

1 State of Arkansas

As Engrossed: H2/21/11

2 88th General Assembly

A Bill

3 Regular Session, 2011

HOUSE BILL 1405

4
5 By: Representatives Webb, Perry

6 By: Senators D. Johnson, Elliott, Madison

For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR THE RECOVERY AND RECYCLING OF
10 USED COMPUTER AND ELECTRONIC DEVICES; AND FOR OTHER
11 PURPOSES.

Subtitle

15 TO PROVIDE FOR THE RECOVERY AND RECYCLING
16 OF USED COMPUTER AND ELECTRONIC DEVICES.

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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 8-6-603, concerning definitions, is amended
22 to read as follows:

23 8-6-603. Definitions.

24 As used in this subchapter, unless the context otherwise requires:

25 (1) "Brand" means a manufacturer's name, brand designation, make
26 or model number, or other nomenclature by which a covered electronic device
27 is offered for sale by a manufacturer;

28 (2) "Cathode ray tube" means a vacuum tube, composed primarily
29 of glass, which is the visual or video display component of an electronic
30 device;

31 ~~(1)(3)~~ "Commission" means the Arkansas Pollution Control and
32 Ecology Commission;

33 (4)(A) "Computer" means an electronic, magnetic, optical,
34 electrochemical, or other high-speed data processing device performing
35 logical, arithmetic, or storage functions, and may include both a computer
36 central processing unit and a monitor.



1 (B) "Computer" does not include an automated typewriter or
2 typesetter, a portable handheld calculator, a portable digital assistant, or
3 other similar device;

4 (5) "Consumer" means a person who used a covered electronic
5 device in this state;

6 (6)(A) "Covered computer" means a computer that was or will be
7 used primarily in this state.

8 (B) "Covered computer" does not include a device that is
9 functionally or physically a part of, or connected to, or integrated within a
10 larger piece of equipment or system designed and intended for use in an
11 industrial, governmental, commercial, research and development, or medical
12 setting, including without limitation:

13 (i) Diagnostic, monitoring, or control products;

14 (ii) Medical products approved under the Federal
15 Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as in effect on January
16 1, 2011;

17 (iii) Equipment used for purposes of security,
18 sensing, monitoring, antiterrorism, or emergency purposes; or

19 (iv) Equipment designed and intended primarily for
20 use by professional users;

21 (7)(A) "Covered electronic device" means a covered computer or
22 covered video display device.

23 (B) "Covered electronic device" includes desktop
24 computers, personal computers, computer monitors, portable computers, cathode
25 ray tube-based televisions, and noncathode ray tube-based televisions.

26 (C) "Covered electronic device" does not include:

27 (i) A covered electronic device that is a part of a
28 motor vehicle or any component part of a motor vehicle assembled by, or for,
29 a vehicle manufacturer or franchised dealer, including replacement parts for
30 use in a motor vehicle;

31 (ii) A covered electronic device that is
32 functionally or physically a part of a larger piece of equipment designed and
33 intended for use in an industrial, commercial, or medical setting, including
34 diagnostic, monitoring, or control equipment;

35 (iii) A covered electronic device that is contained
36 within a clothes washer, clothes dryer, refrigerator and freezer, microwave

1 oven, conventional oven or range, dishwasher, room air conditioner,
2 dehumidifier, or air purifier;

3 (iv) A telephone of any type unless the telephone
4 contains a video display area greater than four inches (4") measured
5 diagonally; or

6 (v) Printers or facsimile machines;

7 (8)(A) "Covered video display device" means a video display
8 device with a screen greater than four inches (4") measured diagonally that
9 was or will be used primarily for personal or small business purposes in this
10 state.

11 (B) "Covered video display device" does not include a
12 device that is functionally or physically a part of, or connected to, or
13 integrated within a larger piece of equipment or system designed and intended
14 for transportation or use in an industrial, governmental, commercial,
15 research and development, or medical setting, including without limitation:

16 (i) Diagnostic, monitoring, or control products;

17 (ii) Medical products approved under the Federal
18 Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as in effect on January
19 1, 2011;

20 (iii) Equipment used for purposes of security,
21 sensing, monitoring, antiterrorism, or emergency purposes; or

22 (iv) Equipment designed and intended primarily for
23 use by professional users;

24 ~~(2)~~(9) "Department" means the Arkansas Department of
25 Environmental Quality;

26 (10) "Director" means the Director of the Arkansas Department of
27 Environmental Quality;

28 ~~(3)~~(11) "Landfill" means all landfills permitted under the
29 Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those
30 permitted landfills operated by a regulated public utility for ash generated
31 by the combustion of coal to produce electric energy;

32 (12) "Manufacturer" means any person who, irrespective of the
33 selling technique used, including by means of remote sale:

34 (A) Manufactures covered electronic devices under its own
35 brand for sale;

36 (B) Manufactures covered electronic devices for sale

1 without affixing a brand;

2 (C) Resells covered electronic devices produced by other
3 suppliers under its own brand or label;

4 (D) Imports or exports covered electronic devices into the
5 United States for sale in Arkansas. However, if a company from whom an
6 importer purchases the merchandise has a presence or assets, or both, in the
7 United States, that company shall be deemed to be the manufacturer; or

8 (E) Manufactures covered electronic devices, supplies
9 covered electronic devices to any person within a distribution network that
10 includes wholesalers or retailers in Arkansas, and benefits from the sale in
11 Arkansas of covered electronic devices through that distribution network;

12 ~~(4)~~(13) "Permittee" means any individual, corporation, company,
13 firm, partnership, association, trust, local solid waste authority,
14 institution, county, city, town, or municipal authority or trust, venture, or
15 other legal entity holding a solid waste disposal permit as provided in the
16 Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

17 (14) "Person" means an individual, trust firm, joint stock
18 company, business concern, or corporation, including without limitation a
19 government agency, partnership, limited liability company, or association;

20 ~~(5)~~(15) "Recycling" means the systematic collection, sorting,
21 decontamination, and return of waste materials to commerce as commodities for
22 use or exchange;

23 (16) "Registrant" means a manufacturer of covered electronic
24 devices that is in full compliance with this subchapter;

25 (17) "Retail sales" means the sale of products through sales
26 outlets and includes sales through the Internet, mail order, or other means,
27 whether or not the seller has a physical presence in Arkansas;

28 (18) "Retailer" means a person who owns or operates a business
29 that sells new, covered electronic devices in Arkansas by any means to a
30 consumer;

31 (19) "Sell" or "sale" means any transfer for consideration of
32 title, including but not limited to transactions conducted through sales
33 outlets, catalogs, or the Internet;

34 ~~(6)~~(20) "Solid waste" means any garbage or refuse, sludge from a
35 wastewater treatment plant, water supply treatment plant, or air pollution
36 control facility, and other discarded material, including solid, liquid,

1 semisolid, or contained gaseous material resulting from industrial,
2 commercial, mining, and agricultural operations, and from community
3 activities, but does not include solid or dissolved materials in domestic
4 sewage or solid or dissolved materials in irrigation return flows or
5 industrial discharges that are point sources subject to permit under 33
6 U.S.C. § 1342, or source, special nuclear, or by-product material as defined
7 by the Atomic Energy Act of 1954, 68 Stat. 923;

8 ~~(7)~~(21) "Solid waste disposal permit" means a permit issued by
9 the State of Arkansas under the provisions of the Arkansas Solid Waste
10 Management Act, § 8-6-201 et seq., for the construction and operation of a
11 landfill waste disposal facility;

12 ~~(8)~~(22) "Solid waste management" means the management of, but is
13 not limited to, the storage, collection, transfer, transportation, treatment,
14 utilization, processing, and final disposal of solid waste, including, but
15 not limited to, the prevention, reduction, or recycling of wastes;

16 ~~(9)~~(23) "Solid waste management plan" means a plan which is
17 developed according to the provisions of the Arkansas Solid Waste Management
18 Act, § 8-6-201 et seq., and guidelines of the department, and which is
19 subject to approval by the department; and

20 ~~(10)~~(24) "Transporter" or "solid waste transporter" means any
21 individual, corporation, company, firm, partnership, association, trust,
22 local solid waste authority, institution, county, city, town, or municipal
23 authority or trust, venture, or other legal entity transporting solid waste
24 within the state that is to be disposed of outside the state.

25
26 SECTION 2. Arkansas Code § 8-6-608, concerning penalties, is amended
27 to read as follows:

28 8-6-608. Penalties.

29 (a) Failure of the permittee or, transporter, or manufacturer to pay
30 the fees assessed by to the Arkansas Department of Environmental Quality the
31 fees required under this subchapter provides grounds for administrative or
32 civil enforcement action.

33 (b) Any person who violates any provision of this subchapter or any
34 rule, regulation, or order of the Arkansas Pollution Control and Ecology
35 Commission issued under this subchapter may be subject to administrative or
36 civil enforcement action.

1 (c) Sanctions may include civil penalties and any other relief as
2 provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or
3 the revocation of the solid waste disposal or transporter permit.
4

5 SECTION 3. Arkansas Code § 8-6-609(b)(1)(B), concerning the grant
6 program, is amended to read as follows:

7 (B)(i) Funds collected under the provisions of § 8-6-607
8 and deposited ~~in~~ into the State Treasury to the credit of the Solid Waste
9 Management and Recycling Fund, excluding registration fees and sales fees
10 assessed pursuant to § 8-6-616 and less up to twenty-five percent (25%) for
11 administrative support for the department, shall be annually allocated to
12 each of the approved regional solid waste management districts for costs
13 eligible for grant assistance utilizing a combination of two (2) methods,
14 hereinafter referred to as "method A" and "method B".

15 (ii) Registration fees assessed under § 8-6-616
16 shall be used by the department to administer the program for the recovery
17 and recycling of covered electronic devices. Sales fees assessed under § 8-
18 6-616 shall be used to reimburse regional solid waste management district
19 boards for their reasonable and necessary actual costs of managing the
20 programs for the recovery and recycling of covered electronic devices within
21 their districts.
22

23 SECTION 4. Arkansas Code Title 8, Chapter 6, Subchapter 6, concerning
24 the Solid Waste Management and Recycling Fund Act, is amended to add the
25 additional sections to read as follows:

26 8-6-615. Sales prohibition.

27 (a) A manufacturer shall not sell or offer to sell any new covered
28 electronic device for delivery in Arkansas unless the manufacturer is in
29 compliance with all financial requirements and other provisions of this
30 subchapter.

31 (b) By July 1 of each year, beginning July 1, 2012, the Arkansas
32 Department of Environmental Quality shall maintain on its website a current
33 list of all manufacturers in compliance with the requirements of this
34 subchapter. Retailers of covered electronic devices within Arkansas shall
35 consult the list before purchasing covered electronic devices.

36 (c) A retailer shall be in compliance with this section if, on the

1 date that the product was ordered from the manufacturer or its agent, the
2 manufacturer was listed as being in compliance on the department's website.

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4 8-6-616. Registration and fees.

5 (a) A manufacturer of covered electronic devices shall register with
6 the Arkansas Department of Environmental Quality no later than January 1,
7 2012, and annually thereafter, on a form prescribed by the Director of the
8 Arkansas Department of Environmental Quality and accompanied by an annual
9 registration fee of five hundred dollars (\$500).

10 (b) A manufacturer shall declare its intent to the department no later
11 than January 1, 2012, of whether it will implement a manufacturer's recovery
12 plan under § 8-6-617.

13 (c) A manufacturer of covered electronic devices who elects to
14 implement a manufacturer's recovery plan shall:

15 (1) Submit a manufacturer's recovery plan as provided in § 8-6-
16 617 to the department no later than January 1, 2012;

17 (2) Implement the manufacturer's recovery plan approved by the
18 department no later than July 1, 2012;

19 (3) On or before March 31, 2013, submit to the department an
20 annual report of the manufacturer's total weight of covered electronic
21 devices sold and total weight of covered electronic devices recovered within
22 Arkansas between July 1, 2012, and December 31, 2012;

23 (4) On or before March 31, 2013, pay to the department a
24 manufacturer's sales fee in an amount equal to thirty cents (30¢) per pound
25 for each pound of covered electronic devices sold between July 1, 2012, and
26 December 31, 2012, less a credit of thirty cents (30¢) per pound for each
27 pound of covered electronic devices recovered between July 1, 2012, and
28 December 31, 2012, but the credit provided for the recovered electronic
29 devices shall not be more than the manufacturer's sales fee owed for the
30 period from July 1, 2012, through December 31, 2012;

31 (5) By March 31 of each year beginning March 31, 2014, submit to
32 the department an annual report of the manufacturer's total weight of covered
33 electronic devices sold and total weight of electronic devices recovered
34 within Arkansas between January 1 and December 31 of the preceding year; and

35 (6) By March 31 of each year beginning March 31, 2014, pay to
36 the department an annual manufacturer's sales fee in an amount equal to

1 thirty cents (30¢) per pound for each pound of covered electronic devices
2 sold between January 1 and December 31 of the preceding year, less thirty
3 cents (30¢) per pound for each pound of covered electronic devices recovered
4 during the same time period, but the credit provided for the recovered
5 electronic devices shall not be more than the manufacturer's sales fee owed
6 for that year.

7 (d) A manufacturer of covered electronic devices that does not elect
8 to implement a manufacturer's recovery plan shall:

9 (1) On or before March 31, 2013, submit to the department an
10 annual report of the manufacturer's total weight of covered electronic
11 devices sold in Arkansas between July 1, 2012, and December 31, 2012;

12 (2) On or before March 31, 2013, pay to the department a
13 manufacturer's sales fee in an amount equal to thirty cents (30¢) per pound
14 for each pound of covered electronic devices sold in Arkansas between July 1,
15 2012, and December 31, 2012;

16 (3) By March 31 of each year beginning March 31, 2014, submit to
17 the department an annual report of the manufacturer's total weight of covered
18 electronic devices sold in Arkansas between January 1 and December 31 of the
19 preceding year; and

20 (4) By March 31 of each year beginning March 31, 2014, pay to
21 the department an annual manufacturer's sales fee in an amount equal to
22 thirty cents (30¢) per pound for each pound of covered electronic devices
23 sold in Arkansas between January 1 and December 31 of the preceding year.

24 (e) Fees collected under this section shall be special revenues
25 deposited into the State Treasury to the credit of the Solid Waste Management
26 and Recycling Fund, § 8-6-605.

27 (f) The Arkansas Pollution Control and Ecology Commission may, by
28 rule, modify the fees in this section as needed to support and implement the
29 recovery and recycling of covered electronic devices in the State of
30 Arkansas.

31
32 8-6-617. Manufacturer's recovery plan.

33 (a) A manufacturer of covered electronic devices may implement a
34 manufacturer's recovery plan to collect, transport, and recycle covered
35 electronic devices by submitting to the Arkansas Department of Environmental
36 Quality a written proposal that includes at a minimum:

1 (1) Information for the consumer on how and where to return the
2 manufacturer's covered electronic devices;

3 (2) Methods that will be used to collect the covered electronic
4 devices including the name and locations of all collection and consolidation
5 points;

6 (3) An estimate of the amount of covered electronic devices that
7 will be collected annually;

8 (4) The name and location of all processing and end-use
9 facilities to be used;

10 (5) Means that will be used to publicize the collection
11 opportunities;

12 (6) The intention of the registrant to fulfill its obligations
13 through operation of its own program, either individually or in partnership
14 with other manufacturers; and

15 (7) The total weight of covered electronic devices collected,
16 transported, and recycled the previous year.

17 (b) The collection of covered electronic devices provided under the
18 recovery plan must be reasonably convenient and available to consumers in
19 Arkansas. Collection methods that alone or combined meet the convenience
20 requirements of this section include without limitation:

21 (1) A system by which the manufacturer or the manufacturer's
22 designee offers the consumer a system for returning a covered electronic
23 device by mail at no charge to the consumer;

24 (2) A system using a physical collection site the manufacturer
25 or manufacturer's designee operates and to which the consumer may return a
26 covered electronic device; or

27 (3) A system using collection events held by the manufacturer or
28 manufacturer's designee at which the consumer may return a covered electronic
29 device.

30 (c) Collection services under this section may use existing collection
31 and consolidation infrastructure and may encourage the inclusion of systems
32 jointly managed by a group of manufacturers, electronics recyclers and repair
33 shops, not-for-profit corporations, retailers, solid waste management
34 district boards, or other suitable entities.

35 (d) This section does not exempt the manufacturer from the annual
36 registration requirements or from paying the annual registration fee of five

1 hundred dollars (\$500) under § 8-6-616(a) or from paying the manufacturer's
2 sales fee under §8-6-616(c).

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4 8-6-618. Labeling requirement.

5 Beginning July 1, 2012, a covered electronic device shall be labeled
6 with a brand, and the label shall be permanently affixed and readily visible.

7
8 8-6-619. Environmentally sound management requirements – Landfill ban
9 for covered electronic devices.

10 (a) Covered electronic devices collected for recycling through any
11 program in Arkansas, whether by manufacturers, retailers, for-profit or not-
12 for-profit corporations, units of government, or organized by the Arkansas
13 Department of Environmental Quality, shall be recycled in a manner that is in
14 compliance with all applicable federal, state, and local laws, regulations,
15 and ordinances.

16 (b) It shall be unlawful to dispose of a covered electronic device in
17 a landfill in the state of Arkansas on and after July 1, 2012.

18
19 8-6-620. Regulatory authority – Computer and electronic recycling
20 program.

21 (a) The Arkansas Pollution Control and Ecology Commission may adopt
22 rules as shall be necessary to implement or effectuate the recovery and
23 recycling of covered electronic devices in the State of Arkansas consistent
24 with the provisions of this subchapter.

25 (b) The Department of Finance and Administration may adopt rules
26 allowing a procurement preference based upon a manufacturer's compliance with
27 provisions of this subchapter governing the recovery and recycling of covered
28 electronic devices.

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