Amending the act of November 23, 2010 (P.L.1083, No.108), entitled "An act establishing a recycling program for certain covered devices; imposing duties on manufacturers and retailers of certain covered devices; providing for the powers and duties of the Department of Environmental Protection and for enforcement; establishing the Electronic Materials Recycling Account in the General Fund; and prescribing penalties," in preliminary provisions, further providing for definitions; in duties of manufacturers and retailers, further providing for registration and for manufacturer plan and reporting, providing for manufacturer collection and further providing for retailer responsibility; and, in administration, further providing for duties of Department of Environmental Protection.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of November 23, 2010 (P.L.1083, No.108), known as the Covered Device Recycling Act, is amended by adding definitions to read:

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"Electronic waste." A covered device that has been discarded, or is no longer wanted by its owner or for any other reason, that enters the waste collection, recovery, treatment, processing or recycling system.

"Electronic waste collection site." A facility at which electronic waste is accepted from consumers and which is temporarily stored for at least five days in a calendar year before the waste is transported to an electronic waste consolidation facility or electronic waste recycling facility.

"Electronic waste consolidation facility." A facility that receives and stores electronic waste for the purpose of organizing, categorizing or consolidating items of electronic waste before the waste is transported to an electronic waste recycling facility.

"Electronic waste recycling facility." A facility at which electronic waste is recycled.

* * *

"Orphan product." A covered device for which its manufacturer is no longer operational.

* * *

Section 2. Section 304(a) of the act is amended and the section is amended by adding subsections to read:

Section 304. Registration.

(a) Manufacturers registration.--

(1) A manufacturer of new covered devices offered for sale in this Commonwealth shall register with the department by January 30, 2011, or six months after the effective date of this section, whichever is later, and pay a registration fee of $5,000.

(2) After January 30, 2011, or six months after the
effective date of this section, whichever is later, if a manufacturer has not previously filed a registration, the manufacturer shall file a registration with the department prior to any offer for sale or delivery in this Commonwealth of the manufacturer's new covered devices and shall pay to the department a registration fee of $5,000.

(3) A registered manufacturer shall submit an annual renewal of its registration to the department and pay to the department a registration fee of $5,000 by January 1 of each program year. The registration and each annual renewal shall include [a list of all brands the manufacturer is using on its covered devices regardless of whether the manufacturer owns or licenses the brand and shall be effective upon receipt by the department.]:

(i) The manufacturer's name, address and telephone number.

(ii) The name and title of an officer, director or other individual designated as the manufacturer's contact for purposes of this act.

(iii) A list identifying the manufacturer's brands.

(iv) A general description of the manner in which the manufacturer will comply with section 305.1, including specific information on the manufacturer's electronic waste acceptance program in this Commonwealth and a current list of locations within this Commonwealth where consumers may return electronic waste.

(v) Sales data reported by weight for the manufacturer's covered devices sold in this Commonwealth for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot
provide accurate Commonwealth sales data, the manufacturer must explain why the data cannot be provided and estimate Commonwealth sales data by:

(A) dividing the manufacturer's national sales data by weight by the national population according to the most recent census and multiplying the result by the population of this Commonwealth; or

(B) another method approved by the department.

(vi) Any other information as the department may require.

* * *

(c) Registration.—After the effective date of this subsection, a manufacturer may not sell or offer for sale covered devices in this Commonwealth unless the manufacturer has registered with the department and maintains an electronic waste acceptance program through which the manufacturer, either directly or through an agent or designee, accepts electronic waste from consumers in this Commonwealth for recycling. The manufacturer must ensure that each retailer is notified of the registration.

(d) Electronic waste collection site registration.—After the effective date of this subsection, each person who owns or operates an electronic waste collection site in this Commonwealth shall:

(1) Register with the department on a form and in a manner prescribed by the department. The registration must include:

(i) the name, address and telephone number of each owner and operator of the electronic waste collection site; and
(ii) the name, address and telephone number of the electronic waste collection site. A person who commences the operation of an electronic waste collection site after the effective date of this subsection must register with the department at least 30 days prior to receiving electronic waste at the collection site. A registration shall be effective upon acceptance by the department. If a collection site is operated by a retailer, a single registration listing the name, address and telephone number of the individual collection sites may be submitted covering all of the retailer's collection sites.

(2) Beginning with the immediately succeeding March 1 after the effective date of this subsection, and each March 1 thereafter, each person operating an electronic waste collection site shall submit to the department an annual report for the previous calendar year on a form and in the manner prescribed by the department. Annual reports shall include the following information:

(i) The quantity, by weight, of electronic waste received from consumers in this Commonwealth.

(ii) The name and address of each person to whom the electronic waste collection site sent electronic waste during the reporting period, with the quantity, by weight, of electronic waste that was sent to each person.

(iii) The weight of electronic waste collected on behalf of or under an agreement with each manufacturer during the reporting period.

(3) Manage electronic waste in a manner that complies with applicable Federal, State and local laws, regulations
and ordinances.

(4) Store electronic waste:

   (i) in a fully enclosed building with a roof, floor and walls; or

   (ii) in a secure container that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment.

(5) Remove electronic waste from the site within one year of the waste's receipt at the site and maintain records demonstrating compliance with this requirement.

(e) Electronic waste consolidation facility registration.--

(1) Within 30 days of the effective date of this subsection, each person who operates an electronic waste consolidation facility in this Commonwealth shall register with the department on a form and in a manner prescribed by the department. The registration must include:

   (i) The name, address and telephone number of the owner and operator of the facility.

   (ii) The name, address and telephone number of the electronic waste consolidation facility. A person who commences the operation of an electronic waste consolidation facility after the effective date of this subsection shall register with the department at least 30 days prior to receiving any electronic waste. A registration shall be effective upon acceptance by the department. A registration required under this subparagraph must be accompanied by a registration fee of $250.

(2) Beginning with the immediately succeeding March 1
after the effective date of this subsection, and each March 1
thereafter, each person operating an electronic waste
consolidation facility shall submit to the department an
annual report for the previous calendar year on a form and in
the manner prescribed by the department. The department may
require annual reports to be filed electronically. Annual
reports shall include the following information:

(i) The name and address of each electronic waste
collection site from which the consolidation facility
received electronic waste during the reporting period,
with the quantity, by weight, of electronic waste
received from each collection site.

(ii) The name and address of each person to whom the
electronic waste consolidation facility sent electronic
waste during the reporting period, with the quantity, by
weight, of electronic waste that was sent to each person.

(iii) The weight of electronic waste collected on
behalf of or pursuant to an agreement with each
manufacturer during the reporting period.

(iv) A certification by the owner or operator of the
electronic waste consolidation facility that the facility
has complied with the requirements of this act and other
applicable laws.

(3) Each person operating an electronic waste
consolidation facility shall:

(i) Manage electronic waste in a manner that
complies with applicable Federal, State and local laws,
regulations and ordinances.

(ii) Store electronic waste:

(A) in a fully enclosed building with a roof,
(B) in a secure container that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment.

(iii) Have a means to control entry to the active portion of the facility.

(iv) Inform each employee who handles or has responsibility for managing electronic waste about the proper handling of and emergency procedures appropriate to each type of electronic waste handled at the facility.

(v) Remove electronic waste from the site within one year of the waste's receipt at the site and maintain records demonstrating compliance with this requirement.

(vi) Maintain the records required under paragraphs (1) and (2) and subparagraph (v) on site and make the records available for audit and inspection by the department for a period of at least three years.

(4) A person operating an electronic waste consolidation facility may not engage in electronic waste recycling unless the person is registered as an electronic waste recycling facility and complies with the requirements of this section that are applicable to each type of facility.

(5) A person operating an electronic waste consolidation facility may accept electronic waste in the same manner as an electronic waste collection site if the person complies with the requirements of this section that are applicable to electronic waste collection sites.

(f) Electronic waste recycling facility registration.--

(1) Within 30 days of the effective date of this
subsection, each person operating an electronic waste
recycling facility in this Commonwealth shall register with
the department on a form and in the manner prescribed by the
department. The registration shall include:

(i) The name, address and telephone number of the
owner and operator of the facility.

(ii) The name, address and telephone number of the
electronic waste recycling facility. A person who
commences the operation of an electronic waste recycling
facility after the effective date of this subsection
shall register with the department at least 30 days prior
to receiving electronic waste. A registration shall be
effective upon acceptance by the department. A
registration required under this paragraph must be
accompanied by a registration fee of $250.

(2) Beginning with the immediately succeeding March 1
after the effective date of this subsection, and each March 1
thereafter, each person operating an electronic waste
recycling facility shall submit to the department an annual
report for the previous calendar year on a form and in a
manner prescribed by the department. Annual reports shall
include the following information:

(i) The quantity, by weight, of electronic waste
received from consumers in this Commonwealth.

(ii) The name and address of each electronic waste
collection site and electronic waste consolidation
facility from which electronic waste was received during
the reporting period, with the quantity, by weight, of
electronic waste received from each person.

(iii) The name and address of each person to whom
the facility sent electronic waste or component materials during the reporting period, with the quantity, by weight, of electronic waste or component materials of electronic waste sent to each person.

(iv) The weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period.

(v) A certification by the owner or operator of the facility that the facility has complied with the requirements of this act and other laws, rules and regulations.

(3) Each person operating an electronic waste recycling facility shall:

(i) Manage and recycle electronic waste in a manner that complies with applicable Federal, State and local laws, regulations and ordinances.

(ii) Store electronic waste:

(A) in a fully enclosed building with a roof, floor and walls; or

(B) in a secure container that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment.

(iii) Have a means to control entry through gates or other entrances to the active portion of the facility.

(iv) Inform each employee who handles or has responsibility for managing electronic waste about proper handling of and emergency procedures appropriate to each type of electronic waste handled at the facility.

(v) Remove electronic waste from the site within one
year of the waste's receipt at the site and maintain records demonstrating compliance with this requirement.

(vi) Maintain the records required under paragraphs (1) and (2) and subparagraph (v) on site and make the records available for audit and inspection by the department for a period of at least three years.

(4) A person operating an electronic waste recycling facility may also operate a facility as an electronic waste consolidation facility if the person complies with the requirements of this section that are applicable to each type of facility. If a facility is operated for both purposes, only one registration fee must be paid.

(5) A person operating an electronic waste recycling facility may accept electronic waste in the same manner as an electronic waste collection site if the person complies with the requirements of this section that are applicable to electronic waste collection sites.

(6) Except as required under law, a manufacturer or person operating an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility shall not have responsibility or liability for data in any form stored on electronic waste surrendered for recycling or reuse, except if the person misuses or knowingly and intentionally, or with gross negligence, discloses the data. This paragraph shall not prohibit a person from entering into an agreement that provides for the destruction of data on covered electronic equipment.

Section 3. Section 305(b)(1), (3) and (6) and (c) of the act are amended and subsection (b) is amended by adding paragraphs to read:

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Section 305. Manufacturer plan and reporting.

* * *

(b) Contents of plan.--The plan required under subsection (a) shall include:

(1) Methods that will be used to collect the covered devices, including the name and locations of proposed collection sites. Methods that will be used for the collection, handling and recycling or reuse of electronic waste under section 305.1 in a manner convenient to consumers. The following acceptance methods shall be considered reasonably convenient:

(i) mail or ship back return programs;

(ii) collection or acceptance events conducted by the manufacturer or the manufacturer's agent or designee, including events conducted through local governments or private parties;

(iii) fixed acceptance locations such as dedicated acceptance sites operated by the manufacturer or the manufacturer's agent or designee;

(iv) agreements with local governments, retail stores, sales outlets and not-for-profit organizations which have agreed to provide facilities for the collection of electronic waste;

(v) community collection events; and

(vi) any combination of the methods under this paragraph or other acceptance methods which effectively provide for the acceptance of electronic waste for recycling or reuse through means that are available and reasonably convenient to consumers in this Commonwealth.

(1.1) The manufacturer must ensure that all counties of
this Commonwealth, and each municipality which has a
population of at least 25,000 have at least one method of
acceptance that is available within the county or
municipality. Each facility should be adequately staffed and
be open during hours convenient for local residents. The
department may establish additional requirements to ensure
convenient collection from consumers.

* * *

(3) Means that will be utilized to publicize the
collection opportunities, including specification of an
Internet website address 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 devices for recycling.] A public education
program to inform consumers about the manufacturer's
electronic waste acceptance program, including:

(i) A publicly accessible Internet website and a
toll-free telephone number and written information
included in the product manual for, or at the time of
sale of, covered electronic equipment that provides
sufficient information to allow a consumer of covered
electronic equipment to learn how to return the covered
equipment for recycling or reuse. For manufacturers of
computers, hard drives and other covered electronic
equipment that have internal memory on which personal or
other confidential data can be stored, the website must
provide instructions for how consumers can destroy the
data before surrendering the products for recycling or
reuse.

(ii) Advertisements and press releases, if any.
(6) For an initial plan submitted by a manufacturer or group of manufacturers, an estimate of the weight of covered devices to be collected during the first program year. [The plan shall also include information demonstrating the process by which the manufacturer or group of manufacturers will increase the collection of covered devices by a minimum of 2% by weight per year beginning with the second full program year.]

(7) Information on how consumers can destroy data on electronic waste, through physical destruction of the hard drive or through data wiping.

(8) Any other information required by the department in accordance with regulations promulgated under this article.

(c) Reporting by manufacturers.--

(1) Beginning with the immediately succeeding March 1 after the effective date of this paragraph, and each March 1 thereafter, a manufacturer that offers covered electronic equipment for sale in this Commonwealth shall submit a report to the department on a form prescribed by the department that includes the following:

(i) Sales data reported by weight for the manufacturer's covered devices sold in this Commonwealth for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate Commonwealth sales data, the manufacturer must explain why the data cannot be provided and estimate Commonwealth sales data by:

(A) dividing the manufacturer's national sales data by weight by the national population according
to the most recent census and multiplying the result by the population of this Commonwealth; or

(B) another method approved by the department.

(ii) The quantity, by weight, of electronic waste collected for recycling or reuse in this Commonwealth, categorized by the type of covered devices collected during the reporting period, the methods used to accept the electronic waste and the approximate weight of electronic waste accepted by each method used to the extent known.

(iii) Quantities of electronic waste reported by the manufacturer must separately include:

(A) The quantity, by weight, of electronic waste received directly from consumers in this Commonwealth through a mail back program.

(B) The name and address of each electronic waste collection site, electronic waste consolidation facility and electronic waste recycling facility at which electronic waste from consumers was received on behalf of the manufacturer during the reporting period, along with the quantity, by weight, of electronic waste received.

(C) The name and address of each person to whom the manufacturer sent electronic waste or component materials during the reporting period, along with the quantity, by weight, of electronic waste or component materials of electronic waste sent to each person.

(iv) The number of electronic waste acceptance credits purchased, sold, banked and traded during the reporting period, the number of electronic waste
acceptance credits used to meet the requirements of section 305.1, from whom the credits were purchased and to whom the credits were sold or traded and the number of electronic waste acceptance credits retained as of the date of the report.

(v) The amount of each recycling surcharge owed for the reporting period, with sufficient information to demonstrate the basis for calculation of the surcharge.

(vi) Each name and location of electronic waste recycling facilities utilized by the manufacturer and entities to which electronic waste is sent for reuse, inside or outside of this Commonwealth, including details on the methods of recycling or reuse of electronic waste, any disassembly or physical recovery operation used and the environmental management measures implemented by the recycling facility or entity.

(vii) Information detailing the acceptance methods made available to consumers in municipalities which have a population greater than 25,000 and in each county of this Commonwealth to meet the requirements of subsection (b)(1).

(viii) A brief description of the manufacturer's public education program, including the number of visits to the publicly accessible Internet website and calls to the toll-free telephone number provided by the manufacturer.

(ix) Any other information as required by the department.

(x) A signature by an officer, director or other individual affirming the accuracy of the report.
(2) The department may require annual reports to be filed electronically.

[(1)] (3) (i) In addition to reporting all brands under which its covered devices are offered for sale, regardless of whether the manufacturer owns or licenses the brand, the manufacturer's annual report to the department shall include an estimate of the total weight of its covered devices sold to households during the previous year calculated by multiplying the weight of its covered devices sold nationally times the quotient of this Commonwealth's population divided by the national population.

(ii) The report required under this paragraph shall be submitted to the department upon initial registration and then by January 30 each year thereafter.

[(2)] (4) When a manufacturer or group of manufacturers conducts its own collection, transportation and recycling program for covered devices, the 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 consist of the total weight of covered devices collected from consumers in this Commonwealth by the manufacturer or group of manufacturers during the previous year and documentation verifying collection and recycling of the devices.

* * *

Section 4. The act is amended by adding a section to read:

Section 305.1. Manufacturer collection.

(a) Acceptance of covered devices.--On and after the effective date of this section, a manufacturer of covered devices...
devices must accept for collection, handling and recycling or
reuse:

(1) Electronic waste for which the electronic waste is
provided by the manufacturer. The electronic waste shall
count toward the amount of electronic waste required to be
accepted under this section.

(2) One piece of electronic waste of any manufacturer's
brand if offered by a consumer as part of a transaction to
purchase a covered device of the same type. The electronic
waste shall count toward the amount of the electronic waste
required to be accepted under this section.

(3) Orphan products in an amount equivalent to the
manufacturer's market share of each orphan product presented
for collection, as determined under subsection (d)(2).

(b) Acceptance of standard.--On and after the effective date
of this section, each manufacturer must accept for collection,
handling and recycling or reuse the manufacturer's acceptance
standard under subsection (d).

(c) Statewide recycling or reuse goal.--

(1) For the first calendar year beginning after the
effective date of this section, the Statewide recycling or
reuse goal for electronic waste shall be the product of the
latest population estimate for this Commonwealth, as
published by the United States Census Bureau, multiplied by
three pounds.

(2) For the second calendar year beginning after the
effective date of this section, the Statewide recycling or
reuse goal for electronic waste shall be the product of the
latest population estimate for this Commonwealth, as
published by the United States Census Bureau, multiplied by
(3) For the third calendar year beginning after the effective date of this section, the Statewide recycling or reuse goal for electronic waste shall be the product of the latest population estimate for this Commonwealth, as published by the United States Census Bureau, multiplied by five pounds.

(4) For the fourth calendar year beginning after the effective date and annually thereafter, the Statewide recycling or reuse goal for electronic waste shall be the product of the base weight multiplied by the goal attainment percentage. For the purposes of this paragraph, the term "base weight" means the greater of:

(i) the average weight of electronic waste collected for recycling or reuse during the previous three calendar years as reported to the department under section 305(c)(1); or

(ii) the three-year average of the sum of electronic waste collected for recycling or reuse during the previous three calendar years based on information reported to the department under section 304(d), (e) and (f).

(5) For the purposes of this subsection, the term "goal attainment percentage" means:

(i) Ninety percent if the base weight is less than 90% of the Statewide recycling or reuse goal for the previous calendar year.

(ii) Ninety-five percent if the base weight is at least 90% but does not equal 95% of the Statewide recycling or reuse goal for the previous calendar year.
(iii) One hundred percent if the base weight is at least 95% but does not equal 105% of the Statewide recycling or reuse goal for the previous calendar year.

(iv) One hundred five percent if the base weight is at least 105% but does not equal 110% of the Statewide recycling or reuse goal for the previous calendar year.

(v) One hundred ten percent if the base weight is at least 110% of the Statewide recycling or reuse goal for the previous calendar year.

(d) Manufacturer acceptance standard.--

(1) Calculated annually, each manufacturer's acceptance standard shall be the product of the Statewide recycling or reuse goal under subsection (c)(1), (2), (3) or (4), as appropriate, multiplied by the manufacturer's market share under subsection (e).

(2) Each manufacturer's market share and orphan product share of electronic waste shall be determined by the department based on the manufacturer's percentage share of the total weight of covered electronic equipment sold as determined by the best available information, including Commonwealth sales data reported by weight. On an annual basis, the department shall provide each manufacturer with a determination of the manufacturer's market share and orphan product share of electronic waste which shall be the quotient of the total weight of the manufacturer's covered electronic equipment sold to persons in this Commonwealth based on the average annual retail sales during the preceding three calendar years, as reported under sections 304(a)(3) and 305(c) divided by the total weight of each manufacturer covered electronic equipment sold to persons in this Commonwealth.
Commonwealth based on the average annual retail sales during
the preceding three calendar years, as reported under
sections 304(a)(3) and 305(c).

(e) Recycling surcharge.--Beginning in the third calendar
year after the effective date of this section, a manufacturer
that fails to meet its manufacturer's acceptance standard for
the previous calendar year under subsection (d) shall be subject
to a recycling surcharge, determined as follows:

(1) If a manufacturer accepts at least 90% but less than
100% of its manufacturer's acceptance standard under
subsection (d), the recycling surcharge shall be 30¢
multiplied by the number of additional pounds of electronic
waste that should have been accepted by the manufacturer.

(2) If a manufacturer accepts at least 50% but less than
90% of its manufacturer's acceptance standard under
subsection (d), the recycling surcharge shall be 40¢
multiplied by the number of additional pounds of electronic
waste that should have been accepted by the manufacturer.

(3) If a manufacturer accepts less than 50% of its
manufacturer's acceptance standard under subsection (d), the
surcharge shall be 50¢ multiplied by the number of additional
pounds of electronic waste that should have been accepted by
the manufacturer.

(f) Payment.--The recycling surcharge shall be paid to the
department with the annual report required under section 305(c).

(g) Electronic waste acceptance credits.--Beginning with the
fourth calendar year after the effective date of this section,
if a manufacturer accepts more than its manufacturer's
acceptance standard under subsection (d), the excess weight may
be used as electronic waste acceptance credits and may be sold,
traded or banked for a period no longer than three calendar years after the year in which the credits were earned. No more than 25% of a manufacturer's obligation for a calendar year may be met with recycling credits generated in a prior calendar year.

Section 5. Section 306 of the act is amended to read:

Section 306. Retailer responsibility.

(a) Public notice.--A retailer shall notify customers about the manner in which to recycle a covered device and of the locations for the collection and return of covered devices. This notification shall occur either by posting the information within the retail location, by providing the department's toll-free telephone number, a publicly accessible Internet website or both or by providing retailer-developed information.

(b) Compliance.--A retailer shall comply with sections 302(a) and (c) and 303.

(c) Additional responsibilities.--

(1) A manufacturer shall maintain records demonstrating compliance with this act and make the records available for audit and inspection by the department for a period of at least three years.

(2) The following shall apply:

(i) A manufacturer shall be responsible for each cost associated with the implementation of the electronic waste acceptance program.

(ii) A manufacturer may not charge consumers for the collection, handling and recycling and reuse of electronic waste, except for a charge on business consumers or a charge for premium services. This subparagraph shall not apply to a manufacturer's contract.
with a consumer for the collection, handling, recycling or reuse of electronic waste that was entered into prior to the effective date of this subparagraph.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Business consumer." A for-profit entity which has at least 50 full-time employees or a not-for-profit corporation with at least 75 full-time employees. The term shall not include a not-for-profit corporation designated under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

"Premium services." Equipment and data security services, refurbishment for reuse by the consumer and other custom services as may be determined by the department.

Section 6. Section 501 of the act is amended by adding a paragraph to read:

The department shall:

* * *

(6) Determine the market share and orphan product share for each registered manufacturer.

Section 7. This act shall take effect in 60 days.