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AB-732 Mercury Thermostat Collection Act of 2021. (2021-2022)

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Assembly Bill No. 732

CHAPTER 742

An act to amend Sections 25214.8.11.6, 25214.8.12, 25214.8.13, 25214.8.13.5, and 25214.8.17 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 732, Quirk. Mercury Thermostat Collection Act of 2021.

The Mercury Thermostat Collection Act of 2021, as part of the hazardous waste control laws, requires, until January 1, 2030, 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 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 act requires, on or before June 1, 2022, the qualified third party, as defined, to provide to the Department of Toxic Substances Control for review and approval the plan to carry out the program. The act requires 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 act subjects the thermostats of a manufacturer that fails to have a plan submitted by the qualified third party approved by the department, or fails to make a payment required pursuant to the act, to a sales ban, as provided. The act requires, with the exception of the foregoing violations, the department to determine whether a manufacturer, or group of manufacturers, has made a good faith effort, as defined, to comply with the act. The act requires manufacturers, on and after July 1, 2022, to provide collection bins to wholesalers that request them for out-of-service mercury-added thermostats. A violation of the hazardous waste control laws is a crime.

This bill would impose the sales ban on the thermostats of every manufacturer not in compliance with the act, notwithstanding good faith effort. The bill would require manufacturers to provide, without a request, collection bins to wholesalers for out-of-service mercury-added thermostats. Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program. The bill also would make other technical and nonsubstantive changes to the act.

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. Section 25214.8.11.6 of the Health and Safety Code is amended 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 Sections 25214.8.11.5 and 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 Sections 25214.8.11.5 and 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 the July 1, 2022, deadlines pursuant to clause (ii) 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. 2. Section 25214.8.12 of the Health and Safety Code is amended to read:

25214.8.12. (a) 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 required pursuant to either subparagraph (A) or (B) of paragraph (1) of subdivision (a) or subdivision (f) of Section 25214.8.11.2 shall be subject to the sales ban pursuant to subdivision (b).

(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. 3. 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 a wholesaler in the state that sells thermostats.

(iii) On and after July 1, 2022, provide collection bins for out-of-service mercury-added thermostat collection at no cost to a 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 a 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 (ii) 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 subdivisions (b) to (d), inclusive, 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. 4. Section 25214.8.13.5 of the Health and Safety Code is amended 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 subdivision and to obtain collection data. 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) Until December 31, 2028, 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. 5. Section 25214.8.17 of the Health and Safety Code is amended to read:

25214.8.17. The department shall repeal Chapter 24 (commencing with Section 66274.1) of Division 4.5 of Title 22 of the California Code of Regulations.

SEC. 6. 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.