

ELECTRONIC TAKEBACK AND RECYCLING PROGRAMS

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House Bill 6714

Sponsor: Rep. Rebekah Warren

House Bill 6715

Sponsor: Rep. Fred Miller

Committee: Great Lakes and Environment

Complete to 12-2-08

A SUMMARY OF HOUSE BILLS 6714 & 6715 AS INTRODUCED 11-19-08

BRIEF SUMMARY:

In general, House Bills 6714 and 6715 would add a new Part 173 (Electronics) to the Natural Resources and Environmental Protection Act to the require manufacturers of covered electronic devices (covered computers and covered video display devices) to register and operate takeback programs for covered devices used by individuals and small businesses.

House Bills 6714 and 6715 as introduced are identical to the Senate-passed versions of Senate Bills 897 and 898 except for the tie-bars.

House Bill 6714 would do the following:

- Require manufacturers of covered electronic devices sold in Michigan to establish takeback programs by April 1, 2010 that allow consumers to return electronic devices that are no longer useful to them in a reasonably convenient manner without payment of an additional fee. Takeback programs would apply to electronic devices used by individuals and small businesses (those with 10 or fewer employees).

"Covered computers" would initially mean desktop computers, laptop computers, and computer monitors, but would expand to include printers on April 1, 2011. "Covered video display devices" would include televisions and other devices with tuners and viewable screens of four inches or larger that are capable of receiving and displaying television programming via broadcast, cable, or satellite signals. Computer manufacturers would only have to take back covered computers they manufactured; video display device manufacturers would have to take back covered devices of any brand.

- Require manufacturers of covered electronic devices to register with the Department of Environmental Quality (DEQ), pay an annual registration fee of \$2,000 (\$3,000, if the manufacturer doesn't use Michigan-based recyclers to recycle collected devices),

- and meet labeling and reporting requirements. After the first year, an annual registration would have to contain a report on the operation of the manufacturer's takeback program during the previous year.
- Require the DEQ to maintain a list of registered manufacturers on its website and to submit a report periodically on the adequacy of the program's fees.
 - Beginning April 1, 2010, prohibit a manufacturer from selling new covered electronic devices in Michigan unless it is registered with the DEQ, it has implemented an appropriate takeback program, and its products meet labeling requirements.
 - Beginning April 1, 2010, prohibit a retailer from purchasing new covered electronic devices from a manufacturer for sale in Michigan, unless the manufacturer is on the DEQ registration list.
 - Create the Electronic Waste Advisory Council and require it submit a report evaluating specified issues.
 - Create the "Electronics Recycling Fund," into which registration fees would be deposited, to cover the DEQ's expenses of administering Part 173.
 - Allow the DEQ to promulgate administrative rules consistent with specified EPA and industry guidelines.
 - Require electronic devices collected in takeback programs to be recycled in accordance with federal, state, and local laws, including DEQ rules.
 - Establish a nonbinding target recycling rate of 60 percent for covered video display devices collected.

House Bill 6715 would do the following:

- Prohibit a person from recycling covered electronic devices without registering with the DEQ and paying a \$2,000 registration fee (until October 1, 2015).
- Require recyclers to report the total weight of covered electronic devices they recycled during the previous year and base their reports on a log.
- Require recyclers to obtain insurance, use industry-accepted procedures, and maintain a management system and records.
- Prohibit recyclers from using prison labor.
- Prescribe civil and criminal fines for violations of Part 173, and allow the DEQ to suspend or revoke a recycler's registration for a third or subsequent violation.
- Require civil fines to be deposited in the Electronics Recycling Fund.
- Grant manufacturers, recyclers, collectors, and retailers immunity from liability for the loss or use of data stored on covered electronic devices.
- Require the DEQ to enforce Part 173 to the extent it receives appropriations for this purpose and allow the DEQ to inspect recycler operations.

DETAILED SUMMARY:

House Bill 6714

Objectives of Part 115 (Solid Waste Management). [§11514] The bill would add the recycling and reuse of materials from electronic devices as an objective of Michigan's solid waste management plan and declare that the recycling and reuse of electronic devices promotes the public health and welfare and that that policies to foster recycling

and reuse of materials, in general, including electronic devices, conserve raw materials and landfill space and avoid soil and groundwater contamination from heavy metals and other pollutants.

Part 173 definitions. [§17301] would create a new Part 173 (Electronics), to which the following definitions (among others) would apply:

"Collector" would mean a person who receives covered electronic devices from consumers and arranges for delivery of the devices to a recycler.

"Computer" would mean desktop computers, laptop computers, and computer monitors. Beginning April 1, 2011, the term "computer" would also include printers.

The term **"computer"** would not include personal digital assistants, mobile telephones, computer peripherals such as mice or other pointing devices, or detachable or wireless keyboards.

"Consumer" would mean a person who used a covered electronic device primarily for personal or small business purposes in Michigan. [The bill defines a small business as one with ten or fewer employees.]

"Covered computer" would mean a computer that was or will be used primarily for personal or small business purposes in Michigan. The term "covered computer" would not include "a device that is functionally or physically part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting," including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal Food, Drug, and Cosmetic Act, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

"Covered electronic device" would mean either a "covered computer" or a "covered video display device," both of which are specifically defined terms.

"Covered video display device" would mean "a video display device that was or will be used primarily for personal or small business purposes in [Michigan]." As with covered computers, the term **"covered video display device"** would not include "a device that is functionally or physically part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting," including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal Food, Drug, and Cosmetic Act, 21 USC 301-399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purpose, or equipment designed and intended primarily for use by professional users.

"Manufacturer" would mean any of the following, so long as the person manufactured, sold, or imported more than 50 covered video display devices in the previous calendar year, or more than 50 covered computers in 2000 or any subsequent calendar year:

- The person who owns the brand with which a covered computer is labeled.
- The person who owns or is licensed to use the brand with which a covered video display device is labeled.
- If the brand owner does not do business in the U.S., the person on whose account the device was imported into the U.S.
- A person who contractually assumes the responsibilities of one of the persons described above.

"Printer" would mean a printer or multifunction all-in-one device designed to be placed on a desk or other work surface using any type of print technology, such as laser, LED (electrographic), ink jet, dot matrix, thermal, or digital sublimation. The term **"printer"** would not include a floor-standing printer, or one with an optional floor stand, a point of sale (POS) receipt printer, a calculator with printing capabilities, a label maker, or a non-stand-alone printer embedded into a product that is not a covered computer.

"Recycler" would mean "a person who as a principal component of business operations acquires covered electronic devices and sorts and processes [them] to facilitate recycle or resource recovery techniques." The term **"recycler"** would not include a "collector, hauler, or electronics shop."

"Retailer" would mean "a person that sells a covered electronic device to a consumer by any means, including transactions conducted through sales outlets, catalogs, mail order or the internet, whether or not the person has a physical presence in [Michigan]."

"Small business" would mean one with 10 or fewer employees.

"Video display device" would mean "an electronic device with a viewable screen of four inches or larger that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable or satellite. Video display device includes, but is not limited to a direct view or projection television whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLF), liquid crystal or silicon (LCOS), silicon crystal reflective display (SXR), light emitting diode (LED), or similar technology."

Manufacturer registration. [§17303(1)] Within 30 days after the end of a state fiscal year (the state fiscal year ends September 30), a manufacturer that sells or offers for sale in Michigan a new covered electronic device would have to register with the DEQ on a DEQ-provided form. After October 30, 2009, a manufacturer not already registered would have to do so within 10 business days after beginning to sell or offering for sale new covered electronic devices in Michigan.

Required information. [§17303(2)] A manufacturer's registration would to include all of the following information:

- The manufacturer's name, address, and telephone number.

- The brand names under which the manufacturer sells or offers for sale covered electronic devices in Michigan.
- Information about the manufacturer's electronic device takeback program.

The takeback program information would have to include all of the following:

- Information given to consumer on how and where to return the manufacturer's covered devices.
- The way that information is given to consumers, including any relevant website address.
- A report on the takeback program's implementation during the previous state fiscal year, beginning with the first registration submitted after the program has begun.

The takeback program report would have to include all of the following:

- The total weight of covered devices received from consumers the previous year.
- The processes and methods used to recycle or reuse the devices.
- The identity of any collector or recycler with whom the manufacturer has contracted to collect or recycle covered devices, including the address of a recycler's facilities in Michigan, if any. The reported identity of a collector or recycler would be exempt from the Freedom of Information Act (FOIA), and the DEQ could not disclose it unless required by a court order.

Effective date and duration of registration; duty of video display devices manufacturers to update registration if brands change. [§17303(3)-(5)] If administratively complete under this section and any rules promulgated under Part 173, a registration would be effective upon receipt by the DEQ. If not complete, the DEQ would have to notify the manufacturer of the insufficiency. A manufacturer would have 60 days from the receipt of a notice of insufficiency to submit a revised registration that addressed identified problems. A registration would be valid until October 30 of each year.

A manufacturer of covered video display devices would have 10 business days to update its registration after a change in the brands of covered video display devices it sells or offers for sale in Michigan. [The bill does not appear to impose the same duty to update brand information on the manufacturers of covered computers.]

Manufacturer's registration fee. [§17303(6)-(7)] Until October 1, 2015, a manufacturer's registration fee would be \$2,000, if its takeback program uses Michigan-based recyclers. If not, its registration fee would be \$3,000. Fees would be deposited in the Electronics Recycling Fund.

DEQ list on website. [§17303(8)] The DEQ would have to maintain a list of registered manufacturers on its website that contains the website addresses at which registered manufacturers provide recycling information.

DEQ report on fees. [§17303(9)] By October 1, 2011, and every two years afterward, the DEQ would have to submit a report to the Secretary of the Senate and to the Clerk of the House of Representatives about the adequacy of the fees under this section.

Sale of covered devices by manufacturers. [§17305] Beginning April 1, 2010, a manufacturer could not sell or offer for sale any new covered electronic devices in Michigan, whether through sales outlets, catalogs, mail order, the Internet, or any other means, unless the following requirements are met:

- The device is labeled with the manufacturer's name or brand.
- The manufacturer is on the DEQ's list of registered manufacturers.
- The manufacturer has a takeback program that meets the program requirements for type of covered electronic devices it sells. (As described below, there are slightly different requirements for computer takeback programs and video display takeback programs).

Sale of covered devices by retailers. [§17307] A retailer could not sell or offer for sale any new covered electronic devices in Michigan that the retailer purchases from a manufacturer on or after April 1, 2010, unless the manufacturer is on the DEQ's list of registered manufacturers.

Computer takeback program requirements. [§17309] Beginning April 1, 2010, each manufacturer of covered computers would have to implement a takeback program that meets the following criteria:

- If a covered computer has reached the end of its useful life for the consumer, the manufacturer of the computer or its designee would have to take it back from the consumer. (However, Part 173 is not to be construed as impairing a contractual obligation under which a person agrees to conduct a computer takeback program on behalf of a manufacturer.)
- A consumer returning a computer to the manufacturer or its designee could not be required to pay a separate fee.
- The collection of covered computers would have to be reasonably convenient, available to, and otherwise designed to meet the needs of Michigan consumers.
- The manufacturer would have to tell consumers how and where to return covered computers including, but not limited to, providing collection, recycling, and reuse information on the manufacturer's website. The manufacturer could also include this information in the packaging or other materials that accompany the computers when sold or provide this information via a toll-free telephone number.
- The manufacturer would have to recycle or arrange for the recycling of covered computers collected from consumers by the manufacturer or its designee.

Examples of collection methods that alone or in combination would meet the convenience requirement include returning computers by one or more of the following means (1) mail or common carrier; (2) deposit at a local physical collection site that is kept open and staffed on a continuing basis; (3) deposit during periodic local collection events; or (4) deposit with a retailer.

A manufacturer's covered computer takeback program would not have to accept more than seven covered computers from a single consumer on a single day.

Video display device takeback program requirements. [§17311] Beginning April 1, 2010, each manufacturer of covered video display devices would have to implement a takeback program that meets the following criteria:

- If a video display device has reached the end of its useful life for the consumer, a manufacturer or its designee would have to accept the device from the consumer, regardless of its brand or type.
- A consumer returning a computer to the manufacturer or its designee could not be required to pay a separate fee.
- As with covered computers, the collection of video display devices would have to be reasonably convenient, available to, and otherwise designed to meet the needs of, Michigan consumers.
- The manufacturer would have to tell consumers how and where to return covered video display devices including providing collection, recycling, and reuse information on the manufacturer's website. The manufacturer could also include this information in the packaging or other materials that accompany the covered devices when sold or provide this information via a toll-free telephone number.
- The manufacturer would have to recycle or arrange for the recycling of covered video display devices collected from consumers by the manufacturer or its designee. As a nonbinding target, a manufacturer required to conduct a video display device takeback program would have to recycle 60 percent of the total weight of covered devices sold by the manufacturer in Michigan during the previous state fiscal year. A manufacturer's sales data would be exempt from disclosure under FOIA and would not be disclosed by the DEQ unless required by court order.
- A manufacturer could conduct its takeback program alone or jointly with other manufacturers. A manufacturer could arrange for the collection and recycling of covered video display devices by another person to fulfill its obligations.

A manufacturer's covered video display device takeback program would not have to accept more than seven covered devices from a single consumer on a single day.

Electronic Waste Advisory Council. [§17313(1)-(7)] An eight-member advisory council would be created within the DEQ with the following membership:

Three Senate Majority Leader appointees, representing:

- Covered video display device manufacturers (1 member).
- Covered computer recyclers (1 member).
- A trade association of computer and video display device manufacturers (1 member).

Three Speaker of the House appointees, representing:

- Covered computer manufacturers (1 member).
- Covered computer or video display retailers (1 member).

- An agency responsible for a countywide recycling program (1 member).

Two Governor appointees, representing:

- A statewide conservation organization. (1 member)
- The DEQ (1 member).

Appointments to the council would have to be made within 30 days of the bill's effective date. Members would serve for four-year terms and any vacancies would be filled in the same manner as the original appointments. The appointing official could remove a member for any good cause, including incompetence or dereliction of duty.

The DEQ representative would have to call the first meeting at which the council would elect a chairperson and other officers it considers necessary or appropriate. A majority of the members of the council would constitute a quorum for the transaction of business. A majority of the members present and serving would be required for official action. The council's business would have to be conducted at public meetings held in compliance with the Open Meetings Act, and the council's written materials relating to official functions would be subject to the Freedom of Information Act. Members of the council would serve without compensation or additional compensation in the case of the DEQ representative.

Advisory council report. [§17313(8)] By April 1, 2012, the council would have to submit a report to the Governor, the DEQ, and to legislative standing committees with jurisdiction over issues relating to natural resources and the environment. The report would evaluate Part 173 and make recommendations to improve it. The report would have to evaluate all of the following in light of the policies and objectives set forth in Section 11514:

- Whether a manufacturer's market share should be used to determine the amount of video display devices it must recycle annually.
- Whether a manufacturer with a takeback program that recycles electronic waste at a higher rate than provided for in Part 173 should receive credits, and if so, how the credit system should operate.
- Whether the nonbinding target for the recycling of covered video display devices should be increased, decreased, or made mandatory.
- What items should be included in a mandatory takeback program, and if new items are added, what the recycling rates for those items would be.
- Whether the funding for administration of Part 173 is appropriate or needs to be increased or decreased.
- Whether a program should be developed to recognize manufacturers that implement an expanded recycling program for additional products such as printers or that recycle at a higher rate than provided for in Part 173.
- Whether a system should be developed to collect covered electronic devices that are otherwise not collected.
- Whether additional recycling data, such as the amount of covered devices collected by collectors, should be collected, and if so, how.

- Whether a program should be developed and funding obtained for grants to expand recycling and recovery programs for covered electronic devices and for consumer education.
- Whether a disposal ban for covered electronic devices is appropriate.

Laws governing recycling; DEQ rules. [§17315; 17321] Covered electronic devices collected under Part 173 would have to be recycled in a manner that complies with federal, state, and local laws, including rules promulgated by the DEQ. Any rules promulgated by the DEQ regulating recycling of electronic devices collected under Part 173 would have to be consistent with both (1) the EPA's "Plug-in to eCycling Guidelines for Materials Management," as of the effective date of the bill¹ and (2) a publication of the Institute of Scrap Recycling Industries, Inc. (ISRI), dated April 25, 2006, entitled "Electronics Recycling Operating Practices."² After the advisory council submits its report (due by April 1, 2012), the DEQ could promulgate rules under the Administrative Procedures Act concerning Sections 17303 and 17315.

Electronic Recycling Fund. [§17325] This fund would be created within the State Treasury and could receive funds from any source. The State Treasurer would direct its investment and credit interest and investment earnings to the fund. Money in the fund at the close of the fiscal year would remain in it and not lapse to the General Fund. The DEQ would be the administrator of the fund for auditing purposes. The fund's money would have to be spent, upon appropriation, for the DEQ's administrative expenses to implement Part 173.

Effect of federal program. [§17331] If a national program to collect and recycle computer equipment is established by federal law, the DEQ would have to report to relevant legislative standing committees within 90 days with a description of the federal program, whether it preempts provisions of Part 173, and whether Part 173 should be amended or appealed.

Tie-bar. [Enact. §1] The bill would not take effect unless Senate Bill 898 or House Bill 6715 is also enacted.

House Bill 6715

Recycler registration. [§17317(1)-(2)] Beginning April 1, 2010, a person could not engage in the business of recycling covered electronic devices unless registered with the DEQ. The registration, to be submitted on a DEQ-provided form, would have to include all of the following:

- The name, address, telephone number, and location of all recycling facilities under the direct control of the recycler located in Michigan that may receive covered electronic devices.

¹ The EPA guidelines are available online at <http://www.epa.gov/epawaste/partnerships/plugin/pdf/guide.pdf>.

² The ISRI operating practices are available online at

<http://www.isri.org/AM/Template.cfm?Section=Home1&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=9293>.

- The recycler's certification that it substantially meets the requirements of Section 17315 (found in House Bill 6714, requiring compliance with federal, state, and local laws, including DEQ rules).

Report & log. [§17317(3)] Beginning October 30, 2010, a recycler would have to report the total weight of covered electronic devices it recycled during the previous year and base its report on a log in which the recycler recorded the weight of covered video display devices and computers delivered to it and identified as such on receipt.

Recycler registration fee. [§17317(4)] Until October 1, 2015, a recycler's registration would have to be accompanied by a fee of \$2,000.

Submission of a false registration. [§17317(5)] A recycler who submits a false registration report would commit a violation of Part 173.

Recycler requirements & certification. [§17319) A recycler would have to do all of the following:

- Obtain comprehensive or commercial general liability insurance, including coverage for bodily injury, property damage, complete operations, and contractual liability, with combined limits of at least \$1 million per occurrence and general aggregate.
- Use industry-accepted procedures substantially equivalent to U.S. Department of Defense procedures for the destruction or sanitization of data on hard drives and other data storage devices.
- Maintain a documented environmental, health, and safety management system that may be audited and that complies with or is equivalent to ISO 14001.
- Maintain records identifying all persons to whom the recycler provided electronic devices or material derived from them for the purpose of conducting additional recycling and the weight and volume of material provided to each.
- Not use state or federal prison labor to process covered devices or transact with a third party that uses or subcontracts for the use of prison labor.
- Certify to the DEQ annually that it is in compliance with all of these requirements and, upon request, provide supporting documentation.

DEQ administration of Part 173. [§17323(1)] The DEQ would administer and enforce Part 173 to the extent it receives appropriations for this purpose.

Inspections. [§17323(2)] The DEQ could inspect the operations of a recycler of covered electronic devices to assess compliance with Part 173's requirements.

Violations; penalties; fines. [§17327(1)-(3)] A person who knowingly violates Part 173 would be subject to a civil fine not to exceed \$1,000 for the first violation, or \$2,500 for the second violation.

A person who commits a knowing violation for the third or subsequent time or who knowingly submits false information would be guilty of a misdemeanor punishable by a fine of not more than \$5,000.

Each day on which a violation occurs is a separate violation.

After a contested case hearing, the department could suspend or revoke a recycler's registration after a third or subsequent violation and, if it does so, would have to provide notice of the suspension or revocation on its website.

Civil fines collected under this section would be deposited in the Electronics Recycling Fund created in Section 17325 (to be created by House Bill 6714).

Liability for loss or use of data. [§17329] Except to the extent otherwise provided by contract, a manufacturer, retailer, collector, or recycler would not be liable for the loss or use of data or other information from an information storage device of a covered electronic device collected or recycled under Part 173.

Tie-bar. The bill would not take effect unless either Senate Bill 896 or House Bill 6714 is also enacted.

FISCAL IMPACT:

These bills would generate an indeterminate increase in state restricted fund revenue. The actual amount collected would depend on the number of manufacturers and recyclers of household electronic devices registered to sell and operate in Michigan.

Restricted fee revenue collected through this package would be deposited into a new Electronics Recycling Fund. The Department of Environmental Quality would be authorized to spend appropriations from this fund for program and other administrative costs.

To the extent that the bills increased the number of misdemeanor sentences, they could increase local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.