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AB-707 Mercury Thermostat Collection Act of 2021. (2021-2022)

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Assembly Bill No. 707

CHAPTER 703

An act to amend Sections 25214.8.10, 25214.8.11, 25214.8.12, 25214.8.13, 25214.8.14, 25214.8.15, and 25214.8.16 of, to amend the heading of Article 10.2.2 (commencing with Section 25214.8.10) of Chapter 6.5 of Division 20 of, to add Sections 25214.8.11.2, 25214.8.11.4, 25214.8.11.5, 25214.8.11.6, 25214.8.13.5, and 25214.8.19 of, to repeal Section 25214.8.20 of, to repeal Article 10.2.2 (commencing with Section 25214.8.10) of Chapter 6.5 of Division 20 of, and to repeal and add Sections 25214.8.17 and 25214.8.18 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 707, Quirk. Mercury Thermostat Collection Act of 2021.

Existing law, the Mercury Thermostat Collection Act of 2008, as part of the state's hazardous waste control laws, requires a manufacturer that owns or owned a name brand of mercury-added thermostats, as defined, sold in this state before January 1, 2006, to establish and maintain a collection, transportation, recycling, and disposal program for out-of-service mercury-added thermostats, as defined. Among other requirements, the act requires each manufacturer, or group of manufacturers, to provide collection bins to wholesalers for collection of out-of-service mercury-added thermostats at a cost not to exceed \$25. A violation of the hazardous waste control laws is a crime.

This bill would recast the program, still as part of the state's hazardous waste control laws, as the Mercury Thermostat Collection Act of 2021. The bill would require each manufacturer of mercury-added thermostats, or group of manufacturers, on or before March 1, 2022, to contract with or retain a qualified third party, as defined, to develop and implement a convenient, cost-effective, and efficient program for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats. The bill would require each manufacturer, or group of manufacturers, to issue a request for proposals for a qualified third party to develop and implement the program, and would require the manufacturer, or group of manufacturers, to consider specified factors when selecting the qualified third party. The bill would require the qualified third party to develop and implement a program that includes, but is not limited to, the collection, handling, and arrangement for the appropriate management of out-of-service mercury-added thermostats, unless these activities are performed by a manufacturer, or group of manufacturers, an educational and outreach campaign sufficient to inform appropriate entities about the importance of safe recycling and disposal of out-of-service mercury-added thermostats, and informational materials about the program. The bill would require the qualified third party to make available to consumers, as defined, and service technicians out-of-service mercury-added thermostat collection incentives of no less than \$30 per out-of-service mercury-added thermostat collected. The bill would require that an incentive be provided to these persons only if the person attests, under penalty of perjury, to their California state residency, among other things. By requiring a person to provide an attestation under penalty of perjury, this bill would expand the crime of perjury and create a state-mandated local program.

This bill would require, by June 1, 2022, the qualified third party to submit to the Department of Toxic Substances Control for review and approval, as provided, a written plan for the program that addresses these program elements. The bill would provide that program required by the act as it existed before January 1, 2022, shall remain in effect until the plan submitted by the qualified third party is approved by the department and fully implemented by the qualified third party.

The bill would require the qualified third party, no later than July 1, 2023, and no later than July 1 of each year thereafter until July 1, 2028, to conduct an annual survey of specified entities to evaluate the effectiveness of the program's education and outreach campaign and to obtain collection data from each entity engaged in the collection of out-of-service mercury-added thermostats, as provided.

This bill would require each manufacturer, or group of manufacturers, on or before March 30, 2022, and on or before March 30 of each year thereafter until March 30, 2028, to pay to the department an aggregate total of \$400,000, as provided, which shall not exceed the department's actual and reasonable regulatory costs to administer, implement, and enforce the act. The bill would require the funds to be deposited in the Mercury Thermostat Collection Program Fund, which the bill would establish. The bill would provide that, upon appropriation by the Legislature, the funds would be required to be used only for specified purposes, including, but not limited to, the department's actual and reasonable regulatory costs to administer, implement, and enforce the act. The bill would also require each manufacturer, or group of manufacturers, on or before March 30, 2022, and on or before March 30 of each year thereafter until March 30, 2028, to pay to the qualified third party a specified amount per program year to effectively and efficiently develop and implement the required education and outreach campaign and to also pay for the qualified third party's estimated and actual annual costs to develop and implement the other components of the program, as provided. The bill would require a group of manufacturers to notify the department in writing of the identity of any nonpaying manufacturer and the apportioned amount for which the nonpaying manufacturer is responsible so the department can determine each manufacturer's compliance with the act. The bill would subject the thermostats of a manufacturer that fails to make the required payment or comply with the act to a sales ban, as provided. The bill would require the department to determine whether a manufacturer, or group of manufacturers, has made a good faith effort, as defined, to comply with the act. Because a violation of the act would be a crime, the bill would impose a state-mandated local program.

This bill would express the intent of the Legislature to provide for, and would provide for, upon the expiration of the act, the satisfaction, discharge, release, or termination of any liability, obligation, or violation established or alleged against a manufacturer, or group of manufacturers, pursuant to the act, including regulations adopted by the department, as it existed before January 1, 2022, if the manufacturer, or group of manufacturers, makes all payments required pursuant to the act, as provided.

This bill would require the department to repeal any regulations previously adopted by the department to implement the act. The bill would require, on or before January 1, 2028, the department to report to the Legislature on the status of the program. The bill would repeal the act on January 1, 2030.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) In 2006, the Legislature banned the sale of thermostats containing mercury switches in the state because of the toxicity of mercury and the development of alternative thermostat technologies. Before the ban, thermostat manufacturers sold approximately 325,000 mercury thermostats annually in California.

(b) American manufacturers used almost 14.5 tons of mercury annually to produce these thermostats, with the average mercury thermostat containing about four grams of mercury.

(c) Mercury is a powerful neurotoxin that interferes with normal childhood development. The health concerns posed by mercury are well known and severe. If mercury thermostats are improperly disposed of, the mercury from those thermostats has the potential to enter our waterways, impacting aquatic life and the food chain.

(d) In 2008, the Legislature enacted the Mercury Thermostat Collection Act of 2008, requiring thermostat manufacturers to establish collection programs for out-of-service mercury thermostats.

(e) In 2011, under the Mercury Thermostat Collection Act of 2008, the thermostat manufacturing industry collected 19,927 out-of-service mercury thermostats, representing a fraction of the mercury thermostats remaining in the state. In 2012, the thermostat

industry recorded the collection of 16,353 out-of-service mercury thermostats.

(f) It is the intent of the Legislature to modify the existing mercury thermostat collection program to ensure that the maximum feasible number of out-of-service mercury thermostats get collected for proper disposal as quickly and as cost effectively as possible. It is the intent of the Legislature that a modified mercury thermostat collection program do all of the following:

(1) Ensure convenient out-of-service mercury thermostat return options for consumers that are free and accessible across the state.

(2) Provide incentives to consumers to maximize returns for collection of out-of-service mercury thermostats.

(3) Include a robust public education effort that is multilingual and targets all individuals or specific groups of individuals that have mercury thermostats and does so in a cost-effective manner without externalizing costs to the environment or the public sector.

SEC. 2. The heading of Article 10.2.2 (commencing with Section 25214.8.10) of Chapter 6.5 of Division 20 of the Health and Safety Code is amended to read:

Article 10.2.2. Mercury Thermostat Collection Act of 2021

SEC. 3. Section 25214.8.10 of the Health and Safety Code is amended to read:

25214.8.10. This article shall be known, and may be cited, as the Mercury Thermostat Collection Act of 2021.

SEC. 4. Section 25214.8.11 of the Health and Safety Code is amended to read:

25214.8.11. For purposes of this article, the following definitions apply:

(a) "Act" means the Mercury Thermostat Collection Act of 2021.

(b) "Department" means the Department of Toxic Substances Control.

(c) "Manufacturer" means a business concern that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006.

(d) "Mercury-added thermostat" has the same meaning as defined in paragraph (2) of subdivision (b) of Section 25214.8.1.

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

(f) "Program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively by a group of manufacturers pursuant to this act. "Program" also includes the education and outreach campaign conducted by a qualified third party to inform appropriate entities about the out-of-service mercury-added thermostat collection opportunities provided by the program.

(g) "Qualified third party" means a nonprofit organization, exempt from taxation pursuant to Section 501(c)(3) of the federal Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)), that is selected by a manufacturer, or group of manufacturers, pursuant to Section 25214.8.11.4 to implement the program.

(h) "Retailer" means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including, but not limited to, a sale using catalogs or the internet. A retailer may be a wholesaler if the person meets the definition of a wholesaler set forth in subdivision (j).

(i) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Thermostat" includes a thermostat used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(j) "Wholesaler" means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components, and whose total wholesale sales account for 80 percent or more of total sales. A manufacturer, as defined in subdivision (c), is not a wholesaler.

SEC. 5. Section 25214.8.11.2 is added to the Health and Safety Code, to read:

25214.8.11.2. (a) (1) (A) On or before March 30, 2022, and on or before March 30 of each year thereafter until March 30, 2028, each manufacturer shall, in accordance with this section, individually, or collectively with a group of manufacturers, do both of the

following:

(i) Pay to the department an aggregate total of four hundred thousand dollars (\$400,000).

(ii) Pay to the qualified third party the amount required pursuant to the annual payment schedule outlined in paragraph (1) of subdivision (e) and provide to the department written notice of each payment.

(B) If March 30 falls on a Saturday or Sunday, a payment required pursuant to subparagraph (A) shall be due on the following Monday.

(C) A late payment shall be subject to interest beginning April 1 at a rate of 10 percent per annum pursuant to subdivision (a) of Section 25360.1.

(2) (A) The total aggregate amount required to be paid to the department pursuant to clause (i) of subparagraph (A) of paragraph (1) shall not exceed the department's actual and reasonable regulatory costs to administer, implement, and enforce this act.

(B) If the department's actual and reasonable costs to administer, implement, and enforce this act exceed the amount specified in clause (i) of subparagraph (A) of paragraph (1), the department may submit a report to the Legislature regarding the insufficiency of the funds and seeking additional funds.

(3) (A) The department shall deposit all moneys paid by a manufacturer, or group of manufacturers, to the department pursuant to clause (i) of subparagraph (A) of paragraph (1) into the Mercury Thermostat Collection Program Fund, which is hereby established.

(B) Upon appropriation by the Legislature, moneys in the Mercury Thermostat Collection Program Fund shall be used only for the following purposes:

(i) The department's actual and reasonable regulatory costs in administering, implementing, and enforcing this act.

(ii) Reimbursement of any loans made to the Mercury Thermostat Collection Program Fund to finance the department's initial costs incurred to implement this act.

(iii) The actual and reasonable regulatory costs incurred by any other agency assisting the department in administering, implementing, and enforcing this act.

(C) Notwithstanding any other law, moneys in the Mercury Thermostat Collection Program Fund shall not be loaned to, or borrowed by, any other special fund or the General Fund.

(D) Moneys in the Mercury Thermostat Collection Program Fund shall not be expended for any purpose not enumerated in this act.

(b) (1) A manufacturer may individually remit a payment required pursuant to subparagraph (A) of paragraph (1) of subdivision (a), or a group of manufacturers may remit a payment on behalf of a group of manufacturers. Manufacturers shall apportion a payment or payments required pursuant to subparagraph (A) of paragraph (1) of subdivision (a) among themselves in a fair and reasonable manner.

(2) If a payment required pursuant to subparagraph (A) of paragraph (1) of subdivision (a) is made on behalf of a group of manufacturers, the names of the manufacturers shall be included with the payment and in the written notice to the department required pursuant to clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a) so the department can determine each manufacturer's compliance with this act. If a manufacturer that is part of a group of manufacturers making a payment required pursuant to subparagraph (A) of paragraph (1) of subdivision (a) fails to make a payment, the group of manufacturers shall provide to the department a written notice of the nonpaying manufacturer's identity and the apportioned payment amount for which the nonpaying manufacturer is responsible.

(c) If a manufacturer fails to make a payment pursuant to subparagraph (A) of paragraph (1) of subdivision (a) in accordance with this section, or pursuant to subdivision (f), the manufacturer's thermostats shall be subject to a sales ban pursuant to subdivision (b) of Section 25214.8.12.

(d) (1) The Legislature intends that, by making all payments required pursuant to subparagraph (A) of paragraph (1) of subdivision (a) on or before March 30, 2022, and on or before March 30 of each year thereafter until March 30, 2028, and all payments required pursuant to subdivision (f) on or before January 1, 2023, and on or before January 1 of each year thereafter until January 1, 2029, a manufacturer shall be deemed to have satisfied, and will have discharged or be released from, any liability, obligation, or violation established or alleged pursuant to this article, including the regulations adopted by the department pursuant to former Section 25214.8.17, as it existed before January 1, 2022.

(2) If a manufacturer makes all payments required pursuant to subparagraph (A) of paragraph (1) of subdivision (a) on or before March 30, 2022, and on or before March 30 of each year thereafter until March 30, 2028, and all payments required pursuant to subdivision (f) on or before January 1, 2023, and on or before January 1 of each year thereafter until January 1, 2029, any consent order, summary of violation or violations, or other instrument or document, including, but not limited to, the February 10, 2016, Consent Order entered into between the department and 25 mercury-added thermostat manufacturers pursuant to Section 25187 and former Section 25214.8.17, establishing or alleging liability, obligations, or violations of that manufacturer pursuant to this article, including the regulations adopted by the department pursuant to former Section 25214.8.17, as it existed before January 1, 2022, shall be deemed stayed prior to the expiration of this act and deemed satisfied, discharged, released, or terminated upon the expiration of this act.

(e) (1) A manufacturer, or group of manufacturers, shall do all of the following:

(A) Provide to the qualified third party two million dollars (\$2,000,000) in the first program year to effectively and efficiently develop and implement the education and outreach campaign required pursuant to subdivisions (c) to (f), inclusive, of Section 25214.8.11.5.

(B) Provide to the qualified third party one million two hundred thousand dollars (\$1,200,000) annually in each of the subsequent five program years to carry out the education and outreach campaign required pursuant to subdivisions (c) to (f), inclusive, of Section 25214.8.11.5.

(C) Provide to the qualified third party one million one hundred thousand dollars (\$1,100,000) in the seventh program year to carry out the education and outreach campaign required pursuant to subdivisions (c) to (f), inclusive, of Section 25214.8.11.5.

(D) Provide to the qualified third party an amount equal to the annual costs estimated by the qualified third party to develop and implement the program pursuant to this act.

(2) Any funds provided to the qualified third party pursuant to paragraph (1) that are not expended by the qualified third party in the program year in which the funds were received may be used by the qualified third party the following program year for the education and outreach campaign required pursuant to subdivisions (c) to (f), inclusive, of Section 25214.8.11.5.

(f) A manufacturer, or group of manufacturers, on or before January 1, 2023, and on or before January 1 of each year thereafter until January 1, 2029, shall provide to the qualified third party an amount equal to the actual costs incurred by the qualified third party that exceed the amount provided to the qualified third party pursuant to subparagraph (D) of paragraph (1) of subdivision (e).

SEC. 6. Section 25214.8.11.4 is added to the Health and Safety Code, to read:

25214.8.11.4. (a) On or before March 1, 2022, a manufacturer, or group of manufacturers, shall contract with or retain a qualified third party to develop and implement a convenient, cost-effective, and efficient program consistent with this act.

(b) A manufacturer, or group of manufacturers, shall issue a request for proposals for a qualified third party to develop and implement the program required pursuant to this act. The manufacturer, or group of manufacturers, shall consider all of the following factors when selecting a qualified third party to develop and implement the program:

(1) The qualified third party's history and success of operating product takeback collection programs.

(2) The qualified third party's ability to identify and provide information to consumers about out-of-service mercury-added thermostat collection locations.

(3) The qualified third party's ability to ensure that transportation systems move waste safely and effectively.

(4) The qualified third party's history of working with recycling or disposal experts, manufacturers, state and local governments, and retailers.

(5) The qualified third party's ability to implement an effective education and outreach campaign.

(6) The qualified third party's presence in the state and its ability to adequately engage with stakeholders in the state to develop and implement the program.

(7) Any other factors determined by the manufacturer, or group of manufacturers, to be relevant to the selection of a qualified third party to develop and implement the program.

SEC. 7. Section 25214.8.11.5 is added to the Health and Safety Code, to read:

25214.8.11.5. A qualified third party selected by a manufacturer, or group of manufacturers, to develop and implement the program shall do all of the following:

(a) Collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with this act, unless these activities are performed by a manufacturer, or group of manufacturers, pursuant to paragraph (1) of subdivision (a) of Section 25214.8.13.

(b) (1) Ensure that the locations and methods established pursuant to the program to collect out-of-service mercury-added thermostats are sufficiently convenient in all parts of the state, including within rural communities, disadvantaged communities, as identified by the California Environmental Protection Agency pursuant to Section 39711, and low-income communities, as defined in paragraph (2) of subdivision (d) of Section 39713, to encourage the collection of out-of-service mercury-added thermostats. For the purpose of this paragraph, "sufficiently convenient" means both of the following:

(A) For at least 90 percent of state residents, a collection location is located within 15 miles of their residence.

(B) At least one collection location in each county in the state, unless there is no collection location in the county that is required to participate under this act or willing to participate voluntarily.

(2) The qualified third party may, in its discretion, provide for and establish a greater number of collection locations than required pursuant to paragraph (1) to maximize convenience and encourage the collection of out-of-service mercury-added thermostats.

(c) On or before July 1, 2022, develop and implement, and update as necessary, a statewide educational and outreach campaign to inform appropriate entities about the importance of safe recycling and disposal of out-of-service mercury-added thermostats, where and how to access out-of-service mercury-added thermostat collection locations, and how to access available out-of-service mercury-added thermostat collection incentives, as well as to coordinate program activities with various stakeholders, including, but not limited to, all of the following:

(1) The Contractors State License Board.

(2) Heating, ventilation, and air-conditioning contractors.

(3) Demolition and environmental contractors, and related associations.

(4) Municipal utility districts.

(5) Household hazardous waste collection programs.

(6) Apartment and property management associations and organizations.

(7) Homeowners.

(8) Rural districts.

(9) Retailers.

(10) Disadvantaged communities, as identified by the California Environmental Protection Agency pursuant to Section 39711, or low-income communities, as defined in paragraph (2) of subdivision (d) of Section 39713.

(11) The general public.

(12) The Public Utilities Commission.

(13) The State Energy Resources Conservation and Development Commission.

(d) (1) On or before July 1, 2022, create and distribute informational materials about the program that include, but are not limited to, all of the following:

(A) Signage that is prominently displayed and easily visible to consumers and contractors.

(B) Written materials and templates of materials for reproduction by retailers and wholesalers to be provided to consumers at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials shall include information on the prohibition of improper disposal of out-of-service mercury-added thermostats, requirements for the proper management of out-of-service mercury-added thermostats, out-of-service mercury-added thermostat collection locations, and the availability of out-of-service mercury-added thermostat collection bins.

(C) Advertising or other promotional materials, or both, that include references to out-of-service mercury-added thermostat collection opportunities.

(D) Materials to be used in direct communications with consumers and contractors at the time of purchase of a thermostat.

(E) A public service announcement promoting the proper management of out-of-service mercury-added thermostats, and a plan for a public service campaign using the public service announcement that includes the media and markets into which the public service announcement is to be distributed and aired on behalf of the program. Copies of the public service announcement shall be provided to the department for its use and promotion.

(F) Written materials, signage, and other advertising and promotional materials that provide information to consumers about how to access the available out-of-service mercury-added thermostat collection incentives.

(2) The informational materials created and distributed by the qualified third party pursuant to this subdivision shall be made available in a manner necessary to ensure that the informational materials are available to and accessible by all state residents, and shall be translated into Spanish, Chinese, Tagalog, Vietnamese, and Korean where any of these languages are spoken by a substantial number of the public to which the materials are being distributed.

(e) (1) On or before July 1, 2022, establish an internet website for the program that is accessible to the public. The qualified third party shall post all of the following on the internet website:

(A) Templates of educational materials, in a form and format that can be easily downloaded.

(B) Location information, by county, of all established out-of-service mercury-added thermostat collection sites in the state. Location information shall be posted and updated in a manner that allows members of the public to easily identify the most convenient location for collection of out-of-service mercury-added thermostats.

(C) Information about accessing available out-of-service mercury-added thermostat collection incentives.

(2) The department shall display on its internet website a link to the internet website for the program established by the qualified third party pursuant to paragraph (1).

(f) On or before July 1, 2022, develop strategies to work with all of the following to encourage their participation in the collection and proper management of out-of-service mercury-added thermostats:

(1) State utilities participating in demand response programs involving the replacement of thermostats. These strategies may include the inclusion of an educational insert in their customers' utility bills.

(2) Wholesalers of thermostats in the state.

(3) Retailers and other outlets that sell thermostats directly to consumers in the state.

(4) Household hazardous waste collection facilities to partner with local take-back centers, including retailers and wholesalers, to facilitate convenient out-of-service mercury-added thermostat collection options for community members.

(g) (1) Provide out-of-service mercury-added thermostat collection incentives to consumers, of no less than thirty dollars (\$30) per out-of-service mercury-added thermostat collected, and educate contractors, service technicians, and residents on the availability of the incentives.

(2) (A) A collection incentive available pursuant to paragraph (1) shall be available only to a consumer or service technician that attests, under penalty of perjury, to both of the following:

(i) Their California state residency.

(ii) That the returned out-of-service mercury-added thermostat or thermostats were removed from a building or facility in the state.

(B) For the purpose of subparagraph (A), "consumer" means an individual resident of the state who returns an out-of-service mercury-added thermostat to an established collection location and who is not a retailer or wholesaler.

(h) Notwithstanding any other provision in this act, the qualified third party shall only be required to implement subdivisions (c) to (f), inclusive, after January 1, 2029, if unspent funds from previous program years are available to further the implementation of these subdivisions.

SEC. 8. Section 25214.8.11.6 is added to the Health and Safety Code, to read:

25214.8.11.6. (a) On or before June 1, 2022, the qualified third party shall provide to the department for review and approval the plan developed by the qualified third party to carry out the program elements identified in Section 25214.8.11.5 and, if implemented by the qualified third party, Section 25214.8.13.

(b) (1) Within 30 days of receipt of the qualified third party's plan pursuant to subdivision (a), the department shall review the plan, determine whether the plan is complete, and notify the qualified third party, in writing, of the department's determination. For the purpose of the department's determination, the qualified third-party's plan shall be deemed complete if the plan addresses each program element identified in Section 25214.8.11.5 and, if implemented by the qualified third party, Section 25214.8.13.

(2) If the department determines that the plan is incomplete, the department shall identify, in writing, what additional information or modifications must be submitted to the department by the qualified third party to complete the plan. The qualified third party shall submit to the department a revised plan within 30 days of the date of the department's written notification. The department shall review the revised plan within 30 days of receipt of the plan.

(c) (1) If the department determines that the plan submitted pursuant to subdivision (a) or revised plan submitted pursuant to paragraph (2) of subdivision (b) is complete, the department shall have 30 days from the date of its determination to review and approve the plan or revised plan.

(2) The department shall review the plan or revised plan for compliance with this act and shall do any of the following:

(A) Approve the plan or revised plan, in which case the department shall provide written notification to the qualified third party of the department's approval of the plan.

(B) Conditionally approve the plan or revised plan, in which case the department shall provide written notification to the qualified third party of the department's conditional approval of the plan. The department shall include in its written notification the basis for its conditional approval and describe, in detail, the requirements with which the qualified third party needs to comply in order to proceed to implement the plan in compliance with this act.

(C) (i) Disapprove the plan or revised plan, in which case the department shall provide written notification to the qualified third party of the department's disapproval of the plan. The department shall include in its written notification the basis for its disapproval and require the qualified third party to submit to the department a revised plan within 30 days of the date of the department's written notification disapproving the plan. The department shall review the revised plan within 15 days of receipt.

(ii) If the department determines that the revised plan submitted pursuant to clause (i) does not comply with this act, the manufacturer, or group of manufacturers, that contracted with or retained the qualified third party shall not be deemed to be in compliance with this act until the qualified third party submits, and the department approves or conditionally approves, a plan that complies with the requirements of this act.

(d) The time taken by the department to review and approve the qualified third party's plan or revised plan pursuant to this section shall toll the qualified third party's July 1, 2022, deadline to develop and implement the statewide educational and outreach campaign required pursuant to subdivisions (c) to (f), inclusive, of Section 25214.8.11.5 and, if implemented by the qualified third party, the July 1, 2022, deadlines pursuant to clause (i) to (iv), inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 25214.8.13.

(e) The program required by this article as it existed before January 1, 2022, shall remain in effect until the plan submitted by the qualified third party pursuant to this section is approved by the department and fully implemented by the qualified third party.

SEC. 9. Section 25214.8.12 of the Health and Safety Code is amended to read:

25214.8.12. (a) Except for a manufacturer that fails to have a plan submitted by the qualified third party approved by the department pursuant to Section 25214.8.11.6, or a manufacturer that fails to make a payment pursuant to subparagraph (A) of paragraph (1) of subdivision (a) and subdivision (f) of Section 25214.8.11.2, which shall solely be addressed pursuant to subdivision (c) of Section 25214.8.11.2 and subdivisions (b) and (c) of this section, the department shall determine whether a manufacturer, or group of manufacturers, has made a good faith effort to comply with this act. For the purpose of this subdivision, "good faith effort" means all reasonable and feasible efforts by a manufacturer, or a group of manufacturers, through the qualified third party that has been retained by the manufacturer, or group of manufacturers, to comply with this act.

(b) (1) A person shall not sell or offer for sale in this state a thermostat that is produced by a manufacturer that is not in compliance with this act.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) listing noncompliant manufacturers is posted on the department's internet website and shall remain in effect until the manufacturer is no longer listed on the department's internet website.

(c) On or before July 1, 2023, and on or before January 1 and July 1 of each year thereafter, the department shall post a notice on its internet website listing manufacturers that are not in compliance with this act.

(d) A wholesaler or a retailer that distributes or sells mercury-added thermostats shall monitor the department's internet website to determine if the sale of a manufacturer's thermostats is in compliance with subdivision (b).

SEC. 10. Section 25214.8.13 of the Health and Safety Code is amended to read:

25214.8.13. (a) (1) (A) Subject to paragraph (2), each manufacturer, or group of manufacturers, shall do all of the following:

(i) Collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with this act.

(ii) On and after July 1, 2022, provide collection bins for out-of-service mercury-added thermostat collection at no cost to wholesalers in the state that sells thermostats and requests a collection bin.

(iii) On and after July 1, 2022, provide collection bins for out-of-service mercury-added thermostat collection at no cost to any retailer in the state that sells thermostats and requests a collection bin.

(iv) On and after July 1, 2022, provide collection bins for out-of-service mercury-added thermostat collection at no cost to any local governmental agency that requests a collection bin for use at a household hazardous waste collection facility or household hazardous waste event, and at no cost to a licensed contractor that requests a collection bin.

(v) Either arrange for pickup of the collection bins or pay for the costs of shipping the collection bins provided pursuant to clauses (i) to (iv), inclusive, for proper handling and recycling or disposal of the out-of-service mercury-added thermostats.

(vi) On or before April 1, 2023, and on or before April 1 of each year thereafter, submit an annual report to the department covering the one-year period ending December 31 of the previous calendar year. Each report shall also be posted on the internet website created by the qualified third party pursuant to subdivision (e) of Section 25214.8.11.5. The annual report shall include all of the following:

(I) The number of out-of-service mercury-added thermostats collected in the state during the previous calendar year.

(II) The estimated total amount of mercury contained in the collected out-of-service mercury-added thermostats.

(III) The number of incentives provided to consumers and the total amount of incentives paid to consumers pursuant to the program during the previous calendar year.

(IV) An evaluation of the effectiveness of the program and the extent to which each element of the planned activities has been successful or could be modified to improve the effectiveness of the program.

(V) An accounting of the program administrative costs, including the most recent copy of Internal Revenue Service Form 990 for the qualified third party.

(VI) A description of the outreach strategies employed to increase participation, convenience, and collection rates, including dedicated outreach to rural communities, disadvantaged communities, as identified by the California Environmental Protection Agency pursuant to Section 39711, and low-income communities, as defined in paragraph (2) of subdivision (d) of Section 39713, and an assessment of the effectiveness of those outreach strategies.

(VII) Examples of outreach and educational materials used, including:

(aa) A description of the education and outreach conducted for each of the groups identified in subdivision (c) of Section 25214.8.11.5.

(ab) The date and form of education and outreach conducted for or at each collection location.

(ac) Data describing the scope, by medium, of all education and outreach conducted by the qualified third party, including, as applicable, online, digital, social, print, broadcast, or other media.

(VIII) Names and locations of all participating out-of-service mercury-added thermostat collection locations.

(IX) The number of out-of-service mercury-added thermostats collected at each collection location.

(X) The address for the internet website created by the qualified third party pursuant to subdivision (e) of Section 25214.8.11.5 where the annual report may be viewed online.

(XI) A description of how the collected out-of-service mercury-added thermostats were managed.

(XII) The results and analysis of the annual survey conducted by the qualified third party pursuant to Section 25214.8.13.5.

(XIII) Proposed modifications to the program.

(XIV) A description of the qualified third party's expenditures incurred in developing and implementing the program.

(B) Subject to paragraph (2), on or before June 1, 2022, a manufacturer, or group of manufacturers, shall provide to the department for review and approval the plan developed by the manufacturer, or group of manufacturers, to carry out the requirements of this paragraph. The department shall review the plan in accordance with the procedures and timeframes outlined in subdivision (b) of Section 25214.8.11.6.

(2) A manufacturer, or group of manufacturers, may retain, but is not required to retain, the qualified third party to implement the requirements of paragraph (1).

(b) (1) On or before January 1, 2028, the department shall report to the Legislature on the status of the program.

(2) The department shall submit its report pursuant to paragraph (1) in compliance with Section 9795 of the Government Code.

SEC. 11. Section 25214.8.13.5 is added to the Health and Safety Code, to read:

25214.8.13.5. (a) No later than July 1, 2023, and no later than July 1 of each year thereafter until July 1, 2028, the qualified third party shall conduct an annual survey of the groups listed in subdivision (c) of Section 25214.8.11.5 to evaluate the effectiveness of the education and outreach campaign developed by the qualified third party pursuant to that paragraph and to obtain collection data from each entity engaged in the collection of out-of-service mercury-added thermostats. The qualified third party shall transmit the annual survey results to the department by September 1 of the same year.

(b) The qualified third party shall post the results of the annual survey on the internet website created pursuant to subdivision (e) of Section 25214.8.11.5 and allow public comment on the survey for up to 30 calendar days after the survey is posted on the internet website. The department shall provide on its internet website a link to the qualified third party's survey results and public comments.

(c) The qualified third party shall review the annual survey responses and public comments and, if warranted, by November 1 of the same year, submit to the department for its review and approval proposals to modify the program. The department shall evaluate the qualified third party's proposals, provide feedback on the proposals to the qualified third party, and render a decision on the proposed modifications no later than December 1 of the same year. The modified plan shall be implemented the following calendar year to ensure that all out-of-service mercury-added thermostat collection locations are thoroughly informed about the program and its collection tools and are provided with any technical assistance that may be needed to increase the program's effectiveness at out-of-service mercury-added thermostat collection locations where warranted.

SEC. 12. Section 25214.8.14 of the Health and Safety Code is amended to read:

25214.8.14. (a) A wholesaler that distributes new thermostats and that has a physical location in the state shall act as a collection location for out-of-service mercury-added thermostats.

(b) A retailer or wholesaler that distributes new thermostats by mail to buyers in the state shall include with the sale of the new thermostat, an internet website address and a toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.

(c) A wholesaler that distributes new thermostats shall distribute the educational and outreach materials developed by the qualified third party pursuant to Section 25214.8.11.5 to the wholesaler's customers.

SEC. 13. Section 25214.8.15 of the Health and Safety Code is amended to read:

25214.8.15. A contractor who installs heating, ventilation, and air-conditioning components and who removes a mercury-added thermostat shall take the out-of-service mercury-added thermostat to a location that is authorized to collect out-of-service mercury-added thermostats.

SEC. 14. Section 25214.8.16 of the Health and Safety Code is amended to read:

25214.8.16. A person who demolishes a building shall remove any mercury-added thermostats from the building before demolition in accordance with all applicable statutes and regulations, and take the out-of-service mercury-added thermostat to a

location that is authorized to collect out-of-service mercury-added thermostats.

SEC. 15. Section 25214.8.17 of the Health and Safety Code is repealed.

SEC. 16. Section 25214.8.17 is added to the Health and Safety Code, to read:

25214.8.17. The department shall repeal all regulations adopted by the department pursuant to former Section 25214.8.17.

SEC. 17. Section 25214.8.18 of the Health and Safety Code is repealed.

SEC. 18. Section 25214.8.18 is added to the Health and Safety Code, to read:

25214.8.18. (a) The collection, handling, storage, and management of out-of-service mercury-added thermostats pursuant to this act shall be performed in compliance with this chapter and its implementing regulations.

(b) Nothing in this act shall be construed as affecting or modifying a person's responsibility to otherwise comply with this chapter, including its implementing regulations, with respect to hazardous waste.

(c) Except as provided, nothing in this act shall limit or restrict the authority of the department's enforcement authority pursuant to this chapter and its implementing regulations.

(d) Notwithstanding any other law, a qualified third party shall not be liable pursuant to this chapter for violations of this act.

SEC. 19. Section 25214.8.19 is added to the Health and Safety Code, to read:

25214.8.19. This article shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 20. Section 25214.8.20 of the Health and Safety Code is repealed.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.