

S.77

An act relating to the disposal of electronic waste

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE FINDINGS

The general assembly finds:

(1) According to the U.S. Environmental Protection Agency, discarded computers, computer monitors, televisions, and other consumer electronics—collectively referred to as e-waste—are the fastest growing portion of the waste stream, growing by approximately eight percent from 2004 to 2005.

(2) Televisions and computers are prevalent in modern society and contribute significantly to the waste generated in Vermont.

(3) Televisions, computers, laptop computers, and computer monitors contain lead, mercury, and other hazardous substances that pose a threat to human health and the environment if improperly disposed of at the end of the useful life of these products.

(4) The state of Vermont has committed to providing its citizens with a safe and healthy environment and has actively undertaken efforts such as mercury reduction programs to reduce the potential for contamination.

(5) The appropriate recycling of televisions and computers protects public health and the environment by reducing the potential for the release of

heavy metals and mercury from landfills into the environment, consistent with other state initiatives, and also conserving valuable landfill space.

(6) The establishment of a system to provide for the collection and recycling of electronic devices in Vermont is consistent with the state's duty to protect the health, safety, and welfare of its citizens; maintain and enhance the quality of the environment; conserve natural resources; prevent pollution of air, water, and land; and stimulate economic growth.

Sec. 2. 10 V.S.A. chapter 166 is added to read:

CHAPTER 166. DISPOSAL OF ELECTRONIC DEVICES

§ 7301. DEFINITIONS

For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Agency" means the agency of natural resources.

(2) "Cathode-ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

(3) "Collection" means the aggregation of covered electronic devices from covered entities and includes all the activities up to the time the covered electronic devices are delivered to a recycler.

(4) "Collector" means a public or private entity that receives covered electronic devices from covered entities and arranges for the delivery of the devices to a recycler on behalf of a manufacturer for the purpose of fulfilling a

manufacturer's responsibilities under this chapter.

(5) "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 portable handheld calculator, or other similar device.

(6) "Computer monitor" means a display device without a tuner that can display pictures and sound and is used with a computer. "Computer monitor" includes a laptop computer.

(7) "Covered electronic device" means computers; peripherals; video display devices; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; cell phones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices) that are sold to a consumer.

(8) "Covered entity" means any household, charity, or school district in the state; a business in the state that employs ten or fewer individuals; or any person giving seven or fewer covered electronic devices to a collector at any one time.

(9) "Delegated solid waste district" means the solid waste district or districts that the agency of natural resources delegates implementation, administration, and enforcement of this chapter under section 7302 of this title.

(10) “Manufacturer” means a person who:

(A) Manufactures or manufactured a video display device or printer under its own brand or label;

(B) Sells under its own brand or label a video display device or printer produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a video display device or printer; or

(D) Imports or imported a video display device or printer into the United States that is manufactured by a person without a presence in the United States.

(11) “Peripheral” means a keyboard, printer, or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.

(12) “Printer” means desktop printers, multifunction printer copiers, and printer fax combinations taken out of service that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and “multi-function” or “all-in-one” devices that perform different tasks, including copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with an optional floor stand, point of sale (POS) receipt printers, household printers such as a calculator with

printing capabilities or label makers, or nonstand-alone printers that are embedded into products that are not covered electronic products.

(13) “Program year” means the period from July 1 through June 30.

(14) “Recycler” means a person who accepts covered electronic devices from covered entities and collectors for the purpose of recycling. A person who takes products solely for refurbishment or repair is not a recycler.

(15) “Recycling” means the process of collecting and preparing video display devices, printers, or covered electronic devices for use in manufacturing processes or for recovery of useable materials followed by delivery of such materials for use. Recycling does not include destruction by incineration, waste-to-energy incineration, or other such processes; land disposal; or reuse, repair, or any other process through which video display devices, printers, or covered electronic devices are returned to use in their original form.

(16) “Recycling credits” means the number of pounds of covered electronic devices recycled by a manufacturer during a program year, less the product of the number of pounds of video display devices or printers sold during the same program year multiplied by the proportion of sales a manufacturer is required to recycle. The calculation and uses of recycling credits are as specified in section 7308 of this title.

(17) “Retailer” means a person who sells, rents, or leases to a household.

through sales outlets, catalogues, or the Internet, a video display device or printer that is not for resale in any form.

(18) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a video display device or printer to a consumer in the state. "Sell" or "sale" does not include a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

(19) "Television" means any telecommunications system or device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(20) "Transporter" means a person that moves covered electronic devices from a collector to a recycler.

(21) "Video display device" means a unit capable of presenting images electronically on a screen, with a video display greater than four inches when measured diagonally, that is viewed by the user, and includes televisions, computer monitors, laptop computers, cathode ray tubes, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that may be developed. "Video display device" does not include any of the following:

(A) a video display device that is part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or

franchised dealer, including replacement parts for use in a motor vehicle;

(B) a video display device, including a touch-screen display, that is functionally or physically part of a larger piece of equipment or that is designed and intended for use in an industrial, commercial, or retail setting;

(C) a video display device that is contained within a household appliance, including a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, home heating device, dehumidifier, water purifier, or air purifier;
or

(D) a telephone of any type unless it contains a video display greater than nine inches when measured diagonally.

§ 7302. DELEGATION OF ELECTRONIC WASTE RECYCLING
PROGRAM

(a)(1) If a solid waste district or districts submits a written request for delegation of statewide implementation, administration, and enforcement of the requirements this chapter, the secretary shall delegate authority to a solid waste district or districts to implement and administer the requirements of this chapter and the enforcement provisions of chapter 201 of this title relating to the requirements of this chapter, provided that the secretary is satisfied that the solid waste district:

(A) Has established a process for accepting, reviewing, and

processing registrations under sections 7304, 7305, and 7306 of this title;

(B) Has hired, appointed, or retained on contract, or will hire, appoint, or retain on contract the necessary employees to: process registrations under sections 7304, 7305, and 7306 of this title; review and audit information submitted by manufacturers, recyclers, collectors, and transporters; and implement the requirements of section 7307 of this title;

(C) Will take timely and appropriate enforcement actions pursuant to the authority of chapter 201 of this title;

(D) Commits to reporting annually to the secretary on a form and date determined by the secretary.

(2) If the secretary receives multiple, competing requests from solid waste districts under subdivision (1) of this subsection, the secretary, in his or her discretion, shall select the most appropriate solid waste district for the implementation, administration, and enforcement of the requirements of this chapter.

(b) A solid waste district or districts delegated under subsection (a) of this section to administer, implement, and enforce the requirements of this chapter may assess and collect the fees required under section 7308 of this title in order to support services necessary to administer, implement, and enforce the requirement of this chapter.

(c) The secretary of natural resources may review administration,

implementation, and enforcement of this chapter by a delegated solid waste district or districts on a random basis, or in response to a complaint, or on his or her own motion. This review may include consideration of the solid waste district implementation itself, as well as consideration of the practices, procedures employed, and any work associated with the performance of these tasks.

(d) Within 30 days of receipt of an administratively complete application under subsection (a) of this section for the implementation, administration, and enforcement of the requirements of this chapter, the secretary of natural resources shall approve the application for delegation, approve the application for delegation with conditions, or deny with justification the application for delegation.

§ 7303. PROHIBITIONS; REQUIREMENTS FOR THE SALE OF

COVERED ELECTRONIC DEVICES; RETAILER OBLIGATIONS

(a) Sale prohibited. No manufacturer shall sell or offer for sale or deliver to retailers for subsequent sale a new video display device or new printer unless:

(1) the video display device or printer is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and

(2) the manufacturer has filed a registration required under section 7304 of this title with the delegated solid waste district.

(b) Retailer obligations.

(1) A retailer who sells or offers for sale a new video display device or new printer to a household shall, before the initial offer of sale, review the website specified in subdivision 7304(7) of this title to determine that all new video display devices and all new printers that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the delegated solid waste district.

(2) A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked, the retailer took possession of the video display device or printer prior to the expiration or revocation of the manufacturer's registration, and the unlawful sale occurred within six months after the expiration or revocation.

(3) A retailer who sells new video display devices or new printers shall provide information to customers describing where and how they may recycle video display devices or printers and advising them of opportunities and locations for the convenient collection of video display devices or printers for the purpose of recycling. This requirement may be met by the posting of a clearly visible and easily readable sign at the point of sale that includes a warning that a video display device or printer shall not be disposed of in a solid waste facility and that provides a toll-free number or website address regarding proper disposal of video display devices and printers. Retailers selling through

catalogues or the Internet may meet this requirement by including in a prominent location on the retailer's website information regarding the proper disposal of video display devices or printers.

§ 7304. MANUFACTURER'S PROGRAM RESPONSIBILITY

(a) Manufacturer registration and reporting requirements.

(1)(A) No manufacturer shall sell or offer for sale a video display device or printer in this state without first submitting a registration to the delegated solid waste district. The delegated solid waste district shall provide the registration form to manufacturers. The form shall include:

(i) a list of the manufacturer's brands of video display devices or printers offered for sale by the manufacturer in this state;

(ii) the name, address, and contact information of a person responsible for ensuring compliance with this chapter; and

(iii) a certification that the manufacturer has complied and will continue to comply with the requirements of this chapter.

(B) A renewal of a registration without changes may be accomplished through notifying the delegated solid waste district on a form provided by the district.

(2)(A) Beginning July 1, 2011, each manufacturer shall, by July 1 of each year, report to the delegated solid waste district the aggregate total weight of video display devices or printers sold during the previous program year.

This information may be provided by one of the following:

(i) the aggregate total weight of its video display devices or printers sold during the previous program year; or

(ii) an estimate of the aggregate total weight of its video display devices or printers sold during the previous program year based on national sales data. A manufacturer shall submit with the report required under this subsection a description of how the information or estimate was calculated.

(B) By July 1 of each year, beginning July 1, 2011, each manufacturer shall report to the delegated solid waste district the aggregate total weight of covered electronic devices the manufacturer recycled during the preceding program year.

(3) A manufacturer who begins to sell or offer for sale video display devices or printers to households and has not filed a registration under this subsection shall submit a registration to the delegated solid waste district within ten days of beginning to sell or offer for sale video display devices or printers.

(4) A registration shall be amended within ten days after a change to any information included in the registration submitted by the manufacturer under this section.

(5) A registration is effective upon receipt by the delegated solid waste district and shall be valid for a period of five years.

(6) The delegated solid waste district shall notify the manufacturer of any required information required that is omitted from the registration. Upon receipt of a notification from the delegated solid waste district, the manufacturer shall submit a revised registration providing the information noted by the delegated solid waste district.

(7) The delegated solid waste district shall maintain a website that includes the names of manufacturers and the manufacturers' brands listed in registrations filed with the district. The delegated solid waste district shall update the website information within 10 days of receipt of a complete registration.

(b) Manufacturer's program responsibilities. Manufacturers shall comply with the following:

(1) A manufacturer shall annually recycle or arrange and pay for the collection and recycling of an amount of covered electronic devices equal to the total weight of its video display devices or printers sold during the preceding program year multiplied by the percentage of sales of video display devices or printers required to be recycled as established by the delegated solid waste district under subdivision 7308(a)(3)(B) of this title. Manufacturers or entities with whom they contract may not charge fees at the time of collecting the unwanted covered electronic devices if those devices will be counted toward the manufacturer's recycling requirement.

(2) Manufacturers may only count covered electronic devices received from covered entities toward their recycling requirements listed under subdivision 7308(a)(3)(B) of this title.

(3) A manufacturer shall certify that a facility recycling covered electronic devices in order to meet the manufacturer's obligation under subdivision (1) of this subsection complies with the recycling standards contained in subdivision 7307(9) of this title. A manufacturer is responsible for maintaining, for a period of three years, documentation of the information relied upon as the basis for the certification under this subdivision.

(4) A manufacturer registered under this section or a collector operating on behalf of a manufacturer under this section shall not charge a fee to covered entities for the collection, transportation, or recycling of covered electronic devices.

§ 7305. RECYCLER PROGRAM RESPONSIBILITY

(a)(1) Recycler registration. No person may recycle a covered electronic device unless that person has submitted a registration with the delegated solid waste district on a form prescribed by the district. A registration is effective upon receipt by the delegated solid waste district and is valid for a period not to exceed five years. An electronics recycling facility registered under this section is not required to obtain a solid waste certification pursuant to chapter 159 of this title. Registration information shall include:

(A) the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive covered electronic devices;

(B) evidence that the financial assurance requirements of section 6611 of this title have been satisfied.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the recycler under this section.

(b) Recycler's reporting requirements. By July 1 of each year, beginning July 1, 2011, a recycler of covered electronic devices shall report to the delegated solid waste district the total weight of covered electronic devices recycled during the preceding program year and shall certify that the recycler has complied with subdivision 7307(8) of this title.

(c) Approved vendors. A recycler of covered electronic devices shall only contract for the transport of, transport to, or disposal of covered electronic devices through a manufacturer mail back or take back program or with a vendor listed by the delegated solid waste district on an approved vendor list.

§ 7306. COLLECTOR AND TRANSPORTER PROGRAM

RESPONSIBILITY

(a)(1) Collector and transporter registration. No person may operate as a collector or transporter of covered electronic devices unless that person has

submitted a registration with the delegated solid waste district on a form prescribed by the district. A registration is effective upon receipt by the delegated solid waste district and is valid for a period not to exceed five years. An electronics collector or transporter registered under this section shall not be required to obtain a solid waste certification or a solid waste hauler permit pursuant to chapter 159 of this title.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the collector under this section.

(b) Transporter's reporting requirements. By July 1 of each year, beginning July 1, 2011, a transporter of covered electronic devices not destined for recycling in Vermont shall report to the delegated solid waste district the total pounds of covered electronic devices collected and the manufacturer who received credits from the covered electronic devices.

§ 7307. ADMINISTRATION OF ELECTRONIC DEVICE DISPOSAL AND
RECYCLING

The delegated solid waste district shall:

(1) Administer the requirements of this chapter.

(2) Establish procedures for:

(A) the registration statements and certifications required under this chapter; and

(B) making the statements and certifications required under this chapter easily available to manufacturers, retailers, and members of the public.

(3) Collect the data submitted annually by each manufacturer on the total aggregate weight of video display devices sold and the total aggregate weight of covered electronic devices collected which are recycled.

(4) Annually review the value of the variables used to calculate a manufacturer's variable recycling fee under subdivision 7308(a)(3) of this title. If the delegated solid waste district determines that any of these values shall be changed in order to improve the efficiency or effectiveness of the activities regulated under this chapter or if the revenues in the account exceed the amount that the delegated solid waste district determines is necessary, the delegated solid waste district shall submit recommended changes to the senate and house committees on natural resources and energy.

(5) Based on the data provided by a manufacturer regarding the sales of video display devices or printers, estimate by July 1 of each year each registered manufacturer's sales of video display devices or printers during the previous year.

(6) Beginning December 1, 2011, report to the senate and house committees on natural resources and energy regarding the implementation of this chapter. For each program year, the report shall provide the total weight of covered electronic devices recycled and a summary of information in the

reports submitted by manufacturers, collectors, and recyclers under this chapter. The report shall also discuss the various collection programs used by manufacturers to collect covered electronic devices; information regarding covered electronic devices that are being collected by persons other than registered manufacturers, collectors, and recyclers; and information about covered electronic devices, if any, being disposed of in landfills in this state. The report shall include an accounting of the cost of the program. The delegated solid waste district may include in its report other information received by the district regarding the implementation of this chapter and recommended additional incentives to increase the rate of recycling.

(7) Promote public participation in the activities regulated under this chapter through public education and outreach efforts.

(8) Post on a website the contact information provided by each manufacturer under subdivision 7304(a)(1)(A)(ii) of this title.

(9) In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics, including specific requirements for collectors, transporters, and recyclers.

(10) Identify approved transporters, collectors, recyclers, and other downstream vendors of covered electronic devices and list such entities on a website.

§ 7308. MANUFACTURER'S REGISTRATION FEE; CREATION OF
ACCOUNT

(a) Registration fee.

(1) By July 1 of each year, all manufacturers who register under section 7304 of this title shall pay to the delegated solid waste district the annual registration fee established under this section. The delegated solid waste district shall deposit the fee into the account required by subsection (b) of this section.

(2) The annual registration fee for a manufacturer who sells video display devices or printers in the state is \$5,000.00 for the initial program year. In years following the initial program year, the annual registration fee for a manufacturer who sells video display devices or printers in the state is \$5,000.00 plus the variable recycling fee calculated according to the formula in subdivision (3) of this subsection. The annual registration fee for a manufacturer who produces fewer than 100 video display devices or printers for sale is \$1,250.00.

(3) Using quantities from the preceding program year, the variable recycling fee shall be calculated according to the formula—variable recycling fee = (A × B) – (C + D) × E, where:

(A) A = the number of pounds of a manufacturer's video display device or printers sold during the previous program year, as reported under

section 7304 of this title to the delegated solid waste district;

(B) B = the proportion of sales of the video display devices or the printers required to be recycled, set at 0.6 for the first program year and at 0.8 for the second program year and every year thereafter;

(C) C = the number of pounds of covered electronic devices recycled by a manufacturer during the previous program year, as reported under section 7304 of this title to the delegated solid waste district;

(D) D = the number of recycling credits a manufacturer elects to use during the current program year to calculate the variable recycling fee, as reported under section 7304 of this title to the delegated solid waste district;

(E) E = the estimated per-pound cost of recycling used to calculate the variable recycling fee initially set at \$0.50 per pound for manufacturers who recycle less than 50 percent of the product required to be recycled under this chapter ($A \times B$); \$0.40 per pound for manufacturers who recycle at least 50 percent but less than 90 percent of the product required to be recycled under this chapter ($A \times B$); and \$0.30 per pound for manufacturers who recycle at least 90 percent of the product required to be recycled under this chapter ($A \times B$).

(4) For the purpose of calculating a manufacturer's variable recycling fee for a given year, a manufacturer may carry recycling credits forward from any of the three preceding program years to be added, in whole or in part, to

the number of pounds reported recycled. Recycling credits are created when the number of pounds reported recycled exceeds the number of pounds required to have been recycled under this chapter according to the formula: credit = C - (A × B), where A, B, and C are defined in subdivision (3) of this subsection. A manufacturer may sell any portion of its recycling credits to another manufacturer, at a price negotiated by the parties, who may use the credits in the same manner and may carry recycling credits forward from any of the three preceding program years.

(b) Creation of electronic waste management fund. The delegated solid waste district shall establish an electronic waste management fund in which fees collected under subsection (a) of this section shall be deposited. The fund shall be used for the costs incurred by the delegated solid waste district in implementing, administering, and enforcing the requirements of this chapter. Gifts or donations for the purposes of implementing, administering, and enforcing the requirements of this chapter may be deposited in the fund. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund and may be used for additional covered electronic device collection activities. Interest earned by the fund shall be deposited in the fund.

(c) The secretary of natural resources, at his or her discretion, shall be allowed to audit the electronic waste management fund established by the

delegated solid waste district under this section.

§ 7309. OTHER RECYCLING PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to recycle their covered electronic devices to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their recycling obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program recycling covered electronic devices in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling covered electronic devices, provided that those persons are registered under section 7304 of this title.

§ 7310. ANTICOMPETITIVE CONDUCT

Manufacturers or industry trade groups may work together and pool resources and collection activities to meet the requirements of this chapter.

§ 7311. MULTISTATE IMPLEMENTATION

The delegated solid waste district is authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

§ 7312. LIMITATIONS

If a federal law or combination of federal laws takes effect that is applicable

to all video display devices or printers sold in the United States and establishes a program for the collection and recycling or reuse of video display devices or printers that is applicable to all discarded video display devices or discarded printers, the delegated solid waste district shall evaluate whether the laws provide a solution that is equal to or better than the program established under this chapter. The delegated solid waste district shall report its findings to the general assembly.

Sec. 3. 10 V.S.A. § 6621a(a) is amended to read:

(a) In accordance with the following schedule, no person shall knowingly dispose of the following solid waste in landfills:

* * *

(8) Covered electronic devices, as defined in chapter 166 of this title, after July 1, 2011.

Sec. 4. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management;

(19) 10 V.S.A. chapter 166, relating to disposal of covered electronic devices.

Sec. 5. EFFECTIVE DATE

(a) This section and Secs. 1 (findings) and 3 (prohibition on disposal of electronic devices in solid waste landfills) of this act shall take effect July 1, 2009.

(b) 10 V.S.A §§ 7301 (findings) and 7302 (delegation of electronic waste recycling program) shall take effect July 1, 2009.

(c) Sec. 4 (enforcement of disposal of covered electronic devices) of this act and 10 V.S.A. §§ 7303 (prohibition on sale of video display devices and printers), 7304 (manufacturer's program responsibility), 7305 (recycler program responsibility), 7306 (collector and transporter program responsibility), 7307 (administration of electronic device disposal and recycling), 7308 (manufacturer's registration fee), 7309 (other recycling programs), 7310 (anticompetitive conduct), 7311 (multistate implementation), 7312 (limitations of federal law) shall take effect 180 days after delegation under 10 V.S.A. § 7302 of the administration, implementation, and enforcement of the requirements of 10 V.S.A. chapter 166.