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H.B. No. 695

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) "Air-conditioning and refrigeration contractor"  
11 has the meaning assigned by Section 1302.002, Occupations Code.

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

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

21 (4) "Out-of-service mercury-added thermostat" means a  
22 mercury-added thermostat that is removed from service in this state  
23 and is intended to be discarded.

24 (5) "Retailer" means a person who sells thermostats

1 directly to a consumer through a selling or distribution mechanism,  
2 including a sale using a catalog or the Internet.

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

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

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

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

17 (2) take the thermostat to a point of collection with a  
18 collection bin operating in accordance with this subchapter and  
19 rules adopted under this subchapter; and

20 (3) dispose of the thermostat only by recycling the  
21 thermostat in a manner described by this subchapter.

22 Sec. 361.973. MANUFACTURER PROGRAMS FOR OUT-OF-SERVICE  
23 MERCURY-ADDED THERMOSTATS. (a) Each manufacturer of mercury-added  
24 thermostats that have been sold in this state shall, individually  
25 or collectively with other manufacturers, establish and maintain a  
26 collection and recycling program for out-of-service mercury-added  
27 thermostats. Each manufacturer, individually or collectively with

1 other manufacturers, is responsible for collecting, handling,  
2 transporting, and recycling or disposing of out-of-service  
3 mercury-added thermostats through a program in accordance with this  
4 subchapter and rules adopted under this subchapter.

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

9 (c) A retailer participating in a manufacturer's program  
10 under this section by providing a point of collection for  
11 out-of-service mercury-added thermostats shall post at the  
12 collection site prominent, easily visible signs that provide  
13 information about the collection and recycling of out-of-service  
14 mercury-added thermostats.

15 (d) A manufacturer may not sell, offer for sale, or  
16 distribute in this state any thermostats unless the manufacturer  
17 complies with this subchapter and the rules adopted under this  
18 subchapter.

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

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

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

25 (B) a local government that requests a collection  
26 bin for use at a household hazardous waste collection facility or a  
27 household hazardous waste event, at a one-time administrative fee

1 not to exceed \$40; and

2 (2) arrange for either:

3 (A) the pickup of the contents of the collection  
4 bins provided pursuant to this section for proper handling and  
5 recycling; or

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

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

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

15 (2) to encourage greater participation in the proper  
16 management of out-of-service mercury-added thermostats in this  
17 state, undertake to engage other stakeholders, including waste,  
18 demolition, heating, ventilation, and air-conditioning  
19 organizations, and appropriate state agencies;

20 (3) encourage wholesalers to support and participate  
21 in educating customers on the proper management of out-of-service  
22 mercury-added thermostats; and

23 (4) encourage retailers to support and participate in  
24 educating consumers on the proper management of out-of-service  
25 mercury-added thermostats.

26 (b) This section expires January 1, 2014.

27 Sec. 361.976. EDUCATIONAL AND OUTREACH MATERIALS. (a) A

1 manufacturer's program established under Section 361.973, in  
2 accordance with commission rules, shall develop, update as  
3 necessary, and make available to participating retailers,  
4 participating wholesalers, and participating household hazardous  
5 waste programs educational and other outreach materials for:

6 (1) heating, ventilation, and air-conditioning  
7 contractors, demolition contractors, and associations of those  
8 contractors;

9 (2) local governments that provide household  
10 hazardous waste programs; and

11 (3) homeowners.

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

14 (1) signs designed for prominent, easily visible  
15 display for viewing by consumers and contractors; or

16 (2) written materials or templates of materials for  
17 reproduction by participating retailers and participating  
18 wholesalers to be provided to the consumer at the time of purchase  
19 or delivery of a thermostat that include information on:

20 (A) proper management of out-of-service  
21 mercury-added thermostats; and

22 (B) locations where out-of-service mercury-added  
23 thermostats are collected for proper handling, recycling, or  
24 disposal.

25 Sec. 361.977. PROGRESS REPORT. (a) On or before April 1 of  
26 each year, a manufacturer, through a program established under  
27 Section 361.973, shall submit to the commission and post on the

1 program's Internet website a report that includes:

2 (1) the number of out-of-service mercury-added  
3 thermostats the program collected in this state during the  
4 preceding calendar year;

5 (2) the estimated total amount of mercury contained in  
6 the out-of-service mercury-added thermostats the program collected  
7 during the preceding calendar year;

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

9 (4) an accounting of the program's administrative  
10 costs that includes:

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

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

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

18 (6) examples of outreach and educational materials  
19 used;

20 (7) names and locations of all participating points of  
21 collection;

22 (8) the total number of out-of-service mercury-added  
23 thermostats collected;

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

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

1           (11) beginning with the report due April 1, 2014, a  
2 comparison of collections to the collection goals established under  
3 this section.

4           (b) With the first progress report due under Subsection (a),  
5 a manufacturer, individually or collectively with other  
6 manufacturers, shall submit to the commission collection goals that  
7 ensure an increase in the number of mercury-added thermostats  
8 collected each year until 2018 or until a time the commission  
9 determines that the number of in-service mercury-added thermostats  
10 is steadily declining as a result of the ban on sales and  
11 installation of mercury-added thermostats.

12           (c) The commission shall use the progress reports required  
13 by this section to determine whether collection goals are being  
14 met. If collection goals are not met, the commission may require  
15 modifications to a manufacturer's collection plans in an attempt to  
16 improve collection rates.

17           (d) The manufacturer or group of manufacturers operating a  
18 program shall post the progress report submitted under this section  
19 on a public Internet website.

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

23           (f) The commission by rule shall establish a review  
24 procedure that includes:

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

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

4           (g) The commission shall review and consider the progress  
5 reports and the public comments submitted under this section. The  
6 commission shall consider each progress report's consistency with  
7 other thermostat manufacturers' collection programs in this state  
8 and in other states. The commission may consult with thermostat  
9 manufacturers, thermostat wholesalers, thermostat technicians,  
10 thermostat retailers, environmental interest groups, and local  
11 governments to solicit additional comments.

12           (h) The commission may discontinue the requirement for the  
13 progress report under this section and the requirements of Section  
14 361.976 if the commission finds, based on diminished returns of  
15 thermostats, that additional education and reporting requirements  
16 would result in only a de minimis number of out-of-service  
17 mercury-added thermostats being returned in this state.

18           Sec. 361.978. COMMISSION'S EDUCATION RESPONSIBILITIES.

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

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

27           Sec. 361.979. THERMOSTAT SALES OR DISTRIBUTION PROHIBITED;



1 LIST OF NONCOMPLIANT MANUFACTURERS. (a) A person, including a  
2 manufacturer, wholesaler, or retailer, may not sell, offer for  
3 sale, or distribute in this state:

4 (1) a mercury-added thermostat; or

5 (2) a thermostat that is produced by a manufacturer  
6 that has been listed on the commission's Internet website as a  
7 noncompliant manufacturer for 120 or more consecutive days.

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

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

15 Sec. 361.980. THERMOSTAT INSTALLATION PROHIBITED. A person  
16 may not install a mercury-added thermostat.

17 Sec. 361.981. WHOLESALER DUTY: POINT OF COLLECTION. (a) A  
18 wholesaler may not sell, offer for sale, or distribute in this state  
19 any thermostats unless the wholesaler:

20 (1) provides at each of its places of business in this  
21 state a point of collection for out-of-service mercury-added  
22 thermostats if the wholesaler conducts business from a physical  
23 location in this state;

24 (2) participates as a collection site in a  
25 manufacturer's collection program as described under Section  
26 361.973; or

27 (3) otherwise collects out-of-service mercury-added

1 thermostats in accordance with applicable state and federal law.

2 (b) A wholesaler that provides a collection site shall post  
3 at the collection site prominent, easily visible signs that provide  
4 information about the collection and recycling of out-of-service  
5 mercury-added thermostats.

6 Sec. 361.982. 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. 361.983. WHOLESALER DISTRIBUTION OF EDUCATIONAL AND  
15 OUTREACH MATERIALS. A wholesaler shall distribute the educational  
16 and outreach materials developed and made available under Section  
17 361.976 to its customers.

18 Sec. 361.984. AIR-CONDITIONING AND REFRIGERATION  
19 CONTRACTOR RESPONSIBILITIES. An air-conditioning and  
20 refrigeration contractor who removes a mercury-added thermostat  
21 shall:

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

24 (2) take the thermostat to a point of collection with a  
25 collection bin operating in accordance with this subchapter and  
26 rules adopted under this subchapter.

27 Sec. 361.985. MANUFACTURERS' COMPLIANCE ASSURANCE. The

1 commission may require a manufacturer or group of manufacturers  
2 operating a program established under Section 361.973 to revise the  
3 collection and recycling program and to take other necessary  
4 actions to comply with this subchapter.

5 Sec. 361.986. AIR-CONDITIONING AND REFRIGERATION  
6 CONTRACTOR COMPLIANCE. (a) The commission is responsible for  
7 ensuring compliance with Section 361.984.

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

13 Sec. 361.987. COMMISSION REPORT. Not later than August 1 of  
14 each year, the commission shall compile information from progress  
15 reports and comments received under Section 361.977 and issue an  
16 electronic report to the committee in each house of the legislature  
17 that has primary jurisdiction over environmental matters.

18 Sec. 361.988. DISPOSAL AND TRANSPORTATION REQUIREMENT. (a)  
19 An owner or operator of a solid waste treatment, processing, or  
20 disposal facility is not in violation of this subchapter or a rule  
21 adopted under this subchapter if the owner or operator:

22 (1) posts in a conspicuous location a sign stating  
23 that mercury-added thermostats are not accepted at the facility and  
24 must be taken to a point of collection; and

25 (2) notifies in writing at least once each calendar  
26 year until December 31, 2014, each solid waste collector who has  
27 contracted to dispose of waste at the facility that mercury-added

1 thermostats are not accepted for disposal in a solid waste  
2 treatment, processing, or disposal facility.

3 (b) A commercial transporter of solid waste who transports  
4 waste to a solid waste treatment, processing, or disposal facility  
5 is not in violation of this subchapter or a rule adopted under this  
6 subchapter if the transporter notifies in writing at least once  
7 each calendar year until December 31, 2014, each person who has  
8 contracted directly with the transporter for the transportation of  
9 solid waste that mercury-added thermostats are not accepted for  
10 disposal in a solid waste treatment, processing, or disposal  
11 facility.

12 SECTION 2. (a) A manufacturer's program established  
13 individually or collectively under Section 361.973, Health and  
14 Safety Code, as added by this Act, is required to provide collection  
15 bins as provided by Section 361.974, Health and Safety Code, as  
16 added by this Act, only on and after July 1, 2012.

17 (b) A manufacturer's program established individually or  
18 collectively under Section 361.973, Health and Safety Code, as  
19 added by this Act, is required to perform the duties provided by  
20 Section 361.975, Health and Safety Code, as added by this Act, only  
21 on and after July 1, 2012.

22 (c) A manufacturer's program established individually or  
23 collectively under Section 361.973, Health and Safety Code, as  
24 added by this Act, is required to develop, update, and make  
25 available educational and outreach materials as provided by Section  
26 361.976, Health and Safety Code, as added by this Act, only on and  
27 after July 1, 2012.

1           (d) The first progress report required by Section 361.977,  
2 Health and Safety Code, as added by this Act, is due April 1, 2013.

3           (e) The Texas Commission on Environmental Quality shall  
4 begin posting the commission's list of noncompliant manufacturers  
5 as provided by Section 361.979, Health and Safety Code, as added by  
6 this Act, on July 1, 2012.

7           (f) The Texas Commission on Environmental Quality shall  
8 issue the first report required by Section 361.987, Health and  
9 Safety Code, as added by this Act, not later than August 1, 2013.

10           SECTION 3. This Act takes effect September 1, 2011.