

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 541

An Act to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.6, consisting of sections numbered 10.1-1425.27 through 10.1-1425.38, relating to a manufacturer responsibility program for the recycling of computer equipment.

[H 344]

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.6, consisting of sections numbered 10.1-1425.27 through 10.1-1425.38, as follows:

Article 3.6.

Computer Recovery and Recycling Act.

§ 10.1-1425.27. Definitions.

As used in this article, unless the context requires a different meaning:

"Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

"Computer equipment" means a desktop or notebook computer and may include a computer monitor or other display device. Computer does not include:

1. A television or any telecommunication system device that can receive moving pictures and sound broadcast over a distance, including a television tuner or a display device peripheral to a computer in which the display device contains a television tuner;

2. A desktop or notebook computer or computer monitor or other display device that is functionally or physically a part of, connected to, or integrated within a larger piece of equipment and designed or intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic, monitoring, security, sensing, or control equipment; or

3. Any monitor or computer equipment contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier.

"Consumer" means an individual who uses computer equipment that is purchased primarily for personal or home business use.

"Manufacturer" means a person who in any calendar year:

1. Manufactures or manufactured computer equipment in excess of 500 units under a brand that:

a. The person owns or owned; or

b. The person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

2. Sells or sold computer equipment in excess of 500 units manufactured by others under a brand that:

a. The person owns or owned; or

b. The person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

3. Manufactures or manufactured computer equipment in excess of 500 units without affixing a brand;

4. Manufactures or manufactured computer equipment in excess of 500 units to which the person affixes or affixed a brand that:

a. The person does not or has not owned; or

b. The person is not or was not licensed to use; or

5. Imports or imported computer equipment in excess of 500 units manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

§ 10.1-1425.28. Applicability.

A. The collection, recycling, and reuse provisions of this article apply to computer equipment used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

B. This article does not apply to:

1. Any part of a motor vehicle, a personal digital assistant, or a telephone;

2. A consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement; or

3. The sale or lease of computer equipment to an entity when the manufacturer and the entity enter

into a contract that effectively addresses the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

§ 10.1-1425.29. *Manufacturer recovery plan.*

A. Before a manufacturer may offer computer equipment for sale in the Commonwealth, the manufacturer shall:

1. Adopt and implement a recovery plan; and
2. Affix a permanent, readily visible label to the computer equipment with the manufacturer's brand.

B. The recovery plan shall enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and shall include provisions for:

1. The collection from a consumer of any computer equipment that has reached the end of its useful life and is labeled with the manufacturer's brand; and

2. Recycling or reuse of computer equipment collected under subdivision 1.

C. The collection of computer equipment provided under the recovery plan must be reasonably convenient and available to consumers in the Commonwealth and designed to meet the collection needs of consumers in the Commonwealth. Examples of collection methods that alone or combined meet the convenience requirements of this section include:

1. A system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail at no charge to the consumer;

2. A system using a physical collection site that the manufacturer or the manufacturer's designee operates and to which the consumer may return computer equipment; and

3. A system using collection events held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

D. Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and should encourage the inclusion of systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in subdivision C 1, either individually, by working together with a group of manufacturers, or by working with others, it shall be deemed to meet the convenience requirements of this section.

E. The recovery plan shall include information for the consumer on how and where to return the manufacturer's computer equipment. The manufacturer:

1. Shall include collection, recycling, and reuse information on the manufacturer's publicly accessible website;

2. Shall provide collection, recycling, and reuse information to the Department; and

3. May include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

F. Information about collection, recycling, and reuse on a manufacturer's publicly accessible website does not constitute a determination by the Department that the manufacturer's recovery plan or actual practices are in compliance with this article.

G. If more than one person is a manufacturer of a certain brand of computer equipment as defined by § 10.1-1425.27, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this article for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, any of those persons may be considered to be the responsible manufacturer for purposes of this article.

H. The obligations under this article of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extends to all computer equipment bearing that brand regardless of its date of manufacture.

§ 10.1-1425.30. *Reporting requirements.*

A. Each manufacturer shall publish a report on its publicly accessible website no later than January 31 of each year that includes:

1. The name and contact information of the representative responsible for the manufacturer's recovery plan;

2. The weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

3. Documentation certifying that the collection, recycling, and reuse of computer equipment complies with § 10.1-1425.38 regarding sound environmental management.

§ 10.1-1425.31. *Retailer responsibility.*

A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in the Commonwealth unless the equipment is labeled with the manufacturer's label and the manufacturer has a recovery plan that complies with the provisions of this article and is accessible on the manufacturer's website. A retailer who is not a manufacturer is not required to collect computer equipment for recycling or reuse under this article.

§ 10.1-1425.32. *Liability for information stored on computers.*

A manufacturer, manufacturer's designee, or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this article, provided that the manufacturer's website (i) conspicuously states such disclaimer of liability and (ii) provides detailed information regarding how a consumer may erase such information from the computer equipment or protect information that the consumer leaves on such computer equipment from disclosure. This article does not exempt a person from potential liability under other federal or state law.

§ 10.1-1425.33. Department responsibilities.

A. The Department shall maintain a list of manufacturers on its website that have notified the Department of the availability of a recovery plan for the Commonwealth. Covered computer equipment from manufacturers on that list may be sold in or into the Commonwealth.

B. The Department shall provide links to the following information on its website:

1. Manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans, provided by manufacturers pursuant to this article; and

2. The potential security issues regarding personal information stored on computer equipment that is collected, recycled, or reused.

§ 10.1-1425.34. Enforcement.

The Office of the Attorney General may enforce the provisions of this article by taking enforcement action against a manufacturer or retailer that fails to comply with this article.

§ 10.1-1425.35. Financial and proprietary information.

Financial or proprietary information submitted to the Department under this article is exempt from public disclosure.

§ 10.1-1425.36. Fees not authorized.

This article does not authorize the Department to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

§ 10.1-1425.37. Consumer responsibilities.

A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

§ 10.1-1425.38. Sound environmental management.

All computer equipment collected under this article shall be recycled or reused in a manner that complies with federal, state, and local law.

2. That the provisions of this act shall become effective on July 1, 2009.