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.

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Covered Device Recycling Act.

Section 102. Definitions.

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:

"Brand." Symbols, words or marks that identify a covered device, rather than any of its components.

"Computer." A desktop or notebook computer. The term does not include an automated typewriter, professional workstation, server, mobile telephone, portable handheld calculator, portable digital assistant, MP3 player or other similar device.

"Computer manufacturer." A person:

(1) who manufactures covered computer devices to be sold under its own brand as identified by its own brand label;

(2) who sells covered computer devices manufactured by others under its own brand as identified by its own brand label; or

(3) who assumes the duties imposed on the computer manufacturer under this act.

The term does not include a person who manufactures only peripheral computer devices.

"Consumer." An occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit who has used a covered device primarily for personal or small business use. For purposes of this definition, a small business is an entity that is independently owned or operated, employs 50 or fewer people, has purchased or leased a covered computer device from a computer manufacturer or retailer and, but for the program established under this act, would not otherwise have access to electronic recycling programs.

"Covered computer device." A desktop or notebook computer or computer monitor or peripheral, marketed and intended for use by a consumer. The term does not include a covered television device.

"Covered device." A covered computer device and covered television device marketed and intended for use by a consumer. The term does not include:

(1) a 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) a device that is functionally or physically a part of or connected to or integrated within equipment or a system designed and intended for use in an industrial, governmental, commercial, research and development or medical setting, including, but not limited to, diagnostic, monitoring, control or medical products as defined under the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), or equipment used for security, sensing, monitoring, antiterrorism, emergency services purposes or equipment designed and intended primarily for use by professional users;

(3) a 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, air purifier or exercise equipment; or

(4) any of the following:

(i) Telephone of any type, including a mobile phone.

(ii) Personal digital assistant.

(iii) Global positioning system.

"Covered television device." An electronic device that contains a tuner that locks on to a selected carrier frequency

and is capable of receiving and displaying television or video programming via broadcast, cable or satellite, including, without limitation, any direct view or projection television with a viewable screen of four inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include a covered computer device or a mobile telephone.

"Department." The Department of Environmental Protection of the Commonwealth.

"Desktop computer." An electronic, magnetic, optical, electrochemical or other high-speed data processing device which:

(1) Performs logical, arithmetic and storage functions for general purpose needs which are met through interaction with a number of software programs contained in the device.

(2) Is not designed to exclusively perform a specific type of limited or specialized application.

(3) Achieves human interface through a stand-alone keyboard, stand-alone monitor or other display unit and a stand-alone mouse or other pointing device and is designed for a single user.

(4) Has a main unit that is intended to be persistently located in a single location, often on a desk or on the floor.

"Manufacturer." A computer manufacturer or a television manufacturer.

"Market share." An estimate of the total weight of a manufacturer's sales of covered devices during the previous program 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.

"New covered device." A covered device that is manufactured after the effective date of this section.

"Notebook computer." An electronic, magnetic, optical, electrochemical or other high-speed data processing device which:

(1) Performs logical, arithmetic or storage functions for general purpose needs which are met through interaction with a number of software programs contained in the device.

(2) Is not designed to exclusively perform a specific type of limited or specialized application.

(3) Achieves human interface through a keyboard, video display greater than four inches in size and mouse or other pointing device, all of which are contained within the construction of the unit which comprises the notebook computer.

(4) Can be carried as one unit by an individual.

(5) May include a supplemental stand-alone interface device.

(6) May use external, internal or batteries for a power source.

The term does not include a portable handheld calculator, portable digital assistant or similar specialized device.

"Obligated share." The proportion of covered devices that reflects a manufacturer's market share responsibility under this act.

"Peripheral." A keyboard, printer or any other device sold exclusively for external use with a computer that provides input

into or output from the computer. The term does not include adaptive or assistive technologies.

"Person." An individual, trust, firm, joint stock company, business concern, corporation, government agency, partnership, limited liability company or association.

"Program year." A full calendar year beginning on or after January 1, 2011.

"Purchase." The taking by sale of title in exchange for consideration.

"Recycling." A process by which covered devices that would otherwise become solid waste or hazardous waste are collected, transported, separated and processed, including disassembling, dismantling or shredding, to be returned to use in the form of raw materials or products in accordance with environmental standards established by the Department of Environmental Protection.

"Retail sales." The sale of covered devices through sales outlets, via the Internet, mail order or other means, regardless of whether the retailer has a physical presence within this Commonwealth.

"Retailer." A person who offers for sale, other than for resale by the purchaser, new covered devices in this Commonwealth by any means, including, but not limited to, sales outlets, catalogs or the Internet.

"Sale" or "sell." A transfer for consideration of title, including, but not limited to, a transaction conducted through a sales outlet, catalog, the Internet or any other similar electronic means. The term does not include a lease.

"Secretary." The Secretary of Environmental Protection of the Commonwealth.

"Television manufacturer." A person who:

(1) manufactures covered television devices to be sold under its own brand as identified by its own brand label or being sold under a brand it is licensed to use;

(2) sells covered television devices manufactured by others under its own brand as identified by its own brand label; or

(3) assumes the duties imposed on a television manufacturer under this act.

CHAPTER 3
DUTIES OF MANUFACTURERS AND RETAILERS

Section 301. Applicability.

The collection, transportation and recycling provisions of this act shall apply only to covered devices used by and collected from a consumer in this Commonwealth.

Section 302. Sales prohibition.

(a) General rule.--No manufacturer and, no later than 12 months after the effective date of this section, no retailer may sell or offer for sale in this Commonwealth a new covered device unless the brand is included on the list of registered manufacturers and their brands maintained by the department pursuant to subsection (b).

(b) List to be maintained by department.--No later than six months after the effective date of this section, the department shall maintain a list of each registered manufacturer, the brands of all covered devices reported in each manufacturer's registration and the brands of covered devices for which no manufacturer has registered and post the list on the department's Internet website.

(c) Duty of retailers to consult list.--

(1) Beginning no later than 12 months after the effective date of this section, a retailer of new covered devices to be offered for sale in or into this Commonwealth shall consult the list prior to selling new covered devices in this Commonwealth.

(2) A retailer shall be considered to have complied with paragraph (1) if, on the date that the new covered device was ordered by the retailer, the brand was on the list of registered manufacturers and is posted on the Internet website identified in subsection (b).

Section 303. Labeling requirement.

On or after the effective date of this section, no manufacturer or retailer may sell or offer for sale in this Commonwealth a new covered device unless it is labeled with the manufacturer's brand whether owned or licensed.

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.

(b) (Reserved).

Section 305. Manufacturer plan and reporting.

(a) Collection, transportation and recycling plan.--

(1) A manufacturer shall establish, conduct and manage a plan to collect, transport and recycle a quantity of covered devices equal to the manufacturer's market share. The plan shall be submitted to the department for review.

(2) A group of manufacturers may submit a joint plan to collect, transport and recycle the manufacturer's market share.

(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.

(2) The processes that will be used to recycle, including a description of the recycling processes that will be used and the names and locations of recyclers to be directly utilized by the plan.

(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.

(4) The intention of the manufacturer or each manufacturer to fulfill its obligated share under this act, through operation of its own program, either individually or with other manufacturers as a group.

(5) A listing of all collection sites for covered devices.

(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.

(c) Reporting by manufacturers.--

(1) (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) 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.

(d) Sales data.--National sales data submitted by a manufacturer to the department to fulfill its obligations under this act shall be exempt from disclosure under the provisions of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and shall not be disclosed by the department unless otherwise required by law or court order.

(e) Approval of plan.--

(1) The department shall review a plan submitted to it under subsection (a) and, within 60 days of receipt of the plan, determine whether the plan complies with the provisions of this act.

(2) If the department approves the plan, the department shall notify the manufacturer or group of manufacturers. If the department rejects the plan, in whole or in part, the department shall notify the manufacturer or group of manufacturers and provide the reasons for the plan's rejection. Rejection of a plan shall be based on the plan's failure to provide the information required by subsection (b).

(3) Within 30 days after receipt of the department's rejection, the manufacturer or group of manufacturers may revise and resubmit the plan to the department for approval.

(f) Effect of failure to comply with approved plan.--

(1) (i) If the total weight in pounds of covered devices collected, transported and recycled during a program year by a manufacturer or group of manufacturers is less than the sum of the obligated shares in weight for that program year of each manufacturer participating in the plan, the manufacturer or group of manufacturers shall submit to the department by March 15 of the following program year a payment to cover the cost of collecting, transporting and recycling the unmet portion of the sum of the obligated shares in weight.

(ii) The payment shall be equal to the quantity of the unmet portion, in pounds, plus an additional 10% of such quantity, multiplied by the cost per pound for collection, transportation and recycling of covered devices.

(iii) All payments collected under subparagraph (ii) shall be deposited into the Electronic Materials Recycling Account and shall be used to fund the activities under this act.

(2) The department shall:

(i) Determine the average cost for collection and transportation of covered devices to be used in calculating the penalties under this paragraph.

(ii) No more frequently than annually and no less frequently than biennially, review these costs and shall publish for public comment any proposed changes to these costs.

(g) Multiple manufacturers.--

(1) Where more than one person may be deemed the manufacturer of a brand of a covered device, any one or more such persons may assume responsibility for and satisfy the obligations of a manufacturer under this act with respect to covered devices bearing that brand.

(2) In the event that no person assumes responsibility for and satisfies the obligations of a manufacturer under this act with respect to covered devices bearing that brand, for purposes of compliance with these provisions, the responsible party shall be the person who satisfies paragraph (1) of the definition of manufacturer.

(h) Construction.--Nothing in this act shall be construed to exempt any person from liability that person would otherwise have under applicable law.

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, Internet website or both or by providing retailer-developed information.

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

CHAPTER 5
ADMINISTRATION

Section 501. Duties of department.

The department shall:

(1) Encourage the use of existing collection and consolidation infrastructure for handling covered devices

to the extent that this infrastructure is accessible on a regular and ongoing basis to at least 85% of the population of this Commonwealth, is cost effective and meets the environmentally sound management requirements of section 506.

(2) Update the list maintained pursuant to section 302(b) upon receipt by the department of a manufacturer's registration or an annual manufacturer registration renewal.

(3) Organize and coordinate public education and outreach. The department shall work with retailers to develop the appropriate public education and outreach materials and to assist retailers as necessary in the conduct of their public education and outreach efforts.

(4) Review all plans submitted by a manufacturer or group of manufacturers for the collection, transportation and recycling of covered devices.

(5) Oversee the implementation of all approved plans and take the necessary actions to ensure compliance with approved plans.

Section 502. Annual report.

The department shall prepare and submit annually to the General Assembly and post on its Internet website a report that includes:

(1) The total weight of covered devices collected in this Commonwealth during the previous calendar year.

(2) A complete listing of all manufacturers' collection, transportation and recycling programs and collection sites operating in this Commonwealth during the prior calendar year, the parties that operated them and the amount of material by weight collected at each site.

(3) An evaluation of the effectiveness of the education and outreach program.

(4) An evaluation of the existing collection and processing infrastructure.

(5) Recommendations for expanding the program to include additional electronic devices. All recommendations shall be accompanied by an analysis of the positive and negative aspects along with a cost benefit analysis of the recommendations.

Section 503. Additional duties.

The department shall:

(1) Maintain an Internet website and toll-free telephone number complete with up-to-date listings of where consumers may take covered devices for recycling under this act.

(2) No more frequently than annually and no less frequently than biennially, review the amount of the covered device recycling and registration fee. The Environmental Quality Board may promulgate regulations to adjust fees so that the fees generate sufficient revenue reasonably necessary to implement this act.

Section 504. Fees for collection or recycling of covered devices.

No manufacturer or retailer may charge a fee or cost to a consumer for the collection, transportation or recycling of a covered device, unless a financial incentive of equal or greater value is provided to the consumer. The financial incentive may be in the form of a coupon or rebate.

Section 505. Environmentally sound management requirements.

(a) General rule.--Covered devices collected through any program in this Commonwealth, whether by a manufacturer, retailer, for-profit or not-for-profit corporation or unit of government, shall be recycled in a manner that is in compliance

with all applicable Federal, State and local laws, regulations and ordinances and may not be exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) Performance requirements.--

(1) All entities shall, at a minimum, demonstrate to the satisfaction of the department that the facility to be used to recycle covered devices has achieved and maintained third-party accredited certification from:

(i) the Responsible Recycling (R2) Practices Standard;

(ii) the e-Stewards standard; or

(iii) an internationally accredited third-party environmental management standard for the safe and responsible handling of covered devices.

(2) All entities shall provide information about their certification and its standing to the department along with any other requirements regarding this subsection that may be mandated by Federal or State law. The department shall make this information available on its Internet website.

(c) Department to maintain Internet website.--The department shall maintain an Internet website that includes a list of entities and organizations that the department has determined have met the performance requirements.

Section 506. Disposal ban.

(a) General rule.--Two years after the effective date of this section, no person may place in municipal solid waste a covered device or any of its components, excluding any nonhazardous residuals produced during recycling in any solid waste disposal facility.

(b) Hold harmless.--An owner or operator of a solid waste disposal facility shall not be found in violation of this section if such owner or operator has:

(1) made a good faith effort to comply with this section;

(2) posted in a conspicuous location at the facility a sign stating that covered devices or any of their components shall not be accepted at such facility; and

(3) notified, in writing, all collectors registered to deposit solid waste to such facility that such devices or their components shall not be accepted at the facility.

(c) Definition.--For purposes of this section, "facility" shall have the same meaning given to it in section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act. The term does not include a transfer station.

Section 507. Enforcement.

(a) Judicial action.--

(1) The Commonwealth, through the Attorney General and the department, may initiate independent action to enforce any provision of this act, including failure by the manufacturer to submit a plan as required in section 305 or to remit the registration fee pursuant to section 304(a) to the department.

(2) 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 the Electronic Materials Recycling Account and used to support the activities under this act.

(b) Penalties.--

(1) Any manufacturer who fails to label its new covered devices with a brand, as required by section 303, who fails to register with the department and pay a registration fee,

as required by section 304(a), may be assessed a penalty of up to $10,000 for the first violation and up to $25,000 for the second and each subsequent violation in addition to paying for any fees, payments and penalties required by or imposed pursuant to this act.

(2) Except as otherwise provided under paragraph (1), any person, including a retailer, who violates any requirement of this act may be assessed a penalty of up to $1,000 for the first violation and up to $2,000 for the second and each subsequent violation, in addition to paying for any fees, payments and penalties required by or imposed pursuant to this act.

(3) All penalty moneys collected under paragraphs (1) and (2) shall be deposited into the Electronic Materials Recycling Account and used to support the activities under this act.

(c) Injunctive relief.--A violation of the sales prohibitions of this act may be enjoined in an action in the name of the Commonwealth, brought by the Attorney General.

Section 508. Regulations.

The Environmental Quality Board may adopt rules and regulations as shall be necessary for the purpose of administering this act. The regulations shall be promulgated in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 509. Multistate implementation.

The department may participate in the establishment and implementation of a regional, multistate organization or compact to assist in carrying out the requirements of this act.

Section 510. Electronic Materials Recycling Account.

(a) Establishment.--The Electronic Materials Recycling Account is established as a restricted account in the General Fund. All proceeds resulting from the manufacturer's registration fees, renewal fees, penalties and judicial actions shall be deposited into the account.

(b) Uses.--The department may expend the moneys of the Electronic Materials Recycling Account only to carry out the duties imposed on the department under this act.

CHAPTER 7
MISCELLANEOUS PROVISIONS

Section 701. Expiration.

(a) Duty of Secretary of Environmental Protection to monitor Federal law.--

(1) The secretary shall monitor the enactment of laws by the Congress of the United States to determine whether any law has been so enacted that establishes a program directed to the collection and recycling of covered devices.

(2) If the secretary determines that such a law is enacted, the secretary shall publish that determination as a notice in the Pennsylvania Bulletin. The notice shall include a statement that the effect of the notice is the immediate expiration of this act as provided under subsection (b).

(b) Effect of secretary's determination.--This act shall expire on the date a determination of the secretary under subsection (a) is published in the Pennsylvania Bulletin.

Section 702. Effective date.

This act shall take effect in 60 days.