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ENGROSSED SENATE BILL 5710

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State of Washington

59th Legislature

2005 Regular Session

By Senators Poulsen, Swecker, Brown, Rockefeller, Regala, Pridemore, Kline, Rasmussen and Kohl-Welles

Read first time 02/03/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to the removal of mercury-added components in motor  
2 vehicles; adding a new chapter to Title 70 RCW; and prescribing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that protecting  
6 human health and the environment is of the utmost importance to the  
7 citizens of the state of Washington.

8 (2) Mercury is introduced into the environment in a variety of ways  
9 and although it is beyond the state's power to control all mercury  
10 emissions, there are many sources that can be controlled, including the  
11 mercury contained in automobiles.

12 (3) Mercury is or has historically been present in a number of auto  
13 components, including but not limited to: Hood and trunk light  
14 switches, antilock brake (ABS) sensors, lights, and navigational  
15 systems.

16 (4) The recycling of automobiles involves the crushing, shredding,  
17 and melting of auto scrap via thermal combustion. Preventing mercury  
18 or mercury-added components from entering thermal combustion units is  
19 an effective way to reduce mercury emissions into the environment.

1 (5) It is the intent of this chapter is to reduce the quantity of  
2 mercury released into the environment by:

3 (a) Removing mercury containing light switches and antilock brake  
4 sensors from end-of-life vehicles in the state of Washington; and

5 (b) Creating a collection and recovery program for mercury-added  
6 components removed from vehicles in the state of Washington.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Capture rate" means the quantity of mercury removed,  
10 collected, or recovered stated as a percentage of the total mercury  
11 available from end-of-life motor vehicles, computed annually.

12 (2) "Department" means the department of ecology.

13 (3) "Director" means the director of the department of ecology.

14 (4) "End-of-life vehicle" means any motor vehicle that is sold,  
15 given, or otherwise conveyed to a motor vehicle crusher, motor vehicle  
16 recycler, or scrap recycling facility.

17 (5) "Manufacturer" includes any person, firm, association,  
18 partnership, corporation, governmental entity, organization,  
19 combination, or joint venture that produced or assembled a new motor  
20 vehicle that used mercury-added components, or in the case of an  
21 imported motor vehicle, the importer or domestic distributor of the  
22 motor vehicle.

23 (6) "Manufacturer-dealer warranty program" means an arrangement  
24 between a manufacturer and its franchisee, whereby the manufacturer  
25 agrees to reimburse the franchisee, at established rates, for labor or  
26 parts necessary to repair a vehicle pursuant to the manufacturer's  
27 original equipment warranty to the original purchaser of the vehicle.

28 (7) "Mercury-added component" means mercury-containing light  
29 switches and antilock brake system sensors, which were intentionally  
30 installed in the motor vehicle.

31 (8) "Motor vehicle" includes any automobile, van, truck, motor  
32 home, motorcycle, travel trailer, or bus.

33 (9) "Motor vehicle recycler" means any person or entity licensed  
34 under chapter 46.80 RCW and engaged in the business of either acquiring  
35 or dismantling, or both, motor vehicles for the primary purpose of  
36 resale of their parts or materials.

1 (10) "Scrap recycling facility" means a fixed location, where  
2 machinery and equipment are utilized for processing and manufacturing  
3 scrap metal into prepared grades and whose principal product is scrap  
4 iron, scrap steel, or nonferrous metallic scrap for sale for remelting  
5 purposes.

6 NEW SECTION. **Sec. 3.** Manufacturers shall, individually or as part  
7 of a group, submit to the department for review and approval a plan to  
8 remove, collect, and recover mercury-added components before crushing  
9 or shredding motor vehicles. Manufacturers are responsible for  
10 ensuring that mercury-added components are properly removed, collected,  
11 and recovered from end-of-life vehicles.

12 (1)(a) Vehicle manufacturers shall develop and implement a system  
13 to remove, collect, and recover mercury-added components from end-of-  
14 life vehicles.

15 (b) The removal, collection, and recovery system must include, at  
16 a minimum, the following elements, which shall be described within the  
17 plan:

18 (i) An education program to inform the stakeholders about the  
19 purposes of the removal, collection, and recovery program and how to  
20 participate in it;

21 (ii) A plan for implementing and financing the system;

22 (iii) Documentation of the willingness of all necessary parties to  
23 implement the proposed system;

24 (iv) Information identifying: The make, model, and year of  
25 vehicles containing mercury-added components; a description of the  
26 component; the locations of these components; and the safe, cost-  
27 effective, and environmentally sound methods for their removal from  
28 end-of-life vehicles;

29 (v) An overall mercury-added component capture rate of at least  
30 ninety percent, consistent with the principle that mercury-added  
31 components must be removed, collected, and recovered unless the part is  
32 inaccessible because of significant damage to that part of the vehicle  
33 where the component is located;

34 (vi) A description of the performance measures that will be used  
35 and reported upon by the manufacturer (or group of manufacturers) to  
36 demonstrate that the system is meeting the capture rate as well as  
37 other measures of program effectiveness. The performance measures must

1 include, but are not limited to: The number of mercury-added  
2 components collected from end-of-life vehicles and the number of  
3 vehicles processed for recycling; the amount of mercury collected; and  
4 the number of vehicles containing mercury-added components;

5 (vii) A process to ensure that, upon request, the motor vehicle  
6 recycler, scrap recycling facility, or mobile crusher provide to the  
7 department documentation to show that the mercury-added components have  
8 been removed. This process must ensure that the information is treated  
9 as confidential business information, and will be publicly released  
10 only in the aggregate;

11 (viii) A description of additional or alternative actions to be  
12 implemented to improve the system and its operation in the event that  
13 the program measures established in (b)(vi) of this subsection are not  
14 met;

15 (ix) A system to mark vehicles to be processed for shredding or  
16 crushing to indicate the presence or absence of mercury-added  
17 components;

18 (x) Training of employees on how to identify vehicles containing  
19 mercury-added components, how to remove them, how to handle and store  
20 them, human health risks associated with mercury, and spill response;

21 (xi) A plan to transfer mercury and mercury-added components that  
22 are removed, collected, and recovered from end-of-life vehicles to  
23 recycling, storage, or disposal facilities.

24 (c) In order to ensure that mercury-added components are removed  
25 and collected in a safe and consistent manner, manufacturers shall, to  
26 the extent practicable, utilize the existing end-of-life vehicle  
27 recycling infrastructure.

28 (d) Manufacturers shall indemnify, defend, and hold harmless motor  
29 vehicle recyclers and scrap recyclers for any liabilities arising from  
30 the release of the mercury from the mercury-added components after the  
31 components are transferred to the manufacturer or its agent or  
32 contractor.

33 (e) Any person or entity holding legal title to a motor vehicle  
34 shall be held harmless for liabilities arising from the release of  
35 mercury from any mercury-added component installed in such a vehicle,  
36 delivered to motor vehicle recyclers or scrap recyclers, or transferred  
37 to the manufacturer or its agent or contractor.

1 (2) The total cost of the removal, collection, and recovery system  
2 for mercury-added components must be borne by the manufacturers who  
3 installed mercury-added components in their vehicles. Costs include,  
4 but are not limited to, the following:

5 (a) Labor to remove mercury-added components. Labor must be  
6 reimbursed at the prevailing rate auto manufacturers use to reimburse  
7 automotive dealers for replacing faulty components under the  
8 manufacturer-dealer warranty program;

9 (b) Training as described in subsection (1)(b)(x) of this section;

10 (c) Packaging in which to transport mercury-added components to  
11 recycling, storage, or disposal facilities;

12 (d) Shipping of mercury-added components to recycling, storage, or  
13 disposal facilities;

14 (e) Proper recycling, storage, or disposal of mercury-added  
15 components;

16 (f) Public education materials and presentations;

17 (g) Maintenance of all appropriate systems and procedures to  
18 protect the environment from mercury contamination;

19 (h) State administrative costs associated with the oversight of the  
20 manufacturer's plan;

21 (i) Any additional costs for documentation required of motor  
22 vehicle recyclers and scrap recycling facilities.

23 (3) Nothing in this section restricts the ability of a  
24 manufacturer, importer, or domestic distributor from transporting  
25 products through the state, or storing products in the state for later  
26 distribution outside the state.

27 NEW SECTION. **Sec. 4.** Every effort must be made by vehicle  
28 manufacturers to ensure that mercury-added components are removed from  
29 vehicles before they are crushed or shredded.

30 (1) It is unlawful to shred or crush vehicles that have not had  
31 mercury-added components removed, except where removal is not possible  
32 because the mercury-added component is inaccessible due to significant  
33 damage to the part of the vehicle where the component is located. To  
34 comply with this section, automobile crushers or shredders may rely on,  
35 as reasonable evidence of removal, representations of certifications  
36 from motor vehicle recyclers that mercury-added components have been  
37 removed. Crushed vehicle hulks imported from out of state may be

1 shredded provided the scrap recycling facilities have, to the best of  
2 their abilities, ensured that their out-of-state suppliers have removed  
3 mercury-added components.

4 (2) It is unlawful for any person to represent that mercury-added  
5 components have been removed from a vehicle or vehicle hulk being sold,  
6 given, or otherwise conveyed for recycling if the mercury-added  
7 components have in fact not been removed.

8 NEW SECTION. **Sec. 5.** (1) Every manufacturer of motor vehicles  
9 sold in this state shall, individually or as part of a group, submit a  
10 plan to the department, within ninety days of the effective date of  
11 this section, describing a program meeting the requirements established  
12 in this chapter.

13 (2) The director shall:

14 (a) Determine within sixty days after receipt of a manufacturer's  
15 plan, whether the plan complies with this chapter. If the plan is  
16 approved, the director shall send a letter of approval and the  
17 manufacturer shall begin implementation within ninety days after  
18 receipt of the letter;

19 (b) In the event the plan is rejected, inform the manufacturer as  
20 to the reasons for rejection. The manufacturer has thirty days after  
21 receipt of the letter of disapproval to submit a new plan;

22 (c) Consider the manufacturer or manufacturers in violation of this  
23 chapter, subject to the penalties described in section 7 of this act,  
24 if they fail to have an approved plan in place within two hundred forty  
25 days of the effective date of this section;

26 (d) Review any plan approved under this section three years after  
27 the original date of approval and every three years thereafter. The  
28 director may require modifications to the plan as appropriate;

29 (e) Make available to the public and to the legislature the reports  
30 required under this chapter.

31 (3) The manufacturers shall submit revised plans as directed within  
32 ninety days of receipt of notification by the department. The  
33 submission and review deadlines are as specified in subsection (2) of  
34 this section.

35 NEW SECTION. **Sec. 6.** A manufacturer subject to this chapter

1 shall, individually or as part of a group, annually report to the  
2 department concerning the performance of the manufacturer's plan. The  
3 report must include, but is not limited to:

4 (1) A detailed description and documentation of the capture rate  
5 achieved and how and where the mercury was recycled or otherwise  
6 appropriately managed;

7 (2) A plan to implement additional or alternative actions, if  
8 necessary, to improve the capture rate.

9 NEW SECTION. **Sec. 7.** A violation of sections 3 through 6 of this  
10 act is punishable by a civil penalty not to exceed one thousand dollars  
11 per violation per day. Penalties collected under this section must be  
12 deposited in the state toxics control account created in RCW  
13 70.105D.070. The civil penalties are in addition to any other  
14 penalties authorized under other state or local laws governing the use  
15 of mercury in motor vehicles.

16 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
17 a new chapter in Title 70 RCW.

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