

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO RECYCLING OF ELECTRONIC DEVICES; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 89, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE DEFINITIONS, TO PROVIDE APPLICATION TO CERTAIN MANUFACTURERS, TO PROVIDE FOR MANUFACTURER REGISTRATION AND TO PROVIDE FOR FEES, TO REQUIRE CERTAIN MANUFACTURERS TO SUBMIT PLANS FOR COLLECTING, TRANSPORTING AND RECYCLING CERTAIN ELECTRONIC DEVICES, TO PROVIDE FOR A MANUFACTURER RECYCLING FEE, TO PROVIDE RESTRICTIONS ON CHARGING FEES, TO PROHIBIT RETAILERS FROM SELLING OR OFFERING TO SELL COVERED PRODUCTS UNLESS CERTAIN CONDITIONS ARE MET, TO REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MAINTAIN CERTAIN LISTS, TO REVIEW AND APPROVE MANUFACTURER PLANS, TO DETERMINE RETURN SHARES FOR MANUFACTURERS, TO ESTABLISH A STATE CONTRACTOR RECYCLING PROGRAM, TO DETERMINE MANUFACTURERS' ANNUAL REGISTRATION FEES, TO DETERMINE RECYCLING FEES, TO MAINTAIN AND PROVIDE CERTAIN INFORMATION AND TO REPORT ANNUALLY TO THE LEGISLATURE, TO AUTHORIZE THE BOARD OF ENVIRONMENTAL QUALITY TO ADOPT RULES, TO PROVIDE FOR THE DEPOSIT OF FEES, TO ESTABLISH THE COVERED ELECTRONIC DEVICES FUND, TO PROVIDE FOR THE EVALUATION OF CERTAIN FEDERAL LAW, TO PROVIDE FOR PRIORITY OF LAWS, TO PROVIDE FOR PENALTIES, AND TO PROVIDE AN APPLICATION DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 89, Title 39, and to read as follows:

CHAPTER 89
IDAHO ELECTRONIC DEVICES RECYCLING ACT

39-8901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Electronic Devices Recycling Act."

39-8902. LEGISLATIVE INTENT. The legislature finds that:

- (1) It is necessary to encourage the design of electronic devices that are more resource efficient, more recyclable and less environmentally toxic;
- (2) The development and availability of a statewide system that conveniently serves both urban and rural areas of Idaho for the collection, transportation and recycling of electronic devices is in the best interest of the state; and
- (3) A statewide collection, transportation and recycling system should be financed by the manufacturers of those electronic devices.

39-8903. DEFINITIONS. As used in this chapter:

- (1) "Brand" means a name, symbol, words or marks that identify a covered electronic device, rather than any of its components, and attribute the device

- 1 to the owner of the brand as the manufacturer.
- 2 (2) "Board" means the board of environmental quality.
- 3 (3) "Collector" means an entity that collects covered electronic devices
4 as part of a manufacturer program or the state contractor program.
- 5 (4) (a) "Covered electronic device" ("CED") means:
- 6 (i) A computer monitor of any type having a viewable area greater
7 than four (4) inches measured diagonally;
- 8 (ii) A desktop computer or portable computer; or
- 9 (iii) A television of any type having a viewable area greater than
10 four (4) inches measured diagonally.
- 11 (b) "Covered electronic device" does not include:
- 12 (i) Any part of a motor vehicle;
- 13 (ii) Any part of a larger piece of equipment designed and intended
14 for use in an industrial, commercial or medical setting, such as
15 diagnostic, monitoring or control equipment;
- 16 (iii) Telephones or personal digital assistants of any type unless
17 the telephone or personal digital assistant contains a viewable area
18 greater than four (4) inches measured diagonally; or
- 19 (iv) Any part of a clothes washer, clothes dryer, refrigerator,
20 freezer, microwave oven, conventional oven or range, dishwasher, room
21 air conditioner, dehumidifier or air purifier.
- 22 (5) "Covered entity" means any Idaho household, a business that employs
23 ten (10) or fewer individuals, a not-for-profit organization exempt from taxa-
24 tion under section 501(c)(3) of the Internal Revenue Code that employs ten
25 (10) or fewer individuals, or any person giving seven (7) or fewer covered
26 electronic devices to a collector at any one (1) time.
- 27 (6) "Department" means the Idaho department of environmental quality.
- 28 (7) "Environmentally sound management practices" means practices that
29 comply with all applicable laws including, but not limited to, adequate
30 recordkeeping, tracking the fate of recycled materials, performance audits and
31 inspections, provisions for reuse and refurbishment, compliance with worker
32 health and safety requirements, maintaining liability insurance and financial
33 assurances and practices that may be adopted by rule by the board of environ-
34 mental quality.
- 35 (8) (a) "Manufacturer" means any person, irrespective of the selling
36 technique used, including by means of remote sale:
- 37 (i) That manufactures covered electronic devices under a brand that
38 it owns or is licensed to use;
- 39 (ii) That sells covered electronic devices manufactured by others
40 under a brand that the seller owns;
- 41 (iii) That manufactures covered electronic devices without affixing a
42 brand;
- 43 (iv) That manufactures covered electronic devices to which it
44 affixes a brand that it does not own; or
- 45 (v) On whose account covered electronic devices manufactured out-
46 side the United States are imported into the United States. This sub-
47 section does not apply if, at the time the covered electronic devices
48 are imported into the United States, another person is registered as
49 the manufacturer of the brand of the covered electronic devices.
- 50 (b) "Manufacturer" does not include a person with a license to manufac-
51 ture covered electronic devices for delivery exclusively to or at the
52 order of the licensor.
- 53 (c) Any person acquiring a manufacturer or brand, or who has acquired a
54 manufacturer or brand, shall have all responsibility for the acquired
55 company's CEDs, including CEDs manufactured prior to January 1, 2010,

1 unless that responsibility remains with another entity per the purchase
2 agreement and the acquiring manufacturer provides the department with a
3 letter from the other entity accepting responsibility for the CEDs.
4 Cobranding manufacturers may negotiate with retailers for responsibility
5 for those products and must notify the department of the results of their
6 negotiations.

7 (9) "Manufacturer program" means a statewide plan for collecting, trans-
8 porting and recycling covered electronic devices that is provided by a single
9 manufacturer or group of manufacturers pursuant to section 39-8906, Idaho
10 Code.

11 (10) "Orphan device" means a covered electronic device for which no manu-
12 facturer can be identified.

13 (11) "Person" means the United States, the state or a public or private
14 corporation, local government unit, public agency, individual, partnership,
15 association, firm, trust, estate or other legal entity.

16 (12) "Portable computer" means any of the following that has a viewable
17 area greater than four (4) inches measured diagonally and that can be carried
18 as one (1) unit by an individual:

- 19 (a) A laptop computer;
20 (b) A notebook computer; or
21 (c) A notepad computer.

22 (13) "Premium service" means services such as at-location system upgrade
23 services and at-home pickup services, including curbside pickup service.

24 (14) (a) "Recycling" means:

25 (i) Processing through disassembling, dismantling, shredding,
26 transforming or remanufacturing covered electronic devices, compo-
27 nents and byproducts into usable or marketable raw materials or prod-
28 ucts in a manner such that the original products may lose their iden-
29 tity; or

30 (ii) Smelting materials from components removed from covered elec-
31 tronic devices to recover metals for reuse in conformance with appli-
32 cable laws and rules.

33 (b) "Recycling" does not include:

34 (i) Landfill disposal or incineration of covered electronic
35 devices; or

36 (ii) Energy recovery or energy generation by means of combusting
37 covered electronic devices, components and byproducts with or without
38 other waste.

39 (15) "Retailer" means a person that offers new covered electronic devices
40 for sale at retail through any means including, but not limited to, remote
41 offerings such as sales outlets, catalogs or the internet.

42 (16) "Return share" means the minimum percentage of covered electronic
43 devices that an individual manufacturer is responsible for collecting, trans-
44 porting and recycling.

45 (17) "Return share by weight" means the minimum total weight of covered
46 electronic devices that an individual manufacturer is responsible for collect-
47 ing, transporting and recycling.

48 (18) (a) "Sell" or "sale" means any transfer of title for consideration
49 including, but not limited to, remote sales conducted through sales out-
50 lets, catalogs or the internet, or through any other similar electronic
51 means.

52 (b) "Sell" or "sale" does not include leases.

53 (19) "State contractor program" means a statewide program for collecting,
54 transporting and recycling covered electronic devices that is provided by the
55 department of environmental quality for manufacturers who pay a recycling fee

1 to the department pursuant to section 39-8907, Idaho Code.

2 39-8904. MANUFACTURERS. (1) The provisions of this chapter apply to all
3 manufacturers engaging in the activities set forth in section 39-8903(8),
4 Idaho Code, on or after the effective date of this chapter.

5 (2) The provisions of this chapter do not apply to reused or refurbished
6 covered electronic devices.

7 (3) A manufacturer shall not sell or offer for sale any covered elec-
8 tronic device in or for delivery in this state unless:

9 (a) The covered electronic device is labeled with a brand and the label
10 is permanently affixed and readily visible; and

11 (b) The brand is included in the plan that is filed with the department
12 of environmental quality pursuant to section 39-8906, Idaho Code.

13 39-8905. MANUFACTURER REGISTRATION -- FEES. (1) Before January 1 of each
14 year, a manufacturer of covered electronic devices sold or offered for sale in
15 this state shall register with the department of environmental quality, for a
16 period to cover the upcoming calendar year, on a form provided by the depart-
17 ment. The registration shall include:

18 (a) A list of all the brands manufactured, sold or imported by the manu-
19 facturer, including those brands being offered for sale in this state by
20 the manufacturer;

21 (b) A statement of whether the manufacturer will be implementing a manu-
22 facturer program or utilizing the state contractor program for recycling
23 covered electronic devices; and

24 (c) Any other information required by the department to implement the
25 provisions of this chapter.

26 (2) (a) Not later than July 1 of each year, a manufacturer of covered
27 electronic devices sold or offered for sale in this state shall pay an
28 annual registration fee to the department.

29 (b) For calendar years 2009 through 2011, the manufacturer registration
30 fee shall be:

31 (i) Fifteen thousand dollars (\$15,000) for manufacturers selling
32 more than one percent (1%) of the total number of units of covered
33 electronic devices sold in this state the previous calendar year.

34 (ii) Five thousand dollars (\$5,000) for manufacturers selling at
35 least one-tenth of one percent (0.1%) but not more than one percent
36 (1.0%) of the total number of units of covered electronic devices
37 sold in this state the previous calendar year.

38 (iii) Two hundred dollars (\$200) for manufacturers selling at least
39 one-hundredth of one percent (0.01%) but less than one-tenth of one
40 percent (0.1%) of the total number of units of covered electronic
41 devices sold in this state the previous calendar year.

42 (iv) Forty dollars (\$40.00) for manufacturers selling less than one-
43 hundredth of one percent (0.01%) of the total number of units of cov-
44 ered electronic devices sold in this state the previous calendar
45 year.

46 (c) For calendar years 2012 and beyond, the board of environmental qual-
47 ity may modify the registration fees under this section so that the total
48 of registration fees collected approximately matches the department's
49 costs in implementing the provisions of this chapter, excluding costs
50 incurred under section 39-8910(4), Idaho Code.

51 (3) (a) If a manufacturer ceases to manufacture, sell or import covered
52 electronic devices, and covered electronic devices manufactured, sold or
53 imported by the manufacturer are collected for recycling under a manufac-

1 turer program or the state contractor program, the manufacturer shall reg-
2 ister with the department and pay a registration fee of two hundred fifty
3 dollars (\$250).

4 (b) Any manufacturer described in paragraph (a) of this subsection to
5 which the department provides notification of a return share and return
6 share by weight and that has not previously filed a registration shall,
7 within thirty (30) days of receiving the notification, file a registration
8 with the department and pay to the department a registration fee equal to
9 the annual fee specified in subsection (2) (b) of this section or two hun-
10 dred fifty dollars (\$250), whichever is greater.

11 39-8906. MANUFACTURER PLAN. (1) A manufacturer choosing to implement a
12 manufacturer program shall submit a plan to the department of environmental
13 quality at the time of payment of the annual registration fee required under
14 section 39-8905, Idaho Code.

15 (2) The manufacturer's plan must describe how the manufacturer shall:

16 (a) Finance, manage and conduct a statewide program to collect covered
17 electronic devices from covered entities in this state;

18 (b) Provide for environmentally sound management practices to collect,
19 transport and recycle covered electronic devices;

20 (c) Provide for advertising and promotion of collection opportunities
21 statewide and on a regular basis; and

22 (d) Include convenient service in every county in this state and at least
23 one (1) collection site for any city with a population of at least ten
24 thousand (10,000). A collection site for a county may be the same as a
25 collection site for a city in the county. Collection sites shall be
26 staffed and open to the public at a frequency adequate to meet the needs
27 of the area being served. A manufacturer's program may provide collection
28 service jointly with another program.

29 (3) A manufacturer choosing to implement a manufacturer program shall:

30 (a) Meet or exceed the requirements for collection sites described in
31 subsection (2) of this section;

32 (b) Provide for collection, transportation and recycling of covered elec-
33 tronic devices for covered entities free of charge, except that a manufac-
34 turer that provides premium service for a covered entity may charge for
35 the additional cost of that premium service;

36 (c) Implement the plan required under this section; and

37 (d) Conduct a statistically significant sampling or actual count of the
38 covered electronic devices collected and recycled by the manufacturer each
39 calendar year using a methodology approved by the department. The manufac-
40 turer shall report the results of the sampling or count to the department
41 no later than March 1 of the following calendar year. The report must
42 include:

43 (i) A list of all brands identified during the sampling or count by
44 the manufacturer;

45 (ii) The weight of covered electronic devices identified for each
46 brand during the sampling or count; and

47 (iii) The total weight of covered electronic devices, including
48 orphan devices, collected from covered entities in the state by the
49 manufacturer during the previous calendar year.

50 (e) By March 1 of each year, provide a report to the department that
51 details how the plan required under this section was implemented during
52 the previous calendar year.

53 (4) A group of manufacturers may choose to implement a manufacturer pro-
54 gram as one (1) entity, if in doing so the manufacturers meet the sum of their

1 individual return shares by weight under section 39-8910 (3), Idaho Code, and
2 that sum is at least five percent (5%).

3 (5) By July 1 of each year, a manufacturer that does not meet its return
4 share by weight for the previous calendar year shall pay the department for
5 the amount not achieved at a rate determined by the department to be equiva-
6 lent to the amount the manufacturer would have paid, plus ten percent (10%),
7 to be part of the state contractor program under section 39-8910, Idaho Code.

8 (6) A manufacturer participating in the state contractor program under
9 section 39-8910, Idaho Code, shall notify the department at the time of its
10 registration each year.

11 (7) Except as provided in subsection (4) of this section, a manufacturer
12 with less than a five percent (5%) return share is required to participate in
13 the state contractor program under section 39-8910, Idaho Code.

14 39-8907. MANUFACTURER RECYCLING FEE. By September 1 of each year, a manu-
15 facturer that participates in the state contractor program shall pay a recy-
16 cling fee to the department of environmental quality in an amount determined
17 by the department under section 39-8910(6), Idaho Code, to cover the costs of
18 collecting, transporting and recycling the manufacturer's annual return share
19 of covered electronic devices for the following year.

20 39-8908. RESTRICTIONS ON FEES. (1) Except as authorized in subsection (2)
21 of this section, a manufacturer program, the state contractor program or a
22 collector participating in a manufacturer program or the state contractor pro-
23 gram may not charge a fee to covered entities for the collection, transporta-
24 tion or recycling of covered electronic devices.

25 (2) A collector that provides a premium service to a covered entity may
26 charge for the additional cost of providing the premium service.

27 39-8909. RETAILERS. (1) A retailer shall not sell or offer for sale any
28 covered electronic device in or for delivery into this state unless:

29 (a) The covered electronic device is labeled with a brand and the label
30 is permanently affixed and readily visible;

31 (b) The brand is included on the list posted by the department of envi-
32 ronmental quality pursuant to section 39-8910(1), Idaho Code; and

33 (c) The list posted by the department pursuant to section 39-8910(1),
34 Idaho Code, specifies that the manufacturer is in compliance with the
35 requirements of this chapter.

36 (2) A retailer shall provide to a consumer at the time of the sale of a
37 covered electronic device information from the department's website that pro-
38 vides details about where and how a consumer may recycle covered electronic
39 devices in Idaho. The information shall be provided in printed form for in-
40 store sales and in printable form for internet sales and other sales where the
41 internet is involved.

42 39-8910. DUTIES OF DEPARTMENT OF ENVIRONMENTAL QUALITY. The department of
43 environmental quality shall:

44 (1) Maintain and make available on its website the following lists, which
45 must be updated by the first day of each month:

46 (a) A list of registered manufacturers and their brands;

47 (b) A list of brands for which no manufacturer has registered; and

48 (c) A list that identifies which manufacturers are in compliance with the
49 provisions of this chapter.

50 (2) Review and approve manufacturer plans that comply with section
51 39-8906, Idaho Code, and are submitted annually by manufacturers choosing to

1 implement a manufacturer program for recycling covered electronic devices.

2 (3) (a) Determine the return share and return share by weight for each
3 calendar year for each manufacturer. The return share shall be determined
4 by dividing the total weight of covered electronic devices of that
5 manufacturer's brands by the total weight of covered electronic devices
6 for all manufacturers' brands. The return share by weight shall be deter-
7 mined by multiplying the return share for each such manufacturer by the
8 total weight in pounds of covered electronic devices, including orphan
9 devices, collected from covered entities the previous calendar year.

10 (b) For 2009 and 2010, determine the return share and return share by
11 weight for each manufacturer based on the best available public return
12 share data and public weight data from within the United States for cov-
13 ered electronic devices from covered entities. For subsequent years, the
14 return share of covered electronic devices for each manufacturer shall be
15 based on the most recent annual sampling or count of covered electronic
16 devices. For subsequent years, the total weight in pounds of covered elec-
17 tronic devices shall be based on the total weight of covered electronic
18 devices, including orphan devices, determined by the department.

19 (c) By May 1 of each year, provide to each manufacturer that had a return
20 share determined under this section its return share and its return share
21 by weight for the following year.

22 (4) Establish a state contractor program for the collection, transporta-
23 tion and recycling of covered electronic devices from covered entities in this
24 state. The state contractor program shall:

25 (a) To the extent practicable, use existing local collection, transporta-
26 tion and recycling infrastructure;

27 (b) Utilize environmentally sound management practices to collect, trans-
28 port and recycle covered electronic devices;

29 (c) Provide for covered entities, free of charge, convenient and avail-
30 able collection services and sites for covered electronic devices in both
31 rural and urban areas;

32 (d) Advertise and promote collection opportunities statewide and on a
33 regular basis; and

34 (e) Conduct a statistically significant sampling or actual count of the
35 covered electronic devices collected and recycled by the state contractor
36 program during each calendar year using a methodology approved by the
37 department and prepare a report no later than March 1 of the following
38 calendar year that includes:

39 (i) A list of all brands identified during the sampling or count;

40 (ii) The weight of covered electronic devices identified for each
41 brand during the sampling or count; and

42 (iii) The total weight of covered electronic devices, including
43 orphan devices, collected from covered entities in the state by the
44 state contractor program during the previous calendar year.

45 (5) Determine a manufacturer's annual registration fee for purposes of
46 section 39-8905 (2), Idaho Code, using national market data prorated for Idaho
47 based on statewide population.

48 (6) Determine the recycling fee to be paid under section 39-8907, Idaho
49 Code, by each manufacturer that participates in the state contractor program
50 established pursuant to subsection (4) of this section. The department shall
51 determine the recycling fees as follows:

52 (a) For each manufacturer except those described in paragraph (b) of this
53 subsection, the department shall determine the recycling fee based on the
54 manufacturer's annual return share and return share by weight as deter-
55 mined under subsection (3) of this section.

1 identified for each brand during the sampling or count;
 2 and
 3 (iii) The total weight of covered electronic devices,
 4 including orphan devices, collected from covered
 5 entities in the state by the state contractor program
 6 during the previous calendar year.

7 (5) Determine a manufacturer's annual registration fee for
 8 purposes of section 39-8405 (2), Idaho Code, using national
 9 market data prorated for Idaho based on statewide population.

10 (6) Determine the recycling fee to be paid under section
 11 39-8407, Idaho Code, by each manufacturer that participates in
 12 the state contractor program established pursuant to subsection
 13 (4) of this section. The department shall determine the recycling
 14 fees as follows:

15 (a) For each manufacturer except those described in
 16 paragraph (b) of this subsection, the department shall
 17 determine the recycling fee based on the manufacturer's
 18 annual return share and return share by weight as determined
 19 under subsection (3) of this section.

20 (b) For each manufacturer whose manufacture of covered
 21 electronic devices as defined in section 39-8403(3)(a)(iii),
 22 Idaho Code, exceeds its manufacture of covered electronic
 23 devices as defined in section 39-8403(3)(a)(i) and (ii),
 24 Idaho Code, the department shall determine the recycling fee
 25 based on the total return share and return share by weight
 26 determined under subsection (3) of this section of all
 27 manufacturers described in this paragraph, allocated
 28 according to each manufacturer's percentage of the total
 29 number of covered electronic devices described in section
 30 39-8403(3)(a)(iii), Idaho Code, sold in this state the
 31 previous calendar year. The department may use national sales
 32 data to determine the percentages. The department may assess
 33 a surcharge on the annual registration fee for manufacturers
 34 described in this paragraph to pay any added costs to the
 35 department in making the determinations.

36 (7) Maintain on its website information on collection
 37 opportunities for covered electronic devices, including
 38 collection site locations and hours. The information must be made
 39 available in a printable format for retailers.

40 (8) Report annually to the legislature on the operation of
 41 the statewide system for collection, transportation and recycling
 42 of covered electronic devices.

43 ⁸⁹¹¹ 39-8411. POWERS OF BOARD. The board of environmental quality
 44 may adopt rules as necessary to implement the provisions of this
 45 chapter.

46 ⁸⁹¹² 39-8412. DEPOSIT OF FEES. Fees collected by the department
 47 of environmental quality under the provisions of this chapter act
 48 shall be deposited in the state treasury to the credit of the
 49 covered electronic devices fund established under in section
 50 39-8413, Idaho Code.

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1 39-8413. FUND CREATED. The covered electronic devices fund
2 is established separate and distinct from the general fund.
3 Interest earned by the fund shall be credited to the fund. Moneys
4 in the fund are continuously appropriated to the department of
5 environmental quality and may be used only to pay the costs of
6 implementing the provisions of this chapter.

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7 39-8414. REVIEW OF FEDERAL LAWS. (1) The department of
8 environmental quality shall evaluate any federal law that
9 establishes a national program for the collection and recycling
10 of electronic devices.

11 (2) If the department determines that the federal law
12 substantially meets or exceeds the requirements and intent of
13 this chapter, the department shall include information on the
14 federal law in the next annual report to the legislature pursuant
15 to section 39-8410, Idaho Code.

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16 39-8415. PRIORITY OF LAW. The provisions of this chapter do
17 not supersede any authority under Chapter 44, Title 31, or
18 Chapter 74, Title 39, Idaho Code for cities and counties to
19 regulate the collection of solid waste.

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21 39-8416. PENALTIES. In addition to any other penalty
22 provided by law, any person who violates the provisions of this
23 chapter shall be liable for civil penalties in accordance with
24 Chapter 1, Title 39, Idaho Code.

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25 39-8417. APPLICATION DATE. Section 39-8409(1), Idaho Code,
26 applies to covered electronic devices sold by a retailer on or
27 after January 1, 2010.