

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 649 of the Regular Session

State of Arkansas

85th General Assembly

Regular Session, 2005

A Bill

SENATE BILL 323

By: Senators Bryles, Altes, Higginbotham, J. Jeffress, Lavery, Luker, Wooldridge

By: Representatives Childers, Blair, Dickinson, Goss

For An Act To Be Entitled

AN ACT TO BE KNOWN AS THE "MERCURY SWITCH REMOVAL ACT OF 2005"; TO ACHIEVE REDUCTIONS OF MERCURY IN THE ENVIRONMENT THROUGH REMOVAL AND COLLECTION OF MERCURY SWITCHES FROM MOTOR VEHICLES WEIGHING LESS THAN TWELVE THOUSAND POUNDS (12,000 LBS.); AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO BE KNOWN AS THE "MERCURY SWITCH REMOVAL ACT OF 2005".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 8, Chapter 9 is amended to add an additional subchapter to read as follows:

8-9-601. Short title.

This subchapter shall be known and may be cited as the "Mercury Switch Removal Act of 2005".

8-9-602. Purpose.

The purpose of this subchapter is to reduce the quantity of mercury in the environment by removing mercury switches from end-of-life vehicles and by creating a collection and recovery program for mercury switches removed from end-of-life vehicles in the State of Arkansas.



1 8-9-603. Definitions.

2 As used in this subchapter:

3 (1) "Capture rate" means the annual removal, collection, and
4 recovery of mercury switches as a percentage of the total number of mercury
5 switches available for removal from end-of-life vehicles;

6 (2) "Department" means the Arkansas Department of Environmental
7 Quality;

8 (3) "Director" means the Director of the Arkansas Department of
9 Environmental Quality;

10 (4) "End-of-life vehicle" means a vehicle that is sold, given,
11 or otherwise conveyed to a vehicle recycler or scrap recycling facility for
12 the purpose of recycling;

13 (5) "Manufacturer" means a person, firm, association,
14 partnership, corporation, governmental entity, organization, combination, or
15 joint venture that is the last person in the production or assembly process
16 of a new vehicle which utilizes mercury switches, or in the case of an
17 imported vehicle, the importer or domestic distributor of the vehicle;

18 (6) "Mercury minimization plan" means a plan for removing,
19 collecting, and recovering mercury switches from end-of-life vehicles that is
20 prepared pursuant to § 8-9-604;

21 (7) "Mercury switch" means each mercury-containing capsule,
22 commonly known as a "bullet", that is part of a convenience light switch
23 assembly or part of an anti-lock braking system assembly installed in a
24 vehicle. An anti-lock braking system assembly may contain more than one (1)
25 mercury switch;

26 (8) "Person" means any individual, corporation, company, firm,
27 partnership, association, trust, joint-stock company or trust, venture, or
28 municipal, state, or federal government or agency, or any other legal entity,
29 however organized;

30 (9) "Scrap recycling facility" means a fixed location where
31 machinery and equipment are utilized for processing and manufacturing scrap
32 metal into prepared grades and whose principal product is scrap iron, scrap
33 steel, or nonferrous metallic scrap for sale for remelting purposes;

34 (10) "Vehicle" means any passenger automobile or passenger car,
35 station wagon, truck, van, or sport utility vehicle with a gross vehicle
36 weight rating of less than twelve thousand pounds (12,000 lbs.); and

1 (11) "Vehicle recycler" means an individual or entity engaged in
2 the business of acquiring, dismantling, or destroying six (6) or more end-of-
3 life vehicles in a calendar year for the primary purpose of resale of their
4 parts.

5
6 8-9-604. Mercury minimization plan.

7 (a) Within ninety (90) days after the effective date of this
8 subchapter, every manufacturer of vehicles sold within this state,
9 individually or as part of a group, shall develop in consultation with the
10 Arkansas Department of Environmental Quality, a mercury minimization plan
11 prepared pursuant to this section and submit the mercury minimization plan to
12 the Director of the Arkansas Department of Environmental Quality for review
13 and approval pursuant to § 8-9-605.

14 (b) The mercury minimization plan prepared and submitted pursuant to
15 this section shall include the following at a minimum:

16 (1)(A)(i) Information identifying the make, model, and year of
17 vehicles, including current or anticipated future production models that may
18 contain one (1) or more mercury switches;

19 (ii) A description of the mercury switches;

20 (iii) a system to mark vehicles to be processed for
21 shredding or crushing to indicate presence or absence of mercury switches;

22 (iv) The location of these mercury switches; and

23 (v) The safe and environmentally sound methods for
24 removal of mercury switches from end-of-life vehicles.

25 (B) To the extent a manufacturer is uncertain as to the
26 content of a switch installed during the manufacture of a vehicle, the
27 mercury minimization plan shall presume that the switch is a mercury switch;

28 (2) Educational materials to assist a vehicle recycler or a
29 scrap recycling facility in undertaking a safe and environmentally sound
30 method for the removal of the mercury switches from end-of-life vehicles,
31 including information on the hazards related to mercury and the proper
32 handling of mercury;

33 (3) A proposal for the method of storage or disposal of the
34 mercury switches, including the method of packaging and shipping mercury
35 switches to authorized recycling, storage, or disposal facilities;

36 (4) A proposal for the storage of mercury switches collected and

1 recovered from end-of-life vehicles if environmentally appropriate management
2 technologies are not available; and

3 (5) A plan for implementing and financing the system in
4 accordance with subsection (d) of this section.

5 (c) To the extent practicable, a mercury minimization plan shall
6 utilize the existing end-of-life vehicle recycling infrastructure. If the
7 existing end-of-life vehicle recycling infrastructure is not utilized, the
8 mercury minimization plan shall include the reasons for establishing a
9 separate infrastructure.

10 (d)(1) A mercury minimization plan must provide for the financing of
11 the removal, collection, and recovery system for mercury switches installed
12 in vehicles manufactured by the manufacturer and its predecessors and
13 affiliates as provided in this subsection (d).

14 (2) These costs shall be borne by the manufacturers of vehicles
15 sold in the state, ensuring that additional financial burdens are not placed
16 on automobile dealers or businesses dealing with end-of-life vehicles. The
17 manufacturers shall develop a method that ensures the prompt payment to
18 vehicle recyclers, scrap recycling facilities, and the department for costs
19 associated with mercury switch removal and disposal. Costs shall include,
20 but not be limited to, the following:

21 (A) A minimum of five dollars (\$5.00) for each mercury
22 switch removed by a vehicle recycler pursuant to § 8-9-606(a) as partial
23 compensation for the labor and other costs incurred by a vehicle recycler in
24 the removal of the mercury switch;

25 (B) A minimum of five dollars (\$5.00) for each mercury
26 switch removed by a scrap recycling facility pursuant to § 8-9-606(b) as
27 partial compensation for the labor and other costs incurred by a scrap
28 recycling facility in the removal of the mercury switch;

29 (C) One dollar (\$1.00) for each mercury switch removed by
30 a vehicle recycler pursuant to § 8-9-606(a) or by a scrap recycling facility
31 pursuant to § 8-9-606(b) as partial compensation to the department for costs
32 incurred in administering and enforcing the provisions of this subchapter;

33 (D) Packaging in which to transport mercury switches to
34 recycling, storage, or disposal facilities;

35 (E) Shipping of mercury switches to recycling, storage, or
36 disposal facilities;

1 (F) Recycling, storage, or disposal of the mercury
2 switches;

3 (G) The preparation and distribution to vehicle recyclers
4 and scrap recycling facilities of the educational materials required pursuant
5 to subdivision (b)(2) of this section; and

6 (H) Maintenance of all appropriate record-keeping systems.

7 (e) Within thirty (30) days after the effective date of this
8 subchapter, every manufacturer of vehicles sold within the state,
9 individually or as part of a group, shall provide to vehicle recyclers and
10 scrap recycling facilities containers suitable for storing mercury switches
11 until such time that vehicle recyclers and scrap recycling facilities can be
12 reimbursed pursuant to this section.

13 (f) Manufacturers of vehicles sold within the state shall provide
14 vehicle recyclers or scrap recycling facilities with reimbursement for each
15 mercury switch in the amount established pursuant to this section regardless
16 of when these switches were removed from the vehicles, if the vehicle
17 recyclers or scrap recycling facilities maintain the records required by § 8-
18 9-606.

19 (g) Manufacturers shall indemnify, defend, and hold harmless vehicle
20 recyclers and scrap recycling facilities for any liabilities arising from the
21 release of the mercury from the mercury-added components after the components
22 are transferred to the manufacturer or its agent or contractor.

23
24 8-9-605. Plan approval and implementation.

25 (a)(1) Within one hundred twenty (120) days after receipt of a mercury
26 minimization plan, the Director of the Arkansas Department of Environmental
27 Quality shall approve, disapprove, or conditionally approve the entire
28 mercury minimization plan. The director may solicit input from
29 representatives of vehicle recyclers, scrap recycling facilities, and other
30 stakeholders as the director deems appropriate.

31 (2)(A) If the entire mercury minimization plan is approved, the
32 manufacturer shall begin implementation within thirty (30) days after receipt
33 of approval or as otherwise agreed to by the director.

34 (B) If the entire mercury minimization plan is
35 disapproved, the director shall inform the manufacturer as to the reasons for
36 the disapproval. The manufacturer shall have thirty (30) days thereafter to

1 submit a new mercury minimization plan.

2 (3)(A) The director may approve those parts of a mercury
3 minimization plan that meet the requirements of § 8-9-604 and disapprove the
4 parts that do not comply with the requirements of § 8-9-604.

5 (B) The manufacturer shall implement the approved parts of
6 the mercury minimization plan within thirty (30) days after receipt of
7 approval or as otherwise agreed to by the director and submit a revised
8 mercury minimization plan for the disapproved parts within thirty (30) days
9 after receipt of notification of the disapproval of the director.

10 (C) The director shall review and approve, conditionally
11 approve, or disapprove a revised mercury minimization plan within thirty (30)
12 days after receipt.

13 (4)(A) If at the conclusion of the time period of one hundred
14 twenty (120) days after receipt of a mercury minimization plan the director
15 has neither approved nor disapproved the mercury minimization plan pursuant
16 to subdivision (a)(2)(A) or (B) of this section, the mercury minimization
17 plan shall be considered to be conditionally approved.

18 (B) Subject to any modifications required by the director,
19 a manufacturer shall implement a conditionally effective mercury minimization
20 plan within thirty (30) days after receipt of approval or as otherwise agreed
21 to by the director.

22 (b) At the conclusion of a time period two hundred forty (240) days
23 after the effective date of this subchapter, the director shall reserve the
24 right to complete, on behalf of a manufacturer any portion of a mercury
25 minimization plan that has not been approved pursuant to this section.

26 (c) The director may review a mercury minimization plan approved
27 pursuant to this section and recommend modifications to the plan at any time
28 upon a finding that the approved mercury minimization plan is deficient or
29 not accomplishing the purposes set out in this subchapter in any material
30 respect.

31
32 8-9-606. Removal and proper management of mercury-added vehicle
33 components.

34 (a) Commencing thirty (30) days after the approval or conditional
35 approval of a mercury minimization plan pursuant to § 8-9-605, a vehicle
36 recycler that sells, gives, or otherwise conveys ownership of an end-of-life

1 vehicle to a scrap recycling facility for recycling shall remove all mercury
2 switches identified in the approved mercury minimization plan from the end-
3 of-life vehicle prior to delivery to a scrap recycling facility, unless a
4 mercury switch is inaccessible due to significant damage to the vehicle in
5 the area surrounding the location of the mercury switch, in which case the
6 damage shall be noted on the normal business records of the vehicle recycler
7 who delivered the end-of-life vehicle to the scrap recycling facility.

8 (b) Notwithstanding subsection (a) of this section, a scrap recycling
9 facility may agree to accept an end-of-life vehicle which has not been
10 intentionally flattened, crushed, or baled, containing mercury switches, in
11 which case the scrap recycling facility shall be responsible for removing the
12 mercury switches identified in the mercury minimization plan approved
13 pursuant to § 8-9-605 before the end-of-life vehicle is intentionally
14 flattened, crushed, baled, or shredded.

15 (c)(1) A vehicle recycler or scrap recycling facility that removes
16 mercury switches pursuant to subsections (a) or (b) of this section shall
17 maintain records documenting the number of:

- 18 (A) Mercury switches collected;
- 19 (B) End-of-life vehicles containing mercury switches;
- 20 (C) End-of-life vehicles processed for recycling;
- 21 (D) The makes and models of vehicles from which mercury
22 switches were removed; and
- 23 (E) Switches collected from each make.

24 (2) These records shall be made available for review by the
25 Department of Arkansas Environment Quality upon the request of the
26 department.

27 (d) No person shall represent that mercury switches have been removed
28 from an end-of-life vehicle being sold, given, or otherwise conveyed for
29 recycling if that person has not removed the mercury switches or arranged
30 with another person to remove the mercury switches.

31 (e) Upon removal, mercury switches shall be collected, stored,
32 transported, and otherwise handled in accordance with the:

33 (1) Mercury minimization plan approved pursuant to § 8-9-605;
34 and

35 (2) Provisions of the rules and regulations concerning universal
36 waste adopted by the department pursuant to the Arkansas Hazardous Waste

1 Management Act of 1979, § 8-7-201 et seq.

2 (f) No scrap recycling facility or other person that receives an
3 intentionally flattened, crushed or baled, end-of-life vehicle shall be
4 deemed in violation of this subchapter if a mercury switch is found in the
5 vehicle after its acquisition.

6
7 8-9-607. Annual reporting.

8 (a) One (1) year after the implementation of a mercury minimization
9 plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer
10 subject to § 8-9-604 shall report individually or as part of a group to the
11 Director of the Arkansas Department of Environmental Quality concerning the
12 implementation of the mercury minimization plan. The report shall include,
13 but need not be limited to, the following:

14 (1) A detailed description and documentation of the capture rate
15 achieved, with the goal of achieving a mercury switch capture rate of at
16 least ninety percent (90%), consistent with the principle that mercury
17 switches shall be recovered unless the mercury switch is inaccessible due to
18 significant damage to the end-of-life vehicle in the area surrounding where
19 the mercury switch is located;

20 (2) A description of additional or alternative actions that may
21 be implemented to improve the mercury minimization plan and its
22 implementation in the event that a mercury switch capture rate of at least
23 ninety percent (90%) is not achieved;

24 (3) The number of mercury switches collected, the number of end-
25 of-life vehicles containing mercury switches, the number of end-of-life
26 vehicles processed for recycling, and a description of how the mercury
27 switches were managed; and

28 (4) A description of the amounts paid to cover the costs of
29 implementing the mercury minimization plan.

30 (b) The director may discontinue the requirement for the annual report
31 pursuant to subsection (a) of this section upon a finding that mercury
32 switches in end-of-life vehicles manufactured by a particular manufacturer no
33 longer pose a significant threat to the environment or to public health.

34
35 8-9-608. Design for recycling.

36 (a) One (1) year after the implementation of a mercury minimization

1 plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer
2 subject to § 8-9-604 shall report individually or as part of a group to the
3 Director of the Arkansas Department of Environmental Quality concerning the
4 steps being taken by manufacturers to design vehicles and their components
5 for recycling. The report shall include, but need not be limited to, the
6 following:

7 (1) A list of all vehicle components included in the
8 manufacturer's vehicles in each of the previous three (3) model years, the
9 current model year, and the next upcoming model year that contain mercury;

10 (2) Design changes that each manufacturer has implemented or is
11 implementing to reduce or eliminate all sources of mercury listed in
12 compliance with subdivision (a)(1) of this section from its vehicles, the
13 amount of any reductions, and the year in which mercury will be eliminated
14 from each of the vehicle components listed in compliance with subdivision
15 (a)(1) of this section;

16 (3) Policies which each manufacturer has implemented to ensure
17 that its vehicles are designed to be recycled in a safe, cost effective, and
18 environmentally sound manner using existing technologies and infrastructures;

19 (4) A listing of all:

20 (A) Complaints and reports that the manufacturer has
21 received within the last twelve (12) months from vehicle recyclers, scrap
22 recycling facilities, government entities, or organizations representing any
23 of the persons; or

24 (B) Other facts and circumstances which have made the
25 manufacturer aware that the manufacturer's vehicles contain vehicle
26 components or are designed in such a way that present environmental risks
27 which make it uneconomical to recycle the vehicles or components; and

28 (5) The design or manufacturing changes that the manufacturer
29 has implemented or is implementing to reduce or remove any environmental
30 risks listed in compliance with subdivision (a)(4) of this section and the
31 year in which design changes will eliminate the environmental risk listed in
32 compliance with subdivision (a)(4) of this section.

33 (b) The Arkansas Department of Environmental Quality may conduct
34 hearings from time to time as the director deems appropriate to evaluate the
35 steps manufacturers are taking to design for recycling, and to recommend
36 additional legislative action as may be appropriate in order to promote

1 vehicle recycling for the purpose of preserving scarce resources and the safe
2 and efficient reduction of solid waste.

3
4 8-9-609. Arkansas Pollution Control and Ecology Commission.

5 The Arkansas Pollution Control and Ecology Commission may adopt rules
6 and regulations to effectuate and implement the purposes and intent of this
7 subchapter and the powers and duties of the Department of Environmental
8 Quality.

9
10 8-9-610. Penalties and enforcement.

11 (a) Any person who violates any provisions of this subchapter or any
12 rule or order issued pursuant to this subchapter shall be subject to the same
13 penalty and enforcement provisions as are contained in § 8-6-204.

14 (b) Except as otherwise provided in this subchapter, the procedure of
15 the Arkansas Pollution Control and Ecology Commission for issuance of rules,
16 conduct of hearings, notice, power of subpoena, review of action on permits,
17 right of appeal, presumptions, finality of actions, and related matters shall
18 be as provided in §§ 8-4-101 – 8-4-106 and 8-4-201 – 8-4-229 of the Arkansas
19 Water and Air Pollution Control Act, including, without limitation, §§ 8-4-
20 205, 8-4-210, 8-4-212 – 8-4-214, and 8-4-218 – 8-4-229.

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23 APPROVED: 3/03/2005
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