**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 96, TITLE 44, SO AS TO ENACT THE “ELECTRONICS RECYCLING ACT”, AND TO PROVIDE FOR THE RECYCLING OF CERTAIN ELECTRONIC DEVICES, TO REQUIRE MANUFACTURERS OF THESE DEVICES TO REGISTER WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, TO PAY REGISTRATION FEES TO FUND THE ADMINISTRATION OF THIS ARTICLE, AND TO PAY FEES TO FUND THE TRANSPORTATION AND RECYCLING OF THESE DEVICES, TO PROHIBIT MANUFACTURERS OF THESE DEVICES FROM SELLING THEM IN THIS STATE UNLESS THE MANUFACTURER IS REGISTERED AND IN COMPLIANCE WITH THIS ARTICLE, TO AUTHORIZE AND ESTABLISH REQUIREMENTS FOR PRIVATE RECYCLING PROGRAMS FOR THESE ELECTRONIC DEVICES, TO REQUIRE THAT ELECTRONIC RECYCLING INFORMATION BE PROVIDED TO CONSUMERS OF THESE DEVICES, AND TO PROHIBIT AFTER DECEMBER 31, 2013 THE DISPOSAL OF THESE ELECTRONIC DEVICES IN SOLID WASTE DISPOSAL FACILITIES.

Whereas, the General Assembly finds that:

(1) Electronics scrap, or ‘e‑scrap’ is one of the fastest growing waste streams in the nation. Each year hundreds of thousands of computers, monitors, televisions, printers, fax machines, copiers, cell phones, and other electronics become obsolete.

(2) E‑scrap poses a complex challenge beyond sheer numbers. E‑scrap is a significant source of heavy metals and organic pollutants in the nation’s waste stream. Some electronics, usually those with cathode ray tubes, circuit boards, batteries and mercury switches, contain hazardous materials including lead, mercury, cadmium, and chromium.

(3) If not properly managed, e‑scrap can be hazardous to human health and the environment.

(4) Recycling is good for the environment by conserving natural resources, saving energy, and reducing the need to build landfills. Recycling is also good for the economy. In South Carolina, recycling has a $6.5 billion impact on the State’s economy. The recycling industry is directly responsible for 15,000 jobs, $1.5 billion in annual personal income, and $69 million in tax revenue each year. Currently, there are about two dozen South Carolina companies that are part of the e‑scrap recycling industry.

(5) Many components of e‑scrap, such as precious metals, have value on the recycling market.

(6) No other recycling system currently exists, either provided by electronics manufacturers, retailers, or others to adequately serve consumers in the State.

(7) The purpose of this article is to enact a comprehensive system for the collection and recycling of electronic scrap when discarded by South Carolina consumers.

(8) Further, it is the purpose of this article for the State to provide a statewide electronics recycling program to protect human health and the environment by:

(a) recovering and recycling valuable components of electronic scrap;

(b) providing business opportunities that support the State’s economy; and

(c) eliminating the disposal of electronics scrap in landfills.

(9) The statewide electronics recycling program will:

(a) be accessible to all consumers that purchase electronic equipment at the retail level;

(b) be convenient and simple for all consumers, i.e., built around collection systems that are not burdensome for consumers;

(c) be free of cost at end‑of‑life;

(d) incorporate existing electronics recyclers in the State.

Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 96, Title 44 of the 1976 Code is amended by adding:

“Article 3

Electronics Recycling

Section 44‑96‑600. This article may be cited as the ‘Electronics Recycling Act’.

Section 44‑96‑610. As used in this article:

(1) ‘Cathode ray tube’ or ‘CRT’ means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device.

(2) ‘Collector’ means a local governmental entity, retailer, manufacturer, or recycler that accepts covered electronic devices for recycling.

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

(4) ‘Consumer’ means an individual who purchases new or refurbished electronic equipment as a retail sale or in a transaction in which a use tax applies. A consumer does not include businesses or other organizations.

(5) ‘Covered electronic device’ or ‘CED’ means desktop or personal computers, computer monitors, portable computers, CRT‑based televisions and non‑CRT‑based televisions or any other similar or peripheral electronic device specified in regulations sold to consumers. A ‘CED’ does not include:

(a) an 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 franchise dealer, including replacement parts for use in a motor vehicle;

(b) an 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;

(c) an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier;

(d) telephones of any type unless they contain a video display area greater than four inches measured diagonally; and

(e) other devices as specified by the department in regulations promulgated pursuant to Section 44‑96‑720;

(6) ‘Covered electronic device recycler’ means a person who is approved by the department to recycle covered electronic devices.

(7) ‘Department’ means the Department of Health and Environmental Control.

(8) ‘Director’ means the Director of the Department of Health and Environmental Control.

(9) ‘Electronics scrap’ or e‑scrap’ means electronic equipment that has been discarded. E‑scrap includes computers, monitors, and peripherals, as well as laptop computers and televisions.

(10) ‘Manufacturer’ means a person who:

(a) manufactures or manufactured for sale in this State covered electronic devices under a brand that it licenses, owns, or owned;

(b) manufactures or manufactured for sale in this State covered electronic devices without affixing a brand;

(c) resells or has resold in this State under its own brand or label a covered electronic device produced by other suppliers, including retail establishments that sell covered electronic devices under their own brand names;

(d) imports or imported into the United States covered electronic devices for sale in this State;

(e) sells at retail a covered electronic device acquired from an importer that is the manufacturer, as defined in subitem (d), and elects to register in lieu of the importer as the manufacturer for these devices;

(f) manufactures or manufactured covered electronic devices, supplies them to a person or persons within a distribution network that includes wholesalers or retailers in this State, and benefits from the sale in this State of these covered electronic devices through this distribution network.

(11) ‘Manufacturer’s brands’ means a manufacturer’s name, brand name, or brand label and all of a manufacture’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.

(12) ‘Market share’ means a manufacturer’s national sales of a particular product category of CEDs expressed as a percentage of the total of all manufacturers’ national sales for such product category of CEDs.

(13) ‘Monitor’ means a separate video display component of a computer that does not contain a tuner, whether sold separately or together with a computer central processing unit or computer box, and that 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.

(14) ‘Orphan device’ means a covered electronic device, excluding CRT based televisions and non‑CRT based television, for which no manufacturer can be identified or for which the manufacturer is no longer in business and has no successor in interest.

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

(16) ‘Portable computer’ means a computer and video display greater than four inches in size that can be carried as one unit by an individual including, but not limited to, a laptop computer.

(17) ‘Purchase’ means the taking, by sale, of title in exchange for consideration.

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

(19) ‘Registrant’ means a manufacturer or group of manufacturers of covered electronic devices who are registered with the department.

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

(21) ‘Retailer’ means a person who makes a retail sale of new or refurbished electronic equipment and includes a manufacturer of electronic equipment who sells that equipment directly to a consumer through any means including, but not limited to, a transaction conducted through a sales outlet, catalog, Internet, or any other similar electronic means.

(22) ‘Sell’ or ‘sale’ means any transfer of title for consideration including, but not limited to, transactions conducted through sales outlets, mail order, or the Internet, or any other similar means, excluding leases.

(23) ‘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, ATSC and HDTV, and having a capability of selecting different broadcast channels and support sound capability.

(24) ‘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, but not limited to, a device that is an integral part of the display that cannot be easily removed from the display by the consumer and that produces the moving image on the screen and includes technology using a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology.

Section 44‑96‑620. (A) Each manufacturer of covered electronic devices shall register with the Department of Health and Environmental Control before July first of each year on a form prescribed by the department and accompanied by a fee as provided for in this section.

(B)(1) A manufacturer who sold CEDs in this State in 2009 shall pay an initial registration fee of five thousand dollars before July 1, 2010.

(2) A manufacturer who began selling CEDs in this State after December 31, 2009, shall pay an initial registration fee of five thousand dollars before July first of the year following its initial sale of CEDs in this State.

(C) In subsequent years all manufacturers shall pay an annual registration renewal fee as determined by the department in accordance with Section 44‑96‑720.

(D) The proceeds of the fees received from registrants in the electronic device recycling program must be remitted to the State Treasurer and deposited in an account established for the administration of this article, unless otherwise provided for in this article.

Section 44‑96‑630. The department shall establish a statewide covered electronics recycling program that establishes statewide per capita collection and recycling goals and identifies any necessary action to achieve these goals. A description of this program must be posted on the department’s website. Every three years the department shall review and if necessary revise the goals and actions needed to achieve these goals.

Section 44‑96‑640. (A) Each manufacturer shall participate in the statewide electronics recycling program to implement and finance the transportation and recycling of covered electronic devices and may offer or participate in a private electronics recycling program.

(B) Each local governmental entity shall participate in the statewide electronics recycling program. A municipality or county may elect to participate in the state‑wide electronics program through its regional recycling authority. Each municipality, county, or regional authority shall:

(1) provide for the collection of CEDs from its residents;

(2) arrange for the transportation of collected CEDs to a covered electronic device recycler; and

(3) make readily available to residents the time and location of the collection of CEDs, and in providing collection and recycling opportunities to its residents, give priority to convenience and accessibility.

(C) Each covered electronic device recycler shall:

(1) cooperate with all municipalities, counties, and regional authorities to provide for the collection and transportation of CEDs;

(2) reimburse a municipality, county, or regional authority for the municipality’s, county’s, or regional authority’s qualified costs of transportation as provided for in regulation;

(3) recycle all collected CEDs in accordance with the minimum standards established in Section 44‑96‑650;

(4)(a) for CEDs other than CRT‑based televisions and non‑CRT‑based televisions, maintain a written log that identifies responsible manufacturers by recording the brand and weight of each CED delivered to a covered electronic device recycler and identified upon receipt as generated by a consumer in this State; and

(b) for CRT‑based televisions and non‑CRT‑based televisions, maintain a written log of the total weight of these televisions delivered each month to a covered electronic device recycler and identified upon receipt as generated by a consumer in this State;

(5) invoice manufacturers quarterly for the reasonable costs of transporting and recycling that the manufacturer is responsible for under this section with these costs calculated for:

(a) CRT‑based and non‑CRT based televisions, on a sliding scale basis that is representative of the manufacturer’s market share of these televisions in the State multiplied by the total pounds recycled. Market share information must be based upon available national market share data;

(b) CEDs other than CRT‑based televisions and non‑CRT‑based televisions on a per pound basis on separate invoices; and

(c) both subitems (a) and (b), not to exceed fifty cents per pound or an amount determined by the department in regulations promulgated pursuant to Section 44‑96‑650;

(6) report to the department all manufacturers that are in arrears for more than ninety days;

(7) file a plan for carrying out the provisions of this section on a form approved by the department.

Nothing in this subsection prohibits a registered manufacturer from entering into a cooperative agreement with a covered electronic device recycler to return the manufacturer’s CEDs for subsequent recycling by the manufacturer if the manufacturer certifies to the department that the CEDs have been recycled in accordance with subsection (E) and the manufacturer reimburses the covered electronic device recycler for the recycler’s qualified costs, as provided for in regulation.

(D) Each manufacturer shall pay the reasonable costs of transportation and recycling incurred by a covered electronic device recycler for the CEDs attributed to the manufacturer and the manufacturer’s pro rata share of orphan devices processed by a covered electronic device recycler. A manufacturer’s pro rata share of orphan devices must be calculated as a manufacturer’s market share for each product category of CEDs for the preceding calendar year divided by the total market share of all registered manufacturers for the same year multiplied by the total, in pounds, of orphan devices returned. The department may suspend the registration of any manufacturer in arrears for more than ninety days. A manufacturer that has had its manufacturer’s registration suspended in accordance with this subsection shall demonstrate that all past due payments, and a penalty equivalent to ten percent of the past due payments, have been paid to the department before seeking reinstatement of the registration. A penalty paid pursuant to this subsection must be remitted to the State Treasurer and deposited into the account established for the administration of this article and used for the purpose of reimbursing covered electronic device recyclers for unpaid qualified expenses in accordance with this section and as provided for in regulation. Any covered electronic device recycler seeking reimbursement for unpaid qualified expenses shall file a request with the department and certify that these expenses are qualified. The department shall reimburse each covered electronic device recycler to the extent that funds are available.

(E) A private program for the collection, transportation, and recycling of CEDs shall comply with the standards established in Section 44‑96‑650. A manufacturer participating in a private program shall file a description of the program with the manufacturer’s annual registration including:

(1) the methods that will be used to collect the covered electronic devices including, but not limited to, the name and locations of all collection and consolidation points;

(2) the processes and methods that will be used to recycle covered electronic devices, including a description of the disassembly and physical recovery operation such as crushing, shredding, grinding, glass‑to‑glass recycling, or other operations that will be used;

(3) the name and location of all facilities to be utilized;

(4) documentation of audits of each processor used in the plan and compliance with processing standards established in Section 44‑96‑650;

(5) a description of the means that will be utilized to publicize the collection opportunities; and

(6) the total weight of CEDs collected, transported, and recycled the previous year.

Section 44‑96‑650. (A) Covered electronic devices collected through any program in this State, whether by manufacturers, retailers, for‑profit or not‑for‑profit corporations, units of government, or organized by the department, 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 risk to the public health or to the environment.

(B) The department shall establish performance requirements for CED recyclers in order for these recyclers to be eligible to receive funds from this CED recycling program. All entities, at a minimum, shall demonstrate compliance with the United States Environmental Protection Agency’s Plug‑In to eCycling Guidelines for Materials Management as issued and available on the agency’s website in addition to any other requirements mandated by state or federal law.

Section 44‑96‑660. After December 31, 2009, a manufacturer or retailer may not sell or offer for sale a covered electronic device in the State unless it is labeled with the manufacturer’s brand, and the label is permanently affixed and readily visible.

Section 44‑96‑670. (A) The department shall post a list of all manufacturers in compliance with the requirements of this article on the department’s website and shall maintain and annually update this list. Retailers shall consult the list before selling covered electronic devices. A retailer may not offer for sale in this State a covered electronic device of a manufacturer that is not in compliance with this article. A retailer is considered to have complied with this requirement 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 department’s website.

(B) Notwithstanding subsection (A), a retailer may sell any CEDs ordered or in stock at the time of the initial posting of the list, regardless of whether the manufacturer of the CED is on the list, until six months after the initial posting.

Section 44‑96‑680. A retailer shall provide consumers with covered electronic device recycling information provided by the department. This information must include a toll‑free telephone number and a website to obtain further information on CED recycling. The information must be included in the packaging of the covered electronic device or must accompany the sale of the covered electronic device. If applicable, each manufacturer shall make readily available to all retailers, selling that manufacturer’s CEDs, information concerning the manufacturer’s private program for the collection, transportation, and recycling of CEDs that has been submitted to the department, in accordance with this article.

Section 44‑96‑690. A collector may only receive seven covered electronic devices at any one time from a consumer and may not charge the consumer any fees or costs for the collection, transportation, or recycling of these covered electronic devices.

Section 44‑96‑700. (A) After December 31, 2013, a consumer must not knowingly place a covered electronic device or any of the components or subassemblies of a covered electronic device in any solid waste disposal facility.

(B) An owner or operator of a solid waste disposal facility is not in violation of subsection (A) if the owner or operator has:

(1) made a good faith effort to comply with this section;

(2) posted, in a conspicuous location at the facility, a sign stating that covered electronic devices or any components of covered electronic devices are not accepted at the facility; and

(3) notified, in writing, all collectors registered to haul solid waste to the facility that covered electronic devices or components of covered electronic devices are not accepted at the facility.

(C) For the purposes of this section, ‘solid waste disposal facility’ means ‘solid waste disposal facility’ as defined in Section 44‑96‑40.

Section 44‑96‑710. The department may issue cease and desist orders for any violation of this article and may suspend or revoke a registration issued by the department under Section 44‑96‑620 upon a showing of cause and after a hearing. Civil proceedings to enforce this article may be brought by the department in a court of competent jurisdiction, which may grant restraining orders and temporary and permanent injunctive relief as may be necessary to secure compliance with this article.

Section 44‑96‑720. The department shall promulgate regulations, in accordance with the Administrative Procedures Act to carry out the provisions of this article. These regulations must include, but are not limited to, provisions that establish:

(1) annual manufacturer registration and renewal fees and such other fees as may be necessary for the administration of this article. All fees charged must be based on factors relative to the costs of administering this article. Fees must be established in amounts to fully cover but not to exceed expenses incurred for the administration of the article, including the cost of any education or outreach necessary to carry out the requirements of this article;

(2) a process for and requirements to become a covered electronic device recycler;

(3) a table of qualified reimbursable costs for covered electronic device recyclers;

(4) standards for operation, accounting, and auditing of covered electronic device recyclers;

(5) a list of covered electronic devices and the list may include additional devices other than those defined in Section 44‑96‑610 including, but not limited to, printers; and

(6) any other requirements necessary to carry out the provisions of this article.

Section 44‑96‑730. Annually, the department shall gather information from manufacturers and prepare a report regarding the status of the electronics recycling program. The department shall submit the report to the General Assembly. The report must contain:

(1) sufficient data, as determined by the department, and analysis of this data to evaluate the effectiveness of the statewide recycling program and the components of the program; and

(2) information on federal law if at any time the federal government establishes a national program for the collection and recycling of electronic devices and the department determines that the federal law substantially meets or exceeds the requirements of this article.

Section 44‑96‑740. Except for Sections 44-96-610, 44‑96‑620, 44‑96‑660, 44‑96‑700, and 44‑96‑720, which take effect upon approval by the Governor, the remaining sections of this article become effective upon the promulgation of regulations by the department as required by this article.”

SECTION 2. This act takes effect upon approval by the Governor, except as otherwise provided for in Section 44-96-740 of the 1976 Code, as added by Section 1 of this act.

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