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DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 382

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE PROVIDING FOR THE RECOVERY AND RECYCLING OF USED ELECTRONIC DEVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend Title 7, Delaware Code, by adding a new Subchapter IX to read as follows:

2 "Subchapter IX. Electronic Recycling

3 §6099A. Purpose.

4 The purpose of the Act is to establish a comprehensive recycling system that ensures the safe and environmentally
5 sound management of electronic devices and components and that encourages the design of electronic devices and
6 components that are less toxic and more recyclable; and promotes the development of a statewide infrastructure for
7 collection and recycling of end-of-life electronics.

8 §6099B. Definitions. For the purposes of this Act, the following terms have the following meanings:

9 (a) 'Department' means the Department of Natural Resources and Environmental Control

10 (b) 'Cathode ray tube' or 'CRT' means a vacuum tube or picture tube used to convert an electronic signal into a
11 visual image.

12 (c) 'Computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing
13 device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a
14 monitor, but such term does not include an automated typewriter or typesetter, a portable handheld calculator, a portable
15 digital assistant, or other similar device.

16 (d) 'Consumer' means an individual who purchases a covered electronic device in a transaction that is a retail
17 sale.

18 (e) 'Covered Electronic Device' (CED) for the purposes of this Act, is desktop/personal computers, computer
19 monitors, portable computers, CRT-based televisions, and non- CRT-based televisions. 'Covered electronic device' does
20 not include any of the following:

21 i. A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle
22 assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor
23 vehicle.

24 ii. A covered electronic device that is functionally or physically a part of a larger piece of equipment
25 designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring,
26 or control equipment.

27 iii. A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator,
28 refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner,
29 dehumidifier, or air purifier.

30 iv. Telephones of any type unless they contain a video display area greater than 4" measured diagonally.

31 (f) 'Covered electronic recycler' is one that is approved by the Department for compensation.

32 (g) 'Manufacturer' means any person who, either as of the effective date of this legislation or thereafter, and
33 irrespective of the selling technique used, including by means of remote sale: 1) manufactures covered electronic devices
34 under its own brand for sale in this State; 2) manufactures covered electronic devices for sale in this State without affixing
35 a brand, 3) resells in this State covered electronic devices produced by other suppliers under its own brand or label; or 4)
36 imports or exports covered electronic devices into the United States for sale in this State. However, if a company from
37 whom an importer purchases the merchandise has a U.S. presence and/or assets, that company shall be deemed to be the
38 manufacturer; or, 5) manufactures covered electronic devices, supplies them to any person or persons within a distribution
39 network that includes wholesalers or retailers in this State, and benefits from the sale in this State of those covered
40 electronic devices through that distribution network.

41 (h) 'Manufacturer's brands' means a manufacturer's name, brand name, or brand label, and all manufacturer's
42 names, brand names, and brand labels for which the manufacturer has legal responsibility, including those names, brand
43 names, and brand labels of companies that have been acquired by the manufacturer.

44 (i) 'Monitor' means a separate video display component of a computer, whether sold separately or together with a
45 computer central processing unit/computer box, and includes a cathode ray tube, liquid crystal display, gas plasma, digital
46 light processing, or other image projection technology, greater than four inches when measured diagonally, and its case,
47 interior wires and circuitry, cable to the central processing unit, and power cord.

48 (j) 'Obligation' means the quantity of covered electronic devices, by weight, identified for an individual
49 manufacturer, as defined by the Department under § 6099G of this Title.

50 (k) 'Person' means an individual, trust firm, joint stock company, business concern, and corporation, including,
51 but not limited to, a government agency, partnership, limited liability company, or association.

52 (l) 'Portable computer' means a computer and video display greater than four inches in size that can be carried as
53 one unit by an individual (e.g., a laptop computer).

54 (m) 'Purchase' means the taking, by sale, of title in exchange for consideration.

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

58 (o) 'Registrant' means a manufacturer of covered electronic devices that is in full compliance with the
59 requirements of this Act.

60 (p) 'Retail sales' includes sales of products through sales outlets, via the Internet, mail order, or other means,
61 whether or not the seller has a physical presence in this State.

62 (q) 'Retailer' means a person who owns or operates a business that sells new covered electronic devices in this
63 State by any means to a consumer.

64 (r) 'Sell' or 'sale' means any transfer for consideration of title, including, but not limited to, transactions
65 conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, and excluding leases.

66 (s) 'State recycling rate' means the ratio of the weight of total overall returns of CEDs in the State to the weight of
67 total overall sales of CEDs in the State during the previous calendar year.

68 (t) 'Television' means a stand-alone display system containing a CRT or any other type of display primarily
69 intended to receive video programming via broadcast, having a viewable area greater than four inches when measured
70 diagonally, able to adhere to standard consumer video formats such as PAL, SECAM, NTSC, and HDTV and having the
71 capability of selecting different broadcast channels and support sound capability.

72 (t) 'Video Display' means an output surface having a viewable area greater than four inches when measured
73 diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a
74 number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable,
75 a device that is an integral part of the display (and cannot be easily removed from the display by the consumer) that
76 produces the moving image on the screen. Displays typically use a cathode ray tube (CRT), liquid crystal display (LCD),
77 gas plasma, digital light processing, or other image projection technology.

78 (u) 'Small Business' means any not-for-profit enterprise, sheltered workshop or business enterprise which is
79 engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its
80 organization, when such enterprise or workshop employs less than 20 persons, has gross receipts of less than \$4,000,000
81 and is not owned, operated or controlled by another business enterprise.

82 §6099C. Sales Prohibition.

83 (a) A manufacturer not in compliance with all financial and other requirements of this Act is prohibited from
84 offering a covered electronic device for sale in this State.

85 (b) It shall be unlawful for any entity to offer for sale in this State a new covered electronic device from a
86 manufacturer that is not in full compliance with the requirements of this Act. The Department shall maintain a list of all
87 manufacturers in compliance the requirements of this Act and post the list on an internet website. Sellers of products in or
88 into the State shall consult the list prior to selling covered electronic devices in this State. A seller shall be considered to
89 have complied with this responsibility if, on the date that the product was ordered from the manufacturer or its agent, the
90 manufacturer was listed as being in compliance on the aforementioned website.

91 (c) A manufacturer or retailer may not sell or offer for sale a covered electronic product in the State unless it is
92 labeled with the manufacturer's brand, and the label is permanently affixed and readily visible.

93 §6099D. Reporting and Registration.

94 (a) Manufacturers of covered electronic devices shall report to the Department by January 30 of each year the
95 total weight of CEDs sold in the State the previous calendar year. In lieu of providing the total weight of CEDs sold in the
96 State the previous calendar year, a manufacturer may request that the Department calculate the total weight of CEDs sold
97 in the State by using prorated national sales data based on State population.

98 (b) Each manufacturer of covered electronic devices shall register with the Department by January 30 of each year
99 and pay an annual registration fee of \$2,500, with the exception of the fee for any manufacturer that qualifies as a small
100 business, which shall pay an annual registration fee of \$500.

101 §6099E. Manufacturer Responsibility.

102 (a) Manufacturers of CEDs sold in the state must submit an additional fee based on sales in the State to the
103 Department. The fee shall be calculated using the following formula: the State recycling rate multiplied by the weight of
104 sales of the manufacturer's covered electronic devices sold in the State during the previous calendar year, multiplied by no
105 more than \$0.50 per pound.

106 (b) In lieu of payment of the fee set forth in subsection (a) above, a manufacturer or a group of manufacturers may
107 submit a plan to collect, transport, and recycle CEDs.

108 (c) An individual manufacturer submitting a plan in lieu of payment of the fee set forth in subsection (a) above,
109 must collect, transport, and recycle a quantity of CEDs equal to the weight of sales of the manufacturer's covered
110 electronic devices in the State during the previous calendar year multiplied by the State recycling rate.

111 (d) A group of manufacturers jointly submitting a plan in lieu of payment of the fee set forth in subsection (a)
112 above, must collect, transport, and recycle the sum of the obligations of each participating manufacturer.

113 (e) The plan shall be filed with a manufacturer's annual registration, and shall include at a minimum:

- 114 1. Methods that will be used to collect the CEDs including the name and locations of all collection and
115 consolidation points.
- 116 2. An estimate of the amount of CEDs that will be collected annually.
- 117 3. The processes and methods that will be used to recycle recovered CEDs including a description of the
118 disassembly, physical recovery operation (e.g., crushing, shredding, grinding, glass to glass recycling)
119 and /or other operations that will be used. Include the name and location of all facilities to be utilized.
- 120 4.. Documentation of audits of each processor used in the plan and compliance with processing standards
121 established under this Title
- 122 5 A description of the accounting and reporting systems that will be employed to track progress toward
123 fulfilling the plan's obligations.
- 124 6. Means that will be utilized to publicize the collection opportunities.
- 125 7. The intention of the registrant to fulfill its obligations through operation of its own program, either
126 individually or in partnership with other manufacturers.
- 127 8. The total weight of CEDs collected, transported and recycled the previous year.

128 (f) Before the fee set forth in subsection (a) of this section may be waived, the plan must be reviewed and
129 approved by the Department. Upon approval of the plan by the Department, the manufacturer payment of the annual fees

130 based upon sales will be waived. The Department may reject the plan in part or in whole and may impose additional
131 requirements as a condition of approval.

132 (g) If a manufacturer fails to comply with all the conditions and terms of an approved plan, it will be required to
133 submit the following:

134 1. A payment to the Department to cover the cost of collecting, transporting, and recycling the unmet
135 portion of its obligation. The payment shall be equal to the following formula: the quantity of the outstanding
136 portion, in pounds, multiplied by no more than \$0.50, and

137 2. A penalty in the form of a payment equal to the cost of collecting, transporting and recycling 10% of
138 the manufacturer's total obligation.

139 (h) Manufacturers that collect, transport, and recycle CEDs in excess of their obligation may sell "credits" to
140 another registrant or apply that excess to the following year's recycling obligation.

141 §6099F. Retailer Responsibility.

142 (a) A retailer must clearly post and provide information provided by the Department that describes where and
143 how to recycle the covered electronic device and opportunities and locations for the collection or return of the device,
144 through the use of a toll-free telephone number and website, information included in the packaging, or information
145 provided accompanying the sale of the covered electronic device. This information shall be provided in clear written form
146 in English and any other languages deemed to be primary languages by the State Department of Education.

147 (b) A retailer shall only sell products from registrants. Retailers shall consult the list described in § 6099C of this
148 Title prior to selling covered electronic devices in this State. A retailer shall be considered to have complied with this
149 responsibility if on the date that the product was ordered from the manufacturer or its agent, the manufacturer was listed as
150 being in compliance on the aforementioned website.

151 §6099G. Department Responsibility.

152 (a) By February 15 of each year, the Department shall establish the State recycling rate, by calculating the ratio of
153 the weight of total overall returns of CEDs in the State to the weight of total overall sales of CEDs in the State during the
154 previous calendar year.

155 (b) By March 1 of each year, the Department shall provide each registrant with its responsibility for fees from
156 sales or for collection, recycling, and transportation in pounds for that year.

157 (c) The Department shall receive fees as described in § 6099E of this Title from manufacturers for the sale of
158 covered electronic devices.

159 (d) The Department shall ensure that at least one electronics collection opportunity is available at least five (5)
160 days a week in each county throughout the State and in such a manner as to be convenient, to the maximum extent feasible,
161 to all consumers in the County.

162 (e) The Department shall encourage the use of existing collection and consolidation infrastructures for handling
163 CEDs to the extent that this infrastructure is accessible on a regular and ongoing basis to at least 85% of the population of
164 the State, is cost effective, and meets the environmentally sound management requirements of § 6099K of this Title.

165 (f) The Department shall maintain a list of registrants and post the list on an Internet website that is updated at
166 least once a month.

167 (g) The Department shall organize and coordinate public education and outreach.

168 (h) The Department shall use the revenues received from registrants for the sole purpose of fulfilling its
169 responsibilities under this Act.

170 (i) The Department shall prepare a plan every three years that:

- 171 1. establishes per capita collection and recycling goals, and.
- 172 2. identifies any necessary State actions to expand collection opportunities to achieve the per capita
173 collection and recycling goals.

174 That plan shall be posted on the Department website and sent to the General Assembly.

175 (j) The Department shall annually report:

- 176 1. A list of all parties that the Department has designated as approved to receive payments for collection,
177 transportation, or recycling, the amount of payments it has made to those parties, and the purpose of those
178 payments.
- 179 2. The total weight of CEDs collected in the State the previous calendar year.
- 180 3. The total weight of CEDs sold in the State the previous calendar year.
- 181 4. Progress toward achieving the overall annual total recovery and recycling goals described in the plan
182 described in § 6099G(i) of this Title.
- 183 5. A complete listing of all collection sites operating in the State in the prior calendar year, the parties
184 that operated them, and the amount of material by weight collected at each site.
- 185 6. An evaluation of the effectiveness of the education and outreach program
- 186 7. An evaluation of the existing collection and processing infrastructure.

187 (k) The Department shall annually post the report on its website.

188 (l) The program implemented to effect the provisions of this Act and its associated regulations shall be fully
189 audited by an independent, certified public accountant at the end of each calendar year and said audit report submitted to
190 the Legislature.

191 (m) The Department shall maintain a website and toll-free number complete with up-to-date listings of where
192 consumers can bring covered electronics products for recycling under this Act.

193 (n) The Department shall not be held financially liable or responsible for any violation of federal, state, or local
194 law by any entity to whom the Department makes payment pursuant to § 6099I of this Title.

195 (o) No more frequently than annually and no less frequently than biennially, the Department shall review, at a
196 public hearing, the CED recycling and registration fee(s).

197 §6099H. Fees for the Collection or Recycling of Covered Electronic Products.

198 No fees or costs may be charged to consumers for the collection, transportation, or recycling of covered electronic products.

199 §6099I. Reimbursement for Collection, Transportation, and Recycling.

200 (a) The Department shall engage in competitive bidding for the collection, transportation, and recycling of
201 covered electronic devices.

202 (b) The Department shall make covered electronic device payments for the collection, transportation, and
203 recycling of covered electronic devices to an authorized or approved entity upon receipt of a completed and verified
204 invoice submitted to the Department in the form and manner determined by the Department.

205 1. In order to receive payment, proof will be required:

206 a. That the covered electronic device was collected from a consumer who is a resident of the
207 State or is otherwise located in the State, or who provides evidence that the device was purchased in the
208 State after the effective date of this Act.

209 b. That the collection, transportation, and recycling of the CED was conducted in accordance
210 with all local, state, and federal laws, including the requirements created by this Act, its associated
211 regulations.

212 2. No fees or costs were charged to the consumer.

213 §6099J. Environmentally Sound Management Requirements.

214 (a) Covered electronic devices collected through any program in Delaware, whether by manufacturers, retailers,
215 for-profit or not-for profit corporations, units of government, or organized by the Department, must be recycled in a

216 manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and must not be
217 exported for disposal in a manner that poses a significant risk to the public health or the environment.

218 (b) The Department shall establish performance requirements in order for collectors, transporters, and recyclers to
219 be eligible to receive funds from the Department. All entities shall, at a minimum, demonstrate compliance with the United
220 States Environmental Protection Department's (EPA) Guidance on Environmentally Sound Management of Electronic
221 devices as issued and available on the EPA's website in addition to any other requirements mandated by state or federal
222 law.

223 (c) The Department shall maintain a website that shall include a list of entities and organizations that it has
224 determined have met these performance standards.

225 §6099K. Disposal Ban. Two years after enactment of this law, it shall be illegal for any person to place
226 in municipal solid waste a covered electronic device or any of the components or subassemblies thereof in any
227 solid waste disposal facility.

228 §6099L. Enforcement

229 (a) The State including its Attorney General and the Department shall be authorized to initiate independent action
230 to enforce any provision of this law, including failure by the manufacturer to remit the fee to the Department. Any funds
231 awarded by the court shall be used first to offset enforcement expenses. Money in excess of the enforcement expenses shall
232 be deposited with the Department.

233 (b) An offense shall be considered:

234 (1) the sale of a new CED by any person that is not in full compliance with the provisions of this Act.

235 (2) application for compensation for the collection, transportation and recycling of covered electronic
236 products not collected within the state.

237 (3) use of a qualified collection program to recycle covered electronic products not discarded within the
238 state.

239 (4) the knowing failure to report or accurately report any data required to be reported to the Department
240 by this Act.

241 (5) non-payment of fees.

242 §6099M. The Department shall adopt rules and regulations as shall be necessary for the purpose of
243 administering this Act.

244 §6099N. Multi-State Implementation. The Department is authorized to participate in the establishment
245 and implementation of a regional, multi-state organization or compact to assist in carrying out the requirements of
246 this Act.

247 Section 2. Unless otherwise specified, this Act shall take effect on January 1, 2007, with the exception of § 6099M of this
248 Title which shall take effect immediately.

249 Section 3. The provisions of this Act shall be severable, and if any part of this Act is declared to be invalid or void by a
250 court of competent jurisdiction, the remaining portion shall not be affected, but shall remain in full force and effect and shall be
251 construed to be the entire Act.

SYNOPSIS

This Act establishes a comprehensive electronics recycling system that would be financed by the manufacturers of consumer electronics, such as computers and televisions. The manufacturers of covered electronic devices would be required to register with the Department of Natural Resources and Environmental Control. It prohibits the sale of any covered electronic device from a manufacturer which is not registered with DNREC. It requires DNREC to maintain a public list of all such registered manufacturers. The Act imposes a fee upon manufacturers based on the weight of electronic equipment sold during each calendar year, unless the manufacturer provides for the collection and recycling of such equipment pursuant to plans submitted and approved by DNREC. The Act requires a covered electronic device to be labeled with the name of its manufacturer. The Act requires retailers of covered electronic devices to post and provide information on locations for recycling such equipment. It directs DNREC to enforce and implement such provisions. The Act would ban the disposal of covered electronic devices in landfills within two years of its enactment into law.

Author: Senator McDowell