

By: Jackson

S.B. No. 1681

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 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 is part of a motor vehicle convenience light switch assembly which, because of its contents, is the type of switch subject to U.S. Environmental Protection Agency work practice standards, such as those promulgated in Title 40, Code of Federal Regulations, Section 63.7700(c)(2) or subsequent rulemaking.

(4) "Convenience switch recovery plan" means a plan for removing, collecting, and recovering convenience switches from

1 end-of-life vehicles in accordance with Subchapter B.

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

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

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

8 (6) "Executive director" means the executive director
9 of the commission.

10 (7) "Manufacturer" means:

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

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

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

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

22 (10) "Vehicle recycler" means a person engaged in the
23 business of acquiring, dismantling, or preparing for recycling six
24 or more end-of-life vehicles in a calendar year for the primary
25 purpose of reselling the vehicles' parts. The term includes a
26 salvage vehicle dealer licensed under Chapter 2302, Occupations
27 Code.

1 Sec. 375.002. 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 375.003-375.050 reserved for expansion]

7 SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PLAN

8 Sec. 375.051. 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 commission, shall develop a
11 convenience switch recovery plan in accordance with this subchapter
12 and shall submit the plan to the executive director for review and
13 approval.

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

17 Sec. 375.052. CONVENIENCE SWITCH RECOVERY PLAN CONTENTS.

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

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

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

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

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

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

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

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

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

25 Sec. 375.053. FINANCING OF COSTS. A convenience switch
26 recovery plan must provide for financing by the manufacturer of the
27 removal, collection, and recovery of convenience switches from a

1 vehicle of the manufacturer in a way that ensures that a financial
2 burden is not imposed on the commission or on an automobile dealer
3 or business that recycles, handles, or otherwise processes
4 end-of-life vehicles.

5 Sec. 375.054. FEE. Each manufacturer's convenience switch
6 recovery plan must include a procedure that ensures the prompt
7 payment to a vehicle recycler, scrap metal recycling facility, or
8 the commission of a fee paid by the manufacturer to cover the costs
9 associated with convenience switch removal and disposal. The
10 payments must include:

11 (1) a minimum of \$5 for each convenience switch
12 removed by a vehicle recycler or scrap metal recycling facility in
13 accordance with Section 375.101 as compensation for the labor and
14 other costs incurred in the removal of the convenience switch; and

15 (2) \$1 for each convenience switch removed by a
16 vehicle recycler or scrap metal recycling facility in accordance
17 with Section 375.101 as compensation to the commission for costs
18 incurred in administering and enforcing the provisions of this
19 chapter.

20 Sec. 375.055. PACKAGING, SHIPPING, AND RECYCLING COSTS.
21 The manufacturer's plan must include financing to pay the costs of:

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

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

26 Sec. 375.056. COSTS OF EDUCATIONAL MATERIALS. The
27 manufacturer's plan must provide financing for the preparation of

1 educational materials required under Section 375.052 and the
2 distribution of those materials to each vehicle recycler and scrap
3 metal recycling facility.

4 Sec. 375.057. COSTS OF RECORDS MAINTENANCE. The
5 manufacturer's plan must provide financing for the costs of
6 maintaining all record-keeping systems associated with the
7 implementation of this chapter.

8 Sec. 375.058. FEE INCREASES AS NEEDED. The executive
9 director shall increase a fee under Section 375.054 to an
10 appropriate level on a determination by the executive director that
11 the amount being collected is not sufficient to ensure the proper
12 removal and management of convenience switches.

13 Sec. 375.059. STORAGE AND REIMBURSEMENT. (a) Each
14 manufacturer, individually or as part of a group, shall provide to
15 each vehicle recycler and scrap metal recycling facility containers
16 suitable for the safe storage of convenience switches until the
17 vehicle recycler or scrap metal recycling facility can be
18 reimbursed for the costs of removal, storage, packaging, and
19 shipping of the switches.

20 (b) A vehicle recycler or scrap metal recycling facility is
21 entitled to reimbursement by the manufacturer of a vehicle for each
22 convenience switch removed from the vehicle in the amount specified
23 by Section 375.054 or by the executive director under Section
24 375.058 regardless of the date on which a switch is removed from a
25 vehicle if the vehicle recycler or scrap metal recycling facility
26 maintains the records required by Section 375.101 or 375.102.

27 Sec. 375.060. INDEMNIFICATION OF VEHICLE RECYCLERS AND

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

7 Sec. 375.061. PLAN APPROVAL PROCESS. (a) Not later than
8 the 60th day after the date on which a convenience switch recovery
9 plan is received by the commission, the executive director shall
10 approve or disapprove all or part of the plan or may approve the
11 plan conditionally. In considering the plan, the executive
12 director may seek comments or information from interested persons,
13 including representatives of vehicle recyclers and scrap metal
14 recycling facilities.

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

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

27 (d) If only part of a convenience switch recovery plan is

1 approved, the manufacturer shall implement the approved part as
2 instructed by the executive director and shall submit a revised
3 plan not later than the 30th day after the date on which the notice
4 of partial approval is received.

5 (e) The executive director 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 375.051, the executive director may complete on
12 behalf of a manufacturer any part of a convenience switch recovery
13 plan that the executive director has not approved.

14 (g) The executive director may review an approved
15 convenience switch recovery plan and recommend modifications to the
16 plan at any time on a determination that the plan is deficient or is
17 not accomplishing the objectives set out in this chapter in any
18 material respect, including a determination that the fees under
19 Section 375.054 are not sufficient to ensure the removal of each
20 convenience switch.

21 [Sections 375.052-375.100 reserved for expansion]

22 SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PLAN IMPLEMENTATION

23 Sec. 375.101. 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. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING
21 FACILITY RECORDS. A vehicle recycler or scrap metal recycling
22 facility that removes convenience switches under Section 375.101
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. 375.103. INACCESSIBLE CONVENIENCE SWITCHES CONSIDERED
12 IN CAPTURE RATE. For purposes of computing the capture rate, a
13 convenience switch that is inaccessible because of damage to the
14 vehicle is considered to be a convenience switch that was available
15 for inspection or removal but was not inspected or removed.

16 Sec. 375.104. LIMIT ON DUTIES OF VEHICLE RECYCLER OR SCRAP
17 METAL RECYCLING FACILITY. (a) The commission shall not require a
18 vehicle recycler or scrap metal recycling facility to undertake any
19 action beyond the actions reasonably arising from obligations
20 created under this chapter.

21 (b) On request, the records required under Sections 375.101
22 and 375.102 must be made available to the commission for review.

23 Sec. 375.105. HONEST CONVEYANCE; RECEIPT OF VEHICLE.

24 (a) A person may not represent that a convenience switch has been
25 removed from an end-of-life vehicle being conveyed for recycling or
26 other processing if that person has not removed the convenience
27 switch or unless the person has good cause to believe that another

1 person has removed the convenience switch.

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

7 Sec. 375.106. HANDLING OF CONVENIENCE SWITCHES. After
8 removal from a vehicle, a convenience switch shall be collected,
9 stored, transported, and otherwise handled in accordance with:

10 (1) the applicable convenience switch recovery plan;
11 and

12 (2) the applicable solid waste rules of the
13 commission.

14 [Sections 375.107-375.150 reserved for expansion]

15 SUBCHAPTER D. REPORTS

16 Sec. 375.151. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT.

17 (a) On or before December 31 of each year, each manufacturer shall
18 present a report individually or as part of a group to the executive
19 director on the manufacturer's convenience switch recovery plan.

20 The report must include:

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

26 (2) a description of additional or alternative actions
27 that may be implemented to improve the convenience switch recovery

1 plan and the implementation of the plan, if the 90 percent capture
2 rate is not achieved;

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

6 (4) a description of how the convenience switches
7 collected were managed; and

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

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

15 Sec. 375.152. ANNUAL MANUFACTURER'S DESIGN REPORT. (a) On
16 or before December 31 of each year, a manufacturer shall report
17 individually or as part of a group to the executive director
18 concerning steps being taken by the manufacturer to design vehicles
19 and vehicle components for recycling. The report must include:

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

25 (2) design changes that the manufacturer has
26 implemented or is planning to implement to reduce or eliminate
27 convenience switches or other components presenting similar

1 environmental risks from the manufacturer's vehicles and the amount
2 of any reductions;

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

7 (4) a list of:

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

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

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

19 (b) The commission may:

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

22 (2) report to the governor, the lieutenant governor,
23 the speaker of the house of representatives, and the chair of each
24 standing committee of the legislature with jurisdiction over
25 environmental issues the commission's findings under Subdivision
26 (1) together with any recommended legislative action that may be
27 appropriate to promote vehicle recycling in the interest of

1 preserving scarce resources and the safe and efficient reduction of
2 solid waste.

3 [Sections 375.153-375.200 reserved for expansion]

4 SUBCHAPTER E. RULES, PENALTIES, AND ENFORCEMENT

5 Sec. 375.201. RULES. (a) The commission shall adopt rules
6 to implement this chapter, including rules governing the removal of
7 a convenience switch under a convenience switch recovery plan.

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

14 (c) To the extent authorized by federal law, in the
15 development of emission trading programs, the commission shall
16 recognize as creditable any emission reductions accomplished
17 through implementation of this chapter, including any additional
18 emission reductions accomplished through plans submitted under
19 Subsection (b).

20 Sec. 375.202. PENALTIES AND ENFORCEMENT. A person who
21 violates a provision of this chapter, or a rule or order issued
22 under this chapter, is subject to the penalty and enforcement
23 provisions of Chapter 7, Water Code.

24 SECTION 2. (a) The Texas Commission on Environmental
25 Quality shall adopt rules to implement Chapter 375, Health and
26 Safety Code, as added by this Act, not later than March 1, 2006. The
27 rules adopted under this section shall include provisions for

1 regulating a convenient switch, as defined by Section 375.001,
2 Health and Safety Code, as added by this Act, as universal waste
3 under Section 335.261, Title 30, Texas Administrative Code.

4 (b) Until rules have been adopted and promulgated under
5 Subsection (a) of this section, the commission shall regulate a
6 convenience switch, as defined by Section 375.001, Health and
7 Safety Code, as added by this Act, as a universal waste in
8 accordance with 40 C.F.R. Part 273, and as incorporated by
9 reference in Section 335.261, Title 30, Texas Administrative Code,
10 for purposes of establishing the accumulation time limits.

11 SECTION 3. (a) This section applies only to a manufacturer
12 of a vehicle sold in this state as those terms are defined by
13 Section 375.001.

14 (b) Not later than 30 days after the effective date of this
15 Act, the executive director of the Texas Commission on
16 Environmental Quality shall notify each manufacturer of vehicles
17 sold in this state of the requirement to submit a convenience switch
18 recovery plan in accordance with Subchapter B, Chapter 375, Health
19 and Safety Code, as added by this Act.

20 (c) Not later than 60 days after the effective date of this
21 Act, individually or as part of a group, a manufacturer shall
22 provide containers as required by Section 375.059, as added by this
23 Act, to each vehicle recycler and scrap metal recycling facility.

24 (d) Each manufacturer shall submit a convenience switch
25 recovery plan as required by Section 375.051, as added by this Act,
26 to the executive director of the Texas Commission on Environmental
27 Quality for review not later than 90 days after the effective date

1 of this Act.

2 (e) The initial reports described by Sections 375.151 and
3 375.152, Health and Safety Code, as added by this Act, shall be
4 presented as required by those sections on or before December 31,
5 2006.

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