

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1136
Committee Substitute Favorable 4/20/05
Committee Substitute #2 Favorable 5/10/05
Committee Substitute #3 Favorable 5/19/05

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.

- 1 (5) "Mercury switch" means each mercury-containing capsule, commonly
2 known as a "bullet", that is part of a convenience light switch assembly
3 installed in a vehicle.
- 4 (6) "Scrap metal recycling facility" means a fixed location where
5 machinery and equipment are used to process scrap metal into specific
6 grades of scrap metal for sale and whose primary product is scrap iron,
7 scrap steel, or nonferrous metallic scrap.
- 8 (7) "Vehicle" means any passenger automobile or passenger car, station
9 wagon, truck, van, or sport utility vehicle with a gross vehicle weight
10 rating of less than 12,000 pounds.
- 11 (8) "Vehicle recycler" means an individual or entity engaged in the
12 business of acquiring, dismantling, or destroying six or more
13 end-of-life vehicles in a calendar year for the primary purpose of resale
14 of parts of the vehicle.

15 **"§ 130A-310.52. Purpose.**

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

20 **"§ 130A-310.53. Mercury minimization plan.**

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

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

- 31 (1) The make, model, and year of any vehicle, including current and
32 anticipated future production models, that are sold or offered for sale
33 by the vehicle manufacturer and that may contain one or more mercury
34 switches. For each make, model, and year, the vehicle manufacturer
35 shall provide a description and the location of each mercury switch in
36 the vehicle and all safe and environmentally sound methods for
37 removal of mercury switches from end-of-life vehicles. If the
38 manufacturer does not know or is uncertain as to whether or not a
39 switch contains mercury, the plan shall be based on a presumption that
40 the switch does contain mercury.
- 41 (2) A system to mark end-of-life vehicles that are to be shredded or
42 crushed to indicate the presence or absence of a mercury switch.
- 43 (3) Educational materials to assist a vehicle recycler or a scrap metal
44 recycling facility in undertaking a safe and environmentally sound

1 method for the removal of the mercury switches from end-of-life
2 vehicles. The materials shall include information on hazards related to
3 mercury and on the proper handling of mercury.

4 (4) A proposed method for storage and disposal of the mercury switches,
5 including packaging and shipping of mercury switches to permitted
6 recycling, storage, or disposal facilities. To the extent adequate,
7 affordable, and environmentally sound mercury switch disposal
8 technology is unavailable, the plan shall provide for the temporary
9 storage of mercury switches.

10 (5) A proposed procedure for the transfer of information among entities
11 subject to the mercury minimization plan to enable vehicle
12 manufacturers and the Department to comply with the reporting
13 requirements set out in G.S. 130A-310.56.

14 (6) A proposal to implement and finance the plan in accordance with
15 subsection (d) of this section.

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

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

31 (1) Five dollars (\$5.00) for each mercury switch removed by a vehicle
32 recycler pursuant to G.S. 130A-310.55(a) as partial compensation for
33 the labor and other costs incurred by a vehicle recycler in the removal
34 of the mercury switch.

35 (2) Five dollars (\$5.00) for each mercury switch removed by a scrap metal
36 recycling facility pursuant to G.S. 130A-310.55(b) as partial
37 compensation for the labor and other costs incurred by a scrap metal
38 recycling facility in the removal of the mercury switch.

39 (3) One dollar (\$1.00) for each mercury switch removed by a vehicle
40 recycler pursuant to G.S. 130A-310.55(a) or by a scrap metal recycling
41 facility pursuant to G.S. 130A-310.55(b) as partial compensation to the
42 Department for costs incurred in administering and enforcing the
43 provisions of this Part.

- 1 (4) The cost of packaging necessary to store or transport mercury switches
2 to recycling, storage, or disposal facilities.
- 3 (5) The cost of shipping mercury switches to recycling, storage, or
4 disposal facilities.
- 5 (6) The cost of recycling, storage, or disposal of mercury switches.
- 6 (7) The preparation and distribution to vehicle recyclers and scrap metal
7 recycling facilities of the educational materials required by subdivision
8 (3) of subsection (b) of this section.
- 9 (8) Maintenance of all appropriate record-keeping systems.

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

16 **"§ 130A-310.54. Plan approval and implementation.**

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

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

39 (c) The Department may review an approved mercury minimization plan and
40 recommend or require the manufacturer to modify the plan at anytime upon finding that
41 the approved mercury minimization plan as implemented no longer meets the
42 requirements of this Part.

43 **"§ 130A-310.55. Removal of mercury switches from end-of-life vehicles.**

1 (a) A vehicle recycler that is subject to an approved mercury minimization plan
2 and that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility
3 shall remove all mercury switches identified in the mercury minimization plan prior to
4 delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is
5 inaccessible due to the condition of the vehicle, the fact that the mercury switch remains
6 in the vehicle shall be noted on the vehicle recycler's invoice.

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

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

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

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

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

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

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

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

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

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

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

41 **"§ 130A-310.56. Evaluation of vehicle design changes that affect mercury**
42 **recyclability; reporting requirements.**

43 (a) Each vehicle manufacturer shall, either individually or as part of a group,
44 prepare an annual report that describes in detail the status of vehicle design changes that

1 are intended to facilitate recycling of vehicle components that contain mercury. At a
2 minimum, the report shall include all of the following:

3 (1) For each make and model, a list of all vehicle components that contain
4 mercury for the previous three model years, the current model year,
5 and the next upcoming model year.

6 (2) A description of all design changes that each manufacturer has
7 implemented or will implement to reduce or eliminate vehicle
8 components that contain mercury, the achieved or anticipated amount
9 of each reduction, and when the design change will be implemented.

10 (3) A summary of all policies that each manufacturer has implemented or
11 will implement to ensure that the manufacturers' vehicles are designed
12 to be recycled in a safe, cost-effective, and environmentally sound
13 manner.

14 (4) A summary of any recommendations, complaints, or reports that the
15 manufacturer has received within the previous 12 months from vehicle
16 recyclers, scrap metal recycling facilities, government entities, or other
17 persons, as well as any other information available to the
18 manufacturer, regarding vehicle design features that adversely affect
19 the recyclability of vehicle components that contain mercury.

20 (b) A vehicle manufacturer or group of vehicle manufacturers that submits the
21 report required by subsection (a) of this section may designate any information in the
22 report that constitutes a trade secret, as defined in G.S. 66-152, as confidential
23 information in accordance with G.S. 132-1.2. Information so designated shall be
24 protected as provided in G.S. 130A-304.

25 (c) Each vehicle manufacturer shall submit, either individually or as part of a
26 group, the report required by subsection (a) of this section on or before 1 July of each
27 year.

28 (d) The Department may evaluate the extent to which vehicle design promotes or
29 impedes recycling of vehicle components that contain mercury. The Department may
30 conduct hearings from time to time to receive public comment regarding vehicle design
31 changes that affect recycling of vehicle components that contain mercury. The
32 Department may develop recommendations as to changes in vehicle design that would
33 further promote the recyclability of these components. The Department shall report its
34 findings and recommendations, including any legislative proposals, to the
35 Environmental Review Commission on or before 1 October of each year.

36 (e) Each vehicle manufacturer that is required to implement a mercury
37 minimization plan shall prepare, either individually or as part of a group, an annual
38 report on the implementation of the plan. The report shall be submitted to the
39 Department within 90 days after the end of the anniversary of the date on which the
40 manufacturer is required to begin implementation of the plan. The report shall include,
41 at a minimum, all of the following:

42 (1) A detailed description and documentation of the capture rate achieved.

43 (2) In the event that a capture rate of at least ninety percent (90%) is not
44 achieved, a description of additional or alternative actions that may be

1 implemented to improve the mercury minimization plan and its
2 implementation.

3 (3) The number of mercury switches collected, the number of end-of-life
4 vehicles containing mercury switches, the number of end-of-life
5 vehicles processed for recycling, and a description of how the mercury
6 switches were managed.

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

9 **"§ 130A-310.57. Adoption of rules; administrative procedure; enforcement.**

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

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

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

13 **SECTION 2.** The Commission for Health Services shall amend 15A NCAC
14 13A .0119 to adopt rules governing the management of waste mercury-containing
15 devices, as defined in the Notice of Proposed Rulemaking published on 12 June 2002 in
16 the Federal Register, Volume 67, Number 113, Page 40507 through 40528, as universal
17 waste.

18 **SECTION 3.** There is appropriated from the General Fund to the
19 Department of Environment and Natural Resources the sum of eighty-nine thousand
20 five hundred four dollars (\$89,504) for the 2005-2006 fiscal year and the sum of
21 twenty-eight thousand seven hundred seventy dollars (\$28,770) for the 2006-2007 fiscal
22 year to implement the provisions of this act.

23 **SECTION 4.** G.S. 130A-310.53, as enacted by Section 1 of this act,
24 becomes effective 1 January 2006. G.S. 130A-310.56, as enacted by Section 1 of this
25 act, becomes effective 1 July 2007. Section 3 of this act becomes effective 1 July 2005.
26 All other provisions of Part 6 of Article 9 of Chapter 130A of the General Statutes, as
27 enacted by Section 1 of this act and Sections 2 and 4 of this act, become effective when
28 this act becomes law. Section 3 of this act becomes effective 1 July 2005 except that
29 Section 3 of this act shall become effective only if the 2005 Regular Session of the
30 General Assembly appropriates funds to implement this act in the Appropriations Act of
31 2005. This act expires on 1 July 2026.