**South Carolina General Assembly**

118th Session, 2009-2010

**A178, R212, H4093**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Loftis, Mitchell, H.B. Brown, Bedingfield, Anthony, G.A. Brown, Crawford, Dillard, Harvin, Hiott, Knight, Lowe, J.R. Smith, Toole, D.C. Moss, Sellers, Brady, Funderburk, Hodges, Horne, Gunn, Bowers, Hutto and Stavrinakis

Document Path: l:\council\bills\agm\19487ab09.docx

Introduced in the House on May 20, 2009

Introduced in the Senate on March 9, 2010

Last Amended on April 28, 2010

Passed by the General Assembly on May 6, 2010

Governor's Action: May 19, 2010, Signed

Summary: Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/20/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\05-20-09.docx)‑9

5/20/2009 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h:\HJ%20Archive\2009\05-20-09.docx)‑10

5/20/2009 House Member(s) request name added as sponsor: D.C.Moss, Sellers

2/2/2010 House Member(s) request name added as sponsor: Brady

2/3/2010 House Member(s) request name added as sponsor: Funderburk

2/4/2010 House Member(s) request name added as sponsor: Hodges

2/4/2010 House Committee report: Favorable with amendment **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h:\HJ%20Archive\2010\02-04-10.docx)‑14

2/17/2010 House Member(s) request name added as sponsor: Horne

2/18/2010 House Member(s) request name added as sponsor: Gunn, Bowers

2/24/2010 House Member(s) request name added as sponsor: Hutto

2/25/2010 House Member(s) request name added as sponsor: Stavrinakis

2/25/2010 House Debate adjourned until Tuesday, March 2, 2010 [HJ](file:///h:\HJ%20Archive\2010\02-25-10.docx)‑54

3/2/2010 House Amended [HJ](file:///h:\HJ%20Archive\2010\03-02-10.docx)‑44

3/2/2010 House Read second time [HJ](file:///h:\HJ%20Archive\2010\03-02-10.docx)‑63

3/3/2010 House Read third time and sent to Senate [HJ](file:///h:\HJ%20Archive\2010\03-03-10.docx)‑8

3/3/2010 Scrivener's error corrected

3/9/2010 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2010\03-09-10.docx)‑4

3/9/2010 Senate Referred to Committee on **Agriculture and Natural Resources** [SJ](file:///h:\SJ%20Archive\2010\03-09-10.docx)‑4

4/15/2010 Senate Committee report: Favorable with amendment **Agriculture and Natural Resources** [SJ](file:///h:\SJ%20Archive\2010\04-15-10.docx)‑9

4/16/2010 Scrivener's error corrected

4/22/2010 Senate Committee Amendment Adopted [SJ](file:///h:\SJ%20Archive\2010\04-22-10.docx)‑49

4/22/2010 Senate Read second time [SJ](file:///h:\SJ%20Archive\2010\04-22-10.docx)‑49

4/28/2010 Senate Amended [SJ](file:///h:\SJ%20Archive\2010\04-28-10.docx)‑25

4/28/2010 Senate Read third time and returned to House with amendments [SJ](file:///h:\SJ%20Archive\2010\04-28-10.docx)‑25

5/6/2010 House Concurred in Senate amendment and enrolled [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑37

5/6/2010 House Roll call Yeas‑97 Nays‑0 [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑37

5/13/2010 Ratified R 212

5/19/2010 Signed By Governor

5/26/2010 Effective date See Act for Effective Date

6/9/2010 Act No. 178

**VERSIONS OF THIS BILL**

[5/20/2009](file:///p:\pprever\2009-10\4093_20090520.docx)

[2/4/2010](file:///p:\pprever\2009-10\4093_20100204.docx)

[3/2/2010](file:///p:\pprever\2009-10\4093_20100302.docx)

[3/3/2010](file:///p:\pprever\2009-10\4093_20100303.docx)

[4/15/2010](file:///p:\pprever\2009-10\4093_20100415.docx)

[4/16/2010](file:///p:\pprever\2009-10\4093_20100416.docx)

[4/22/2010](file:///p:\pprever\2009-10\4093_20100422.docx)

[4/23/2010](file:///p:\pprever\2009-10\4093_20100423.docx)

[4/28/2010](file:///p:\pprever\2009-10\4093_20100428.docx)

(A178, R212, H4093)

**AN ACT** **TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 60 TO TITLE 48 SO AS TO ENACT THE “SOUTH CAROLINA MANUFACTURER RESPONSIBILITY AND CONSUMER CONVENIENCE INFORMATION TECHNOLOGY EQUIPMENT COLLECTION AND RECOVERY ACT”; TO PROVIDE FINDINGS BY THE GENERAL ASSEMBLY; TO PROVIDE DEFINITIONS; TO REQUIRE A CERTAIN LABEL ON A COMPUTER OR TELEVISION DEVICE SOLD BY A MANUFACTURER; TO PROVIDE A COMPUTER MANUFACTURER MAY NOT SELL OR OFFER TO SELL A COVERED COMPUTER DEVICE UNLESS THE MANUFACTURER OFFERS A CERTAIN RECOVERY PROGRAM, AND TO DESCRIBE REQUIREMENTS FOR THIS PROGRAM; TO PROVIDE A TELEVISION MANUFACTURER MAY NOT SELL OR OFFER TO SELL A COVERED TELEVISION DEVICE UNLESS THE MANUFACTURER OFFERS A CERTAIN RECOVERY PROGRAM, AND TO DESCRIBE REQUIREMENTS FOR THIS PROGRAM; TO PROVIDE 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 PROGRAM; TO PROVIDE A RETAILER ONLY MAY SELL A COVERED DEVICE THAT MEETS CERTAIN REQUIREMENTS; TO PROVIDE AFTER JULY 1, 2011, A CONSUMER MAY NOT DISPOSE OF A COVERED DEVICE IN A CERTAIN MANNER; TO PROVIDE AN OWNER OR OPERATOR OF A SOLID WASTE LANDFILL MAY NOT KNOWINGLY ACCEPT COVERED DEVICES, AMONG OTHER THINGS; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL PROVIDE CERTAIN INFORMATION ABOUT THE DISPOSAL OF COVERED DEVICES; TO PROVIDE THE DEPARTMENT MAY CONDUCT AUDITS AND INSPECTIONS OF A COMPUTER OR TELEVISION MANUFACTURER, RETAILER, OR RECOVERER TO DETERMINE COMPLIANCE WITH THIS CHAPTER; TO EXEMPT FINANCIAL AND PROPRIETARY INFORMATION SUBMITTED TO THE DEPARTMENT PURSUANT TO THIS CHAPTER FROM THE FREEDOM OF INFORMATION ACT; TO REQUIRE THE DEPARTMENT INCLUDE IN ITS ANNUAL SOLID WASTE REPORT INFORMATION PROVIDED BY MANUFACTURERS ON RECOVERY PROGRAMS; TO PROVIDE COVERED DEVICES MUST BE RECOVERED IN A MANNER THAT COMPLIES WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REQUIREMENTS, AND CERTAIN RESPONSIBLE RECYCLING PRACTICES; AND TO PROVIDE THE DEPARTMENT SHALL PROMULGATE CERTAIN REGULATIONS.**

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

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

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 the program must ensure that end‑of‑life televisions, computing, and printing devices are disposed of in a manner that promote resource conservation through the development of an effective and efficient system for collection and recycling, and to encourage manufacturers to offer convenient collection and recycling service to consumers 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; if 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, antiterrorism, 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; or

(d) telephones of any type, including mobile telephones, a personal digital assistant (PDA), a global positioning system (GPS), or 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, plasma, liquid crystal display, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, 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) ‘Person’ means an individual, business entity, partnership, limited liability company, corporation, not‑for‑profit corporation, association, government entity, public benefit corporation, or public authority.

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

(11) ‘Recoverer’ means a person or entity that reuses or recycles a covered device.

(12) ‘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.

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

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

(15) ‘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, plasma, liquid crystal display, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include a covered computer device.

(16) ‘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, including retail establishments that sell covered television devices under a brand the retailer owns or licenses;

(d) imports covered television devices; if 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 the 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 the 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 in this State 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 the collection service as convenient to a consumer as the purchase of a covered computer device from a computer manufacturer as follows:

(a) 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.

(b) If the computer manufacturer does not provide a mail-back system, the computer manufacturer must provide collection sites or collection events, or both, that are centrally located in a county, region, or other locations based on population. Computer manufacturers shall work in coordination with the department to determine an appropriate number of collection sites or collection events, or both.

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

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

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

(E) 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) Beginning on the effective date of this chapter through June 30, 2012, a television manufacturer annually must recycle or arrange for the recycling of covered televisions.

(1) Beginning program year 2012, a television manufacturer annually must recycle or arrange for the recycling of its market share of covered television devices pursuant to this section*.* Market share, as used in this chapter, is the total weight of the manufacturer’s televisions that were sold at retail in the United States to individuals during the previous program year, multiplied by the population fraction of South Carolina to the United States population, divided by the total weight of all of the televisions that were sold at retail to individuals in South Carolina during the previous program year. The individual recycling obligation for each television manufacturer is the total pounds of television recycled by all television manufacturers during the previous program year multiplied by the manufacturer’s market share as calculated above. The population fraction is determined by using the most recent United States Census data for the total population of South Carolina divided by the total population of the United States.

(2) The department shall notify each television manufacturer of its market share recycling obligation. A television manufacturer shall provide the department information necessary for the department to calculate market share and to determine each television manufacturer’s recycling obligation.

(3) A television manufacturer shall report to the department the total weight of manufacturer’s televisions sold at retail in the United States, the state specific television sales data annually calculated using the population fraction of South Carolina to the United States population, and the total weight of televisions collected and recycled in the State during the previous program year*.*

(4) 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*.*

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 only may 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, at the gate, knowingly accept, for disposal, loads containing more than an incidental amount 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.

(D) The owner or operator of a solid waste landfill must notify, in writing, all haulers delivering solid waste to the landfill that covered devices or any components of covered devices are not accepted for disposal at the landfill.

Section 48‑60‑100. (A) 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 also 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 computer or television manufacturer’s Internet websites.

(B) Any local government eligible to participate in the statewide Electronic Equipment Recycling Services (EERS) contract with the South Carolina Budget and Control Board may not charge a consumer a fee at any point of the recovery process.

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 may establish by regulation administrative fines for violations of this chapter.

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 include in its annual solid waste report information provided by manufacturers on recovery programs offered pursuant to this chapter.

Section 48‑60‑140. (A) Covered devices must be recovered in a manner that complies with all applicable federal, state, and local requirements.

(B) Recoverers must at a minimum comply with the responsible recycling practices (R2/RIOS) developed by the Institute of Scrap Recycling Industries or other comparable industry or governmental standards.

Section 48‑60‑150. The department shall promulgate regulations needed to implement this chapter’s provisions including, but not limited to, reporting requirements, manufacturers’ plans, manufacturers’ annual reports, and standards for operations of recovery facilities. 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.”

**Severability clause**

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, the 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.

**Time effective**

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.

Ratified the 13th day of May, 2010.

Approved the 19th day of May, 2010.

\_\_\_\_\_\_\_\_\_\_