

**MERCURY SWITCH REMOVAL ACT**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ronda Rudd Menlove**

Senate Sponsor: Peter C. Knudson

Cosponsors:

Ben C. Ferry

Peggy Wallace

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**LONG TITLE**

**General Description:**

This bill provides for the removal and collection of mercury switches from vehicles.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires manufacturers of vehicles sold in the state to:
  - submit a plan for the removal and collection of mercury switches;
  - pay for the costs of removing and collecting mercury switches; and
  - submit an annual report to the Solid and Hazardous Waste Control Board;
- ▶ specifies plan contents;
- ▶ authorizes the Solid and Hazardous Waste Control Board to:
  - make rules; and
  - enforce the part; and
- ▶ authorizes the Solid and Hazardous Waste Control Board's executive secretary to:
  - establish a fee for the review and approval of the plan;
  - review and disapprove or approve a plan; and
  - initiate administrative action to compel compliance with the part.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63-46b-1**, as last amended by Chapters 33 and 102, Laws of Utah 2005

33 **63-55-219**, as last amended by Chapter 86, Laws of Utah 2005

34 ENACTS:

35 **19-6-1001**, Utah Code Annotated 1953

36 **19-6-1002**, Utah Code Annotated 1953

37 **19-6-1003**, Utah Code Annotated 1953

38 **19-6-1004**, Utah Code Annotated 1953

39 **19-6-1005**, Utah Code Annotated 1953

40 **19-6-1006**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **19-6-1001** is enacted to read:

44 **Part 10. Mercury Switch Removal Act**

45 **19-6-1001. Title.**

46 This part is known as the "Mercury Switch Removal Act."

47 Section 2. Section **19-6-1002** is enacted to read:

48 **19-6-1002. Definitions.**

49 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
50 19-6-103.

51 (2) "Executive secretary" means the executive secretary of the Solid and Hazardous  
52 Waste Control Board appointed under Section 19-6-107.

53 (3) "Manufacturer" means the last person in the production or assembly process of a  
54 vehicle.

55 (4) "Mercury switch" means a mercury-containing capsule that is part of a convenience  
56 light switch assembly installed in a vehicle's hood or trunk.

57 (5) "Person" means an individual, a firm, an association, a partnership, a corporation,

58 the state, or a local government.

59 (6) "Plan" means a plan for removing and collecting mercury switches from vehicles.

60 (7) "Vehicle" means any passenger automobile or car, station wagon, truck, van, or  
61 sport utility vehicle that may contain one or more mercury switches.

62 Section 3. Section **19-6-1003** is enacted to read:

63 **19-6-1003. Board and executive secretary powers.**

64 (1) By following the procedures and requirements of Title 63, Chapter 46a, Utah  
65 Administrative Rulemaking Act, the board shall make rules:

66 (a) governing administrative proceedings under this part;

67 (b) specifying the terms and conditions under which the executive secretary shall  
68 approve, disapprove, revoke, or review a plan submitted by a manufacturer; and

69 (c) governing reports and educational materials required by this part.

70 (2) These rules shall include:

71 (a) time requirements for plan submission, review, approval, and implementation;

72 (b) a public notice and comment period for a proposed plan; and

73 (c) safety standards for the collection, packaging, transportation, storage, recycling, and  
74 disposal of mercury switches.

75 (3) The board may request the attorney general to bring an action for injunctive relief  
76 and enforcement of this part, including, without limitation, imposition of the penalty provided  
77 in Section 19-6-1006.

78 (4) As authorized by the board, the executive secretary may:

79 (a) review and approve or disapprove plans, specifications, or other data related to  
80 mercury switch removal;

81 (b) enforce a rule by issuing a notice, an order, or both, which may be subsequently  
82 amended or revoked by the board; and

83 (c) initiate an administrative action to compel compliance with this part and any rules  
84 adopted under this part.

85 (5) The executive secretary shall establish a fee to cover the costs of a plan's review by

86 following the procedures and requirements of Section 63-38-3.2.

87 Section 4. Section **19-6-1004** is enacted to read:

88 **19-6-1004. Mercury switch collection plan -- Reimbursement for mercury switch**  
89 **removal.**

90 (1) (a) Each manufacturer of any vehicle sold within this state, individually or in  
91 cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the  
92 executive secretary.

93 (b) If the executive secretary disapproves a plan, the manufacturer shall submit an  
94 amended plan within 90 days.

95 (c) A manufacturer shall submit an updated plan within 90 days of any change in the  
96 information required by Subsection (2).

97 (d) The executive secretary may require the manufacturer to modify the plan at any  
98 time upon finding that an approved plan as implemented has failed to meet the requirements of  
99 this part.

100 (e) If the manufacturer does not know or is uncertain about whether or not a switch  
101 contains mercury, the plan shall presume that the switch contains mercury.

102 (2) The plan shall include:

103 (a) the make, model, and year of any vehicle, including current and anticipated future  
104 production models, sold by the manufacturer that may contain one or more mercury switches;

105 (b) the description and location of each mercury switch for each make, model, and year  
106 of vehicle;

107 (c) education materials that include:

108 (i) safe and environmentally sound methods for mercury switch removal; and

109 (ii) information about hazards related to mercury and the proper handling of mercury;

110 (d) a method for storage and disposal of the mercury switches, including packaging and  
111 shipping of mercury switches to an authorized recycling, storage, or disposal facility;

112 (e) a procedure for the transfer of information among persons involved with the plan to  
113 comply with reporting requirements; and

114 (f) a method to implement and finance the plan, which shall include the prompt  
115 reimbursement by the manufacturer of costs incurred by a person removing and collecting  
116 mercury switches.

117 (3) In order to ensure that the costs of removal and collection of mercury switches are  
118 not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

119 (a) a minimum of \$5 for each mercury switch removed by a person as partial  
120 compensation for the labor and other costs incurred in removing the mercury switch;

121 (b) the cost of packaging necessary to store or transport mercury switches to recycling,  
122 storage, or disposal facilities;

123 (c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;

124 (d) the cost of recycling, storage, or disposal of mercury switches;

125 (e) the cost of the preparation and distribution of educational materials; and

126 (f) the cost of maintaining all appropriate record-keeping systems.

127 (4) Manufacturers of vehicles sold within this state shall reimburse a person for each  
128 mercury switch removed and collected without regard to the date on which the mercury switch  
129 is removed and collected.

130 (5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

131 Section 5. Section **19-6-1005** is enacted to read:

132 **19-6-1005. Reporting requirements.**

133 (1) Each manufacturer that is required to implement a plan shall submit, either  
134 individually or in cooperation with other manufacturers, an annual report on the plan's  
135 implementation to the executive secretary within 90 days after the anniversary of the date on  
136 which the manufacturer is required to begin plan implementation.

137 (2) The report shall include:

138 (a) the number of mercury switches collected;

139 (b) the number of mercury switches for which the manufacturer has provided  
140 reimbursement;

141 (c) a description of the successes and failures of the plan; and

142 (d) a statement that details the costs required to implement the plan.

143 Section 6. Section **19-6-1006** is enacted to read:

144 **19-6-1006. Penalties.**

145 A manufacturer who fails to submit, modify, or implement a plan according to this part  
146 and rules enacted under this part is subject to a civil penalty of not more than \$1,000 per day  
147 per violation as determined in an administrative proceeding conducted according to the board's  
148 rules.

149 Section 7. Section **63-46b-1** is amended to read:

150 **63-46b-1. Scope and applicability of chapter.**

151 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute  
152 superseding provisions of this chapter by explicit reference to this chapter, the provisions of  
153 this chapter apply to every agency of the state and govern:

154 (a) state agency action that determines the legal rights, duties, privileges, immunities,  
155 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,  
156 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

157 (b) judicial review of the action.

158 (2) This chapter does not govern:

159 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

160 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to  
161 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the  
162 issuance of a tax assessment, except that this chapter governs an agency action commenced by  
163 a taxpayer or by another person authorized by law to contest the validity or correctness of the  
164 action;

165 (c) state agency action relating to extradition, to the granting of a pardon or parole, a  
166 commutation or termination of a sentence, or to the rescission, termination, or revocation of  
167 parole or probation, to the discipline of, resolution of a grievance of, supervision of,  
168 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah  
169 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction

170 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or  
171 judicial review of the action;

172 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a  
173 student or teacher in a school or educational institution, or judicial review of the action;

174 (e) an application for employment and internal personnel action within an agency  
175 concerning its own employees, or judicial review of the action;

176 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah  
177 Occupational Safety and Health Act, and Title 58, Chapter 3a, Architects Licensing Act,  
178 Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing  
179 Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional  
180 Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55,  
181 Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and  
182 Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an agency  
183 action commenced by the employer, licensee, or other person authorized by law to contest the  
184 validity or correctness of the citation or assessment;

185 (g) state agency action relating to management of state funds, the management and  
186 disposal of school and institutional trust land assets, and contracts for the purchase or sale of  
187 products, real property, supplies, goods, or services by or for the state, or by or for an agency of  
188 the state, except as provided in those contracts, or judicial review of the action;

189 (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of  
190 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution  
191 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or  
192 Holding Companies, and Title 63, Chapter 30d, Governmental Immunity Act of Utah, or  
193 judicial review of the action;

194 (i) the initial determination of a person's eligibility for unemployment benefits, the  
195 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'  
196 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial  
197 determination of a person's unemployment tax liability;

198 (j) state agency action relating to the distribution or award of a monetary grant to or  
199 between governmental units, or for research, development, or the arts, or judicial review of the  
200 action;

201 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah  
202 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,  
203 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,  
204 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,  
205 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used  
206 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except  
207 that this chapter governs an agency action commenced by a person authorized by law to contest  
208 the validity or correctness of the notice or order;

209 (l) state agency action, to the extent required by federal statute or regulation, to be  
210 conducted according to federal procedures;

211 (m) the initial determination of a person's eligibility for government or public  
212 assistance benefits;

213 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of  
214 registration;

215 (o) a license for use of state recreational facilities;

216 (p) state agency action under Title 63, Chapter 2, Government Records Access and  
217 Management Act, except as provided in Section 63-2-603;

218 (q) state agency action relating to the collection of water commissioner fees and  
219 delinquency penalties, or judicial review of the action;

220 (r) state agency action relating to the installation, maintenance, and repair of headgates,  
221 caps, valves, or other water controlling works and weirs, flumes, meters, or other water  
222 measuring devices, or judicial review of the action;

223 (s) the issuance and enforcement of an initial order under Section 73-2-25;

224 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

225 (ii) an action taken by the Division of Securities pursuant to a hearing conducted under



226 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange  
227 of securities described in Subsection 61-1-11.1(1); and

228 (u) state agency action relating to water well driller licenses, water well drilling  
229 permits, water well driller registration, or water well drilling construction standards, or judicial  
230 review of the action.

231 (3) This chapter does not affect a legal remedy otherwise available to:

232 (a) compel an agency to take action; or

233 (b) challenge an agency's rule.

234 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative  
235 proceeding, or the presiding officer during an adjudicative proceeding from:

236 (a) requesting or ordering a conference with parties and interested persons to:

237 (i) encourage settlement;

238 (ii) clarify the issues;

239 (iii) simplify the evidence;

240 (iv) facilitate discovery; or

241 (v) expedite the proceeding; or

242 (b) granting a timely motion to dismiss or for summary judgment if the requirements of  
243 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,  
244 except to the extent that the requirements of those rules are modified by this chapter.

245 (5) (a) A declaratory proceeding authorized by Section 63-46b-21 is not governed by  
246 this chapter, except as explicitly provided in that section.

247 (b) Judicial review of a declaratory proceeding authorized by Section 63-46b-21 is  
248 governed by this chapter.

249 (6) This chapter does not preclude an agency from enacting a rule affecting or  
250 governing an adjudicative proceeding or from following the rule, if the rule is enacted  
251 according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking  
252 Act, and if the rule conforms to the requirements of this chapter.

253 (7) (a) If the attorney general issues a written determination that a provision of this

254 chapter would result in the denial of funds or services to an agency of the state from the federal  
255 government, the applicability of the provision to that agency shall be suspended to the extent  
256 necessary to prevent the denial.

257 (b) The attorney general shall report the suspension to the Legislature at its next  
258 session.

259 (8) Nothing in this chapter may be interpreted to provide an independent basis for  
260 jurisdiction to review final agency action.

261 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good  
262 cause shown, from lengthening or shortening a time period prescribed in this chapter, except  
263 the time period established for judicial review.

264 Section 8. Section **63-55-219** is amended to read:

265 **63-55-219. Repeal dates, Title 19.**

266 (1) Title 19, Chapter 2, Air Conservation Act, is repealed July 1, 2009.

267 (2) Title 19, Chapter 3, Radiation Control Act, is repealed July 1, 2012.

268 (3) Title 19, Chapter 4, Safe Drinking Water Act, is repealed July 1, 2009.

269 (4) Title 19, Chapter 5, Water Quality Act, is repealed July 1, 2009.

270 (5) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, is repealed July 1,  
271 2009.

272 (6) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, is repealed July  
273 1, 2010.

274 (7) Title 19, Chapter 6, Part 4, Underground Storage Tank Act, is repealed July 1,  
275 2008.

276 (8) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal, is repealed July 1, 2006.

277 (9) Title 19, Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 2009.

278 (10) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act, is repealed July 1, 2010.

279 (11) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, is repealed July 1,  
280 2012.