

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 746**

(By Senator Facemyer)

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[Originating in the Committee on the Judiciary;

reported February 26, 2008.]

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A BILL to amend and reenact §22-15A-2 and §22-15A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §22-15A-24, §22-15A-25, §22-15A-26, §22-15A-27, §22-15A-28 and §22-15A-29, all relating to implementing a takeback program for certain electronic devices with manufacturers; providing incentives for recycling certain electronics; providing an opportunity for counties and municipalities to increase recycling efforts; establishing a registration program for manufacturers of certain electronic goods; assessing registration fees; authorizing civil and administrative penalties; and requiring rulemaking.

*Be it enacted by the Legislature of West Virginia:*

That §22-15A-2 and §22-15A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §22-15A-24, §22-15A-25, §22-15A-26, §22-15A-27, §22-15A-28 and §22-15A-29, all to read as follows:

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.**

**§22-15A-2. Definitions.**

Unless the context clearly indicates a different meaning or defined elsewhere in this chapter, as used in this article:

(1) "Beneficial use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feed hopper or watering troughs for livestock, other agricultural uses approved by the Department of Environmental Protection, playground equipment, boat or truck dock construction, house or building construction, go-cart, motorbike or race track barriers or similar types of beneficial applications: *Provided*, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the Secretary of the

Department of Environmental Protection, is put at risk.

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

~~(2)~~ (3) "Collected for commercial purposes" means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two, chapter twenty-four-a of this code.

(4) "Computer" means a desktop, personal computer or laptop computer, including the computer monitor. Computer does not include a personal digital assistant device, computer peripheral devices such as a mouse or other similar pointing device, a printer or a detachable keyboard.

~~(3)~~ (5) "Court" means any circuit, magistrate or municipal court.

(6) "Covered electronic device" means a television, computer or video display device with a screen that is greater than four inches measured diagonally. "Covered electronic device" does not include a video display device that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial or medical equipment.

~~(4)~~ (7) "Department" means the Department of Environmental Protection.

~~(5)~~ (8) "Litter" means all waste material, including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, covered electronic devices, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

~~(6)~~ (9) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the secretary's rules promulgated pursuant to subsection (e), section three of this article.

(10) "Manufacturer" means a person that is the brand owner of a covered electronic device or television sold or offered for sale in this state by any means, including transactions conducted through retail sales outlets, catalogs or the internet.

~~(7)~~ (11) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

~~(8)~~ (12) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state or an area held open for unrestricted access by the general public.

(13) "Recyclable materials" means those materials that would otherwise become solid waste for disposal in a refuse disposal system and which may be collected, separated or processed and returned to the marketplace in the form of raw materials or products.

~~(9)~~ (14) "Remediate or Remediation" means to remove all litter, solid waste and tires located above grade at a site: *Provided*, That remediation does not include clean up of hazardous waste.

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

~~(10)~~ (16) "Secretary" means the Secretary of the Department of Environmental Protection.

(17) "Video display device" means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of image sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion. Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving image on the screen. A "video display device" may use a cathode-ray tube (CRT), liquid crystal display

(LCD), gas plasma, digital light processing, other image-projection technology or imaging display technologies.

~~(11)~~ (18) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

~~(12)~~ (19) "Waste tire monofill or monofill" means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

~~(13)~~ (20) "Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprocessing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling and/or marketing.

~~(14)~~ (21) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands.

**§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.**

(a) *Litter pickup and removal.* --

(1) Each county commission and the Regional Jail Authority may establish a jail or prison inmate program including a regular litter pickup work regimen under proper supervision pursuant to section four, article fifteen, chapter seventeen of this code. Funding for these programs shall be from the Litter Control Fund. Funding requirements may include salaries for additional personnel needed for the program. The program may include the cooperative help of the Division of Highways or any other voluntary state, local, private, civic or public agency for personnel, equipment or materials in establishing a county or regionwide, continual program of inmate litter pickup. Upon final approval of the projected cost of the program for a given fiscal year, the secretary shall disburse the approved amount to the county or Regional Jail Authority. The funds will be used by the Authority to reimburse the county commission or Regional Jail Authority for its expenses related to the program and to pay other costs related to the use of inmates for litter pickup. Nothing contained herein shall preclude a county or counties from expending whatever additional funds its commission or commissions may deem appropriate from any other revenue source in furtherance of said program.

(2) All persons involved with litter pickup may separate identifiable recyclable materials from other litter collected. The funds resulting from the sale of those recyclable materials shall be returned to the Litter Control Fund.

(3) The county or regional solid waste authority may also contract with local governments, civic organizations or chief correctional officers in any county to implement litter pickup and removal pursuant to this act when the state offender workforce is not available. In such cases, the contract provisions shall require that identifiable recyclable materials shall be separated from other litter collected, with resulting funds returned to the Litter Control Fund. Priority shall be given to

those contracts that maximize the use of community service hours by inmates and youth employment programs.

(b) *Education.* --

(1) The Department of Education in cooperation with the Department of Environmental Protection shall distribute educational materials to the schools based on the goals of litter clean up and proper solid waste disposal, the rationale for the goals and how primary and secondary school students can contribute to the achievement of the goals. The Department of Education shall further incorporate this information into the curriculum of the public school system as appropriate.

(2) The Division of Highways and local governments shall conduct public awareness programs to notify the public of the provisions of this law and how they can participate, to inform them as to the rationale behind the provisions of this law, to advise them of other avenues for achievement of the noted goals and to encourage their participation.

(3) The Department of Environmental Protection and the Solid Waste Management Board shall provide technical assistance to local governments in the implementation of this law.

(c) *Government recycling responsibilities.* --

(1) All state agencies and regional planning councils may establish and implement aluminum container, glass and paper recycling programs at their public facilities. To the extent practicable, programs for other metals, plastics, covered electronic devices, rubber and other recyclable materials may be established and implemented. The moneys collected from the sale of such materials shall be deposited and accounted for in the Litter Control Fund pursuant to the authority of section four of this article.

(2) To further promote recycling and reduction of the waste stream, county and municipal governments shall consider the establishment of recycling programs as provided in this section in the operation of their facilities and shall evaluate the cost effectiveness of:

(A) Procedures that separate identifiable recyclable materials from solid waste collected; and

(B) Programs that provide for:

(i) The establishment of a collection place for recyclables at all landfills and other interim solid waste collection sites and arrangements for the material collected to be recycled;

(ii) Public notification of such places and encouragement to participate;

(iii) The use of rate differentials at landfills to facilitate public participation in on-site recycling programs.

(3) In preparing the recycling plan as required under this subsection, the county may address methods for the separate collection and recycling of covered electronic devices, including efforts by the county with manufacturers, recyclers, retailers or other local governments for the collection and recycling of covered electronic devices.

(d) Each affected agency and local government shall monitor and evaluate the programs implemented pursuant to this law.

(e) The secretary shall submit a report to the Speaker of the House and the President of the Senate not later than the first day of March, two thousand six, and every five years thereafter regarding the effectiveness of the programs authorized by this law.

**§22-15A-24. Covered manufacturers; prohibited sales; effective date.**

(a) This section, along with sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine of this article apply to a manufacturer that manufactured an average of more than one thousand covered electronic devices per year in the three-year period immediately preceding

the initial registration required in section twenty-five of this article.

(b) On or after the first day of July, two thousand nine, a manufacturer may not sell or lease or offer for sale or lease to any person in the state a new covered electronic device or television unless:

(1) The covered electronic device is labeled with the name of the manufacturer or the manufacturer's brand label; and

(2) The manufacturer has registered with and submitted a registration fee to the secretary as provided in section twenty-five of this article.

(c) If a manufacturer is subject to the requirements of sections twenty-four, twenty-five and twenty-six of this article, a retailer may not sell or lease or offer for sale or lease to any person in the state a new covered electronic device unless the manufacturer has complied with the requirements of this section and sections twenty-five and twenty-six of this article.

**§22-15A-25. Manufacturer registration; registration fees; creating the Covered Electronic Devices Takeback Fund.**

(a) Each manufacturer wishing to sell or lease covered electronic devices shall register with the secretary no later than the first day of January, two thousand nine, and each year thereafter. The secretary shall provide a registration form which at a minimum shall include:

(1) The name, address and telephone number of the manufacturer;

(2) The brand names under which the manufacturer sells or offers for sale covered electronic devices or televisions in the state;

(3) Whether the manufacturer has implemented takeback or recycling program for its covered electronic devices or televisions or both;

(4) If the manufacturer has implemented a takeback or recycling program for its covered electronic devices, the manufacturer must provide a toll-free number or website address that provides information about the takeback or recycling program, including a detailed description of how a person may return a covered electronic device for recycling, refurbishing or reuse.

(5) The secretary may request additional information necessary to further the goals of this program.

(b) One year after the implementation of the program and each year thereafter, the manufacturer must submit a report to the secretary on the implementation of the program during the prior year, including:

(1) The total weight of covered electronic devices received by the program from West Virginia during the prior year;

(2) The total number of covered electronic devices from West Virginia recycled, refurbished and reused during the prior year;

(3) The processes and methods used to recycle, refurbish or reuse the covered electronic devices received from West Virginia; and

(4) If the manufacturer has implemented a covered electronic device or television takeback program, be updated prior to any significant change in the program.

(c) The covered electronic device manufacturer registration fee is:

(1) Ten thousand dollars for the initial registration by the manufacturer that has not implemented a takeback program and is due no later than the first day of January, two thousand nine;

(2) Three thousand dollars for the initial registration by the manufacturer that has implemented a takeback program and is due no later than the first day of January, two thousand nine;

(3) Five thousand dollars for each subsequent annual registration by a manufacturer that did not

have an implemented covered electronic device takeback program in the prior year; and

(4) Five hundred for each subsequent annual registration by a manufacturer that had implemented and maintained a covered electronic device takeback program in the prior year.

(d) All registration fees collected shall be deposited in a special account in the State Treasury to be known as the Covered Electronic Devices Takeback Fund which is to be administered by the secretary. Expenditures from the fund shall be for recycling grants to counties and municipalities for recycling or other programs that divert covered electronic devices from the waste stream and for the secretary's administrative expense in administering the requirements of sections twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight of this article. Expenditures are not authorized from collections but are to be made only in accordance with the appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand nine, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(e) The secretary shall review the registration submitted under this section. If the registration does not meet the requirements of this section and the rules adopted by the secretary, the secretary shall notify the manufacturer of the insufficiency.

(f) Within sixty days after receipt of a notice of insufficiency, the manufacturer shall submit a revised registration that addresses the insufficiencies noted by the secretary.

(g) The secretary shall maintain a list of registered covered electronic device manufacturers.

(h) The secretary shall publish the list of registered covered electronic device manufacturers online to provide retailers easy access to the manufacturers authorized to sell their products in this state.

**§22-15A-26. Manufacturers' takeback programs.**

(a) Before a manufacturer may offer a covered electronic device for sale or lease in this state, the manufacturer may:

(1) Adopt and implement a takeback program; and

(2) Affix a permanent, readily visible label to the covered electronic device or television with the manufacturer's brand.

(b) The takeback program shall enable a consumer to recycle covered electronic devices or televisions without paying a separate fee at the time of recycling and shall include provisions for:

(1) The manufacturer's collection from a consumer of any covered electronic device that has reached the end of its useful life and is labeled with the manufacturer's brand; and

(2) Recycling or reuse of covered electronic devices collected under subdivision one of this section.

(c) The collection of covered electronic devices provided under the takeback program must be reasonable, convenient and available to consumers in the state and designed to meet the collection needs of consumers in the state. Examples of collection methods that alone are combined meet the convenience requirements of this section include:

(1) A system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning covered electronic devices by mail at no charge to the consumer.

(2) A system using a physical collection site that the manufacturer or the manufacturer's designee operates and to which the consumer may return covered electronic devices.

(3) A system using collection events held by the manufacturer or the manufacturer's designee at which the consumer may return covered electronic devices.

(d) Collection services under this section may use existing collection infrastructure for handling

covered electronic devices and should encourage the inclusion of systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in this section, either individually, by working together with a group of manufacturers or by working with others, it shall be deemed to meet the convenience requirements of this section.

(e) The takeback program shall include information for the consumer on how and where to return the manufacturer's covered electronic device. The manufacturer shall include collection, recycling and reuse information on the manufacturer's publicly available website. The manufacturer shall provide collection, recycling and reuse information to the secretary. The manufacturer may include collection, recycling and reuse information in the packaging or in the other materials that accompany the manufacturer's covered electronic devices when the equipment is sold.

(f) If more than one person is a manufacturer of a certain brand of covered electronic devices as defined in section two of this article, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this article for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the covered electronic devices of that brand, the secretary may consider any of those persons to be the responsible manufacturer for purposes of sections twenty-four, twenty-five, twenty-six and twenty-seven of this article.

**§22-15A-27. Civil actions and administrative fines; powers and duties of secretary.**

(a) *Civil action.* -- In addition to being subject to injunctive relief under this article, a manufacturer who violates any provision of section twenty-four or twenty-five of this article or of any rule adopted pursuant to section twenty-four or twenty-five of this article is liable for a civil penalty not to exceed ten thousand dollars to be collected in a civil action brought by the secretary. Venue for such actions shall be in the circuit court of Kanawha County. Each day a violation occurs is a separate violation.

(b) *Administrative action.* -- (1) In addition to any other remedies available at law and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the secretary may impose a penalty for violation of any provision of section twenty-four or twenty-five of this article or any rule adopted thereunder. The secretary's decision may be appealed to the Environmental Quality Board.

(2) The penalty imposed on a person under this subsection shall be up to one thousand dollars for each violation, but not to exceed a total of fifty thousand dollars a year. Each day a violation occurs is a separate violation under this subsection.

(3) Any penalty imposed under this subsection is payable to the State of West Virginia and collectible in any manner provided by law for the collection of debts.

(4) Any penalty collected under this section shall be placed in the Covered Electronic Devices Takeback Fund.

(c) *Powers and duties of secretary.* - The secretary may conduct audits and inspections to determine compliance with the provisions of sections twenty-four and twenty-five of this article and may take enforcement action as provided herein. The secretary may remove a manufacturer from the registration list for failure to pay any penalty imposed under this section and upheld on appeal. **§22-15A-28. Retailer penalties.**

(a) The secretary may assess against any retailer that sells covered electronic devices not

authorized for sale in this state a penalty up to five hundred dollars for each violation, but not to exceed five thousand total for the year. The secretary's decision may be appealed to the Environmental Quality Board.

(b) A fine under subsection (a) of this section may be assessed only after the retailer that committed the violation has been issued three warnings from the secretary regarding the violation.

(c) Each day on which a violation occurs or continues is a separate violation under this section.

(d) All penalties assessed under this section shall be deposited into the Covered Electronic Devices Takeback Fund.

**§22-15A-29. Rulemaking.**

The secretary shall propose for promulgation emergency and legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of sections twenty-four through twenty-eight, inclusive, of this article by the first day of January, two thousand nine.

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(NOTE: The purpose of this bill is to establish a convenient and environmentally sound recovery program for the collection, recycling and reuse of covered electronic devices that have reached the end of their useful lives, maximize recovery of resources contained in discarded covered electronic devices and prevent improper disposal of materials in electronic devices in state landfills.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§22-15A-24 through §22-15A-29 are new; therefore, strike-throughs and underscoring have been omitted.)