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SENATE BILL 1184

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO INFORMATION TECHNOLOGY; REQUIRING INFORMATION
TECHNOLOGY PRODUCER RESPONSIBILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Manufacturer Responsibility and Consumer Convenience
Information Technology Equipment Collection and Recovery Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that computing, display
and printing devices are critical elements to the strength and
growth of the state's economic prosperity and its quality of
life. Many of these products can be refurbished and reused,
and many such obsolete products contain valuable components
that can be recycled. Developing and implementing an
appropriate state computing, display and printing device

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1 recovery system is important to the state's resource
2 conservation, worker health and safety and economic prosperity
3 goals.

4 B. The purpose of the Manufacturer Responsibility
5 and Consumer Convenience Information Technology Equipment
6 Collection and Recovery Act is to establish a comprehensive and
7 convenient computing, display and printing device recovery
8 program based on individual producer responsibility and shared
9 responsibility among consumers, retailers and government. The
10 purposes of the recovery system are to ensure that end-of-life
11 computing, display and printing devices are responsibly
12 retired, to promote resource conservation through the
13 development of an effective and efficient system for collecting
14 and recycling such products and to encourage manufacturers to
15 offer such service to consumers with convenience and at no
16 charge.

17 Section 3. DEFINITIONS.--As used in the Manufacturer
18 Responsibility and Consumer Convenience Information Technology
19 Equipment Collection and Recovery Act:

20 A. "collect" or "collection" means to physically
21 pick up a covered device at a household or to facilitate the
22 drop-off of a covered device at a collection site included in
23 the manufacturer's plan and to transport the covered device for
24 recovery;

25 B. "consumer" means any occupant of a single

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1 detached dwelling unit or a single unit of a multiple dwelling
2 unit who has used a covered device primarily for personal or
3 home business use;

4 C. "covered device" means any computing, display or
5 printing device, including a desktop or notebook computer,
6 computer monitor, portable computer, printer and inkjet
7 printer; but does not include a television, including a cathode
8 ray tube or flat-panel based television, a part of a motor
9 vehicle, a personal digital assistant or a telephone;

10 D. "department" means the department of
11 environment;

12 E. "manufacturer" means any person who:

13 (1) manufactures covered devices under its own
14 brand for sale;

15 (2) manufactures covered devices for sale in
16 this state without affixing a brand;

17 (3) resells in this state covered devices
18 produced by other suppliers under its own brand or label;

19 (4) imports or exports covered devices into
20 the United States; however, if a company from whom an importer
21 purchases the merchandise has a presence in the United States
22 or assets, that company shall be deemed to be the manufacturer;
23 or

24 (5) manufactures covered devices or supplies
25 them to any person within a distribution network that includes

1 wholesalers or retailers in this state, and benefits or
2 benefited from the sale of those covered devices through that
3 distribution network;

4 F. "manufacturer's brands" means a manufacturer's
5 name, brand name or brand logo, and all the manufacturer's
6 names, brand names and brand logos for which the manufacturer
7 has legal responsibility, including those names, brand names
8 and brand logos of companies that the manufacturer has
9 acquired;

10 G. "person" means any individual, business entity,
11 partnership, limited liability company, corporation, nonprofit
12 corporation, association, governmental entity, public benefit
13 corporation or public authority;

14 H. "recover" means to reuse, recycle or dispose;
15 and "recoverer" means a person or entity that reuses, recycles
16 or disposes;

17 I. "retail sales" means sales of products through
18 sales outlets, via the internet, mail order or any other means,
19 whether or not the seller has a physical presence in this
20 state. "Retail sales" includes sales of new, used, refurbished
21 and other products;

22 J. "retailer" means a person that owns or operates
23 a business that sells covered devices to a consumer, including
24 through sales outlets, catalogs or the internet, whether or not
25 the seller has a physical presence in this state;

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1 K. "sell" or "sale" means any transfer for
2 consideration of title, including, but not limited to,
3 transactions conducted through sales outlets, catalogs or the
4 internet or any other similar electronic means, but does not
5 mean leases; and

6 L. "television" means any telecommunications system
7 device that can broadcast and receive moving pictures and sound
8 over a distance, and includes a television tuner. Display
9 devices that are peripheral to a computer but nevertheless
10 contain a television tuner are considered "televisions".

11 Section 4. APPLICABILITY.--The provisions of the
12 Manufacturer Responsibility and Consumer Convenience
13 Information Technology Equipment Collection and Recovery Act
14 apply to covered devices purchased and used by consumers in
15 this state.

16 Section 5. MANUFACTURERS.--

17 A. No manufacturer shall sell or offer for sale a
18 covered device in this state unless the manufacturer has
19 labeled the covered device before sale and has adopted and is
20 implementing a recovery plan.

21 B. No manufacturer shall sell or offer for sale any
22 covered device in this state unless the covered device is
23 labeled with the manufacturer's brand. The label shall be
24 permanently affixed and readily visible.

25 C. No manufacturer shall sell or offer for sale any

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1 covered device in this state unless the manufacturer has a
2 recovery plan under which the manufacturer offers to collect
3 from a consumer and recover each covered device that is labeled
4 with the manufacturer's brand at no charge to the consumer.

5 D. The recovery plan shall offer covered device
6 collection services that are reasonably convenient and
7 available to consumers in each county in the state. Collection
8 should be as convenient for the consumer as purchasing the
9 product in the first place. The following is a nonexclusive
10 list of systems that meet the convenience requirements of this
11 section:

12 (1) the manufacturer or its designee offers a
13 system in which the consumer can return an end-of-life covered
14 device through the mail, including a system in which the
15 consumer can go online, print a pre-paid shipping label,
16 package the product and schedule an at-home pickup for shipment
17 back to the manufacturer;

18 (2) the manufacturer or its designee keeps
19 open and staffed one physical collection site at which
20 consumers may return end-of-life covered devices, in a location
21 that is geographically central to the people served; or

22 (3) the manufacturer or its designee holds one
23 collection event each calendar year at which consumers may
24 return end-of-life covered devices in a location that is
25 geographically central to the people served.

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1 E. Collection services may use existing collection
2 and consolidation infrastructure for handling covered devices
3 and may include electronic recyclers and repair shops,
4 recyclers of other commodities, reuse organizations, nonprofit
5 corporations, retailers, recyclers or other suitable
6 operations.

7 F. Manufacturers shall offer collection under their
8 recovery plan at no charge to the consumer.

9 G. Each manufacturer shall, as part of its recovery
10 plan, inform consumers in this state about where and how to
11 return and recover covered devices. Each manufacturer shall
12 include collection and recovery information on its web site,
13 shall provide such information to the department and may also
14 include such information in the covered device's packaging or
15 accompanying the sale of the covered device. Inclusion on the
16 state's web site is not a determination by the state that the
17 manufacturer's recovery plan or actual recovery are in
18 compliance with the Manufacturer Responsibility and Consumer
19 Convenience Information Technology Equipment Collection and
20 Recovery Act or other laws.

21 H. Each manufacturer shall annually report to the
22 department on or before January 30, beginning the second
23 program year, the number, type and weight of covered devices
24 collected and recovered during the previous calendar year by
25 category of covered devices and by brand. The report shall

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1 also include documentation verifying proper collection and
2 recovery of such material compliant with the sound
3 environmental management provisions under Section 9 of the
4 Manufacturer Responsibility and Consumer Convenience
5 Information Technology Equipment Collection and Recovery Act.

6 I. Manufacturers shall not be liable in any way for
7 data or other information that a consumer may leave on a
8 covered device that is collected or recovered.

9 Section 6. RETAILERS.--

10 A. No retailer shall sell or offer for sale a
11 covered device in this state unless the covered device has a
12 proper manufacturer label and such device's manufacturer is
13 included on the state list of manufacturers with recovery
14 plans.

15 B. Retailers shall not be liable in any way for
16 data or other information that a consumer may leave on a
17 covered device that is collected or recovered.

18 Section 7. DEPARTMENT.--

19 A. The department shall educate consumers about
20 collection and recovery of covered devices.

21 B. The department shall host, or designate another
22 person to host, a web site about information technology
23 recovery for consumers, with information about and links to
24 manufacturers' collection and recovery information, including
25 their recovery plans, and information about and links to

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1 information for noncompliant and other covered devices,
2 including information about collection events, collection sites
3 and community recycling programs. Inclusion on the
4 department's web site is not a determination by the state that
5 the manufacturer's recovery plan or actual recovery is in
6 compliance with the Manufacturer Responsibility and Consumer
7 Convenience Information Technology Equipment Collection and
8 Recovery Act or other laws.

9 C. The department may conduct audits and
10 inspections to determine compliance under the Manufacturer
11 Responsibility and Consumer Convenience Information Technology
12 Equipment Collection and Recovery Act. The department and the
13 attorney general, as appropriate, shall enforce the provisions
14 of that act and take enforcement action against any
15 manufacturer, retailer or recoverer for failure to comply with
16 any provisions of that act, including assessing appropriate
17 injunctive relief and administrative, civil and criminal
18 penalties, as appropriate.

19 D. Financial or proprietary information submitted
20 to the department under the Manufacturer Responsibility and
21 Consumer Convenience Information Technology Equipment
22 Collection and Recovery Act is exempt from public disclosure,
23 in accordance with state law.

24 E. The department shall compile the information
25 from manufacturers and issue a report to the legislature by

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1 March 1 each year, beginning the second program year.

2 F. The department may adopt such rules and
3 regulations as are necessary to implement the provisions of the
4 Manufacturer Responsibility and Consumer Convenience
5 Information Technology Equipment Collection and Recovery Act.

6 G. The department shall not assess any fees,
7 including an advanced recycling fee, registration fee or other
8 fee, on consumers, manufacturers, retailers or recoverers for
9 collection or recovery of covered devices.

10 Section 8. CONSUMERS.--

11 A. Consumers remain responsible for any data or
12 other information that may be on a covered device that is
13 collected or recovered.

14 B. Consumers are encouraged to learn about proper
15 recovery of their end-of-life covered devices by visiting the
16 department's and manufacturers' web sites.

17 Section 9. SOUND ENVIRONMENTAL MANAGEMENT.--

18 A. All covered devices collected pursuant to the
19 Manufacturer Responsibility and Consumer Convenience
20 Information Technology Equipment Collection and Recovery Act
21 shall be recovered in a manner that is in compliance with all
22 applicable federal, state and local laws and requirements.

23 B. The department shall adopt by reference the
24 institute of scrap recycling industries, incorporated
25 publication *Electronics Recycling Operating Practices* as

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1 standards for recovery in an environmentally sound manner that
2 are protective of worker health and safety.

3 C. Recovery of covered devices under the
4 Manufacturer Responsibility and Consumer Convenience
5 Information Technology Equipment Collection and Recovery Act
6 may be undertaken only by recoverers certified pursuant to the
7 recycling industry operating standard.

8 Section 10. STATE PROCUREMENT--COMPLIANCE.--

9 A. Any person who submits a bid for a contract with
10 a state agency for the purchase or lease of covered devices
11 shall be in compliance with the Manufacturer Responsibility and
12 Consumer Convenience Information Technology Equipment
13 Collection and Recovery Act.

14 B. A state agency that purchases or leases covered
15 devices shall require each prospective bidder to certify
16 compliance with the Manufacturer Responsibility and Consumer
17 Convenience Information Technology Equipment Collection and
18 Recovery Act. Failure to provide such certification shall
19 render the prospective bidder ineligible to bid on the
20 procurement of covered devices.

21 C. In considering bids for state contracts for
22 covered devices, in addition to any other preferences provided
23 elsewhere under state law, the state shall give special
24 preference to manufacturers that have programs to recover other
25 manufacturers' covered devices, including but not limited to

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1 collection events, recycling grants and manufacturer
2 initiatives to take back any covered device brand with
3 purchase.

4 D. The department shall adopt rules to implement
5 this section.

6 Section 11. FEDERAL PREEMPTION.--The Manufacturer
7 Responsibility and Consumer Convenience Information Technology
8 Equipment Collection and Recovery Act shall be deemed repealed
9 if a federal law or a combination of federal laws takes effect
10 that establishes a national program for the collection and
11 recycling of covered devices that substantially meets the
12 intent of that act.