

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/13/15

A Bill

HOUSE BILL 1830

By: Representative Tucker

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS MANUFACTURER RESPONSIBILITY AND CONSUMER CONVENIENCE INFORMATION TECHNOLOGY EQUIPMENT COLLECTION AND RECOVERY ACT; TO REQUIRE A MANUFACTURER OF CERTAIN COMPUTING, DISPLAY, OR PRINTING EQUIPMENT TO OFFER A RECOVERY PROGRAM FOR THE COLLECTION OF EQUIPMENT FROM A CONSUMER IN A MANNER CONVENIENT TO THE CONSUMER; TO LIMIT THE LIABILITY OF A MANUFACTURER FOR DAMAGE SUSTAINED BY A CONSUMER FROM INFORMATION CONTAINED ON EQUIPMENT RETURNED BY THE CONSUMER TO A MANUFACTURER THROUGH THE MANUFACTURER'S RECOVERY PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS MANUFACTURER RESPONSIBILITY AND CONSUMER CONVENIENCE INFORMATION TECHNOLOGY EQUIPMENT COLLECTION AND RECOVERY ACT; TO REQUIRE A RECOVERY PROGRAM FOR CERTAIN COMPUTING, DISPLAY, AND PRINTING EQUIPMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 8, Chapter 6, is amended to add an additional subchapter to read as follows:

Subchapter 20 – Arkansas Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act



8-6-2001. Title.

This subchapter may be cited as the "Arkansas Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act".

8-6-2002. Findings.

The General Assembly finds that:

(1) Televisions, computing, and printing devices are critical to the development of this state's economy and the promotion of the quality of life of the citizens of this state;

(2) Many used televisions, computing, and printing devices can be refurbished and reused, or recycled;

(3) Developing and implementing a system for recovering televisions, computing, and printing devices promotes resource conservation, public health, public safety, and economic prosperity; and

(4)(A) The state should establish a comprehensive and convenient recovery program for televisions, computing, and printing devices based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and government.

(B) The program should ensure that used televisions, computing, and printing devices are disposed of in a manner that promotes resource conservation through the development of an effective and efficient system for collection and recycling.

(C) The program should encourage manufacturers to offer a convenient collection and recycling service to consumers at no charge.

8-6-2003. Definitions.

As used in this subchapter:

(1) "Collect" means to facilitate the delivery of a covered device to a collection site included in the manufacturer's program, and to transport the covered device for recovery;

(2) "Computer manufacturer" means a person that:

(A) Manufactures a covered computer device under its own brand for sale or without affixing a brand;

(B) Sells in this state a covered computer device produced

by another supplier under its own brand or label;

(C) Imports covered computer devices into the United States;

(D) Is a foreign company from which an importer purchases a covered computer device that has a presence or assets in the United States;
or

(E) Manufactures a covered computer device, supplies a covered computer device to a person within a distribution network that includes wholesalers or retailers in this state, and benefits from the sale of a covered computer device through the distribution network;

(3) "Consumer" means an occupant of a single, detached dwelling unit or a single unit of a multiple dwelling unit who has used a covered device primarily for personal or home business use;

(4)(A) "Covered computer device" means a desktop or notebook computer, computer monitor, or printing device marketed and intended for use by a consumer.

(B) "Covered computer device" does not include a covered television device;

(5)(A) "Covered device" means a covered computer device and a covered television device marketed and intended for use by a consumer.

(B) "Covered device" does not include:

(i) A device that is a part of a motor vehicle or a component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(ii) A device that is functionally or physically a part of, or connected to, or integrated within equipment or a system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including without limitation diagnostic, monitoring, control, or medical products as defined under the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., equipment or a system designed and intended for use in security, sensing, monitoring, anti-terrorism, and emergency services purposes, or equipment or a system designed and intended primarily for use by professional users;

(iii) A device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave

oven, conventional oven or range, dishwasher, air conditioner, dehumidifier, air purifier, water heater, or exercise equipment; or

(iv) A telephone, including a mobile telephone, a personal digital assistant, a global positioning system, or a handheld gaming device;

(6)(A) "Covered television device" means an electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite, including without limitation a direct view or projection television with a viewable screen of nine inches (9") or larger whose display technology is based on cathode ray tube, plasma, liquid crystal display, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for use by a consumer primarily for personal purposes.

(B) "Covered television device" does not include a covered computer device;

(7) "Manufacturer's brand" means a manufacturer's name, brand name either owned or licensed by the manufacturer, or brand logo for which the manufacturer has legal responsibility;

(8) "Market share" means the total weight of a television manufacturer's covered television devices that were sold at retail in the United States to individuals during the previous year, multiplied by the population fraction of Arkansas to the United States population as determined in the most recent United States Census data for the total population of Arkansas divided by the total population of the United States, divided by the total weight of all of the covered television devices that were sold at retail to individuals in Arkansas during the previous year;

(9) "Person" means an individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, government entity, public benefit corporation, or public authority;

(10) "Recover" means to reuse or recycle;

(11) "Recoverer" means a person or entity that reuses or recycles a covered device;

(12) "Retail sale" means the sale of a new product through a sales outlet, the Internet, mail order, or otherwise, whether or not the

seller has a physical presence in this state;

(13) "Retailer" means a person engaged in retail sales;

(14)(A) "Sell" means a transfer for consideration of title, including without limitation a transaction conducted through a sales outlet, a catalog, or the Internet or another similar electronic means.

(B) "Sell" does not mean a lease; and

(15)(A) "Television manufacturer" means a person that:

(i) Manufactures covered television devices under a manufacturer's brand that it licenses or owns for sale in this state;

(ii) Manufactures covered television devices without affixing a manufacturer's brand for sale in this state;

(iii) Resells into this state a covered television device under a manufacturer's brand it owns or licenses produced by other suppliers, including a retail establishment that sells covered television devices under a manufacturer's brand the retailer owns or licenses;

(iv) Imports covered television devices into the United States;

(v) Is a foreign company from which an importer purchases a covered television device that has a presence or assets in the United States;

(vi) Manufactures covered television devices, supplies covered television devices to a person within a distribution network that includes wholesalers or retailers in this state, and benefits from the sale in this state of the covered television devices through the distribution network; or

(vii) Assumes the responsibilities and obligations of a television manufacturer under this subchapter.

(B) "Television manufacturer" does not include a licensor or manufacturer's brand owner of a manufacturer's brand under which a television manufacturer manufactures, sells, or resells televisions.

8-6-2004. Manufacturer's brand label.

A computer manufacturer or television manufacturer shall not sell or offer to sell a covered device unless a label indicating the computer manufacturer's or television manufacturer's brand is permanently affixed to the covered device in a readily visible location.

8-6-2005. Computer device recovery program.

(a) A computer manufacturer shall not sell or offer to sell in this state a covered computer device unless the computer manufacturer provides a recovery program at no charge or provides a financial incentive of equal or greater value, such as a coupon.

(b) A recovery program under this section shall:

(1) Require a computer manufacturer to offer to collect from a consumer a covered computer device bearing a label indicating the computer manufacturer's brand; and

(2)(A) Make the computer manufacturer's collection service as convenient to a consumer as the purchase of a covered computer device from the computer manufacturer.

(B) A computer manufacturer may use a mail-back system in which a consumer can return an end-of-life covered computer device by mail, including a system in which a consumer can go online, print a prepaid shipping label, package the covered computer device, and affix the prepaid label to the package for deposit with the United States Postal Service or other carrier selected by the computer manufacturer.

(C)(i) If a computer manufacturer does not provide a mail-back system, the computer manufacturer shall provide collection sites or collection events, or both, that are centrally located in a county, region, or other location based on population.

(ii) A computer manufacturer shall work in coordination with the Arkansas Department of Environmental Quality to determine an appropriate number of collection sites or collection events, or both.

(c) A recovery program under this section may use existing collection and consolidation infrastructure for collecting covered computer devices, including retailers, recyclers, and reuse organizations.

(d) A computer manufacturer may work collectively and cooperatively with another computer manufacturer to offer collection services to consumers.

(e) A computer manufacturer shall describe the computer manufacturer's recovery program on the computer manufacturer's website if the computer manufacturer maintains a website.

(f) A collection event under this section shall accept a covered

computer device manufactured by any computer manufacturer.

8-6-2006. Television device recovery program.

(a) A television manufacturer shall not sell or offer for sale a covered television device in this state unless the television manufacturer provides a recovery program at no charge or provides a financial incentive of equal or greater value, such as a coupon.

(b) A television manufacturer shall annually recycle or arrange for the recycling of covered television devices manufactured by the television manufacturer.

(c)(1) A television manufacturer shall annually recycle or arrange for the recycling of its market share of covered television devices under this section.

(2) The individual recycling obligation for each television manufacturer is the total number of pounds of covered television devices recycled by all television manufacturers during the previous year multiplied by the television manufacturer's market share.

(3) The Arkansas Department of Environmental Quality shall notify each television manufacturer of its market share recycling obligation.

(4) A television manufacturer shall provide information to the department to allow the department to calculate market share and to determine each television manufacturer's recycling obligation.

(5) A television manufacturer shall report to the department the total weight of the television manufacturer's covered television devices sold at retail in the United States, the state specific covered television device sales data annually calculated using the population fraction of Arkansas to the United States population, and the total weight of covered television devices collected and recycled in the state during the previous year.

(d)(1) A television manufacturer may fulfill the requirements of this section either individually or in participation with other television manufacturers.

(2) A recovery program under this section may use existing collection and consolidation infrastructure for collecting covered television devices, including retailers, recyclers, and reuse organizations.

(e) A television manufacturer shall provide the department with contact information for the television manufacturer's designated agent or

employee whom the department may contact for information related to the television manufacturer's compliance with this section.

8-6-2007. Retailers.

(a) A retailer shall only sell or offer to sell a covered device that:

(1) Bears a manufacturer label as required under § 8-6-2004; and

(2) Is manufactured by a computer manufacturer or television manufacturer that offers a recovery program under this subchapter.

(b) This section does not apply to a covered television device sold by a retailer for less than one hundred dollars (\$100).

8-6-2008. Immunity.

(a) A computer manufacturer or television manufacturer is not liable for damages arising from information stored on a covered device collected from a consumer through the computer manufacturer or television manufacturer's recovery programs under this subchapter.

(b) A retailer is not liable for damages arising from information stored on a covered device collected from a consumer under a computer manufacturer or television manufacturer's recovery program under this subchapter.

8-6-2009. Landfill disposal prohibited – Notice.

(a) A consumer shall not knowingly place or discard a covered device or any of the components or subassemblies of a covered device in a waste stream that is to be disposed of in a solid waste landfill.

(b) An owner or operator of a solid waste landfill shall not knowingly accept for disposal at the solid waste landfill's gate a load containing more than an incidental amount of covered devices.

(c) The owner or operator of a solid waste landfill shall post, in a conspicuous location at the solid waste landfill, a sign stating that covered devices and components of covered devices are not accepted for disposal at the solid waste landfill.

(d) The owner or operator of a solid waste landfill shall notify in writing a hauler delivering solid waste to the landfill that covered devices and components of covered devices are not accepted for disposal at the solid waste landfill.

8-6-2010. Arkansas Department of Environmental Quality – Website information.

The Arkansas Department of Environmental Quality shall provide information to the public on its website regarding:

- (1) The recovery programs under this subchapter;
- (2) The prohibition on disposing of covered devices and components in a solid waste landfill;
- (3) Collection options available for covered devices;
- (4) The definition of covered devices;
- (5) Proper methods for disposing of covered devices and noncovered devices; and
- (6) Links to recovery programs on each computer manufacturer or television manufacturer’s website.

8-6-2011. Arkansas Department of Environmental Quality – Audits and inspections – Penalties.

The Arkansas Department of Environmental Quality may:

- (1) Conduct audits and inspections of a computer or television manufacturer, retailer, or recoverer to determine compliance with this subchapter; and
- (2) Establish by rule administrative fines for violations of this subchapter not to exceed one thousand dollars (\$1,000) for each violation.

8-6-2012. Confidentiality.

Financial and proprietary information submitted to the Arkansas Department of Environmental Quality under this subchapter is confidential and is not subject to examination or disclosure as public information under the Freedom of Information Act, § 25-19-101 et seq.

8-6-2013. Arkansas Department of Environmental Quality – Annual report.

The Arkansas Department of Environmental Quality shall include in its annual solid waste report information provided by computer manufacturers and television manufacturers on recovery programs offered under this subchapter.

8-6-2014. Compliance with law and industry standards.

(a) A covered device shall be recovered in a manner that complies with applicable federal, state, and local requirements.

(b) A recoverer shall at a minimum comply with the responsible recycling practices developed by the Institute of Scrap Recycling Industries, Inc., or other comparable industry or governmental standards as they existed on January 1, 2015.

8-6-2015. Fees.

(a) The Arkansas Department of Environmental Quality shall establish a registration fee schedule for a computer manufacturer and a television manufacturer as follows:

(1) An initial registration fee of not more than two thousand five hundred dollars (\$2,500); and

(2) An annual registration renewal fee of not more than one thousand dollars (\$1,000).

(b)(1)(A) A fee for a computer manufacturer shall be based on the computer manufacturer's volume of sales in this state.

(B) A fee for a television manufacturer shall be based on the market share of the television manufacturer.

(2) A manufacturer of a covered device that sells one thousand (1,000) or fewer covered devices per year is exempt from a fee under this subchapter.

(c) Proceeds from fees collected under this section shall be used by the department exclusively to implement this subchapter.

8-6-2016. Rules.

The Arkansas Department of Environmental Quality shall adopt rules to implement this subchapter including without limitation rules for:

(1) Computer manufacturers' and television manufacturers' annual reports;

(2) Computer manufacturers' and television manufacturers' plans;

(3) Reporting requirements; and

(4) Standards for operations of recovery facilities.

/s/Tucker