

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 504

(Delegate Robinson, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Products That Contain Mercury - Prohibition on Sale of Electric Switches,
Electric Relays, and Gas Valve Switches

This bill prohibits a “marketer,” beginning October 1, 2018, from knowingly selling or providing to a consumer (individually or as a product component) (1) an electric switch containing mercury; (2) an electric relay containing mercury; or (3) a gas valve switch containing mercury. The bill does not apply to an electric switch, an electric relay, or a gas valve switch that is a component of a larger product that was in use on or before October 1, 2018, if (1) the larger product is used in manufacturing; (2) the larger product is used in a generating, transmission, or distributing facility for electric energy, gas, or water; (3) the switch or relay is integrated with, and not physically separate from, other components of the larger product; (4) the use of the switch or relay is required under federal law or regulation; or (5) there is no manufacturer-approved switch or relay (that does not contain mercury) for the larger product. The bill establishes civil and administrative penalties for violations of the bill’s prohibition, and existing criminal penalty provisions also apply.

Fiscal Summary

State Effect: The Maryland Department of the Environment (MDE) can implement the bill with existing budgeted resources, as discussed below. Potential minimal increase in general fund revenues from applicable penalty provisions.

Local Effect: Potential minimal increase in local revenues from the bill’s civil penalty provisions to the extent that the counties in which any actions are brought retain any penalties assessed in the circuit courts. Otherwise, the bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Likely minimal, as discussed below.

Analysis

Bill Summary: The definition of “marketer” is altered to include a person who manufactures, assembles, sells, distributes, affixes a brand name or private label to, or licenses the use of a brand name on an electric relay; electric switch; gas valve switch; or product component with an electric switch, electric relay, or gas valve switch containing mercury.

A person who violates the bill’s prohibition is liable for a civil penalty to be collected in a civil action in the circuit court for any county in the State of up to (1) \$1,000 for a first offense; (2) \$2,500 for a second offense; and (3) \$5,000 for a third or subsequent offense. In addition to any other remedies available at law or in equity, after an opportunity for a hearing, MDE may impose a fine for each violation of up to (1) \$1,000 for a first offense; (2) \$2,500 for a second offense; and (3) \$5,000 for a third or subsequent offense. MDE must consider specified factors in assessing an administrative fine. Each day a violation continues is a separate offense.

Existing criminal penalty provisions also apply to violations of the bill; a person who violates the bill’s prohibition is guilty of a misdemeanor and subject to a fine of up to \$100 for each violation.

Current Law:

Maryland Department of the Environment’s Mercury Program

MDE’s mercury program relates primarily to mercury-added products (*e.g.*, dyes or pigments, electric switches, fluorescent lamps), mercury switches in vehicles, thermostats, mercury fever thermometers, mercuric oxide batteries, the use of mercury in schools, and public outreach and education. Chapter 494 of 2004 established prohibitions and requirements relating to the sale and reclamation or destination of mercury-added products. In general, unless a mercury-added product is labeled, a manufacturer or wholesaler may not sell the product at retail in the State or to a retailer in the State. Unless properly labeled, a retailer may not knowingly sell a new mercury-added product in the State. Chapter 56 of 2006 prohibits a marketer from selling or providing a thermostat containing mercury to a consumer.

Generally, a person who violates any provisions of Subtitle 9 (Mercury) of the Environment Article is guilty of a misdemeanor and on conviction is subject to a fine of up to \$100 for each violation.

Maryland's Mercury Minimization Plan

Chapter 713 of 2009 requires vehicle manufacturers that sold motor vehicles in the State containing mercury switches to, individually or as a group, develop a mercury minimization plan relating to mercury switch removal from vehicles prior to processing at vehicle recycling and scrap processing facilities. MDE approved the required plan in January 2010. This program is being implemented by the End of Life Vehicle Solutions Corporation (ELVS), an entity created by a consortium of motor vehicle manufacturers. [ELVS](#) provides vehicle recyclers and scrap processing facilities with specially designed containers for collection, temporary storage, and shipping of mercury switches removed from end-of-life vehicles. Maryland's mercury minimization plan complements nationwide efforts to increase recycling of mercury switches through the National Vehicle Mercury Switch Recovery Program (NVMSRP), discussed in more detail below.

More information on Maryland's program is available in the 2013-2014 [annual report](#) prepared by MDE's Land Management Administration for the Maryland General Assembly. ELVS reports that in Maryland, 62,212 mercury switches containing 136.91 pounds of mercury have been collected from the start of the program in 2007 to 2014.

If a person violates any provision of law or regulation adopted in accordance with implementation of the mercury minimization plan, he/she is guilty of a misdemeanor, liable for a civil penalty, and may be subject to an administrative fine of (1) up to \$1,000 for a first offense; (2) up to \$2,500 for a second offense; and (3) up to \$5,000 for a third or subsequent offense. If MDE opts to assess an administrative penalty, Chapter 713 establishes the factors that must be considered in determining the level of the fine. Each day a violation continues is a separate offense. All such fines and penalties are paid into the State Recycling Trust Fund.

The mercury minimization plan program and related statutory provisions terminate December 31, 2017.

Background: Mercury is a silver-colored metallic element that is harmful to living organisms. More than half of the mercury in the environment comes from human sources such as burning coal to create electricity, and the incineration of waste without proper controls. Mercury can be found in a broad array of consumer products. According to the U.S. Environmental Protection Agency (EPA), older model electric appliances, including chest freezers, space heaters, clothes dryers, clothes irons, and washing machines, may contain mercury switches that turn the device on or off or turn a light on. Additionally, gas-fired appliances, including ovens, water heaters, furnaces, poll heaters, and appliances in some recreational vehicles, may contain mercury. Wheel balancers on trucks,

motor homes, and motorcycles installed behind the vehicles' wheel assemblies may also contain mercury.

According to MDE, prior to 2003, vehicle manufacturers used mercury in switches for convenience lights (under the hood or in the trunk) and in anti-locking braking systems (ABS). Automakers have since phased out the use of mercury switches in new vehicles. When retired vehicles are recycled, however, the mercury from unrecovered switches can be released into the environment.

NVMSRP was formed as a result of an agreement reached in August 2006 by representatives of dismantlers, automotive steel and scrap industries, environmental groups, a national association of state government environmental agency officials (including Maryland), and EPA. The primary goal of NVMSRP is to maximize switch collection nationally. A \$4 million fund was established to reward dismantlers and recyclers on a first-come, first-served basis for their efforts by paying \$4 per mercury light switch or assembly received and \$6 per ABS module received. The fund was depleted in 2009, and incentive payments in voluntary states were terminated. However, incentive payments continued in states where such payments were required by law, including Maryland.

State Expenditures: MDE anticipates, and the Department of Legislative Services concurs, that based on sharply declining usage of mercury switches and relays, the availability of alternative products, and existing bans in other states, any manufacturers still using mercury switches and relays are likely able to shift to alternative options with relative ease. Thus, assuming that the compliance workload is minimal, MDE can enforce the bill's prohibition with existing budgeted resources.

Because the bill's prohibition does not apply to certain switches and relays that are components of larger products that are in use on or before October 1, 2018, there is likely no material fiscal impact on State agencies as a user of products that might contain affected switches or relays.

Small Business Effect: Any loss in revenues for small businesses resulting from the bill's prohibition is anticipated to be minimal for several reasons. Vehicle manufacturers no longer use mercury-containing switches and the use of mercury in switches and relays has been declining. Additionally, the bill's prohibition does not take effect until October 1, 2018, which provides time to phase out existing stock, both for marketers and for any other small business that sells products that contain affected switches and relays. Finally, the bill allows for the sale and use of replacement parts for equipment in use at the time the bill's prohibition takes effect.

Additional Information

Prior Introductions: None.

Cross File: Although SB 713 (Senator Young, *et al.* - Education, Health, and Environmental Affairs) is designated as a cross file, it is not identical.

Information Source(s): End of Life Vehicle Solutions; Maryland Department of the Environment; U.S. Environmental Protection Agency; Department of Legislative Services

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