

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1136
Committee Substitute Favorable 4/20/05

Short Title: Mercury Switch Removal-2.

(Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE RELEASE OF MERCURY INTO THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 6. Mercury Switch Removal Act of 2005.

"§ 130A-310.50. Short title.

This Part may be cited as the Mercury Switch Removal Act of 2005.

"§ 130A-310.51. Definitions.

As used in this Part:

- (1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.
- (2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.
- (3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.
- (4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.
- (5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

1 (6) "Scrap metal recycling facility" means a fixed location where
2 machinery and equipment are used to process scrap metal into specific
3 grades of scrap metal for sale and whose primary product is scrap iron,
4 scrap steel, or nonferrous metallic scrap.

5 (7) "Vehicle" means any passenger automobile or passenger car, station
6 wagon, truck, van, or sport utility vehicle with a gross vehicle weight
7 rating of less than 12,000 pounds.

8 (8) "Vehicle recycler" means an individual or entity engaged in the
9 business of acquiring, dismantling, or destroying six or more
10 end-of-life vehicles in a calendar year for the primary purpose of resale
11 of parts of the vehicle.

12 **"§ 130A-310.52. Purpose.**

13 The purpose of this Part is to reduce the quantity of mercury that is released into the
14 environment by removing mercury switches from end-of-life vehicles and by creating a
15 removal, collection, and recovery program for mercury switches that are removed from
16 end-of-life vehicles in this State.

17 **"§ 130A-310.53. Mercury minimization plan.**

18 (a) Every manufacturer of vehicles sold within this State shall develop a mercury
19 minimization plan prepared pursuant to this section and submit the plan to the
20 Department for review and approval pursuant to G.S. 130A-310.54. Manufacturers of
21 vehicles may develop and submit a plan either individually or as part of a group of
22 manufacturers. A manufacturer shall not be required to develop or implement a
23 mercury minimization plan if the manufacturer demonstrates to the satisfaction of the
24 Department that there is no significant risk of a release of mercury from any vehicle
25 manufactured by the manufacturer.

26 (b) The mercury minimization plan prepared and submitted pursuant to this
27 section shall include at a minimum all of the following:

28 (1) The make, model, and year of any vehicle, including current and
29 anticipated future production models, that are sold or offered for sale
30 by the vehicle manufacturer and that may contain one or more mercury
31 switches. For each make, model, and year the vehicle manufacturer
32 shall provide a description and the location of each mercury switch in
33 the vehicle and all safe and environmentally sound methods for
34 removal of mercury switches from end-of-life vehicles. If the
35 manufacturer does not know or is uncertain as to whether or not a
36 switch contains mercury, the plan shall be based on a presumption that
37 the switch does contain mercury.

38 (2) A system to mark end-of-life vehicles that are to be shredded or
39 crushed to indicate the presence or absence of a mercury switch.

40 (3) Educational materials to assist a vehicle recycler or a scrap metal
41 recycling facility in undertaking a safe and environmentally sound
42 method for the removal of the mercury switches from end-of-life
43 vehicles. The materials shall include information on hazards related to
44 mercury and on the proper handling of mercury.

- 1 (4) A proposed method for storage and disposal of the mercury switches,
2 including packaging and shipping of mercury switches to permitted
3 recycling, storage, or disposal facilities. To the extent adequate,
4 affordable, and environmentally sound mercury switch disposal
5 technology is unavailable, the plan shall provide for the temporary
6 storage of mercury switches.
- 7 (5) A proposed procedure for the transfer of information among entities
8 subject to the mercury minimization plan to enable vehicle
9 manufacturers and the Department to comply with the reporting
10 requirements set out in G.S. 130A-310.56.
- 11 (6) A proposal to implement and finance the plan in accordance with
12 subsection (d) of this section.

13 (c) To the extent practicable, a mercury minimization plan shall utilize the
14 currently available end-of-life vehicle recycling infrastructure. To the extent adequate,
15 affordable, and environmentally sound end-of-life vehicle recycling infrastructure is
16 unavailable, the plan shall provide for the development of this infrastructure.

17 (d) A mercury minimization plan shall provide a method to finance the removal,
18 collection, and recovery of mercury switches installed in vehicles manufactured by the
19 manufacturer and its predecessors and affiliates. In order to ensure that the costs of
20 removal, collection, and recovery of mercury switches are not borne by automobile
21 dealers, consumers, vehicle recyclers, scrap metal recycling facilities, the State or local
22 governments, or other persons who become responsible for end-of-life vehicles, these
23 costs shall be borne by the manufacturers of vehicles sold in the State. The plan shall
24 provide for prompt reimbursement by manufacturers to vehicle recyclers, scrap metal
25 recycling facilities, the Department, and others of any costs incurred for removal,
26 collection, and recovery of mercury switches. Costs shall include, but are not limited to,
27 the following:

- 28 (1) A minimum of five dollars (\$5.00) for each mercury switch removed
29 by a vehicle recycler pursuant to G.S. 130A-310.55(a) as partial
30 compensation for the labor and other costs incurred by a vehicle
31 recycler in the removal of the mercury switch.
- 32 (2) A minimum of five dollars (\$5.00) for each mercury switch removed
33 by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as
34 partial compensation for the labor and other costs incurred by a scrap
35 metal recycling facility in the removal of the mercury switch.
- 36 (3) One dollar (\$1.00) for each mercury switch removed by a vehicle
37 recycler pursuant to G.S. 130A-310.55(a) or by a scrap metal recycling
38 facility pursuant to G.S. 130A-310.55(b) as partial compensation to the
39 Department for costs incurred in administering and enforcing the
40 provisions of this Part.
- 41 (4) The cost of packaging necessary to store or transport mercury switches
42 to recycling, storage, or disposal facilities.
- 43 (5) The cost of shipping mercury switches to recycling, storage, or
44 disposal facilities.

1 (6) The cost of recycling, storage, or disposal of mercury switches.

2 (7) The preparation and distribution to vehicle recyclers and scrap metal
3 recycling facilities of the educational materials required by subdivision
4 (3) of subsection (b) of this section.

5 (8) Maintenance of all appropriate record-keeping systems.

6 (e) Manufacturers of vehicles sold within this State shall reimburse vehicle
7 recyclers or scrap metal recycling facilities for each mercury switch removed, collected,
8 and recovered as provided in this section. Manufacturers shall reimburse vehicle
9 recyclers or scrap metal recycling facilities that maintain the records required by
10 G.S. 130A-310.55 for each mercury switch as provided in this section without regard to
11 the date on which the mercury switch is removed, collected, or recovered.

12 **"§ 130A-310.54. Plan approval and implementation.**

13 (a) The Department shall review a mercury minimization plan within 120 days
14 after receiving the plan. As a part of its review the Department shall consider comments
15 received from vehicle recyclers, persons who operate scrap metal recycling facilities,
16 and other interested parties. The Department may approve or disapprove the entire plan
17 or may approve part of the plan and disapprove the remainder of the plan. If the
18 Department approves the plan in its entirety, the manufacturer shall begin
19 implementation of the plan within 30 days unless the Department approves a later
20 implementation date. If the Department disapproves the plan in its entirety, the
21 Department shall notify the manufacturer of the reasons for the disapproval. The
22 manufacturer shall submit a revised mercury minimization plan within 30 days. If the
23 Department approves a mercury minimization plan in part, the manufacturer shall
24 implement the approved parts of the mercury minimization plan within 30 days unless
25 the Department approves a later implementation date and shall submit a revision of
26 those parts of the plan that are disapproved within 30 days. Any part of a mercury
27 minimization plan that is not approved or disapproved within 120 days shall be deemed
28 approved, and the manufacturer shall begin implementation within 30 days.

29 (b) A manufacturer must obtain approval of all required parts of a mercury
30 minimization plan within 240 days of the date on which the manufacturer is required to
31 submit a plan for review under this Part. If a manufacturer fails to obtain approval of all
32 required parts of a mercury minimization plan within the 240 days, the Department shall
33 prepare a plan, notify the manufacturer of the plan, and direct the manufacturer to begin
34 implementation of the plan within 30 days.

35 (c) The Department may review an approved mercury minimization plan and
36 recommend or require the manufacturer to modify the plan at any time upon finding that
37 the approved mercury minimization plan as implemented no longer meets the
38 requirements of this Part.

39 **"§ 130A-310.55. Removal of mercury switches from end-of-life vehicles.**

40 (a) A vehicle recycler that is subject to an approved mercury minimization plan
41 and that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility
42 shall remove all mercury switches identified in the mercury minimization plan prior to
43 delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is

1 inaccessible due to the condition of the vehicle, the fact that the mercury switch remains
2 in the vehicle shall be noted on the vehicle recycler's invoice.

3 (b) A scrap metal recycling facility that is subject to an approved mercury
4 minimization plan and that accepts an end-of-life vehicle that has not been flattened,
5 crushed, baled, or shredded and that contains mercury switches shall remove the
6 mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded
7 unless the mercury switch is inaccessible due to the condition of the vehicle.

8 (c) It shall be unlawful for any person to knowingly flatten, crush, bale, shred, or
9 otherwise alter the condition of a vehicle from which accessible mercury switches have
10 not been removed.

11 (d) A mercury switch is inaccessible if, due to the condition of the vehicle, the
12 switch cannot be removed in accordance with the approved mercury minimization plan
13 and removal of the switch would significantly increase the risk of a release of mercury
14 into the environment.

15 (e) A vehicle recycler or scrap metal recycling facility that removes mercury
16 switches pursuant to subsection (a) or (b) of this section shall maintain records of:

17 (1) The number of vehicles of each make that are processed for recycling.

18 (2) The number of mercury switches removed from each vehicle make,
19 model, and year.

20 (3) The number of vehicles processed for recycling.

21 (f) Each vehicle recycler and scrap metal recycling facility that is required to
22 maintain records under subsection (e) of this section shall retain the records for a
23 minimum of three years and shall make the records available for inspection by the
24 Department upon request.

25 (g) It shall be unlawful for a person who is required to remove mercury switches
26 under this Part to willfully fail to do so. It shall be unlawful for a person who is
27 required to make and maintain records under this Part to willfully fail to do so. It shall
28 be unlawful to knowingly make a false report that a mercury switch has been removed
29 from an end-of-life vehicle.

30 (h) Mercury switches that are removed from end-of-life vehicles shall be
31 considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1
32 July 2004 Edition). Mercury switches that are removed from end-of-life vehicles shall
33 be collected, transported, treated, stored, disposed of, and otherwise handled in
34 accordance with rules adopted by the Commission governing universal waste.

35 (i) Mercury switches shall be removed from end-of-life vehicles so as to achieve
36 a capture rate of at least ninety percent (90%).

37 **§ 130A-310.56. Evaluation of vehicle design changes that affect mercury**
38 **recyclability; reporting requirements.**

39 (a) Each vehicle manufacturer shall, either individually or as part of a group,
40 prepare an annual report that describes in detail the status of vehicle design changes that
41 are intended to facilitate recycling of vehicle components that contain mercury. At a
42 minimum, the report shall include all of the following:

- 1 (1) For each make and model, a list of all vehicle components that contain
2 mercury for the previous three model years, the current model year,
3 and the next upcoming model year.
- 4 (2) A description of all design changes that each manufacturer has
5 implemented or will implement to reduce or eliminate vehicle
6 components that contain mercury, the achieved or anticipated amount
7 of each reduction, and when the design change will be implemented.
- 8 (3) A summary of all policies that each manufacturer has implemented or
9 will implement to ensure that the manufacturers' vehicles are designed
10 to be recycled in a safe, cost-effective, and environmentally sound
11 manner.
- 12 (4) A summary of any recommendations, complaints, or reports that the
13 manufacturer has received within the previous 12 months from vehicle
14 recyclers, scrap metal recycling facilities, government entities, or other
15 persons, as well as any other information available to the
16 manufacturer, regarding vehicle design features that adversely affect
17 the recyclability of vehicle components that contain mercury.
- 18 (b) Each vehicle manufacturer shall submit, either individually or as part of a
19 group, the report required by subsection (a) of this section on or before 1 July of each
20 year.
- 21 (c) The Department may evaluate the extent to which vehicle design promotes or
22 impedes recycling of vehicle components that contain mercury. The Department may
23 conduct hearings from time to time to receive public comment regarding vehicle design
24 changes that affect recycling of vehicle components that contain mercury. The
25 Department may develop recommendations as to changes in vehicle design that would
26 further promote the recyclability of these components. The Department shall report its
27 findings and recommendations, including any legislative proposals, to the
28 Environmental Review Commission on or before 1 October of each year.
- 29 (d) Each vehicle manufacturer that is required to implement a mercury
30 minimization plan shall prepare, either individually or as part of a group, an annual
31 report on the implementation of the plan. The report shall be submitted to the
32 Department within 90 days after the end of the anniversary of the date on which the
33 manufacturer is required to begin implementation of the plan. The report shall include,
34 at a minimum, all of the following:
- 35 (1) A detailed description and documentation of the capture rate achieved.
36 (2) In the event that a capture rate of at least ninety percent (90%) is not
37 achieved, a description of additional or alternative actions that may be
38 implemented to improve the mercury minimization plan and its
39 implementation.
- 40 (3) The number of mercury switches collected, the number of end-of-life
41 vehicles containing mercury switches, the number of end-of-life
42 vehicles processed for recycling, and a description of how the mercury
43 switches were managed.

1 (4) A statement that details the costs required to implement the mercury
2 minimization plan.

3 **"§ 130A-310.57. Adoption of rules; administrative procedure; enforcement.**

4 (a) The Commission may adopt rules to implement this Part.

5 (b) Chapter 150B of the General Statutes governs implementation of this Part.

6 (c) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter."

7 **SECTION 2.** The Commission for Health Services shall amend 15A NCAC
8 13A .0119 to adopt rules governing the management of waste mercury-containing
9 devices, as defined in the Notice of Proposed Rulemaking published on 12 June 2002 in
10 the Federal Register, Volume 67, Number 113, Page 40507 through 40528, as universal
11 waste.

12 **SECTION 3.** G.S. 130A-310.53, as enacted by Section 1 of this act,
13 becomes effective 1 January 2006. G.S. 130A-310.56, as enacted by Section 1 of this
14 act, becomes effective 1 July 2007. All other provisions of Part 6 of Article 9 of
15 Chapter 130A of the General Statutes, as enacted by Section 1 of this act and Sections 2
16 and 3 of this act, become effective when this act becomes law. This act expires on 1
17 July 2026.