

LC01524

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

A N A C T

RELATING TO HEALTH AND SAFETY -- MERCURY-FREE VEHICLE ACT OF 2003

Introduced By: Senators Gibbs, Parella, Roberts, Tassoni, and Lenihan

Date Introduced: February 26, 2003

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 24.10

4 MERCURY-FREE VEHICLE ACT

5 **23-24.10-1. Short title.** – This chapter shall be known as the "Mercury-Free Vehicle
6 Act."

7 **23-24.10-2. Findings.** – The general assembly has found and hereby declares that:

8 (1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;

9 (2) Forty-one (41) states including Rhode Island have issued fish advisories that warn
10 certain individuals to restrict or avoid consuming fish from bodies of water contaminated with
11 mercury. (U.S. Environmental Protection Agency, Fact Sheet – Update: National Listing of Fish
12 and Wildlife Advisories, April 2001. (EPA-823-F-01-010));

13 (3) The U.S. Food and Drug Administration has advised pregnant women and women of
14 childbearing age who may become pregnant not to eat shark, swordfish, king mackerel, and
15 tilefish due to methyl mercury contamination. (U.S. Food and Drug Administration, "Updated
16 Consumer Advisory – FDA Announces Advisory on Methyl Mercury in Fish," March 2001.);

17 (4) According to National Research Council estimates, over sixty thousand (60,000)
18 babies are born annually at risk for adverse neurodevelopmental effects from inutero exposure to
19 methyl mercury resulting from the consumption of mercury contaminated fish. These children

1 will have to struggle to keep up in school and might require remedial classes or special education.
2 (National Research Council, “Toxicological Effects of Methyl mercury,” 2000.);

3 (5) Recent findings show historic and current use of mercury in automobiles can cause
4 the release of as much as ten (10) tons of mercury to the environment each year. Based on the
5 automobile industry’s own data, there is an estimated one hundred fifty (150) to two hundred
6 (200) tons of mercury contained in the vehicles currently on the road in North America;

7 (6) Pollution prevention is the preferred strategy, more desirable than waste management
8 and pollution control. Preventing mercury or mercury-containing components from entering
9 thermal combustion units is an effective way to reduce mercury emissions into the environment;

10 (7) Vehicle mercury switch collection programs are being established across the country
11 to protect human health and the environment; and

12 (8) The intent of this chapter is to reduce the quantity of mercury in the environment by:

13 (i) removing mercury from vehicles in commerce and end-of-life vehicles in the state of
14 Rhode Island;

15 (ii) creating a collection and recovery program for mercury switches removed from
16 vehicles in the state of Rhode Island;

17 (iii) establishing a system to store the mercury collected and recovered from vehicle
18 components in the event that environmentally appropriate management technologies are not
19 available; and

20 (iv) designing future vehicles for maximum environmental protection and recyclability at
21 the end of their useful lives by implementing a design for recycling program which includes
22 phasing out the use of mercury in future vehicle models.

23 **23-24.10-3. Definitions.** – For the purposes of this chapter:

24 (1) “Capture rate” means removal, collection, and recovery as a percentage of the total
25 mercury available from vehicles in commerce and end-of-life vehicles annually.

26 (2) “End-of-life vehicle” means any vehicle which is sold, given or otherwise conveyed
27 to a vehicle recycler or scrap recycling facility for the purpose of recycling.

28 (3) “Manufacturer” means any person, firm, association, partnership, corporation,
29 governmental entity, organization, combination, or joint venture which is the last person to
30 produce or assemble a new vehicle that utilizes mercury-added components, or in the case of an
31 imported vehicle, the importer or domestic distributor of such vehicle.

32 (4) “Manufacturer-dealer warranty program” means an arrangement between a
33 manufacturer and its franchisee(s), whereby the manufacturer agrees to reimburse the
34 franchisee(s), at established rates, for labor or parts necessary to repair a vehicle pursuant to the

1 manufacturer's original equipment warranty to the original purchaser of the vehicle.

2 (5) "Mercury-added component" means a component that contains mercury and which
3 was intentionally added to a vehicle in order to provide a specific characteristic, appearance, or
4 quality or to perform a specific function, or for any other reason. Such components may include,
5 but are not limited to, switches, sensors, lights, and navigational systems.

6 (6) "Mercury-added switch" a convenience light switch installed by an automotive
7 manufacturer in a motor vehicle.

8 (7) "Scrap recycling facility" means any licensed individual or entity engaged in the
9 processing and manufacturing of scrap metal into prepared grades and whose principal product is
10 scrap iron, scrap steel or nonferrous metallic scrap for sale for remelting purposes.

11 (8) "Vehicle recycler" means any licensed individual or entity engaged in the business of
12 acquiring, dismantling or destroying vehicles for the primary purpose of resale of their parts or
13 scraps therefrom.

14 (9) "Vehicle in commerce" means any vehicle offered for sale by a dealer or registered
15 by the state of Rhode Island to be operated on public roads and highways.

16 **23-24.10-4. Removal, replacement, collection, and recovery of vehicle mercury**
17 **switches.** – Within ninety (90) days of enactment of this chapter, every manufacturer of vehicles
18 sold within the state of Rhode Island shall, individually or as part of a group, submit to the
19 department of environmental management for review and approval a plan to remove, collect, and
20 recover mercury switches.

21 (a) Removal, replacement, collection, and recovery system.

22 (1) Vehicle manufacturers shall develop and implement a system to remove, replace,
23 where possible, collect, and recover mercury switches from vehicles in commerce and end-of-life
24 vehicles. For vehicles in commerce, the system shall provide for the removal, collection, and
25 recovery of mercury switches, and replace them with mercury-free alternatives, where possible;
26 the system shall also provide for the removal, collection, and recovery of mercury switches from
27 end-of-life vehicles.

28 (2) The removal, replacement, where possible, collection, and recovery system shall
29 include, at a minimum, the following:

30 (A) an education program to inform the public and other stakeholders about the purposes
31 of the collection program and how to participate in it;

32 (B) a plan for implementing and financing the system, in accordance with section 23-
33 24.10-4(b);

34 (C) documentation of the willingness of all necessary parties to implement the proposed

1 system;

2 (D) information identifying the make, model, and year of vehicles containing mercury
3 switches; a description of the component; the location of these components; and the safe, cost
4 effective, and environmentally sound methods for their removal from vehicles in commerce and
5 end-of-life vehicles;

6 (E) a mercury switch capture rate of at least ninety percent (90%), consistent with the
7 principle that mercury switches shall be recovered unless the part is inaccessible due to
8 significant damage to the vehicle in the area surrounding where the mercury switch is located;

9 (F) a description of the performance measures to be utilized and reported upon by the
10 manufacturer to demonstrate that the system is meeting the capture rate identified in paragraph
11 (E) of this section and other measures of program effectiveness, including, but not limited to, the
12 number of switches collected from both end-of-life and vehicles in commerce, amount of mercury
13 collected, the number of vehicles containing mercury switches, and the number of vehicles
14 processed for recycling;

15 (G) a description of additional or alternative actions that shall be implemented to improve
16 the system and its operation in the event that the program targets established under paragraph (E)
17 are not met; and

18 (H) a plan to store the mercury collected and recovered from vehicle components in the
19 event that environmentally appropriate management technologies are not available.

20 (3) Use of existing infrastructure for mercury switch replacement. In developing a
21 removal, replacement, collection, and recovery system, manufacturers shall, to the extent
22 practicable, utilize existing dealerships, service stations, inspection stations, repair shops, and
23 other facilities which regularly service vehicles in commerce. Where a manufacturer does not
24 utilize such infrastructure, the manufacturer shall include in its plan the reasons for establishing a
25 separate removal, replacement, collection, and recovery infrastructure.

26 (4) Use of existing end-of-life vehicle infrastructure for mercury switch removal. In
27 developing a removal, collection, and recovery system, manufacturers shall, to the extent
28 practicable, utilize the existing end-of-life vehicle recycling infrastructure. Where a manufacturer
29 does not utilize such infrastructure, the manufacturer must include in its plan the reasons for
30 establishing a separate removal, collection, and recovery infrastructure.

31 (b) Cost. The total cost of the removal, replacement, collection, and recovery system for
32 mercury switches shall be borne by the manufacturer or manufacturers. Costs shall include, but
33 not be limited to, the following:

34 (1) labor to remove, or replace where possible, mercury switches. Labor shall be

1 reimbursed at the prevailing rate auto manufacturers use to reimburse automotive dealers for
2 replacing faulty switches under the manufacturer-dealer warranty program;

3 (2) training;

4 (3) packaging in which to transport mercury switches to recycling, storage or disposal
5 facilities;

6 (4) shipping of mercury switches to recycling, storage or disposal facilities;

7 (5) recycling, storage or disposal of the mercury switches;

8 (6) public education materials and presentations; and

9 (7) maintenance of all appropriate systems and procedures to protect the environment
10 from mercury contamination.

11 (c) Plan approval. The director of the department of environmental management shall:

12 (1) Within thirty (30) days of receipt of a manufacturer's plan, issue public notice and
13 solicit public comment on the manufacturer's plan;

14 (2) Within ninety (90) days after receipt of a manufacturer's plan:

15 (A) determine whether the entire plan complies with this section. If the entire plan is
16 approved, the manufacturer shall begin implementation as soon as practicable. If the entire plan is
17 rejected, the director shall inform the manufacturer as to the reasons for such rejection. The
18 manufacturer will have thirty (30) days thereafter to submit a new plan; or

19 (B) determine whether any part of the plan meets the requirements of this section and
20 shall approve such part(s) and disapprove such other(s) that do not comply with the requirements
21 of this section. The manufacturer shall immediately implement the approved part(s) and submit a
22 revised plan respecting the remaining parts within thirty (30) days after receipt of notification of
23 the director's disapproval. The director shall review a manufacturer's revised plan within thirty
24 (30) days of receipt.

25 (3) Two hundred forty (240) days after the date of enactment of this chapter, complete,
26 on behalf of a manufacturer, any portion of the plan that has not been approved.

27 (4) The director of the department of environmental management shall review the plan
28 three (3) years after the original date of approval of the plan and every three (3) years thereafter,
29 and shall require modifications to the plan as appropriate.

30 **23-24.10-5. Prohibition and proper management of vehicle mercury switches. – A**
31 **licensed vehicle recycler who sells, gives or otherwise conveys ownership of an end-of-life**
32 **vehicle to a scrap recycling facility for recycling shall remove all mercury-added switches from**
33 **such end-of-life vehicle prior to delivery to such facility. Notwithstanding the foregoing, a scrap**
34 **recycling facility may agree to accept an end-of-life vehicle (which has not been intentionally**

1 flattened, crushed or baled) with mercury-added switches, in which case the scrap recycling
2 facility shall be responsible for removing such switches. It shall be unlawful for any person to
3 represent that mercury switches have been removed from a vehicle or vehicle hulk being sold,
4 given or otherwise conveyed for recycling if that person has not removed such mercury switches
5 or arranged with another person to remove such switches.

6 **23-24.10-6. Phase-out of mercury-added vehicle components and exemptions. – (a)**
7 Phase-out of mercury-added components. To prevent emissions or other releases of mercury from
8 vehicles, effective two (2) vehicle model years from the date of enactment of this chapter, no
9 mercury-added component shall be included as part of a new vehicle offered for sale in the state
10 of Rhode Island.

11 (b) Exemption. A mercury-added component in a vehicle that is necessary in order to
12 comply with federal or state health or safety requirements, or for purposes of national security,
13 shall be exempt from the requirements of subsection (a) of this section, provided that:

14 (1) The manufacturer must apply, or reapply, for such exemption to the director of the
15 department of environmental management;

16 (2) The application must be in writing, in a form acceptable to the director of the
17 department of environmental management, stating the need for an exemption and the legal basis
18 for an exemption. It must include documentation that there is no technically feasible alternative to
19 the use of mercury in the component and that there is no comparable mercury-free component
20 available at reasonable cost to address the health or safety requirement, or national security. “No
21 technically feasible alternative” does not include the use of mercury for the purpose of marketing.

22 (A) The application must include a description of how the manufacturer will insure that a
23 system exists, and how the manufacturer will fund such system, for the proper removal,
24 collection, and recovery of the mercury-added component while the vehicle is in commerce and
25 at the end of the vehicle’s useful life.

26 (B) Subject to the issuance of public notice and solicitation of public comment, the
27 department of environmental management shall, within ninety (90) days, accept or reject the
28 application for exemption.

29 (3) An exemption application may be submitted to the director of the department of
30 environmental management, subject to public notice and comment, for safety components not
31 required by federal or state law. An exemption may only be granted upon clear demonstration
32 that:

33 (A) Such components will substantially increase public health and safety considering any
34 impacts the components may have on overall public safety on the roads, and the life-cycle

1 impacts of the mercury use; and

2 (B) That there is no technically feasible alternative to the use of mercury in the
3 component.

4 (4) An exemption granted under this section by the director of the department of
5 environmental management shall be valid for a period not to exceed two (2) years.

6 (5) Exemptions granted under this section shall be renewable for periods not to exceed
7 two (2) years.

8 (6) If granted an exemption, any vehicle that may contain a mercury-added component
9 shall be labeled by the manufacturer in a manner to clearly inform purchasers that mercury is
10 present in the vehicle, and that the component may not be disposed of or placed in a waste stream
11 destined for disposal until the mercury is removed or reused, recovered, or properly disposed of
12 as a hazardous waste or otherwise managed to ensure that the mercury does not become mixed
13 with other solid waste. The label shall identify the component with sufficient detail so that it may
14 be readily located for removal. This label shall be placed on the doorpost of each vehicle that may
15 contain a mercury-added component and be constructed of materials that are sufficiently durable
16 to remain legible for the useful life of the vehicle.

17 (c) Design for recycling. Manufacturers, when designing vehicles and their components,
18 shall:

19 (1) to the maximum extent practicable eliminate hazardous substances from their
20 vehicles;

21 (2) insure that their vehicles are designed to be recycled in a safe, cost-effective, and
22 environmentally sound manner, using existing technologies and infrastructures;

23 (3) where a vehicle is found to present environmental risks that make it uneconomical to
24 recycle, the manufacturer shall make appropriate design or manufacturing changes.

25 **23-24.10-7. Prohibit auto dismantling by unlicensed entities.** – Any person or entity
26 not licensed under the provisions of chapter 42-14.2 and chapter 5-21 is prohibited from
27 dismantling automobiles for the sale of used parts and disposal at the end life of a motor vehicle.

28 **23-24.10-8. General compliance with other provisions.** – Except as expressly provided
29 in this chapter, compliance with this chapter shall not exempt a person from compliance with any
30 other law.

31 **23-24.10-9. Regulations.** – The director of the department of environmental management
32 may promulgate rules and regulations concerning this chapter.

33 **23-24.10-10. Public notification and comment.** – The department of environmental
34 management shall issue public notice and solicit public comment on; (1) the removal,

1 replacement, collection, and recovery plans submitted by the vehicle manufacturer(s) submitted
2 pursuant to section 23-24.10-4; and (2) the applications/reapplications for exemptions from the
3 phase-out provisions of section 23-24.10-6. Such notification and solicitation shall be issued
4 within thirty (30) days of receiving a plan/application from the manufacturer(s), giving the public
5 adequate time to comment on the proposals.

6 Public comments received within the ninety (90) day review period of these provisions
7 shall be considered by the department of environmental management when making its decision to
8 accept or reject either the plan or the application for exemption.

9 **23-24.10-11. Reporting.** – One (1) year after the implementation of the removal,
10 replacement, collection, and recovery system, and annually thereafter, a manufacturer subject to
11 section 23-24.10-4 shall report to the department of environmental management concerning the
12 performance of the manufacturer’s plan. The report shall include, but not be limited to, the
13 following:

14 (a) a detailed description and documentation of the capture rate achieved;

15 (b) a plan to implement additional or alternative actions, if necessary to improve the
16 capture rate;

17 (c) a listing of the public educational initiatives implemented, including size of audience
18 reached; and

19 (d) any changes in the participation of the necessary parties for the plan to be effectively
20 implemented.

21 **23-24.10-12. Violations.** – A violation of any of the provisions of this law or any rule or
22 regulation promulgated pursuant thereto shall be punishable, in the case of a first violation, by a
23 civil penalty not to exceed one thousand dollars (\$1,000). In the case of a second and any further
24 violations, the liability shall be for a civil penalty not to exceed five thousand dollars (\$5,000) for
25 each violation.

26 **23-24.10-13. Universal waste.** – The department of environmental management shall
27 modify its rules governing universal hazardous waste as appropriate to promote the collection,
28 transport, recovery, and proper management of mercury-added vehicle components.

29 **23-24.10-14. Public education and outreach.** – (a) Automobile manufacturers shall
30 implement a comprehensive education and outreach program for the general public and the
31 parties willingly participating in the removal, replacement where appropriate, recovery and
32 disposal system established under this chapter. This education and outreach program should focus
33 on the hazards related to, and the proper handling of, mercury; the requirements and obligations
34 of individuals, manufacturers, and agencies under this chapter; and the details of the system

1 established under this chapter.

2 (b) In collaboration with automobile manufacturers, the department of environmental
3 management shall supplement this education and outreach program with an assistance program
4 for businesses that might participate in the collection, replacement where appropriate, recovery
5 and disposal system established under this chapter.

6 (c) Willingly participating parties shall implement a public education and outreach
7 program focused on their participation in the collection, replacement (where applicable), recovery
8 and disposal system established under this chapter.

9 **23-24.10-15. Government procurement.** – Notwithstanding other policies and
10 guidelines for the procurement of vehicles, the department of administration shall, within one (1)
11 year of the effective date of this chapter, revise its policies, rules and procedures to give priority
12 and preference to the purchase of mercury-free vehicles taking into consideration competition,
13 price, availability and performance.

14 **23-24.10-16. Severability and construction.** – The provisions of this chapter shall be
15 severable, and if any court declares any phrase, clause, sentence, or provision of this chapter to be
16 invalid, or its applicability of any government, agency, person, or circumstance is declared
17 invalid, the remainder of the chapter and its relevant applicability shall not be affected. The
18 provisions of this chapter shall be liberally construed to give effect to the purposes thereof.

19 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- MERCURY-FREE VEHICLE ACT OF 2003

- 1 This act would establish the “Mercury-Free Vehicle Act.”
- 2 This act would take effect upon passage.

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