

## Model Electronic Recycling Legislation

### ***An Act Providing for the Recovery and Recycling of Used Electronic Devices***

**Purpose:** The purpose of the Act is to establish a comprehensive recycling system that ensures the safe and environmentally sound management of electronic devices and components and that encourages the design of electronic devices and components that are less toxic and more recyclable; and promotes the development of a statewide infrastructure for collection and recycling of end-of-life electronics.

#### **Section 1: Definitions**

For the purposes of this Act, the following terms have the following meanings:

(a) "Agency" means the *[State Environmental Agency]*

(b) "Cathode ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

(c) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor, but such term does not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other similar device.

(d) "Consumer" means an individual who purchases a covered electronic device in a transaction that is a retail sale.

(e) "Covered Electronic Device" (CED) for the purposes of this Act means desktop/personal computers, computer monitors, portable computers, CRT-based televisions, and non-CRT-based televisions sold to consumers.

"Covered electronic device" does not include any of the following:

- i. A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.
- ii. A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment.
- iii. A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier.
- iv. Telephones of any type unless they contain a video display area greater than 4" measured diagonally.

(f) "Covered electronic recycler" is one that is approved by the Agency for compensation.

(g) "Manufacturer" means any person who, either as of the effective date of this legislation or thereafter, and irrespective of the selling technique used, including by means of remote sale: 1) manufactures covered electronic devices under its own brand for sale in this State; 2) manufactures covered electronic devices for sale in this State without affixing a brand, 3) resells in this State covered electronic devices produced by other suppliers under its own brand or label; or 4) imports or exports covered electronic

devices into the United States for sale in this State. However, if a company from whom an importer purchases the merchandise has a U.S. presence and/or assets, that company shall be deemed to be the manufacturer; or, 5) manufactures covered electronic devices, supplies them to any person or persons within a distribution network that includes wholesalers or retailers in this State, and benefits from the sale in this State of those covered electronic devices through that distribution network.

(h) "Manufacturer's brands" means a manufacturer's name, brand name, or brand label, and all manufacturer's names, brand names, and brand labels for which the manufacturer has legal responsibility, including those names, brand names, and brand labels of companies that have been acquired by the manufacturer.

(i) "Monitor" means a separate video display component of a computer, whether sold separately or together with a computer central processing unit/computer box, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, cable to the central processing unit, and power cord.

(j) "Obligation" means the quantity of covered electronic devices, by weight, identified for an individual manufacturer, as defined by the Agency under Section 8 of this Act.

(k) "Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government agency, partnership, limited liability company, or association.

(l) "Portable computer" means a computer and video display greater than four inches in size that can be carried as one unit by an individual (e.g., a laptop computer).

(m) "Purchase" means the taking, by sale, of title in exchange for consideration.

(n) "Recycling" means any process by which covered electronic devices that would otherwise become solid waste or hazardous waste are collected, separated, and processed to be returned to use in the form of raw materials or products, in accordance with environmental standards established by the Agency.

(o) "Registrant" means a manufacturer of covered electronic devices that is in full compliance with the requirements of this Act.

(p) "Retail sales" includes sales of products through sales outlets, via the Internet, mail order, or other means, whether or not the seller has a physical presence in this State.

(q) "Retailer" means a person who owns or operates a business that sells new covered electronic devices in this State by any means to a consumer.

(r) "Sell" or "sale" means any transfer for consideration of title, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, and excluding leases.

(s) "State recycling rate" means the ratio of the weight of total overall returns of CEDs in the State to the weight of total overall sales of CEDs in the State during the previous calendar year.

(t) "Television" means a stand-alone display system containing a CRT or any other type of display primarily intended to receive video programming via broadcast, having a viewable area greater than four inches when measured diagonally, able to adhere to standard consumer video formats such as PAL, SECAM, NTSC, and HDTV and having the capability of selecting different broadcast channels and support sound capability.

(u) "Video Display" means an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display (and cannot be easily removed from the display by the consumer) that produces the moving image on the screen. Displays typically use a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

## **Section 2: Scope of Products**

The scope of products is the same as "Covered Electronic Devices". [The scope of products may be modified by \_\_\_\_\_].

## **Section 3: Sales Prohibition**

(1) A manufacturer not in compliance with all financial and other requirements of this Act is prohibited from offering a covered electronic device for sale in this State.

(2) It shall be unlawful for any entity to offer for sale in this State a new covered electronic device from a manufacturer that is not in full compliance with the requirements of this Act. The Agency shall maintain a list of all manufacturers in compliance the requirements of this Act and post the list on an Internet website. Sellers of products in or into the State shall consult the list prior to selling covered electronic devices in this State. A seller shall be considered to have complied with this responsibility if, on the date that the product was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the aforementioned website.

## **Section 4: Labeling Requirement**

On and after the effective date of this Act, a manufacturer or retailer may not sell or offer for sale a covered electronic product in the State unless it is labeled with the manufacturer's brand, and the label is permanently affixed and readily visible.

## **Section 5: Reporting and Registration**

(1) Manufacturers of covered electronic devices shall report to the Agency by January 30 of each year the total weight of CEDs sold in the State the previous calendar year. In lieu of providing the total weight of CEDs sold in the State the previous calendar year, a manufacturer may request that the Agency calculate the total weight of CEDs sold in the State by using prorated national sales data based on State population.

(2) Each manufacturer of covered electronic devices shall register with the Agency by January 30 of each year and pay a registration fee of \$5,000.

## **Section 6: Manufacturer Responsibility**

(1) Manufacturers of CEDs sold in the state must submit an additional fee based on sales in the State to the Agency. The fee shall be calculated using the following formula: the State recycling rate multiplied by the weight of sales of the manufacturer's covered electronic devices sold in the State during the previous calendar year, multiplied by no more than \$0.50 per pound.

- (2) In lieu of payment of the fee set forth in paragraph 1 above, a manufacturer or a group of manufacturers may submit a plan to collect, transport, and recycle CEDs.
- (3) An individual manufacturer submitting a plan in lieu of payment of the fee set forth in paragraph 1 above must collect, transport, and recycle a quantity of CEDs equal to the weight of sales of the manufacturer's covered electronic devices in the State during the previous calendar year multiplied by the State recycling rate.
- (4) A group of manufacturers jointly submitting a plan in lieu of payment of the fee set forth in paragraph 1 above must collect, transport, and recycle the sum of the obligations of each participating manufacturer.
- (5) The plan shall be filed with a manufacturer's annual registration, and shall include at a minimum:
  - i. Methods that will be used to collect the CEDs including the name and locations of all collection and consolidation points.
  - ii. An estimate of the amount of CEDs that will be collected annually.
  - iii. The processes and methods that will be used to recycle recovered CEDs including a description of the disassembly, physical recovery operation (e.g., crushing, shredding, grinding, glass-to-glass recycling) and /or other operations that will be used. Include the name and location of all facilities to be utilized.
  - iv. Documentation of audits of each processor used in the plan and compliance with processing standards established under Section 11 of this Act.
  - v. A description of the accounting and reporting systems that will be employed to track progress toward fulfilling the plan's obligations.
  - vi. Means that will be utilized to publicize the collection opportunities.
  - vii. The intention of the registrant to fulfill its obligations through operation of its own program, either individually or in partnership with other manufacturers.
  - viii. The total weight of CEDs collected, transported and recycled the previous year.
- (6) Before the fee set forth in paragraph 1 above may be waived, the plan must be reviewed and approved by the Agency. Upon approval of the plan by the Agency, the manufacturer payment of the annual fees based upon sales will be waived. The Agency may reject the plan in part or in whole and may impose additional requirements as a condition of approval.
- (7) If a manufacturer fails to comply with all the conditions and terms of an approved plan, it will be required to submit the following:
  - i. A payment to the Agency to cover the cost of collecting, transporting, and recycling the unmet portion of its obligation. The payment shall be equal to the following formula: the quantity of the outstanding portion, in pounds, multiplied by no more than \$0.50, and
  - ii. A penalty in the form of a payment equal to the cost of collecting, transporting and recycling 10% of the manufacturer's total obligation.
- (8) Manufacturers that collect, transport, and recycle CEDs in excess of their obligation may sell "credits" to another registrant or apply that excess to the following year's recycling obligation.

## **Section 7: Retailer Responsibility**

- (1) A retailer must clearly post and provide information provided by the Agency that describes where and how to recycle the covered electronic device and opportunities

and locations for the collection or return of the device, through the use of a toll-free telephone number and website, information included in the packaging, or information provided accompanying the sale of the covered electronic device. This information shall be provided in clear written form in English and any other languages deemed to be primary languages by the State Department of Education.

(2) A retailer shall only sell products from registrants. Retailers shall consult the list described in Section 3 prior to selling covered electronic devices in this State. A retailer shall be considered to have complied with this responsibility if on the date that the product was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the aforementioned website.

**Section 8: Agency Responsibility [States may wish to designate a third-party organization to assume some or all of the responsibilities contained in this section]**

(1) By February 15 of each year, the Agency shall establish the State recycling rate, by calculating the ratio of the weight of total overall returns of CEDs in the State to the weight of total overall sales of CEDs in the State during the previous calendar year.

(2) By March 1 of each year, the Agency shall provide each registrant with its responsibility for fees from sales or for collection, recycling, and transportation in pounds for that year.

(3) The Agency shall receive fees as described in Section 6 from manufacturers for the sale of covered electronic devices.

(4) The Agency must organize, administer, and ensure that at least one electronics collection opportunity is available at least five (5) days a week in each county throughout the State and in such a manner as to be convenient, to the maximum extent feasible, to all consumers in the County.

(5) The Agency shall ensure that collection sites do not place limits on the number of covered electronic devices permitted for drop-off by consumers.

(6) The Agency shall encourage the use of existing collection and consolidation infrastructures for handling CEDs to the extent that this infrastructure is accessible on a regular and ongoing basis to at least 85% of the population of the State, is cost effective, and meets the environmentally sound management requirements of Section 11.

(7) The Agency shall maintain a list of registrants and post the list on an Internet website that is updated at least once a month.

(8) The Agency shall organize and coordinate public education and outreach.

(9) The Agency shall use the revenues received from registrants for the sole purpose of fulfilling its responsibilities under this Act. In the event that expenses from administration, education, collection, transportation, and recycling activities exceed receipts, the Agency may borrow up to ten percent of the projected annual State revenues from fees submitted under this Act from outside sources. Borrowed funds must be repaid within two years.

(10) The Agency shall prepare a plan every three years that:

- i. establishes per-capita collection and recycling goals, and
- ii. identifies any necessary State actions to expand collection opportunities to achieve the per-capita collection and recycling goals.

That plan shall be posted on the Agency website and sent to the Legislature.

(11) The Agency shall annually report:

- i. A list of all parties that the Agency has designated as approved to receive payments for collection, transportation, or recycling, the amount of payments it has made to those parties, and the purpose of those payments.
- ii. The total weight of CEDs collected in the State the previous calendar year.
- iii. The total weight of CEDs sold in the State the previous calendar year.
- iv. Progress toward achieving the overall annual total recovery and recycling goals described in the plan described in Section 8, above.
- v. A complete listing of all collection sites operating in the State in the prior calendar year, the parties that operated them, and the amount of material by weight collected at each site.
- vi. An evaluation of the effectiveness of the education and outreach program
- vii. An evaluation of the existing collection and processing infrastructure.

(12) The Agency shall annually post the report on its website.

(13) The program implemented to effect the provisions of this Act and its associated regulations shall be fully audited by an independent, certified public accountant at the end of each calendar year and said audit report submitted to the Legislature.

(14) The Agency shall maintain a website and toll-free number complete with up-to-date listings of where consumers can bring covered electronic devices for recycling under this Act.

(15) The Agency shall not be held financially liable or responsible for any violation of federal, state, or local law by any entity to whom the Agency makes payment pursuant to Section 10.

(16) No more frequently than annually and no less frequently than biennially, the Agency shall review, at a public hearing, the CED recycling and registration fee(s). Recommended changes to the covered electronic device recycling rate and registration fee(s) shall be included in the annual report.

### **Section 9: Fees for the Collection or Recycling of Covered Electronic Devices**

No fees or costs may be charged to consumers for the collection, transportation, or recycling of covered electronic devices.

### **Section 10: Reimbursement for Collection, Transportation, and Recycling**

(1) The Agency shall engage in competitive bidding for the collection, transportation, and recycling of covered electronic devices.

(2) The Agency shall make covered electronic device payments for the collection, transportation, and recycling of covered electronic devices to an authorized or approved entity upon receipt of a completed and verified invoice submitted to the Agency in the form and manner determined by the Agency.

a. In order to receive payment, proof will be required:

- i. That the covered electronic device was collected from a consumer who is a resident of the State or is otherwise located in the State, or who provides evidence that the device was purchased in the State after the effective date of this Act.

- ii. That the collection, transportation, and recycling of the CED was conducted in accordance with all local, state, and federal laws, including the requirements created by this Act, and its associated regulations.
- b. No fees or costs were charged to the consumer.

### **Section 11: Environmentally Sound Management Requirements**

(1) Covered electronic devices collected through any program in [State], whether by manufacturers, retailers, for-profit or not-for profit corporations, units of government, or organized by the Agency, must be recycled in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and must not be exported for disposal in a manner that poses a significant risk to the public health or the environment.

(2) The Agency shall establish performance requirements in order for collectors, transporters, and recyclers to be eligible to receive funds from the Agency. All entities shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's (EPA) Plug-In to eCycling Guidelines for Materials Management as issued and available on the EPA's website in addition to any other requirements mandated by state or federal law.

(3) The Agency shall maintain a website that shall include a list of entities and organizations that it has determined have met these performance standards.

### **Section 12: Disposal Ban**

Two years after enactment of this law, it shall be illegal for any person to place in municipal solid waste a covered electronic device or any of the components or subassemblies thereof in any solid waste disposal facility.

### **Section 13: Enforcement**

(1) The State including its Attorney General and the Agency shall be authorized to initiate independent action to enforce any provision of this law, including failure by the manufacturer to remit the fee to the Agency. Any funds awarded by the court shall be used first to offset enforcement expenses. Money in excess of the enforcement expenses shall be deposited with the Agency.

(2) An offense shall be considered:

- (i) the sale of a new covered electronic device by any person that is not in full compliance with the provisions of this Act.
- (ii) application for compensation for the collection, transportation and recycling of covered electronic devices not collected within the state, or region as provided in Section 16.
- (iii) use of a qualified collection program to recycle covered electronic devices not discarded within the state, or region as provided in Section 15.
- (iv) the knowing failure to report or accurately report any data required to be reported to the Agency by this Act.
- (v) non-payment of fees.

### **Section 14: Regulatory Authority**

The Agency may adopt rules and regulations as shall be necessary for the purpose of administering this Act.

**Section 15: Multi-State Implementation**

The Agency is authorized to participate in the establishment and implementation of a regional, multi-state organization or compact to assist in carrying out the requirements of this Act.

**Section 16: Relation to Federal Law**

This Act is intended to govern all aspects of the collection and recycling of covered electronic devices as those terms are defined herein. Upon the implementation of an acceptable national program to collect and/or recycle covered electronic devices, the provisions of this Act shall sunset within the timeframe determined by federal law.

**Section 17: Effective Date**

Unless otherwise specified, this Act shall take effect on January 1, 2007.

**Section 18: Severability Clause**

The provisions of this Act shall be severable, and if any part of this Act is declared to be invalid or void by a court of competent jurisdiction, the remaining portion shall not be affected, but shall remain in full force and effect and shall be construed to be the entire Act.