

By: Bonnen

H.B. No. 2793

A BILL TO BE ENTITLED

AN ACT

relating to the removal and collection of convenience switches from motor vehicles; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 375 to read as follows:

CHAPTER 375. REMOVAL OF CONVENIENCE SWITCHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. DEFINITIONS. In this chapter:

(1) "Capture rate" means the annual number of convenience switches removed, collected, and recovered, expressed as a percentage of the number of convenience switches estimated to be available for removal in that year from end-of-life vehicles.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Convenience switch" means a capsule, commonly known as a bullet, that:

(A) is part of a convenience light switch assembly; and

(B) because of its mercury content, is the type of switch subject to work practice standards promulgated by the United States Environmental Protection Agency under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(4) "Convenience switch recovery program" means a

1 program for removing, collecting, and recovering convenience
2 switches from end-of-life vehicles in accordance with Subchapter B.

3 (5) "Eligible vehicle" means a vehicle identified by
4 information provided by the manufacturer to the commission under
5 Section 375.051 as a vehicle that might contain a convenience
6 switch.

7 (6) "End-of-life vehicle" means a vehicle that:

8 (A) has not been intentionally flattened,
9 crushed, shredded, or baled; and

10 (B) is sold, given, or otherwise conveyed to a
11 vehicle recycler or scrap metal recycling facility for the purpose
12 of recycling.

13 (7) "Executive director" means the executive director
14 of the commission.

15 (8) "Manufacturer" means:

16 (A) a person who is the last entity in the
17 production or assembly process of a new vehicle; or

18 (B) the importer or domestic distributor of the
19 vehicle, in the case of an imported vehicle.

20 (9) "Scrap metal recycling facility" means a facility
21 at a fixed location that uses equipment to process and refabricate
22 scrap metal into prepared grades and principally produces scrap
23 iron, scrap steel, or nonferrous metallic scrap for sale.

24 (10) "Vehicle" means any automobile, station wagon,
25 truck, van, or sport utility vehicle with a gross vehicle weight
26 rating of less than 12,000 pounds.

27 (11) "Vehicle recycler" means a person engaged in the

1 business of acquiring, dismantling, or preparing for recycling six
2 or more end-of-life vehicles in a calendar year for the primary
3 purpose of reselling the vehicles' parts. The term includes a
4 salvage vehicle dealer licensed under Chapter 2302, Occupations
5 Code.

6 Sec. 375.002. APPLICABILITY OF CHAPTER. (a) This chapter
7 applies only to:

8 (1) a manufacturer of vehicles sold in this state that
9 contain or contained convenience switches; and

10 (2) a vehicle recycler or scrap metal recycling
11 facility in this state.

12 (b) The requirements of this chapter do not apply to a
13 manufacturer on or after the 10th anniversary of the date on which
14 the manufacturer last installed a convenience switch in a vehicle
15 sold in this state.

16 Sec. 375.003. PURPOSE; COMMISSION AUTHORITY TO AMEND
17 PROCEDURES. (a) It is the purpose of this chapter to establish a
18 convenience switch recovery program for this state that is
19 recognized by the United States Environmental Protection Agency as
20 a method of compliance with regulations promulgated under Section
21 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to the
22 extent that the regulations recognize state convenience switch
23 recovery programs as a method of compliance.

24 (b) Consistent with the purpose expressed in Subsection
25 (a), the commission may amend procedures adopted to implement this
26 chapter to include additional program elements paid for from the
27 convenience switch recovery account established under Section

1 375.251 if, after January 1, 2007, the attorney general certifies
2 that the state will not have a recognized program without
3 implementing those additional elements based on:

4 (1) information included in the annual implementation
5 report required under Section 375.151; and

6 (2) a final written guidance document or rule,
7 including a preamble to the guidance document or rule, developed
8 for Section 112 of the federal Clean Air Act (42 U.S.C. Section
9 7412) and provided by the United States Environmental Protection
10 Agency.

11 Sec. 375.004. EXPIRATION. This chapter expires August 31,
12 2015.

13 [Sections 375.005-375.050 reserved for expansion]

14 SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PROGRAM

15 Sec. 375.051. MANUFACTURER PROGRAM COMPONENTS. (a) Each
16 manufacturer of vehicles sold in this state, individually or as
17 part of a group, shall, not later than January 1, 2006, implement a
18 program that provides the following:

19 (1) information identifying that manufacturer's
20 eligible vehicles, including:

21 (A) a description of the convenience switches
22 used by the manufacturer;

23 (B) the location on each vehicle of each
24 convenience switch;

25 (C) the safe and environmentally sound methods
26 for removing a convenience switch from an end-of-life vehicle; and

27 (D) the estimated number of convenience switches

1 available, for purposes of computing the capture rate;

2 (2) educational materials to assist a vehicle recycler
3 or scrap metal recycling facility in following a safe and
4 environmentally sound method to remove convenience switches from
5 end-of-life vehicles, including educational materials on hazards
6 presented by the content of a convenience switch and the proper
7 handling of that content;

8 (3) methods for recycling or disposing of the
9 manufacturer's convenience switches, including the method of
10 packaging and shipping a convenience switch to an authorized
11 recycling, storage, or disposal facility; and

12 (4) methods for the storage of a convenience switch
13 collected and recovered from an end-of-life vehicle if
14 environmentally appropriate recycling or disposal technologies are
15 not available.

16 (b) To the extent possible, a convenience switch recovery
17 program must use existing end-of-life vehicle infrastructure. If
18 that infrastructure is not used, the program must include reasons
19 for establishing a separate infrastructure.

20 Sec. 375.052. PACKAGING, SHIPPING, AND RECYCLING COSTS.
21 Each manufacturer, individually or as part of a group, shall pay the
22 costs of:

23 (1) packaging and shipping of the manufacturer's
24 convenience switches to recycling, storage, or disposal
25 facilities; and

26 (2) recycling, storing, or disposing of the
27 manufacturer's removed convenience switches.

1 Sec. 375.053. COSTS OF EDUCATIONAL MATERIALS. Each
2 manufacturer shall provide financing for:

3 (1) the preparation of educational materials required
4 under Section 375.051; and

5 (2) the distribution of those materials at workshops
6 that the commission is required to conduct as part of the
7 commission's technical assistance.

8 Sec. 375.054. PROVISION OF STORAGE CONTAINERS. Each
9 manufacturer, individually or as part of a group, shall pay for and
10 provide to each vehicle recycler and scrap metal recycling facility
11 containers suitable for the safe storage of convenience switches,
12 including switches encased in light assemblies from which the
13 switches cannot be removed.

14 Sec. 375.055. COMPLIANCE BONUS FEE. (a) This section takes
15 effect only if the attorney general certifies that the United
16 States Environmental Protection Agency has promulgated final
17 regulations under Section 112 of the federal Clean Air Act (42
18 U.S.C. Section 7412) that recognize state convenience switch
19 recovery programs as a method of compliance with those final
20 regulations and that require an incentive as provided by this
21 section for a program's approval by the United States Environmental
22 Protection Agency.

23 (b) The commission shall pay a fee not to exceed \$2 per
24 convenience switch to the vehicle recycler or scrap metal recycling
25 facility as compensation for the labor and other costs incurred in
26 the removal of convenience switches.

27 (c) The commission shall adopt rules to implement this

1 section.

2 [Sections 375.056-375.100 reserved for expansion]

3 SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PROGRAM IMPLEMENTATION

4 Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE

5 SWITCHES. (a) In accordance with educational materials received
6 under this chapter, a vehicle recycler shall remove all convenience
7 switches from an end-of-life vehicle that is identified as an
8 eligible vehicle in the applicable convenience switch recovery
9 program before the vehicle recycler:

10 (1) crushes, flattens, bales, or shreds the vehicle;

11 or

12 (2) sells, gives, or otherwise conveys ownership of
13 the vehicle to:

14 (A) a scrap metal recycling facility for
15 recycling; or

16 (B) any other person for purposes of crushing or
17 other similar processing.

18 (b) If damage to a vehicle makes a convenience switch
19 inaccessible for removal, the vehicle recycler shall note the
20 location of the damage and of the switch on the normal business
21 records of the vehicle recycler. Except as provided by Subsection
22 (c), a vehicle recycler may not deliver a vehicle that contains a
23 convenience switch to a scrap metal recycling facility.

24 (c) A scrap metal recycling facility may accept an
25 end-of-life vehicle that contains a convenience switch if the
26 owner, operator, or other designated individual of the facility
27 agrees to remove the convenience switch before the vehicle is

1 flattened, crushed, shredded, or baled.

2 (d) It is a violation of this chapter for a vehicle recycler
3 or scrap metal recycling facility to bring a convenience switch
4 into this state that was removed from a motor vehicle outside this
5 state for the purpose of receiving compensation from the commission
6 under Section 375.055(b) or under a procedure amended by the
7 commission under Section 375.003(b).

8 Sec. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING
9 FACILITY RECORDS. (a) A vehicle recycler or scrap metal recycling
10 facility that removes convenience switches under Section 375.101
11 shall maintain records documenting:

12 (1) the number of convenience switches collected;

13 (2) the total number of end-of-life vehicles processed
14 for recycling; and

15 (3) the number of convenience switches that were
16 inaccessible because of damage to the end-of-life vehicle.

17 (b) A vehicle recycler that removes convenience switches
18 shall note on the inventory receipt for surrendered certificates of
19 title or other evidence of ownership required to be maintained
20 under Chapter 2302, Occupations Code, the following additional
21 information:

22 (1) whether a vehicle for which title or other
23 evidence of ownership was surrendered was an eligible vehicle; and

24 (2) a certification that all identified convenience
25 switches were recovered and placed in containers specified by the
26 applicable convenience switch recovery program.

27 Sec. 375.103. LIMITATION ON DUTIES OF VEHICLE RECYCLER OR

1 SCRAP METAL RECYCLING FACILITY. (a) The commission may not require
2 a vehicle recycler or scrap metal recycling facility to undertake
3 any action beyond the actions reasonably arising from obligations
4 created under this chapter.

5 (b) A summary of the records required under Section 375.102
6 must be reported to the commission by September 1 of each year.

7 Sec. 375.104. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a) A
8 person may not represent that a convenience switch has been removed
9 from an end-of-life vehicle being conveyed for recycling or other
10 processing unless that person:

11 (1) removed the convenience switch; or

12 (2) has good cause to believe that another person
13 removed the convenience switch.

14 (b) A scrap metal recycling facility or other person that
15 acquires scrap metal, including scrap metal in the form of an
16 intentionally flattened, crushed, shredded, or baled vehicle, is
17 not considered to be in violation of this subchapter solely because
18 a convenience switch is found in the scrap metal after acquisition.

19 Sec. 375.105. HANDLING OF CONVENIENCE SWITCHES. After
20 removal from a vehicle, a convenience switch shall be collected,
21 stored, transported, and otherwise handled in accordance with:

22 (1) the applicable convenience switch recovery
23 program; and

24 (2) the applicable solid waste rules of the
25 commission.

26 [Sections 375.106-375.150 reserved for expansion]

SUBCHAPTER D. REPORTS

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or before December 31 of each year, the commission shall publish a report that must include:

(1) documentation of the capture rate achieved, consistent with the principle that a convenience switch should be recovered unless damage to the vehicle makes the switch inaccessible and in consideration of the anticipated two-to-three-year period required to fully implement a program for the recovery of switches;

(2) an evaluation of the number of convenience switches identified in the records required to be maintained under Section 375.102 compared to the information reported under Section 375.152;

(3) the number of convenience switches collected, the number of end-of-life vehicles containing convenience switches, and the number of end-of-life vehicles processed for recycling; and

(4) a description of how the convenience switches collected were managed.

(b) The executive director may discontinue the requirement for an annual report under this section if the executive director determines that the convenience switches in end-of-life vehicles no longer pose a significant threat to the environment or to public health.

Sec. 375.152. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT. On or before January 15 of each year, each manufacturer, individually or as part of a group, shall report to the commission

1 the total number of convenience switches recovered in this state
2 and the total amount of mercury, by weight, recovered from those
3 convenience switches during the preceding calendar year.

4 [Sections 375.153-375.200 reserved for expansion]

5 SUBCHAPTER E. PENALTIES AND ENFORCEMENT

6 Sec. 375.201. PENALTIES AND ENFORCEMENT. A person who
7 violates a provision of this chapter, or a rule or order issued
8 under this chapter, is subject to the penalty and enforcement
9 provisions of Chapter 7, Water Code.

10 [Sections 375.202-375.250 reserved for expansion]

11 SUBCHAPTER F. CONVENIENCE SWITCH RECOVERY ACCOUNT

12 Sec. 375.251. CONVENIENCE SWITCH RECOVERY ACCOUNT. (a)
13 Except as provided by Section 375.003(b), this section takes effect
14 only if the attorney general certifies that the United States
15 Environmental Protection Agency has promulgated final regulations
16 under Section 112 of the federal Clean Air Act (42 U.S.C. Section
17 7412) that recognize state convenience switch recovery programs as
18 a method of compliance with those final regulations and that
19 require an incentive as provided by Section 375.055 for a program's
20 approval by the United States Environmental Protection Agency.

21 (b) The convenience switch recovery account is an account in
22 the general revenue fund.

23 (c) The account is administered by the comptroller for the
24 benefit of the convenience switch recovery program established
25 under this chapter. The fund is exempt from the application of
26 Section 403.095, Government Code.

27 (d) The fund consists of:

1 (1) transfers of unexpended and unobligated amounts
2 from the Texas emissions reduction plan fund as provided by Section
3 386.252(c);

4 (2) interest earned on money in the account;

5 (3) penalties collected under Section 375.201;

6 (4) any amounts appropriated by the legislature for
7 the account; and

8 (5) grants and gifts to the account.

9 (e) Money in the fund may be appropriated only to implement
10 and administer the convenience switch recovery program under this
11 chapter. Each year of the program, the commission may spend an
12 amount not to exceed \$3 million for the payment of compliance bonus
13 fees under Section 375.055 or under procedures amended under
14 Section 375.003 and the associated administrative costs.

15 SECTION 2. Section 386.252, Health and Safety Code, is
16 amended by amending Subsection (a) and adding Subsection (c) to
17 read as follows:

18 (a) Except as provided by Subsection (c), money [~~Money~~] in
19 the fund may be used only to implement and administer programs
20 established under the plan and shall be allocated as follows:

21 (1) for the diesel emissions reduction incentive
22 program, 87.5 percent of the money in the fund, of which not more
23 than 10 percent may be used for on-road diesel purchase or lease
24 incentives;

25 (2) for the new technology research and development
26 program, 9.5 percent of the money in the fund, of which up to
27 \$250,000 is allocated for administration, up to \$200,000 is

1 allocated for a health effects study, \$500,000 is to be deposited in
2 the state treasury to the credit of the clean air account created
3 under Section 382.0622 to supplement funding for air quality
4 planning activities in affected counties, and not less than 20
5 percent is to be allocated each year to support research related to
6 air quality for the Houston-Galveston-Brazoria and Dallas-Fort
7 Worth nonattainment areas by a nonprofit organization based in
8 Houston; and

9 (3) for administrative costs incurred by the
10 commission and the laboratory, three percent.

11 (c) Except as provided by Section 375.003(b), this
12 subsection takes effect only if the attorney general certifies that
13 the United States Environmental Protection Agency has promulgated
14 final regulations under Section 112 of the federal Clean Air Act (42
15 U.S.C. Section 7412) that recognize state convenience switch
16 recovery programs as a method of compliance with those final
17 regulations and that require an incentive as provided by Section
18 375.055 for a program's approval by the United States Environmental
19 Protection Agency. If the attorney general's certification is made
20 before September 1, 2006, money collected but not appropriated for
21 any program or activity under Subsection (a) for the fiscal year
22 beginning September 1, 2005, shall be reallocated to the
23 convenience switch recovery account established under Section
24 375.251 on or before the 90th day after the date of the
25 certification and not later than August 31, 2006, in an amount not
26 to exceed \$24 million. If the attorney general's certification is
27 made on or after September 1, 2006, or the attorney general's

1 certification under Section 375.003 is made on or after January 1,
2 2007, money collected but not appropriated for any program or
3 activity under Subsection (a) for the fiscal year immediately
4 preceding the fiscal year in which the certification occurs shall
5 be reallocated to the convenience switch recovery account
6 established under Section 375.251 on or before the 90th day after
7 the date of the certification and not later than August 31 of the
8 fiscal year in which the certification occurs in an amount not to
9 exceed \$24 million. If after an attorney general's certification
10 is made, the amount collected and reallocated to the convenience
11 switch recovery account is less than \$24 million, additional
12 reallocations of money collected in excess of the amounts
13 appropriated for any program or activity under Subsection (a) to
14 the convenience switch recovery account shall occur before November
15 1 of each fiscal year after the fiscal year of the initial
16 reallocation until the total cumulative amount reallocated equals
17 \$24 million.

18 SECTION 3. (a) The Texas Commission on Environmental
19 Quality shall adopt rules not later than March 1, 2006, for
20 regulating a convenience switch, as defined by Section 375.001,
21 Health and Safety Code, as added by this Act, as universal waste
22 under 30 T.A.C. Section 335.261.

23 (b) Until rules have been adopted and promulgated under
24 Subsection (a) of this section, the Texas Commission on
25 Environmental Quality shall regulate a convenience switch, as
26 defined by Section 375.001, Health and Safety Code, as added by this
27 Act, as a universal waste in accordance with 40 C.F.R. Part 273, and

1 as incorporated by reference in 30 T.A.C. Section 335.261.

2 SECTION 4. Not later than the 60th day after the effective
3 date of this Act, individually or as part of a group, a manufacturer
4 shall provide containers as required by Section 375.054, Health and
5 Safety Code, as added by this Act, to each vehicle recycler and
6 scrap metal recycling facility identified by the Texas Commission
7 on Environmental Quality.

8 SECTION 5. The initial report described by Section 375.151,
9 Health and Safety Code, as added by this Act, shall be published as
10 required by that section on or before December 31, 2006.

11 SECTION 6. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect August 29, 2005.