

## DISCUSSION DOCUMENT ONLY

### An Act Providing for the Recovery and Recycling of Used Electronic Devices

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

#### Section 1: Definitions

For the purposes of this Act, the following terms have the following meanings:

- (a) "Agency" means the *[State Environmental Agency]*
- (b) "Annual recovery" means the weight in pounds per capita set as the annual recovery goal by the Corporation multiplied by the state population as reported in the most recent U.S. Decennial Census.
- (c) "Board" means the Board of Directors of the Corporation formed to implement this Act.
- (d) "Cathode ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.
- (e) "Computer" means an electronic, magnetic, optical, electrochemical, or other highspeed data processing device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant or other similar device.
- (f) "Consumer" means an individual who purchases a covered electronic device in a transaction that is a sale, including but not limited to a business, corporation, limited partnership, government agency, or non-profit organization.
- (g) "Corporation" means the not-for-profit organization formed or designated by the Agency for implementing this Act.
- (h) "Covered Electronic Device," for the purposes of this Act, is desktop/personal computers, computer monitors, portable computers, desktop printers, CRT-based televisions, non-CRT-based televisions, VCRs and DVD players.  
"Covered electronic device" does not include any of the following:
  - i. A covered electronic 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.
  - ii. A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment.
  - iii. A covered electronic 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, or air purifier.

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

(i) “Covered electronic recycler” is one that is approved by the Corporation for compensation.

(k) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(l) “Manufacturer” means any person who, either as of the effective date of this legislation or thereafter, and irrespective of the selling technique used, including by means of remote sale: 1) manufactures covered electronic devices under its own brand for sale in this State; 2) manufactures covered electronic devices for sale in this State without affixing a brand, 3) resells in this State covered electronic devices produced by other suppliers under its own brand or label; or 4) imports or exports covered electronic devices into the United States that are sold in this State. However, if a company from whom an importer purchases the merchandise has a U.S. presence and/or assets, that company shall be deemed to be the manufacturer.

(m) “Person” means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association.

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

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

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

(r) “Purchase” means the taking, by sale, of title or of the right to use, in exchange for consideration.

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

(t) "Retail sales" includes sales of products through sales outlets, via the Internet, mail order, or other means, whether or not the seller has a physical presence in this state.

- (u) "Retailer" means a person who owns or operates a business that sells new covered electronic devices in this State by any means to an end user.
- (v) "Reuse" means any operation by which a covered electronic device or component changes ownership for the same purpose for which it was originally put on the market and includes repair and the continued use of whole systems or components.
- (w) "Sell" or "sale" 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, and excluding wholesale transactions with distributors or dealers and excluding leases.
- (x) "Television" means a stand-alone display system containing a CRT or any other type of display primarily intended to receive video programming via broadcast, having a viewable area greater than four inches when measured diagonally, able to adhere to standard consumer video formats such as PAL, SECAM, NTSC, and HDTV and having the capability of selecting different broadcast channels and support sound capability.
- (y) "Video Display Device " means an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display (and cannot be easily removed from the display by the consumer) that produces the moving image on the screen. Displays typically use a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

## **Section 2: Scope of Products**

- (1) On or after the effective date of the Act, the following products shall be considered "Covered Electronic Devices" (CEDs): desktop/personal computers, and video display devices.
- (2) Beginning one year after the effective date of the Act and continuing after that date, the "Covered Electronic Devices" shall include the CEDs defined above, as well as printers, DVD players, and VCRs.

## **Section 3: Sales Prohibition**

- (1) A manufacturer not in compliance with all reporting, financial, and other requirements of this Act is prohibited from offering a covered electronic device for sale in this State.
- (2) It shall be unlawful for any entity to offer for sale in this State a new covered electronic device from a manufacturer that is not in full compliance with the requirements of this Act. The Corporation shall maintain a list of all manufacturers in compliance the requirements of this Act and post the list on an Internet Web site. Sellers of products into the state shall consult the list prior to

selling covered electronic devices in this State. A seller shall be considered to have complied with this responsibility if, on the date that the product was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the aforementioned Web site.

#### **Section 4: Labeling Requirement**

On and after the effective date of this Act, a manufacturer or retailer may not sell or offer for sale a covered electronic product to any consumer in the State unless the covered product is labeled with the manufacturer's brand, and the label is permanently affixed and readily visible.

#### **Section 5: Financing Mechanism**

##### **Option A**

(1) On and after the effective date of this Act, each manufacturer shall annually pay a fee of \$10 per video display device sold to a consumer in the state, based on the number of video display devices placed on the market in the state.

The Corporation shall contract with a market research firm to track the market share for each company placing CEDs on the market. The data shall exclude figures for sales involving business-to-business contracts that provide end-of-life takeback programs for covered electronic devices.

(2) Each manufacturer shall pay the fee to the Corporation on a quarterly basis for all video display devices sold during that quarter.

(3) No more frequently than annually, and no less frequently than biennially, the Corporation, in cooperation with the Agency, shall review, at a public hearing, the covered electronic device recycling fee(s). Recommended changes to the covered electronic device recycling fee shall be included in the annual report.

(Please see the Addendum for Description of the Individual Responsibility option)

##### **Option B**

(1) A fee of \$10 is imposed on the sale or transfer of a new video display device upon the first sale of the device in the state. The seller or transferor is liable for the fee when the following occurs:

- I. the video display device is shipped or delivered to a retail outlet in the state, to a retailer for sale in the state, or to another person for resale or use in the state

II. if the first seller is a retailer, dealer or distributor then that entity is responsible to collect and remit the fee.

(2) Each seller or transferor shall pay the fee to the Corporation on a quarterly basis.

### **Section 6: Manufacturer Responsibility**

(1) On and after the effective date of this Act and at least annually thereafter, each manufacturer of a covered electronic device sold in this state shall do all of the following:

(a) Submit to the Corporation a report that includes all of the following information:

- I. The number of covered electronic products, by category, sold within the state or region
- II. The formulas used to calculate fees submitted to the Corporation.
- III. Any pertinent anecdotal information regarding the sale of covered electronic products in the state or region.

(b) In lieu of an individual report, manufacturers may submit the information in a collated report submitted via a trade association provided that information about an individual company can be made available to the Corporation upon written request by the Corporation. The Corporation may only make such a request for auditing purposes.

(c) A report submitted to another state or to the federal government that contains the same information as required in this section will be accepted by the Corporation in lieu of a separate report for the state.

(2) The Corporation may not make public any confidential business information claimed by the manufacturer in the report. Any information submitted to the Corporation or Agency pursuant to this Act that is proprietary in nature or a trade secret shall be subject to protection under State laws and regulations governing that information.

### **Section 7: Retailer Responsibility**

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

(2) A retailer will only sell products from manufacturers that are in compliance with this Act. Retailers shall consult the list described in section 9(2) prior to selling covered electronic devices in this State. A retailer shall be considered to have complied with this responsibility if on the date that the product was ordered

from the manufacturer or its agent, the manufacturer was listed as being in compliance on the aforementioned Web site.

(3) Retailers must indicate on receipts that a unit recycling fee has been applied for all Covered Electronic Devices (CEDs) that carry a fee.

### **Section 8: Not-for-Profit Corporation**

(1) The Agency shall designate or create by within one calendar year of the passage of this Act a not-for-profit Corporation organized under Act \_\_\_ that qualifies for tax exempt status under United States Code, title 26, section 501(c)(3), to collect and administer the fees remitted by manufacturers for the sale of covered electronic devices. The Agency may designate a regional, multi-state Corporation established or operating for the same purposes.

(2) The Corporation will develop and implement statewide recycling programs for covered electronic devices, distribute fee proceeds, provide reports on the program to the Agency and the Legislature, and make recommendations regarding the improvement of the program and adjustments in fees.

(3) If the Agency designates a Corporation, the Agency shall enter into a cooperative agreement with that Corporation to fulfill the requirements of this Act. The Agency shall certify that the Corporation promotes and organizes services for the collection or recycling of eligible electronic products as a qualified organization if the entity meets the qualifications or their equivalent established in Sections 9 and 11 of this Act. In cases where a single corporation implements provisions identical or similar to the provisions of this Act in other States, the Agency may waive the Corporation Structure requirements specified in Section 12. If the Agency chooses to implement this Act on a multi-state basis, such Corporation may be incorporated in any other state but must comply with all other provisions of this Act and be duly authorized to do business in [State].

(4) No fees shall be required of manufacturers until such time as the Corporation has been fully incorporated and legally constituted or designated.

(5) The Corporation shall submit a budget annually to the Agency and Legislature and spend no more than five percent of the total fees collected under Section 6 for its administrative expenses.

(6) The Corporation shall annually remit to the Agency three percent of the total fees collected in the state under this Act for administrative, education and enforcement responsibilities of the Agency under this Act. These fees shall be deposited no later than 30 days after each quarter into a dedicated account to be used solely and absolutely for the purposes of administration, public education, and enforcement associated with this Act. It shall be unlawful for those funds to be diverted for any other purpose or activity.

### **Section 9: Corporation Responsibilities**

(1) The Corporation shall be governed and operated by a multi-stakeholder Board of Directors who are responsible for managing a cost-efficient and

environmentally sound regional collection, transportation, and recycling system for covered electronic devices.

(2) The Corporation must organize, administer, and ensure that electronics collection opportunities are available throughout the state and in such a manner as to be convenient, to the maximum extent feasible, to all consumers in the state.

(3) The Corporation shall encourage the use of existing collection and consolidation infrastructures for handling covered electronic devices to the extent that this infrastructure is accessible on a regular and ongoing basis to at least 85% of the population of the State, is cost effective, and meets the environmentally sound management requirements of section 14.

(4) The Corporation shall compensate for the collection and recycling of covered electronic devices, by qualified collectors and recyclers whether by government, for-profit corporations, non-profit corporations, retailers, manufacturers or any other party, for the reasonable costs associated with these activities. The Corporation may choose to issue contracts to fulfill their responsibilities for recycling under this section.

(5) The Corporation shall maintain a list of all manufacturers in compliance with all reporting, financial, and other requirements of this Act and post the list on an Internet Web site.

(6) The Corporation shall receive fees as described in Section 6 from manufacturers or their agents for the sale of covered electronic devices.

(7) The Corporation shall organize and coordinate public outreach in association with Agency education efforts.

(8) The Corporation shall use the fees for the sole purpose of fulfilling its responsibilities under this Act. In the event that expenses from administration, education, collection, transportation, and recycling activities exceed revenues, the Corporation may borrow up to ten percent of the projected annual net fee funds from outside sources. Borrowed funds must be repaid within two years.

(9) The Corporation shall prepare a business plan every three years that:

I. establishes per capita collection and recycling goals for each service area.

II. identify any necessary state actions to expand the collection opportunities to achieve the per capita collection and recycling goals.

(10) On April 1 of each year, the Corporation shall report to the Agency and the Legislature on the implementation of the system during the previous calendar year. The report must include:

i. A list of all parties participating in the system whom the Corporation has designated as approved to receive payments, the amount of payments it has made to those parties, and the purpose of those payments.

ii. The total amount of covered electronic devices collected in the State the previous year as reported to the Board.

iii. Progress toward achieving the overall annual total recovery and recycling goals described in the business plan.

iv. The total amount of fees collected.

v. A summary of funds expended by category:

- I. Education
  - II. Administration (both Corporation and Agency)
  - III. Collection
  - IV. Transportation
  - V. Recycling
  - VI. Disposal
  - VII. Other
- vi. Any surplus funds carried forward.
- vii. A complete listing of all collection sites operating in the State in the prior calendar year, the parties who operated them and the amount of material collected at each site.
- viii. An evaluation of the effectiveness of the education and outreach program
- ix. An evaluation of the existing collection and processing infrastructure in each participating state.
- The Corporation shall annually post the report on its Web site.
- (11) The Corporation shall be fully audited by an independent, certified public accountant at the end of each calendar year and said audit report submitted to the Agency and the Legislature.
- (12) The Corporation shall maintain a Web site and toll-free number complete with up-to-date listings of where consumers can bring covered electronics products for recycling under this Act.
- (13) The Corporation and its Board shall not be held financially liable or responsible for any violation of federal, state, or local law by any entity to whom the Corporation makes payment pursuant to Section 10.

**Section 10: Fees for the Collection or Recycling of Covered Electronic Products**

No fees may be charged to consumers for the collection or recycling of covered electronic products by any person or entity participating in or being compensated by the statewide program operated and funded by the Corporation or by a manufacturer for recycling or take-back or any other program for the recycling of covered electronic devices.

**Section 11: Not-for-Profit Corporation Structure**

- (1) The Corporation shall have a Board of Directors consisting of members appointed by the Commissioner/Director of the Agency. The Board members shall be appointed for two-year terms. The Director shall appoint a replacement if any vacancy occurs. The Board shall consist of representatives from:
- (1) Five manufacturers of covered electronic devices;
  - (2) Two retailers of covered electronic devices;
  - (3) One not-for-profit organization with experience in the recycling of covered electronic devices;
  - (4) One for-profit organization with experience in the recycling of covered electronic devices; and

- (5) One state government representative from each participating state may exercise the option to participate on the Board.
- (6) One representative from local government
- (b) The Board shall hire an executive director who shall run the day-to-day operations of the Corporation and report to the Board on the Corporation's day-to-day operations at least once a year.
- (c) The executive director shall hire such staff as is required to fulfill the responsibilities and requirements of the Corporation.

## **Section 12: Restrictions on Hazardous Substances**

Upon the effective date of this Act, manufacturers of CEDs must be in Compliance with the European Union's Restrictions on Hazardous Substances (RoHS) Directive for mercury, cadmium, lead, hexavalent chromium and PBB's.

## **Section 13: Reimbursement for Collection, Transportation, & Recycling**

The Corporation shall make electronic device collection payments and electronic device recycling payments for the collection and recycling of covered electronic devices to an authorized or approved entity upon receipt of a completed and verified invoice submitted to the Corporation by the Corporation authorized entity in the form and manner determined by the Corporation.

- a. In order to receive payment, proof will be required:
  - i. That the covered electronic device was collected from a consumer located in the State after the effective date of this Act.
  - ii. That the collection and recycling of the device was conducted in accordance with all local, state, and federal laws, including the requirements created by this Act, its associated regulations and the Corporation.
- b. No fees or costs were charged to the consumer.

## **Section 14: Environmentally Sound Management Requirements**

(1) Covered electronic devices collected through any program in [State], whether it be by manufacturers, retailers, for-profit or not-for profit corporations, units of government, or organized by the Corporation, must be recycled in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and must not be exported for disposal in a manner that poses a significant risk to the public health or the environment.

(2) The Agency shall establish performance requirements in order for collectors and recyclers to be eligible to receive funds from the Corporation. All entities shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's (EPA) Guidance on Environmentally Sound Management of Electronic devices as issued and available on the EPA's Web site in addition to any other requirements mandated by state law.

(3) The Corporation shall maintain a Web site of entities and organizations that it has determined have met the performance standards.

## **Section 15: Disposal Ban**

Two years after enactment of this law, it shall be illegal for any person to dispose of any of the covered electronic devices, or components or subassemblies thereof in any solid waste disposal facility in the [State].

## **Section 16: Enforcement**

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

(2) An offense shall be considered:

(i) the sale of a single item by any person not in full compliance with the provisions of this Act.

(ii) applying for compensation on covered electronic products not collected within the state or region

(iii) using a qualified collection program to recycle covered electronic products not discarded within the state or region.

## **Section 17: Regulatory Authority**

The Agency may adopt rules and regulations for the purpose of administering this Act.

## **Section 18: Relation to Federal Law**

This Act is intended to govern all aspects of the collection and recycling of covered electronic devices as those terms are defined herein. Upon the implementation of an acceptable national program to collect and/or recycle covered electronic devices, the provisions of this Act shall sunset within the time frame determined by federal law.

## **Section 19: Effective Date**

Unless otherwise specified, this Act shall take effect 90 days after the date of enactment.

## **Section 20: Severability Clause**

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

## **Addendum**

### **Discussion Draft- Individual Responsibility under Option A**

The states participating in the Great Lakes multi-state waste electronics policy initiative are seeking comments on the feasibility of enacting an individual responsibility approach for those manufacturers that would prefer operate their own program to collect and recycle waste electronics.

#### **General Concept**

Manufacturers choosing to collect and recycle products are required to submit a plan to the Agency every three years demonstrating their strategy to collect and recycle products in equivalence as to will be collected and recycled by the Corporation. Manufacturers qualifying for the individual responsibility option will not have a fee assessed on video display devices or be compelled to participate in the Corporation.

A manufacturer choosing this option may write an individual plan or may participate as a member of a group plan in collaboration with other manufacturers. Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, recycling businesses, and local government solid waste management planning jurisdictions in the development of their plans.

Plans must contain the following elements:

- Systems for the collection, transporting and processing of covered electronic devices (CEDs);
- Service providers for the Collection, transportation and processing and CEDs;
- Accounting and reporting systems that will be employed to track progress toward meeting target collection and recycling targets for their share of CED returns in addition to a share of orphan and abandoned products and document product sales within the state;
- Timeline, including startup and implementation, with associated progress milestones with anticipated results; and
- A public information campaign to promote the recycling of electronic products and proper end of life management of the products by the final users. Manufacturers will work in collaboration with local governments in the development and implementation of this public information campaign.

Manufacturers choosing individual responsibility shall file an annual report with the Agency stating the amount of CEDs collected and recycled the previous year,

as well as an evaluation of the existing infrastructure to fulfill their collection and recycling responsibilities.

Plans must assure that collection services for covered electronic products are available to all citizens of the state.

Plans must be approved by the Agency according to the criteria established by the Agency.