

[First Reprint]

**ASSEMBLY, No. 3343**

**STATE OF NEW JERSEY**

**213th LEGISLATURE**

INTRODUCED OCTOBER 23, 2008

**Sponsored by:**

**Assemblyman REED GUSCIORA**

**District 15 (Mercer)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Co-Sponsored by:**

**Assemblywoman Greenstein and Senator B.Smith**

**SYNOPSIS**

Revises "Electronic Waste Recycling Act."

**CURRENT VERSION OF TEXT**

As reported by the Assembly Environment and Solid Waste Committee on November 13, 2008, with amendments.

AN ACT concerning electronic waste management, and amending, supplementing and repealing various sections of P.L.1987, c.102 and P.L.2007, c.347.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2007, c.347 (C.13:1E-99.95) is amended to read as follows:

2. As used in sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L. , c. (C. )(pending before the Legislature as this bill):

“Authorized recycler” means a person who: (1) engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of re-use or recycling; or (2) changes the physical or chemical composition of a covered electronic device by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for the purpose of segregating components, and for the purpose of recovering or recycling those components, and who arranges for the transport of those components to an end user.

“Brand” means symbols, words, or marks that identify a covered electronic device, rather than any of its components.

“Business concern” means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization. “Business concern” shall not include a small business enterprise.

“Cathode ray tube” means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

“Computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor, but the term shall not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other similar device.

“Consumer” means a person who purchases a covered electronic device in a transaction that is a retail sale. “Consumer” shall not include any business concern purchasing covered electronic devices <sup>1</sup>[whose recycling is contractually mandated in language included within

the annual plan submitted to, and approved by, the department pursuant to section 10 of P.L.2007, c.347 (C.13:1E-99.103)]<sup>1</sup> .

“Covered electronic device” means a desktop or personal computer, computer monitor, portable computer, or television sold to a consumer. A “covered electronic device” shall not include any of the following: (1) an 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; (2) an 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; (3) an 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; or (4) a telephone of any type unless it contains a video display area greater than four inches measured diagonally.

“Department” means the Department of Environmental Protection.

<sup>1</sup>“Local government unit” means any county or municipality, or any agency, instrumentality, authority or corporation of any county or municipality, including, but not limited to, sewerage, utilities and improvement authorities, or any other political subdivision of the State.<sup>1</sup>

“Manufacturer” means any person: (1) who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (2) who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (3) who manufactures or manufactured covered electronic devices without affixing a brand; (4) who manufactures or manufactured covered electronic devices to which the person affixes or affixed a brand that the person neither owns or owned nor is or was licensed to use; [or] (5) for whose account covered electronic devices manufactured outside the United States are or were imported into the United States, provided however, if, at the time such covered electronic devices are or were imported into the United States, another person has registered as the manufacturer of the brand of the covered electronic devices

pursuant to subsection b. of section 9 of [this act] P.L.2007, c.347 (C.13:1E-99.102), then paragraph (5) of this definition shall not apply; or (6) a person who assumes the obligations and responsibilities for any manufacturer pursuant to paragraphs (1) through (5) of this definition.

“Market share” means a television manufacturer’s <sup>1</sup>national<sup>1</sup> sales of televisions <sup>1</sup>[within the State]<sup>1</sup> expressed as a percentage of the total of all television manufacturers’ <sup>1</sup>[annual sales within the State] national sales<sup>1</sup> based on <sup>1</sup>[sales data submitted to the television manufacturer by retailers pursuant to section 11 of P.L.2007, c.347 (C.13:1E-99.104)] the best available public data<sup>1</sup>.

“Monitor” means a separate video display component of a computer, whether sold separately or together with a computer central processing unit and 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 measured diagonally, and its case, interior wires and circuitry, cable to the central processing unit, and power cord.

“Obligation” means: (1) the return share in weight, identified for an individual manufacturer, as determined by the department pursuant to subsection a. of section 12 of [this act] P.L.2007, c.347 (C.13:1E-99.105); or (2) the market share, identified for an individual television manufacturer, as determined by the department pursuant to subsection c. of section 3 of P.L.2007, c.347 (C.13:1E-99.96).

“Orphan device” means a covered electronic device for which no manufacturer can be identified, or for which the original manufacturer no longer exists.

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

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

“Program year” means a full calendar year beginning on or after January 1, [2010] 2011.

“Purchase” means the taking, by sale, of title in exchange for consideration.

<sup>1</sup>“Recognized academic institution” means any of the following educational or research institutions located in this State: a duly authorized institution of higher education licensed by the Board of Higher Education; a public school operated by a local school district; a private

vocational school; or a nonpublic school satisfying the State's compulsory attendance requirements.]<sup>1</sup>

“Recycling” means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products. “Recycling” shall not include energy recovery or energy generation by means of incinerating electronic waste whether apart or in combination with other wastes.

“Registrant” means a manufacturer of covered electronic devices that is in full compliance with the requirements of this act.

“Retail sales” means the sale of covered electronic devices through sales outlets, via the Internet, mail order, or other means, whether or not the retailer has a physical presence in this State.

“Retailer” means a person who owns or operates a business that sells new covered electronic devices in this State by any means to a consumer.

“Return share” means the proportion of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the department pursuant to subsection a. of section 12 of [this act] P.L.2007, c.347 (C.13:1E-99.105).

“Return share in weight” means the total weight of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the department pursuant to subsection a. of section 12 of [this act] P.L.2007, c.347 (C.13:1E-99.105).

“Sale” or “sell” 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 leases.

“Small business enterprise” means any business which has its principal place of business in this State, is independently owned and operated, and employs the equivalent of fewer than 50 full-time employees.

“Television” means a stand-alone display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, having a viewable area greater than four inches measured diagonally, able to adhere to standard

consumer video formats and having the capability of selecting different broadcast channels and support sound capability.

“Video display” 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. A “video display” typically uses a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology.

(cf: P.L.2007, c.347, s.2)

2. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) is amended to read as follows:

3. a. Beginning on January 1, [2009] 2010, and each January 1 thereafter, each manufacturer of televisions offered for sale for delivery in this State shall register with the department and pay a registration fee of \$5,000. Each television manufacturer’s registration and renewal shall include a list of all of the brands under which its televisions are sold.

b. Each registered television manufacturer shall submit an annual renewal of its registration to the department and pay to the department a registration renewal fee of \$5,000 by January 1 of each program year. Each registered television manufacturer’s renewal shall include an annual report.

c. In addition to reporting all brands under which its televisions are sold, regardless of whether the brand is owned or licensed, the registered television manufacturer’s annual report shall include the [total weight] <sup>1</sup>[market share] total number<sup>1</sup> of all new televisions sold in the State in the previous program year. [In lieu of providing this information, a registered television manufacturer may request the department to calculate the total weight of new televisions sold in the State by using prorated national sales data based on State population] The department shall determine a registered television manufacturer’s market share <sup>1</sup>[by using sales data submitted to the registered television manufacturer by retailers pursuant to section 11 of P.L.2007, c.347 (C.13:1E-99.104)]<sup>1</sup> .

d. A registered television manufacturer shall inform the department, in writing, as soon as it becomes aware that it will cease selling televisions in the State.

e. By June 1, 2010, each registered television manufacturer or group of registered television manufacturers shall submit a plan to the department to collect, transport and recycle used televisions based on the television manufacturer's market share. Every plan shall be filed with a television manufacturer's annual registration, and shall include:

(1) Methods that will be used to collect the used televisions including proposed collection services;

(2) The processes and methods that will be used to recycle recovered used televisions including a description of the recycling processes that will be used, including the name and location of all authorized recyclers to be directly utilized by the plan;

(3) Means that will be utilized to publicize the collection services, including specification of a website or toll-free telephone number that provides information about the registrant's recycling program in sufficient detail to allow consumers to learn how to return their used televisions for recycling, including limitations placed by collection sites on the number of used televisions permitted for drop-off by consumers; and

(4) The intention of the registrant to fulfill its obligation through its own operations, either individually or with other registered television manufacturers, or by contract with for-profit or not-for-profit corporations, or <sup>1</sup>[units of government] local government units<sup>1</sup>.

The department shall hold confidential any information obtained pursuant to this subsection when shown by a registered television manufacturer that the information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of the registered television manufacturer.

Recovered used televisions shall not be sent to prisons for recycling either directly or through intermediaries and nothing in this section shall be construed to allow for the recycling of used televisions by prisoners. Any person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense shall be disqualified from being an authorized recycler.

By January 1, [2010] 2011, each registered television manufacturer or group of registered television manufacturers shall [participate in a statewide] commence its used television recycling program to implement and finance the collection, transportation, and recycling of

used televisions. The [statewide] used television recycling program shall accept all types and all brands of used televisions, including orphan devices.

f. [A registered television manufacturer or group of registered television manufacturers may conduct its own collection, transportation, and used television recycling program. The recycling program shall accept all types and all brands of used televisions. The registered television manufacturer or group of manufacturers shall submit a report to the department annually by January 30, beginning the year after the program is initiated. The report shall include the total weight of used televisions collected from consumers in this State by the manufacturer or group of manufacturers during the previous program year and documentation verifying collection and recycling of these used televisions.] Each registrant's plan or plan jointly submitted by a group of registrants shall be reviewed to determine its compliance with subsection e. of this section and approved by the department. The department may reject the plan, in whole or in part, and may impose additional requirements as a condition of approval.

g. If a registered television manufacturer fails to comply with all the conditions and terms of an approved plan, the registered television manufacturer shall be prohibited from selling or offering for sale televisions in this State.

h. Registered television manufacturers that collect, transport, and recycle used televisions in excess of their market share may sell credits to another registrant or apply that excess to the following year's recycling program.

i. Nothing in this act is intended to exempt any person from liability the person would otherwise have under applicable law.

(cf: P.L.2007, c.347, c.3)

3. (New section) a. The department shall prepare a plan every three years that: (1) establishes used television per-capita collection and recycling goals; and (2) identifies any necessary State actions to expand collection opportunities to achieve the used television per-capita collection and recycling goals. The plan shall be posted on the department's Internet website and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

b. The department shall prepare an annual report, which shall be posted on the department's Internet website and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

The annual report shall include the following:

(1) Progress toward achieving the overall annual total recovery and recycling goals described in the plan prepared pursuant to subsection a. of this section; and

(2) An evaluation of the effectiveness of existing used television collection and processing infrastructure.

c. The used television recovery and recycling program implemented to effectuate the provisions of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and its associated regulations shall be fully audited by an independent, certified public accountant at the end of each calendar year and the audit report shall be submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

4. Section 6 of P.L.2007, c.347 (C.13:1E-99.99) is amended to read as follows:

6. a. Any manufacturer that is not in compliance with all financial and other requirements of this act shall be prohibited from selling or offering for sale in this State a covered electronic device.

b. Beginning on January 1, [2010] 2011, it shall be unlawful for any person to sell or 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.

c. [The] Beginning on January 1, 2011, the department shall maintain a list of all manufacturers in compliance with the requirements of this act and shall post the list on the department's Internet website.

d. Sellers of [products] covered electronic devices in or into the State shall consult the list established by the department pursuant to subsection c. of this section 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] covered electronic device was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the aforementioned website.

[The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.]

(cf: P.L.2007, c.347, s.6)

5. Section 7 of P.L.2007, c.347 (C.13:1E-99.100) is amended to read as follows:

7. Beginning on January 1, [2009] 2010, a manufacturer or retailer may not sell or offer for sale a covered electronic device in this State unless the covered electronic device is labeled with the manufacturer's brand, and the label is permanently affixed and readily visible.

[The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.]

(cf: P.L.2007, c.347, s.7)

6. Section 8 of P.L.2007, c.347 (C.13:1E-99.101) is amended to read as follows:

8. Beginning on January 1, [2010] 2011, [it shall be unlawful for any] no person [to] shall sell or offer for sale in this State [any] a new covered electronic [devices, including televisions, unless those products comply with the applicable provisions of Directive 2002/95/EC of the European Union, adopted by the European Parliament and the Council of the European Union on January 27, 2003, as implemented and interpreted through the decisions of the Technical Adaptation Committee established by Directive 2002/95/EC] device, including a television, if the covered electronic device is prohibited from being sold or offered for sale in the European Union on or after its date of manufacture due to the concentration of one or more heavy metals in the covered electronic device exceeding its maximum concentration value, as specified in the Commission of European Communities' Decision of August 18, 2005, amending Directive 2002/95/EC (European Union document 2005/618/EC), or as specified in a subsequent amendment to the Directive.

(cf: P.L.2007, c.347, s.8)

7. Section 9 of P.L.2007, c.347 (C.13:1E-99.102) is amended to read as follows:

9. a. (1) By January 30, [2011] 2012, and by each January 30 thereafter, the department shall:

(a) have completed an auditable, statistically significant sampling of covered electronic devices collected from consumers in this State [by the department] during the previous program year. The sampling information collected shall consist of a list of brands of covered electronic devices and the weight of covered electronic devices that are identified for each brand. The department's sampling shall be conducted in accordance with a procedure established by the department and may be conducted by a third-party organization including [a] an authorized recycler, to be determined by the department. The department may, at its discretion, be present at the sampling and may audit the methodology and the results of the third-party organization. The costs associated with the sampling shall be recovered from the fees paid by manufacturers to the department; and

(b) determine the total weight of covered electronic devices, including orphan devices, collected from consumers in this State [by the department] during the previous program year.

(2) If a manufacturer or group of manufacturers conducts its own [collection, transportation, and recycling program for] sampling of covered electronic devices, the manufacturer or group of manufacturers shall submit a report to the department annually by [January 30] March 1, beginning the year after the program is initiated. The report shall include:

(a) the results of an auditable, statistically significant sampling of covered electronic devices collected from consumers in this State by the manufacturer or group of manufacturers during the previous program year. The sampling information reported shall consist of a list of brands of covered electronic devices and the weight of covered electronic devices that are identified for each brand; and

(b) the total weight of covered electronic devices, including orphan devices, collected from consumers in this State by the manufacturer or group of manufacturers during the previous program year and documentation verifying collection and recycling of such devices.

b. By February 1, [2009] 2010, and each January 1 thereafter, each manufacturer of covered electronic devices offered for sale for delivery in this State shall register with the department and pay a registration fee of \$5,000. Any manufacturer to whom the department provides notification of a return share and return share in weight pursuant to subsection a. of section 12 of [this act] P.L.2007, c.347 (C.13:1E-99.105) and who has not previously filed a registration shall file a registration with the department within 30 days of receiving such

notification from the department. Each manufacturer's registration and renewal shall include a list of all of the manufacturer's brands of covered electronic devices.

The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.

(cf: P.L.2007, c.347, s.9)

8. Section 10 of P.L.2007, c.347 (C.13:1E-99.103) is amended to read as follows:

10. a. By June 1, [2009] 2010, each manufacturer to whom the department provides, by April 2, [2009] 2010, a return share in weight that is greater than zero shall[:

(1) submit an additional fee to the department based on its return share in weight of covered electronic devices. The fee shall be calculated using the following formula: the manufacturer's return share in weight multiplied by no more than \$0.50 per pound; or

(2)] submit a plan to the department to collect, transport and recycle covered electronic devices.

b. Each manufacturer to whom the department provides, by February 15, [2011] 2012 or by February 15 of any year thereafter, a return share in weight that is greater than zero shall, by March 15 of that year, comply with the requirements of [paragraphs (1) or (2) of] subsection a. of this section.

c. An individual manufacturer submitting a plan [in lieu of payment of the fee set forth in] pursuant to subsection a. of this section shall collect, transport, and recycle its return share in weight.

d. A group of manufacturers jointly submitting a plan [in lieu of payment of the fee set forth in] pursuant to subsection a. of this section shall collect, transport, and recycle the sum of the obligations of each participating manufacturer.

e. Every plan shall be filed with a manufacturer's annual registration, and shall include:

(1) Methods that will be used to collect the covered electronic devices including proposed collection services;

(2) The processes and methods that will be used to recycle recovered covered electronic devices including a description of the recycling processes that will be used, including the name and location of all authorized recyclers to be directly utilized by the plan;

(3) The processes and methods that will be used to recycle recovered covered electronic devices which originated from transactions between business concerns;

(4) Means that will be utilized to publicize the collection services, including specification of a website or toll-free telephone number that provides information about the manufacturer's program in sufficient detail to allow consumers to learn how to return their covered electronic devices for recycling; and

[(4)] (5) The intention of the registrant to fulfill its obligation through operation of its own plan, either individually or with other manufacturers.

The department shall hold confidential any information obtained pursuant to this subsection when shown by a manufacturer that the information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of the manufacturer.

Recovered covered electronic devices shall not be sent to prisons for recycling either directly or through intermediaries and nothing in this section shall be construed to allow for the recycling of covered electronic devices by prisoners. Any person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense shall be disqualified from engaging in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of re-use or recycling.

f. [Before the fee set forth in subsection a. of this section may be waived by the department, the] Each manufacturer's plan or plan jointly submitted by a group of manufacturers shall be reviewed to determine its compliance with subsection e. of this section and approved by the department. [Upon approval of the plan by the department, the payment of the annual fee set forth in subsection a. of this section shall be waived.] The department may reject the plan, in whole or in part, and may impose additional requirements as a condition of approval.

g. If a manufacturer fails to comply with all the conditions and terms of an approved plan, the manufacturer shall be [required to submit the following:

(1) A payment to the department to cover the cost of collecting, transporting, and recycling the unmet portion of its obligation. The payment shall be equal to the following

formula: the quantity of the outstanding portion, in pounds, multiplied by no more than \$0.50; and

(2) A penalty in the form of a payment equal to the cost of collecting, transporting, and recycling 10% of the manufacturer's total obligation] prohibited from selling or offering for sale in this State a covered electronic device.

h. Manufacturers that collect, transport, and recycle covered electronic devices in excess of their obligation may sell credits to another registrant or apply that excess to the following year's recycling obligation.

i. [Whenever more than one person is within the definition of manufacturer of a brand of a covered electronic device pursuant to section 2 of this act, any one or more such persons may assume responsibility for and satisfy the obligations of a manufacturer under this act with respect to covered electronic devices bearing that brand. In the event that no person assumes responsibility for and satisfies the obligations of a manufacturer under this act with respect to covered electronic devices bearing that brand, the department may consider any one or more persons within such definition to be the manufacturer of that brand.] (Deleted by amendment, P.L. , c. )

j. [The obligations under this act for a manufacturer who manufactures or manufactured covered electronic devices, or who sells or sold covered electronic devices manufactured by others, under a brand that was previously used by a different person in the manufacture of covered electronic devices shall extend to all covered electronic devices bearing that brand.] (Deleted by amendment, P.L. , c. )

k. Nothing in this act is intended to exempt any person from liability the person would otherwise have under applicable law.

l. The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.

(cf: P.L.2007, c.347, s.10)

9. Section 11 of P.L.2007, c.347 (C.13:1E-99.104) is amended to read as follows:

11. a. A retailer shall provide information provided by the department that describes where and how to recycle the covered electronic device and opportunities and locations for the collection or return of the device, including limitations placed by collection sites on the

number of covered electronic devices permitted for drop-off by consumers, through the use of a toll-free telephone number and website, 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.

b. Beginning January 1, [2010] 2011, a retailer shall only sell [products] covered electronic devices from registrants. Retailers shall consult the list posted on the department's Internet website pursuant to section 6 of [this act] P.L.2007, c.347 (C.13:1E-99.99) 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] covered electronic device was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the aforementioned website.

<sup>1</sup>[c. Beginning on March 1, 2010, and each March 1 thereafter, retailers of new televisions shall submit a report to every registered television manufacturer from whom a new television was ordered indicating the number of televisions sold within the State from the registered television manufacturer for the previous year.]<sup>1</sup>

[The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.]

(cf: P.L.2007, c.347, s.11)

10. Section 12 of P.L.2007, c.347 (C.13:1E-99.105) is amended to read as follows:

12. a. (1) The department shall determine the return share for each program year for each manufacturer by dividing the weight of covered electronic devices identified for each manufacturer by the total weight of covered electronic devices identified for all manufacturers. For the first program year, the return share of covered electronic devices identified for each manufacturer shall be based on the best available public return share data from the United States, including data from other states, for covered electronic devices from consumers. For the second and each subsequent program year, the return share of covered electronic devices identified for each manufacturer shall be based on the most recent samplings of covered electronic devices conducted in this State pursuant to subsection a. of section 9 of [this act] P.L.2007, c.347 (C.13:1E-99.102).

(2) The department shall determine the return share in weight for each program year for each manufacturer for whom a return share is determined pursuant to paragraph (1) of this subsection by multiplying the return share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices, collected from consumers the previous program year. For the first program year, the total weight in pounds of covered electronic devices shall be based on the best available public weight data from the United States, including data from other states, for covered electronic devices from consumers. For the second and each subsequent program year, the total weight in pounds of covered electronic devices shall be based on the total weight of covered electronic devices, including orphan devices, determined by the department pursuant to subsection a. of section 9 of [this act] P.L.2007, c.347 (C.13:1E-99.102).

(3) By April 2, [2010] 2011, the department shall provide each manufacturer for whom a return share is determined pursuant to paragraph (1) of this subsection with its return share and its return share in weight for the first program year. Annually thereafter, by February 15, beginning in [2012] 2013, the department shall provide each manufacturer for whom a return share is determined pursuant to paragraph (1) of this subsection with its return share and its return share in weight for the second and subsequent program years.

b. [The department shall receive fees from manufacturers as provided in section 10 of this act.] (Deleted by amendment, P.L. , c. )

c. (1) The department shall [organize, administer, and] ensure that at least one electronics collection opportunity is available in each county throughout the State and in such a manner as to be convenient, to the maximum extent practicable and feasible, to all consumers in the county.

(2) The department shall ensure that collection sites do not place unreasonable limits on the number of covered electronic devices permitted for drop-off by consumers.

d. (1) Beginning on [April] January 1, [2010] 2011, the department shall maintain a list of registrants and the brands reported in each manufacturer's registration, and post the list on the department's Internet website that is updated at least once a month.

(2) The department shall organize and coordinate public education and outreach.

e. The department shall prepare a plan every three years that: (1) establishes per-capita collection and recycling goals; and (2) identifies any necessary State actions to expand collection opportunities to achieve the per-capita collection and recycling goals. The plan shall be posted on the department's Internet website and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

f. The department shall prepare an annual report, which shall be posted on the department's Internet website and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

The annual report shall include the following:

(1) [A list of all parties that the department has designated as approved to receive payments for collection, transportation, or recycling, the amount of payments it has made to those parties, and the purpose of those payments;

(2)] The total weight of covered electronic devices collected in the State the previous calendar year;

[(3)] (2) Progress toward achieving the overall annual total recovery and recycling goals described in the plan prepared pursuant to subsection e. of this section;

[(4)] (3) A complete listing of all collection sites operating in the State in the prior calendar year, the parties that operated them, and the amount of material by weight collected at each site;

[(5)] (4) An evaluation of the effectiveness of the education and outreach program; and

[(6)] (5) An evaluation of the existing collection and processing infrastructure.

g. The program implemented to effectuate the provisions of this act and its associated regulations shall be fully audited by an independent, certified public accountant at the end of each calendar year and the audit report shall be submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

h. The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery

in this State.

(cf: P.L.2007, c.347, s.12)

11. Section 13 of P.L.2007, c.347 (C.13:1E-99.106) is amended to read as follows:

13. a. The department shall maintain an Internet website and toll-free number complete with up-to-date listings of where consumers can bring covered electronic devices for recycling under the provisions of this act.

b. [The department shall not be held financially liable or responsible for any violation of federal, State, or local law by any person to whom the department makes payment pursuant to section 14 of this act.] (Deleted by amendment, P.L. , c. ) (pending in the Legislature as this bill)

c. No more frequently than annually and no less frequently than biennially, the department shall review, at a public hearing, the covered electronic device recycling [rate] goals and registration fees. Recommended changes to the covered electronic device recycling [rate] goals and registration fees shall be included in the annual [report] reports required pursuant to section 3 of P.L. , c. (pending in the Legislature as this bill) and subsection f. of section 12 of [this act] P.L.2007, c.347 (C.13:1E-99.105).

d. No fees or costs may be charged to consumers for the collection, transportation, or recycling of covered electronic devices. Any <sup>1</sup>[manufacturer or]<sup>1</sup> authorized recycler may charge fees to <sup>1</sup>[recognized academic institutions or units of government] schools or local government units<sup>1</sup> for the reasonable costs incurred by the <sup>1</sup>[manufacturer or]<sup>1</sup> authorized recycler for the collection, transportation, or recycling of covered electronic devices.

(cf: P.L.2007, c.347, s.13)

12. Section 15 of P.L.2007, c.347 (C.13:1E-99.108) is amended to read as follows:

15. a. Covered electronic devices collected through any program in this State <sup>1</sup>[, whether by manufacturers, retailers, for-profit or not-for profit corporations, or units of government, or organized by the department,]<sup>1</sup> shall be recycled in a manner that is in compliance with all applicable federal, State, and local laws, regulations, and ordinances, and shall not be exported for disposal in a manner that poses a significant risk to the public health or the environment.

The provisions of this subsection shall apply to the collection and recycling of used televisions.

b. The department shall establish performance requirements [in order] for collectors, transporters, and authorized recyclers [to be eligible to receive funds from the department]. Every collector, transporter, and authorized recycler shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or State law. The department shall maintain an Internet website that shall include a list of collectors, transporters, and authorized recyclers that it has determined have met these performance requirements.

(cf: P.L.2007, c.347, s.15)

13. Section 16 of P.L.2007, c.347 (C.13:1E-99.109) is amended to read as follows:

16. On and after January 1, [2010] 2011, no person shall knowingly dispose of a used covered electronic device, or any of the components or subassemblies thereof, as solid waste.

(cf: P.L.2007, c.347, s.16)

14. Section 17 of P.L.2007, c.347 (C.13:1E-99.110) is amended to read as follows:

17. a. The State, including the Attorney General and the department, shall be authorized to initiate independent action to enforce any provision of this act, including failure by a manufacturer to remit the registration fee required pursuant to section 3 of P.L.2007, c.347 (C.13:1E-99.96) or section 9 of [this act] P.L.2007, c.347 (C.13:1E-99.102), [the fee required pursuant to section 10 of this act,] or any fee required pursuant to subsection b. of section 18 of [this act] P.L.2007, c.347 (C.13:1E-99.111) to the department. Any funds awarded by the court shall be used first to offset enforcement expenses. Money in excess of the enforcement expenses shall be deposited into a separate account, and shall be dedicated for use by the department solely for the purposes of administering and enforcing the provisions of this act and any rules or regulations adopted pursuant thereto.

b. Any person who violates the provisions of this act shall be subject to a penalty of not less than \$500 nor more than \$1,000 for each offense, to be collected in a civil action by a

summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate, and distinct offense.

The department may institute a civil action for injunctive relief to enforce this act and to prohibit and prevent a violation of this act, and the court may proceed in the action in a summary manner.

c. Violations of the act include, but are not limited to:

(1) the sale of a new covered electronic device by any person that is not in full compliance with the provisions of this act;

(2) [the application for compensation for the collection, transportation, and recycling of covered electronic devices not collected within the State, or region as provided in section 19 of this act;

(3) the use of a qualified collection program to recycle covered electronic devices not discarded within the State, or region as provided in section 19 of [this act] P.L.2007, c.347 (C.13:1E-99.112);

[(4)] (3) the knowing failure to report or accurately report any data required to be reported to the department pursuant to this act; and

[(5)] (4) the non-payment of any fee required pursuant to this act.

(cf: P.L.2007, c.347, s.17)

15. Section 18 of P.L.2007, c.347 (C.13:1E-99.111) is amended to read as follows:

18. a. (1) The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as are necessary to effectuate the purposes of [this act] P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L. , c. (C. )(pending before the Legislature as this bill).

(2) The department shall adopt rules and regulations, in accordance with the provisions of section 8 of P.L.2007, c.347 (C.13:1E-99.101), that prohibit a new covered electronic device from being sold or offered for sale in this State if the covered electronic device is prohibited

from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.

(a) The department shall exclude from the rules and regulations the sale of a new covered electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories or federal or State law.

(b) In adopting rules and regulations pursuant to this subsection, the department may not require the manufacture or sale of a new covered electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003. The department shall use, in addition to any other information deemed relevant by the department, the published decisions of the Technical Adaptation Committee and European Union member states that interpret the requirements of Directive 2002/95/EC.

b. The department may, in accordance with a fee schedule adopted as a rule or regulation pursuant to the provisions of the "Administrative Procedure Act," establish and charge reasonable fees for any of the services to be performed in connection with this act, which shall cover the full costs incurred by the department for the review of plans and for other costs incurred by the department for implementation of this act.

(cf: P.L.2007, c.347, s.18)

16. Section 19 of P.L.2007, c.347 (C.13:1E-99.112) is amended to read as follows:

19. The department is authorized to participate in the establishment and implementation of a regional, multi-state organization or compact that is consistent with the requirements of [this act] P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L. , c. (C. )(pending before the Legislature as this bill).

(cf: P.L.2007, c.347, s.19)

17. Section 20 of P.L.2007, c.347 (C.13:1E-99.113) is amended to read as follows:

20. [This act is] The provisions of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L. , c. (C. )(pending before the Legislature as this bill) are intended to govern all aspects of the collection and recycling of covered electronic devices as those terms are defined in [this act] section 2 of P.L.2007, c.347 (C.13:1E-99.95). Upon a determination by the Department of Environmental Protection of an equivalent national program to collect or recycle covered electronic devices, the Commissioner of Environmental Protection shall notify, in writing, the Governor, the President of the Senate and the Speaker of the General Assembly, and the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors, of this determination.

The provisions of this act shall expire 60 days after the date of the notification required pursuant to this section or within the timeframe provided by federal law, as appropriate.

The department shall provide notice in the New Jersey Register of any determination made pursuant to this section, and shall take any administrative action necessary in order to implement the

national program.

(cf: P.L.2007, c.347, s.20)

18. Section 21 of P.L.2007, c.347 (C.13:1E-99.114) is amended to read as follows:

21. By January 1, [2013] 2014, the department shall prepare a report, which shall be posted on the department's Internet website and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, assessing the success or failure of the electronic waste management system implemented pursuant to the provisions of [this act] P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L. , c. (C. )(pending before the Legislature as this bill) relative to the statutory management of covered electronic devices in other states, including jurisdictions that have adopted a producer responsibility model versus those that have adopted an advance recovery fee approach, or both, with respect to the recycling of used televisions and other covered electronic devices.

(cf: P.L.2007, c.347, s.21)

19. Section 3 of P.L.1987, c.102 (C.13:1E-99.13) is amended to read as follows:

3. a. Each county shall prepare and adopt a district recycling plan to implement the State Recycling Plan goals. Each district recycling plan shall be adopted as an amendment to the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) and subject to the approval of the department. Each district recycling plan may be modified after adoption pursuant to a procedure set forth in the adopted plan as approved by the department.

b. Each district recycling plan required pursuant to this section shall include, but need not be limited to:

(1) Designation of a district recycling coordinator;

(2) Designation of the recyclable materials to be source separated in each municipality which shall include, in addition to leaves, at least three other recyclable materials separated from the municipal solid waste stream;

(3) Designation of the strategy for the collection, marketing and disposition of designated source separated recyclable materials in each municipality;

(4) Designation of recovery targets in each municipality to achieve the maximum feasible recovery of recyclable materials from the municipal solid waste stream which shall include, at a minimum, the following schedule:

(a) The recycling of at least 15% of the total municipal solid waste stream by December 31, 1989;

(b) The recycling of at least 25% of the total municipal solid waste stream by December 31, 1990; and

(c) The recycling of at least 50% of the total municipal solid waste stream, including yard waste and vegetative waste, by December 31, 1995; and

(5) Designation of countywide recovery targets to achieve the maximum feasible recovery of recyclable materials from the total solid waste stream which shall include, at a minimum, the recycling of at least 60% of the total solid waste stream by December 31, 1995.

Within 24 months of the effective date of P.L.2007, c.311 (C.13:1E-96.2 et al.), each district recycling plan shall be modified to include the designation of a district certified recycling coordinator.

For the purposes of this subsection, "district certified recycling coordinator" means a person who shall have completed the requirements of a course of instruction in various aspects of recycling program management, as determined and administered by the department; "total municipal solid waste stream" means the sum of the municipal solid waste stream disposed of as solid waste, as measured in tons, plus the total number of tons of recyclable materials recycled; and "total solid waste stream" means the aggregate amount of solid waste generated within the boundaries of any county from all sources of generation, including the municipal solid waste stream.

c. Each district recycling plan, in designating a strategy for the collection, marketing and disposition of designated recyclable materials in each municipality, shall authorize municipalities that adopt a recycling ordinance pursuant to subsection b. of section 6 of P.L.1987, c.102 (C.13:1E-99.16) to limit the collection of designated recyclable materials to specified operating hours in order to preserve the peace and quiet in neighborhoods during the hours when most residents are asleep.

d. A district recycling plan may be modified to require that each municipality within the county revise the ordinance adopted pursuant to subsection b. of section 6 of P.L.1987, c.102 (C.13:1E-99.16) to provide for the source separation and collection of used dry cell batteries as a designated recyclable material.

e. [Within 12 months of the effective date of P.L.2007, c.347 (C.13:1E-99.94 et al.), each district recycling plan shall be modified to include the designation of collection sites for the delivery of used televisions, and may be modified to include the designation of collection sites for the delivery of other covered electronic devices.

For the purposes of this subsection, "television" and "covered electronic device," respectively, mean the same as those terms are defined in section 2 of P.L.2007, c.347 (C.13:1E-99.95).] (Deleted by amendment, P.L. , c. )(pending in the Legislature as this bill)

(cf: P.L.2007, c.347, s.22)

20. Section 6 of P.L.1987, c.102 (C.13:1E-99.16) is amended to read as follows:

6. Each municipality in this State shall, within 24 months of the effective date of P.L.2007, c.311 (C.13:1E-96.2 et al.), designate one or more persons as the municipal certified recycling coordinator. For the purposes of this section, "municipal certified recycling coordinator" means a person who shall have completed the requirements of a course of instruction in various aspects of recycling program management, as determined and administered by the department. Each municipality shall establish and implement a municipal recycling program in accordance with the following requirements:

a. [(1)] Each municipality shall provide for a collection system for the recycling of the recyclable materials designated in the district recycling plan as may be necessary to achieve the designated recovery targets set forth in the plan in those instances where a recycling collection system is not otherwise provided for by the generator or by the county, interlocal service agreement or joint service program, or other private or public recycling program operator.

[(2)] Each municipality shall provide for collection sites for the delivery of used televisions by consumers, and the delivery of other covered electronic devices if designated in the district recycling plan.

For the purposes of this paragraph, "television" and "covered electronic device," respectively, mean the same as those terms are defined in section 2 of P.L.2007, c.347 (C.13:1E-99.95).]

b. The governing body of each municipality shall adopt an ordinance which requires persons generating municipal solid waste within its municipal boundaries to source separate from the municipal solid waste stream, in addition to leaves, the specified recyclable materials for which markets have been secured and, unless recycling is otherwise provided for by the generator, place these specified recyclable materials for collection in the manner provided by the ordinance.

c. The governing body of each municipality shall, at least once every 36 months, conduct a review and make necessary revisions to the master plan and development regulations adopted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), which revisions shall reflect changes in federal, State, county and municipal laws, policies and objectives concerning the collection, disposition and recycling of designated recyclable materials.

The revised master plan shall include provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance adopted pursuant to subsection b. of this section, and for the collection, disposition and recycling of designated recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land.

d. The governing body of a municipality may exempt persons occupying commercial and institutional premises within its municipal boundaries from the source separation requirements of the ordinance adopted pursuant to subsection b. of this section if those persons have otherwise provided for the recycling of the recyclable materials designated in the district recycling plan from solid waste generated at those premises. To be eligible for an exemption pursuant to this subsection, a commercial or institutional solid waste generator annually shall provide written documentation to the municipality of the total number of tons recycled.

e. The governing body of each municipality shall, on or before July 1 of each year, submit a recycling tonnage report to the New Jersey Office of Recycling in accordance with rules and regulations adopted by the department therefor.

f. The governing body of each municipality shall, at least once every six months, notify all persons occupying residential, commercial, and institutional premises within its municipal boundaries of local recycling opportunities, and the source separation requirements of the ordinance. In order to fulfill the notification requirements of this subsection, the governing body of a municipality may, in its discretion, place an advertisement in a newspaper circulating in the municipality, post a notice in public places where public notices are customarily posted, include a notice with other official notifications periodically mailed to residential taxpayers, or any combination thereof, as the municipality deems necessary and appropriate.

The governing body of a municipality that adopts a recycling ordinance pursuant to subsection b. of this section may limit the collection of designated recyclable materials to specified operating hours in order to preserve the peace and quiet in neighborhoods during the hours when most residents are asleep.

(cf: P.L.2007, c.347, s.23)

21. Section 1 of P.L.2007, c.347 (C.13:1E-99.94) is amended to read as follows:

1. Sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L. , c. (C. )(pending before the Legislature as this bill) shall be known and may be cited as the "Electronic Waste Management Act."

22. The following are repealed:

Sections 4 and 5 of P.L.2007, c.347 (C.13:1E-99.97 and 13:1E-99.98);

Section 14 of P.L.2007, c.347 (C.13:1E-99.107).

23. This act shall take effect immediately.