

Assembly Bill No. 2347

Passed the Assembly August 19, 2008

Chief Clerk of the Assembly

Passed the Senate August 18, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 10.2.2 (commencing with Section 25214.8.10) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2347, Ruskin. Mercury-added thermostats: collection program.

(1) Existing law prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat, as defined, unless the mercury-added thermostat meets specified criteria. A violation of the hazardous waste control laws is a crime.

This bill would enact the Mercury Thermostat Collection Act of 2008 and would require a manufacturer that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006, to establish and maintain a collection, transportation, recycling, and disposal program for out-of-service mercury-added thermostats.

The bill would authorize a manufacturer to establish a collection and recycling program individually or with other manufacturers and would require manufacturers to meet certain requirements, including, but not limited to, undertaking education and outreach efforts, developing educational and outreach materials, providing adequate incentives and education to contractors, service technicians, and homeowners to encourage return of out-of-service mercury-added thermostats to established collection locations, and on or before April 1, 2010, and on or before April 1 annually thereafter, submitting an annual report to the Department of Toxic Substances Control with specified information and publishing the annual report on the manufacturer's or program's Internet Web site.

The bill would require a wholesaler that has a physical location in the state to act as a collection location for out-of-service mercury-added thermostats, and would require a retailer or wholesaler that distributes new thermostats by mail to buyers in the state to include an Internet Web site address and toll-free

telephone number with instructions on obtaining a prepaid mail-in label with the new thermostat. A wholesaler would also be required to distribute to its customers the educational and outreach materials developed by the manufacturers.

The bill would require a contractor who installs heating, ventilation, and air-conditioning components and who removes out-of-service mercury-added thermostats to handle the thermostat in accordance with regulations, adopted pursuant to the hazardous waste control laws, and take the out-of-service mercury-added thermostat to a location with a collection bin operating in accordance with those regulations. A person demolishing a building would be required to remove the out-of-service mercury-added thermostats prior to demolition and dispose of them in the same manner.

The department would be required to adopt regulations on or before January 1, 2012, establishing performance requirements that specify collection rates and a methodology for the calculation of the numbers of out-of-service mercury-added thermostats becoming waste annually. The department would be authorized to order a manufacturer, or a group of manufacturers, to revise its collection and recycling program or to undertake actions to comply with the act.

The bill would require a manufacturer, or group of manufacturers operating a collection and recycling program, to conduct a survey, as prescribed, to provide to the department statistically valid data on the number of out-of-service mercury-added thermostats becoming waste in California buildings.

The bill would require the department to provide a notice on its Internet Web site listing manufacturers that are not in compliance with the act on July 1, 2009, and on January 1 and July 1 annually thereafter. The bill would prohibit a person from selling or offering for sale a thermostat that is manufactured by a manufacturer that is not in compliance with the act, would make that prohibition effective on the 120th day after the notice listing the manufacturer is posted on the department's Internet Web site, and would continue that prohibition until the manufacturer is no longer listed on the department's Internet Web site.

Because a violation of the act's requirements would be a crime, the bill would impose a state-mandated local program by creating new crimes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Mercury that is released into the atmosphere can be transported long distances and deposited in aquatic ecosystems, where it is methylated to methylmercury, the organic and most toxic form of mercury.

(b) Methylmercury bioaccumulates and biomagnifies in animals, including fish and humans.

(c) The March 2007 report of the Office of Environmental Health Hazard Assessment stated that fish consumption advisories exist in about 40 states, including, within California, for the San Francisco Bay and Delta, Tomales Bay, and eight other county water bodies, and more locations may be included as more fish and water bodies are tested.

(d) Methylmercury is a known neurotoxin to which the human fetus is very sensitive.

(e) The federal Centers for Disease Control and Prevention estimate that between 300,000 and 630,000 infants are born in the United States each year with mercury levels that are associated, at later ages, with the loss of IQ.

(f) New evidence indicates that methylmercury exposure may increase the risk of cardiovascular disease in humans, especially adult men.

(g) According to a 2004 study by the federal Environmental Protection Agency, more than 10 percent of the estimated mercury reservoir still currently in use in the United States resides in mercury-added thermostats.

(h) Decreases in local and regional sources of mercury emissions have been shown to lead to decreases in mercury levels in fish and wildlife.

(i) As of January 1, 2006, state law banned the sale of new mercury-added thermostats for most uses, but the long lifetime of thermostats means that many of them are still in use.

(j) State law bans the disposal of mercury-added thermostats in solid waste landfills, but according to an estimate by the Department of Toxic Substances Control, less than 5 percent of the mercury-added thermostats removed from buildings in the state are turned in to the Thermostat Recycling Corporation (TRC) collection program.

(k) In 1998, thermostat makers General Electric, Honeywell, and White Rodgers, established the TRC to implement a program for collecting used mercury-added thermostats. Under the TRC program, thermostat wholesalers and contractors volunteer to collect thermostats from heating, ventilating, and air-conditioning contractors, and the general public. In 2007, the manufacturer Nordyne joined the program and the TRC expanded its voluntary program to household hazardous waste facilities.

(l) The California Integrated Waste Management Board adopted an Overall Framework for an Extended Producer Responsibility (EPR) guidance document as a policy priority in September 2007 and approved refinements in January 2008.

(m) The EPR framework recognizes that the responsibility for the end-of-life management of discarded products and materials rests primarily with the producers, thereby incorporating costs of product collection, recycling, and disposal into the total product costs so as to have a reduced impact on human health and the environment.

(n) Producers that historically manufactured, branded, and sold mercury-added thermostats in California before 2006 have a responsibility to collect out-of-service mercury-added thermostats and ensure that they are properly handled and recycled.

SEC. 2. Article 10.2.2 (commencing with Section 25214.8.10) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.2.2. Mercury Thermostat Collection Act of 2008

25214.8.10. This article shall be known, and may be cited, as the Mercury Thermostat Collection Act of 2008.

25214.8.11. For purposes of this article, the following definitions shall apply:

(a) “Manufacturer” means a business concern that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006.

(b) “Mercury-added thermostat” has the same meaning as defined in paragraph (2) of subdivision (b) of Section 25214.8.1.

(c) “Out-of-service mercury-added thermostat” means a mercury-added thermostat that is removed from a building or facility in this state and is intended to be discarded.

(d) “Program” means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.

(e) “Retailer” means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including, but not limited to, a sale using catalogs or the Internet. A retailer may be a wholesaler if the person meets the definition of a wholesaler set forth in subdivision (g).

(f) “Thermostat” means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. “Thermostat” includes a thermostat 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.

(g) “Wholesaler” means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components, and whose total wholesale sales account for 80 percent or more of total sales. A manufacturer, as defined by this section, is not a wholesaler.

25214.8.12. (a) (1) A manufacturer shall establish and maintain a program for out-of-service mercury-added thermostats in compliance with this article.

(2) A manufacturer may establish a collection and recycling program for out-of-service mercury-added thermostats individually or collectively with other manufacturers.

(3) A manufacturer, or a group of manufacturers operating a program collectively, may contract with a retailer for in-store or out-of-store collection of out-of-service mercury-added thermostats.

(b) (1) A person shall not sell or offer for sale in this state a thermostat that is produced by a manufacturer that is not in compliance with this article.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) listing a manufacturer is posted on the department's Internet Web site and shall remain in effect until the manufacturer is no longer listed on the department's Internet Web site.

(c) On July 1, 2009, and on January 1 and July 1 annually thereafter, the department shall post a notice on its Internet Web site listing manufacturers that are not in compliance with this article.

(d) A wholesaler or a retailer that distributes or sells mercury-added thermostats shall monitor the department's Internet Web site to determine if the sale of a manufacturer's thermostats is in compliance with this section.

25214.8.13. Each manufacturer shall individually, or collectively with other manufacturers, do all of the following:

(a) Collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with this chapter and the regulations adopted pursuant to this chapter.

(b) On and after July 1, 2009, provide collection bins for out-of-service mercury-added thermostat collection to wholesalers at a cost not to exceed twenty-five dollars (\$25).

(c) On and after July 1, 2009, make collection bins available at no cost for out-of-service mercury-added thermostats to any local governmental agency that requests a collection bin for use at household hazardous waste collection facilities or household hazardous waste events.

(d) Either arrange for pick up of the collection bins, or pay for the costs of shipping the collection bins provided pursuant to subdivisions (b) and (c) for proper handling and recycling.

(e) From July 1, 2009, to December 31, 2011, inclusive, undertake education and outreach efforts, including, but not limited to, all of the following:

(1) A public service announcement promoting the proper management of out-of-service mercury-added thermostats. Copies

of the public service announcement shall be provided to the department and the California Integrated Waste Management Board for their use and promotion.

(2) The establishment of a public Internet Web site. Templates of educational materials shall be posted on the Internet Web site that are in a form and format that can be easily downloaded. A link to the Internet Web site shall be provided to the department and the California Integrated Waste Management Board.

(3) Methods used to engage other stakeholders such as waste, demolition, heating, ventilation, and air-conditioning organizations, as well as appropriate state agencies and local governments to secure support and participation to encourage the proper management of out-of-service mercury-added thermostats throughout California.

(4) Strategies to work with California utilities participating in demand response programs involving the replacement of thermostats to encourage their participation in the collection and proper management of out-of-service mercury-added thermostats. These strategies may include the inclusion of an educational insert in their customers' utility bills.

(5) Contacting wholesalers in California and encouraging their support and participation in educating their customers on the proper management of out-of-service mercury-added thermostats.

(6) Strategies used to encourage support and participation by retailers and other outlets to educate consumers on the proper management of out-of-service mercury-added thermostats.

(f) On or before July 1, 2009, develop, and update as necessary, educational and other outreach materials aimed at heating, ventilation, and air-conditioning contractors, demolition contractors, and their associations, municipal utility districts, and homeowners. Those materials shall be made available to participating retailers, all wholesalers, and household hazardous waste programs. These materials shall include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer and contractors.

(2) Written materials and templates of materials for reproduction by retailers and wholesalers to be provided to the consumer at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials shall include information on the

prohibition of improper disposal of mercury-added thermostats, the proper management of out-of-service mercury-added thermostats, and the locations of collection opportunities.

(3) Advertising or other promotional materials, or both, that include references to the collection opportunities.

(4) Materials to be used in direct communications with the consumer and contractor at the time of purchase.

(g) Provide incentives and education to contractors, service technicians, and homeowners to encourage the return of out-of-service mercury-added thermostats to established collection locations.

(h) Encourage the purchase of programmable thermostats that comply with Part 6 (commencing with Section 100) of Title 24 of the California Building Standards Code and that qualify for the Energy Star program of the federal Environmental Protection Agency, as replacements for mercury-added thermostats.

(i) On or before April 1, 2010, and on or before April 1 annually thereafter, submit an annual report to the department covering the one-year period ending December 31st of the previous calendar year. Each report shall be posted on the manufacturer's or program's Internet Web site. The annual report shall include all of the following:

(1) The number of out-of-service mercury-added thermostats collected in California during the previous calendar year.

(2) The estimated total amount of mercury contained in the collected out-of-service mercury-added thermostats.

(3) An evaluation of the effectiveness of the program.

(4) Commencing with the report due April 1, 2013, a comparison to the performance requirements for collection established pursuant to subdivision (b) of Section 25214.8.17.

(5) An accounting of the program administrative costs, including a copy of Internal Revenue Service Form 990 for a nonprofit organization's program. For a for-profit organization's program, the manufacturer, or group of manufacturers operating a program, shall submit independently audited financial statements detailing revenues and a full accounting of administrative costs incurred.

(6) A description of the outreach strategies employed to increase participation and collection rates.

(7) Examples of outreach and educational materials used.

(8) Names and locations of all participating collection locations.

(9) The number of out-of-service mercury-added thermostats collected at each collection location.

(10) The Internet Web site address where the annual report may be viewed online.

(11) A description of how the collected out-of-service mercury-added thermostats were managed.

(12) Modifications that the manufacturer is proposing to make in its collection and recycling program.

25214.8.14. (a) A wholesaler that has a physical location in the state shall act as a collection location for out-of-service mercury-added thermostats.

(b) A retailer or wholesaler that distributes new thermostats by mail to buyers in the state shall include with the sale of the new thermostat, an Internet Web site address and toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.

(c) A wholesaler shall distribute the educational and outreach materials developed pursuant to Section 25214.8.13 to its customers.

25214.8.15. A contractor who installs heating, ventilation, and air-conditioning components and who removes a mercury-added thermostat shall handle the thermostat in accordance with the regulations adopted pursuant to this chapter, and take the out-of-service mercury-added thermostat to a location with a collection bin operating in accordance with those regulations.

25214.8.16. A person who demolishes a building shall remove any mercury-added thermostats from the building prior to demolition in accordance with all applicable regulations adopted pursuant to this chapter, and take the out-of-service mercury-added thermostat to a location that is authorized to collect out-of-service mercury-added thermostats.

25214.8.17. (a) The department may order a manufacturer, or a group of manufacturers operating a program, to revise its program and to undertake actions to comply with this article.

(b) On or before January 1, 2012, the department shall adopt regulations for all of the following:

(1) To develop performance requirements that specify collection rates expressed as a percentage of out-of-service mercury-added thermostats becoming waste annually.

(2) To establish a methodology for the calculation of the number of out-of-service mercury-added thermostats becoming waste annually.

25214.8.18. On or before March 1, 2009, a manufacturer, or a group of manufacturers operating a program, shall present to the department a survey plan and methodology for a survey to provide statistically valid data on the number of mercury-added thermostats that become waste annually in California. The manufacturer or group of manufacturers shall complete the survey by December 1, 2009, and shall present all survey data to the department by December 31, 2009.

25214.8.20. It is the intent of this article to provide for the collection and recycling of the maximum feasible number of out-of-service mercury-added thermostats.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2008

Governor