

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1777*

Short Title: Recovery of Certain I.T. Equipment. (Public)

Sponsors: Representative Gibson.

Referred to: Science and Technology, if favorable, Environment and Natural Resources.

April 19, 2007

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A COMPREHENSIVE AND CONVENIENT
2 INFORMATION TECHNOLOGY COMPUTING, DISPLAY, AND PRINTING
3 DEVICE RECOVERY PROGRAM BASED ON INDIVIDUAL
4 MANUFACTURER RESPONSIBILITY AND THE SHARED RESPONSIBILITY
5 OF CONSUMERS, RETAILERS, AND THE DEPARTMENT OF
6 ENVIRONMENT AND NATURAL RESOURCES.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** Article 9 of Chapter 130A of the General Statutes is amended
10 by adding a new Part to read:

11 "Part 2E. Recovery of Certain Information Technology Equipment.

12 "§ 130A-309.90. Short title.

13 This Part may be cited as the "Manufacturer Responsibility and Consumer
14 Convenience Information Technology Equipment Collection and Recovery Act".

15 "§ 130A-309.91. Findings; purpose.

16 (a) The General Assembly makes the following findings:

17 (1) Information technology computing, display, and printing devices are
18 critical elements to the strength and growth of this State's economic
19 prosperity and our quality of life.

20 (2) Many of these products can be refurbished and reused, and many such
21 obsolete products contain valuable components that can be recycled.

22 (3) Developing and implementing an appropriate State program for
23 information technology computing, display, and printing device
24 recovery is important to our State's resource conservation, worker
25 health and safety, and economic prosperity goals.

26 (b) The purpose of this Part is to establish a comprehensive and convenient
27 information technology computing, display, and printing device recovery program
28 based on individual manufacturer responsibility and the shared responsibility of

1 consumers, retailers, and government. The purposes of this recovery system are to
2 ensure that end-of-life information technology computing, display, and printing devices
3 are responsibly retired, to promote resource conservation through the development of an
4 effective and efficient program for collecting and recycling such products, and to
5 encourage manufacturers to offer such service to consumers at no charge and
6 convenient to consumers.

7 **"§ 130A-309.92. Definitions.**

8 As used in this Part, the following definitions apply:

- 9 (1) Collect or collection. – To physically pick up a covered device at a
10 household or to facilitate the drop-off of a covered device at a
11 collection site identified in the manufacturer's plan, and to transport
12 the covered device from the collection site to a recovery facility.
- 13 (2) Consumer. – Any occupant of a single detached dwelling unit or any
14 occupant of a single unit of a multiple dwelling unit or a household
15 when the occupant uses a covered device primarily for personal or
16 home business use.
- 17 (3) Covered device. – Any electronic computing, display, or printing
18 device, including a desktop or notebook computer, computer monitor,
19 portable computer, printer, and inkjet printer. Covered device does not
20 include a television, including a cathode ray tube or flatpanel based
21 television, a part of a motor vehicle, a personal digital assistant (PDA),
22 or a telephone.
- 23 (4) Manufacturer. – Any person for which one or more of the following
24 apply:
- 25 a. Manufactures covered devices under its own brand for sale.
- 26 b. Manufactures covered devices for sale in this State without
27 affixing a brand.
- 28 c. Resells in this State covered devices produced by other
29 suppliers under its own brand or label.
- 30 d. Imports or exports covered devices into the United States;
31 however, if a company from whom an importer purchases the
32 merchandise has a presence in the United States or has assets in
33 the United States, that company is a manufacturer.
- 34 e. Manufactures covered devices, supplies them to any person
35 within a distribution network that includes wholesalers or
36 retailers in this State, and benefits from the sale of those
37 covered devices through that distribution network.
- 38 (5) Manufacturer's brand. – A manufacturer's name, brand name, or brand
39 logo, and any manufacturer's name, brand name, and brand logo for
40 which the manufacturer has legal responsibility, including any name,
41 brand name, and brand logo of any company that the manufacturer has
42 acquired.
- 43 (6) Person. – Any individual, business entity, partnership, limited liability
44 company, corporation, nonprofit corporation, association,

1 governmental entity, public entity, public benefit corporation, or public
2 authority.

3 (7) Recover. – To reuse, recycle, or dispose.

4 (8) Recoverer. – A person or entity that reuses, recycles, or disposes.

5 (9) Retail sales. – Sales of any product through a sales outlet, via the
6 Internet, by mail order, or by any other means, whether or not the
7 seller has a physical presence in this State. Sales include sales of new,
8 used, refurbished, and other products.

9 (10) Retailer. – A person who owns or operates a business that sells
10 covered devices to a consumer, including sales through a sales outlet,
11 the Internet, or a catalog, whether or not the seller has a physical
12 presence in this State.

13 (11) Sell or sale. – Any transfer for consideration of title including, but not
14 limited to, any transaction conducted through a sales outlet, the
15 Internet or any other similar electronic means, or a catalog. Sell or sale
16 does not include a lease.

17 (12) Television. – Any telecommunication system device that can broadcast
18 and receive moving pictures and sound over a distance, and includes a
19 TV tuner. Television includes a display device that is peripheral to a
20 computer but contains a TV tuner.

21 **"§ 130A-309.93. Scope.**

22 The provisions of this Part apply to covered devices purchased and used by
23 consumers in this State.

24 **"§ 130A-309.94. Responsibilities of manufacturers.**

25 (a) Sales in this State. – No manufacturer shall sell or offer for sale any covered
26 device in this State unless the manufacturer has labeled the covered device in
27 accordance with subsection (b) of this section and has adopted and is implementing a
28 recovery program in accordance with subsection (c) of this section.

29 (b) Label. – A manufacturer of a covered device shall label the device with the
30 manufacturer's brand, and this label shall be permanently affixed and readily visible.

31 (c) Recovery Program. – The manufacturer shall adopt and implement a recovery
32 program that provides for the manufacturer to offer to collect from a consumer and
33 recover each covered device that is labeled with the manufacturer's brand at no charge
34 to the consumer. The manufacturer's recovery plan under this subsection may use
35 existing collection and consolidation infrastructure for handling covered devices and
36 may include electronic recyclers and repair shops, recyclers of other commodities, reuse
37 organizations, nonprofit corporations, retailers, recyclers, or other operations approved
38 for this purpose by the Department. The recovery plan shall offer covered device
39 collection services in each county in the State that are reasonably convenient and
40 available to consumers. A collection service is reasonably convenient for the consumer
41 if the collection service is as convenient for the consumer to use as it is for the
42 consumer to purchase a covered device. Each of the following methods of providing
43 device collection services is reasonably convenient to consumers:

- 1 (1) A mail-back system, offered by the manufacturer or its designee,
2 whereby the consumer can return an end-of-life covered device
3 through the mail, including, but not limited to, a system in which the
4 consumer can go online, print a prepaid shipping label, package the
5 product, and schedule an at-home pickup for shipment back to the
6 manufacturer.
- 7 (2) A physical collection site, whereby the manufacturer or its designee
8 provides one physical collection site at which consumers may return
9 end-of-life covered devices, that remains open and staffed and that is
10 sited in a location that is geographically central to the people served as
11 follows:
- 12 a. One collection site for every 250,000 people in the State; or
13 b. In each county in the State with a population of 250,000 people
14 or more, one additional collection site in each such county for
15 every 250,000 people in that county above 250,000 people.
- 16 (3) An annual collection event, whereby the manufacturer or its designee
17 holds one collection event each calendar year at which consumers may
18 return end-of-life covered devices and that is sited in a location that is
19 geographically central to the people served as follows:
- 20 a. One annual collection event for every 50,000 people in the
21 State; or
- 22 b. In each county in the State with a population of 50,000 people
23 or more, one additional collection event in each such county for
24 every 50,000 people in that county above 50,000 people.
- 25 (d) Education. – Each manufacturer shall, as part of its recovery program under
26 subsection (c) of this section, inform consumers in this State about where and how to
27 return and recover covered devices. Each manufacturer shall include collection and
28 recovery information on its Web site, shall provide such information to the Department,
29 and may also include such information in the covered device's packaging or
30 accompanying the sale of the covered device.
- 31 (e) Annual Report. – No later than January 30 of each year, each manufacturer
32 shall annually report to the Department the number, type, and weight of covered devices
33 collected and recovered during the previous calendar year by each category of covered
34 devices and by brand. The report also shall include documentation verifying whether or
35 not the collection and recovery of such material complies with the provisions of
36 G.S. 130A-309.98.
- 37 (f) Data Security. – A manufacturer is not liable for any damage suffered for data
38 or other information that a consumer leaves on a covered device that is collected or
39 recovered.
- 40 **§ 130A-309.95. Responsibilities and liability of retailers.**
- 41 (a) Conditions for Sales. – No retailer shall sell or offer for sale a covered device
42 in this State unless the covered device is labeled in accordance with
43 G.S. 130A-309.94(b) and such device's manufacturer is included on the Department's

1 list of manufacturers that have adopted and implemented a recovery program under this
2 Part.

3 (b) Data Security. – A retailer is not liable for any damage suffered for data or
4 other information that a consumer leaves on a covered device that is collected or
5 recovered.

6 **"§ 130A-309.96. Responsibilities of Department.**

7 (a) Education. – The Department shall develop a program for the education of
8 consumers about the collection and recovery of covered devices under this Part.

9 (b) Web site. – The Department shall host, or designate another person to host, a
10 Web site for consumers about the collection and recovery of covered devices that shall
11 provide information about and links to manufacturers' collection and recovery programs'
12 information, including their recovery programs, and information about and links to
13 information for noncompliant and other covered devices, including information about
14 collection events, collection sites, and community recycling programs. Inclusion on the
15 Department's Internet Web site is not a determination by the Department that the
16 manufacturer's recovery program or its recovery activities are in compliance with this
17 Part or other laws.

18 (c) Enforcement. – The Department may conduct audits and inspections to
19 determine compliance under this Part. The Department and the Attorney General, as
20 appropriate, shall enforce the provisions of this Part and take enforcement action against
21 any manufacturer, retailer, or recoverer for failure to comply with any provisions of this
22 Part, including assessing appropriate injunctive relief and administrative, civil, and
23 criminal penalties under Article 1 of this Chapter.

24 (d) Financial and Proprietary Information. – Financial or proprietary information
25 submitted to the Department under this Part is exempt from public disclosure as
26 provided under State law

27 (e) Annual Report. – No later than March 1 of each year, the Department shall
28 compile the information from the reports of manufacturers under G.S. 130A-309.94 and
29 any other information it may obtain from an audit or otherwise and issue a consolidated
30 report to the General Assembly and the Environmental Review Commission.

31 (f) Rules. – The Department may adopt any rules that are necessary to
32 implement the provision of this Part.

33 **"§ 130A-309.97. Responsibilities of consumers.**

34 (a) Data Security. – Each consumer is responsible for removing or deleting any
35 data or other information on a covered device prior to its collection for recovery under
36 this Part.

37 (b) Education. – Consumers are encouraged to learn about proper recovery of
38 their end-of-life covered devices by visiting the Department's and the manufacturers'
39 Web sites.

40 **"§ 130A-309.98. Application of other laws; recovery standards, certification of**
41 **recoverers.**

42 (a) Compliance. – All covered devices collected pursuant to this Part shall be
43 recovered in a manner that is in accordance with all applicable federal, State, and local
44 laws and requirements.

1 (b) Recovery Standards. – The Department shall adopt by reference the Institute
2 of Scrap Recycling Industries, Inc.'s, Electronics Recycling Operating Practices, as
3 amended, as the Department's standards for a recovery that is done in an
4 environmentally sound manner and that is protective of worker health and safety.

5 (c) Recoverer Certification. – Recovery of covered devices under this Part may
6 be undertaken only by recoverers that are certified under the Institute of Scrap
7 Recycling Industries, Inc.'s, Recycling Industry Operating Standard, as amended."

8 **SECTION 2.** G.S. 130A-309.14 is amended by adding a new subsection to
9 read:

10 "(a2) The Department of Administration shall review and revise its bid procedures
11 and specifications set forth in Article 3 of Chapter 143 of the General Statutes to require
12 that any person who submits a bid for a contract with a State agency for the purchase or
13 lease of covered devices, as defined in G.S. 130A-309.92, must be in compliance with
14 Part 2E of this Article and to require that, for each State agency that purchases or leases
15 covered devices, the State agency shall require each prospective bidder to certify
16 compliance with this Part, and failure to provide such certification shall render the
17 prospective bidder ineligible to bid on the procurement of covered devices. Further, in
18 considering bids for State contracts for covered devices, in addition to any other
19 preferences provided under Article 3 of Chapter 143 of the General Statutes, the State
20 shall give special preference to manufacturers that have programs to recover other
21 manufacturers' covered devices under Part 2E of this Article, including, but not limited
22 to, collection events, recycling grants, and manufacturer initiatives to take back any
23 covered device with the purchase of a new covered device. The Department of
24 Administration may adopt rules to implement this section."

25 **SECTION 3.** Upon a federal law or any combination of federal laws
26 becoming effective that establishes a national program for the collection and recovery of
27 covered devices as "recovery" and "covered device" are defined in G.S. 130A-309.92,
28 as enacted by Section 1 of this act, that substantially meets the intent of this act, this act
29 is repealed.

30 **SECTION 4.** This act becomes effective January 1, 2008, and applies to
31 covered devices as defined in G.S. 130A-309.92, as enacted by Section 1 of this act, that
32 are sold or offered for sale on or after that date.