

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1631

By: Paddock of the Senate

and

Peterson (Ron) of the House

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9 COMMITTEE SUBSTITUTE

10 (Environment and natural resources - Oklahoma

11 Computer Equipment Recovery Act - codification -

12 effective date)

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-11-601 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Oklahoma
20 Computer Equipment Recovery Act".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2-11-602 of Title 27A, unless
23 there is created a duplication in numbering, reads as follows:

1 A. Computers and computer monitors have become indispensable to
2 the strength and growth of the state's economy and the quality of
3 life of its citizens. Equally important is the protection of our
4 state's environment and natural resources which necessitates the
5 implementation of a statewide system to properly dispose of or
6 recycle these products. Many of these products can be refurbished
7 and reused, and many contain valuable materials that can be
8 recycled.

9 B. The purpose of the Oklahoma Computer Equipment Recovery Act
10 is to establish a convenient and environmentally sound recovery
11 program for the collection, recycling and reuse of computers and
12 computer monitors that have reached the end of their useful lives.
13 The program is based on individual manufacturer responsibility and
14 shared responsibility among consumers, retailers, and government.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-11-603 of Title 27A, unless
17 there is created a duplication in numbering, reads as follows:

18 As used in the Oklahoma Computer Equipment Recovery Act:

19 1. "Brand" means symbols, words, or marks that identify a
20 covered device, rather than any of its components;

21 2. "Consumer" means any occupant of a single detached dwelling
22 unit or a single unit of a multiple dwelling unit who has used a
23 covered device primarily for personal or home business use;

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1 3. "Covered device" means a desktop or notebook computer, or
2 computer monitor which is no longer of use to a consumer. Covered
3 device does not include a television, any part of a motor vehicle, a
4 personal digital assistant (PDA), a telephone, or a medical device
5 that contains a video display device;

6 4. "Department" means the Department of Environmental Quality;

7 5. "Desktop computer" means an electronic, magnetic, optical,
8 electrochemical, or other high-speed data-processing device
9 performing logical, arithmetic, or storage functions, but does not
10 include an automated typewriter or typesetter. A desktop computer
11 has a main unit that is intended to be located in a permanent
12 location, often on a desk or on the floor. A desktop computer is
13 not designed for portability and generally utilizes an external
14 monitor, keyboard, and mouse;

15 6. "Manufacturer" means a person:

16 a. who manufactures or manufactured covered devices under
17 a brand that is or was owned or is or was licensed to
18 use, other than a license to manufacture covered
19 devices for delivery exclusively to or at the order of
20 the licensor,

21 b. who sells or sold covered devices manufactured by
22 others under a brand that the seller owns or owned or
23 is or was licensed to use, other than a license to
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1 manufacture covered devices for delivery exclusively
2 to or at the order of the licensor,

3 c. who manufactures or manufactured covered devices
4 without affixing a brand,

5 d. who manufactures or manufactured covered devices to
6 which is or were affixed a brand that neither is or
7 was owned nor is or was licensed to use, or

8 e. for whose account covered devices, manufactured
9 outside the United States, are or were imported into
10 the United States. If at the time such covered
11 devices are or were imported into the United States
12 another person has offered to collect such covered
13 devices under a recovery plan pursuant to subsection C
14 of Section 5 of this act, this subparagraph shall not
15 apply.

16 To be subject to the provisions of this act, a manufacturer must
17 produce, sell or import covered devices in an amount exceeding five
18 hundred units per year;

19 7. "Notebook computer" means an electronic, magnetic, optical,
20 electrochemical, or other high-speed data-processing device
21 performing logical, arithmetic, or storage functions, but does not
22 include a portable handheld calculator, or a portable digital
23 assistant;

1 8. "Person" means any individual, business entity, partnership,
2 limited liability company, corporation, not-for-profit corporation,
3 association, governmental entity, public benefit corporation or
4 public authority;

5 9. "Recover" means to reuse or recycle;

6 10. "Recoverer" means a person or entity that reuses or
7 recycles;

8 11. "Retailer" means a person that owns or operates a business
9 that sells covered devices directly to a consumer, whether or not
10 the seller has a physical presence in this state;

11 12. "Sell" or "sale" means any transfer for consideration of
12 title including, but not limited to, transactions conducted through
13 sales outlets, catalogs, or the Internet or any other similar
14 electronic means, but does not include leases; and

15 13. "Television" means any telecommunication system device that
16 can receive moving pictures and sound broadcast over a distance, and
17 includes a television tuner or a display device peripheral to a
18 computer that contains a television tuner.

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2-11-604 of Title 27A, unless
21 there is created a duplication in numbering, reads as follows:

22 The collection and recovery provisions of this act shall apply
23 to covered devices used and returned by consumers in this state.

24 Manufacturers are encouraged to offer collection and recovery

1 services to address the collection, recycling and reuse of computer
2 and other electronic equipment not covered by the provisions of this
3 act.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2-11-605 of Title 27A, unless
6 there is created a duplication in numbering, reads as follows:

7 A. A manufacturer shall not sell or offer for sale any covered
8 device in this state unless the covered device is labeled with the
9 manufacturer's brand. The label shall be permanently affixed and
10 readily visible.

11 B. A manufacturer shall not sell or offer for sale a covered
12 device in this state unless the manufacturer has adopted and is
13 implementing a recovery plan, either alone or in cooperation with
14 other manufacturers.

15 C. The recovery plan shall fully explain how the manufacturer
16 will collect from a consumer and recover each covered device that is
17 labeled with the manufacturer's brand, at no charge to the consumer.
18 The manufacturer's recovery plan under this subsection may use
19 existing collection and consolidation infrastructure for handling
20 covered devices and may include electronic recyclers and repair
21 shops, recyclers of other commodities, reuse organizations,
22 nonprofit corporations, retailers, recyclers, or other suitable
23 operations.

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1 D. The recovery plan shall provide for covered device
2 collection services that are reasonably convenient and available,
3 and designed to meet the collection needs of consumers in this
4 state. Nonexclusive examples of collection methods that alone or in
5 combination meet the convenience requirements of this section
6 include:

7 1. A mail-back system, at no cost to the consumer, whereby the
8 consumer can return a covered device through the mail, including,
9 but not limited to, a system in which the consumer can go online,
10 print a prepaid shipping label, package the product, and schedule an
11 at-home pickup for shipment back to the manufacturer;

12 2. The providing of staffed physical collection sites at which
13 consumers may return covered devices, sited in locations that are
14 geographically central to the consumers served; and

15 3. Collection events at which consumers may return covered
16 devices, sited in locations that are geographically central to the
17 people served and conducted with sufficient frequency to reasonably
18 meet the needs of the consumers served.

19 E. If a manufacturer does not offer a mail-back system, it
20 shall submit for approval by the Department of Environmental Quality
21 a plan that offers reasonably convenient collections as set forth in
22 paragraph 2 or 3 of subsection D of this section. The Department
23 shall review the plan for geographic distribution and frequency of
24 collections. The Department shall notify the manufacturer within

1 thirty (30) days of receipt of the plan whether or not the
2 manufacturer's plan complies with the requirements of this section.
3 If the Department does not approve the plan, the Department shall
4 state the reasons the plan does not comply. The manufacturer shall
5 respond to the Department within twenty (20) days of receipt of
6 notification of the disapproval of the plan. If the Department and
7 the manufacturer do not agree on whether the plan should be
8 approved, the manufacturer may seek review in a declaratory ruling
9 proceeding under the provisions of Section 307 of Title 75 of the
10 Oklahoma Statutes.

11 F. The recovery plan shall also include a statement that the
12 manufacturer will not dispose of covered devices in landfills or
13 transfer covered devices to computer equipment recycling facilities
14 that dispose of covered devices in landfills other than necessary
15 incidental disposal in de minimis amounts.

16 G. Each manufacturer operating or publishing a website for
17 providing product information about a covered device shall include
18 information about collection and recovery for consumers and provide
19 such information to the Department. The manufacturer shall also
20 include such information in the packaging or accompanying the sale
21 of the covered device.

22 H. No later than March 1 of each year, each manufacturer shall
23 submit a report to the Department that includes:

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1 1. A summary of the recovery program implemented by the
2 manufacturer during the previous calendar year, specifically
3 describing the methods of recovery implemented by the manufacturer;

4 2. The weight of covered devices collected and recovered during
5 the previous calendar year;

6 3. The location and dates of collection events during the
7 previous calendar year, if any, and the location of collection
8 sites, if any; and

9 4. Certification that the collection and recovery of covered
10 devices complies with the provisions of Section 9 of this act.

11 I. Where more than one person is within the definition of
12 manufacturer of a brand of a covered device, any of those persons
13 may assume responsibility for and satisfy the obligations of a
14 manufacturer with respect to covered devices bearing that brand. If
15 no person assumes responsibility for and satisfies the obligations
16 of a manufacturer with respect to covered devices bearing that
17 brand, the Department may consider any of those persons within such
18 definition to be the manufacturer of that brand.

19 J. This section does not apply to a manufacturer solely of
20 covered devices that the Department determines are of such a
21 character that the covered devices would not be used by a consumer.
22 If, however, such a manufacturer also manufactures one or more
23 covered devices that are of such character as to be used by a
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1 consumer, then the provisions of this section nevertheless apply to
2 the manufacturer for those covered devices.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-11-606 of Title 27A, unless
5 there is created a duplication in numbering, reads as follows:

6 A retailer shall not sell or offer for sale a covered device in
7 this state unless the covered device is labeled in accordance with
8 Section 5 of this act and the manufacturer of the covered device is
9 included on the state list of manufacturers with recovery plans.

10 SECTION 7. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 2-11-607 of Title 27A, unless
12 there is created a duplication in numbering, reads as follows:

13 A. The Department of Environmental Quality shall assist in
14 educating consumers about collection and recovery of covered
15 devices. This shall include hosting, or designating another person
16 to host, a website for consumers about the collection and recovery
17 of covered devices. The website shall provide information about and
18 links to manufacturers' collection and recovery information,
19 including their recovery plans, and information about and links to
20 information for covered devices, including information about
21 collection events, collection sites, and community recycling
22 programs. Inclusion on such website is not a determination by the
23 state that the manufacturer's recovery plan or practices are in
24 compliance with this act or other laws.

1 B. The Department shall maintain and make available:

2 1. A list of registered manufacturers who have adopted and
3 implemented a recovery plan, as required by this act; and

4 2. A separate list of manufacturers whose registered recovery
5 plan permits consumers to return for collection and recovery other
6 manufacturers' brands of covered devices, including orphan devices.

7 Manufacturers shall be included on this list of beyond-brand
8 collection plans if such plan:

9 a. provides recycling grants or collection events for
10 covered devices other than that manufacturer's covered
11 devices,

12 b. requires a consumer who purchases a new covered
13 electronic device from the manufacturer to return
14 another manufacturer's branded covered device, in
15 which case the manufacturer may require the consumer
16 to pay for transportation or shipping, or

17 c. provides for use of other collection or recovery
18 methods that are approved by the Department.

19 C. The Department shall file each recovery plan and annual
20 report submitted by a manufacturer. The Department shall make
21 recovery plans and annual reports available to the public pursuant
22 to the Oklahoma Open Records Act.

23 D. The Department shall produce a schedule of collection
24 events, based on the manufacturers' submitted recovery plans.

1 E. The Department shall by July 1 of each year produce and
2 submit to the Governor, the President Pro Tempore of the Senate and
3 Speaker of the House of Representatives a summary of the recovery
4 program annual reports filed by the manufacturers.

5 F. The Department may conduct audits and inspections to
6 determine compliance with the provisions of this act and take
7 enforcement action against any manufacturer, retailer, or recoverer
8 for failure to comply with any provisions of this act.

9 G. The Environmental Quality Board may promulgate rules
10 necessary to implement the provisions of this act, including the
11 adoption of fees pursuant to the provisions of Section 2-3-402 of
12 Title 27A of the Oklahoma Statutes as necessary to cover the costs
13 of administering the program. The Board may adopt by reference
14 standards developed by the Institute of Scrap Recycling Industries,
15 Inc., or other recognized practices, procedures or standards.

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-11-608 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 A. Consumers remain responsible for any data or other
20 information that may be on a covered device that is collected or
21 recovered.

22 B. Manufacturers and retailers shall not be liable for data or
23 other information that a consumer placed on a covered device that is
24 collected or recovered.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-11-609 of Title 27A, unless
3 there is created a duplication in numbering, reads as follows:

4 All covered devices collected pursuant to the provisions of this
5 act shall be recovered in a manner that is in compliance with all
6 applicable federal, state, and local laws.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2-11-610 of Title 27A, unless
9 there is created a duplication in numbering, reads as follows:

10 A. No state agency shall contract for the purchase of covered
11 electronic devices manufactured by any manufacturer that is not on
12 the Department of Environmental Quality's list of registered
13 manufacturers or that has been otherwise determined noncompliant
14 with the provisions of this act.

15 B. Any person who submits a bid for a contract with a state
16 agency for the purchase or lease of covered devices must show that
17 the manufacturer of the brand of covered device is in compliance
18 with the Oklahoma Computer Equipment Recovery Act.

19 C. A state agency that purchases or leases covered devices
20 shall require each prospective bidder to certify compliance with
21 this act. Failure to provide such certification shall render the
22 prospective bidder ineligible to bid on the procurement of covered
23 devices.

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1 D. In the case of contracts for the purchase of covered
2 electronic devices through a competitive process, in the event that
3 the bidder having the lowest price or best value offer will supply
4 covered electronic devices manufactured by a manufacturer that is
5 not included on the Department's list of manufacturers with beyond-
6 brand collection plans under subsection B of Section 7 of this act
7 and one or more other bidders will supply covered electronic devices
8 manufactured by a manufacturer that is included on that list, the
9 contracting entity shall award such contract to the lowest price or
10 best value bidder that will supply covered electronic devices
11 manufactured by a manufacturer that is included on that list.

12 E. The Department of Central Services shall promulgate rules to
13 implement the provisions of this section.

14 F. Financial or proprietary information submitted to the
15 Department under this act is exempt from public disclosure, in
16 accordance with state law.

17 SECTION 11. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2-11-611 of Title 27A, unless
19 there is created a duplication in numbering, reads as follows:

20 Nothing in this act is intended to exempt any person, firm or
21 corporate entity from liability otherwise arising under applicable
22 law.

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SECTION 12. This act shall become effective January 1, 2009.

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