AMENDED

March 2, 2010

**H. 4093**

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**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.

Amend Title To Conform

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

SECTION 1. 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 48‑60‑05. This Chapter may be cited as the ‘South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act’.

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

(1) Televisions, computing, 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 televisions, computing, and printing devices can be refurbished and reused, or recycled.

(3) Developing and implementing a system for recovering televisions, computing, 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 televisions, computing, 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 televisions, computing, 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) ‘Computer Manufacturer’ means a person who:

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

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

(c) imports covered computer 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 computer 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.

(3) ‘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.

(4) ‘Covered Computer Device’ means a desktop or notebook computer, computer monitor, or printing device marketed and intended for use by a consumer, but does not include a covered television device.

(5) ‘Covered Devices’ means a covered computer device and a covered television device marketed and intended for use by a consumer. ‘Covered Device,’ ‘Covered Computer Device’, and ‘Covered Television Device’ do not include any of the following:

(a) A covered 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.

(b) A covered device that is functionally or physically a part of, or connected to, or integrated within equipment or a system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including but not limited to diagnostic, monitoring, control or medical products as defined under the federal Food, Drug, and Cosmetic Act, or equipment used for security, sensing, monitoring, anti‑terrorism, emergency services purposes or equipment designed and intended primarily for use by professional users.

(c) A covered 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, air purifier, water heater or exercise equipment.

(d) telephones of any type including mobile telephones, a personal digital assistant (PDA), a global positioning systems (GPS), and a hand‑held gaming device.

(6) ‘Covered Television Device’ means any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include a covered computer device.

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

(8) ‘Manufacturer’s brands’ means a manufacturer’s name, brand name either owned or licensed by the manufacturer, or brand logo for which the manufacturer has legal responsibility.

(9) ‘Market share’ means a television manufacturer’s obligation to recycle discarded televisions. A television manufacturer’s market share is the television manufacturer’s prior year’s sales of televisions by weight as calculated by the department divided by all manufacturers’ prior year’s sales for all televisions by weight as calculated by the department. Market share may be expressed as a percentage, a fraction, or a decimal fraction.

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

(11) ‘Recover’ means to reuse or recycle.

(12) ‘Recoverer’ means a person or entity that reuses or recycles.

(13) ‘Retail sale’ means the sale of a new 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 products.

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

(15) ‘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.

(16) ‘Television’ means any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying of television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include a covered computer device.

(17) ‘Television Manufacturer’ means a person who:

(a) manufactures covered television devices under a brand that it licenses or owns, for sale in this state;

(b) manufactures covered television devices without affixing a brand for sale in this state;

(c) resells into this state a covered television device under a brand it owns or licenses produced by other suppliers, this includes retail establishments that sell covered television devices under a brand the retailer owns or licenses;

(d) imports covered television 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*;*

(e) manufactures covered television 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 television devices through such distribution network; or

(f) assumes the responsibilities and obligations of a television manufacturer under this chapter. In the event the television manufacturer is one who manufactures, sells, or resells under a brand it licenses, the licensor or brand owner of such brand shall not be included in the definition of television manufacturer under items (a) or (c) above.

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

Section 48‑60‑40. (A) A computer manufacturer may not sell or offer to sell a covered computer device unless the computer manufacturer provides a recovery program at no charge or provides a financial incentive of equal or greater value, such as a coupon. A recovery program must:

(1) require a computer manufacturer to offer to collect from a consumer a covered computer 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 computer device from a computer manufacturer. A computer manufacturer may utilize 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, and affix the prepaid label to the package for deposit with the United States Postal Service or other carrier selected by the computer manufacturer. If the computer manufacturer does not provide a mail back system, the computer manufacturer must provide the following:

(a) collection site centrally located in each county, region, or other locations based on population, as the department may determine in coordination with the computer manufacturer; and

(b) collection events held at least annually in each county or region, as determined by the department in consultation with the computer manufacturer, at which a consumer may return covered devices.

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

(4) Computer manufacturers may work collectively and cooperatively to offer collection services to consumers.

(5) A recovery program must be described on a computer manufacturer’s Internet website if a manufacturer maintains an Internet website.

(B) Collection events under this section must accept any covered computer device.

Section 48‑60‑50. (A) No television manufacturer shall sell or offer for sale a covered television device in this state unless the television manufacturer provides a recovery program at no charge or provides a financial incentive of equal or greater value, such as a coupon.

(B) The obligation to recycle covered television devices shall be allocated to each television manufacturer based on the television manufacturer’s market share multiplied by the total pounds of televisions recycled by all television manufacturers during the previous program year. Beginning on the effective date of this chapter through June 30, 2012, a television manufacturer must annually recycle or arrange for the recycling of covered televisions. Beginning program year 2012, a television manufacturer must annually recycle or arrange for the recycling of its market share of covered television devices pursuant to this section. The program year for a recovery program under this section is the state’s fiscal year*.*

(C) A television manufacturer may fulfill the requirements of this section either individually or in participation with other television manufacturers. A recovery program may use existing collection and consolidation infrastructure for collecting covered television devices, including retailers, recyclers, and reuse organizations*.*

(D) A television manufacturer shall provide the department with contact information for the manufacturer’s designated agent or employee whom the department may contact for information related to the manufacturer’s compliance with the requirements of this section*.*

(E) The department shall set reporting dates and notify each television manufacturer of its market share recycling obligation annually. A television manufacturer shall report to the department annually the total weight of televisions the television manufacturer sold, collected, and recycled in the state during the previous program year*.* The department shall use state‑specific television sales data or national television sales data availablefrom the television manufacturers or commercially available analytical sources to determine each television manufacturer’s recovery responsibilities for televisions based on the television manufacturer’s market share. If the department uses national sales data, the department shall extrapolate data for the state from national data on the basis of the state’s share of national population. The department shall seek to establish the most accurate determination of each television manufacturer’s market share and may rely on supplemental sources of information to achieve this goal.

Section 48‑60‑60. A computer or television manufacturer may not be liable for damages arising from information stored on a covered device collected from a consumer under the manufacturer’s recovery programs of this chapter.

Section 48‑60‑70. (A) 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 Sections 48‑60‑40 and 48‑60‑50.

(B) The requirements of this section do not apply to a television sold by a retailer for less than one hundred dollars.

Section 48‑60‑80. A retailer may not be liable for damages arising from information stored on any covered device collected from a consumer under the manufacturer’s recovery program.

Section 48‑60‑90. (A) After July 1, 2011, a consumer must not knowingly place or discard a covered device or any of the components or subassemblies of a covered device in any waste stream that is to be disposed of in a solid waste landfill.

(B) An owner or operator of a solid waste landfill must not knowingly accept for disposal loads composed primarily of covered devices.

(C) The owner or operator of a solid waste landfill must post, in a conspicuous location at the landfill, a sign stating that covered devices or any components of covered devices are not accepted for disposal at the landfill.

Section 48‑60‑100. The department shall provide information to the public on its Internet website regarding the provisions of the chapter and the prohibition on disposing of covered devices in a solid waste landfill. The department shall also 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 computer or television manufacturer’s Internet websites.

Section 48‑60‑110. The department may conduct audits and inspection of a computer or television manufacturer, retailer, or recoverer to determine compliance with this chapter’s provisions, and shall enforce compliance with this chapter’s provisions.

Section 48‑60‑120. Financial and proprietary information submitted to the department pursuant to this act is exempt from public disclosure.

Section 48‑60‑130. The department shall report annually information provided by manufacturers to the General Assembly before March first, beginning in 2012.

Section 48‑60‑140. 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 or other comparable industry or governmental standards. The department must include standards for environmentally responsible export of covered devices.

Section 48‑60‑150. The department shall promulgate rules and regulations needed to implement this chapter’s provisions including, but not limited to, manufacturers’ plans and manufacturers’ annual reports. The department may propose by regulation, which must be submitted to the General Assembly pursuant to the Administrative Procedures Act, an initial registration fee or annual fee, or both, on computer or television manufacturers of covered devices, the proceeds of which must be used solely for the purposes of implementing the provisions of this chapter. Any fee proposed by the department must be graduated based on the computer manufacturer’s volume of sales in this State. Any registration fee or annual fee for television manufacturers must be based on market share as defined in this chapter. A manufacturer of a covered device that sells one thousand or less per year is exempt from any fee.”

SECTION 2. 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 3. This act takes effect July 1, 2011; provided however, a retailer must be allowed an additional period of six months from the effective date to sell any inventory purchased prior to the effective date before having to comply with the applicable provisions of this act.

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