

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 583

Introduced by Preister, 5

Read first time January 17, 2007

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to recycling; to adopt the Electronics
2 Recycling System Act; to provide for termination of
3 the act; to provide an operative date; and to provide
4 severability.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known
2 and may be cited as the Electronics Recycling System Act.

3 Sec. 2. The purpose of the Electronics Recycling System
4 Act is to establish a comprehensive electronics recycling system
5 that ensures the safe and environmentally sound management of
6 covered electronic devices and their components, encourages the
7 design of covered electronic devices and their components that
8 are less toxic and more recyclable, and promotes the development
9 of a statewide infrastructure for collection and recycling of
10 end-of-life covered electronic devices and their components.

11 Sec. 3. For purposes of the Electronics Recycling System
12 Act:

13 (1) Cathode ray tube means a vacuum tube or picture tube
14 used to convert an electronic signal to a visual image;

15 (2) Computer means an electronic, magnetic, optical,
16 electrochemical, or other high-speed data processing device
17 performing logical, arithmetic, or storage functions and may
18 include both a computer central processing unit and a monitor.
19 Computer does not include an automated typewriter or typesetter,
20 a portable handheld calculator, a portable digital assistant, or
21 other similar device;

22 (3) Consumer means an individual who purchases a covered
23 electronic device at retail for use by household members;

24 (4) Covered electronic device means a personal
25 desktop computer, a computer monitor, a portable computer, a

1 cathode-ray-tube-based television, or a non-cathode-ray-tube-based
2 television sold to consumers for use by household members. Covered
3 electronic device does not include (a) part of a motor vehicle
4 or any component part of a motor vehicle assembled by or for a
5 vehicle manufacturer or franchised dealer, including replacement
6 parts for use in a motor vehicle, (b) a device that is functionally
7 or physically a part of a larger piece of equipment designed
8 and intended for use in an industrial, commercial, or medical
9 setting, including diagnostic, monitoring, or control equipment,
10 (c) a device that is contained within a clothes washer, a clothes
11 dryer, a refrigerator, a refrigerator-freezer, a microwave oven, a
12 conventional oven or range, a dishwasher, a room air conditioner,
13 a dehumidifier, or an air purifier, or (d) a telephone of any type
14 unless it contains a video display area greater than four inches
15 when measured diagonally;

16 (5) Covered electronics recycler means an electronics
17 recycler that is approved by the department for compensation;

18 (6) Department means the Department of Environmental
19 Quality;

20 (7) Manufacturer means any person who or which,
21 regardless of the selling technique used, including remote sale,
22 manufactures covered electronic devices, supplies them to any
23 person or persons within a distribution network that includes
24 wholesalers or retailers in this state, and benefits from the sale
25 in this state of those covered electronic devices through that

1 distribution network;

2 (8) Manufacturer's brand means a manufacturer's name,
3 brand name, or brand label and all manufacturer's names, brand
4 names, and brand labels of companies that have been acquired by the
5 manufacturer;

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

13 (10) Obligation means the quantity of covered electronic
14 devices, by weight, identified for an individual manufacturer
15 pursuant to section 4 of this act;

16 (11) Person means an individual, a trust firm, a joint
17 stock company, a business concern, a corporation, a governmental
18 agency, a partnership, a limited liability company, or an
19 association;

20 (12) Portable computer means a computer and video display
21 greater than four inches when measured diagonally that can be
22 carried as one unit by an individual;

23 (13) Purchase means the taking of title in exchange for
24 consideration;

25 (14) Recycling means any process by which covered

1 electronic devices that would otherwise become solid waste or
2 hazardous waste are collected, separated, and processed to be
3 returned to use in the form of raw materials or products in
4 accordance with environmental standards established the department;

5 (15) Registrant means a manufacturer of covered
6 electronic devices that is in full compliance with the requirements
7 of the Electronics Recycling System Act;

8 (16) Retail sale includes sale of a product through sales
9 outlets, the Internet, mail order, or other means, whether or not
10 the seller has a physical presence in this state;

11 (17) Retailer means a person who owns or operates a
12 business that sells at retail new covered electronic devices in
13 this state by any means to a consumer;

14 (18) Sell or sale means any transfer of title for
15 consideration, including, but not limited to, transactions
16 conducted through sales outlets, the Internet, mail order or any
17 other similar means but does not include leases;

18 (19) State recycling rate means the ratio of the weight
19 of total overall covered electronic devices collected for recycling
20 or reuse in this state to the weight of total overall sales
21 of covered electronic devices in this state during the previous
22 calendar year;

23 (20) Television means a stand-alone display system
24 containing a cathode ray tube or any other type of display
25 primarily intended to receive video programming via broadcast,

1 having a viewable area greater than four inches when measured
2 diagonally, and having the capability of selecting different
3 broadcast channels and support sound capability; and

4 (21) Video display means an output surface having a
5 viewable area greater than four inches when measured diagonally
6 that displays moving graphical images or a visual representation of
7 image sequences or pictures, showing a number of quickly changing
8 images on a screen in fast succession to create the illusion of
9 motion, including, if applicable, a device that is an integral
10 part of the display and cannot be easily removed from the display
11 by the consumer that produces the moving image on the screen and
12 which typically uses a cathode ray tube, liquid crystal display,
13 gas plasma, digital light processing, or other image projection
14 technology.

15 Sec. 4. (1) On October 1, 2007, each manufacturer of
16 covered electronic devices shall report to the department the
17 total weight of covered electronic devices sold in this state the
18 previous calendar year.

19 (2) Beginning January 31, 2008, and each January 31
20 thereafter, each manufacturer of covered electronic devices sold
21 in this state shall register with the department and pay a
22 registration fee. The department shall designate a registration fee
23 of either one thousand dollars or five thousand dollars based on
24 the quantity of covered electronic devices sold in the previous
25 calendar year.

1 (3) Beginning January 31, 2009, and each January 31
2 thereafter, each manufacturer of covered electronic devices (a)
3 shall report to the department the total weight of covered
4 electronic devices sold in this state the previous calendar year or
5 (b) may request that the department calculate the total weight of
6 covered electronic devices sold in this state by such manufacturer
7 by using prorated national sales data based on state population.

8 Sec. 5. (1) In addition to the fee required pursuant to
9 section 4 of this act and except as provided in subsection (3) of
10 this section, each manufacturer shall pay, beginning in 2009, to
11 the department an annual fee based on sales in the state. The fee
12 shall be calculated by multiplying the state recycling rate by the
13 weight in pounds of sales of the manufacturer's covered electronic
14 devices sold in this state during the previous calendar year and
15 then multiplying such product by not more than fifty cents per
16 pound.

17 (2) Each manufacturer may include information regarding
18 the weight of covered electronic devices which were collected,
19 refurbished, and donated for reuse. The department shall count the
20 weight of such covered electronic devices as a credit against the
21 amount of fees owed by the manufacturer pursuant to subsection (1)
22 of this section.

23 (3) In lieu of the payment required pursuant to
24 subsection (1) of this section, a manufacturer or group of
25 manufacturers may submit a plan to collect, transport, and recycle

1 covered electronic devices. An individual manufacturer submitting a
2 plan in lieu of such payment shall collect, transport, and recycle
3 a quantity of covered electronic devices equal to the weight in
4 pounds of sales of the manufacturer's covered electronic devices
5 in the state during the previous calendar year multiplied by the
6 state recycling rate. A group of manufacturers jointly submitting a
7 plan in lieu of such payment shall collect, transport, and recycle
8 the sum of the obligations of each participating manufacturer
9 calculated pursuant to this subsection. The plan shall be filed
10 with the annual registration of the manufacturer or group of
11 manufacturers and shall include, at a minimum:

12 (a) The methods that will be used to collect the covered
13 electronic devices, including the names and locations of all
14 collection and consolidation points;

15 (b) An estimate of the number of pounds of covered
16 electronic devices that will be collected annually;

17 (c) The processes and methods that will be used to
18 recycle covered electronic devices that are recovered, including
19 a description of the disassembly, physical recovery operation
20 including but not limited to crushing, shredding, grinding, or
21 glass-to-glass recycling, other operations that will be used, and
22 the names and locations of all facilities to be used;

23 (d) Documentation of audits of each processor used in
24 the plan and documentation of compliance with standards established
25 under section 13 of this act;

1 (e) The accounting and reporting systems that will
2 be employed to track progress toward fulfilling the plan's
3 obligations;

4 (f) The means that will be used to publicize the
5 collection opportunities;

6 (g) The intention of the registrant to fulfill
7 its obligations through operation of its own program, either
8 individually or in partnership with other manufacturers; and

9 (h) The total weight of covered electronic devices
10 collected, transported, and recycled by the registrant or
11 registrants the previous year.

12 (4) Before the fee set forth in subsection (1) of this
13 section may be waived, the plan shall be reviewed and approved
14 by the department. Upon approval of the plan, the manufacturer's
15 payment of the annual fees based upon sales shall be waived. The
16 department may reject the plan in whole or in part and may impose
17 additional requirements as a condition of approval.

18 (5) If a manufacturer fails to comply with all of the
19 conditions and terms of an approved plan, it shall submit the
20 following:

21 (a) A payment to the department to cover the cost of
22 collecting, transporting, and recycling the unmet portion of the
23 manufacturer's obligation. The payment shall be an amount equal to
24 the quantity of the outstanding portion, in pounds, multiplied by
25 not more than fifty cents; and

1 (b) A fee equal to the cost of collecting, transporting,
2 and recycling ten percent of the manufacturer's total obligation.

3 (6) Manufacturers that collect, transport, and recycle
4 covered electronic devices in excess of their obligation may sell
5 credits based on weight to another registrant or apply such excess
6 to the following year's recycling obligation.

7 Sec. 6. (1) A manufacturer which is not in compliance
8 with the Electronics Recycling System Act shall not offer a covered
9 electronic device for sale in this state.

10 (2) Beginning March 1, 2009, no person shall offer
11 for sale in this state a new covered electronic device from a
12 manufacturer that is not in compliance with the act.

13 (3) The department shall maintain a list of all
14 registrants and post the list on its web site. Sellers of products
15 in or into this state shall consult the list prior to selling
16 covered electronic devices in this state. A seller shall be deemed
17 to have complied with the requirements of this subsection if,
18 on the date a covered electronic device was ordered from the
19 manufacturer or its agent, the manufacturer was included on such
20 list.

21 Sec. 7. Beginning January 1, 2009, a manufacturer or
22 retailer shall not sell or offer for sale a covered electronic
23 product in the state unless it is labeled with the manufacturer's
24 brand and the label is permanently affixed and readily visible.

25 Sec. 8. A retailer shall clearly post and provide

1 information provided by the department that describes where and
2 how to recycle covered electronic devices sold by the retailer
3 and opportunities and locations for the collection or return of
4 the covered electronic devices, through the use of a toll-free
5 telephone number and web site, information included in the
6 packaging, or information provided accompanying the sale of a
7 covered electronic device. This information shall be provided in
8 clear written form in English and any other languages deemed to be
9 primary languages by the State Department of Education.

10 Sec. 9. The department shall:

11 (1) By March 1 of each year, establish the state
12 recycling rate;

13 (2) By April 1 of each year, provide each registrant
14 with the amount of its obligation for the fees for that year as
15 prescribed in subsection (1) of section 5 of this act;

16 (3) Receive the fees as prescribed in section 5 of this
17 act from manufacturers for the sale of covered electronic devices;

18 (4) Ensure that collection sites do not place limits on
19 the number of covered electronic devices permitted for drop-off by
20 consumers;

21 (5) Encourage the use of existing collection and
22 consolidation infrastructure, including household waste collection
23 facilities, transfer stations, and landfills, for handling covered
24 electronic devices to the extent that the infrastructure is
25 accessible on a regular and ongoing basis, is cost effective, and

1 meets the requirements of sections 12 and 13 of this act;

2 (6) Encourage the use of existing recyclers to remove the
3 recycled covered electronic devices from the established collection
4 points;

5 (7) Encourage, to the extent possible, the refurbishment
6 and reuse of covered electronic devices and work with for-profit
7 and nonprofit organizations to achieve these goals;

8 (8) Organize and coordinate public education and outreach
9 on recycling of covered electronic devices;

10 (9) Maintain a web site and toll-free telephone number
11 which includes up-to-date listings of the locations where consumers
12 can bring covered electronic devices for recycling; and

13 (10) Use the revenue received from registrants for the
14 sole purpose of carrying out the Electronics Recycling System Act.
15 The department may adjust the fees established in section 8 of
16 this act to cover the department's expenses in carrying out the
17 Electronics Recycling System Act.

18 Sec. 10. (1) The department shall prepare and transmit
19 an annual report to the Legislature and post the report to the
20 department's web site by December 1, 2008, and each December 1
21 thereafter. The annual report shall include, but need not be
22 limited to:

23 (a) A list of all persons the department has designated
24 as approved to receive payments under section 12 of this act
25 for collection, transportation, or recycling of covered electronic

1 devices, the amount of payments it has made to those persons, and
2 the purpose of the payments;

3 (b) The total weight of covered electronic devices
4 collected for recycling in the state the previous calendar year;

5 (c) The total weight of covered electronic devices sold
6 in the state the previous calendar year;

7 (d) The progress made during the previous calendar year
8 toward achieving the overall annual total recovery and recycling
9 goals listed in the report described in subsection (1) of this
10 section;

11 (e) A complete listing of all collection sites for
12 covered electronic devices operating in the state in the previous
13 calendar year, the persons that operated them, and the amount of
14 material, in pounds, collected at each site;

15 (f) An evaluation of the effectiveness of the education
16 and outreach program on recycling of covered electronic devices;
17 and

18 (g) An evaluation of the existing collection and
19 processing infrastructure.

20 (2) The department shall not be held financially liable
21 or responsible for any violation of federal, state, or local
22 law committed by any person to whom the department makes payment
23 pursuant to section 12 of this act.

24 Sec. 11. No fees or costs shall be charged to consumers
25 for the collection, transportation, or recycling of covered

1 electronic devices.

2 Sec. 12. (1) The department shall engage in competitive
3 bidding for the collection, transportation, and recycling of
4 covered electronic devices.

5 (2) The department shall make payments for the
6 collection, transportation, and recycling of covered electronic
7 devices to a successful bidder upon receipt of a completed invoice
8 submitted to the department in the form and manner determined
9 by the department, which invoice shall include, but need not be
10 limited to, proof that:

11 (a) The covered electronic device was collected from a
12 consumer who is a resident of this state or is otherwise located in
13 this state or who provides evidence that the device was purchased
14 in this state after the operative date of this act;

15 (b) The collection, transportation, and recycling of the
16 covered electronic device was conducted in accordance with all
17 local, state, and federal laws, including the Electronics Recycling
18 System Act and the rules and regulations adopted and promulgated
19 under the act; and

20 (c) No fees or costs were charged to the consumer.

21 Sec. 13. (1) Covered electronic devices collected through
22 any program in Nebraska, whether by manufacturers, retailers,
23 for-profit or not-for-profit corporations, or units of government
24 or organized by the department, shall be recycled in a manner that
25 is in compliance with all applicable federal, state, and local

1 laws, rules, regulations, ordinances, and resolutions and shall not
2 be exported for disposal in a manner that poses a significant risk
3 to the public health or the environment.

4 (2) The department shall adopt and promulgate rules and
5 regulations establishing requirements for collectors, transporters,
6 and recyclers to be eligible to receive funds under the Electronics
7 Recycling System Act from the department. All entities shall,
8 at a minimum, demonstrate compliance with the Guidance on
9 Environmentally Sound Management of Electronic Devices as issued
10 by the United States Environmental Protection Agency and available
11 on the agency's web site, in addition to any other requirements
12 mandated by state or federal law.

13 Sec. 14. No person shall:

14 (1) Sell a new covered electronic device if such person
15 is not in full compliance with the Electronics Recycling System
16 Act;

17 (2) Apply for compensation for the collection,
18 transportation, and recycling of covered electronic devices not
19 collected within this state;

20 (3) Use a qualified collection program to recycle covered
21 electronic devices not discarded within this state;

22 (4) Knowingly fail to accurately report any data required
23 to be reported to the department under the act; and

24 (5) Fail to remit any fees the person is required to pay
25 pursuant to the act.

1 Sec. 15. The Attorney General or the department may
2 initiate an action to enforce any provision of the Electronics
3 Recycling System Act. Offenses include: (1) Nonpayment of fees;
4 (2) the sale of a new covered electronic device by any person
5 that is not in full compliance with the act; (3) application for
6 compensation for the collection, transportation, and recycling of
7 covered electronic devices which are not collected within the state
8 or region as provided in section 16 of this act; (4) use of a
9 qualified collection program to recycle covered electronic devices
10 which are not discarded within the state or region as provided
11 in section 16 of this act; and (5) the knowing failure to report
12 or accurately report any data required to be reported to the
13 department under the act.

14 Sec. 16. The department may contract with a third party
15 to carry out its duties and responsibilities under the Act.

16 The department may participate in the establishment and
17 implementation of a regional multistate organization to assist in
18 carrying out the Electronics Recycling System Act.

19 Sec. 17. It is the intent of the Legislature that
20 the Electronics Recycling System Act govern all aspects of the
21 collection and recycling of covered electronic devices. Upon
22 implementation of a federal program to collect and recycle
23 covered electronic devices which is at least as stringent as
24 the Electronics Recycling System Act, the Electronics Recycling
25 System Act shall terminate.

1 Sec. 18. The department shall adopt and promulgate rules
2 and regulations to carry out the Electronics Recycling System Act.

3 Sec. 19. This act becomes operative on September 1, 2007.

4 Sec. 20. If any section in this act or any part of any
5 section is declared invalid or unconstitutional, the declaration
6 shall not affect the validity or constitutionality of the remaining
7 portions.