



2011 ASSEMBLY BILL 744

March 15, 2012 – Introduced by Representatives C. TAYLOR, POCAN, BERCEAU, ROYS, TURNER and RINGHAND, cosponsored by Senator LASSA. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 287.95 (1); and **to create** 20.370 (2) (hs), 20.370 (2) (ht), 25.46
2 (22), 25.46 (23), 287.03 (1) (g), 287.07 (6), 287.16 and 287.165 of the statutes;
3 **relating to:** the sale, collection, and recycling of mercury-added lamps and
4 thermostats, the disposal of mercury-added products, granting rule-making
5 authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Light bulbs containing mercury

This bill imposes requirements on manufacturers that sell, or that have previously sold, mercury-added lamps to households in this state. Lamps are commonly called light bulbs. The bill defines a mercury-added lamp as any electric lamp to which mercury is intentionally added during the manufacturing process. The bill requires manufacturers, beginning on January 1, 2014, to file an annual registration with the Department of Natural Resources (DNR) and to pay an annual fee. The registration must also include an annual report containing specific information required by DNR. Under the bill, a manufacturer must implement a recycling plan approved by DNR for recycling mercury-added lamps derived from households (household lamps). If a manufacturer fails to annually register with DNR, pay an annual registration fee, or fully implement an approved recycling plan, the manufacturer may not conduct business of any kind in this state. All of these requirements cease to apply to a manufacturer after the expiration of a ten-year

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period during which the manufacturer does not sell any household lamps in this state.

In order for a manufacturer to comply with registration requirements established under the bill, the manufacturer must submit a recycling plan to DNR for approval. The bill provides that DNR may not approve a recycling plan unless the plan contains certain information. The plan must contain, among other things, information about the collection sites established by the manufacturer at which household lamps may be deposited for recycling, information about the procedure established by the manufacturer for the delivery of household lamps from collection sites to a recycler, and a public education component that provides information about recycling and the safe storage and handling of used household lamps. The bill authorizes manufacturers to establish joint recycling programs or to participate in the creation of an entity to collect and recycle household lamps.

Under this bill, DNR must review a manufacturer's recycling plan within three months of its submission. Within 30 days after completing its review, DNR must notify the manufacturer of any deficiencies in the manufacturer's plan. If DNR determines that an original or modified plan complies with the plan requirements established in the bill, DNR must approve the plan. If the plan is deficient and the manufacturer fails to remedy the plan, DNR must disapprove the plan. The bill requires DNR, in approving recycling plans, to establish a goal of achieving by January 1, 2016, an average yearly recycling rate of 70 percent of the total weight of mercury-added lamps sold to households in this state.

The bill also requires each manufacturer to submit an annual report to DNR that includes information about the total weight of household lamps recycled by the manufacturer in the previous year and an evaluation of the effectiveness of the manufacturer's plan. The bill requires a manufacturer upon submission of a plan, and with each annual registration, to pay a recycling administration fee to DNR of \$5,000.

Beginning on July 1, 2014, the bill prohibits a retailer from selling a mercury-added lamp to a household unless the retailer determines that the manufacturer is on a list, maintained by DNR, of manufacturers that have fully implemented an approved recycling plan.

Thermostats containing mercury

This bill requires a manufacturer that sells or sold thermostats that contain mercury (mercury-added thermostats) in this state to implement a recycling plan approved by DNR for collecting and recycling mercury-added thermostats. The plan must contain provisions for education and outreach, for ensuring that collection and recycling are conducted in accordance with DNR's rules, for the furnishing of containers to wholesalers and collectors, and for financial incentives for the return of mercury-added thermostats. The bill also imposes annual reporting requirements on manufacturers. If a manufacturer does not comply with the requirements, the bill prohibits the manufacturer from selling any kind of thermostat in this state and prohibits wholesalers and retailers from selling any of the manufacturer's thermostats in this state.

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The bill prohibits a wholesaler from selling or distributing any kind of thermostat unless the wholesaler collects used mercury-added thermostats. The bill prohibits a retailer from selling or distributing any kind of thermostat unless the retailer participates in a program to educate consumers on the collection of mercury-added thermostats. The bill requires a contractor that demolishes a building to first remove any mercury-added thermostats. The bill also requires a contractor who removes a mercury-added thermostat from a building to deliver the old thermostat to a wholesaler or collector.

Disposal of mercury-added products

Current law prohibits various items, including lead acid batteries and major appliances, from being disposed of in landfills and from being incinerated. This bill prohibits products to which mercury is intentionally added from being knowingly disposed of in landfills and from being knowingly incinerated.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.370 (2) (hs) of the statutes is created to read:
- 2 20.370 (2) (hs) *Mercury-added lamp recycling.* From the environmental fund,
- 3 all moneys received under s. 287.16 (8) for administration of the mercury-added
- 4 lamp recycling program under s. 287.16.
- 5 **SECTION 2.** 20.370 (2) (ht) of the statutes is created to read:
- 6 20.370 (2) (ht) *Mercury-added thermostat recycling.* From the environmental
- 7 fund, all moneys received under s. 287.165 (2) (e) for administration of the
- 8 mercury-added thermostat recycling program under s. 287.165.
- 9 **SECTION 3.** 25.46 (22) of the statutes is created to read:
- 10 25.46 (22) The moneys received under s. 287.16 (8).
- 11 **SECTION 4.** 25.46 (23) of the statutes is created to read:
- 12 25.46 (23) The moneys received under s. 287.65 (2) (e).
- 13 **SECTION 5.** 287.03 (1) (g) of the statutes is created to read:

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1 287.03 (1) (g) Maintain an updated list of manufacturers that have fully
2 implemented an approved recycling plan under s. 287.16 (6).

3 **SECTION 6.** 287.07 (6) of the statutes is created to read:

4 287.07 (6) MERCURY-ADDED PRODUCTS. (a) In this subsection, “mercury-added
5 product” has the meaning given in s. 299.49 (1) (a).

6 (b) Beginning on the first day of the 19th month beginning after the effective
7 date of this paragraph [LRB inserts date], no person may knowingly dispose of a
8 mercury-added product in a solid waste disposal facility, burn a mercury-added
9 product in a solid waste treatment facility, or place a mercury-added thermostat in
10 a container the contents of which will be disposed of in a solid waste disposal facility
11 or burned in a solid waste treatment facility.

12 (c) 1. Beginning on the first day of the 19th month beginning after the effective
13 date of this subdivision [LRB inserts date], the operator of a solid waste disposal
14 facility may not knowingly accept a mercury-added product for disposal in the solid
15 waste disposal facility.

16 2. Beginning on the first day of the 19th month beginning after the effective
17 date of this subdivision [LRB inserts date], the operator of a solid waste treatment
18 facility may not knowingly accept a mercury-added product for burning in the solid
19 waste treatment facility.

20 **SECTION 7.** 287.16 of the statutes is created to read:

21 **287.16 Mercury-added lamp recycling.** (1) DEFINITIONS. In this section:

22 (a) “Collection” means the act of receiving mercury-added lamps derived from
23 households and delivering, or arranging for the delivery of, the mercury-added
24 lamps to a recycler.

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1 (b) "Dwelling unit" means a single unit providing complete, independent living
2 facilities for one or more persons, including permanent provisions for living,
3 sleeping, eating, cooking, and sanitation.

4 (c) "Household" means one or more individuals who occupy one dwelling unit
5 in a detached or multiunit building.

6 (d) "Manufacturer" means a person who does, or who previously has done, any
7 of the following:

8 1. Manufacture mercury-added lamps to be sold under the person's own brand.

9 2. Sell mercury-added lamps manufactured by others under the person's own
10 brand.

11 3. License the person's brand for manufacture and sale of mercury-added
12 lamps by others.

13 (e) "Mercury-added lamp" means an electric lamp to which mercury is
14 intentionally added during the manufacturing process.

15 (f) "Recycler" means a person who accepts mercury-added lamps for recycling.

16 (g) "Recycling" means preparing mercury-added lamps for use in
17 manufacturing processes or for recovery of useable materials and delivering the
18 materials for use. "Recycling" does not include destruction by incineration or other
19 processes or land disposal of recyclable materials and does not include reuse, repair,
20 or any other process through which eligible mercury-added lamps are returned for
21 use by households in their original form.

22 (h) "Retailer" means any person engaged in the retail sale of mercury-added
23 lamps to persons in this state.

24 (i) "Sell" means sell to a household, offer to sell to a household, or deliver to a
25 retailer for subsequent sale to a household.

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1 **(2) MANUFACTURER REQUIREMENTS.** (a) Except as provided under par. (c),
2 beginning on January 1, 2014, a manufacturer who sells, or who has sold,
3 mercury-added lamps to households in this state, may not conduct business in this
4 state unless all of the following apply:

5 1. The manufacturer has filed an annual registration with the department in
6 the form and manner required by the department by rule.

7 2. The manufacturer has paid the fees required under sub. (8).

8 3. The manufacturer has fully implemented an approved recycling plan under
9 sub. (6).

10 (b) The registration required under par. (a) 1. shall include the annual report
11 required under sub. (7).

12 (c) The requirements under this subsection do not apply to a manufacturer if
13 the manufacturer has not sold any mercury-added lamps to households in this state
14 for 10 consecutive years and does not resume such sales upon expiration of that
15 10-year period.

16 **(3) PLAN SUBMISSION.** (a) To comply with sub. (2), a manufacturer whose
17 mercury-added lamps are or were sold in this state shall submit a recycling plan to
18 the department that establishes a program for recycling, or arranging for recycling,
19 mercury-added lamps derived from households. The plan shall do all of the
20 following:

21 1. Establish collection locations throughout this state at which mercury-added
22 lamps derived from households may be deposited without cost to the household or
23 owner of the collection site. The plan shall provide that the manufacturer shall
24 establish at least one collection site for each 10,000 residents in each county that has
25 a population of fewer than 30,000 residents.

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1 2. Include any information required by the department about collection sites
2 established by the manufacturer and about the persons who collect and recycle the
3 manufacturer's mercury-added lamps under the plan.

4 3. Include a description of the action taken by the manufacturer to ensure that
5 collectors comply with the requirements of ch. NR 673, Wis. Adm. Code.

6 4. Include a public education component to provide information about the
7 reasons to recycle, local opportunities for recycling, and the safe storage and
8 handling of used mercury-added lamps derived from households.

9 5. Establish a procedure for the delivery of mercury-added lamps derived from
10 households, in containers approved by the department, from collection locations to
11 a recycler. The department may not approve a container under this subdivision
12 unless the department determines that the container is designed to prevent the
13 escape of mercury into the environment by volatilization or other means.

14 (b) Paragraph (a) does not apply to a manufacturer if the manufacturer has not
15 sold mercury-added lamps to households in this state for 10 consecutive years and
16 does not resume such sales upon expiration of that 10-year period.

17 (c) A manufacturer may establish a recycling program under this subsection
18 jointly with other manufacturers and may participate with other manufacturers in
19 creating an entity to collect and recycle mercury-added lamps derived from
20 households.

21 (d) The department may require a manufacturer to submit a revised plan under
22 this subsection consistent with any recommendations contained in the
23 manufacturer's report under sub. (7) for increasing the weight of mercury-added
24 lamps recycled under the manufacturer's plan.

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1 (e) The department shall publish each plan submitted under this subsection
2 as a class 1 notice under ch. 985 and shall make the plan available on the
3 department's Internet site.

4 **(4) PLAN REVIEW.** The department shall review a plan submitted under sub. (3)
5 within 3 months of its submission to determine whether the plan complies with the
6 requirements of sub. (3). Within 30 days after completing its review, the department
7 shall notify a manufacturer of any deficiencies in the manufacturer's plan. If an
8 original or modified plan complies with the requirements of sub. (3), the department
9 shall approve the plan. If a manufacturer fails to remedy deficiencies in the
10 manufacturer's original or modified plan by a deadline set by the department, the
11 department shall disapprove the plan.

12 **(5) GOAL.** The department shall approve plans under sub. (4) with a goal of
13 achieving by January 1, 2016, an average yearly recycling rate of 70 percent of the
14 total weight of mercury-added lamps sold to households in this state.

15 **(6) PLAN IMPLEMENTATION.** Upon approval under sub. (4) of a manufacturer's
16 plan, the manufacturer shall implement the plan. A manufacturer shall fully
17 implement its plan no more than 12 months after the department approves the plan
18 under sub. (4).

19 **(7) ANNUAL REPORT REQUIREMENT.** Within 12 months of approval of its plan and
20 annually thereafter, a manufacturer shall submit a report to the department that
21 includes all of the following:

22 (a) The total weight of mercury-added lamps derived from households that the
23 manufacturer recycled under the plan in the previous year.

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1 (b) The estimated total weight of the manufacturer's mercury-added lamps
2 that were sold to households in the previous year and the methodology used for
3 estimating that number.

4 (c) An evaluation of the effectiveness of the manufacturer's plan.

5 (d) An accounting of the costs associated with administering the plan in the
6 previous year.

7 (e) A description of any changes proposed to be made to the manufacturer's plan
8 to increase the weight of mercury-added lamps collected from households for
9 recycling including changes to collection site locations and recyclers to whom the
10 manufacturer delivers, or has delivered, mercury-added lamps for recycling.

11 **(8) FEE.** Upon submission of a plan under sub. (3), and annually with a
12 registration filed under sub. (2), a manufacturer shall pay a recycling administration
13 fee of \$5,000 to the department. This subsection does not apply to a manufacturer
14 if the manufacturer has not sold any mercury-added lamps to households in this
15 state for 10 consecutive years and does not resume such sales upon expiration of that
16 10-year period.

17 **(9) RETAILERS.** Beginning on July 1, 2014, a retailer may not sell or offer to sell
18 a mercury-added lamp produced by a manufacturer unless, before making the first
19 offer for sale, the retailer has determined that the manufacturer is on the list
20 maintained by the department under s. 287.03 (1) (g).

21 **(10) COOPERATION.** The department shall encourage communication between
22 local governments, persons operating solid waste collection and recycling centers,
23 and manufacturers to promote cooperation in establishing and maintaining effective
24 methods for recycling mercury-added lamps derived from households.

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1 **(11) REPORT.** On or before January 1, 2016, the department shall submit a
2 report to the appropriate standing committees of the legislature under s. 13.172 (3)
3 of the statutes on the recycling of mercury-added lamps under this section for the
4 period beginning immediately after the date of submission of the report under 2011
5 Wisconsin Act (this act), section 10 (1). The report shall include the information
6 required for the report specified under 2011 Wisconsin Act (this act), section 10
7 (1). The report shall also contain an assessment of whether the goal under sub. (5)
8 has been met. If the assessment in the report provides that the goal has not been met,
9 the report shall include recommendations for revising mercury-added lamp
10 collection and recycling procedures to achieve that goal.

11 **SECTION 8.** 287.165 of the statutes is created to read:

12 **287.165 Mercury-added thermostat recycling. (1) DEFINITIONS.** In this
13 section:

14 (a) “Contractor” means a person who is engaged in the business of installing
15 heating, ventilating, or air-conditioning components or in the business of
16 demolishing buildings.

17 (b) “Manufacturer” means a person who produces or produced mercury-added
18 thermostats for sale under its own brand or who sells or sold under its own brand
19 mercury-added thermostats produced by another.

20 (c) “Mercury-added thermostat” has the meaning given in s. 299.49 (1) (b).

21 (d) “Registered collector” means a person who collects mercury-added
22 thermostats and who is registered under sub. (6) (c) 1.

23 (e) “Retailer” means a person who sells thermostats to homeowners and other
24 individuals who are not wholesalers or contractors.

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1 (f) "Thermostat" means a product or device that senses and controls room
2 temperature through communication with heating, ventilating, or air-conditioning
3 equipment.

4 (g) "Wholesaler" means a person who is engaged in the distribution and sale
5 of heating, ventilating, or air-conditioning components to contractors.

6 **(2) MANUFACTURER RESPONSIBILITY.** A manufacturer who sold or distributed
7 mercury-added thermostats in this state shall do all of the following, individually
8 or in conjunction with other manufacturers:

9 (a) No later than the first day of the 13th month beginning after the effective
10 date of this paragraph ... [LRB inserts date], submit to the department a plan for a
11 program to collect and recycle mercury-added thermostats that includes all of the
12 following:

13 1. Education and outreach for wholesalers, retailers, contractors, and
14 homeowners, including the provision of education and outreach materials to
15 wholesalers and retailers at no cost.

16 2. Provisions to ensure the collection and recycling of mercury-added
17 thermostats in accordance with ch. NR 673, Wis. Adm. Code.

18 3. The furnishing of containers to wholesalers for returning mercury-added
19 thermostats for recycling at no cost other than an initial, reasonable fee per
20 container.

21 4. The furnishing of containers to registered collectors for returning
22 mercury-added thermostats for recycling, at no cost other than an initial, reasonable
23 fee per container.

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1 5. A financial incentive of at least \$5 per thermostat for the return of
2 mercury-added thermostats by a contractor to a wholesaler, in the form of cash or
3 a coupon that is redeemable for cash by the contractor.

4 6. A financial incentive of at least \$5 per thermostat for the return of
5 mercury-added thermostats by a homeowner or other individual who is not a
6 contractor to a registered collector, in one of the following forms:

7 a. Cash.

8 b. A coupon that is redeemable for cash by the homeowner or other individual.

9 c. If the registered collector is a retailer, a coupon that may be used toward the
10 purchase of any merchandise from the retailer.

11 (b) No later than the first day of the 19th month beginning after the effective
12 date of this paragraph [LRB inserts date], implement a program for the collection
13 and recycling of mercury-added thermostats in accordance with a plan under par.

14 (a) that is approved by the department under sub. (6) (b).

15 (c) No later than the first day of the 4th month beginning after the effective date
16 of this paragraph [LRB inserts date], submit to the department a report
17 containing data showing its national sales of mercury-added thermostats for each
18 year from 1958 to the year before the year in which the report is due.

19 (d) No later than April 1 annually, beginning in 2015, submit to the department
20 a report that includes all of the following:

21 1. The number of mercury-added thermostats collected and recycled under the
22 manufacturer's collection and recycling program during the previous year in the
23 United States and in each state.

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1 2. The estimated amount of mercury contained in the mercury-added
2 thermostats collected and recycled under the manufacturer's collection and recycling
3 program during the previous year in the United States and in each state.

4 3. The administrative costs associated with the manufacturer's collection and
5 recycling program during the previous year.

6 4. An evaluation of the effectiveness of the manufacturer's collection and
7 recycling program.

8 (e) Annually pay the fee specified by the department under sub. (6) (em).

9 **(3) WHOLESALER RESPONSIBILITY.** Beginning on the first day of the 20th month
10 beginning after the effective date of this subsection [LRB inserts date], a
11 wholesaler may not sell or distribute any thermostat unless all of the following apply:

12 1. The wholesaler collects mercury-added thermostats.

13 2. The wholesaler promotes the collection of mercury-added thermostats and
14 uses collection containers provided by manufacturers to return mercury-added
15 thermostats for recycling.

16 **(4) RETAILER RESPONSIBILITY.** Beginning on the first day of the 20th month
17 beginning after the effective date of this subsection [LRB inserts date], a retailer
18 may not sell any thermostat unless the retailer participates in an education and
19 outreach program to educate consumers on the collection of mercury-added
20 thermostats.

21 **(5) CONTRACTOR RESPONSIBILITY.** (a) Beginning on the first day of the 20th
22 month beginning after the effective date of this paragraph [LRB inserts date],
23 before a contractor demolishes a building containing a mercury-added thermostat,
24 the contractor shall remove the mercury-added thermostat.

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1 (b) Beginning on the first day of the 20th month beginning after the effective
2 date of this paragraph [LRB inserts date], a contractor who removes a
3 mercury-added thermostat under par. (a) or replaces a mercury-added thermostat
4 shall deliver the mercury-added thermostat to a wholesaler or a registered collector.

5 **(5m) REGISTRATION REQUIRED.** (a) No person, other than a wholesaler, may
6 collect mercury-added thermostats unless the person is registered under sub. (6) (c)
7 1.

8 (b) No person may recycle mercury-added thermostats unless the person is
9 registered under sub. (6) (c) 2.

10 **(6) DEPARTMENT RESPONSIBILITY AND AUTHORITY.** (a) The department shall
11 provide public notice when it receives a plan under sub. (2) from a manufacturer. The
12 department shall receive public comment on the plan for at least 30 days after it
13 provides the notice.

14 (b) The department shall review a plan received under sub. (2). Within 60 days
15 after receiving a complete plan, the department shall approve, approve with
16 modifications, or disapprove the plan. In reviewing a plan, the department may
17 consider consistency of the plan with collection and financial incentive requirements
18 in other states and may consider consistency among manufacturers' collection
19 programs. The department shall ensure consistency among manufacturers'
20 education and outreach efforts to ensure ease of implementation by wholesalers and
21 retailers.

22 (c) 1. The department shall register retailers, local governmental units, and
23 other entities that wish to collect mercury-added thermostats. There is no fee for
24 registration under this subdivision.

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1 2. The department shall register recyclers that wish to recycle mercury-added
2 thermostats. There is no fee for registration under this subdivision.

3 (d) The department shall maintain and post on its Internet site a list of
4 registered collectors, including the locations at which they collect mercury-added
5 thermostats.

6 (e) The department shall maintain and post on its Internet site a list of
7 manufacturers who are not in compliance with this section.

8 (em) The department shall promulgate a rule specifying annual fees to be paid
9 by manufacturers for the administration of the program under this section.

10 (f) The department shall conduct an information and outreach program for
11 wholesalers, retailers, and homeowners to promote the collection and recycling of
12 mercury-added thermostats.

13 (g) Beginning in 2015, the department shall submit to the legislature, under
14 s. 13.172 (2), an annual report on the collection and recycling of mercury-added
15 thermostats in this state, including a description and discussion of available
16 financial incentives and any recommendations for changes in the program under this
17 section. The department shall include in the 2nd and subsequent reports under this
18 paragraph information on collection rates and an evaluation of the effectiveness of
19 mercury-added thermostat collection and recycling programs required by this
20 section.

21 (h) 1. The department, in consultation with manufacturers, wholesalers,
22 retailers, contractors, municipalities, environmental groups, and others, shall
23 estimate the number of mercury-added thermostats that are discarded in this state
24 annually.

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1 2. If the department determines, after July 1, 2015, that less than 65 percent
2 of discarded mercury-added thermostats generated in this state are being collected
3 and recycled annually, the department, in consultation with interested persons,
4 shall require manufacturers to modify their plans for the collection and recycling of
5 mercury-added thermostats to attempt to improve the rate of collection and
6 recycling.

7 (i) The department may inspect manufacturers' records, require audits, or
8 undertake other activities needed to collect or verify data concerning past sales of
9 mercury-added thermostats or to determine the effectiveness of collection and
10 recycling programs.

11 **(7) RESTRICTION ON SALES OF THERMOSTATS.** (a) 1. The department shall notify
12 a manufacturer if the department determines that the manufacturer is not in
13 compliance with this section.

14 2. If the department determines that a manufacturer is not in compliance with
15 this section, the manufacturer may not sell or distribute any thermostat in this state.

16 (b) A wholesaler or retailer may not sell any thermostat of a manufacturer not
17 in compliance with this section, as shown on the list posted under sub. (6) (e).

18 **SECTION 9.** 287.95 (1) of the statutes is amended to read:

19 287.95 (1) Any person who violates s. 287.07 (1m) ~~or~~, (4m) ~~or~~, (5), or (6) may be
20 required to forfeit \$50 for a first violation, may be required to forfeit \$200 for a 2nd
21 violation and may be required to forfeit not more than \$2,000 for a 3rd or subsequent
22 violation.

23 **SECTION 10. Nonstatutory provisions.**

24 (1) On or before January 1, 2014, the department of natural resources shall
25 submit a report to the appropriate standing committees of the legislature in the

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1 manner provided under section 13.172 (3) of the statutes on the recycling of
2 mercury-added lamps derived from households. The report shall include all of the
3 following:

4 (a) An assessment of the costs of implementing the requirements of section
5 287.16 of the statutes, as created by this act, to manufacturers, consumers, and local
6 governmental units.

7 (b) After consulting with manufacturers of mercury-added lamps derived from
8 households and with persons who receive mercury-added lamps derived from
9 households and deliver, or arrange for the delivery of, those lamps to a recycler,
10 recommendations for streamlining the recycling of mercury-added lamps derived
11 from households.

12 (c) A review and assessment of education and outreach methods that, if
13 implemented by manufacturers, would improve the rate of recycling of
14 mercury-added lamps derived from households.

15 (END)