

By: Allen, Turner of Harris, Weber, Edwards

H.B. No. 4056

Substitute the following for H.B. No. 4056:

By: Farrar

C.S.H.B. No. 4056

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of a program for the collection,
3 transportation, recycling, and disposal of mercury-added
4 thermostats.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 361, Health and Safety Code, is amended
7 by adding Subchapter Z to read as follows:

8 SUBCHAPTER Z. MERCURY-ADDED THERMOSTAT COLLECTION PROGRAM

9 Sec. 361.971. DEFINITIONS. In this subchapter:

10 (1) "Manufacturer" means a business concern that owns
11 or owned a name brand of mercury-added thermostats sold in this
12 state.

13 (2) "Mercury-added thermostat" means a thermostat
14 that uses a mercury switch to sense and control room temperature
15 through communication with heating, ventilating, or
16 air-conditioning equipment in residential, commercial, industrial,
17 or other buildings. The term does not include a thermostat used to
18 sense and control temperature as part of a manufacturing process.

19 (3) "Out-of-service mercury-added thermostat" means a
20 mercury-added thermostat that is removed from a building in this
21 state and is intended to be discarded.

22 (4) "Retailer" means a person who sells thermostats
23 directly to a consumer through a selling or distribution mechanism,
24 including a sale using a catalog or the Internet.

1 (5) "Thermostat" means a device that uses a switch to
2 sense and control room temperature in a residential, commercial,
3 industrial, or other building through communication with heating,
4 ventilating, or air-conditioning equipment.

5 (6) "Wholesaler" means a person engaged in the
6 distribution and wholesale selling of heating, ventilation, and
7 air-conditioning components to contractors who install heating,
8 ventilation, and air-conditioning components and whose total
9 wholesale sales account for 80 percent or more of total sales. The
10 term does not include a manufacturer.

11 Sec. 361.972. MERCURY-ADDED THERMOSTAT RECYCLING. A person
12 who removes a mercury-added thermostat from service shall:

13 (1) handle the thermostat in accordance with this
14 subchapter and rules adopted under this subchapter; and

15 (2) take the thermostat to a point of collection with a
16 collection bin operating in accordance with this subchapter and
17 rules adopted under this subchapter.

18 Sec. 361.973. MANUFACTURER PROGRAMS FOR OUT-OF-SERVICE
19 MERCURY-ADDED THERMOSTATS. (a) Each manufacturer of mercury-added
20 thermostats that have been sold in this state shall, individually
21 or collectively with other manufacturers, establish and maintain a
22 collection and recycling program for out-of-service mercury-added
23 thermostats. Each manufacturer, individually or collectively with
24 other manufacturers, is responsible for collecting, handling,
25 transporting, and recycling or disposing of out-of-service
26 mercury-added thermostats through a program in accordance with this
27 subchapter and rules adopted under this subchapter.

1 (b) A manufacturer or a group of manufacturers operating a
2 program collectively may contract with a retailer to provide a
3 point of collection for out-of-service mercury-added thermostats,
4 either in the retailer's place of business or elsewhere.

5 Sec. 361.974. COLLECTION BINS. A manufacturer's program
6 established under Section 361.973 shall:

7 (1) provide collection bins for out-of-service
8 mercury-added thermostat collection to:

9 (A) wholesalers, at a one-time administrative
10 fee not to exceed \$40; and

11 (B) a local government that requests a collection
12 bin for use at a household hazardous waste collection facility or a
13 household hazardous waste event, at a one-time administrative fee
14 not to exceed \$40; and

15 (2) arrange for either:

16 (A) the pickup of the contents of the collection
17 bins provided pursuant to this section for proper handling and
18 recycling; or

19 (B) the payment of the costs of shipping the
20 collection bins provided under this section for proper handling and
21 recycling in accordance with the program.

22 Sec. 361.975. INITIAL PROGRAM EDUCATION AND OUTREACH. (a)
23 A manufacturer's program established under Section 361.973, in
24 accordance with commission rules, shall:

25 (1) establish and provide to the commission the
26 address of a public Internet website through which visitors can
27 easily download templates of educational materials;

1 (2) to encourage greater participation in the proper
2 management of out-of-service mercury-added thermostats in this
3 state, undertake to engage other stakeholders, including waste,
4 demolition, heating, ventilation, and air-conditioning
5 organizations, and appropriate state agencies and local
6 governments;

7 (3) work with utilities or their contractors in this
8 state that are participating in demand response programs involving
9 thermostat replacement to encourage the utilities' participation
10 in the collection and proper management of out-of-service
11 mercury-added thermostats;

12 (4) encourage utilities to include an educational
13 insert in customers' utility bills;

14 (5) encourage wholesalers to support and participate
15 in educating customers on the proper management of out-of-service
16 mercury-added thermostats;

17 (6) encourage retailers to support and participate in
18 educating consumers on the proper management of out-of-service
19 mercury-added thermostats; and

20 (7) undertake other educational or outreach efforts
21 required by commission rule.

22 (b) This section expires January 1, 2012.

23 Sec. 361.976. EDUCATIONAL AND OUTREACH MATERIALS. (a) A
24 manufacturer's program established under Section 361.973, in
25 accordance with commission rules, shall develop, update as
26 necessary, and make available to participating retailers,
27 participating wholesalers, and participating household hazardous

1 waste programs educational and other outreach materials for:

2 (1) heating, ventilation, and air-conditioning
3 contractors, demolition contractors, and associations of those
4 contractors;

5 (2) utilities and local governments that provide
6 utility services or household hazardous waste programs; and

7 (3) homeowners.

8 (b) Materials developed and made available under Subsection
9 (a) must include at least one of the following:

10 (1) signs designed for prominent, easily visible
11 display for viewing by consumers and contractors;

12 (2) written materials or templates of materials for
13 reproduction by participating retailers and participating
14 wholesalers to be provided to the consumer at the time of purchase
15 or delivery of a thermostat that include information on:

16 (A) prohibited generator methods of disposing of
17 mercury-added thermostats;

18 (B) proper management of out-of-service
19 mercury-added thermostats;

20 (C) locations where out-of-service mercury-added
21 thermostats are collected for proper handling, recycling, or
22 disposal; and

23 (D) energy-efficient thermostats as replacements
24 for mercury-added thermostats;

25 (3) advertising or promotional materials that inform
26 about out-of-service mercury-added thermostat collection
27 opportunities; or

1 (4) materials to be used in direct communications with
2 the consumer and contractor at the time a thermostat is purchased.

3 Sec. 361.977. COLLECTION INCENTIVES AND EDUCATION. A
4 manufacturer's program established under Section 361.973 shall
5 provide nonfinancial incentives and education to contractors and
6 service technicians to encourage the return of out-of-service
7 mercury-added thermostats to established points of collection.

8 Sec. 361.978. PROGRESS REPORT. (a) On or before April 1 of
9 each year, a manufacturer, through a program established under
10 Section 361.973, shall submit to the commission and post on the
11 program's Internet website a report that includes:

12 (1) the number of out-of-service mercury-added
13 thermostats the program collected in this state during the
14 preceding calendar year;

15 (2) the estimated total amount of mercury contained in
16 the out-of-service mercury-added thermostats the program collected
17 during the preceding calendar year;

18 (3) an evaluation of the effectiveness of the program;

19 (4) an accounting of the program's administrative
20 costs that includes:

21 (A) for a nonprofit organization's program, a
22 copy of Internal Revenue Service Form 990; or

23 (B) for a for-profit organization's program,
24 independently audited financial statements detailing revenues and
25 a full accounting of administrative costs incurred;

26 (5) a description of the outreach strategies employed
27 to increase participation and collection rates;

1 (6) examples of outreach and educational materials
2 used;

3 (7) names and locations of all participating points of
4 collection;

5 (8) the number of out-of-service mercury-added
6 thermostats collected at each point of collection;

7 (9) the Internet website address at which the annual
8 report may be viewed online;

9 (10) a description of how the collected out-of-service
10 mercury-added thermostats were managed; and

11 (11) beginning with the report due April 1, 2012, a
12 comparison of collections to the collection goals established under
13 this section.

14 (b) With the first progress report due under Subsection (a),
15 a manufacturer, individually or collectively with other
16 manufacturers, shall submit to the commission collection goals that
17 ensure an increase in the number of mercury-added thermostats
18 collected each year until 2016 or until a time the commission
19 determines that the number of in-service mercury-added thermostats
20 is steadily declining as a result of the ban on sales and
21 installation of mercury-added thermostats.

22 (c) The commission shall use the progress reports required
23 by this section to determine whether collection goals are being
24 met. If collection goals are not met, the commission may require
25 modifications to a manufacturer's collection plans in an attempt to
26 improve collection rates.

27 (d) The manufacturer or group of manufacturers operating a

1 program shall post the progress report submitted under this section
2 on a public Internet website.

3 (e) The commission shall post progress reports submitted
4 under this section on the commission's Internet website or provide
5 a link to the public Internet website described by Subsection (d).

6 (f) The commission by rule shall establish a review
7 procedure that includes:

8 (1) notice of the review procedure and timeline,
9 including notice of the opportunity for public comment to be posted
10 on the commission's Internet website; and

11 (2) a period for public comment that extends at least
12 90 days from the date the commission posts progress reports
13 submitted under this section.

14 (g) The commission shall review and consider the progress
15 reports and the public comments submitted under this section. The
16 commission shall consider each progress report's consistency with
17 other thermostat manufacturers' collection programs in this state
18 and in other states. The commission may consult with thermostat
19 manufacturers, thermostat wholesalers, thermostat technicians,
20 thermostat retailers, environmental interest groups, and local
21 governments to solicit additional comments.

22 (h) The commission may discontinue the requirement for the
23 progress report under this section if the commission finds, based
24 on diminished returns of thermostats, that mercury-added
25 thermostats no longer pose a threat to the environment and public
26 health in this state.

27 Sec. 361.979. COMMISSION'S EDUCATION RESPONSIBILITIES.

1 (a) The commission may provide outreach to educate consumers
2 regarding the collection and recycling requirement for
3 out-of-service mercury-added thermostats.

4 (b) The commission shall provide a link on the commission's
5 Internet website for a program operated by a manufacturer or group
6 of manufacturers by which consumers, contractors, retailers, and
7 wholesalers are provided information about the recycling of
8 out-of-service mercury-added thermostats.

9 Sec. 361.980. THERMOSTAT SALES PROHIBITED; LIST OF
10 NONCOMPLIANT MANUFACTURERS. (a) A person may not sell or offer for
11 sale in this state a thermostat that is produced by a manufacturer
12 that has been listed on the commission's Internet website as a
13 noncompliant manufacturer for 120 or more consecutive days.

14 (b) On January 2 and July 1 of each year, the commission
15 shall post a list on its Internet website of manufacturers that are
16 not in compliance with this subchapter.

17 (c) A wholesaler or retailer that distributes or sells
18 thermostats shall monitor the commission's Internet website to
19 determine whether the sale of a manufacturer's thermostat is in
20 compliance with this subchapter.

21 Sec. 361.981. WHOLESALER DUTY: POINT OF COLLECTION. A
22 wholesaler that conducts business from a physical location in this
23 state shall provide at each of its places of business in this state
24 a point of collection for out-of-service mercury-added
25 thermostats.

26 Sec. 361.982. DISTRIBUTION OF INFORMATION ON POINTS OF
27 COLLECTION. A retailer or wholesaler that distributes new

1 thermostats by mail to buyers in this state shall include with the
2 sale of the new thermostat an Internet website address and
3 toll-free telephone number with instructions on obtaining a prepaid
4 mail-in label that a consumer may use to send an out-of-service
5 mercury-added thermostat to a point of collection for mercury-added
6 thermostats.

7 Sec. 361.983. WHOLESALER DISTRIBUTION OF EDUCATIONAL AND
8 OUTREACH MATERIALS. A wholesaler shall distribute the educational
9 and outreach materials developed and made available under Section
10 361.976 to its customers.

11 Sec. 361.984. AIR-CONDITIONING AND REFRIGERATION
12 CONTRACTOR RESPONSIBILITIES. (a) In this section,
13 "air-conditioning and refrigeration contractor" has the meaning
14 assigned by Section 1302.002, Occupations Code.

15 (b) An air-conditioning and refrigeration contractor who
16 removes a mercury-added thermostat shall:

17 (1) handle the thermostat in accordance with this
18 subchapter and rules adopted under this subchapter; and

19 (2) take the thermostat to a point of collection with a
20 collection bin operating in accordance with this subchapter and
21 rules adopted under this subchapter.

22 Sec. 361.985. MANUFACTURERS' COMPLIANCE ASSURANCE. The
23 commission may require a manufacturer or group of manufacturers
24 operating a program established under Section 361.973 to revise the
25 collection and recycling program and to take other necessary
26 actions to comply with this subchapter.

27 Sec. 361.986. AIR-CONDITIONING AND REFRIGERATION

1 CONTRACTOR COMPLIANCE. (a) In this section, "air-conditioning and
2 refrigeration contractor" has the meaning assigned by Section
3 1302.002, Occupations Code.

4 (b) The commission is responsible for ensuring compliance
5 with Section 361.984.

6 (c) The Texas Department of Licensing and Regulation shall
7 refer to the commission any complaints filed with that department
8 and any other information obtained by that department against an
9 air-conditioning and refrigeration contractor related to a
10 violation of Section 361.984.

11 Sec. 361.987. COMMISSION REPORT. Not later than August 1 of
12 each year, the commission shall compile information from progress
13 reports and comments received under Section 361.978 and issue an
14 electronic report to the committee in each house of the legislature
15 that has primary jurisdiction over environmental matters.

16 Sec. 361.988. SIGNAGE ON RECYCLING COLLECTION REQUIREMENT.
17 An operator of a solid waste treatment, processing, or disposal
18 facility shall notify the facility's customers of the requirement
19 under Section 361.972 to take an out-of-service mercury-added
20 thermostat to a point of collection by posting at the facility signs
21 that clearly note the requirement.

22 SECTION 2. (a) A manufacturer's program established
23 individually or collectively under Section 361.973, Health and
24 Safety Code, as added by this Act, is required to provide collection
25 bins as provided by Section 361.974, Health and Safety Code, as
26 added by this Act, only on and after July 1, 2010.

27 (b) A manufacturer's program established individually or

1 collectively under Section 361.973, Health and Safety Code, as
2 added by this Act, is required to perform the duties provided by
3 Section 361.975, Health and Safety Code, as added by this Act, only
4 on and after July 1, 2010.

5 (c) A manufacturer's program established individually or
6 collectively under Section 361.973, Health and Safety Code, as
7 added by this Act, is required to develop, update, and make
8 available educational and outreach materials as provided by Section
9 361.976, Health and Safety Code, as added by this Act, only on and
10 after July 1, 2010.

11 (d) The first progress report required by Section 361.978,
12 Health and Safety Code, as added by this Act, is due April 1, 2011.

13 (e) The Texas Commission on Environmental Quality shall
14 begin posting the commission's list of noncompliant manufacturers
15 as provided by Section 361.980, Health and Safety Code, as added by
16 this Act, on July 1, 2010.

17 (f) The Texas Commission on Environmental Quality shall
18 issue the first report required by Section 361.987, Health and
19 Safety Code, as added by this Act, not later than August 1, 2011.

20 SECTION 3. This Act takes effect September 1, 2009.