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HOUSE BILL NO. 344

Offered January 9, 2008

Prefiled January 4, 2008

A BILL to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.6, consisting of sections numbered 10.1-1425.27 through 10.1-1425.39, relating to a manufacturer responsibility program for the recycling of computer equipment and televisions; penalties.

Patrons—Plum, Bulova, Hugo and Scott, J.M.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.6, consisting of sections numbered 10.1-1425.27 through 10.1-1425.39 as follows:

*Article 3.6.**Computer and Television Recovery and Recycling Act.**§ 10.1-1425.27. Definitions.*

As used in this article, unless the context requires a different meaning:

"Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

"Computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device.

"Consumer" means an individual who uses computer equipment or a television that is purchased primarily for personal or home business use.

"Manufacturer" means a person who:

1. Manufactures or manufactured computer equipment or televisions in excess of 100 units under a brand that:

a. The person owns or owned; or

b. The person is or was licensed to use, other than under a license to manufacture computer equipment or televisions for delivery exclusively to or at the order of the licensor;

2. Sells or sold computer equipment or televisions in excess of 100 units manufactured by others under a brand that:

a. The person owns or owned; or

b. The person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

3. Manufactures or manufactured computer equipment or televisions in excess of 100 units without affixing a brand;

4. Manufactures or manufactured computer equipment in excess of 100 units to which the person affixes or affixed a brand that:

a. The person does not or has not owned; or

b. The person is not or was not licensed to use; or

5. Imports or imported computer equipment or televisions in excess of 100 units manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the computer equipment or televisions to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

"Television" means any telecommunication system device that can receive moving pictures and sound broadcast over a distance and includes a television tuner or a display device peripheral to a computer in which the display device contains a television tuner.

§ 10.1-1425.28. Applicability.

A. The collection, recycling, and reuse provisions of this article apply to computer equipment and televisions used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

B. This article does not apply to:

1. Any part of a motor vehicle, a personal digital assistant, or a telephone;

2. A consumer's lease of computer equipment or televisions or a consumer's use of computer equipment or televisions under a lease agreement; or

3. The sale or lease of computer equipment or televisions to an entity when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of computer equipment or televisions that have reached the end of their useful lives.

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59 § 10.1-1425.29. *Manufacturer recovery plan.*

60 A. *Before a manufacturer may offer computer equipment or televisions for sale in the*
61 *Commonwealth, the manufacturer shall:*

62 1. *Adopt and implement a recovery plan; and*

63 2. *Affix a permanent, readily visible label to the computer equipment or television with the*
64 *manufacturer's brand.*

65 B. *The recovery plan shall enable a consumer to recycle computer equipment or televisions without*
66 *paying a separate fee at the time of recycling and shall include provisions for:*

67 1. *The manufacturer's collection from a consumer of any computer equipment or television that has*
68 *reached the end of its useful life and is labeled with the manufacturer's brand; and*

69 2. *Recycling or reuse of computer equipment or televisions collected under subdivision 1.*

70 C. *The collection of computer equipment and televisions provided under the recovery plan must be*
71 *reasonably convenient and available to consumers in the Commonwealth and designed to meet the*
72 *collection needs of consumers in the Commonwealth. Examples of collection methods that alone or*
73 *combined meet the convenience requirements of this section include:*

74 1. *A system by which the manufacturer or the manufacturer's designee offers the consumer a system*
75 *for returning computer equipment or televisions by mail at no charge to the consumer;*

76 2. *A system using a physical collection site that the manufacturer or the manufacturer's designee*
77 *operates and to which the consumer may return computer equipment or televisions; and*

78 3. *A system using collection events held by the manufacturer or the manufacturer's designee at which*
79 *the consumer may return computer equipment or televisions.*

80 D. *Collection services under this section may use existing collection and consolidation infrastructure*
81 *for handling computer equipment or televisions and should encourage the inclusion of systems jointly*
82 *managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other*
83 *commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable*
84 *operations. If a manufacturer or its designee offers a mail-back system as described in subdivision C 1,*
85 *either individually, by working together with a group of manufacturers, or by working with others, it*
86 *shall be deemed to meet the convenience requirements of this section.*

87 E. *The recovery plan shall include information for the consumer on how and where to return the*
88 *manufacturer's computer equipment or television. The manufacturer:*

89 1. *Shall include collection, recycling, and reuse information on the manufacturer's publicly available*
90 *website;*

91 2. *Shall provide collection, recycling, and reuse information to the Department; and*

92 3. *May include collection, recycling, and reuse information in the packaging or in other materials*
93 *that accompany the manufacturer's computer equipment or televisions when the equipment is sold.*

94 F. *Information about collection, recycling, and reuse on a manufacturer's publicly available website*
95 *does not constitute a determination by the Department that the manufacturer's recovery plan or actual*
96 *practices are in compliance with this article.*

97 G. *If more than one person is a manufacturer of a certain brand of computer equipment as defined*
98 *by § 10.1-1425.27, any of those persons may assume responsibility for and satisfy the obligations of a*
99 *manufacturer under this article for that brand. If none of those persons assumes responsibility or*
100 *satisfies the obligations of a manufacturer for the computer equipment or televisions of that brand, the*
101 *Department may consider any of those persons to be the responsible manufacturer for purposes of this*
102 *article.*

103 H. *The obligations under this article of a manufacturer who manufactures or manufactured computer*
104 *equipment or televisions, or sells or sold computer equipment or televisions manufactured by others,*
105 *under a brand that was previously used by a different person in the manufacture of the computer*
106 *equipment or televisions extends to all computer equipment or televisions bearing that brand regardless*
107 *of its their date of manufacture.*

108 § 10.1-1425.30. *Reporting requirements.*

109 A. *Each manufacturer shall submit a report to the Department no later than January 31 of each year*
110 *that includes:*

111 1. *The name and contact information of the representative responsible for the manufacturer's*
112 *recovery plan;*

113 2. *The weight of computer equipment and televisions collected, recycled, and reused during the*
114 *preceding calendar year; and*

115 3. *Documentation certifying that the collection, recycling, and reuse of computer equipment and*
116 *televisions complies with § 10.1-1425.39 regarding sound environmental management.*

117 § 10.1-1425.31. *Retailer responsibility*

118 A *person who is a retailer of computer equipment or televisions may not sell or offer to sell new*
119 *computer equipment or televisions in the Commonwealth unless the equipment or television is labeled*
120 *with the manufacturer's label and the manufacturer is included on the Department's list of*

manufacturers that have registered a recovery plan. A retailer who is not a manufacturer is not required to collect computer equipment or televisions for recycling or reuse under this article.

§ 10.1-1425.32. Liability for information stored on computers.

A manufacturer, manufacturer's designee, or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this article. This article does not exempt a person from potential liability under other federal or state law.

§ 10.1-1425.33. Department responsibilities.

A. The Department shall maintain a list of manufacturers on its website that have registered a recovery plan in the Commonwealth. Covered computer equipment or televisions from manufacturers on that list may be sold in or into the Commonwealth.

B. The Department shall provide information on its website to consumers regarding the collection, recycling, and reuse of computer equipment and televisions, including best management practices and information and links to information on:

1. Manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans;

2. Computer equipment and television collection events, collection sites, and community computer equipment and television recycling and reuse programs; and

3. The potential security issues regarding personal information stored on computer equipment that is collected, recycled, or reused.

§ 10.1-1425.34. Enforcement.

A. The Department may conduct audits and inspections to determine compliance with this article.

B. The Department may enforce the provisions of this article and, except as provided by subsections C and D, take enforcement action against any manufacturer or retailer that fails to comply with this article.

C. The Department shall issue a warning notice to a person on the person's first violation of this article. The person must comply with this article no later than the 60th day after the date the warning notice is issued.

D. A retailer who receives a warning notice that the retailer's inventory violates this article because it includes computer equipment or televisions from a manufacturer that has not submitted the recovery plan required by §10.1-1425.29 must bring the inventory into compliance with this article not later than the 60th day after the date the warning notice is issued.

§ 10.1-1425.35. Penalties.

A. The amount of the penalty assessed against a manufacturer that does not label its computer equipment or televisions or adopt and implement a recovery plan as required by this article, may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation.

B. Except as provided by subsection A, the amount of the penalty for a violation of this article, may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation.

C. Notwithstanding the 60-day limit under § 10.1-1425.34, a retailer may sell any inventory accrued before the effective date of this Act without incurring a penalty.

§ 10.1-1425.36. Financial and proprietary information.

Financial or proprietary information submitted to the Department under this article is exempt from public disclosure.

§ 10.1-1425.37. Fees not authorized.

This article does not authorize the Department to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment or televisions.

§ 10.1-1425.38. Consumer responsibilities.

A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

§ 10.1-1425.39. Sound environmental management.

A. All computer equipment and televisions collected under this article must be recycled or reused in a manner that complies with federal, state, and local law.

B. The Department shall compile and make available a list of best practices and model guidelines for the electronics recycling industry in the Commonwealth.

2. That the provisions of this act shall become effective on July 1, 2009.