

By: Allen

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

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

21 (5) "Thermostat" means a device that uses a switch to
22 sense and control room temperature in a residential, commercial,
23 industrial, or other building through communication with heating,
24 ventilating, or air-conditioning equipment. The term does not

1 include a thermostat used to sense and control temperature as part
2 of a manufacturing process.

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

9 Sec. 361.972. MANUFACTURER PROGRAMS FOR OUT-OF-SERVICE
10 MERCURY-ADDED THERMOSTATS. (a) A manufacturer shall establish,
11 finance, manage, and maintain a program for the collection,
12 transportation, recycling, and disposal of out-of-service
13 mercury-added thermostats in accordance with this subchapter,
14 either individually or collectively with other manufacturers. Each
15 manufacturer is responsible for collecting, handling,
16 transporting, and recycling or disposing of out-of-service
17 mercury-added thermostats through a program in accordance with this
18 subchapter and rules adopted under this subchapter.

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

23 Sec. 361.973. COLLECTION BINS. A manufacturer's program
24 established under Section 361.972 shall:

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

27 (A) wholesalers, at a cost not to exceed \$25; and

1 (B) a local government that requests a collection
2 bin for use at a household hazardous waste collection facility or a
3 household hazardous waste event, at no cost to the local
4 government; and

5 (2) arrange to:

6 (A) collect the contents of the collection bins
7 provided under this section for proper handling, recycling, or
8 disposal; or

9 (B) pay the costs of shipping the contents of the
10 collection bins provided under this section for proper handling,
11 recycling, or disposal.

12 Sec. 361.974. PROGRAM EDUCATION AND OUTREACH. (a) A
13 manufacturer's program established under Section 361.972, in
14 accordance with commission rules, shall:

15 (1) make a public service announcement promoting the
16 proper management of out-of-service mercury-added thermostats and
17 provide copies of the announcement to the commission for its use and
18 promotion;

19 (2) establish and provide to the commission the
20 address of a public Internet website through which visitors can
21 easily download templates of educational materials;

22 (3) to encourage greater participation in the proper
23 management of out-of-service mercury-added thermostats throughout
24 this state, undertake to engage other stakeholders, including
25 waste, demolition, heating, ventilation, and air-conditioning
26 organizations, and appropriate state agencies and local
27 governments;

1 (4) work with utilities in this state that are
2 participating in demand response programs involving thermostat
3 replacement to encourage the utilities' participation in the
4 collection and proper management of out-of-service mercury-added
5 thermostats;

6 (5) encourage utilities to include an educational
7 insert in customers' utility bills;

8 (6) encourage wholesalers to support and participate
9 in educating customers on the proper management of out-of-service
10 mercury-added thermostats;

11 (7) encourage retailers' support and participation in
12 educating consumers on the proper management of out-of-service
13 mercury-added thermostats; and

14 (8) undertake other educational or outreach efforts
15 required by commission rule.

16 (b) This section expires January 1, 2013.

17 Sec. 361.975. EDUCATIONAL AND OUTREACH MATERIALS. (a) A
18 manufacturer's program established under Section 361.972, in
19 accordance with commission rules, shall develop, update as
20 necessary, and make available to retailers, wholesalers, and
21 household hazardous waste programs educational and other outreach
22 materials for:

23 (1) heating, ventilation, and air-conditioning
24 contractors, demolition contractors, and associations of those
25 contractors;

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

1 (3) homeowners.

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

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

6 (2) written materials and templates of materials for
7 reproduction by retailers and wholesalers to be provided to the
8 consumer at the time of purchase or delivery of a thermostat that
9 include information on:

10 (A) prohibited methods of disposing of
11 mercury-added thermostats;

12 (B) proper management of out-of-service
13 mercury-added thermostats; and

14 (C) locations where out-of-service mercury-added
15 thermostats are collected for proper handling, recycling, or
16 disposal;

17 (3) advertising or promotional materials that inform
18 about out-of-service mercury-added thermostat collection
19 opportunities; or

20 (4) materials to be used in direct communications with
21 the consumer and contractor at the time a mercury-added thermostat
22 is purchased.

23 Sec. 361.976. COLLECTION INCENTIVES AND EDUCATION. A
24 manufacturer's program established under Section 361.972 shall
25 provide incentives and education to contractors, service
26 technicians, and homeowners to encourage the return of
27 out-of-service mercury-added thermostats to established points of

1 collection.

2 Sec. 361.977. PROGRAMMABLE REPLACEMENT THERMOSTATS. A
3 manufacturer's program established under Section 361.972 shall
4 encourage the purchase of programmable thermostats that comply with
5 applicable building codes and that qualify for the Energy Star
6 program of the United States Environmental Protection Agency as
7 replacements for mercury-added thermostats.

8 Sec. 361.978. PROGRESS REPORT. On or before April 1 of each
9 year, a manufacturer, through a program established under Section
10 361.972, shall submit to the commission and post on the program's
11 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) beginning with the report due April 1, 2014, a
20 comparison to the performance standards for collection established
21 under Section 361.986;

22 (5) an accounting of the program's administrative
23 costs that includes:

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

26 (B) for a for-profit organization's program,
27 independently audited financial statements detailing revenues and

- 1 a full accounting of administrative costs incurred;
2 (6) a description of the outreach strategies employed
3 to increase participation and collection rates;
4 (7) examples of outreach and educational materials
5 used;
6 (8) names and locations of all participating points of
7 collection;
8 (9) the number of out-of-service mercury-added
9 thermostats collected at each point of collection;
10 (10) the Internet website address at which the annual
11 report may be viewed online;
12 (11) a description of how the collected out-of-service
13 mercury-added thermostats were managed; and
14 (12) modifications that the manufacturer is proposing
15 to make in its collection and recycling program.

16 Sec. 361.979. THERMOSTAT SALES PROHIBITED; LIST OF
17 NONCOMPLIANT MANUFACTURERS. (a) A person may not sell or offer for
18 sale in this state a thermostat that is produced by a manufacturer
19 that has been listed on the commission's Internet website as a
20 noncompliant manufacturer for 120 or more consecutive days.

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

24 (c) A wholesaler or retailer that distributes or sells
25 mercury-added thermostats shall monitor the commission's Internet
26 website to determine whether the sale of a manufacturer's
27 thermostats is in compliance with this subchapter.

1 Sec. 361.980. WHOLESALER DUTY: POINT OF COLLECTION. A
2 wholesaler that conducts business from a physical location in this
3 state shall provide at each of its places of business in this state
4 a point of collection for out-of-service mercury-added
5 thermostats.

6 Sec. 361.981. DISTRIBUTION OF INFORMATION ON POINTS OF
7 COLLECTION. A retailer or wholesaler that distributes new
8 thermostats by mail to buyers in this state shall include with the
9 sale of the new thermostat an Internet website address and
10 toll-free telephone number with instructions on obtaining a prepaid
11 mail-in label that a consumer may use to send an out-of-service
12 mercury-added thermostat to a point of collection for mercury-added
13 thermostats.

14 Sec. 361.982. WHOLESALER DISTRIBUTION OF EDUCATIONAL AND
15 OUTREACH MATERIALS. A wholesaler shall distribute the educational
16 and outreach materials developed and made available under Section
17 361.975 to its customers.

18 Sec. 361.983. CONTRACTOR RESPONSIBILITIES. A contractor
19 who installs heating, ventilation, and air-conditioning components
20 and who removes a mercury-added thermostat shall handle the
21 thermostat in accordance with rules adopted under this subchapter
22 and take the thermostat to a point of collection with a collection
23 bin operating in accordance with those rules.

24 Sec. 361.984. RESPONSIBILITIES OF PERSON WHO DEMOLISHES
25 BUILDING. A person who demolishes a building shall remove any
26 mercury-added thermostats from the building before demolition in
27 accordance with all applicable rules adopted under this subchapter

1 and take the thermostats to a point of collection that is authorized
2 to collect out-of-service mercury-added thermostats.

3 Sec. 361.985. COMMISSION ORDER. The commission may order a
4 manufacturer or group of manufacturers operating a program to
5 revise the program and to take other necessary actions to comply
6 with this subchapter.

7 Sec. 361.986. COMMISSION PERFORMANCE STANDARDS. The
8 commission by rule shall:

9 (1) develop performance standards that specify
10 collection rates expressed as a percentage of out-of-service
11 mercury-added thermostats becoming waste annually; and

12 (2) establish a methodology to estimate the number of
13 out-of-service mercury-added thermostats becoming waste annually.

14 Sec. 361.987. SURVEY REGARDING MERCURY-ADDED THERMOSTATS
15 THAT BECOME WASTE. (a) Not later than March 1, 2010, a manufacturer
16 or group of manufacturers operating a program shall present to the
17 commission a survey plan and methodology for a survey to provide
18 statistically valid data on the number of mercury-added thermostats
19 made by the manufacturer or group of manufacturers that become
20 waste annually in this state.

21 (b) The manufacturer or group of manufacturers shall
22 complete the survey not later than December 1, 2010, and shall
23 present all of the survey information to the commission not later
24 than December 31, 2010.

25 (c) This section expires January 1, 2011.

26 SECTION 2. (a) A manufacturer's program established under
27 Section 361.972, Health and Safety Code, as added by this Act, is

1 required to provide collection bins as provided by Section 361.973,
2 Health and Safety Code, as added by this Act, only on and after July
3 1, 2010.

4 (b) A manufacturer's program established under Section
5 361.972, Health and Safety Code, as added by this Act, is required
6 to perform the duties provided by Section 361.974, Health and
7 Safety Code, as added by this Act, only on and after July 1, 2010.

8 (c) A manufacturer's program established under Section
9 361.972, Health and Safety Code, as added by this Act, is required
10 to develop, update, and make available educational and outreach
11 materials as provided by Section 361.975, Health and Safety Code,
12 as added by this Act, only on and after July 1, 2010.

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

15 (e) The Texas Commission on Environmental Quality shall
16 begin posting the commission's list of noncompliant manufacturers
17 as provided by Section 361.979, Health and Safety Code, as added by
18 this Act, on July 1, 2010.

19 (f) The Texas Commission on Environmental Quality shall
20 adopt the commission's performance standards and methodology
21 required by Section 361.986, Health and Safety Code, as added by
22 this Act, not later than January 1, 2013.

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