

1 AN ACT concerning safety.

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

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

6 Section 3. Legislative findings. The General Assembly
7 finds:

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

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

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

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

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

22 "Agency" means the Environmental Protection Agency.

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

30 "End-of-life vehicle" means any vehicle that is sold,
31 given, or otherwise conveyed to a vehicle recycler or scrap

1 metal recycler for the purpose of resale of its parts or
2 recycling.

3 "Manufacturer" means a person who is the last person in the
4 production or assembly process of a new motor vehicle that uses
5 one or more mercury switches or, in the case of an imported
6 vehicle, the importer or domestic distributor of the vehicle.
7 "Manufacturer" does not include any person engaged in the
8 business of selling new motor vehicles at retail or converting
9 or modifying new motor vehicles after the production or
10 assembly process.

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

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

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

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

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

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

5 Section 10. Removal requirements.

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

9 (b) No person shall represent that all mercury switches
10 have been removed from a vehicle if all mercury switches have
11 not been removed from the vehicle, except where a mercury
12 switch cannot be removed from the vehicle because the switch is
13 inaccessible due to significant damage to the vehicle in the
14 area surrounding the switch.

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

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

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

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

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

33 The records required under this subsection (c) must be
34 retained at the vehicle recycler's or scrap metal recycler's
35 place of business for a minimum of 3 years and made available

1 for inspection and copying by the Agency during normal business
2 hours.

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

22 Section 15. Mercury switch collection programs.

23 (a) Within 60 days of the effective date of this Act,
24 manufacturers of vehicles in Illinois that contain mercury
25 switches must begin to implement a mercury switch collection
26 program that facilitates the removal of mercury switches from
27 end-of-life vehicles prior to the vehicles being flattened,
28 crushed, shredded, or otherwise processed for recycling and to
29 collect and properly manage mercury switches in accordance with
30 the Environmental Protection Act and regulations adopted
31 thereunder. In order to ensure that the mercury switches are
32 removed and collected in a safe and consistent manner,
33 manufacturers must, to the extent practicable, use the
34 currently available end-of-life vehicle recycling
35 infrastructure. The collection program must be designed to

1 achieve capture rates of not less than (i) 35% for the period
2 of July 1, 2006, through June 30, 2007; (ii) 50% for the period
3 of July 1, 2007, through June 30, 2008; and (iii) 70% for the
4 period of July 1, 2008, through June 30, 2009 and for each
5 subsequent period of July 1 through June 30. At a minimum, the
6 collection program must:

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

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

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

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

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

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

32 (b) Within 90 days of the effective date of this Act,
33 manufacturers of vehicles in Illinois that contain mercury
34 switches must submit to the Agency an implementation plan that
35 describes how the collection program under subsection (a) of
36 this Section will be carried out for the duration of the

1 program and how the program will achieve the capture rates set
2 forth in subsection (a) of this Section. At a minimum, the
3 implementation plan must:

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

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

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

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

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

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

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

31 (c) The Agency must provide assistance to manufacturers in
32 their implementation of the collection program required under
33 this Section. The assistance shall include providing
34 manufacturers with information about businesses likely to be
35 engaged in vehicle recycling or vehicle crushing, conducting
36 site visits to promote participation in the collection program,

1 and assisting with the scheduling, locating, and staffing of
2 workshops conducted to encourage vehicle recyclers and vehicle
3 crushers to participate in the collection program.

4 (d) Manufacturers subject to the collection program
5 requirements of this Section shall provide, to the extent
6 practicable, the opportunity for trade associations of vehicle
7 recyclers, vehicle crushers, and scrap metal recyclers to be
8 involved in the delivery and dissemination of educational
9 materials regarding the identification, removal, collection,
10 and proper management of mercury switches in end-of-life
11 vehicles.

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

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

1 in the manufacturers' collection plans. Once the Agency
2 provides notice pursuant to this subsection (f) it is not
3 required to provide notice in subsequent periods in which the
4 capture rate is not met.

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

8 (1) Vehicle recyclers must remove all mercury switches
9 from end-of-life vehicles prior to delivering the vehicles
10 to an on-site or off-site vehicle crusher or to a scrap
11 metal recycler, provided that a vehicle recycler is not
12 required to remove a mercury switch that is inaccessible
13 due to significant damage to the vehicle in the area
14 surrounding the mercury switch that occurred prior to the
15 vehicle recycler's receipt of the vehicle in which case the
16 damage must be noted in the records the vehicle recycler is
17 required to maintain under Section 10(c) of this Act.

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

29 (3) Notwithstanding subsection (g) (1) of this Section,
30 a scrap metal recycler may agree to accept an end-of-life
31 vehicle that contains one or more mercury switches and that
32 has not been flattened, crushed, shredded, or otherwise
33 processed for recycling provided the scrap metal recycler
34 removes all mercury switches from the vehicle before the
35 vehicle is flattened, crushed, shredded, or otherwise
36 processed for recycling. Scrap metal recyclers are not

1 required to remove a mercury switch that is inaccessible
2 due to significant damage to the vehicle in the area
3 surrounding the mercury switch that occurred prior to the
4 scrap metal recycler's receipt of the vehicle. The damage
5 must be noted in the records the scrap metal recycler is
6 required to maintain under Section 10(c) of this Act.

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

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

21 Section 20. Evaluation. At the end of calendar year 2007,
22 and at the end of each year thereafter through calendar year
23 2016, the Agency shall meet with manufacturers subject to the
24 collection program requirements of Section 15 of this Act to
25 review the performance of the manufacturers' mercury switch
26 collection program, provided that the manufacturers must
27 request such a meeting. If the program is not accomplishing the
28 objectives set forth in the implementation plan the Agency may
29 recommend modifications to the program or recommend the
30 investigation of additional methods to promote the removal,
31 collection, and proper management of mercury switches from
32 end-of-life vehicles.

33 Section 25. Agency recommendations. Every 3 years the
34 Agency shall make a recommendation to the General Assembly as

1 to whether the \$2 fee required under Section 15 of this Act
2 should be modified to ensure adequate compensation for the
3 removal of mercury switches from end-of-life vehicles. In
4 developing its recommendations, the Agency shall seek comments
5 or information from interested persons, including, but not
6 limited to, representatives of vehicle recyclers, scrap metal
7 recyclers, vehicle manufacturers, steel and iron
8 manufacturers, and environmental groups.

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

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

14 Section 40. Penalties.

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

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

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

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

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

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

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

34 Section 50. If the Agency determines that the requirements

1 of this Act are no longer necessary because a federal program
2 provides equal or greater protection of human health and safety
3 and the environment in this State, the Agency shall submit a
4 report of its determination to the General Assembly. In making
5 its determination the Agency shall seek comments or information
6 from interested persons, including, but not limited to,
7 representatives of vehicle recyclers, vehicle crushers, scrap
8 metal recyclers, vehicle manufacturers, steel and iron
9 manufacturers, and environmental groups.

10 Section 55. Repealer. This Act is repealed on January 1,
11 2011.

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