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AMENDED

June 4, 2013

**H. 3847**

Introduced by Reps. Hiott and Hardwick

S. Printed 6/4/13--S.

Read the first time April 30, 2013.

**A** **BILL**

TO AMEND SECTION 48‑60‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR TERMS USED IN THE SOUTH CAROLINA MANUFACTURER RESPONSIBILITY AND CONSUMER CONVENIENCE INFORMATION TECHNOLOGY EQUIPMENT COLLECTION AND RECOVERY ACT OF 2010, SO AS TO ADD, AMONG OTHER DEFINITIONS, TERMS RELATED TO COMPUTER MONITORS; TO AMEND SECTION 48‑60‑30, RELATING TO REQUIREMENTS OF CERTAIN MANUFACTURERS TO PROVIDE LABELS ON DEVICES INDICATING THE BRAND, SO AS TO REQUIRE COMPUTER MONITOR MANUFACTURERS TO DO SO; TO AMEND SECTION 48‑60‑50, RELATING TO THE REQUIREMENT FOR TELEVISION MANUFACTURERS TO PROVIDE A RECOVERY PROGRAM FOR RECYCLING TELEVISIONS, SO AS TO REQUIRE COMPUTER MONITOR MANUFACTURERS TO DO SO; BY ADDING SECTION 48‑60‑55 SO AS TO PROVIDE FOR THE CREATION AND OPERATION OF STATEWIDE CONSUMER ELECTRONIC DEVICE STEWARDSHIP PROGRAMS AND THE DEVELOPMENT AND IMPLEMENTATION OF RELATED RECOVERY PLANS, INCLUDING REQUIREMENTS FOR APPROVAL OF PLANS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AND TO ESTABLISH OTHER RESPONSIBILITIES AND AUTHORITY OF THE DEPARTMENT AND REQUIREMENTS OF REGULATED MANUFACTURERS; TO AMEND SECTION 48‑60‑60, RELATING TO PROTECTION FROM LIABILITY FOR CERTAIN DAMAGES, SO AS TO APPLY TO COMPUTER MONITOR MANUFACTURERS; TO AMEND SECTION 48‑60‑70, RELATING TO RETAILER SALE REQUIREMENTS, SO AS TO PROHIBIT RETAILERS FROM SELLING DEVICES MADE BY MANUFACTURERS WHO DO NOT COMPLY WITH THE REQUIREMENTS OF SECTION 48‑60‑55; TO AMEND SECTION 48‑60‑90, RELATING TO DISCARDING OR PLACING COVERED DEVICES IN A WASTE STREAM, TO PROHIBIT COMPONENTS OF COVERED DEVICES; TO AMEND SECTION 48‑60‑100, RELATING TO RECOVERY PROCESS FEES, SO AS TO LIMIT THE ABILITY OF LOCAL GOVERNMENTS TO CHARGE CERTAIN FEES; TO AMEND SECTION 48‑60‑140, RELATING TO REQUIREMENTS THAT RECOVERY PROCESSES COMPLY WITH STATE AND FEDERAL LAW, SO AS TO REQUIRE RECYCLING OR REUSE FACILITIES TO MAINTAIN CERTIFICATION, TO IDENTIFY APPROVED CERTIFICATION PROGRAMS, AND TO REQUIRE MANUFACTURERS AND GOVERNMENTS ONLY TO USE FACILITIES THAT HAVE APPROPRIATE CERTIFICATION; TO AMEND SECTION 48‑60‑150, RELATING TO THE DEPARTMENT’S PROMULGATION OF REGULATIONS, SO AS TO ELIMINATE THE RIGHT TO CHARGE CERTAIN FEES TO MANUFACTURERS; BY ADDING SECTION 48‑60‑160 SO AS TO PROVIDE FOR CERTAIN FEES AND PENALTIES; BY ADDING SECTION 48‑60‑170 SO AS TO SET FORTH THE PURPOSES OF THE CHAPTER AND CERTAIN LIMITATIONS ON LIABILITY; TO PROVIDE EXPIRATION DATES FOR REGULATIONS PROMULGATED PURSUANT TO THIS CHAPTER, AND TO MAKE TECHNICAL CORRECTIONS; AND TO REPEAL SECTION 48-60-50 JUNE 30, 2014, AND CERTAIN OTHER PROVISIONS JUNE 30, 2020.

Amend Title To Conform

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

SECTION 1. Section 48‑60‑20 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“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; provided that if a company from which an importer purchases a covered computer 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 computer 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) ‘Computer monitor manufacturer’ means a person who:

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

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

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

(d) manufactures a covered computer monitor device, supplies a covered computer monitor 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.

(4) ‘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.

(5) ‘Consumer electronic device stewardship program’ means a recycling effort established by the representative organization or manufacturer of a covered television device or covered computer monitor device.

~~(4)~~(6) ‘Covered computer device’ means a desktop, laptop or notebook computer~~, computer monitor,~~ or a printing device marketed and intended for use by a consumer, but does not include a covered television device.

(7) ‘Covered computer monitor device’ means a display device typically manufactured without an internal tuner that can display pictures and sound and is designed for use with a desktop computer.

~~(5)~~(8) ‘Covered devices’ means a covered computer device, covered computer monitor device, and a covered television device marketed and intended for use by a consumer. ‘Covered device’, ‘covered computer device’, ‘covered computer monitor 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~~ a 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, or 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, but not limited to, mobile telephones, a personal digital assistant (PDA), a global positioning system (GPS), or a hand‑held gaming device; or

(e) a plastic, wood, or composite case that once held a covered device or was a subassembly of a covered device but is void of any electronics, leaded glass, or metal electronic components.

~~(6)~~(9) ‘Covered television device’ means ~~any~~ an 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~~ but not limited to, ~~any~~ a 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)~~(10) ‘Department’ means the South Carolina Department of Health and Environmental Control.

~~(8)~~(11) ‘Manufacturer’s brands’ means a manufacturer’s name, brand name either owned or licensed by the manufacturer, or brand logo for which the manufacturer otherwise has legal responsibility.

~~(9)~~(12) ‘Person’ means an individual, business entity, partnership, limited liability company, corporation, not‑for‑profit corporation, association, government entity, public benefit corporation, or public authority.

(13) ‘Program’ means a consumer electronic device stewardship program.

(14) ‘Program year’ means the state’s fiscal year.

(15) ‘Representative organization’ means an organization created to develop and oversee implementation of a statewide plan consisting of one or more consumer electronic device stewardship programs, both in the State and in other jurisdictions that authorize such a representative organization.

~~(10)~~(16) ‘Recover’ means to reuse or recycle.

~~(11)~~(17) ‘Recoverer’ means a person ~~or entity~~ that reuses or recycles a covered device.

~~(12)~~(18) ‘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)~~(19) ‘Retailer’ means a person engaged in retail sales.

~~(14)~~(20) ‘Sale’ or ‘sell’ means ~~any~~ a 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)~~(21) ‘Television’ means ~~any~~ an 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~~ but not limited to, ~~any~~ a 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)~~(22) ‘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; provided that 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~~ 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 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~~ If the television manufacturer is one who manufactures, sells, or resells under a brand it licenses, the licensor or brand owner of the brand ~~shall~~ must not be included in the definition of television manufacturer under items (a) or (c) ~~above~~.”

SECTION 2. Section 48‑60‑30 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

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

SECTION 3. Section 48‑60‑50 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“Section 48‑60‑50. (A) No television manufacturer or computer monitor manufacturer shall sell or offer for sale a covered television device or covered computer monitor device in this State unless the television manufacturer or computer monitor 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,~~ For the program year 2014, which begins July 1, 2013, a television manufacturer or computer monitor manufacturer ~~annually must~~ shall recycle or arrange for the recycling of its market share of covered television devices or covered computer monitor devices pursuant to this section. Market share, as used in this chapter, is the total weight of the manufacturer’s televisions or computer monitors 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 or computer monitors 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~~ calculated by multiplying 4.8 million pounds ~~of television recycled by all television manufacturers during the previous program year multiplied~~ by the manufacturer’s market share as calculated above. The individual recycling obligation for each computer monitor manufacturer is calculated by multiplying 720,000 pounds 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. A television manufacturer or computer monitor manufacturer may use covered televisions or covered computer monitor devices to meet their recycling obligation.

(2) The department shall notify each television manufacturer and computer monitor manufacturer of its market share recycling obligation by September 15, 2013. A television manufacturer and computer monitor 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 and computer monitor manufacturer shall report to the department the total weight of manufacturer’s televisions or computer monitors sold at retail in the United States, the state specific television or computer monitor sales data annually calculated using the population fraction of South Carolina to the United States population, and the total weight of ~~televisions~~ covered television devices and covered computer monitor devices collected and recycled in the State during the previous program year. If a computer monitor manufacturer or a television monitor manufacturer does not provide the department the necessary information for the department to calculate market share then the department shall use the best available national market share data to make this calculation.

~~(4)~~ ~~The program year for a recovery program under this section is the state’s fiscal year.~~

(C) A television manufacturer or computer monitor 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 or covered computer monitor devices, including retailers, recyclers, and reuse organizations. Every manufacturer shall provide the department a report at the beginning of each program year, regarding compliance with the obligations established by the department.

(D) A television manufacturer or computer monitor 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 4. Chapter 60, Title 48 of the 1976 Code is amended by adding:

“Section 48‑60‑55. (A) On July 1, 2014, and annually thereafter, a television manufacturer or computer monitor manufacturer shall either:

(1) join a representative organization created by manufacturers of covered electronic devices to establish fair and reasonable policies to be applied in the State and to provide a plan to the department in accordance with this section; or

(2) notify the department of its intent to fulfill its obligations under this chapter by implementing a program under subsection (K).

(B) A representative organization shall submit a plan for the operation of a statewide consumer electronic device stewardship program described in this section to the department for approval annually. The initial plan must be submitted to the department by March 3, 2014, and annually ninety days prior to the beginning of the program year in subsequent years. The plan must include detail on how one or more eligible companies or covered electronic device stewardship programs operating within the plan will:

(1) provide for the recycling of all used covered television devices and used covered computer monitor devices collected by participating local governments specified in the plan based on the proportionate membership of the representative organization;

(2) work with a representative organization, the department, and local government recycling representatives to provide recycling services of covered television devices and covered computer monitor devices and to provide consumers with information and educational materials regarding the program to promote the recycling and reuse of used covered television devices and used covered computer monitor devices;

(3) achieve environmentally sound management for covered television devices and covered computer monitor devices that are collected for reuse and recycling; and

(4) incorporate economic arrangements that minimize costs to participating manufacturers, consistent with Section 48‑60‑170.

(C) The representative organization plan must:

(1) document how the collection component of the plan was developed with input from local government recycling representatives and other stakeholders interested in electronics recycling, especially recycling of used covered television devices and used covered computer monitor devices;

(2) identify each manufacturer and local government participating in the consumer electronic device stewardship programs included in the representative organization plan and the brands of consumer electronic devices sold in the State that are covered by the programs;

(3) provide a mechanism for making the most current list of participating manufacturers available to the department;

(4) include incentives to ensure convenient mechanisms to collect used consumer electronic devices throughout the State; and

(5) explain why a disruption of commercial activity that may arise from implementation of the plan is consistent with fulfilling the intent of this chapter and provide sufficient information to allow the department to confirm the consistency of the plan with this chapter by review of the plan’s financial and operational elements.

(D) Representative organization’s annual plans must include, but not be limited to, the following:

(1) a list of collection programs and locations available to consumers in the State;

(2) a description of the methods used to collect, transport, and process used consumer electronic devices in the State;

(3) the results of a survey of county and municipal recycling representatives concerning the availability of opportunities for consumers to recycle covered electronic devices;

(4) samples of information awareness and educational materials provided to consumers of consumer electronic devices to promote reuse and recycling and collection opportunities for used devices that are available in the State;

(5) a list of participating companies for the most recent program year and the upcoming year;

(6) a list of contacts from all participating local governments who may be contacted by the department to confirm that their recycling needs are being met by manufacturers participating in the representative organization;

(7) a report of the organization’s prior year’s activities, including the amount of electronics collected for recycling in the State and the number and location of collection locations used during the prior year;

(8) a description of services provided to each of the local government participants including, but not limited to, collection event services and logistical support for electronics pick‑up; and

(9) a list of manufacturers, as determined by the representative organization, failing to meet their individual recycling obligation as assigned by the representative organization and any shortfall penalties, pursuant to Section 48‑60‑160(E)(3). A manufacturer so reported to the department may elect to account for the shortfall in the next program year but only may elect this option once every three years. This does not preclude a representative organization from developing and implementing participation requirements that may otherwise exclude manufacturers from participating in the representative organization for failing to meet those participation requirements.

(E)(1) Not later than thirty calendar days after submission of the plan pursuant to subsection (B), the department shall determine whether or not to approve the plan. The department shall approve the plan for the establishment of a consumer electronic device stewardship program by the submitting representative organization if it meets the requirements of subsections (B) and (C). If the department finds activities included in the plan that do not fulfill those requirements, it shall specify in writing what the department believes to be the plan’s deficiencies, promptly meet with the representative organization to discuss the department’s concerns, and allow the representative organization at least thirty calendar days after the denial notice to submit a revised plan. If a revised plan is submitted, the department shall review and approve or disapprove the plan within thirty calendar days of submission.

(2) If the department disapproves a plan submitted pursuant to item (1), and the representative organization chooses not to submit a revised plan or the department disapproves the revised plan, the representative organization shall have the right to appeal pursuant to Section 44‑1‑60.

(3) If the plan is disapproved on appeal, the representative organization may resubmit a plan pursuant to item (1) which conforms with the guidance of the appellate opinion or member companies may comply with subsection (K).

(F) After the representative organization’s plan is approved, the representative organization is responsible for maintaining continuous service to local governments specified in the plan provided by the participating consumer electronic device stewardship programs. The representative organization shall establish fair and reasonable policies for administration and operation.

(G) Manufacturers of covered television devices or covered computer monitor devices that are participating in a plan submitted pursuant to this section and subject to a recycling assessment may choose to fulfill their recycling assessment using a consumer electronic device stewardship program that meets the elements set forth in the approved representative organization plan.

(H) The department shall maintain a list of the names of manufacturers and eligible programs complying with the requirement of this chapter and the brands of consumer electronic devices that are covered by the consumer electronic device stewardship program and post this list on its website.

(I) A representative organization and the department shall confer with stakeholders at least quarterly to address compliance, efficiency, and best practices of the stewardship programs that implement the representative organization’s plan.

(J)(1) Local governments that receive recycling services from stewardship programs participating in the representative organization’s plan to recycle covered television devices and covered computer monitor devices must not charge the manufacturer or the representative operating the stewardship program for collection costs and shall offer the manufacturer or its representative other covered devices collected by a participating local government at no cost. Provided, this item does not obligate a local government to offer other covered devices collected by a participating local government at no cost once the representative organization’s obligation within its plan to recycle covered television devices and covered computer monitor devices has been met during a program year.

(2) A representative organization shall provide the department and each local government recycling representative a point of contact for the organization, including email and phone number, to ensure communication and coordination among local governments, participating manufacturers, consumer electronic device stewardship programs and the representative organization.

(K)(1) If a television manufacturer or computer monitor manufacturer does not participate in a representative organization, the manufacturer annually shall recycle or arrange for the recycling of covered television devices and covered computer monitor devices in the amount of eighty percent of the weight of the covered television devices and covered computer monitor devices sold by the manufacturer in the State during the previous program year.

(2) The department shall notify each television manufacturer or computer monitor manufacturer of its recycling obligation by September fifteenth of each program year. A television manufacturer or computer monitor manufacturer shall provide the department information noted in item (3) to be used by the department to calculate each television and computer monitor manufacturer’s recycling obligation under this subsection.

(3) A television or computer monitor manufacturer shall report to the department the total weight of the manufacturer’s covered television devices or covered computer monitor devices sold at retail in the United States or in this State, if the information is available, and the total weight of covered devices collected and recycled in the State during the previous program year. A manufacturer’s weight sold data is proprietary information of the manufacturer.

(L) A manufacturer may fulfill the requirements of this section either individually, in participation with other manufacturers, or through a representative organization. A recovery program may use existing collection and consolidation infrastructure for collecting covered devices, including local governments, retailers, recyclers, and reuse organizations.

(M) A manufacturer shall provide the department with contact information for the manufacturer’s designated agent or employee whom the department may contact concerning the manufacturer’s compliance with the requirements of this section.

(N) Manufacturers not identified as participating in a representative organization plan pursuant to subsection (B) of this section shall comply with the requirements of subsection (K).”

SECTION 5. Section 48‑60‑60 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“Section 48‑60‑60. A computer, computer monitor, or television manufacturer ~~may~~ is 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 6. Section 48‑60‑70 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“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, and 48‑60‑55.

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

SECTION 7. Section 48‑60‑90(A) of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“(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~~ a waste stream that is to be disposed of in a solid waste landfill.”

SECTION 8. Section 48‑60‑100 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“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~~ disposal of covered devices, the proper methods for ~~disposing~~ disposal of 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 9. Section 48‑60‑140 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“Section 48‑60‑140. (A) Covered devices must be recovered in a manner that complies with all applicable federal, state, and local requirements. Collection and storage of covered devices must be performed in accordance with best management practices.

(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~~ All recycling or reuse facilities used by recoverers of covered electronic devices must, at a minimum, achieve and maintain third‑party accredited certification. Acceptable certification programs include the Responsible Recycling (R)(2) Practices and e‑Stewards. Other certification programs recognized by the department or the United States Environmental Protection Agency also are acceptable. Manufacturers of covered electronic devices shall ensure that recycling or reuse facilities used as part of their recovery programs meet this requirement. Local governments and other consolidators of covered electronic devices shall ensure that the material they collect is transferred to a recycling or reuse facility that meets this requirement.”

SECTION 10. Section 48‑60‑150 of the 1976 Code, as added by Act 178 of 2010, is amended to read:

“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~~, which must be submitted to the General Assembly pursuant to the Administrative Procedures Act.”

SECTION 11. Chapter 60, Title 48 of the 1976 Code is amended by adding:

“Section 48‑60‑160. (A) A manufacturer subject to the requirements of this chapter shall pay the department an annual registration fee in the amount of three thousand five hundred dollars.

(B) A representative organization shall pay the department an annual registration fee in the amount of twenty thousand dollars for the department to pay the full costs of administering and enforcing the provisions of this chapter relating to representative organizations.

(C) Manufacturers participating in a representative organization are exempt from paying an annual registration fee.

(D) A manufacturer that produces computer monitors, computers, or televisions is only required to pay one annual registration fee, if a fee is required.

(E)(1) A manufacturer of a covered device that fails to comply with a requirement of this chapter, excluding recycling obligation shortfalls as provided for in this section, is subject to a fine not to exceed one thousand dollars per violation.

(2) A manufacturer of a covered television device or covered computer monitor device participating in a plan pursuant to Section 48‑60‑50 or Section 48‑60‑55(K) that fails to meet its individual recycling obligation for the previous program year as outlined in this chapter may elect to:

(a) pay a shortfall fee as determined by the department; or

(b) account for the amount of the shortfall in the following year. A manufacturer electing to account for the amount of a shortfall in the following year only may elect this option once every three years.

(3) The shortfall fee provided for in this section must be calculated as follows:

(a) If the manufacturer of a covered television or computer monitor device recycles at least ninety percent, but less than one hundred percent of its individual recycling obligation, the shortfall fee is thirty cents multiplied by the number of additional pounds that should have been recycled in order for the manufacturer to have met its individual recycling obligation.

(b) If the manufacturer of a covered television or computer monitor device recycles at least fifty percent, but less than ninety percent of its individual recycling obligation, the shortfall fee is forty cents multiplied by the number of additional pounds that should have been recycled in order for the manufacturer to have met its individual recycling obligation.

(c) If the manufacturer of a covered television or computer monitor device recycles less than fifty percent of its individual recycling obligation, the shortfall fee is fifty cents multiplied by the number of additional pounds that should have been recycled in order for the manufacturer to have met its individual recycling obligation.

(F) A manufacturer of a covered device that sells five hundred or fewer such devices in the State per year is exempt from registration, penalty, or shortfall fees proposed in this chapter.

(G) A television manufacturer participating in a representative organization with an approved consumer electronic device stewardship program that falls below seventy‑five percent of its allocation, as determined by a representative organization at the end of the program year, is ineligible to participate in the consumer electronic device stewardship program the following year and must participate in the plan enumerated in Section 48‑60‑55(K).

(H) All fees and penalties collected by the department to administer and enforce this chapter must be deposited in a dedicated account and may be expended by the department to cover the department’s costs to implement this chapter. Shortfall fees must be used to assist local governments in recycling covered devices as required by this chapter.”

SECTION 12. Chapter 60, Title 48 of the 1976 Code is amended by adding:

“Section 48‑60‑170. (A) The intent of this chapter is to implement programs and services that ensure the availability of adequate end‑of‑life electronic product handling for the benefit of citizens of the State, which fairly, effectively, and efficiently share the burdens of doing so among television manufacturers, computer manufacturers, and computer monitor manufacturers, regardless of the effect on competition of doing so, and which require the State to direct and supervise implementation of a statewide plan of one or more consumer electronic device stewardship programs. Representative organizations and persons participating in representative organizations may not be held liable or prosecuted under federal or state antitrust law.

(B) A manufacturer acting in accordance with the provisions of this chapter may negotiate, enter into, or conduct business with a representative organization, and the manufacturer, representative organization, and eligible program are not subject to damages, liability, or scrutiny under federal or state antitrust law, regardless of the effects of their actions on competition. It further is the intent and belief of the State that the supervisory activities described in this chapter are sufficient to confirm that activities of the manufacturers, eligible programs, and recyclers developing or participating in a plan that is approved pursuant to Section 48‑60‑55 are authorized and actively supervised by the State.”

SECTION 13. The department shall compile and submit annual reports concerning the implementation of the provisions contained in this act to the Chairman of the Senate Agriculture and Natural Resources Committee and the Chairman of the House Agriculture and Natural Resources Committee. The annual reports must also be posted on the department’s website.

SECTION 14. Section 48‑60‑50 is repealed June 30, 2014. The remaining provisions of this chapter, except Section 48‑60‑90, are repealed June 30, 2020.

SECTION 15. 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 16. This act takes effect upon approval by the Governor.

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