

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1042

H.P. 717

House of Representatives, March 17, 2009

An Act To Continue To Reduce Mercury Use and Emissions

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TREAT of Hallowell.
Cosponsored by Representatives: BRYANT of Windham, DUCHESNE of Hudson, EBERLE of South Portland, PERRY of Calais, VAN WIE of New Gloucester, WELSH of Rockport,
Senators: BARTLETT of Cumberland, GOODALL of Sagadahoc.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §1661, sub-§4**, as repealed and replaced by PL 2003, c. 221,
3 §2, is amended to read:

4 **4. Mercury switch.** "Mercury switch" means a mercury-added product or device
5 ~~that opens or closes an electrical circuit or gas valve for measuring, controlling or~~
6 ~~regulating the flow of gas, other fluids or electricity.~~ "Mercury switch" includes mercury
7 float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by
8 a change in the switch position, mercury pressure switches actuated by a change in
9 pressure, mercury temperature switches actuated by a change in temperature and
10 mercury flame sensors and mercury connectors for making, breaking or changing the
11 connection in an electrical circuit. "Mercury switch" does not include a mercury-added
12 thermostat as defined in section 1665-B, subsection 1, paragraph B.

13 **Sec. 2. 38 MRSA §1661-C, sub-§5**, as amended by PL 2003, c. 221, §3, is
14 repealed.

15 **Sec. 3. 38 MRSA §1661-C, sub-§11** is enacted to read:

16 **11. Recoil reduction devices.** Beginning January 1, 2010, a person may not sell or
17 offer to sell or distribute a device for reducing recoil when discharging a firearm if the
18 device contains mercury.

19 **Sec. 4. 38 MRSA §1661-C, sub-§12** is enacted to read:

20 **12. Wheel balancing products.** Beginning January 1, 2010, a person may not sell
21 or offer to sell or distribute weights or other products for balancing motor vehicle wheels
22 if the product contains mercury.

23 **Sec. 5. 38 MRSA §1665-A, sub-§5**, as amended by PL 2005, c. 561, §9, is
24 further amended to read:

25 **5. Motor vehicle manufacturer responsibility.** Manufacturers of motor vehicles
26 sold in this State that contain mercury switches or mercury headlamps shall, individually
27 or collectively, do the following:

28 ~~A. By January 1, 2003, establish and maintain consolidation facilities geographically~~
29 ~~located to serve all areas of the State to which mercury switches removed pursuant to~~
30 ~~this section may be transported by the persons performing the removal. A~~
31 ~~consolidation facility may not be a facility that is licensed in the State as a new or~~
32 ~~used automobile dealership; Establish a system to collect and recycle mercury~~
33 ~~switches removed pursuant to subsection 3. The system may consist of consolidation~~
34 ~~facilities geographically located to serve all areas of the State to which the switches~~
35 ~~may be transported by the persons performing the removal or any other collection~~
36 ~~methodology approved by the department. The system must be convenient to use,~~
37 ~~must accept the switches free of charge and may not provide for collection of the~~
38 ~~switches at an automobile dealership;~~

1 B. ~~Pay for each mercury switch brought to the consolidation facilities as partial~~
2 ~~compensation for the removal, storage and transport of the switches a minimum of \$4~~
3 ~~if the vehicle identification number of the source vehicle is provided. If the vehicle~~
4 ~~identification number of the source vehicle is not provided, no payment is required;~~
5 For each mercury switch collected pursuant to paragraph A, pay a minimum of \$4 to
6 the person responsible for removing the switch whether or not the vehicle
7 identification number of the source vehicle is provided;

8 C. ~~Ensure that mercury switches redeemed at the consolidation centers collected~~
9 ~~pursuant to paragraph A are managed in accordance with the universal waste rules~~
10 ~~adopted by the board under subsection 8; and~~

11 D. Provide the department and persons who remove motor vehicle components
12 under this section with information, training and other technical assistance required to
13 facilitate removal and recycling of the components in accordance with the universal
14 waste rules adopted by the board under subsection 8, including, but not limited to,
15 information identifying the motor vehicle models that contain or may contain
16 mercury switches or mercury headlamps.

17 ~~The goal of this collection and recycling effort is to collect and recycle at least 90 pounds~~
18 ~~of mercury per year from~~ minimize mercury emissions to the environment by ensuring
19 that all mercury switches are removed from motor vehicles for recycling before the
20 vehicles are flattened, baled or crushed. By September 30, 2002, motor vehicle
21 manufacturers shall provide the department with a plan as to how they intend to comply
22 with the requirements of this subsection.

23 In complying with the requirements of this subsection, manufacturers of motor vehicles
24 shall establish a system that does not require a person who removes a mercury switch to
25 segregate switches separately according to each manufacturer of motor vehicles from
26 which the switches are removed.

27 **Sec. 6. 38 MRSA §1665-B, sub-§1**, as enacted by PL 2005, c. 558, §1, is
28 repealed and the following enacted in its place:

29 **1. Definitions.** For purposes of this section, unless the context otherwise indicates,
30 the following terms have the following meanings.

31 A. "Manufacturer" means the first person who assembles component parts into a
32 functioning thermostat. "Manufacturer" does not include a person who purchased a
33 functioning mercury thermostat and affixed its brand or label to the thermostat for
34 resale.

35 B. "Mercury-added thermostat" or "mercury thermostat" means a product or device
36 that uses a mercury switch to sense and control room temperature through
37 communication with heating, ventilating or air conditioning equipment. "Mercury-
38 added thermostat" or "mercury thermostat" includes a thermostat used to sense and
39 control room temperature in residential, commercial, industrial and other buildings
40 but does not include a thermostat used to sense and control temperature as part of a
41 manufacturing process.

1 C. "Retailer" means a person who sells thermostats of any kind directly to
2 homeowners or other nonprofessionals through any selling or distribution
3 mechanism, including, but not limited to, sales using the Internet or catalogues.

4 **Sec. 7. 38 MRSA §1665-B, sub-§1-A** is enacted to read:

5 **1-A. Prohibition.** A person may not sell or offer to sell or distribute for promotional
6 purposes a mercury thermostat.

7 **Sec. 8. 38 MRSA §1665-B, sub-§2, ¶A,** as enacted by PL 2005, c. 558, §1, is
8 amended to read:

9 A. Establish and maintain a collection and recycling program for out-of-service
10 mercury-added thermostats. The collection and recycling program must be designed
11 and implemented to ensure that:

12 (1) A maximum rate of collection of mercury-added thermostats is achieved;

13 (2) Handling and recycling of mercury-added thermostats are accomplished in a
14 manner that is consistent with section 1663, with other provisions of this chapter
15 and with the universal waste rules adopted by the board pursuant to section
16 1319-O;

17 (3) Authorized bins for mercury-added thermostat collection are made available
18 at all heating, ventilation and air conditioning supply, electrical supply and
19 plumbing supply distributor locations that sell thermostats and to all retailers who
20 volunteer to participate in the program; and

21 (4) By January 1, 2007, authorized bins for mercury-added thermostat collection
22 are made available to municipalities and regions requesting bins for mercury-
23 added thermostat collection at universal waste collection sites or at periodic
24 household hazardous waste collection events, as long as the collection sites or
25 events are approved by the department for mercury-added thermostat collections;

26 **Sec. 9. 38 MRSA §1665-B, sub-§2, ¶F,** as enacted by PL 2005, c. 558, §1, is
27 amended to read:

28 F. Within 3 months after the department develops phase 2 of the plan required by
29 subsection 4, provide a financial incentive with a minimum value of \$5 for the return
30 of each mercury-added thermostat by a homeowner to an established recycling
31 collection point; ~~and~~

32 **Sec. 10. 38 MRSA §1665-B, sub-§2, ¶G,** as enacted by PL 2005, c. 558, §1, is
33 amended to read:

34 G. Beginning in 2008, submit an annual report to the department by January 30th of
35 each year ~~that includes. The report must be submitted on a form provided by the~~
36 department and must include at a minimum:

37 (1) ~~The number of mercury added thermostats collected and recycled by that~~
38 ~~manufacturer pursuant to this section during the previous calendar year;~~

1 (2) ~~The estimated total amount of mercury contained in the thermostat~~
2 ~~components collected by that manufacturer pursuant to this section;~~

3 (3) An evaluation of the effectiveness of the manufacturer's collection and
4 recycling program and the financial incentive provided pursuant to paragraphs E
5 and F; and

6 (4) An accounting of the administrative costs incurred in the course of
7 administering the collection and recycling program and the financial incentive
8 plan developed pursuant to subsection 4. For the purposes of this subparagraph,
9 administrative costs are limited to costs associated with processing thermostats
10 shipped to the manufacturer for recycling, issuing incentive payments and
11 conducting education and outreach activities; and

12 (5) The manufacturer's proposed education and outreach plan as required under
13 subsection 4-A;

14 **Sec. 11. 38 MRSA §1665-B, sub-§2, ¶H** is enacted to read:

15 H. Beginning January 1, 2010, submit a quarterly report to the department within 30
16 days after the end of each quarter that, for each shipment of thermostats received by
17 the manufacturer or manufacturer's agent for recycling during the quarter, provides:

18 (1) The collection location that shipped the thermostats;

19 (2) The date the manufacturer received the shipment;

20 (3) The number of mercury thermostats; and

21 (4) The total amount of mercury collected. The manufacturer may include in this
22 total mercury amounts in devices other than thermostats it made if the shipment
23 included such devices and the mercury in those devices is recovered; and

24 **Sec. 12. 38 MRSA §1665-B, sub-§2, ¶I** is enacted to read:

25 I. Beginning January 1, 2010, implement the education and outreach plan approved
26 by the department under subsection 4-A.

27 **Sec. 13. 38 MRSA §1665-B, sub-§2-A** is enacted to read:

28 2-A. Termination of retailer participation. A manufacturer may terminate a
29 retailer's participation in the collection program under subsection 2, paragraph A only
30 after complying with the provisions of this subsection.

31 A. The manufacturer must notify the retailer, in writing, of noncompliance with
32 program policies and procedures and provide the retailer an opportunity to comply.

33 B. If the retailer continues to send in significant ineligible materials through the
34 collection program after 3 written notices of noncompliance, the manufacturer may
35 terminate the retailer's participation.

36 C. For termination to occur under this subsection, the manufacturer must notify the
37 retailer and the department in writing.

38 **Sec. 14. 38 MRSA §1665-B, sub-§4-A** is enacted to read:

1 4-A. Education and outreach plan. The annual report required under subsection 2,
2 paragraph G must include a plan setting forth the steps that the manufacturer will take to
3 inform wholesalers, retailers, contractors and homeowners about the thermostat collection
4 and recycling program and encourage participation. Copies of all informational material
5 proposed for distribution must be submitted with the plan. The plan must provide for
6 distribution of the informational material at no cost to thermostat wholesalers and
7 retailers.

8 The department shall review the proposed education and outreach plan within 60 days of
9 receipt of the annual report from the manufacturer and may grant, deny or approve the
10 plan with or without modifications. The department shall approve the plan upon
11 determining that it is designed to effectively reach thermostat wholesalers, retailers,
12 contractors and homeowners in all regions of the State, will be effective in making the
13 public aware of the program and encourages the public's participation by providing an
14 effective and consistent recycling message. The department may consider consistency of
15 the plan with plans submitted by other manufacturers to ensure ease of implementation by
16 wholesalers and retailers. The department also may consider consistency of the plan with
17 corresponding education and outreach efforts in other states to ensure ease of
18 implementation by manufacturers.

19 **Sec. 15. 38 MRSA §1665-B, sub-§5**, as enacted by PL 2005, c. 558, §1, is
20 amended to read:

21 **5. Goals.** The goal of the collection and recycling efforts under this section is to
22 collect and recycle at least 125 pounds of mercury per year from mercury-added
23 thermostats within 2 years after the development of phase one of the plan required by
24 subsection 4 and at least 160 pounds of mercury per year within 3 years after the
25 development of phase 2 of the plan required by subsection 4. Mercury in a product other
26 than a thermostat may be counted toward this goal if the product was captured by the
27 collection system and the mercury in the product was recovered.

28 SUMMARY

29 The bill clarifies the definition of the term "mercury switch" as used in the law on
30 mercury-added products.

31 The bill bans the sale of devices used to balance motor vehicle wheels and devices
32 used to reduce recoil when discharging firearms if the devices contain mercury.

33 The bill amends the law governing removal of mercury switches from motor vehicles
34 to give automakers flexibility in the design of systems put in place to collect mercury
35 switches from automobile recyclers and junkyard operators who are required by law to
36 remove the switches. The bill also eliminates the need to record the 17-digit vehicle
37 identification number as a prerequisite to payment of the switch bounty. Automakers will
38 be required to pay a minimum of \$4 for each switch delivered to them for recycling
39 whether or not the vehicle identification number of the source vehicle is provided.

1 The bill consolidates the law banning the sale of mercury thermostats with the law
2 that requires manufacturers to establish a program to collect and recycle mercury
3 thermostats placed in service before the ban.

4 The bill amends the law on collection and recycling of mercury thermostats to:

5 1. Limit the applicability of the manufacturer collection requirement by defining
6 "manufacturer" to exclude persons whose brand or label appears on the thermostat if the
7 thermostat was manufactured by someone else;

8 2. Require manufacturers of mercury thermostats to submit a quarterly report on the
9 number of thermostats and amount of mercury collected to the Department of
10 Environmental Protection;

11 3. Require manufacturers to implement an education and outreach plan approved by
12 the Department of Environmental Protection and to annually submit a proposed plan to
13 the department for review; and

14 4. Expand the collection and recycling program to include retailers who volunteer to
15 participate.