

An Act

ENROLLED SENATE
BILL NO. 1631

By: Paddack of the Senate

and

Peterson (Ron) of the
House

An Act relating to environment and natural resources; creating the Oklahoma Computer Equipment Recovery Act; providing short title; stating purpose; defining terms; stating application of act to certain devices; requiring labeling of certain devices; requiring manufacturers to adopt certain recovery plan; stating requirements of plan; providing examples of collection methods; requiring approval of certain recovery plans by the Department of Environmental Quality; directing manufacturers to include certain collection and recovery information on certain web sites; requiring manufacturers to submit an annual report; providing for assumption of responsibilities and obligations; limiting application of requirements; prohibiting sales of certain devices by retailers; requiring Department of Environmental Quality to educate consumers and maintain certain lists of registered manufacturers adopting certain recovery plans; requiring Department to implement certain collection events and produce and file certain reports and plans; authorizing the Department to conduct audits and inspections; providing for certain penalties for violations; authorizing Department to promulgate certain rules; establishing responsibility for certain data; limiting liability for certain data; requiring certain devices to be collected in compliance with certain laws; requiring state agencies to purchase certain electronic devices from manufacturers in compliance with act; requiring

certification of compliance with act; requiring contracts to be awarded to certain bidders; authorizing the Department of Central Services to promulgate certain rules; exempting certain information from disclosure; stating applicability; providing for codification; and providing an 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 and reused, and many contain valuable materials that can be recycled.

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

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

As used in the Oklahoma Computer Equipment Recovery Act:

1. "Brand" means symbols, words, or marks that identify a covered device, rather than any of its components;
2. "Consumer" means any occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit who has used a covered device primarily for personal or home business use;
3. "Covered device" means a desktop or notebook computer, or computer monitor which is no longer of use to a consumer. Covered device does not include a television, any part of a motor vehicle, a personal digital assistant (PDA), a telephone, or a medical device that contains a video display device;
4. "Department" means the Department of Environmental Quality;
5. "Desktop computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data-processing device performing logical, arithmetic, or storage functions, but does not include an automated typewriter or typesetter. A desktop computer has a main unit that is intended to be located in a permanent location, often on a desk or on the floor. A desktop computer is not designed for portability and generally utilizes an external monitor, keyboard, and mouse;
6. "Manufacturer" means a person:
 - a. who manufactures or manufactured covered devices under a brand that the manufacturer owns or owned or is or was licensed to use, other than a license to manufacture covered devices for delivery exclusively to or at the order of the licensor,
 - b. who sells or sold covered devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered devices for delivery exclusively to or at the order of the licensor,

- c. who manufactures or manufactured covered devices without affixing a brand,
- d. who manufactures or manufactured covered devices to which is or was affixed a brand that the manufacturer neither owns or owned nor is or was licensed to use, or
- e. for whose account covered devices, manufactured outside the United States, are or were imported into the United States. If at the time such covered devices are or were imported into the United States another person has offered to collect such covered devices under a recovery plan pursuant to subsection C of Section 5 of this act, this subparagraph shall not apply.

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

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

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

9. "Recover" means to reuse or recycle;

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

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

12. "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 include leases; and

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

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

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

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

A. A manufacturer shall not 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.

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

C. The recovery plan shall fully explain how the manufacturer will collect from a consumer and recover each covered device that is labeled with the manufacturer's brand, at no charge to the consumer. The manufacturer's recovery plan under this subsection 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,

nonprofit corporations, retailers, recyclers, or other suitable operations.

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

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

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

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

E. If a manufacturer does not offer a mail-back system, it shall submit for approval by the Department of Environmental Quality a plan that offers reasonably convenient collections as set forth in paragraph 2 or 3 of subsection D of this section. The Department shall review the plan for geographic distribution and frequency of collections. The Department shall notify the manufacturer within thirty (30) days of receipt of the plan whether or not the manufacturer's plan complies with the requirements of this section. If the Department does not approve the plan, the Department shall state the reasons the plan does not comply. The manufacturer shall respond to the Department within twenty (20) days of receipt of notification of the disapproval of the plan. If the Department and the manufacturer do not agree on whether the plan should be approved, the manufacturer may seek review in a declaratory ruling proceeding under the provisions of Section 307 of Title 75 of the Oklahoma Statutes.

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

G. Each manufacturer operating or publishing a web site for providing product information about a covered device shall include information about collection and recovery for consumers and provide such information to the Department. The manufacturer shall also include such information in the packaging or accompanying the sale of the covered device.

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

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

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

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

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

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

J. This section does not apply to a manufacturer solely of covered devices that the Department determines are of such a character that the covered devices would not be used by a consumer.

If, however, such a manufacturer also manufactures one or more covered devices that are of such character as to be used by a consumer, then the provisions of this section nevertheless apply to the manufacturer for those covered devices.

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

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

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

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

B. The Department shall maintain and make available:

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

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

- a. provides recycling grants or collection events for covered devices other than that manufacturer's covered devices,
- b. requires a consumer who purchases a new covered electronic device from the manufacturer to return another manufacturer's branded covered device, in which case the manufacturer may require the consumer to pay for transportation or shipping, or
- c. provides for use of other collection or recovery methods that are approved by the Department.

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

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

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

F. The Department may conduct audits and inspections to determine compliance with 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.

G. In addition to any other remedies provided by law, the Department may assess a penalty of up to One Thousand Dollars (\$1,000.00) for the first violation, and up to Five Thousand Dollars (\$5,000.00) for the second and each subsequent violation, against any manufacturer who fails to label its covered devices or to adopt and implement a recovery plan as required by this act.

H. The Environmental Quality Board may promulgate rules necessary to implement the provisions of this act, including the adoption of fees pursuant to the provisions of Section 2-3-402 of Title 27A of the Oklahoma Statutes as necessary to cover the costs

of administering the program. The Board may adopt by reference standards developed by the Institute of Scrap Recycling Industries, Inc., or other recognized practices, procedures or standards.

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

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

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

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

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

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

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

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

C. 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.

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

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

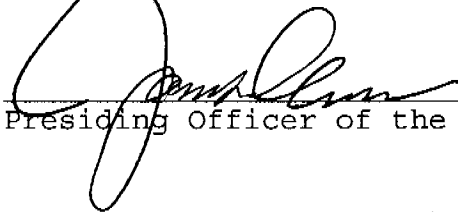
F. Financial or proprietary information submitted to the Department under this act is exempt from public disclosure, in accordance with state law.

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


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

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

Passed the Senate the 7th day of May, 2008.

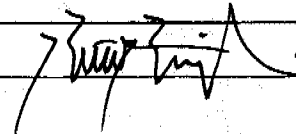

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2008.

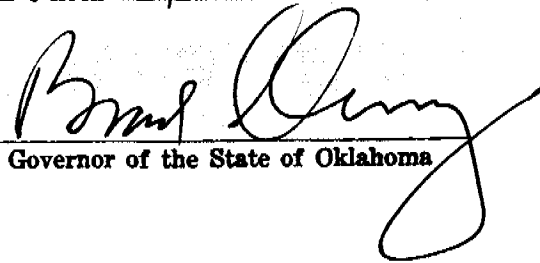

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 8th
day of May, 2008,
at 1:20 o'clock P M.

By: 

Approved by the Governor of the State of Oklahoma the 12th day of
May, 2008, at 5:49 o'clock P M.


Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
13th day of May, 2008,
at 10:35 o'clock A M.

By: 