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THE STATE SENATE
Monday, February 25, 2008

Committee Substitute for
Senate Bill No. 1631

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1631 - By: PADDACK of the Senate and PETERSON (Ron) of the House.

[environment and natural resources - Oklahoma Computer Equipment Recovery Act - codification - effective date]

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

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

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

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

A. Computers and computer monitors have become indispensable to the strength and growth of the state's economy and the quality of life of its citizens. Equally important is the protection of our state's environment and natural resources which necessitates the implementation of a statewide system to properly dispose of or recycle these products. Many of these products can be refurbished

1 and reused, and many contain valuable materials that can be
2 recycled.

3 B. The purpose of the Oklahoma Computer Equipment Recovery Act
4 is to establish a convenient and environmentally sound recovery
5 program for the collection, recycling and reuse of computers and
6 computer monitors that have reached the end of their useful lives.
7 The program is based on individual manufacturer responsibility and
8 shared responsibility among consumers, retailers, and government.

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

12 As used in the Oklahoma Computer Equipment Recovery Act:

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

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

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

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

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

9 6. "Manufacturer" means a person:

- 10 a. who manufactures or manufactured covered devices under
11 a brand that is or was owned or is or was licensed to
12 use, other than a license to manufacture covered
13 devices for delivery exclusively to or at the order of
14 the licensor,
15 b. who sells or sold covered devices manufactured by
16 others under a brand that the seller owns or owned or
17 is or was licensed to use, other than a license to
18 manufacture covered devices for delivery exclusively
19 to or at the order of the licensor,
20 c. who manufactures or manufactured covered devices
21 without affixing a brand,

1 d. who manufactures or manufactured covered devices to
2 which is or were affixed a brand that neither is or
3 was owned nor is or was licensed to use, or
4 e. for whose account covered devices, manufactured
5 outside the United States, are or were imported into
6 the United States. If at the time such covered
7 devices are or were imported into the United States
8 another person has offered to collect such covered
9 devices under a recovery plan pursuant to subsection C
10 of Section 5 of this act, this subparagraph shall not
11 apply.

12 To be subject to the provisions of this act, a manufacturer must
13 produce, sell or import covered devices in an amount exceeding five
14 hundred (500) units per year.

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

20 8. "Person" means any individual, business entity, partnership,
21 limited liability company, corporation, not-for-profit corporation,
22 association, governmental entity, public benefit corporation or
23 public authority;

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

2 10. "Recovered" means a person or entity that reuses or
3 recycles;

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

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

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

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

18 The collection and recovery provisions of this act shall apply
19 to covered devices used and returned by consumers in this state.
20 Manufacturers are encouraged to offer collection and recovery
21 services to address the collection, recycling and reuse of computer
22 and other electronic equipment not covered by the provisions of this
23 act.

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

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

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

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

21 D. The recovery plan shall provide for covered device
22 collection services that are reasonably convenient and available,
23 and designed to meet the collection needs of consumers in this

1 state. Nonexclusive examples of collection methods that alone or in
2 combination meet the convenience requirements of this section
3 include:

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

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

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

16 E. If a manufacturer does not offer a mail-back system, it
17 shall submit for approval by the Department of Environmental Quality
18 a plan that offers reasonably convenient collections as set forth in
19 paragraph 2 or 3 of subsection D of this section. The Department
20 shall review the plan for geographic distribution and frequency of
21 collections. The Department shall notify the manufacturer within
22 thirty (30) days of receipt of the plan whether or not the
23 manufacturer's plan complies with the requirements of this section.

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

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

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

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

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

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

1 state that the manufacturer's recovery plan or practices are in
2 compliance with this act or other laws.

3 B. The Department shall maintain and make available:

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

6 2. A separate list of manufacturers whose registered recovery
7 plan permits consumers to return for collection and recovery other
8 manufacturers' brands of covered devices, including orphan devices.
9 Manufacturers shall be included on this list of beyond-brand
10 collection plans if such plan:

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

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

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

21 C. The Department shall file each recovery plan and annual
22 report submitted by a manufacturer. The Department shall make

1 recovery plans and annual reports available to the public pursuant
2 to the Oklahoma Open Records Act.

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

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

9 F. The Department may conduct audits and inspections to
10 determine compliance with the provisions of this act and take
11 enforcement action against any manufacturer, retailer, or recoverer
12 for failure to comply with any provisions of this act.

13 G. In addition to any other remedies provided by law, the
14 Department may assess a penalty of up to Ten Thousand Dollars
15 (\$10,000.00) for the first violation, and up to Twenty-five Thousand
16 Dollars (\$25,000.00) for the second and each subsequent violation,
17 against any manufacturer who fails to label its covered devices or
18 to adopt and implement a recovery plan as required by this act.

19 H. The Environmental Quality Board may promulgate rules
20 necessary to implement the provisions of this act, including the
21 adoption of fees pursuant to the provisions of Section 2-3-402 of
22 Title 27A of the Oklahoma Statutes as necessary to cover the costs
23 of administering the program. The Board may adopt by reference

1 standards developed by the Institute of Scrap Recycling Industries,
2 Inc., or other recognized practices, procedures or standards.

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

6 A. Consumers remain responsible for any data or other
7 information that may be on a covered device that is collected or
8 recovered.

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

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

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

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

21 A. No state agency shall contract for the purchase of covered
22 electronic devices manufactured by any manufacturer that is not on
23 the Department of Environmental Quality's list of registered

1 manufacturers or that has been otherwise determined noncompliant
2 with the provisions of this act.

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

7 C. A state agency that purchases or leases covered devices
8 shall require each prospective bidder to certify compliance with
9 this act. Failure to provide such certification shall render the
10 prospective bidder ineligible to bid on the procurement of covered
11 devices.

12 D. In the case of contracts for the purchase of covered
13 electronic devices through a competitive process, in the event that
14 the bidder having the lowest price or best value offer will supply
15 covered electronic devices manufactured by a manufacturer that is
16 not included on the Department's list of manufacturers with beyond-
17 brand collection plans under subsection B of Section 7 of this act
18 and one or more other bidders will supply covered electronic devices
19 manufactured by a manufacturer that is included on that list, the
20 contracting entity shall award such contract to the lowest price or
21 best value bidder that will supply covered electronic devices
22 manufactured by a manufacturer that is included on that list.

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

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

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

9 Nothing in this act is intended to exempt any person, firm or
10 corporate entity from liability otherwise arising under applicable
11 law.

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

13 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated
14 2-21-08 - DO PASS, As Amended and Coauthored.