for mercury thermostats.

130 (l) Sales prohibition. Beginning July 1, 2012, the following sales prohibitions shall apply to  
131 manufacturers, thermostat wholesalers, and thermostat retailers:

132 (1) A manufacturer not in compliance with this section shall be prohibited from offering any  
133 thermostat for final sale in the commonwealth, selling any thermostat at final sale in the  
134 commonwealth, or distributing any thermostat in the commonwealth. A manufacturer not in



135 compliance with this section shall provide the necessary support to thermostat wholesalers and  
136 thermostat retailers to ensure the manufacturer's thermostats are not offered for final sale, sold at  
137 final sale, or distributed in the commonwealth.

138 (2) A thermostat wholesaler or thermostat retailer shall not offer for final sale, sell at final sale,  
139 or distribute in the commonwealth any thermostat of a manufacturer that is not in compliance  
140 with this section.