

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 323

4  
5 By: Senators Bryles, Altes, Higginbotham, J. Jeffress, Lavery, Luker, Wooldridge  
6 By: Representatives Childers, Blair, Dickinson, Goss

## For An Act To Be Entitled

10 AN ACT TO BE KNOWN AS THE "MERCURY SWITCH REMOVAL  
11 ACT OF 2005"; TO ACHIEVE REDUCTIONS OF MERCURY IN  
12 THE ENVIRONMENT THROUGH REMOVAL AND COLLECTION OF  
13 MERCURY SWITCHES FROM MOTOR VEHICLES WEIGHING  
14 LESS THAN TWELVE THOUSAND POUNDS (12,000 LBS.);  
15 AND FOR OTHER PURPOSES.

## Subtitle

18 AN ACT TO BE KNOWN AS THE "MERCURY  
19 SWITCH REMOVAL ACT OF 2005".

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24 SECTION 1. Arkansas Code Title 8, Chapter 9 is amended to add an  
25 additional subchapter to read as follows:

26 8-9-601. Short title.

27 This subchapter shall be known and may be cited as the "Mercury Switch  
28 Removal Act of 2005".

30 8-9-602. Purpose.

31 The purpose of this subchapter is to reduce the quantity of mercury in  
32 the environment by removing mercury switches from end-of-life vehicles and by  
33 creating a collection and recovery program for mercury switches removed from  
34 end-of-life vehicles in the State of Arkansas.

36 8-9-603. Definitions.



1       As used in this subchapter:

2           (1) "Capture rate" means the annual removal, collection, and  
3 recovery of mercury switches as a percentage of the total number of mercury  
4 switches available for removal from end-of-life vehicles;

5           (2) "Department" means the Arkansas Department of Environmental  
6 Quality;

7           (3) "Director" means the Director of the Arkansas Department of  
8 Environmental Quality;

9           (4) "End-of-life vehicle" means a vehicle that is sold, given,  
10 or otherwise conveyed to a vehicle recycler or scrap recycling facility for  
11 the purpose of recycling;

12           (5) "Manufacturer" means a person, firm, association,  
13 partnership, corporation, governmental entity, organization, combination, or  
14 joint venture that is the last person in the production or assembly process  
15 of a new vehicle which utilizes mercury switches, or in the case of an  
16 imported vehicle, the importer or domestic distributor of the vehicle;

17           (6) "Mercury minimization plan" means a plan for removing,  
18 collecting, and recovering mercury switches from end-of-life vehicles that is  
19 prepared pursuant to § 8-9-604;

20           (7) "Mercury switch" means each mercury-containing capsule,  
21 commonly known as a "bullet", that is part of a convenience light switch  
22 assembly or part of an anti-lock braking system assembly installed in a  
23 vehicle. An anti-lock braking system assembly may contain more than one (1)  
24 mercury switch;

25           (8) "Person" means any individual, corporation, company, firm,  
26 partnership, association, trust, joint-stock company or trust, venture, or  
27 municipal, state, or federal government or agency, or any other legal entity,  
28 however organized;

29           (9) "Scrap recycling facility" means a fixed location where  
30 machinery and equipment are utilized for processing and manufacturing scrap  
31 metal into prepared grades and whose principal product is scrap iron, scrap  
32 steel, or nonferrous metallic scrap for sale for remelting purposes;

33           (10) "Vehicle" means any passenger automobile or passenger car,  
34 station wagon, truck, van, or sport utility vehicle with a gross vehicle  
35 weight rating of less than twelve thousand pounds (12,000 lbs.); and

36           (11) "Vehicle recycler" means an individual or entity engaged in

1 the business of acquiring, dismantling, or destroying six (6) or more end-of-  
2 life vehicles in a calendar year for the primary purpose of resale of their  
3 parts.

4  
5 8-9-604. Mercury minimization plan.

6 (a) Within ninety (90) days after the effective date of this  
7 subchapter, every manufacturer of vehicles sold within this state,  
8 individually or as part of a group, shall develop in consultation with the  
9 Arkansas Department of Environmental Quality, a mercury minimization plan  
10 prepared pursuant to this section and submit the mercury minimization plan to  
11 the Director of the Arkansas Department of Environmental Quality for review  
12 and approval pursuant to § 8-9-605.

13 (b) The mercury minimization plan prepared and submitted pursuant to  
14 this section shall include the following at a minimum:

15 (1)(A)(i) Information identifying the make, model, and year of  
16 vehicles, including current or anticipated future production models that may  
17 contain one (1) or more mercury switches;

18 (ii) A description of the mercury switches;

19 (iii) a system to mark vehicles to be processed for  
20 shredding or crushing to indicate presence or absence of mercury switches;

21 (iv) The location of these mercury switches; and

22 (v) The safe and environmentally sound methods for  
23 removal of mercury switches from end-of-life vehicles.

24 (B) To the extent a manufacturer is uncertain as to the  
25 content of a switch installed during the manufacture of a vehicle, the  
26 mercury minimization plan shall presume that the switch is a mercury switch;

27 (2) Educational materials to assist a vehicle recycler or a  
28 scrap recycling facility in undertaking a safe and environmentally sound  
29 method for the removal of the mercury switches from end-of-life vehicles,  
30 including information on the hazards related to mercury and the proper  
31 handling of mercury;

32 (3) A proposal for the method of storage or disposal of the  
33 mercury switches, including the method of packaging and shipping mercury  
34 switches to authorized recycling, storage, or disposal facilities;

35 (4) A proposal for the storage of mercury switches collected and  
36 recovered from end-of-life vehicles if environmentally appropriate management

1 technologies are not available; and

2 (5) A plan for implementing and financing the system in  
3 accordance with subsection (d) of this section.

4 (c) To the extent practicable, a mercury minimization plan shall  
5 utilize the existing end-of-life vehicle recycling infrastructure. If the  
6 existing end-of-life vehicle recycling infrastructure is not utilized, the  
7 mercury minimization plan shall include the reasons for establishing a  
8 separate infrastructure.

9 (d)(1) A mercury minimization plan must provide for the financing of  
10 the removal, collection, and recovery system for mercury switches installed  
11 in vehicles manufactured by the manufacturer and its predecessors and  
12 affiliates as provided in this subsection (d).

13 (2) These costs shall be borne by the manufacturers of vehicles  
14 sold in the state, ensuring that additional financial burdens are not placed  
15 on automobile dealers or businesses dealing with end-of-life vehicles. The  
16 manufacturers shall develop a method that ensures the prompt payment to  
17 vehicle recyclers, scrap recycling facilities, and the department for costs  
18 associated with mercury switch removal and disposal. Costs shall include,  
19 but not be limited to, the following:

20 (A) A minimum of five dollars (\$5.00) for each mercury  
21 switch removed by a vehicle recycler pursuant to § 8-9-606(a) as partial  
22 compensation for the labor and other costs incurred by a vehicle recycler in  
23 the removal of the mercury switch;

24 (B) A minimum of five dollars (\$5.00) for each mercury  
25 switch removed by a scrap recycling facility pursuant to § 8-9-606(b) as  
26 partial compensation for the labor and other costs incurred by a scrap  
27 recycling facility in the removal of the mercury switch;

28 (C) One dollar (\$1.00) for each mercury switch removed by  
29 a vehicle recycler pursuant to § 8-9-606(a) or by a scrap recycling facility  
30 pursuant to § 8-9-606(b) as partial compensation to the department for costs  
31 incurred in administering and enforcing the provisions of this subchapter;

32 (D) Packaging in which to transport mercury switches to  
33 recycling, storage, or disposal facilities;

34 (E) Shipping of mercury switches to recycling, storage, or  
35 disposal facilities;

36 (F) Recycling, storage, or disposal of the mercury

1 switches;

2 (G) The preparation and distribution to vehicle recyclers  
3 and scrap recycling facilities of the educational materials required pursuant  
4 to subdivision (b)(2) of this section; and

5 (H) Maintenance of all appropriate record-keeping systems.

6 (e) Within thirty (30) days after the effective date of this  
7 subchapter, every manufacturer of vehicles sold within the state,  
8 individually or as part of a group, shall provide to vehicle recyclers and  
9 scrap recycling facilities containers suitable for storing mercury switches  
10 until such time that vehicle recyclers and scrap recycling facilities can be  
11 reimbursed pursuant to this section.

12 (f) Manufacturers of vehicles sold within the state shall provide  
13 vehicle recyclers or scrap recycling facilities with reimbursement for each  
14 mercury switch in the amount established pursuant to this section regardless  
15 of when these switches were removed from the vehicles, if the vehicle  
16 recyclers or scrap recycling facilities maintain the records required by § 8-  
17 9-606.

18 (g) Manufacturers shall indemnify, defend, and hold harmless vehicle  
19 recyclers and scrap recycling facilities for any liabilities arising from the  
20 release of the mercury from the mercury-added components after the components  
21 are transferred to the manufacturer or its agent or contractor.

22  
23 8-9-605. Plan approval and implementation.

24 (a)(1) Within one hundred twenty (120) days after receipt of a mercury  
25 minimization plan, the Director of the Arkansas Department of Environmental  
26 Quality shall approve, disapprove, or conditionally approve the entire  
27 mercury minimization plan. The director may solicit input from  
28 representatives of vehicle recyclers, scrap recycling facilities, and other  
29 stakeholders as the director deems appropriate.

30 (2)(A) If the entire mercury minimization plan is approved, the  
31 manufacturer shall begin implementation within thirty (30) days after receipt  
32 of approval or as otherwise agreed to by the director.

33 (B) If the entire mercury minimization plan is  
34 disapproved, the director shall inform the manufacturer as to the reasons for  
35 the disapproval. The manufacturer shall have thirty (30) days thereafter to  
36 submit a new mercury minimization plan.

1           (3)(A) The director may approve those parts of a mercury  
2 minimization plan that meet the requirements of § 8-9-604 and disapprove the  
3 parts that do not comply with the requirements of § 8-9-604.

4           (B) The manufacturer shall implement the approved parts of  
5 the mercury minimization plan within thirty (30) days after receipt of  
6 approval or as otherwise agreed to by the director and submit a revised  
7 mercury minimization plan for the disapproved parts within thirty (30) days  
8 after receipt of notification of the disapproval of the director.

9           (C) The director shall review and approve, conditionally  
10 approve, or disapprove a revised mercury minimization plan within thirty (30)  
11 days after receipt.

12           (4)(A) If at the conclusion of the time period of one hundred  
13 twenty (120) days after receipt of a mercury minimization plan the director  
14 has neither approved nor disapproved the mercury minimization plan pursuant  
15 to subdivision (a)(2)(A) or (B) of this section, the mercury minimization  
16 plan shall be considered to be conditionally approved.

17           (B) Subject to any modifications required by the director,  
18 a manufacturer shall implement a conditionally effective mercury minimization  
19 plan within thirty (30) days after receipt of approval or as otherwise agreed  
20 to by the director.

21           (b) At the conclusion of a time period two hundred forty (240) days  
22 after the effective date of this subchapter, the director shall reserve the  
23 right to complete, on behalf of a manufacturer any portion of a mercury  
24 minimization plan that has not been approved pursuant to this section.

25           (c) The director may review a mercury minimization plan approved  
26 pursuant to this section and recommend modifications to the plan at any time  
27 upon a finding that the approved mercury minimization plan is deficient or  
28 not accomplishing the purposes set out in this subchapter in any material  
29 respect.

30  
31           8-9-606. Removal and proper management of mercury-added vehicle  
32 components.

33           (a) Commencing thirty (30) days after the approval or conditional  
34 approval of a mercury minimization plan pursuant to § 8-9-605, a vehicle  
35 recycler that sells, gives, or otherwise conveys ownership of an end-of-life  
36 vehicle to a scrap recycling facility for recycling shall remove all mercury

1 switches identified in the approved mercury minimization plan from the end-  
2 of-life vehicle prior to delivery to a scrap recycling facility, unless a  
3 mercury switch is inaccessible due to significant damage to the vehicle in  
4 the area surrounding the location of the mercury switch, in which case the  
5 damage shall be noted on the normal business records of the vehicle recycler  
6 who delivered the end-of-life vehicle to the scrap recycling facility.

7 (b) Notwithstanding subsection (a) of this section, a scrap recycling  
8 facility may agree to accept an end-of-life vehicle which has not been  
9 intentionally flattened, crushed, or baled, containing mercury switches, in  
10 which case the scrap recycling facility shall be responsible for removing the  
11 mercury switches identified in the mercury minimization plan approved  
12 pursuant to § 8-9-605 before the end-of-life vehicle is intentionally  
13 flattened, crushed, baled, or shredded.

14 (c)(1) A vehicle recycler or scrap recycling facility that removes  
15 mercury switches pursuant to subsections (a) or (b) of this section shall  
16 maintain records documenting the number of:

17 (A) Mercury switches collected;

18 (B) End-of-life vehicles containing mercury switches;

19 (C) End-of-life vehicles processed for recycling;

20 (D) The makes and models of vehicles from which mercury  
21 switches were removed; and

22 (E) Switches collected from each make.

23 (2) These records shall be made available for review by the  
24 Department of Arkansas Environment Quality upon the request of the  
25 department.

26 (d) No person shall represent that mercury switches have been removed  
27 from an end-of-life vehicle being sold, given, or otherwise conveyed for  
28 recycling if that person has not removed the mercury switches or arranged  
29 with another person to remove the mercury switches.

30 (e) Upon removal, mercury switches shall be collected, stored,  
31 transported, and otherwise handled in accordance with the:

32 (1) Mercury minimization plan approved pursuant to § 8-9-605;

33 and

34 (2) Provisions of the rules and regulations concerning universal  
35 waste adopted by the department pursuant to the Arkansas Hazardous Waste  
36 Management Act of 1979, § 8-7-201 et seq.

1       (f) No scrap recycling facility or other person that receives an  
2 intentionally flattened, crushed or baled, end-of-life vehicle shall be  
3 deemed in violation of this subchapter if a mercury switch is found in the  
4 vehicle after its acquisition.

5  
6       8-9-607. Annual reporting.

7       (a) One (1) year after the implementation of a mercury minimization  
8 plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer  
9 subject to § 8-9-604 shall report individually or as part of a group to the  
10 Director of the Arkansas Department of Environmental Quality concerning the  
11 implementation of the mercury minimization plan. The report shall include,  
12 but need not be limited to, the following:

13           (1) A detailed description and documentation of the capture rate  
14 achieved, with the goal of achieving a mercury switch capture rate of at  
15 least ninety percent (90%), consistent with the principle that mercury  
16 switches shall be recovered unless the mercury switch is inaccessible due to  
17 significant damage to the end-of-life vehicle in the area surrounding where  
18 the mercury switch is located;

19           (2) A description of additional or alternative actions that may  
20 be implemented to improve the mercury minimization plan and its  
21 implementation in the event that a mercury switch capture rate of at least  
22 ninety percent (90%) is not achieved;

23           (3) The number of mercury switches collected, the number of end-  
24 of-life vehicles containing mercury switches, the number of end-of-life  
25 vehicles processed for recycling, and a description of how the mercury  
26 switches were managed; and

27           (4) A description of the amounts paid to cover the costs of  
28 implementing the mercury minimization plan.

29       (b) The director may discontinue the requirement for the annual report  
30 pursuant to subsection (a) of this section upon a finding that mercury  
31 switches in end-of-life vehicles manufactured by a particular manufacturer no  
32 longer pose a significant threat to the environment or to public health.

33  
34       8-9-608. Design for recycling.

35       (a) One (1) year after the implementation of a mercury minimization  
36 plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer



1 subject to § 8-9-604 shall report individually or as part of a group to the  
2 Director of the Arkansas Department of Environmental Quality concerning the  
3 steps being taken by manufacturers to design vehicles and their components  
4 for recycling. The report shall include, but need not be limited to, the  
5 following:

6 (1) A list of all vehicle components included in the  
7 manufacturer's vehicles in each of the previous three (3) model years, the  
8 current model year, and the next upcoming model year that contain mercury;

9 (2) Design changes that each manufacturer has implemented or is  
10 implementing to reduce or eliminate all sources of mercury listed in  
11 compliance with subdivision (a)(1) of this section from its vehicles, the  
12 amount of any reductions, and the year in which mercury will be eliminated  
13 from each of the vehicle components listed in compliance with subdivision  
14 (a)(1) of this section;

15 (3) Policies which each manufacturer has implemented to ensure  
16 that its vehicles are designed to be recycled in a safe, cost effective, and  
17 environmentally sound manner using existing technologies and infrastructures;

18 (4) A listing of all:

19 (A) Complaints and reports that the manufacturer has  
20 received within the last twelve (12) months from vehicle recyclers, scrap  
21 recycling facilities, government entities, or organizations representing any  
22 of the persons; or

23 (B) Other facts and circumstances which have made the  
24 manufacturer aware that the manufacturer's vehicles contain vehicle  
25 components or are designed in such a way that present environmental risks  
26 which make it uneconomical to recycle the vehicles or components; and

27 (5) The design or manufacturing changes that the manufacturer  
28 has implemented or is implementing to reduce or remove any environmental  
29 risks listed in compliance with subdivision (a)(4) of this section and the  
30 year in which design changes will eliminate the environmental risk listed in  
31 compliance with subdivision (a)(4) of this section.

32 (b) The Arkansas Department of Environmental Quality may conduct  
33 hearings from time to time as the director deems appropriate to evaluate the  
34 steps manufacturers are taking to design for recycling, and to recommend  
35 additional legislative action as may be appropriate in order to promote  
36 vehicle recycling for the purpose of preserving scarce resources and the safe

1 and efficient reduction of solid waste.

3 8-9-609. Arkansas Pollution Control and Ecology Commission.

4 The Arkansas Pollution Control and Ecology Commission may adopt rules  
5 and regulations to effectuate and implement the purposes and intent of this  
6 subchapter and the powers and duties of the Department of Environmental  
7 Quality.

9 8-9-610. Penalties and enforcement.

10 (a) Any person who violates any provisions of this subchapter or any  
11 rule or order issued pursuant to this subchapter shall be subject to the same  
12 penalty and enforcement provisions as are contained in § 8-6-204.

13 (b) Except as otherwise provided in this subchapter, the procedure of  
14 the Arkansas Pollution Control and Ecology Commission for issuance of rules,  
15 conduct of hearings, notice, power of subpoena, review of action on permits,  
16 right of appeal, presumptions, finality of actions, and related matters shall  
17 be as provided in §§ 8-4-101 – 8-4-106 and 8-4-201 – 8-4-229 of the Arkansas  
18 Water and Air Pollution Control Act, including, without limitation, §§ 8-4-  
19 205, 8-4-210, 8-4-212 – 8-4-214, and 8-4-218 – 8-4-229.