



## 2013 ASSEMBLY BILL 424

October 17, 2013 – Introduced by Representatives C. TAYLOR, BERNARD SCHABER, BEWLEY, BERCEAU, CLARK, DANOU, GOYKE, HEBL, HESSELBEIN, JOHNSON, JORGENSEN, KAHL, MILROY, OHNSTAD, POPE, RINGHAND, SARGENT, SHANKLAND, WACHS and YOUNG, cosponsored by Senators MILLER, SCHULTZ, CARPENTER, ERPENBACH, HANSEN, HARRIS, JAUCH, LASSA, LEHMAN, RISSER, WIRCH and T. CULLEN. Referred to Committee on Environment and Forestry.

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

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### *Analysis by the Legislative Reference Bureau*

#### ***Recycling 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 the Department of Natural Resources (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.

The bill prohibits a wholesaler from selling or distributing any kind of thermostat unless the wholesaler collects used mercury-added thermostats. The bill

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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.

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

1           **SECTION 1.** 20.370 (2) (ht) of the statutes is created to read:

2           20.370 (2) (ht) *Mercury-added thermostat recycling.* From the environmental  
3 fund, all moneys received under s. 287.165 (2) (e) for administration of the  
4 mercury-added thermostat recycling program under s. 287.165.

5           **SECTION 2.** 25.46 (23) of the statutes is created to read:

6           25.46 (23) The moneys received under s. 287.165 (2) (e).

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

8           287.07 (6) MERCURY-ADDED PRODUCTS. (a) In this subsection, “mercury-added  
9 product” has the meaning given in s. 299.49 (1) (a).

10           (b) Beginning on January 1, 2015, no person may knowingly dispose of a  
11 mercury-added product in a solid waste disposal facility, burn a mercury-added  
12 product in a solid waste treatment facility, or place a mercury-added thermostat in  
13 a container the contents of which will be disposed of in a solid waste disposal facility  
14 or burned in a solid waste treatment facility.

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1 (c) 1. Beginning on January 1, 2015, the operator of a solid waste disposal  
2 facility may not knowingly accept a mercury-added product for disposal in the solid  
3 waste disposal facility.

4 2. Beginning on January 1, 2015, the operator of a solid waste treatment  
5 facility may not knowingly accept a mercury-added product for burning in the solid  
6 waste treatment facility.

7 **SECTION 4.** 287.165 of the statutes is created to read:

8 **287.165 Mercury-added thermostat recycling.** (1) DEFINITIONS. In this  
9 section:

10 (a) "Contractor" means a person who is engaged in the business of installing  
11 heating, ventilating, or air-conditioning components or in the business of  
12 demolishing buildings.

13 (b) "Manufacturer" means a person who produces or produced mercury-added  
14 thermostats for sale under its own brand or who sells or sold under its own brand  
15 mercury-added thermostats produced by another.

16 (c) "Mercury-added thermostat" has the meaning given in s. 299.49 (1) (b).

17 (d) "Registered collector" means a person who collects mercury-added  
18 thermostats and who is registered under sub. (6) (c) 1.

19 (e) "Retailer" means a person who sells thermostats to homeowners and other  
20 individuals who are not wholesalers or contractors.

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

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

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

4           (a) No later than April 30, 2014, submit to the department a plan for a program  
5 to collect and recycle mercury-added thermostats that includes all of the following:

6           1. Education and outreach for wholesalers, retailers, contractors, and  
7 homeowners, including the provision of education and outreach materials to  
8 wholesalers and retailers at no cost.

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

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

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

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

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

23           a. Cash.

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

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

3 (b) No later than January 1, 2015, implement a program for the collection and  
4 recycling of mercury-added thermostats in accordance with a plan under par. (a)  
5 that is approved by the department under sub. (6) (b).

6 (c) No later than April 30, 2015, submit to the department a report containing  
7 data showing its national sales of mercury-added thermostats for each year from  
8 1958 to 2014.

9 (d) No later than April 1 annually, beginning in 2016, submit to the department  
10 a report that includes all of the following:

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

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

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

19 4. An evaluation of the effectiveness of the manufacturer's collection and  
20 recycling program.

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

22 **(3) WHOLESALER RESPONSIBILITY.** Beginning on February 1, 2015, a wholesaler  
23 may not sell or distribute any thermostat unless all of the following apply:

24 (a) The wholesaler collects mercury-added thermostats.

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1 (b) The wholesaler promotes the collection of mercury-added thermostats and  
2 uses collection containers provided by manufacturers to return mercury-added  
3 thermostats for recycling.

4 (4) **RETAILER RESPONSIBILITY.** Beginning on February 1, 2015, a retailer may not  
5 sell any thermostat unless the retailer participates in an education and outreach  
6 program to educate consumers on the collection of mercury-added thermostats.

7 (5) **CONTRACTOR RESPONSIBILITY.** (a) Beginning on February 1, 2015, before a  
8 contractor demolishes a building containing a mercury-added thermostat, the  
9 contractor shall remove the mercury-added thermostat.

10 (b) Beginning on February 1, 2015, a contractor who removes a mercury-added  
11 thermostat under par. (a) or replaces a mercury-added thermostat shall deliver the  
12 mercury-added thermostat to a wholesaler or a registered collector.

13 (5m) **REGISTRATION REQUIRED.** (a) No person, other than a wholesaler, may  
14 collect mercury-added thermostats unless the person is registered under sub. (6) (c)  
15 1.

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

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

22 (b) The department shall review a plan received under sub. (2). Within 60 days  
23 after receiving a complete plan, the department shall approve, approve with  
24 modifications, or disapprove the plan. In reviewing a plan, the department may  
25 consider consistency of the plan with collection and financial incentive requirements

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1 in other states and may consider consistency among manufacturers' collection  
2 programs. The department shall ensure consistency among manufacturers'  
3 education and outreach efforts to ensure ease of implementation by wholesalers and  
4 retailers.

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

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

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

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

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

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

20 (g) Beginning in 2017, the department shall submit to the legislature, under  
21 s. 13.172 (2), an annual report on the collection and recycling of mercury-added  
22 thermostats in this state, including a description and discussion of available  
23 financial incentives and any recommendations for changes in the program under this  
24 section. The department shall include in the 2nd and subsequent reports under this  
25 paragraph information on collection rates and an evaluation of the effectiveness of

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1 mercury-added thermostat collection and recycling programs required by this  
2 section.

3 (h) 1. No later than December 31, 2016, the department, in consultation with  
4 manufacturers, wholesalers, retailers, contractors, municipalities, environmental  
5 groups, and others, shall estimate the number of mercury-added thermostats that  
6 are discarded in this state annually.

7 2. If the department determines, after July 1, 2017, that less than 65 percent  
8 of discarded mercury-added thermostats generated in this state are being collected  
9 and recycled annually, the department, in consultation with interested persons,  
10 shall require manufacturers to modify their plans for the collection and recycling of  
11 mercury-added thermostats to attempt to improve the rate of collection and  
12 recycling.

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

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

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

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

24 **SECTION 5.** 287.95 (1) of the statutes is amended to read:



