

Public Act 094-0732

HB5578 Enrolled LRB094 19563 RSP 55658 b

AN ACT concerning the environment.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 1. Short title. This Act may be cited as the
Mercury Switch Removal Act.

Section 3. Legislative findings. The General Assembly
finds:

(a) That switches containing mercury have been used for
convenience lighting and anti-lock braking systems in vehicles
sold in the State of Illinois.

(b) That mercury from the switches may be released into the
environment when end-of-life vehicles are flattened, crushed,
baled, shredded, melted, or otherwise processed for recycling.

(c) That removing mercury switches from end-of-life
vehicles is an effective way to prevent mercury from being
released into the environment.

(d) That it is in the public interest of the residents of
the State of Illinois to reduce the quantity of mercury
entering the environment by removing mercury switches from
end-of-life vehicles.

Section 5. Definitions. For the purposes of this Act:

"Agency" means the Environmental Protection Agency.

"Capture rate" means the number of convenience light
mercury switches removed from end-of-life vehicles prior to the
vehicle being flattened, crushed, baled, shredded, or
otherwise processed for recycling as a percentage of the total
number of convenience light mercury switches available for
removal from end-of-life vehicles that are flattened, crushed,
shredded, or otherwise processed for recycling.

"End-of-life vehicle" means any vehicle that is sold,
given, or otherwise conveyed to a vehicle recycler or scrap
metal recycler for the purpose of resale of its parts or
recycling.

"Manufacturer" means a person who is the last person in the production or assembly process of a new motor vehicle that uses one or more mercury switches or, in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

"Manufacturer" does not include any person engaged in the business of selling new motor vehicles at retail or converting or modifying new motor vehicles after the production or assembly process.

"Mercury switch" means each mercury-containing capsule or mercury-containing switch assembly that is part of a convenience light switch assembly or part of an anti-lock braking system assembly installed in a vehicle. An anti-lock braking system assembly may contain more than one mercury switch.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent, or assigns.

"Scrap metal recycler" means a person who engages in the business of shredding or otherwise processing end-of-life vehicles or other scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes.

"Vehicle" means "motor vehicle" as that term is defined in the Illinois Vehicle Code, but excluding second division vehicles weighing more than 8,000 pounds.

"Vehicle crusher" means a person, other than a vehicle recycler or a scrap metal recycler, who engages in the business of flattening, crushing, or otherwise processing end-of-life vehicles for recycling. Vehicle crushers include, but are not limited to, persons who use fixed or mobile equipment to flatten or crush end-of-life vehicles for a vehicle recycler or a scrap recycler.

"Vehicle recycler" means a person who engages in the business of acquiring, dismantling, removing parts from, or destroying 6 or more end-of-life vehicles in a calendar year for the primary purpose of reselling the vehicle parts.

Section 10. Removal requirements.

(a) Mercury switches removed from end-of-life vehicles must be managed in accordance with the Environmental Protection Act and regulations adopted thereunder.

(b) No person shall represent that all mercury switches have been removed from a vehicle if all mercury switches have not been removed from the vehicle, except where a mercury

switch cannot be removed from the vehicle because the switch is inaccessible due to significant damage to the vehicle in the area surrounding the switch.

(c) Consistent with the protection of confidential business information, vehicle recyclers, vehicle crushers, and scrap metal recyclers that remove mercury switches from end-of-life vehicles must maintain records documenting the following for each calendar quarter:

(1) the number of mercury switches the vehicle recycler, vehicle crusher, or scrap metal recycler removed from end-of-life vehicles;

(2) the number of end-of-life vehicles received by the vehicle recycler, vehicle crusher, or scrap metal recycler that contain one or more mercury switches;

(3) the number of end-of-life vehicles the vehicle recycler, vehicle crusher, or scrap metal recycler flattened, crushed, shredded, or otherwise processed for recycling; and

(4) the make and model of each car from which one or more mercury switches was removed by the vehicle recycler, vehicle crusher, or scrap metal recycler.

The records required under this subsection (c) must be retained at the vehicle recycler's or scrap metal recycler's place of business for a minimum of 3 years and made available for inspection and copying by the Agency during normal business hours.

(d) For the period of July 1, 2006 through June 30, 2007 and for each period of July 1 through June 30 thereafter, no later than 45 days after the close of the period vehicle recyclers, vehicle crushers, and scrap metal recyclers that remove mercury switches from end-of-life vehicles must submit to the Agency an annual report containing the following information for the period: (i) the number of mercury switches the vehicle recycler, vehicle crusher, or scrap metal recycler removed from end-of-life vehicles; (ii) the number of end-of-life vehicles received by the vehicle recycler, vehicle crusher, or scrap metal recycler that contain one or more mercury switches, and (iii) the number of end-of-life vehicles the vehicle recycler, vehicle crusher, or scrap metal recycler flattened, crushed, shredded, or otherwise processed for recycling. Data required to be reported to the United States Environmental Protection Agency under federal law or regulation may be used in meeting requirements of this subsection (d), if the data contains the information required under items (i), (ii), and (iii) of this subsection.

Section 15. Mercury switch collection programs.

(a) Within 60 days of the effective date of this Act, manufacturers of vehicles in Illinois that contain mercury switches must begin to implement a mercury switch collection program that facilitates the removal of mercury switches from end-of-life vehicles prior to the vehicles being flattened, crushed, shredded, or otherwise processed for recycling and to collect and properly manage mercury switches in accordance with the Environmental Protection Act and regulations adopted thereunder. In order to ensure that the mercury switches are removed and collected in a safe and consistent manner, manufacturers must, to the extent practicable, use the currently available end-of-life vehicle recycling infrastructure. The collection program must be designed to achieve capture rates of not less than (i) 35% for the period of July 1, 2006, through June 30, 2007; (ii) 50% for the period of July 1, 2007, through June 30, 2008; and (iii) 70% for the period of July 1, 2008, through June 30, 2009 and for each subsequent period of July 1 through June 30. At a minimum, the collection program must:

(1) Develop and provide educational materials that include guidance as to which vehicles may contain mercury switches and procedures for locating and removing mercury switches. The materials may include, but are not limited to, brochures, fact sheets, and videos.

(2) Conduct outreach activities to encourage vehicle recyclers and vehicle crushers to participate in the mercury switch collection program. The activities may include, but are not limited to, direct mailings, workshops, and site visits.

(3) Provide storage containers to participating vehicle recyclers and vehicle crushers for mercury switches removed under the program.

(4) Provide a collection and transportation system to periodically collect and replace filled storage containers from vehicle recyclers, vehicle crushers, and scrap metal recyclers, either upon notification that a storage container is full or on a schedule predetermined by the manufacturers.

(5) Establish an entity that will serve as a point of contact for the collection program and that will establish, implement, and oversee the collection program on behalf of the manufacturers.

(6) Track participation in the collection program and the progress of mercury switch removals and collections.

(b) Within 90 days of the effective date of this Act,

manufacturers of vehicles in Illinois that contain mercury switches must submit to the Agency an implementation plan that describes how the collection program under subsection (a) of this Section will be carried out for the duration of the program and how the program will achieve the capture rates set forth in subsection (a) of this Section. At a minimum, the implementation plan must:

(A) Identify the educational materials that will assist vehicle recyclers, vehicle crushers, and scrap metal processors in identifying, removing, and properly managing mercury switches removed from end-of-life vehicles.

(B) Describe the outreach program that will be undertaken to encourage vehicle recyclers and vehicle crushers to participate in the mercury switch collection program.

(C) Describe how the manufacturers will ensure that mercury switches removed from end-of-life vehicles are managed in accordance with the Illinois Environmental Protection Act and regulations adopted thereunder.

(D) Describe how the manufacturers will collect and document the information required in the quarterly reports submitted pursuant to subsection (e) of this Section.

(E) Describe how the collection program will be financed and implemented.

(F) Identify the manufacturer's address to which the Agency should send the notice required under subsection (f) of this Section.

The Agency shall review the collection program plans it receives for completeness and shall notify the manufacturer in writing if a plan is incomplete. Within 30 days after receiving a notification of incompleteness from the Agency the manufacturer shall submit to the Agency a plan that contains all of the required information.

(c) The Agency must provide assistance to manufacturers in their implementation of the collection program required under this Section. The assistance shall include providing manufacturers with information about businesses likely to be engaged in vehicle recycling or vehicle crushing, conducting site visits to promote participation in the collection program, and assisting with the scheduling, locating, and staffing of workshops conducted to encourage vehicle recyclers and vehicle crushers to participate in the collection program.

(d) Manufacturers subject to the collection program requirements of this Section shall provide, to the extent practicable, the opportunity for trade associations of vehicle

recyclers, vehicle crushers, and scrap metal recyclers to be involved in the delivery and dissemination of educational materials regarding the identification, removal, collection, and proper management of mercury switches in end-of-life vehicles.

(e) For the calendar quarter ending March 31, 2007, and for each calendar quarter thereafter, not later than 45 days following the close of the calendar quarter manufacturers subject to the collection program requirements of this Section must submit to the Agency a quarterly report that contains the following information: (i) the number of vehicle recyclers, vehicle crushers, and scrap metal recyclers participating in the manufacturer's collection program during the reported quarter, (ii) the number of mercury switches removed from end-of-life vehicles during the reported quarter by the vehicle recyclers, vehicle crushers, and scrap metal recyclers participating in the program, and (iii) the amount of mercury collected and recycled through the manufacturer's collection program during the reported calendar quarter.

(f) If the reports required under this Act indicate that the capture rates set forth in subsection (a) of this Section for the period of July 1, 2007, through June 30, 2008, or for any subsequent period have not been met the Agency shall provide notice that the capture rate was not met; provided, however, that the Agency is not required to provide notice if it determines that the capture rate was not met due to a force majeure. The Agency shall provide the notice by posting a statement on its website and by sending a written notice via certified mail to the manufacturers subject to the collection program requirement of this Section at the addresses provided in the manufacturers' collection plans. Once the Agency provides notice pursuant to this subsection (f) it is not required to provide notice in subsequent periods in which the capture rate is not met.

(g) Beginning 30 days after the Agency first provides notice pursuant to subsection (f) of this Section, the following shall apply:

(1) Vehicle recyclers must remove all mercury switches from end-of-life vehicles prior to delivering the vehicles to an on-site or off-site vehicle crusher or to a scrap metal recycler, provided that a vehicle recycler is not required to remove a mercury switch that is inaccessible due to significant damage to the vehicle in the area surrounding the mercury switch that occurred prior to the vehicle recycler's receipt of the vehicle in which case the damage must be noted in the records the vehicle recycler is

required to maintain under Section 10(c) of this Act.

(2) No vehicle recycler, vehicle crusher, or scrap metal recycler shall flatten, crush, or otherwise process an end-of-life vehicle for recycling unless all mercury switches have been removed from the vehicle, provided that a mercury switch that is inaccessible due to significant damage to the vehicle in the area surrounding the mercury switch that occurred prior to the vehicle recycler's or the vehicle crusher's receipt of the vehicle is not required to be removed. The damage must be noted in the records the vehicle recycler or vehicle crusher is required to maintain under Section 10(c) of this Act.

(3) Notwithstanding subsection (g)(1) of this Section, a scrap metal recycler may agree to accept an end-of-life vehicle that contains one or more mercury switches and that has not been flattened, crushed, shredded, or otherwise processed for recycling provided the scrap metal recycler removes all mercury switches from the vehicle before the vehicle is flattened, crushed, shredded, or otherwise processed for recycling. Scrap metal recyclers are not required to remove a mercury switch that is inaccessible due to significant damage to the vehicle in the area surrounding the mercury switch that occurred prior to the scrap metal recycler's receipt of the vehicle. The damage must be noted in the records the scrap metal recycler is required to maintain under Section 10(c) of this Act.

(4) Manufacturers subject to the collection program requirements of this Section must provide to vehicle recyclers, vehicle crushers, and scrap metal recyclers the following compensation for all mercury switches removed from end-of-life vehicles on or after the date of the notice: \$2.00 for each mercury switch removed by the vehicle recycler, vehicle crusher, or the scrap metal recycler, the costs of the containers in which the mercury switches are collected, and the costs of packaging and transporting the mercury switches off-site. Payment of this compensation must be provided in a prompt manner.

(h) In meeting the requirements of this Section manufacturers may work individually or as part of a group of 2 or more manufacturers.

Section 20. Evaluation. At the end of calendar year 2007, and at the end of each year thereafter through calendar year 2016, the Agency shall meet with manufacturers subject to the collection program requirements of Section 15 of this Act to review the performance of the manufacturers' mercury switch

collection program, provided that the manufacturers must request such a meeting. If the program is not accomplishing the objectives set forth in the implementation plan the Agency may recommend modifications to the program or recommend the investigation of additional methods to promote the removal, collection, and proper management of mercury switches from end-of-life vehicles.

Section 25. Agency recommendations. Every 3 years the Agency shall make a recommendation to the General Assembly as to whether the \$2 fee required under Section 15 of this Act should be modified to ensure adequate compensation for the removal of mercury switches from end-of-life vehicles. In developing its recommendations, the Agency shall seek comments or information from interested persons, including, but not limited to, representatives of vehicle recyclers, scrap metal recyclers, vehicle manufacturers, steel and iron manufacturers, and environmental groups.

Section 30. All information required to be submitted to the Agency under this Act must be submitted on forms prescribed by the Agency.

Section 35. The Agency shall have the duty to investigate violations of this Act.

Section 40. Penalties.

(a) Any manufacturer that willfully or knowingly violates any provision of this Act or willfully or knowingly fails to perform any duty imposed by this Act shall be liable for a civil penalty not to exceed \$1,000 for the violation and an additional civil penalty not to exceed \$1,000 for each day the violation continues, and shall be liable for a civil penalty not to exceed \$5,000 for a second or subsequent violation and an additional civil penalty not to exceed \$1,000 for each day the second or subsequent violation continues.

(b) Any vehicle recycler, vehicle crusher, or scrap metal recycler that willfully or knowingly violates any provision of this Act or fails to perform any duty imposed by this Act shall be liable for a civil penalty not to exceed \$250 for the first violation and not to exceed \$500 for a second or subsequent violation.

(c) The penalties provided for in this Section may be recovered in a civil action brought in the name of the people of the State of Illinois by the State's Attorney of the county in which the violation occurred or by the Attorney General.

Without limiting any other authority that may exist for the awarding of attorney's fees and costs, a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he or she has prevailed against a person who has committed a willful, knowing, or repeated violation of this Act. Any funds collected under this Section in an action in which the Attorney General has prevailed shall be deposited in the Hazardous Waste Fund established under the Environmental Protection Act. Any funds collected under this Section in an action in which a State's Attorney has prevailed shall be retained by the county in which he or she serves.

(d) The State's Attorney of the county in which the violation occurred or the Attorney General may, at the request of the Agency or on his or her own motion, institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act or to require such other actions as may be necessary to address violations of this Act.

(e) The penalties and injunctions provided in this Act are in addition to any penalties, injunctions, or other relief provided under any other law. Nothing in this Act shall bar a cause of action by the State for any other penalty, injunction, or relief provided by any other law.

Section 45. Manufacturers subject to the collection program requirement of Section 15 of this Act shall indemnify, defend, and hold harmless vehicle recyclers, vehicle crushers, and scrap metal recyclers for any liabilities arising from releases from a mercury switch after the switch is transferred under the manufacturer's collection program to the manufacturer or its agent, provided that the switch has been managed in accordance with the Environmental Protection Act and regulations adopted thereunder prior to the transfer.

Section 50. If the Agency determines that the requirements of this Act are no longer necessary because a federal program provides equal or greater protection of human health and safety and the environment in this State, the Agency shall submit a report of its determination to the General Assembly. In making its determination the Agency shall seek comments or information from interested persons, including, but not limited to, representatives of vehicle recyclers, vehicle crushers, scrap metal recyclers, vehicle manufacturers, steel and iron manufacturers, and environmental groups.

Section 55. Repealer. This Act is repealed on January 1, 2011.

Section 99. Effective date. This Act takes effect upon becoming law.