

INFORMATION TECHNOLOGY PRODUCER RESPONSIBILITY MODEL STATE LEGISLATION

This approach seeks to combine the important principles of manufacturer responsibility, consumer convenience, accountability, transparency, education, and enforcement into a simple, effective, and efficient IT collection and recovery system.

At the end of an IT product's useful life, any consumer should be able to return that product to the manufacturer at no charge by following a process defined by the manufacturer. A return should be as convenient as the purchase of a new product. Manufacturers will have the incentive to use the most cost effective and efficient system for collecting and recycling old IT products – which also will improve the products' environmental design. The manufacturer could implement its own collection and recovery program; enter into partnerships with other manufacturers, agreements with non-profit organizations, or arrangements with third-party organizations; or adopt other innovative solutions. And manufacturers will report on their progress.

The government will help educate consumers, enforce the law, and offer incentives for better design, collection and recovery. Governmental fees and separate governmental collection systems are not needed and likely would create inefficiencies.

Such a simple approach will promote innovation, foster partnerships, drive efficiencies, and create an effective IT collection and recovery system.

**INFORMATION TECHNOLOGY PRODUCER RESPONSIBILITY
MODEL STATE LEGISLATION**

A BILL

To promote individual producer and shared responsibility for, and resource conservation of, electronic information technology equipment.

Be it enacted by the Senate and House of Representatives of the Legislature of the State of _____ assembled,

SECTION 1. SHORT ACT; TABLE OF CONTENTS.

a. Short Act - This Act may be cited as the “Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act”.

b. Table of Contents – The table of contents of this Act is as follows:

Sec. 1.	Short Act; Table of Contents
Sec. 2.	Findings and Purposes
Sec. 3.	Definitions
Sec. 4.	Applicability
Sec. 5.	Manufacturers
Sec. 6.	Retailers
Sec. 7.	Department
Sec. 8.	Consumers
Sec. 9.	Sound Environmental Management
Sec. 10.	State Procurement
Sec. 11.	Federal Preemption

SECTION 2. FINDINGS AND PURPOSES.

The Legislature makes the following findings and states the following purposes for this Act:

a. Computing, display and printing devices are critical elements to the strength and growth of this state’s economic prosperity and our quality of life. Many of these products can be refurbished and reused, and many such obsolete products contain valuable components that can be recycled. Developing and implementing an appropriate state computing, display and printing device recovery system is important to our state’s resource conservation, worker health and safety, and economic prosperity goals.

b. The purpose of this Act is to establish a comprehensive and convenient computing, display and printing device recovery program based on individual producer responsibility and shared responsibility among consumers, retailers, and government. The

purposes of this recovery system are to ensure that end-of-life computing, display and printing devices are responsibly retired, to promote resource conservation through the development of an effective and efficient system for collecting and recycling such products, and to encourage manufacturers to offer such service to consumers with convenience and at no charge.

SECTION 3. DEFINITIONS.

a. “Collect” or “collection” means to physically pick up a covered device at a household or to facilitate the drop-off of a covered device at a collection site included in the manufacturer’s plan, and to transport the covered device for recovery.

The approach here is intended to balance consumer convenience with manufacturer responsibility in order to maximize efficient and effective collection and recycling of unwanted devices. Manufacturers would have flexibility to adopt whatever collection system works best for them – some might adopt their own, some might join with other manufacturers, some could form a third-party organization, and some might partner with non-profit organizations. Collection for the consumer should be as convenient as purchasing the product in the first place.

b. “Consumer” means any occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit (a household) who has used a covered device primarily for personal or home business use.

The bill is intended to apply to individual consumers, rather than businesses. Businesses already are responsible for complying with state and federal solid waste laws. Moreover, businesses already can avail themselves of manufacturers’ product recovery services.

c. “Covered device” means any computing, display or printing device, including a desktop or notebook computer, computer monitor, portable computer, printer and inkjet printer; but does not include a television (including a cathode ray tube or flatpanel based television), a part of a motor vehicle, a personal digital assistant (PDA), or a telephone.

This legislative approach covers computer, display and printing devices. It does not attempt to include other very different products, such as TVs, phones, or PDAs. The goal of this legislative approach is to offer a simple, convenient recovery system. Adding other products, manufacturers, and collection approaches would make this too complex and likely unworkable.

TVs are excluded because returned TVs are older, bulkier, heavier, less likely to be refurbished and reused, and of less value for components than returned IT products. It makes more sense to adopt separate solutions to address such different products. TVs are defined here to be telecommunication system devices that can broadcast and receive moving pictures and sound over a distance, and include a TV tuner.

Printers are included because they are integrally related peripherals to computers and monitors, are of similar weight and size and are an inherent part of the computing solution.

d. “Department” means the state department of environmental protection.

e. “Manufacturer” means any person who (i) manufactures or manufactured covered devices under its own brand for sale; (ii) manufactures or manufactured covered devices for sale in this state without affixing a brand; (iii) resells or resold in this state covered devices produced by other suppliers under its own brand or label; (iv) imports or exports or imported or exported covered devices into the United States; however, if a company from whom an importer purchases the merchandise has a presence in the United States and/or assets, that company shall be deemed to be the manufacturer; or (v) manufactures or manufactured covered devices, supplies or supplied them to any person or persons within a distribution network that includes wholesalers or retailers in this state, and benefits or benefited from the sale of those covered devices through that distribution network.

This bill is intended to create a legislative framework for producer responsibility for recovery by manufacturers of their own brand IT products. The bill’s intent is to ensure that some manufacturers do not avoid their responsibility and unduly burden other manufacturers. The bill also ensures that current manufacturers are not required to finance the recycling of products manufactured by companies that no longer exist (orphan products). Mandatory recovery programs and fees for collection of orphan products are inefficient and unfair to the PC industry, shifting responsibility for yesterday’s products to different manufacturers of today’s products.

f. “Manufacturer’s brands” means a manufacturer’s name, brand name or brand logo, and all manufacturer’s names, brand names and brand logos for which the manufacturer has legal responsibility, including those names, brand names, and brand logos of companies that the manufacturer has acquired.

The bill is intended to address producer responsibility for recovery by manufacturers of their own brand IT products. Each product must be branded with the manufacturer's logo so that it will be identifiable to consumers and retailers – and to the state for enforcement purposes.

g. “Person” means any individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or public authority.

h. “Recover” means to reuse, recycle, or dispose; and “recoverer” means a person or entity that reuses, recycles, or disposes.

i. “Retail sales” means sales of products through sales outlets, via the Internet, mail order or any other means, whether or not the seller has a physical presence in this state. Sales include sales of new, used, refurbished and other products.

Retailers have only two responsibilities under this legislation: to check to make sure that any computer, display or printing device they sell is labeled with a manufacturer's brand and that such manufacturer is on the state's website of manufacturers with recovery plans. Defining retail sales to be more than just in-store sales reflects the current market and is needed for the bill to be effective.

j. “Retailer” means a person who owns or operates a business that sells covered devices to a consumer, including through sales outlets, catalogs or the Internet, whether or not the seller has a physical presence in this state.

k. “Sell” or “sale” 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, but does not mean leases.

l. “Television” means any telecommunication system device that can broadcast and receive moving pictures and sound over a distance, and includes a TV tuner. Display devices that are peripheral to a computer but nevertheless contain a TV tuner are considered televisions.

This approach focuses on computer, display and printing devices. TVs are excluded because returned TVs are older, bulkier, heavier, less likely to be refurbished and reused, and of less value for components than returned IT products. It makes more sense to adopt separate solutions to address such different products.

SECTION 4. APPLICABILITY.

The provisions of this Act apply to covered devices purchased and used by consumers in this state.

SECTION 5. MANUFACTURERS.

a. *Sale Prohibition.* No manufacturer shall sell or offer for sale a covered device in this state unless the manufacturer has labeled the covered device before sale and has adopted and is implementing a recovery plan.

b. *Label.* No manufacturer shall sell or offer for sale any covered device in this state unless the covered device is labeled with the manufacturer's brand. The label shall be permanently affixed and readily visible.

The simplest way to implement this bill is for manufacturers to have to place their brand label on their computers, display and printing devices before they can be sold in the state. Consumers, retailers, and enforcement officials can then know who is responsible for that product. To avoid adding to the complexities of labeling issues, manufacturers do not have to include information about the recovery plan on the label. Instead, through the manufacturers' and the state's information and education programs, consumers will be directed to the manufacturers' websites for more detailed collection and recycling information.

c. *Recovery Plan.* No manufacturer shall sell or offer for sale any covered device in this state unless the manufacturer has a recovery plan under which the manufacturer offers to collect from a consumer and recover each covered device that is labeled with the manufacturer's brand at no charge to the consumer.

This is the critical element to implementation of the bill. Each manufacturer has to determine what it will do to comply with the bill. The bill does not require the government to approve a manufacturer's recovery plan – but the failure to adopt a recovery plan and the failure to properly collect and recycle unwanted covered devices are violations and enforceable.

d. *Collection.*

(i) The recovery plan must offer covered device collection services that are reasonably convenient and available to consumers in each county in the state.

(ii) Collection should be as convenient for the consumer as purchasing the product in the first place.

(iii) The following is a nonexclusive list of systems that meet the convenience requirements of this section:

(1) Mail-back systems: the manufacturer or its designee offers a system in which the consumer can return an end-of-life covered device through the mail, including but not limited to a system in which the consumer can go online, print a pre-paid shipping label, package the product, and schedule an at-home pickup for shipment back to the manufacturer;

(2) Physical collection sites: the manufacturer or its designee keeps open and staffed one physical collection site at which consumers may return end-of-life covered devices, in a location that is geographically central to the people served:

(a) Per every 250,000 people in the state; or

(b) In each county in the state with a population of 250,000 people or more, plus one additional physical collection site in each such county per every 250,000 people in that county above 250,000 people; or

(3) Collection events: the manufacturer or its designee holds one collection event each calendar year at which consumers may return end-of-life covered devices, in a location that is geographically central to the people served:

(a) Per every 50,000 people in the state; or

(b) In each county in the state with a population of 50,000 people or more, plus one additional collection event in each such county per every 50,000 people in that county above 50,000 people.

The approach here is intended to balance consumer convenience (to best encourage proper disposal) with manufacturer responsibility (to best encourage creation of efficient and effective collection and recycling infrastructure for unwanted devices).

Manufacturers would have flexibility to adopt whatever collection system works best for them – some might adopt their own, some might join with other manufacturers, some could form a third-party organization, and some might partner with non-profit organizations. Collection for the consumer should be as easy and convenient as purchasing the product in the first place, but (to ensure manufacturers have flexibility to identify the most efficient and effective system) the standard for convenience should not require any particular approach over another (such as requiring physical locations and not allowing at-home pickup). The three different examples of convenient systems used here would each meet the terms of this section and are intended to balance the needs of manufacturers and consumers, in both urban and rural areas.

(iv) Collection services may use existing collection and consolidation infrastructure for handling covered devices, and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, or other suitable operations.

The bill is intended to ensure manufacturers have sufficient flexibility to adopt whatever collection system works best for them – some might adopt their own, some might join with other manufacturers, some could form a third-party organization, and some might partner with non-profit organizations. Manufacturers are not required to implement any one solution but have the ability to innovate and find ways that are more efficient. This allows the growth of business models to facilitate compliance systems, drives costs out of the system while encouraging new ways of collecting, and fosters partnerships with others with sufficient capabilities to assist in collection and recovery.

e. **Cost.** Manufacturers must offer collection under their recovery plan at no charge to the consumer.

The bill is focused on making returns as convenient as the initial purchase, which means not charging consumers for the service. Where appropriate, consumers may be required to package end-of-life equipment for disposal or to deliver it to reasonably convenient drop-off facilities.

f. **Education.** Each manufacturer shall, as part of its recovery plan, inform consumers in this state about where and how to return and recover covered devices. Each manufacturer shall include collection and recovery information on its website, shall provide such information to the department, and may also include such information in the covered device's packaging or accompanying the sale of the covered device. Inclusion on the state's website is not a determination by the state that the manufacturer's recovery plan or actual recovery are in compliance with this Act or other laws.

The idea here is to make the unwanted product's collection convenient. If the consumer knows the name of the manufacturer, which should be easily determinable from the label on the product, the consumer can then just go to that manufacturer's website and find out all they need to know about using the recovery program. The state environmental department (or its designee) also will have on its website a link to the manufacturer's information. Manufacturers can also include instructions elsewhere, such as in product packaging.

g. **Annual Report.** Each manufacturer shall annually report to the department on or before January 30, beginning the second program year, the number, type, and weight of covered devices collected and recovered during the previous calendar year by category of covered devices (computing, display, and printing) and by brand. The report also shall include documentation verifying proper collection and recovery of such material compliant with the sound environmental management provisions under Section 9.

This legislation requires public reporting in order to ensure transparency and accountability. Manufacturers are to report to the state agency annually on their progress, and the agency reports annually to the state legislature on the manufacturers' progress. Because little data exists today to set actual performance metrics, reporting is the proper way to measure performance of the program at this point. Reporting will allow the state and the public to see how each manufacturer and the program as a whole are performing. With this baseline information, the state can then assess how the program is working and make any amendments.

h. *Data Security.* Manufacturers shall not be liable in any way for data or other information that a consumer may leave on a covered device that is collected or recovered.

Manufacturers (and their agents) need to be able to take possession of systems without incurring costly potential liability from information that consumers might leave on their systems. Manufacturers and the state should offer on their websites education for consumers about how to properly wipe data from systems.

SECTION 6. RETAILERS.

a. *Sale Prohibition.* No retailer shall sell or offer for sale a covered device in this state unless the covered device has a proper manufacturer label and such device's manufacturer is included on the state list of manufacturers with recovery plans.

Retailers have only two responsibilities under this legislation: to check to make sure that any computer, display or printing device it sells is labeled with a manufacturer's brand and that such manufacturer is on the state's website of manufacturers with recovery plans. If a product is sold without such a label or that product's manufacturer is not on the state website of manufacturers with recovery plans, the state may fine the retailer and seize its products (including those in the retailer's inventory). Without this mechanism, there is no other practical means of preventing improper disposal of end-of-life IT products.

b. *Data Security.* Retailers shall not be liable in any way for data or other information that a consumer may leave on a covered device that is collected or recovered.

Retailers do not have responsibility under this bill for recovery of end-of-life IT products and so should not have responsibility for information that consumers might leave on their systems. Under this bill, manufacturers and the state should offer on their websites education for consumers about how to properly wipe data from systems.

SECTION 7. DEPARTMENT.

a. *Education.* The department shall educate consumers about collection and recovery of covered devices.

Other bills impose new fees, create substantial new bureaucracies, and devise complex governmental systems. This legislation allows state governments to focus on just three things: educating the public about the benefits of proper collection and recycling and how to find manufacturers' information for returning IT products; offering incentives for better design, collection and recovery; and enforcing the law.

b. *Website.* The department shall host, or designate another person to host, a website about IT recovery for consumers, with information about and links to manufacturers' collection and recovery information, including their recovery plans, and information about and links to information for noncompliant and other covered devices, including information about collection events, collection sites, and community recycling programs. Inclusion on the state's website is not a determination by the state that the manufacturer's recovery plan or actual recovery are in compliance with this Act or other laws.

To fulfill its education role, the state will offer a one-stop website to help consumers easily find instructions on how to properly return their covered devices. The state could designate a site hosted and managed by a third party. The state could even work with other states and designate a group, such as the National Recycling Coalition, that would post all such instructions in one place nationally.

c. *Enforcement.* The department may conduct audits and inspections to determine compliance under this Act. The department and the state attorney general, as appropriate, shall enforce the provisions of this Act and take enforcement action against any manufacturer, retailer, or recoverer for failure to comply with any provisions of this Act, including assessing appropriate injunctive relief and administrative, civil, and criminal penalties, as appropriate.

Enforcement will be critical to ensuring a level and fair playing field for all entrants. In addition to using audits and inspections, the state's job will be made easier because this system is transparent: those manufacturers who are legitimate will have their names on their products and will have their recovery information on their and the state's website for all to see. The state can verify whether the system is working by auditing and inspecting manufacturers' products and websites, retailers, and recyclers.

Programs that assess fees or impose costs (e.g., for market or return share) face the difficulty of enforcing against manufacturers with insignificant nexus with the state. This legislation offers several routes for enforcement. The state would be able to enforce against manufacturers, as they have the greatest responsibility under this approach, for failure to label products that the manufacturer offers for sale, for failure to adopt and implement a recovery plan, for failure to offer adequate information to the public and the state, for failure to annually report to the state on its recovery, for failure to properly collect and recover IT products, and for failure to document proper collection and recovery. The state could enforce against a retailer for offering for sale or selling products without a manufacturer label, or for offering for sale or selling products from manufacturers who are not included on the state's website of manufacturers with recovery plans. In addition, the state also could enforce against recyclers for failure to properly recover IT products in compliance with environmental, health and safety laws, for failure to be a certified recycler, and for falsely certifying that recovery was conducted in compliance with EHS laws.

The state does not have the authority to assess any fees for recovery of IT devices, but it could use the funds from penalties for administration.

d. *Financial and Proprietary Information.* Financial or proprietary information submitted to the department under this Act is exempt from public disclosure, in accordance with state law.

e. *Annual Report.* The department shall compile the information from manufacturers and issue a report to the Legislature by March 1 each year, beginning the second program year.

This legislation requires public reporting in order to ensure transparency and accountability. Manufacturers are to report to the state agency annually on their progress, and the agency reports annually to the state legislature on the manufacturers' progress. Because little data exists today to set actual performance metrics, reporting is the proper way to measure performance of the program at this point. Reporting will allow the state and the public to see how each manufacturer and the program as a whole are performing. With this baseline information, the state can then assess how the program is working and make any amendments.

f. *Rules.* The department may adopt such rules and regulations as are necessary to implement the provisions of this Act.

g. *No Fees.* The department does not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on consumers, manufacturers, retailers, or recoverers for collection or recovery of covered devices.

Programs that assess fees do not encourage efficiency. On the contrary, the trend will always be for costs to rise, as they will always be passed directly to the manufacturer. Programs that assess fees or impose costs (e.g., for market or return share) also face the difficulty of enforcing against manufacturers with insignificant nexus with the state. The state could, however, use the funds from penalties for administration.

SECTION 8. CONSUMERS.

a. *Data Security.* Consumers remain responsible for any data or other information that may be on a covered device that is collected or recovered.

The only obligation consumers have under this bill is to retain responsibility for any information that may remain on their IT product. Manufacturers (and their agents) need to be able to take possession of systems without incurring costly potential liability from information that consumers might leave on their systems. Manufacturers and the state should offer on their websites education for consumers about how to properly wipe data from systems. And consumers should learn about proper recovery of old IT products.

b. *Education.* Consumers also are encouraged to learn about proper recovery of their end-of-life covered devices by visiting the department's and manufacturers' websites.

SECTION 9. SOUND ENVIRONMENTAL MANAGEMENT.

a. *Compliance.* All covered devices collected pursuant to this Act shall be recovered in a manner that is in compliance with all applicable federal, state, and local laws and requirements.

b. *Recovery Standards.* The department shall adopt by reference the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices (available at www.isri.org) as standards for recovery in an environmentally sound manner that are protective of worker health and safety.

In order to make the recovery and rulemaking as simple as possible, the state agency will use ISRI's recovery standards, which are the leading industry standards.

c. *Recoverer Certification.* Recovery of covered devices under this Act may be undertaken only by recoverers certified under the Institute of Scrap Recycling Industries, Inc.'s Recycling Industry Operating Standard (available at www.isri.org).

The ISRI RIOS is the industry standard for recovering electronics and requires third party certification to meet its quality, environmental, health, and safety provisions.

SECTION 10. STATE PROCUREMENT.

a. *Compliance.*

(i) Any person who submits a bid for a contract with a state agency for the purchase or lease of covered devices must be in compliance with this Act.

(ii) A state agency that purchases or leases covered devices shall require each prospective bidder to certify compliance with this Act. Failure to provide such certification shall render the prospective bidder ineligible to bid on the procurement of covered devices.

b. *State Purchasing Preferences.* In considering bids for state contracts for covered devices, in addition to any other preferences provided elsewhere under state law, the state shall give special preference to manufacturers that have programs to recover other manufacturers' covered devices, including but not limited to collection events, recycling grants, and manufacturer initiatives to take back any covered device brand with purchase.

This bill would require that manufacturers who want to sell covered devices to the state must comply with all the provisions of this new law. Also, rather than unfairly holding responsible current manufacturers for orphan products created by others, this approach instead incentivizes manufacturers to help recover covered devices that are not their own brand (including orphan products) by giving manufacturers preference in the state procurement process if they undertake collection events, offer recycling grants, or offer to take back any brand with purchase.

Mandatory recovery programs and fees for collection of orphan materials are inefficient and unfair to the PC industry, shifting responsibility for yesterday's products to different manufacturers of today's products. Based on data from collection events and programs around the country, the portion of orphan electronic products returned is approximately 10%. As manufacturers step up to the plate to take back their own and others' products with purchase, and as manufacturers and communities continue to hold collection events, orphan products should continue to decline. Any legislation should encourage manufacturers to take back others' products (which will include some orphans), such as through collection events, recycling grants, and manufacturer initiatives to take back any brand with purchase. This approach would require the state to give preference in procurement decisions to manufacturers that undertake such efforts to address orphan and historic products.

c. *Rulemaking.* The state's procurement agency shall adopt rules to implement this section's provisions.

SECTION 11. FEDERAL PREEMPTION.

This Act shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered devices that substantially meets the intent of this Act.

Although each state might seek to address this important resource recovery issue on its own, the most efficient and effective approach is not a state-by-state one but a national solution. The National Center for Electronics Recycling has calculated that having different state programs carries significant costs above and beyond what would be needed for a uniform national approach (\$25 million per year in such “dead weight” costs with just the four current state programs), which consumers and manufacturers bear through increased fees and product costs.