

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1777*
Committee Substitute Favorable 7/26/07

Short Title: Recovery of Certain Consumer Computers/TV's. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROGRAM FOR THE RECOVERY OF NORTH CAROLINA CONSUMERS' COMPUTERS, COMPUTER MONITORS, AND COMPUTER DISPLAY DEVICES AS WELL AS TELEVISIONS FOR REUSE OR RECYCLING, TO PROVIDE CERTAIN CIVIL PENALTIES, AND TO DIRECT THE STUDY OF THE MANAGEMENT OF DISCARDED CONSUMERS' COMPUTERS, COMPUTER MONITORS, COMPUTER DISPLAY DEVICES, AND TELEVISIONS NOT ADDRESSED UNDER THIS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2E. Consumer Computers and Televisions Recovery Program.

"§ 130A-309.90. Short title.

This Part may be cited as "The "Manufacturer Responsibility and Consumer Computers and Televisions Convenience Collection and Recovery Act".

"§ 130A-309.91. Definitions.

As used in this Part, the following definitions apply:

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

(2) "Covered device" means only the following consumer products:

a. A desktop or notebook computer, including the computer monitor or other display device.

b. A television.

Covered device does not include a computer printer, white goods as defined in G.S. 130A-290, a part of a motor vehicle, a personal digital device (PDA), a telephone, a medical device, or any other consumer product that contains a computer or computer chip.

- 1 (3) "Consumer" means an individual who uses a covered device that is
2 purchased primarily for personal or home business use.
- 3 (4) "Manufacturer" means any of the following persons:
- 4 a. A person who manufactures or manufactured a covered device
5 under a brand that: (i) the person owns or owned; or (ii) the
6 person is or was licensed to use, other than under a license to
7 manufacture a covered device for delivery exclusively to or at
8 the order of the licensor.
- 9 b. A person who sells or sold a covered device manufactured by
10 others under a brand that: (i) the person owns or owned; or (ii)
11 the person is or was licensed to use, other than under a license
12 to manufacture a covered device for delivery exclusively to or
13 at the order of the licensor.
- 14 c. A person who manufactures or manufactured a covered device
15 without affixing a brand.
- 16 d. A person who manufactures or manufactured a covered device
17 to which the person affixes or affixed a brand that: (i) the
18 person does not or has not owned; or (ii) the person is not or
19 was not licensed to use.
- 20 e. A person who imports or imported a covered device
21 manufactured outside the United States into the United States
22 unless at the time of importation the company or licensee that
23 sells or sold the covered device to the importer has or had assets
24 or a presence in the United States sufficient to be considered the
25 manufacturer.
- 26 (5) "Television" means any telecommunication system device that can
27 broadcast or receive moving pictures and sound over a distance and
28 includes a television tuner or a display device peripheral to a computer
29 that contains a television tuner.

30 **"§ 130A-309.92. Legislative findings and purpose.**

31 (a) Computers and related display devices are critical elements to the strength
32 and growth of this State's economic prosperity and quality of life. Many of those
33 products can be refurbished and reused, and many contain valuable components that can
34 be recycled.

35 (b) The purpose of this Part is to establish a comprehensive, convenient, and
36 environmentally sound program for the collection, recycling, and reuse of any covered
37 device that has reached the end of its useful life. The program is based on individual
38 manufacturer responsibility and shared responsibility among consumers, retailers, and
39 the government of this State.

40 **"§ 130A-309.93. Applicability.**

41 (a) The collection, recycling, and reuse provisions of this Part apply to any
42 covered device used and returned to the manufacturer by a consumer in this State and
43 do not impose any obligation on an owner or operator of a solid waste facility.

44 (b) This Part does not apply to any of the following:

- 1 (1) A consumer's lease of a covered device or a consumer's use of a
2 covered device under a lease agreement.
3 (2) The sale or lease of a covered device to an entity when the
4 manufacturer and the entity enter into a contract that effectively
5 addresses the collection, recycling, and reuse of a covered device that
6 has reached the end of its useful life.

7 **"§ 130A-309.94. Manufacturer responsibilities.**

8 (a) Before a manufacturer may offer a covered device for sale in this State, the
9 manufacturer shall:

- 10 (1) Adopt and implement a recovery plan; and
11 (2) Affix a permanent, readily visible label to the covered device with the
12 manufacturer's brand.

13 (b) The recovery plan shall enable a consumer to recycle a covered device
14 without paying a separate fee at the time of recycling and shall include provisions for all
15 of the following:

- 16 (1) The manufacturer's collection from a consumer of any covered device
17 that has reached the end of its useful life and is labeled with the
18 manufacturer's brand.
19 (2) Recycling or reuse of a covered device collected under subdivision (1)
20 of this subsection.

21 (c) The collection of any covered device provided under the recovery plan shall
22 be all of the following:

- 23 (1) Reasonably convenient and available to consumers in this State.
24 (2) Designed to meet the collection needs of consumers in this State.

25 (d) Examples of collection methods that alone or combined meet the convenience
26 requirements of this section include:

- 27 (1) A system by which the manufacturer or the manufacturer's designee
28 offers the consumer a system for returning a covered device by mail.
29 (2) A system using a physical collection site that the manufacturer or the
30 manufacturer's designee keeps open and staffed and to which the
31 consumer may return a covered device.
32 (3) A system using a collection event held by the manufacturer or the
33 manufacturer's designee at which the consumer may return a covered
34 device.

35 (e) Collection services under this section may use existing collection and
36 consolidation infrastructure for handling a covered device and may include electronic
37 recyclers and repair shops, recyclers of other commodities, reuse organizations,
38 nonprofit corporations, retailers, recyclers, and other suitable operations.

39 (f) The recovery plan shall include information for the consumer on how and
40 where to return the manufacturer's covered device. The manufacturer:

- 41 (1) Shall include collection, recycling, and the reuse information on the
42 manufacturer's publicly available Internet site.
43 (2) Shall provide collection, recycling, and reuse information to the
44 Department.

1 (3) May include collection, recycling, and reuse information in the
2 packaging for or in other materials that accompany the manufacturer's
3 covered device when the equipment is sold.

4 (g) Information about collection, recycling, and reuse on a manufacturer's
5 publicly available Internet site does not constitute a determination by the Secretary that
6 the manufacturer's recovery plan or actual practices are in compliance with this Part or
7 other law.

8 (h) Each manufacturer shall submit a report to the Department no later than
9 January 31 of each year that includes all of the following:

10 (1) The weight of all covered devices collected, recycled, and reused
11 during the preceding calendar year.

12 (2) Documentation verifying the collection, recycling, and reuse of those
13 covered devices in a manner that complies with G.S. 130A-309.103
14 regarding sound environmental management.

15 (i) If more than one person is a manufacturer of a certain brand of a covered
16 device as defined by G.S. 130A-309.91, any of those persons may assume responsibility
17 for and satisfy the obligations of a manufacturer under this Part for that brand. If none
18 of those persons assumes responsibility or satisfies the obligations of a manufacturer for
19 the covered device of that brand, the Secretary may consider any of those persons to be
20 the responsible manufacturer for purposes of this Part.

21 **"§ 130A-309.95. Retailer responsibility.**

22 (a) A person who is a retailer of a covered device shall not sell or offer to sell a
23 new covered device in this State unless the equipment is labeled with the manufacturer's
24 label and the manufacturer is included on the Department's list of manufacturers that
25 have recovery plans.

26 (b) Retailers may go to the Department's Internet site as outlined in
27 G.S. 130A-309.97 and view all manufacturers that are listed as having registered a
28 collection program that complies with G.S. 130A-309.94. Covered devices from
29 manufacturers on that list may be sold in or into the State.

30 (c) A retailer is not required under this Part to collect a covered device for
31 recycling or reuse.

32 **"§ 130A-309.96. Liability.**

33 (a) A manufacturer or retailer of a covered device is not liable in any way for
34 information in any form that a consumer leaves on a covered device that is collected,
35 recycled, or reused under this Part.

36 (b) This section does not exempt a person from liability under any other law.

37 **"§ 130A-309.97. Department responsibilities.**

38 (a) The Department shall educate consumers regarding the collection, recycling,
39 and reuse of covered devices.

40 (b) The Department shall host or designate another person to host an Internet site
41 providing consumers with information about the recycling and reuse of covered devices,
42 including best management practices and information about and links to information on:

43 (1) Manufacturers' collection, recycling, and reuse programs, including
44 manufacturers' recovery plans.

1 (2) Covered device collection events, collection sites, and community
2 covered device recycling and reuse programs.

3 (c) The Department may adopt any rules needed to implement this Part.

4 **"§ 130A-309.98. Enforcement.**

5 (a) The Secretary may conduct audits and inspections to determine compliance
6 with this Part.

7 (b) The Secretary and the Attorney General, as appropriate, shall enforce this
8 Part and, except as provided by subsections (c) and (d) of this section, take enforcement
9 action against any manufacturer, retailer, or person who recycles or reuses covered
10 devices for failure to comply with this Part.

11 (c) The Secretary shall issue a warning notice to a person on the person's first
12 violation of this Part. The person shall comply with this Part no later than 60 days after
13 the date the warning notice is issued.

14 (d) A retailer who receives a warning notice from the Secretary that the retailer's
15 inventory violates this Part because it includes a covered device from a manufacturer
16 that has not submitted the recovery plan required by G.S. 130A-309.94 shall bring the
17 inventory into compliance with this Part no later than 60 days after the date the warning
18 notice is issued.

19 (e) Notwithstanding subsection (d) of this section, a retailer may sell a covered
20 device in this State ordered or in stock at the time of the initial posting of the
21 manufacturer's recovery plan, regardless of whether the manufacturer of such a covered
22 device is in compliance.

23 **"§ 130A-309.99. Financial and proprietary information.**

24 Financial or proprietary information submitted to the Department under this Part is
25 not a public record as defined by Chapter 132 of the General Statutes.

26 **"§ 130A-309.100. Annual report required.**

27 The Department shall compile information from manufacturers and issue an
28 electronic report to the standing committees in the House of Representatives and in the
29 Senate of the General Assembly that have primary jurisdiction over environmental
30 matters no later than March 1, 2010, and annually thereafter.

31 **"§ 130A-309.101. Fees.**

32 (a) Each manufacturer who offers a covered device for sale within this State shall
33 register annually with the Department pursuant to rules of the Department on forms
34 prescribed by it. Each manufacturer who offers a covered device for sale within this
35 State shall pay an initial registration fee of two thousand five hundred dollars (\$2,500)
36 and an annual renewal registration fee of one thousand dollars (\$1,000).

37 (b) Except as provided in subsection (a) of this section, the Department shall not
38 impose a fee, including a recycling fee, on a consumer, manufacturer, retailer, or person
39 who recycles or reuses a covered device.

40 **"§ 130A-309.102. Consumer responsibilities.**

41 (a) A consumer is responsible for any information in any form left on the
42 consumer's covered device that is collected, recycled, or reused.

1 (b) A consumer is encouraged to learn about recommended methods for
2 recycling and reuse of a covered device that has reached the end of its useful life by
3 visiting the Department's and the manufacturers' Internet sites.

4 **"§ 130A-309.103. Sound environmental management.**

5 (a) All covered devices collected under this Part shall be recycled or reused in a
6 manner that complies with federal, State, and local law.

7 (b) The Commission shall adopt as standards for recycling or reuse of covered
8 devices in this State the standards provided by "Electronics Recycling Operating
9 Practices," as approved on April 25, 2006, by the board of directors of the Institute of
10 Scrap Recycling Industries, Inc., or other standards from a comparable nationally
11 recognized organization as adopted for this purpose by the Commission.

12 **"§ 130A-309.104. Civil penalty.**

13 (a) A person shall not be assessed a civil penalty for a first violation that is
14 brought into compliance no later than 60 days after the date a warning notice is issued
15 by the Secretary under G.S. 130A-309.98. A first violation that is not brought into
16 compliance as required under G.S. 130A-309.98 shall be treated the same as a second
17 violation under this section.

18 (b) Any manufacturer that does not label its covered devices or adopt and
19 implement a recovery plan as required by G.S. 130A-309.94 shall be assessed a civil
20 penalty not to exceed ten thousand dollars (\$10,000) for the second violation or
21 twenty-five thousand dollars (\$25,000) for each subsequent violation.

22 (c) Except as provided under subsection (b) of this section, any person that
23 violates a provision of this Part shall be assessed a civil penalty not to exceed one
24 thousand dollars (\$1,000) for the second violation or two thousand dollars (\$2,000) for
25 each subsequent violation.

26 (d) All remedies of Part 2 of Article 1 of this Chapter other than G.S. 130A-22
27 apply to violations of this Part."

28 **SECTION 2.** G.S. 130A-29(c) is amended by adding a new subdivision to
29 read:

30 "(11) Establishing best management practices and standards for collecting,
31 recycling, or reusing covered devices as defined in G.S. 130A-309.91."

32 **SECTION 3.** The Environmental Review Commission shall study issues
33 surrounding the management of discarded consumers' desktop and notebook computers,
34 computer monitors, computer display devices, and televisions for which a manufacturer
35 cannot be identified or for which the manufacturer is no longer in business and has no
36 successor in interest. When conducting this study, the Environmental Review
37 Commission may ascertain, by number of units, weight, or volume, how much of this
38 consumer computer and television equipment has been discarded in North Carolina and
39 may determine the threat to the environment these components of the waste stream
40 pose. No later than May 1, 2008, the Environmental Review Commission shall report its
41 findings and recommendations, including any administrative or legislative proposals, on
42 the most efficient and economically practicable means of recovering, reusing, recycling,
43 or disposing of these components of the waste stream.

1 **SECTION 4.(a)** If federal law establishes a national program for the
2 collection and recycling of covered devices, as defined in G.S. 130A-309.91, as enacted
3 by Section 1 of this act, and the Commission for Public Health determines that the
4 federal law substantially meets the purposes of Part 2E of Article 9 of Chapter 130A of
5 the General Statutes, as enacted by Section 1 of this act, the Commission for Public
6 Health may adopt an agency statement that finds the federal law as preemptive of this
7 Part. The Commission for Public Health shall submit this statement to the General
8 Assembly and the Revisor of Statutes.

9 **SECTION 4.(b)** Part 2E of Article 9 of Chapter 130A of the General
10 Statutes, as enacted by Section 1 of this act, expires on the effective date of the
11 Commission's statement under subsection (a) of this section, but such expiration does
12 not abate any penalties under that Part.

13 **SECTION 5.** Notwithstanding the requirement that a person come in to
14 compliance within 60 days of receiving a warning notice under G.S. 130A-309.98(c) or
15 (d), as enacted by Section 1 of this act, a retailer may sell any inventory of covered
16 devices, as defined in G.S. 130A-309.91, as enacted by Section 1 of this act, accrued
17 before the effective date of this act without incurring a civil penalty under Chapter 130A
18 of the General Statutes.

19 **SECTION 6.** This act becomes effective January 1, 2008, and applies to
20 covered devices, as defined in G.S. 130A-309.91, as enacted by Section 1 of this act,
21 that are sold or offered for sale on or after that date.