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HOUSE BILL NO. 375

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 46.2-635 of the Code of Virginia, as it is currently effective; to amend and reenact the third enactments of Chapters 16 and 163 of the Acts of Assembly of 2006; and to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.44, relating to the removal of mercury switches from scrap and recycled vehicles; penalty.*

Patron—Cosgrove

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-635 of the Code of Virginia, as it is currently effective, is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.44, as follows:

Article 3.8.**Mercury Switch Removal from Vehicles.****§ 10.1-1425.40. Definitions.**

As used in this article, unless the context requires a different meaning:

"Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of total number of mercury switches available from end-of-life vehicles for that year.

"End-of-life vehicle" means a motor vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap processing facility for the purpose of resale of its parts or recycling.

"Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from an end-of-life vehicle.

"Mercury switch" means any light switch or antilock braking system switch that contains mercury and that is installed by a manufacturer in a motor vehicle.

"Mercury switch assembly" means a light switch assembly or an antilock braking system switch assembly that contains a mercury switch.

"Motor vehicle" means the same as that term is defined in § 46.2-100.

"Scrap processing facility" means a facility that processes iron, steel, and nonferrous scrap metal; and the principal product of which is scrap iron, scrap steel, and nonferrous scrap for sale and re-melting purposes.

"Vehicle manufacturer" means a person that: (i) is the last person in the production or assembly process of a new motor vehicle that uses mercury switches or (ii) serves as an importer or domestic distributor of a motor vehicle that uses mercury switches produced outside of the United States.

"Vehicle recycler" means a person engaged in the business of: (i) dismantling, destroying, demolishing or scrapping any vehicle for the purpose of reselling any of its usable parts or (ii) otherwise acquiring vehicles for the benefit of their parts or the materials in them.

§ 10.1-1425.41. Mercury minimization plan.

A. Any vehicle manufacturer that sold motor vehicles containing mercury switches within the Commonwealth shall, individually or as a group, develop a mercury minimization plan and submit it to the Department for review and approval on or before September 30, 2010. A vehicle manufacturer that already has processes and procedures in place that meet or exceed the requirements of this section may propose the use of those processes and procedures in its mercury minimization plan. The plan shall contain:

1. Information identifying the make, model, and year of vehicles that may contain a mercury switch, including the location of the switch, the location of a mercury switch assembly, and information regarding the safe and environmentally sound method for removing the switch from end-of-life vehicles;

2. Educational material and training materials to assist a vehicle recycler or a scrap processing facility undertaking a safe method for removal of mercury switches and assemblies, including information on the hazards and proper handling of mercury;

3. A proposal for the method of storage or disposal of mercury switches and assemblies, including the method of packaging and shipping;

4. A proposal for the storage of mercury switches and mercury switch assemblies collected and recovered in the event that appropriate management technologies are not available;

5. A plan for implementing and financing the removal, collection, and recovery system in accordance

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59 with subdivision 6; and

60 6. Information that establishes the financing of the removal, collection and recovery system for the
61 proper management of mercury switches, including:

62 a. Payment by a vehicle manufacturer for the costs associated with the removal, collection, and
63 recovery for the proper management of mercury switches;

64 b. Establishment by a vehicle manufacturer of a method to ensure the prompt payment to a vehicle
65 recycler, a scrap processing facility, and the Department;

66 c. Payment by a manufacturer of the following costs: (i) a minimum of \$4 for each mercury light
67 switch or light switch assembly and \$6 for each antilock braking system switch assembly removed by a
68 vehicle recycler as partial compensation for the labor and other costs incurred by a vehicle recycler in
69 the removal of the mercury switch or mercury switch assembly; (ii) a minimum of \$4 for each mercury
70 light switch or light switch assembly and \$6 for each antilock braking system switch assembly removed
71 by a scrap processing facility as partial compensation for the labor and other costs incurred by a scrap
72 processing facility in the removal of the mercury switch or mercury switch assembly; and (iii) \$1 for
73 each mercury switch or mercury switch assembly removed by a vehicle recycler or by a scrap
74 processing facility to the Mercury Switch Removal Trust Fund established under § 10.1-1425.44 as
75 partial compensation to the Department for costs incurred in administering and enforcing the provisions
76 of this article;

77 d. Packaging for transporting mercury switches and mercury switch assemblies to recycling, storage,
78 or disposal facilities;

79 e. Shipping of mercury switches and mercury switch assemblies to recycling, storage, or disposal
80 facilities;

81 f. Recycling, storage, or disposal of the mercury switch assemblies to recycling, storage, or disposal
82 facilities;

83 g. Preparation and distribution to vehicle recyclers and scrap processing facilities of the educational
84 materials required in accordance with subdivision 2; and

85 h. Maintenance of all appropriate recordkeeping systems.

86 B. Within 90 days after receiving a mercury minimization plan, the Department may approve,
87 disapprove, or conditionally approve the entire mercury minimization plan. The Department may receive
88 input from a representative of a vehicle recycler, scrap processing facility, or any other stakeholder as
89 the Department determines necessary. The vehicle manufacturer shall begin implementation of the
90 mercury minimization plan within 30 days after submittal, unless otherwise directed by the Department.
91 If the entire mercury minimization plan is disapproved, the Department shall inform the vehicle
92 manufacturer of the reasons for the disapproval. The vehicle manufacturer has 30 days after receiving
93 notice of the disapproved plan to submit a new mercury minimization plan. If the Department
94 disapproves any part of a mercury minimization plan, then the vehicle manufacturer shall implement the
95 approved parts of a plan not disapproved within 30 days after submittal or as otherwise directed by the
96 Department and submit a revised mercury minimization plan for the disapproved parts within 30 days
97 after receiving notification of the disapproval from the Department. The Department may review and
98 approve, conditionally approve, or disapprove a revised mercury minimization plan within 30 days after
99 receiving the plan. The Department may complete, on behalf of a vehicle manufacturer, any portion of a
100 mercury minimization plan that has not been approved by January 1, 2011.

101 C. The Department may review a mercury minimization plan submitted in accordance with this
102 section and recommend modifications it considers necessary at any time if the Department determines
103 that the approved mercury minimization plan is deficient or not meeting the goals of this article.

104 § 10.1-1425.42. Removal of mercury switches or mercury switch assemblies.

105 A. Unless a mercury switch or mercury switch assembly is inaccessible due to significant damage to
106 the vehicle in the area surrounding the location of the mercury switch, on and after December 1, 2010,
107 a vehicle recycler that sells, gives, or otherwise conveys ownership of an end-of-life vehicle to a scrap
108 processing facility for processing shall remove all mercury switches or mercury switch assemblies
109 identified in the approved mercury minimization plan (i) from the end-of-life vehicle before delivery to a
110 scrap processing facility; (ii) from the end-of-life vehicle at the time the vehicle is processed, but not
111 later than 180 days after the receipt of an end-of-life vehicle; and (iii) on or before December 31, 2011,
112 for recycling, from the vehicle recycler's inventory.

113 B. If the motor vehicle is damaged, the damage shall be noted on the normal business records of the
114 vehicle recycler that delivered the end-of-life vehicle to the scrap processing facility.

115 C. If the mercury switch assembly is corroded, damaged, or molded in a way as to make removal of
116 the mercury pellet from the mercury switch assembly impractical or pose a danger of damage to the
117 pellet, the entire mercury switch assembly shall be removed.

118 D. Notwithstanding subsection A, a scrap processing facility may agree to accept an end-of-life
119 vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled. A scrap
120 processing facility shall be responsible for removing the mercury switches or mercury switch assemblies

identified in the mercury minimization plan before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded.

E. A vehicle recycler or scrap processing facility that removes a mercury switch or mercury switch assembly in accordance with this section shall maintain electronic records documenting the number of mercury switches and mercury switch assemblies collected, the number of end-of-life vehicles containing mercury switches, and the number of end-of-life vehicles processed for recycling. The records shall be kept for three years and made available for review by the Department upon request of the Department.

F. A person may not falsely represent that mercury switches or mercury switch assemblies have been removed from an end-of-life vehicle being sold, given, or otherwise conveyed for recycling if that person has not removed the mercury switches or mercury switch assemblies, or arranged with another person to remove the mercury switches or mercury switch assemblies.

G. On removal, mercury switches and mercury switch assemblies shall be collected, stored, transported, recycled, and otherwise handled as required by the mercury minimization plan and with any provisions or regulations concerning waste in accordance with this chapter.

H. On or before January 31 of each year, a manufacturer shall report to the Department concerning the implementation of the mercury minimization plan. The Board may discontinue the requirement for the annual report if it determines that mercury switches in end-of-life vehicles will, by the end of December 2020, no longer pose a significant threat to the environment or to public health. The report shall include:

1. A detailed description and documentation of the capture rate achieved in accordance with subsection A;

2. A description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation in the event that a mercury switch or mercury switch assembly capture rate of at least 90 percent for the previous calendar year is not achieved;

3. The numbers of mercury switches and mercury switch assemblies collected, end-of-life vehicles containing mercury switches, and mercury switches and mercury switch assemblies processed for recycling;

4. A description of how the mercury switches and mercury switch assemblies were managed; and

5. A description of the amounts paid to cover the costs of implementing the mercury minimization plan.

I. After December 1, 2012, if the Board determines that an insufficient number of mercury switches have been recycled, the Board may propose new strategies to increase switch removal and recycling, including additional funding sources.

J. On or before October 1 each year, the Department shall report to the General Assembly on the number of mercury switches and mercury switch assemblies recovered from vehicles, the capture rate of switch recovery achieved, the number of switches projected to be recovered, the amount and use of funds paid into the Mercury Switch Removal Trust Fund for the administration of this article, and any recommendations to improve the provisions of this article or to increase the capture rate of mercury switches from vehicles. The Department shall also inform the General Assembly if the Board determines that mercury switches in end-of-life vehicles no longer pose a significant risk to the environment or to public health.

§ 10.1-1425.43. Enforcement and penalties.

A. Notwithstanding the provisions of § 10.1-1455, any person who violates any provision of this article or any regulation adopted hereto of this article shall be subject to a civil penalty not exceeding \$1,000 for a first offense, \$2,500 for a second offense, or \$5,000 for a third or subsequent offense. Each violation is a separate offense and each day a violation continues is a separate offense under this section. Civil penalties collected under this section shall be deposited into the Virginia Mercury Switch Removal Trust Fund established pursuant to § 10.1-1425.44.

B. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or the Director or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this section and shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Mercury Switch Removal Trust Fund established pursuant to § 10.1-1425.44.

§ 10.1-1425.44. Virginia Mercury Switch Removal Trust Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Mercury Switch Removal Trust Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All monies collected under this article shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each

182 *fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall*
183 *be used solely for the implementation of this article. Expenditures and disbursements from the Fund*
184 *shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed*
185 *by the Director.*

186 § 46.2-635. (Effective until July 1, 2012) Surrender of certificates for vehicles to be demolished;
187 securing new title certificates.

188 Every person disposing of a motor vehicle, trailer, or semitrailer which is to be demolished shall
189 make an assignment of title to the transferee as provided in § 46.2-628. The assigned certificate of title,
190 when available, however, shall be delivered to the Department, accompanied by a form provided by the
191 Commissioner, stating that the vehicle is to be demolished and certifying that, before demolition, a good
192 faith effort was made to remove mercury switches in vehicles manufactured for the 2002 model year
193 and preceding model years. On receipt of this form and the assigned title, the Commissioner shall
194 forward to the transferee a receipt for them. Manufacturers of vehicles sold in the Commonwealth shall
195 be responsible for providing a method for storing, shipping, recycling, or disposing of mercury switches
196 removed from vehicles manufactured by them. For purposes of this section "mercury switches" means
197 each mercury-containing capsule, commonly known as a "bullet," that is part of a convenience light
198 switch in a vehicle manufactured for the 2002 model year or any preceding model year.

199 If the person, in lieu of demolishing the vehicle, sells, transfers, or operates the motor vehicle, trailer,
200 or semitrailer, he shall first secure a certificate of title from the Department. Before issuing the new
201 certificate of title, the Department shall inspect, or have inspected, the reconstructed vehicle.

202 If a motor vehicle, trailer, or semitrailer obtained for use or resale, is subsequently demolished, the
203 owner shall immediately surrender its certificate of title to the Department.

204 **2. That the third enactment of Chapter 16 of the Acts of Assembly of 2006 is amended and**
205 **reenacted as follows:**

206 **3. That the provisions of this act shall expire on July 1, 20122017.**

207 **3. That the third enactment of Chapter 163 of the Acts of Assembly of 2006 is amended and**
208 **reenacted as follows:**

209 **3. That the provisions of this act shall expire on July 1, 20122017.**