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First Substitute H.B. 138

Representative Ronda Rudd Menlove proposes the following substitute bill:

1

MERCURY SWITCH REMOVAL ACT

2

2006 GENERAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: Ronda Rudd Menlove

5

Senate Sponsor: _____

6

7 **LONG TITLE**8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

25 **Monies Appropriated in this Bill:**

26

None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63-46b-1**, as last amended by Chapters 33 and 102, Laws of Utah 2005

32 **63-55-219**, as last amended by Chapter 86, Laws of Utah 2005

33 ENACTS:

34 **19-6-1001**, Utah Code Annotated 1953

35 **19-6-1002**, Utah Code Annotated 1953

36 **19-6-1003**, Utah Code Annotated 1953

37 **19-6-1004**, Utah Code Annotated 1953

38 **19-6-1005**, Utah Code Annotated 1953

39 **19-6-1006**, Utah Code Annotated 1953

40

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

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

43

Part 10. Mercury Switch Removal Act

44 **19-6-1001. Title.**

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

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

47 **19-6-1002. Definitions.**

48 *(1) "Board" means the Solid and Hazardous Waste Control Board created in Section*

49 *19-6-103.*

50 *(2) "Executive secretary" means the executive secretary of the Solid and Hazardous*

51 *Waste Control Board appointed under Section 19-6-107.*

52 *(3) "Manufacturer" means the last person in the production or assembly process of a*

53 *vehicle.*

54 *(4) "Mercury switch" means a mercury-containing capsule that is part of a convenience*

55 *light switch assembly installed in a vehicle's hood or trunk.*

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

57

the state, or a local government.

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

59 *(7) "Vehicle" means any passenger automobile or car, station wagon, truck, van, or*

60 *sport utility vehicle that may contain one or more mercury switches.*

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

62 **19-6-1003. Board and executive secretary powers.**

63 *(1) By following the procedures and requirements of Title 63, Chapter 46a, Utah*

64 *Administrative Rulemaking Act, the board shall make rules:*

65 *(a) governing administrative proceedings under this part;*

66 *(b) specifying the terms and conditions under which the executive secretary shall*

67 *approve, disapprove, revoke, or review a plan submitted by a manufacturer; and*

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

69 *(2) These rules shall include:*

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

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

72 *(c) safety standards for the collection, packaging, transportation, storage, recycling,*

and

73 *disposal of mercury switches.*

74 *(3) The board may request the attorney general to bring an action for injunctive relief*

75 *and enforcement of this part, including, without limitation, imposition of the penalty*

provided

76 *in Section 19-6-1006.*

- 77 (4) As authorized by the board, the executive secretary may:
 78 (a) review and approve or disapprove plans, specifications, or other data related to
 79 mercury switch removal;
 80 (b) enforce a rule by issuing a notice, an order, or both, which may be subsequently
 81 amended or revoked by the board; and
 82 (c) initiate an administrative action to compel compliance with this part and any rules
 83 adopted under this part
 84 (5) The executive secretary shall establish a fee to cover the costs of a plan's review by
 85 following the procedures and requirements of Section 63-38-3.2.
 86 Section 4. Section 19-6-1004 is enacted to read:
 87 19-6-1004. Mercury switch collection plan.

- 88
 (1) (a) Each manufacturer of any vehicle sold within this state, individually or in
 89 cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the
 90 executive secretary.
 91 (b) If the executive secretary disapproves a plan, the manufacturer shall submit an
 92 amended plan within 90 days.
 93 (c) A manufacturer shall submit an updated plan within 90 days of any change in the
 94 information required by Subsection (2).
 95 (d) The executive secretary may require the manufacturer to modify the plan at any
 96 time upon finding that an approved plan as implemented has failed to meet the
requirements of
 97 this part.
 98 (e) If the manufacturer does not know or is uncertain about whether or not a switch
 99 contains mercury, the plan shall presume that the switch contains mercury.
 100 (2) The plan shall include:
 101 (a) the make, model, and year of any vehicle, including current and anticipated future
 102 production models, sold by the manufacturer that may contain one or more mercury
switches;
 103 (b) the description and location of each mercury switch for each make, model, and
year
 104 of vehicle;
 105 (c) education materials that include:
 106 (i) safe and environmentally sound methods for mercury switch removal; and
 107 (ii) information about hazards related to mercury and the proper handling of
mercury;
 108 (d) a method for storage and disposal of the mercury switches, including packaging
and
 109 shipping of mercury switches to an authorized recycling, storage, or disposal facility;
 110 (e) a procedure for the transfer of information among persons involved with the plan
to
 111 comply with reporting requirements; and
 112 (f) a method to implement and finance the plan, which shall include the prompt
 113 reimbursement by the manufacturer of costs incurred by a person removing and
collecting
 114 mercury switches.
 115 (3) In order to ensure that the costs of removal and collection of mercury switches are
 116 not borne by any other person, the manufacturers of vehicles sold in the state shall pay:
 117 (a) a minimum of \$5 for each mercury switch removed by a person as partial
 118 compensation for the labor and other costs incurred in removing the mercury switch;

119

(b) the cost of packaging necessary to store or transport mercury switches to recycling,

120 *storage, or disposal facilities;*

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

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

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

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

125 *(4) Manufacturers of vehicles sold within this state shall reimburse a person for each*

126 *mercury switch removed and collected without regard to the date on which the mercury*

switch

127 *is removed and collected.*

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

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

130 **19-6-1005. Reporting requirements.**

131 *(1) Each manufacturer that is required to implement a plan shall submit, either*

132 *individually or in cooperation with other manufacturers, an annual report on the plan's*

133 *implementation to the executive secretary within 90 days after the anniversary of the*

date on

134 *which the manufacturer is required to begin plan implementation.*

135 *(2) The report shall include:*

136 *(a) the number of mercury switches collected;*

137 *(b) the number of mercury switches for which the manufacturer has provided*

138 *reimbursement;*

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

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

141 Section 6. Section 19-6-1006 is enacted to read:

142 **19-6-1006. Penalties.**

143 *A manufacturer who fails to submit, modify, or implement a plan according to this*

part

144 *and rules enacted under this part is subject to a civil penalty of not more than \$1,000 per*

day

145 *per violation as determined in an administrative proceeding conducted according to the*

board's

146 *rules.*

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

148 **63-46b-1. Scope and applicability of chapter.**

149 *(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute*

150

superseding provisions of this chapter by explicit reference to this chapter, the provisions of

151 this chapter apply to every agency of the state and govern:

152 (a) state agency action that determines the legal rights, duties, privileges, immunities,

153 or other legal interests of an identifiable person, including agency action to grant, deny,

revoke,

154 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

155 (b) judicial review of the action.

156 (2) This chapter does not govern:

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

158 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to

159 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or

the

160 issuance of a tax assessment, except that this chapter governs an agency action

commenced by

161 a taxpayer or by another person authorized by law to contest the validity or correctness
of the
162 action;
163 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
164 commutation or termination of a sentence, or to the rescission, termination, or revocation
of
165 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
166 confinement of, or the treatment of an inmate or resident of a correctional facility, the
Utah
167 State Hospital, the Utah State Developmental Center, or a person in the custody or
jurisdiction
168 of the Division of Substance Abuse and Mental Health, or a person on probation or
parole, or
169 judicial review of the action;
170 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
171 student or teacher in a school or educational institution, or judicial review of the action;
172 (e) an application for employment and internal personnel action within an agency
173 concerning its own employees, or judicial review of the action;
174 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
175 Occupational Safety and Health Act, and Title 58, Chapter 3a, Architects Licensing Act,
176 Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician
Licensing
177 Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and
Professional
178 Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act,
Chapter 55,
179 Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act,
and
180 Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an
agency

181
action commenced by the employer, licensee, or other person authorized by law to contest the
182 validity or correctness of the citation or assessment;
183 (g) state agency action relating to management of state funds, the management and
184 disposal of school and institutional trust land assets, and contracts for the purchase or
sale of
185 products, real property, supplies, goods, or services by or for the state, or by or for an
agency of
186 the state, except as provided in those contracts, or judicial review of the action;
187 (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of
188 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository
Institution
189 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
190 Holding Companies, and Title 63, Chapter 30d, Governmental Immunity Act of Utah, or
191 judicial review of the action;
192 (i) the initial determination of a person's eligibility for unemployment benefits, the
193 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2,
Workers'
194 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the
initial
195 determination of a person's unemployment tax liability;
196 (j) state agency action relating to the distribution or award of a monetary grant to or

197 between governmental units, or for research, development, or the arts, or judicial review
of the
198 action;
199 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
200 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act,
Title 19,
201 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title
19,
202 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste
Act,
203 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part
7, Used
204 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act.
except
205 that this chapter governs an agency action commenced by a person authorized by law to
contest
206 the validity or correctness of the notice or order;
207 (l) state agency action, to the extent required by federal statute or regulation, to be
208 conducted according to federal procedures;
209 (m) the initial determination of a person's eligibility for government or public
210 assistance benefits;
211 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of

212
registration;
213 (o) a license for use of state recreational facilities;
214 (p) state agency action under Title 63, Chapter 2, Government Records Access and
215 Management Act, except as provided in Section 63-2-603 ;
216 (q) state agency action relating to the collection of water commissioner fees and
217 delinquency penalties, or judicial review of the action;
218 (r) state agency action relating to the installation, maintenance, and repair of
headgates,
219 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
220 measuring devices, or judicial review of the action;
221 (s) the issuance and enforcement of an initial order under Section 73-2-25 ;
222 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1 ; and
223 (ii) an action taken by the Division of Securities pursuant to a hearing conducted
under
224 Section 61-1-11.1 , including a determination regarding the fairness of an issuance or
exchange
225 of securities described in Subsection 61-1-11.1 (1); and
226 (u) state agency action relating to water well driller licenses, water well drilling
227 permits, water well driller registration, or water well drilling construction standards, or
judicial
228 review of the action.
229 (3) This chapter does not affect a legal remedy otherwise available to:
230 (a) compel an agency to take action; or
231 (b) challenge an agency's rule.
232 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
233 proceeding, or the presiding officer during an adjudicative proceeding from:
234 (a) requesting or ordering a conference with parties and interested persons to:
235 (i) encourage settlement;
236 (ii) clarify the issues;

237 (iii) simplify the evidence;
 238 (iv) facilitate discovery; or
 239 (v) expedite the proceeding; or
 240 (b) granting a timely motion to dismiss or for summary judgment if the requirements
 of
 241 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
 242 except to the extent that the requirements of those rules are modified by this chapter.

243
 (5) (a) A declaratory proceeding authorized by Section 63-46b-21 is not governed by
 244 this chapter, except as explicitly provided in that section.
 245 (b) Judicial review of a declaratory proceeding authorized by Section 63-46b-21 is
 246 governed by this chapter.
 247 (6) This chapter does not preclude an agency from enacting a rule affecting or
 248 governing an adjudicative proceeding or from following the rule, if the rule is enacted
 249 according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative
 Rulemaking
 250 Act, and if the rule conforms to the requirements of this chapter.
 251 (7) (a) If the attorney general issues a written determination that a provision of this
 252 chapter would result in the denial of funds or services to an agency of the state from the
 federal
 253 government, the applicability of the provision to that agency shall be suspended to the
 extent
 254 necessary to prevent the denial.
 255 (b) The attorney general shall report the suspension to the Legislature at its next
 256 session.
 257 (8) Nothing in this chapter may be interpreted to provide an independent basis for
 258 jurisdiction to review final agency action.
 259 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
 260 cause shown, from lengthening or shortening a time period prescribed in this chapter,
 except
 261 the time period established for judicial review.
 262 Section 8. Section **63-55-219** is amended to read:
 263 **63-55-219. Repeal dates, Title 19.**
 264 (1) Title 19, Chapter 2, Air Conservation Act, is repealed July 1, 2009.
 265 (2) Title 19, Chapter 3, Radiation Control Act, is repealed July 1, 2012.
 266 (3) Title 19, Chapter 4, Safe Drinking Water Act, is repealed July 1, 2009.
 267 (4) Title 19, Chapter 5, Water Quality Act, is repealed July 1, 2009.
 268 (5) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, is repealed July 1,
 269 2009.
 270 (6) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, is repealed July
 271 1, 2010.
 272 (7) Title 19, Chapter 6, Part 4, Underground Storage Tank Act, is repealed July 1,
 273 2008.

274
 (8) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal, is repealed July 1, 2006.
 275 (9) Title 19, Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 2009.
 276 (10) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act, is repealed July 1, 2010.
 277 (11) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, is repealed July 1,
 278 2014.

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H.B. 138 Substitute Mercury Switch Removal Act (Menlove, R.)

Date	Action	Location	Vote
1/19/2006	Numbered	<u>LRGC</u>	
1/20/2006	Bill Distributed	<u>LRGC</u>	
1/20/2006	House/ received from General Counsel	<u>HDOCKET</u>	
1/23/2006	House/ read 1st time (Introduced)	<u>HSTRUL</u>	
1/25/2006	House/ to Printing with fiscal note	<u>HSTRUL</u>	
1/31/2006	House/ to standing committee	<u>HSTBUS</u>	
2/2/2006	House Comm - Not Considered	<u>HSTBUS</u>	
2/6/2006	House Comm - Substitute Recommendation	<u>HSTBUS</u>	
2/6/2006	House Comm - Favorable Recommendation	<u>HSTBUS</u>	<u>12 0 1</u>
2/6/2006	Substitute Recommended by Standing Comm	<u>HSTBUS</u>	