

By: Flores

H.B. No. 2887

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling facilities by the Texas Department of Licensing and Regulation; providing penalties.

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

SECTION 1. Subtitle B, Title 12, Occupations Code, is amended by adding Chapter 1959 to read as follows:

CHAPTER 1959. REMOVAL OF CONVENIENCE SWITCHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1959.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "Executive director" means the executive director of the department.

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

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

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

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

(5) "Vehicle" means any automobile, station wagon,

1 truck, van, or sport utility with a gross vehicle weight rating of
2 less than 12,000 pounds.

3 (6) "Vehicle recycler" means a person engaged in the
4 business of acquiring, dismantling, or preparing for recycling six
5 or more end-of-life vehicles in a calendar year for the primary
6 purpose of reselling the vehicles' parts. The term includes a
7 salvage vehicle dealer licensed under Chapter 2302, Occupations
8 Code.

9 (7) "Manufacturer" means:

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

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

14 (8) "Convenience switch" means a capsule, commonly
15 known as a bullet, that is part of a motor vehicle convenience light
16 switch assembly which, because of its contents, is the type of
17 switch subject to U.S. Environmental Protection Agency work
18 practice standards, such as those promulgated in Title 40, Code of
19 Federal Regulations, Section 63.7700(c)(2) or subsequent
20 rulemaking.

21 (9) "Convenience switch recovery plan" means a plan
22 for removing, collecting, and recovering convenience switches from
23 end-of-life vehicles in accordance with Subchapter B.

24 (10) "Capture rate" means the annual number of
25 convenience switches removed, collected, and recovered, expressed
26 as a percentage of the number of convenience switches available for
27 removal in that year from end-of-life vehicles.

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

3 Sec. 1959.002. APPLICABILITY OF CHAPTER. This chapter
4 applies only to:

5 (1) a manufacturer of vehicles sold in this state; and
6 (2) a vehicle recycler or scrap metal recycling
7 facility in this state.

8 [Sections 1959.003-1959.050 reserved for expansion]

9 SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PLAN

10 Sec. 1959.051. DEVELOPMENT OF PLAN. (a) Each manufacturer
11 of vehicles sold in this state, individually or as part of a group,
12 and in consultation with the department, shall develop a
13 convenience switch recovery plan in accordance with this subchapter
14 and shall submit the plan to the executive director for review and
15 approval.

16 (b) The executive director shall notify each manufacturer
17 of the requirement to develop a convenience switch recovery plan
18 and submit the plan to the executive director for approval.

19 Sec. 1959.052. CONVENIENCE SWITCH RECOVERY PLAN CONTENTS.
20 (a) The convenience switch recovery plan shall include:

21 (1) for each make, model, and model year of a vehicle:
22 (A) information identifying the make, model, and
23 year;

24 (B) a description of each convenience switch
25 used;

26 (C) a system to mark a vehicle to indicate the
27 presence or absence of a convenience switch;

1 (D) the location on the vehicle of each
2 convenience switch;

3 (E) safe and environmentally sound methods for
4 removing a convenience switch from an end-of-life vehicle; and

5 (F) the number of convenience switches available
6 in the vehicle, for purposes of computing the capture rate.

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

13 (3) methods for recycling or disposing of the
14 manufacturer's convenience switches, including the method of
15 packaging and shipping a convenience switch to an authorized
16 recycling, storage, or disposal facility;

17 (4) methods for the storage of a convenience switch
18 collected and recovered from an end-of-life vehicle if
19 environmentally appropriate recycling or disposal technologies are
20 not available; and

21 (5) a plan for implementing and financing the removal,
22 collection, and recovery program.

23 (b) To the extent possible, a convenience switch recovery
24 plan must use existing end-of-life vehicle infrastructure. If that
25 infrastructure is not used, the plan must include reasons for
26 establishing a separate infrastructure.

27 Sec. 1959.053. FINANCING OF COSTS. A convenience switch

1 recovery plan must provide for financing by the manufacturer of the
2 removal, collection, and recovery of convenience switches from a
3 vehicle of the manufacturer in a way that ensures that a financial
4 burden is not imposed on the department, the commission, or on an
5 automobile dealer or business that recycles, handles, or otherwise
6 processes end-of-life vehicles.

7 Sec. 1959.054. FEE. Each manufacturer's convenience switch
8 recovery plan must include a procedure that ensures the prompt
9 payment to a vehicle recycler, scrap metal recycling facility, or
10 the department of a fee paid by the manufacturer to cover the costs
11 associated with convenience switch removal and disposal. The
12 payments must include:

13 (1) a minimum of \$5 for each convenience switch
14 removed by a vehicle recycler or scrap metal recycling facility in
15 accordance with Section 1959.101 as compensation for the labor and
16 other costs incurred in the removal of the convenience switch; and

17 (2) \$1 for each convenience switch removed by a
18 vehicle recycler or scrap metal recycling facility in accordance
19 with Section 1959.101 as compensation to the department for costs
20 incurred in administering and enforcing the provisions of this
21 chapter.

22 Sec. 1959.055. PACKAGING, SHIPPING, AND RECYCLING COSTS.
23 The manufacturer's plan must include financing to pay the costs of:

24 (1) packaging, shipping, and removal of convenience
25 switches to recycling, storage, or disposal facilities; and

26 (2) recycling, storing, or disposing of removed
27 convenience switches.

1 Sec. 1959.056. COSTS OF EDUCATIONAL MATERIALS. The
2 manufacturer's plan must provide financing for the preparation of
3 educational materials required under Section 1959.052 and the
4 distribution of those materials to each vehicle recycler and scrap
5 metal recycling facility.

6 Sec. 1959.057. COSTS OF RECORDS MAINTENANCE. The
7 manufacturer's plan must provide financing for the costs of
8 maintaining all record-keeping systems associated with the
9 implementation of this chapter.

10 Sec. 1959.058. FEE INCREASES AS NEEDED. The executive
11 director shall increase a fee under Section 1959.054 to an
12 appropriate level on a determination by the executive director that
13 the amount being collected is not sufficient to ensure the proper
14 removal and management of convenience switches.

15 Sec. 1959.059. STORAGE AND REIMBURSEMENT. (a) Each
16 manufacturer, individually or as part of a group, shall provide to
17 each vehicle recycler and scrap metal recycling facility containers
18 suitable for the safe storage of convenience switches until the
19 vehicle recycler or scrap metal recycling facility can be
20 reimbursed for the costs of removal, storage, packaging, and
21 shipping of the switches.

22 (b) A vehicle recycler or scrap metal recycling facility is
23 entitled to reimbursement by the manufacturer of a vehicle for each
24 convenience switch removed from the vehicle in the amount specified
25 by Section 1959.054 or by the executive director under Section
26 1959.058 regardless of the date on which a switch is removed from a
27 vehicle if the vehicle recycler or scrap metal recycling facility

1 maintains the records required by Section 1959.101 or 1959.102.

2 Sec. 1959.060. INDEMNIFICATION OF VEHICLE RECYCLERS AND
3 SCRAP METAL RECYCLING FACILITIES. A manufacturer shall indemnify,
4 defend, and hold harmless a vehicle recycler or scrap metal
5 recycling facility from liability for any damages arising from the
6 release of the contents of a convenience switch after the switch is
7 transferred to the manufacturer or the manufacture's agent or
8 contractor.

9 Sec. 1959.061. PLAN APPROVAL PROCESS. (a) Not later than
10 the 60th day after the date on which a convenience switch recovery
11 plan is received by the department, the executive director shall
12 approve or disapprove all or part of the plan or may approve the
13 plan conditionally. In considering the plan, the executive
14 director may seek comments or information from interested persons,
15 including representatives of vehicle recyclers and scrap metal
16 recycling facilities.

17 (b) If the executive director approves an entire
18 convenience switch recovery plan, the manufacturer shall begin
19 implementing the plan not later than the 30th day after the date on
20 which the manufacturer receives notice of the approval, unless the
21 manufacturer and the executive director have agreed to a different
22 date to initiate the plan.

23 (c) If the executive director disapproves an entire
24 convenience switch recovery plan, the executive director shall
25 provide the manufacturer with a list of the plan's deficiencies.
26 The manufacturer must submit a new convenience switch recovery plan
27 not later than the 30th day after the date on which the list of

1 deficiencies is received.

2 (d) If only part of a convenience switch recovery plan is
3 approved, the department shall provide the manufacturer with notice
4 setting forth the parts of the plan that are approved and the parts
5 of the plan that are disapproved, including a list of deficiencies
6 for the parts disapproved. The manufacturer shall implement the
7 approved part as instructed by the executive director and shall
8 submit a revised plan not later than the 30th day after the date on
9 which the notice of partial approval and list of deficiencies is
10 received.

11 (e) The executive director shall review and approve, partly
12 approve, or disapprove a revised convenience switch recovery plan
13 not later than the 30th day after the date on which the revised plan
14 is received.

15 (f) If a plan has not been fully approved on or before the
16 180th day after the date on which notice to manufacturers was sent
17 under Section 1959.051, the executive director may complete on
18 behalf of a manufacturer any part of a convenience switch recovery
19 plan that the executive director has not approved.

20 (g) The executive director may review an approved
21 convenience switch recovery plan and recommend modifications to the
22 plan at any time on a determination that the plan is deficient or is
23 not accomplishing the objective set out in this chapter in any
24 material respect, including a determination that the fees under
25 Section 1959.054 are not sufficient to ensure the removal of each
26 convenience switch.

1 [Sections 1959.052–1959.100 reserved for expansion]

2 SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PLAN IMPLEMENTATION

3 Sec. 1959.101 REMOVAL AND MANAGEMENT OF CONVENIENCE
4 SWITCHES. (a) In accordance with educational materials received
5 under this chapter, a vehicle recycler shall remove all convenience
6 switches from the vehicle as identified in the applicable
7 convenience switch recovery plan before the vehicle recycler:

8 (1) crushes, flattens, bales, or shreds an end-of-life
9 vehicle; or

10 (2) sells, gives, or otherwise conveys ownership of an
11 end-of-life vehicle to:

12 (A) a scrap metal recycling facility for
13 recycling; or

14 (B) any other person for purposes of crushing or
15 other similar processing.

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

22 (c) A scrap metal recycling facility may accept an
23 end-of-life vehicle that contains a convenience switch by agreeing
24 to remove the remaining convenience switch in accordance with the
25 applicable convenience switch recovery plan before the vehicle is
26 flattened, crushed, shredded, or baled.

27 Sec. 1959.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING

1 FACILITY RECORDS. A vehicle recycler or scrap metal recycling
2 facility that removes convenience switches under Section 1959.101
3 shall maintain records documenting:

4 (1) the number of convenience switches collected;

5 (2) the total number of end-of-life vehicles accepted
6 containing at least one convenience switch;

7 (3) the total number of end-of-life vehicles processed
8 for recycling;

9 (4) the number of end-of-life vehicles, by make and
10 model of each vehicle processed, from which a convenience switch
11 was removed;

12 (5) the number of end-of-life vehicles processed for
13 recycling, by make and model of each end-of-life vehicle;

14 (6) the total number of convenience switches collected
15 from each make of end-of-life vehicle; and

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

18 Sec. 1959.103. INACCESSIBLE CONVENIENCE SWITCHES
19 CONSIDERED IN CAPTURE RATE. For purposes of computing the capture
20 rate, a convenience switch that is inaccessible because of damage
21 to the vehicle is considered to be a convenience switch that was
22 available for inspection or removal but was not inspected or
23 removed.

24 Sec. 1959.104. LIMIT ON DUTIES OF VEHICLE RECYCLER OR SCRAP
25 METAL RECYCLING FACILITY. (a) Neither the department nor the
26 commission shall require a vehicle recycler or scrap metal
27 recycling facility to undertake any action beyond the actions

1 reasonably arising from obligations created under this chapter.

2 (b) On request, the records required under Sections
3 1959.101 and 1959.102 must be made available to the department for
4 review.

5 Sec. 1959.105. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a)
6 A person may not represent that a convenience switch has been
7 removed from an end-of-life vehicle being conveyed for recycling or
8 other processing if that person has not removed the convenience
9 switch or unless the person has good cause to believe that another
10 person has removed the convenience switch.

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

16 Sec. 1959.106. HANDLING OF CONVENIENCE SWITCHES. After
17 removal from a vehicle, a convenience switch shall be collected,
18 stored, transported, and otherwise handled in accordance with:

19 (1) the applicable convenience switch recovery plan;
20 and

21 (2) the applicable solid waste rules of the
22 commission.

23 [Section 1959.107–1959.150 reserved for expansion]

24 SUBCHAPTER D. REPORTS

25 Sec. 1959.151. ANNUAL MANUFACTURER'S IMPLEMENTATION
26 REPORT. (a) On or before December 31 of each year, each
27 manufacturer shall present a report individually or as part of a

1 group to the executive director on the manufacturer's convenience
2 switch recovery plan. The report must include:

3 (1) a detailed description and documentation of the
4 capture rate achieved in comparison to the target rate of at least
5 90 percent, consistent with the principle that a convenience switch
6 should be recovered unless damage to the vehicle makes the switch
7 inaccessible;

8 (2) a description of additional or alternative actions
9 that may be implemented to improve the convenience switch recovery
10 plan and the implementation of the plan, if the 90 percent capture
11 rate is not achieved;

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

15 (4) a description of how the convenience switches
16 collected were managed; and

17 (5) a summary of the amounts paid to cover the costs of
18 implementing the convenience switch recovery plan.

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

24 Sec. 1959.152. ANNUAL MANUFACTURER'S DESIGN REPORT. (a)
25 On or before December 31 of each year, a manufacturer shall report
26 individually or as part of a group to the executive director
27 concerning steps being taken by the manufacturer to design vehicles

1 and vehicle components for recycling. The report must include:

2 (1) a list of all vehicle components included in the
3 manufacturer's vehicles for each of the last three model years, the
4 current model year, and the upcoming model year that contain
5 convenience switches or other components presenting similar
6 environmental risks;

7 (2) design changes that the manufacturer has
8 implemented or is planning to implement to reduce or eliminate
9 convenience switches or other components presenting similar
10 environmental risks from the manufacturer's vehicles and the amount
11 of any reductions;

12 (3) policies the manufacturer has implemented to
13 ensure that the manufacturer's vehicles are designed to be recycled
14 in a safe, cost-effective, and environmentally sound manner using
15 existing technologies and infrastructure;

16 (4) a list of:

17 (A) complaints and reports received by the
18 manufacturer in the last 12 months from vehicle recyclers, scrap
19 metal recycling facilities, government entities, or organizations
20 representing any of those persons; and

21 (B) other facts and circumstances that have made
22 the manufacturer aware that the manufacturer's vehicles contain
23 vehicle components that present environmental risks; and

24 (5) the design or manufacturing changes that the
25 manufacturer has implemented or plans to implement to reduce or
26 remove each environmental risk listed under Subdivision (4) and the
27 year in which those changes will eliminate that environmental risk.

1 (b) The department may:

2 (1) periodically evaluate the steps manufacturers are
3 taking to design for recycling; and

4 (2) report to the governor, the lieutenant governor,
5 the speaker of the house of representatives, and the chair of each
6 standing committee of the legislature with jurisdiction over
7 environmental issues the department's findings under Subdivision
8 (1) together with any recommended legislative action that may be
9 appropriate to promote vehicle recycling in the interest of
10 preserving scarce resources and the safe and efficient reduction of
11 solid waste.

12 [Sections 1959.153–1959.200 reserved for expansion]

13 SUBCHAPTER E. RULES, PENALTIES, AND ENFORCEMENT

14 Sec. 1959.201. RULES. (a) The department shall adopt rules
15 to implement this chapter, including rules governing the removal of
16 a convenience switch under a convenience switch recovery plan.

17 (b) This chapter does not limit the department's authority
18 or the commission's authority to allow new or modified plans to be
19 submitted and independently financed to facilitate the removal from
20 end-of-life vehicles of any components that have contents that
21 result in the emission of hazardous air pollutants if the contents
22 are melted, similar to the emissions expected from the melting of a
23 convenience switch.

24 (c) To the extent authorized by federal law, in the
25 development of emission trading programs, the commission shall
26 recognize as creditable any emission reductions accomplished
27 through implementation of this chapter, including any additional

1 emission reductions accomplished through plans submitted under
2 Subsection (b).

3 Sec. 1959.202. PENALTIES AND ENFORCEMENT. A person who
4 violates a provision of this chapter, or a rule or order issued
5 under this chapter, is subject to the penalty and enforcement
6 provisions of Chapter 51 of this Code.

7 SECTION 2. (a) The Texas Department of Licensing and
8 Regulation shall adopt rules to implement Chapter 1959, Occupations
9 Code, as added by this Act, not later than March 1, 2006.

10 (b) The Texas Commission on Environmental Quality shall
11 adopt rules for regulating convenience switches, as defined by
12 Section 1959.001, Occupations Code, as added by this Act, as
13 universal waste under Section 335.261, Title 30, Texas
14 Administrative Code.

15 (c) Until rules have been adopted and promulgated under
16 Subsection (b) of this section, the Texas Commission on
17 Environmental Quality shall regulate a convenience switch, as
18 defined by Section 1959.001, Occupations Code, as added by this
19 Act, as a universal waste in accordance with 40 C.F.R. Part 273, and
20 as incorporated by reference in Section 335.261, Title 30, Texas
21 Administrative Code, for purposes of establishing the accumulation
22 time limits.

23 SECTION 3. (a) This section applies only to a manufacturer
24 of a vehicle sold in this state as those terms are defined by
25 Section 1959.001, Occupations Code, as added by this Act.

26 (b) Not later than 30 days after the effective date of this
27 Act, the executive director of the Texas Department of Licensing

1 and Regulation shall notify each manufacturer of vehicles sold in
2 this state of the requirement to submit a convenience switch
3 recovery plan in accordance with Subchapter B, Chapter 1959,
4 Occupations Code, as added by this Act.

5 (c) Not later than 60 days after the effective date of this
6 Act, individually or as part of a group, a manufacturer shall
7 provide containers as required by Section 1959.059, Occupations
8 Code, as added by this Act, to each vehicle recycler and scrap metal
9 recycling facility.

10 (d) Each manufacturer shall submit a convenience switch
11 recovery plan as required by Section 1959.051, Occupations Code, as
12 added by this Act, to the executive director of the Texas Department
13 of Licensing and Regulation for review not later than 90 days after
14 the effective date of this Act.

15 (e) The initial reports described by Sections 1959.151 and
16 1959.152, Occupations Code, as added by this Act, shall be
17 presented as required by those sections on or before December 31,
18 2006.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2005.