

By: Phillips

H.B. No. 2896

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and recycling of scrap metal components by the Texas Department of Transportation; providing penalties.

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

SECTION 1. Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2307 to read as follows:

CHAPTER 2307. REMOVAL OF CONVENIENCE SWITCHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2307.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Transportation.

(2) "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.

(3) "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.

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

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

7 (6) "Manufacturer" means:

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

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

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

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

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

26 (10) "Commission" means the Texas Commission on
27 Environmental Quality.

1 Sec. 2307.002. APPLICABILITY OF CHAPTER. This chapter
2 applies only to:

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

6 [Sections 2307.003-2307.050 reserved for expansion]

7 SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PLAN

8 Sec. 2307.051. DEVELOPMENT OF PLAN. (a) Each manufacturer
9 of vehicles sold in this state, individually or as part of a group,
10 and in consultation with the department, shall develop a
11 convenience switch recovery plan in accordance with this subchapter
12 and shall submit the plan to the department for review and approval.

13 (b) The department shall notify each manufacturer of the
14 requirement to develop a convenience switch recovery plan and
15 submit the plan to the department for approval.

16 Sec. 2307.052. CONVENIENCE SWITCH RECOVERY PLAN CONTENTS.

17 (a) The convenience switch recovery plan shall include:

- 18 (1) for each make, model, and model year of a vehicle:
19 (A) information identifying the make, model, and
20 year;
21 (B) a description of each convenience switch
22 used;
23 (C) a system to mark a vehicle to indicate the
24 presence or absence of a convenience switch;
25 (D) the location on the vehicle of each
26 convenience switch;
27 (E) safe and environmentally sound methods for

1 removing a convenience switch from an end-of-life vehicle; and

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

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

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

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

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

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

24 Sec. 2307.053. FINANCING OF COSTS. A convenience switch
25 recovery plan must provide for financing by the manufacturer of the
26 removal, collection, and recovery of convenience switches from a
27 vehicle of the manufacturer in a way that ensures that a financial

1 burden is not imposed on the department, the commission, or on an
2 automobile dealer or business that recycles, handles, or otherwise
3 processes end-of-life vehicles.

4 Sec. 2307.054. FEE. Each manufacturer's convenience
5 switch recovery plan must include a procedure that ensures the
6 prompt payment to a vehicle recycler, scrap metal recycling
7 facility, or the department of a fee paid by the manufacturer to
8 cover the costs associated with convenience switch removal and
9 disposal. The payments must include:

10 (1) a minimum of \$5 for each convenience switch
11 removed by a vehicle recycler or scrap metal recycling facility in
12 accordance with Section 2307.101 as compensation for the labor and
13 other costs incurred in the removal of the convenience switch; and

14 (2) \$1 for each convenience switch removed by a
15 vehicle recycler or scrap metal recycling facility in accordance
16 with Section 2307.101 as compensation to the department for costs
17 incurred in administering and enforcing the provisions of this
18 chapter.

19 Sec. 2307.055. PACKAGING, SHIPPING, AN RECYCLING COSTS.
20 The manufacturer's plan must include financing to pay the costs of:

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

23 (2) recycling, storing, or disposing of removed
24 convenience switches.

25 Sec. 2307.056. COSTS OF EDUCATIONAL MATERIALS. The
26 manufacturer's plan must provide financing for the preparation of
27 educational materials required under Section 2307.052 and the

1 distribution of those materials to each vehicle recycler and scrap
2 metal recycling facility.

3 Sec. 2307.057. COSTS OF RECORDS MAINTENANCE. The
4 manufacturer's plan must provide financing for the costs of
5 maintaining all record-keeping systems associated with the
6 implementation of this chapter.

7 Sec. 2307.058. FEE INCREASES AS NEEDED. The department
8 shall increase a fee under Section 2307.054 to an appropriate level
9 on a determination by the department that the amount being
10 collected is not sufficient to ensure the proper removal and
11 management of convenience switches.

12 Sec. 2307.059. STORAGE AND REIMBURSEMENT. (a) Each
13 manufacturer, individually or as part of a group, shall provide to
14 each vehicle recycler and scrap metal recycling facility containers
15 suitable for the safe storage of convenience switches until the
16 vehicle recycler or scrap metal recycling facility can be
17 reimbursed for the costs of removal, storage, packaging, and
18 shipping of the switches.

19 (b) A vehicle recycler or scrap metal recycling facility is
20 entitled to reimbursement by the manufacturer of a vehicle for each
21 convenience switch removed from the vehicle in the amount specified
22 by Section 2307.054 or by the department under Section 2307.058
23 regardless of the date on which a switch is removed from a vehicle
24 if the vehicle recycler or scrap metal recycling facility maintains
25 the records required by Section 2307.101 or 2307.102.

26 Sec. 2307.060. INDEMNIFICATION OF VEHICLE RECYCLERS AND
27 SCRAP METAL RECYCLING FACILITIES. A manufacturer shall indemnify,

1 defend, and hold harmless a vehicle recycler or scrap metal
2 recycling facility from liability for any damages arising from the
3 release of the contents of a convenience switch after the switch is
4 transferred to the manufacturer or the manufacturer's agent or
5 contractor.

6 Sec. 2307.061. PLAN APPROVAL PROCESS. (a) Not later than
7 the 60th day after the date on which a convenience switch recovery
8 plan is received, the department shall approve or disapprove all or
9 part of the plan or may approve the plan conditionally. In
10 considering the plan, the department may seek comments or
11 information from interested persons, including representatives of
12 vehicle recyclers and scrap metal recycling facilities.

13 (b) If the department approves an entire convenience switch
14 recovery plan, the manufacturer shall begin implementing the plan
15 not later than the 30th day after the date on which the manufacturer
16 receives notice of the approval, unless the manufacturer and the
17 department have agreed to a different date to initiate the plan.

18 (c) If the department disapproves an entire convenience
19 switch recovery plan, the department shall provide the manufacturer
20 with a list of the plan's deficiencies. The manufacturer must
21 submit a new convenience switch recovery plan not later than the
22 30th day after the date on which the list of deficiencies is
23 received.

24 (d) If only part of a convenience switch recovery plan is
25 approved, the department shall provide the manufacturer with notice
26 setting forth the parts of the plan that are approved and the parts
27 of the plan that are disapproved, including a list of deficiencies

1 for the parts disapproved. The manufacturer shall implement the
2 approved part as instructed by the department and shall submit a
3 revised plan not later than the 30th day after the date on which the
4 notice of partial approval and list of deficiencies is received.

5 (e) The department shall review and approve, partly
6 approve, or disapprove a revised convenience switch recovery plan
7 not later than the 30th day after the date on which the revised plan
8 is received.

9 (f) If a plan has not been fully approved on or before the
10 180th day after the date on which notice to manufacturers was sent
11 under Section 2307.051, the department may complete on behalf of a
12 manufacturer any part of a convenience switch recovery plan that
13 the department has not approved.

14 (g) The department may review an approved convenience
15 switch recovery plan and recommend modifications to the plan at any
16 time on a determination that the plan is deficient or is not
17 accomplishing the objectives set out in this chapter in any
18 material respect, including a determination that the fees under
19 Section 2307.054 are not sufficient to ensure the removal of each
20 convenience switch.

21 [Sections 2307.052-2307.100 reserved for expansion]

22 SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PLAN IMPLEMENTATION

23 Sec. 2307.101. REMOVAL AND MANAGEMENT OF CONVENIENCE
24 SWITCHES. (a) In accordance with educational materials received
25 under this chapter, a vehicle recycler shall remove all convenience
26 switches from the vehicle as identified in the applicable
27 convenience switch recovery plan before the vehicle recycler:

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

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

5 (A) a scrap metal recycling facility for
6 recycling; or

7 (B) any other person for purposes of crushing or
8 other similar processing.

9 (b) If damage to the vehicle makes a convenience switch
10 inaccessible for removal, the vehicle recycler shall note the
11 location of the damage and of the switch on the normal business
12 records of the vehicle recycler. Except as provided by Subsection
13 (c), a vehicle recycler may not deliver a vehicle that contains a
14 convenience switch to a scrap metal recycling facility.

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

20 Sec. 2307.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING
21 FACILITY RECORDS. A vehicle recycler or scrap metal recycling
22 facility that removes convenience switches under Section 2307.101
23 shall maintain records documenting:

24 (1) the number of convenience switches collected;

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

27 (3) the total number of end-of-life vehicles processed

1 for recycling;

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

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

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

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

11 Sec. 2307.103. INACCESSIBLE CONVENIENCE SWITCHES
12 CONSIDERED IN CAPTURE RATE. For purposes of computing the capture
13 rate, a convenience switch that is inaccessible because of damage
14 to the vehicle is considered to be a convenience switch that was
15 available for inspection or removal but was not inspected or
16 removed.

17 Sec. 2307.104. LIMIT ON DUTIES OF VEHICLE RECYCLER OR SCRAP
18 METAL RECYCLING FACILITY. (a) Neither the department nor the
19 commission shall require a vehicle recycler or scrap metal
20 recycling facility to undertake any action beyond the actions
21 reasonably arising from obligations created under this chapter.

22 (b) On request, the records required under Sections
23 2307.101 and 2307.102 must be made available to the department for
24 review.

25 Sec. 2307.105. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a)
26 A person may not represent that a convenience switch has been
27 removed from an end-of-life vehicle being conveyed for recycling or

1 other processing if that person has not removed the convenience
2 switch or unless the person has good cause to believe that another
3 person has removed the convenience switch.

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

9 Sec. 2307.106. HANDLING OF CONVENIENCE SWITCHES. After
10 removal from a vehicle, a convenience switch shall be collected,
11 stored, transported, and otherwise handled in accordance with:

12 (1) the applicable convenience switch recovery plan;
13 and

14 (2) the applicable solid waste rules of the
15 commission.

16 [Section 2307.107-2307.150 reserved for expansion]

17 SUBCHAPTER D. REPORTS

18 Sec. 2307.151. ANNUAL MANUFACTURER'S IMPLEMENTATION
19 REPORT. (a) On or before December 31 of each year, each
20 manufacturer shall present a report individually or as part of a
21 group to the department on the manufacturer's convenience switch
22 recovery plan. The report must include:

23 (1) a detailed description and documentation of the
24 capture rate achieved in comparison to the target rate of at least
25 90 percent, consistent with the principle that a convenience switch
26 should be recovered unless damage to the vehicle makes the switch
27 inaccessible;

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

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

8 (4) a description of how the convenience switches
9 collected were managed; and

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

12 (b) The department may discontinue the requirement for an
13 annual report under this section if the department determines that
14 the convenience switches in end-of-life vehicles manufactured by a
15 particular manufacturer no longer pose a significant threat to the
16 environment or to public health.

17 Sec. 2307.152. ANNUAL MANUFACTURER'S DESIGN REPORT. (a)
18 On or before December 31 of each year, a manufacturer shall report
19 individually or as part of a group to the department concerning
20 steps being taken by the manufacturer to design vehicles and
21 vehicle components for recycling. The report must include:

22 (1) a list of all vehicle components included in the
23 manufacturer's vehicles for each of the last three model years, the
24 current model year, and the upcoming model year that contain
25 convenience switches or other components presenting similar
26 environmental risks;

27 (2) design changes that the manufacturer has

1 implemented or is planning to implement to reduce or eliminate
2 convenience switches or other components presenting similar
3 environmental risks from the manufacturer's vehicles and the amount
4 of any reductions;

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

9 (4) a list of:

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

14 (B) other facts and circumstances that have made
15 the manufacturer aware that the manufacturer's vehicles contain
16 vehicle components that present environmental risks; and

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

21 (b) The department may:

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

24 (2) report to the governor, the lieutenant governor,
25 the speaker of the house of representatives, and the chair of each
26 standing committee of the legislature with jurisdiction over
27 environmental issues the department's findings under Subdivision

1 (1) together with any recommended legislative action that may be
2 appropriate to promote vehicle recycling in the interest of
3 preserving scarce resources and the safe and efficient reduction of
4 solid waste.

5 [Sections 2307.153-2307.200 reserved for expansion]

6 SUBCHAPTER E. RULES, PENALTIES, AND ENFORCEMENT

7 Sec. 2307.201. RULES. (a) The Texas Transportation
8 Commission shall adopt rules to implement this chapter, including
9 rules governing the removal of a convenience switch under a
10 convenience switch recovery plan.

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

18 (c) To the extent authorized by federal law, in the
19 development of emission trading programs, the commission shall
20 recognize as creditable any emission reductions accomplished
21 through implementation of this chapter, including any additional
22 emission reductions accomplished through plans submitted to the
23 department under Subsection (b).

24 Sec. 2307.202. ADMINISTRATIVE PROCEEDINGS AND PENALTY. (a)
25 The department may impose administrative penalties on a
26 manufacturer that violates any provision of this chapter. An
27 administrative action is in addition to any action under Section

1 2307.203.

2 (b) The amount of an administrative penalty may not exceed
3 \$10,000 for each violation. Each day a violation continues or
4 occurs is a separate violation for purposes of imposing a penalty.

5 (c) In determining the amount of the penalty, the department
6 shall consider:

7 (1) the seriousness of the violation, including:

8 (A) the nature, circumstances, extent, and
9 gravity of any prohibited act; and

10 (B) the hazard or potential hazard to the health,
11 safety, or economic welfare of the public;

12 (2) the economic harm to property or the environment
13 caused by the violation;

14 (3) the history of previous violations;

15 (4) the amount necessary to deter a future violation;

16 (5) efforts to correct the violation; and

17 (6) any other matter that justice may require.

18 (d) An administrative penalty may be imposed under this
19 chapter only after the person charged with a violation is given an
20 opportunity for an administrative hearing.

21 (e) If the person requests a hearing or fails to respond
22 timely to notice, the department shall set a hearing and give notice
23 of the hearing to the person.

24 (f) A hearing set by the department under Subsection (e)
25 shall be held by an administrative law judge of the State Office of
26 Administrative Hearings.

27 (g) The administrative law judge shall:

1 (1) make findings of fact and conclusions of law; and
2 (2) issue to the department a proposal for a decision
3 as to the occurrence of the violation and the amount of any proposed
4 administrative penalty.

5 (h) Based on the findings of fact, conclusions of law, and
6 proposal for a decision under subsection (g), the department by
7 order may:

8 (1) determine that a violation has occurred and impose
9 an administrative penalty; or

10 (2) determine that a violation has not occurred.

11 (i) The department may increase or decrease the amount of
12 the penalty recommended by the administrative law judge.

13 (j) If the person does not appear for the hearing, the
14 department may impose a penalty and issue an order that the penalty
15 be paid after the department has determined that a violation
16 occurred.

17 (k) Not later than the 30th day after the date the
18 department's order becomes final, the person shall:

19 (1) pay the administrative penalty; or

20 (2) file a petition for judicial review.

21 (l) An administrative penalty owed under this subchapter
22 may be recovered in a civil action brought by the attorney general
23 at the request of the department.

24 Sec. 2307.203. INJUNCTION; CIVIL PENALTY. (a) If a person
25 has violated this chapter or a rule or order adopted under this
26 chapter, the department or the attorney general at the request of
27 the department may institute an action for:

1 (1) injunctive relief;

2 (2) a civil penalty not to exceed \$1,000 for each
3 violation, where each day a violation continues or occurs
4 constitutes a separate violation; or

5 (3) both injunctive relief and the civil penalty.

6 (b) If the department or the attorney general prevails in an
7 action under this section, the department or the attorney general
8 is entitled to recover reasonable attorney's fees and court costs.

9 SECTION 2. (a) The Texas Transportation Commission shall
10 adopt rules to implement Chapter 2307, Occupations Code, as added
11 by this Act, not later than March 1, 2006.

12 (b) The Texas Commission on Environmental Quality shall
13 adopt rules for regulating convenience switches, as defined by
14 Section 2307.001, Occupations Code, as added by this Act, as
15 universal waste under Section 335.261, Title 30, Texas
16 Administrative Code.

17 (c) Until rules have been adopted and promulgated under
18 Subsection (b) of this section, the Texas Commission on
19 Environmental Quality shall regulate a convenience switch, as
20 defined by Section 2307.001, Occupations Code, as added by this
21 Act, as a universal waste in accordance with 40 C.F.R. Part 273, and
22 as incorporated by reference in Section 335.261, Title 30, Texas
23 Administrative Code, for purposes of establishing the accumulation
24 time limits.

25 SECTION 3. (a) This section applies only to a manufacturer
26 of a vehicle sold in this state as those terms are defined by
27 Section 2307.001, Occupations Code, as added by this Act.

1 (b) Not later than 30 days after the effective date of this
2 Act, the Texas Department of Transportation shall notify each
3 manufacturer of vehicles sold in this state of the requirement to
4 submit a convenience switch recovery plan in accordance with
5 Subchapter B, Chapter 2307, Occupations Code, as added by this Act.

6 (c) Not later than 60 days after the effective date of this
7 Act, individually or as part of a group, a manufacturer shall
8 provide containers as required by Section 2307.059, Occupations
9 Code, as added by this Act, to each vehicle recycler and scrap metal
10 recycling facility.

11 (d) Each manufacturer shall submit a convenience switch
12 recovery plan as required by Section 2307.051, as added by this Act,
13 to the Texas Department of Transportation for review not later than
14 90 days after the effective date of this Act.

15 (e) The initial reports described by Sections 2307.151 and
16 2307.152, 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 receives a
20 vote of two-thirds of all members elected to each house, as provided
21 by Section 39, Article III, Texas Constitution. If this Act does
22 not receive the vote necessary for immediate effect, this Act takes
23 effect September 1, 2005.