**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 60 TO TITLE 48 TO ENACT THE “SOUTH CAROLINA MANUFACTURER RESPONSIBILITY AND CONSUMER CONVENIENCE INFORMATION TECHNOLOGY EQUIPMENT COLLECTION AND RECOVERY ACT”; TO PROVIDE CERTAIN FINDINGS BY THE GENERAL ASSEMBLY RELATED TO THE ACT; TO PROVIDE CERTAIN DEFINITIONS RELATED TO THE ACT; TO REQUIRE A MANUFACTURER OF CERTAIN COMPUTING, DISPLAY, OR PRINTING EQUIPMENT TO OFFER A RECOVERY PROGRAM FOR THE COLLECTION OF EQUIPMENT FROM A CONSUMER IN A MANNER CONVENIENT TO THE CONSUMER; TO REQUIRE A MANUFACTURER TO DOCUMENT ITS COMPLIANCE WITH THIS CHAPTER IN AN ANNUAL REPORT TO THE DEPARTMENT; TO LIMIT THE LIABILITY OF A MANUFACTURER FOR DAMAGE SUSTAINED BY A CONSUMER FROM INFORMATION CONTAINED ON EQUIPMENT RETURNED BY THE CONSUMER TO A MANUFACTURER THROUGH THE MANUFACTURER’S RECOVERY PROGRAM; TO REQUIRE A RETAILER TO SELL ONLY EQUIPMENT MANUFACTURED IN COMPLIANCE WITH THIS CHAPTER; TO LIMIT THE LIABILITY OF A RETAILER FOR DAMAGE SUSTAINED BY A CONSUMER FROM INFORMATION CONTAINED ON EQUIPMENT SOLD BY THE RETAILER TO A CONSUMER AND RETURNED TO THE MANUFACTURER OF THE EQUIPMENT THROUGH THE MANUFACTURER’S RECOVERY PROGRAM; TO REQUIRE A MANUFACTURER TO EDUCATE CONSUMERS ABOUT THE MANUFACTURER’S RECOVERY PROGRAM; TO REQUIRE THE DEPARTMENT TO EDUCATE CONSUMERS ABOUT ALL RECOVERY PROGRAMS AVAILABLE IN THIS STATE; TO ENABLE THE DEPARTMENT TO AUDIT A MANUFACTURER TO DETERMINE THE MANUFACTURER’S COMPLIANCE WITH THIS CHAPTER; TO PROVIDE THAT FINANCIAL AND PROPRIETARY INFORMATION SUBMITTED TO THE DEPARTMENT BY A MANUFACTURER OR RETAILER PURSUANT TO THIS CHAPTER IS EXEMPT FROM PUBLIC DISCLOSURE; TO REQUIRE THE DEPARTMENT TO REPORT ANNUALLY INFORMATION PROVIDED BY A MANUFACTURER OR A RETAILER TO THE GENERAL ASSEMBLY; TO REQUIRE THE DEPARTMENT TO DEVELOP STANDARDS FOR RECOVERY PROGRAMS, REPORTING REQUIREMENTS, AND RECOVERER CERTIFICATION THAT COMPLY WITH THE ELECTRONICS RECYCLING OPERATING PRACTICES OF THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES; AND TO PROVIDE THAT THE DEPARTMENT MAY PROMULGATE RULES AND REGULATIONS NEEDED TO IMPLEMENT THIS CHAPTER’S PROVISIONS.

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

SECTION 1. This Chapter may be cited as the “South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act”.

SECTION 2. Title 48 of the 1976 Code is amended by adding:

“CHAPTER 60

South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act

Section 48‑60‑10. The General Assembly finds:

(1) Computing, display, and printing devices are critical to the development of this State’s economy and the promotion of the quality of life of the citizens of this State.

(2) Many of these computing, display, and printing devices can be refurbished and reused, or recycled.

(3) Developing and implementing a system for recovering computing, display, and printing devices promotes resource conservation, public health, public safety, and economic prosperity.

(4) In order to carry out these purposes, the State must establish a comprehensive and convenient recovery program for computing, display, and printing devices based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and government, and that such a program must ensure that end‑of‑life computing, display, and printing devices are retired in a manner that promotes resource conservation through the development of an effective and efficient system for collecting and recycling such products, and to encourage manufacturers to offer such service to consumers conveniently and at no charge.

Section 48‑60‑20. As used in this chapter:

(1) ‘Collect’ or ‘collection’ means to facilitate the delivery of a covered device to a collection site included in the manufacturer’s program, and to transport the covered device for recovery.

(2) ‘Consumer’ means an occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit who has used a covered device primarily for personal or home business use.

(3) ‘Covered device’ means a computing, display, or printing device, including a desktop computer, notebook computer, computer monitor, and printer. This term does not include a motor vehicle part, a personal digital assistant (PDA), or a telephone.

(4) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(5) ‘Manufacturer’ means a person who:

(a) manufactures a covered device under its own brand for sale or without affixing a brand;

(b) resells in this State a covered device produced by another supplier under its own brand or label;

(c) imports covered devices unless a company from which an importer purchases a covered device has a presence or assets in the United States, that company must be considered the manufacturer; or

(d) manufactures a covered device, supplies a covered device to a person within a distribution network that includes wholesalers or retailers in this State, and benefits from the sale of a covered device through that distribution network.

(6) ‘Manufacturer’s brands’ means a manufacturer’s name, brand name, or brand logo for which the manufacturer has legal responsibility.

(7) ‘Person’ means an individual, business entity, partnership, limited liability company, corporation, not‑for‑profit corporation, association, government entity, public benefit corporation, or public authority.

(8) ‘Recover’ means to reuse, recycle, or dispose.

(9) ‘Recoverer’ means a person or entity that reuses, recycles, or disposes.

(10) ‘Retail sale’ means the sale of a product through a sales outlet, the Internet, mail order, or otherwise, whether or not the seller has a physical presence in this State. A retail sale includes the sale of new, used, or refurbished products.

(11) ‘Retailer’ means a person engaged in retail sales.

(12) ‘Sale’ or ‘sell’ means any transfer for consideration of title including, but not limited to, transaction conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not mean leases.

(13) ‘Television’ means any telecommunication system device that can broadcast and receive moving pictures and sound over a distance, and includes a TV tuner. Display devices that are peripheral to a computer but nevertheless contain a TV tuner are considered televisions.

Section 48‑60‑30. A manufacturer may not sell or offer to sell a covered device unless a label indicating the manufacturer’s brand is permanently affixed to the covered device in a readily visible location.

Section 48‑60‑40. A manufacturer may not sell or offer to sell a covered device unless the manufacturer provides a recovery program at no charge. A recovery program must:

(1) require a manufacturer to offer to collect from a consumer a covered device bearing a label as provided in Section 48‑60‑30; and

(2) make such a collection service as convenient to a consumer as the purchase of a covered device from a manufacturer, including:

(a) a mail back system in which a consumer can return an end‑of‑life covered device by mail, including a system in which a consumer can go online, print a prepaid shipping label, package the product, affix the prepaid label to the package, and schedule an at‑home pickup for shipment to the manufacturer;

(b) a collection site centrally located in each county, region, or other locations based on population, as the department may provide; or

(c) collection events held at least annually in each county or region, as determined by the department, at which a consumer may return a covered device;

(3) may use existing collection and consolidation infrastructure for collecting covered devices, including retailers, recyclers, and reuse organizations;

(4) must be described on a manufacturer’s Internet website if a manufacturer maintains an Internet website, and on the packaging on which a covered device is sold.

Section 48‑60‑50. A manufacturer may not be liable for damages arising from information stored on a covered device collected from a consumer under the manufacturer’s recovery program.

Section 48‑60‑60. A retailer may only sell or offer to sell a covered device that:

(1) bears a manufacturer label as provided in Section 48‑60‑30; and

(2) is manufactured by a manufacturer that offers a recovery program as provided in Section 48‑60‑40.

Section 48‑60‑70. A retailer may not be liable for damages arising from information stored on a covered device collected from a consumer under the manufacturer’s recovery program.

Section 48‑60‑80. The department shall provide information about recovery programs available in the State on the department’s Internet website. The website must include information about collection options available, the definition of covered devices, the proper methods for disposing of covered devices, the proper methods for disposing noncovered devices, and links to relevant portions of manufacturer’s Internet websites.

Section 48‑60‑90. The department may conduct audits and inspection of a manufacturer, retailer, or recoverer to determine compliance with this chapter’s provisions, and shall enforce compliance with this chapter’s provisions.

Section 48‑60‑100. Financial and proprietary information submitted to the department by a manufacturer, retailer, or recoverer pursuant to this act is exempt from public disclosure.

Section 48‑60‑110. The department shall report annually information provided by manufacturers and retailers to the General Assembly before March first, beginning in 2010.

Section 48‑60‑120. The department shall develop standards for recovery programs, reporting requirements, and recoverer certification that at a minimum must comply with the Electronics Recycling Operating Practices of the Institute of Scrap Recycling Industries.

Section 48‑60‑130. The department shall promulgate rules and regulations needed to implement this chapter’s provisions.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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