

**HOUSE . . . . . No. 3556**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Martha M. Walz**

*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 prohibiting the sale, installation and disposal of mercury thermostats.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	8th Suffolk
Carl M. Sciortino, Jr.	34th Middlesex
Louis L. Kafka	8th Norfolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT PROHIBITING THE SALE, INSTALLATION AND DISPOSAL OF MERCURY 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 SECTION 1. The General Laws are hereby amended by inserting after Chapter 25 the following chapter:

2 Chapter 25D.

3 Section 1. Short title.

4 This act shall be known and may be cited as the Mercury-Free Thermostat Act.

5 Section 2. Legislative findings.

6 The General Court finds and declares as follows:

7 (1) Waterways throughout this Commonwealth have been placed under fish consumption advisory  
8 warnings due to high levels of mercury contamination.

9 (2) Human exposure to mercury from thermostats is primarily through improper disposal of items in  
10 landfills or through incineration.

11 (3) Mercury thermostats represent the largest amount of mercury in ordinary household products. A  
12 single mercury thermostat contains between three and five grams of mercury.

13 According to the Environmental Protection Agency's 2002 estimates, each year about six to eight tons of  
14 mercury from discarded thermostats end up in solid waste facilities and between one and two tons are  
15 released into the air.

16 (4) Electronic programmable thermostats that do not contain mercury are readily available and can save  
17 consumers considerable money in energy costs when used properly. Snap switch thermostats that function  
18 like mercury thermostats, but contain no mercury, are also available.

19 (5) The Commonwealth supports shared responsibility for all stakeholders including manufacturers,  
20 retailers, wholesalers, after market users, local and state governments working to resolve those issues and  
21 efforts to reduce mercury entering the atmosphere and water supply from all sources in the most  
22 cooperative and cost-effective means available.

23 (6) The nonprofit Thermostat Recycling Corporation (TRC), created and supported by thermostat  
24 manufacturers, runs a voluntary program designed to collect mercury thermostats from wholesalers. The  
25 TRC program has been operating in this Commonwealth since 2000 and has recycled almost 17,500  
26 thermostats, thereby diverting more than 140 pounds of mercury in eight years in Massachusetts. This  
27 Commonwealth has been a consistent leader in environmental legislation and formal implementation and  
28 participation will only increase the amount of diverted mercury.

29 (7) It is in the public interest to increase the scope and effectiveness of mercury thermostat collection  
30 programs through promotion and expansion of recycling efforts and banning the sale, installation and  
31 disposal of mercury thermostats in this Commonwealth.

32 Section 3. Definitions.

33 The following words and phrases when used in this act shall have the meanings given to them in this  
34 section unless the context clearly indicates otherwise:

35 "After-Market User." A business that the Department of Energy Resources determines is primarily  
36 engaged in the installation or removal of heating, ventilation and air conditioning components.

37 "Department." The Department of Energy Resources of the Commonwealth.

38 "Manufacturer." The owner of a brand name on a thermostat.

39 "Mercury thermostat." A product or device that contains mercury or a mercury compound and is used to  
40 sense and control room temperature through communication with heating, ventilating or air-conditioning  
41 equipment. The term does not include such product or device used to sense and control temperature as  
42 part of a manufacturing process.

43 "Retailer." A business that sells thermostats of any kind directly to homeowners, other nonprofessionals  
44 or contractors through any selling or distribution mechanism, including, but not limited to, sales using the  
45 Internet or catalogs. A retailer may also be a wholesaler if the retailer meets the definition of wholesaler.

46 "Wholesaler." A business that the Department of Energy Resources determines is primarily engaged in  
47 the distribution and wholesale selling of large quantities of heating, ventilation and air conditioning  
48 components to contractors who install heating, ventilation and air conditioning components.

#### 49 Section 4. Prohibiting disposal of mercury thermostats.

50 (a) General rule.--No person, municipality or operator of a solid waste treatment, processing or disposal  
51 facility or after-market user shall knowingly dispose, permit the disposal of, or send to a resource  
52 recovery facility for processing, a mercury thermostat from which the mercury has not been removed for  
53 reuse, recycling or other methods approved by the department.

54 (b) Exception.--No operator of a solid waste treatment, processing or disposal facility shall be found to  
55 have knowingly disposed of a mercury thermostat if the facility has notified customers of the ban in  
56 writing and posted signs at the facility clearly noting the prohibition.

57 (c) Construction.--This subsection shall not be construed to affect prior existing laws, rules or regulations  
58 more stringent than the provisions under subsection (a) governing the disposal of mercury, mercury  
59 thermostats and other products containing mercury.

#### 60 Section 5. Collection and recycling programs.

61 (a) Manufacturer programs.--

62 (1) Each manufacturer of mercury thermostats that have been sold in this Commonwealth shall,  
63 individually or collectively, establish and maintain a collection and recycling program for out-of-service  
64 mercury thermostats from wholesalers, contractors and retailers, service technicians, after-market users  
65 and homeowners.

66 (2) The program shall be developed in a manner that ensures to the maximum extent that:

67 (i) There is no direct cost to contractors, service technicians or homeowners for participating in the  
68 program, except that wholesalers, contractors and retailers may be assessed a nominal administrative fee  
69 to offset the cost of each collection bin for each collection location for out-of-service thermostats.

70 (ii) Information and education on proper management and recycling of mercury thermostats are provided  
71 to contractors, service technicians, wholesalers, retailers, institutions and homeowners to encourage the  
72 return of out-of-service thermostats at established recycling collection points.

73 (iii) The purchase of mercury-free programmable thermostats qualified by the Environmental Protection  
74 Agency's Energy Star program as replacements for mercury thermostats is encouraged.

75 (iv) The handling and recycling of mercury thermostats is accomplished in a manner compliant with  
76 section 4 and all other applicable Federal, State and local requirements.

77 (v) The program otherwise implements all aspects of the collection program as instructed by the  
78 department.

79 (b) Wholesaler and retailer participation.--

80 (1) Beginning one year after the effective date of this section, except as provided for in paragraph (4), a  
81 wholesaler or retailer may not sell a thermostat in this Commonwealth unless the wholesaler or retailer  
82 acts as a collection site for thermostats that contain

83 mercury.

84 (2) The Department may require that a retailer must meet the requirements of this subsection by  
85 participating as a collection site in a manufacturer collection program as described under subsection (a) or  
86 by collecting thermostats that contain mercury and managing the collected thermostats in accordance with  
87 applicable Federal and State universal waste rules.

88 (3) A retailer acting as a collection site shall provide visible signage at the site about the  
89 collection and recycling of mercury thermostats.

90 (4) A retailer that sells thermostats but chooses not to act as a collection site or participate in a  
91 manufacturer collection program as a collection site shall provide notice to consumers that recycling of  
92 mercury thermostats is required under Massachusetts law and the notice shall include the specific names  
93 and locations of any collection sites within reasonably close proximity that recycle mercury thermostats.

94 (c) Department oversight.--

95 (1) Each manufacturer shall submit to the department the collection and recycling program required under  
96 subsection (a) no later than 180 days after the effective date of this section. The proposed collection and  
97 recycling program may include appropriate enhancements to an existing program or a new program.

98 (2) If the revised collection program is not submitted by the applicable date, the manufacturer shall be  
99 considered out of compliance for the purposes of subsection (b) beginning on the date the revised plan is  
100 received by the department.

101 (3)(d) Safe management and recycling program.--The department, in cooperation with manufacturers,  
102 shall provide education and outreach to business, local government, schools and the public on proper  
103 management of mercury thermostats and other products containing mercury, including a listing of  
104 department-approved collection sites. A

105 list of department-approved collection sites shall also be distributed to wholesalers, retailers and  
106 contractors or made available on the department's internet website.

107 (e) Reporting.--

108 (1) Each manufacturer with an approved collection and recycling program shall submit an annual report  
109 to the department by June 1 of each year that includes:

110 (i) The number of mercury thermostats collected and recycled by the manufacturer pursuant to this act  
111 during the previous year.

112 (ii) The estimated total amount of mercury contained in the mercury components collected by the  
113 manufacturer pursuant to this act during the previous year.

114 (iii) An evaluation of the effectiveness of the manufacturer's collection and recycling program and any  
115 recommendations for improvements, including modifications

116 to the program.

117 (iv) Collection goals which shall be established to ensure an increase in the number of mercury  
118 thermostats collected each year until 2015 or a time that the department determines that the number of in-  
119 service thermostats is steadily declining as a result of the ban on sales and installation.

120 (2) Within 90 days after receipt of the manufacturer's annual reports, the department shall publish  
121 information in its Internet website about the collection and recycling of mercury thermostats in this  
122 Commonwealth. This information shall include:

123 (i) A description of the collection and recycling program established under this act.

124 (ii) Collection goals and data on actual collection rates.

125 (3) In conjunction with the manufacturer, the department may alter any and all elements of the 17  
126 manufacturer collection and recycling program, including, but not limited to, the number and location of  
127 the collection points and collection goals and means to achieve established goals, provided alterations are  
128 not inconsistent with the requirements of this and other applicable laws.

129 (4) The Secretary of Energy and Environmental Affairs may discontinue the requirement for the annual  
130 report pursuant to this subsection on finding that mercury thermostats no longer pose a threat to the  
131 environment and to public health.

### 132 Section 6. Penalties.

133 The department may assess civil penalties for violations of this act. The penalty shall not exceed \$2,500  
134 per day for each violation. Each day of continued violation, and each violation of any provision of this  
135 act, any rule or regulations adopted under this act, any order of the department or any condition or term of  
136 a collection and recycling program approved pursuant to this act shall constitute a separate offense and  
137 violation.