S T A T E O F N E W Y O R K

862

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. COLTON, ENGLEBRIGHT, SPANO -- Multi-Sponsored by -- M. of A. DINOWITZ, PAULIN -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the recovery of mercury-added components from end-of-life vehicle

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The title heading of title 21 of article 27 of the environmental conservation law, as added by chapter 145 of the laws of 2004, is amended to read as follows:

MERCURY-ADDED CONSUMER
PRODUCTS AND MERCURY-ADDED
MOTOR VEHICLE COMPONENTS

S 2. Subdivision 29 of section 27-2101 of the environmental conservation law, as added by chapter 611 of the laws of 2006, is amended and five new subdivisions 30, 31, 32, 33 and 34 are added to read as follows:

29. "Mercury-added component" means a motor vehicle component that contains [greater than fifteen milligrams of] mercury, which was intentionally added to such vehicle in order to provide a specific characteristic, appearance or quality, to perform a specific function, or for any other purpose. Such components shall include, but not be limited to, switches, sensors, lights and navigational systems.

30. "CAPTURE RATE" MEANS THE REMOVAL, COLLECTION AND RECOVERY, AS A PERCENTAGE OF THE TOTAL MERCURY ANNUALLY AVAILABLE FROM MOTOR VEHICLES IN COMMERCE AND END-OF-LIFE VEHICLES.

31. "END-OF-LIFE VEHICLE" MEANS ANY MOTOR VEHICLE SOLD, GIVEN OR OTHERWISE CONVEYED TO A VEHICLE RECYCLER OR SCRAP RECYCLING FACILITY FOR THE PURPOSE OF RECYCLING.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD04980-01-1

32. "MOTOR VEHICLE MERCURY-ADDED SWITCH" MEANS A LIGHT SWITCH OR AN ANTI-LOCK BRAKING SYSTEM SWITCH THAT CONTAINS MERCURY AND WAS INSTALLED BY THE MANUFACTURER IN A MOTOR VEHICLE.

33. "SCRAP RECYCLING FACILITY" MEANS A FIXED LOCATION, WHERE MACHINERY AND EQUIPMENT ARE USED FOR PROCESSING AND MANUFACTURING SCRAP METAL INTO PREPARED GRADES OF METAL AND THE PRINCIPAL PRODUCT OF WHICH IS SCRAP IRON, SCRAP STEEL OR NONFERROUS METAL SCRAP FOR SALE FOR REMELTING PURPOSES.

34. "VEHICLE RECYCLER" MEANS ANY PERSON OR ENTITY ENGAGED IN THE BUSINESS OF ACQUIRING, DISMANTLING OR DESTROYING SIX OR MORE MOTOR VEHICLES DURING ANY CALENDAR YEAR FOR THE PRIMARY PURPOSE OF RESELLING THE PARTS OF SUCH VEHICLES.

S 3. The environmental conservation law is amended by adding a new section 27-2119 to read as follows:

S 27-2119. REMOVAL, COLLECTION AND RECOVERY OF MOTOR VEHICLE MERCURY-ADDED SWITCHES.

1. MANUFACTURER'S RESPONSIBILITIES. (A) MANUFACTURERS OF MOTOR VEHICLES SOLD AT RETAIL IN THIS STATE THAT CONTAIN MOTOR VEHICLE MERCURY-ADDED SWITCHES SHALL, INDIVIDUALLY OR COLLECTIVELY, ESTABLISH AND IMPLEMENT A COLLECTION PROGRAM FOR SUCH SWITCHES TO ACHIEVE A CAPTURE RATE OF NOT LESS THAN FIFTY PERCENT FOR CALENDAR YEAR TWO THOUSAND TWELVE AND NOT LESS THAN SEVENTY PERCENT FOR CALENDAR YEAR TWO THOUSAND THIRTEEN AND EACH CALENDAR YEAR THEREAFTER THROUGH CALENDAR YEAR TWO THOUSAND TWENTY-THREE.

(B) WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, EVERY MANUFACTURER OF MOTOR VEHICLES SOLD AT RETAIL IN THIS STATE SHALL SUBMIT TO THE DEPARTMENT FOR REVIEW AND APPROVAL, A PLAN TO REMOVE, COLLECT AND RECOVER MOTOR VEHICLE MERCURY-ADDED SWITCHES FROM END-OF-LIFE VEHICLES. SUCH REMOVAL, COLLECTION AND RECOVERY SYSTEM SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING:

(I) AN EDUCATION PROGRAM TO INFORM THE PUBLIC ABOUT THE PURPOSES OF SUCH SYSTEM AND HOW TO PARTICIPATE IN IT;

(II) A PLAN FOR IMPLEMENTING AND FINANCING SUCH SYSTEM PURSUANT TO THIS SUBDIVISION;

(III) DOCUMENTATION OF THE WILLINGNESS OF ALL NECESSARY PARTIES TO IMPLEMENT A PROPOSED SYSTEM;

(IV) INFORMATION IDENTIFYING THE MAKE, MODELS AND YEARS OF MOTOR VEHICLES EQUIPPED WITH MOTOR VEHICLE MERCURY-ADDED SWITCHES, A DESCRIPTION OF THE MERCURY-ADDED COMPONENTS IN SUCH MOTOR VEHICLES, THE LOCATIONS OF SUCH COMPONENTS, AND THE SAFE, COST-EFFECTIVE AND ENVIRONMENTALLY SOUND METHODS OF REMOVAL OF SUCH COMPONENTS;

(V) A DESCRIPTION OF THE PERFORMANCE MEASURES TO BE UTILIZED AND REPORTED UPON BY THE MANUFACTURER TO DEMONSTRATE THAT SUCH SYSTEM IS MEETING THE CAPTURE RATE REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION AND OTHER MEASURES OF THE EFFECTIVENESS OF SUCH SYSTEM INCLUDING, BUT NOT LIMITED TO, THE NUMBER OF MOTOR VEHICLE MERCURY-ADDED SWITCHES COLLECTED FROM END-OF-LIFE VEHICLES, THE AMOUNT OF MERCURY COLLECTED, THE NUMBER OF MOTOR VEHICLES EQUIPPED WITH MOTOR VEHICLE MERCURY-ADDED SWITCHES, AND THE NUMBER OF MOTOR VEHICLES PROCESSED FOR RECYCLING;

(VI) A DESCRIPTION OF ADDITIONAL OR ALTERNATIVE ACTIONS TO BE IMPLEMENTED TO IMPROVE SUCH SYSTEM AND ITS OPERATION IN THE EVENT THE CAPTURE RATE ESTABLISHED BY THIS SUBDIVISION IS NOT MET; AND

(VII) A PLAN TO STORE THE MERCURY COLLECTED AND RECOVERED FROM MERCURY-ADDED COMPONENTS IN THE EVENT THAT ENVIRONMENTALLY APPROPRIATE MANAGEMENT TECHNOLOGIES ARE NOT AVAILABLE.

(C) IN DEVELOPING A MERCURY COMPONENT REMOVAL, COLLECTION AND RECOVERY SYSTEM, MANUFACTURERS SHALL, TO THE EXTENT PRACTICABLE, UTILIZE ITS FRANCHISED MOTOR VEHICLE DEALERS, SERVICE STATIONS, INSPECTION STATIONS, REPAIR SHOPS AND OTHER FACILITIES WHICH REGULARLY SERVICE MOTOR VEHICLES. IN THE EVENT THAT A MANUFACTURER DOES NOT UTILIZE SUCH RESOURCES, IT SHALL INCLUDE IN ITS PLAN THE REASONS FOR ESTABLISHING SEPARATE REMOVAL, COLLECTION AND RECOVERY RESOURCES.

(D) IN DEVELOPING A RECOVERY SYSTEM FOR END-OF-LIFE VEHICLES, MANUFACTURERS SHALL, TO THE EXTENT PRACTICABLE, UTILIZE EXISTING END-OF-LIFE VEHICLE RECYCLING FACILITIES. IN THE EVENT THAT A MANUFACTURER DOES NOT UTILIZE SUCH FACILITIES, IT SHALL INCLUDE IN ITS PLAN THE REASONS FOR ESTABLISHING SEPARATE REMOVAL, COLLECTION AND RECOVERY FACILITIES.

(E) MANUFACTURERS SHALL BEAR THE TOTAL COST OF THE REMOVAL, COLLECTION AND RECOVERY SYSTEM FOR MOTOR VEHICLE MERCURY-ADDED SWITCHES. SUCH COSTS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(I) TWO DOLLARS FOR EACH MOTOR VEHICLE MERCURY-ADDED SWITCH REMOVED BY A VEHICLE RECYCLER, AS PARTIAL COMPENSATION FOR LABOR AND OTHER COSTS;

(II) TWENTY-FIVE CENTS FOR EACH MOTOR VEHICLE MERCURY-ADDED SWITCH REMOVED AS PARTIAL COMPENSATION TO THE DEPARTMENT FOR ADMINISTRATION AND ENFORCEMENT;

(III) PACKAGING IN WHICH TO TRANSPORT MOTOR VEHICLE MERCURY-ADDED SWITCHES TO RECYCLING, STORAGE OR DISPOSAL FACILITIES;

(IV) SHIPPING OF MOTOR VEHICLE MERCURY-ADDED SWITCHES TO RECYCLING, STORAGE OR DISPOSAL FACILITIES;

(V) RECYCLING, STORAGE OR DISPOSAL OF MOTOR VEHICLE MERCURY-ADDED SWITCHES;

(VI) PUBLIC EDUCATION MATERIALS AND PRESENTATIONS; AND

(VII) MAINTENANCE OF ALL APPROPRIATE SYSTEMS AND PROCEDURES TO PROTECT THE ENVIRONMENT FROM MERCURY CONTAMINATION.

(F) MANUFACTURERS SHALL ANNUALLY SUBMIT A DETAILED REPORT TO THE DEPARTMENT ON THE IMPLEMENTATION OF THEIR PLANS. SUCH REPORT SHALL INCLUDE:

(I) A DETAILED DESCRIPTION AND DOCUMENTATION OF THE CAPTURE RATE ACHIEVED;

(II) A PLAN TO IMPLEMENT ADDITIONAL OR ALTERNATIVE ACTIONS, IF NECESSARY, TO IMPROVE THE CAPTURE RATE;

(III) A LISTING OF THE PUBLIC EDUCATIONAL INITIATIVES IMPLEMENTED PURSUANT TO THIS SECTION; AND

(IV) ANY CHANGES IN THE PARTICIPATION OF THE NECESSARY PARTIES FOR THE PLAN TO BE EFFECTIVELY IMPLEMENTED.

2. DEPARTMENT RESPONSIBILITIES. (A) WITHIN NINETY DAYS OF THE RECEIPT OF A MANUFACTURER'S PLAN, THE DEPARTMENT SHALL DETERMINE WHETHER THE ENTIRE PLAN COMPLIES WITH THE PROVISIONS OF THIS SECTION, AND APPROVE, DISAPPROVE OR CONDITIONALLY APPROVE THE PLAN.

(I) IF SUCH PLAN IS APPROVED, THE MANUFACTURER SHALL BEGIN IMPLEMENTATION OF THE PLAN WITHIN THIRTY DAYS OF RECEIPT OF THE APPROVAL FROM THE DEPARTMENT.

(II) IF SUCH PLAN IS DISAPPROVED, THE DEPARTMENT SHALL INFORM THE MANUFACTURER AS TO THE REASONS THE PLAN WAS DISAPPROVED. THE MANUFACTURER SHALL SUBMIT A REVISED PLAN WITHIN THIRTY DAYS OF RECEIPT OF A NOTICE OF DISAPPROVAL.

(III) IF THE PLAN IS CONDITIONALLY APPROVED, THE DEPARTMENT SHALL INFORM THE MANUFACTURER AS TO THE REASONS THE PLAN WAS CONDITIONALLY APPROVED. THE MANUFACTURER SHALL BE RESPONSIBLE FOR IMPLEMENTING THOSE PORTIONS OF THE PLAN WHICH ARE APPROVED WITHIN THIRTY DAYS OF RECEIPT OF THE DEPARTMENT'S NOTICE. THE MANUFACTURER SHALL BE RESPONSIBLE FOR

SUBMITTING A REVISED PLAN WITHIN THIRTY DAYS OF RECEIPT OF THE NOTICE OF CONDITIONAL APPROVAL.

(IV) IF AT THE END OF ONE HUNDRED TWENTY DAYS, THE MANUFACTURER'S PLAN HAS NOT BEEN APPROVED, THE MANUFACTURER SHALL IMPLEMENT THOSE PORTIONS OF THE PLAN THAT HAVE BEEN APPROVED. THE DEPARTMENT SHALL IMPLEMENT THOSE PORTIONS OF THE PLAN THAT HAVE BEEN DISAPPROVED.

(B) THE DEPARTMENT SHALL REVIEW EACH MANUFACTURER'S PLAN AT LEAST ONCE EVERY THREE YEARS, AND REQUIRE ANY SUCH MODIFICATIONS THERETO AS SHALL BE NECESSARY.

3. PROPER MANAGEMENT OF MERCURY-ADDED COMPONENTS. (A) EVERY VEHICLE RECYCLER WHO SELLS, GIVES OR OTHERWISE TRANSFERS POSSESSION OF END-OF-LIFE VEHICLES TO A SCRAP RECYCLING FACILITY FOR RECYCLING SHALL REMOVE ALL MOTOR VEHICLE MERCURY-ADDED SWITCHES FROM SUCH VEHICLE PRIOR TO DELIVERY TO SUCH FACILITY.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, A SCRAP RECYCLING FACILITY MAY AGREE TO ACCEPT POSSESSION OF AN END-OF-LIFE VEHICLE, WHICH HAS NOT INTENTIONALLY BEEN FLATTENED, CRUSHED OR BALED, AND WHICH IS EQUIPPED WITH MOTOR VEHICLE MERCURY-ADDED SWITCHES. EVERY SCRAP RECYCLING FACILITY TAKING POSSESSION OF SUCH A VEHICLE SHALL BE RESPONSIBLE FOR REMOVING ALL MOTOR VEHICLE MERCURY-ADDED SWITCHES THEREFROM.

(C) NO PERSON SHALL REPRESENT THAT MOTOR VEHICLE MERCURY-ADDED SWITCHES HAVE BEEN REMOVED FROM AN END-OF-LIFE VEHICLE SOLD, GIVEN OR OTHERWISE CONVEYED FOR RECYCLING WHEN SUCH PERSON KNOWS OR HAS REASON TO KNOW THAT SUCH SWITCHES HAVE NOT BEEN REMOVED.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided that effective immediately any rules, regulations and actions necessary to implement the provisions of this act on its effective date are authorized to be commenced and completed prior to such date.