

## **CONSUMER INFORMATION TECHNOLOGY RECYCLING MODEL STATE LEGISLATION**

This approach seeks to combine the important principles of manufacturer responsibility, consumer convenience, accountability, transparency, education, and enforcement into a simple, effective, and efficient consumer IT collection and recovery system.

At the end of a consumer IT product's useful life, any consumer should be able to return that product to the manufacturer at no charge by following a process defined by the manufacturer. Manufacturers will have the incentive to use the most cost effective and efficient system for collecting and recycling old consumer IT products. The manufacturer could implement its own collection and recovery program; enter into partnerships with other manufacturers, agreements with non-profit organizations, or arrangements with third-party organizations; or adopt other innovative solutions. And manufacturers will report on their progress.

The government will help educate consumers and enforce the law. Governmental fees and separate governmental collection systems are not needed.

Such a simple approach will promote innovation, foster partnerships, drive efficiencies, and create an effective consumer IT collection and recovery system.

**INFORMATION TECHNOLOGY PRODUCER RESPONSIBILITY  
MODEL STATE LEGISLATION**

**A BILL**

To promote individual producer and shared responsibility for, and resource conservation of, electronic information technology equipment.

*Be it enacted by the Senate and House of Representatives of the Legislature of the State of \_\_\_\_\_ assembled,*

**SECTION 1. SHORT ACT; TABLE OF CONTENTS.**

a. Short Act - This Act may be cited as the “Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act”.

b. Table of Contents – The table of contents of this Act is as follows:

- Sec. 1. Short Act; Table of Contents
- Sec. 2. Findings and Purposes
- Sec. 3. Definitions
- Sec. 4. Applicability
- Sec. 5. Manufacturers
- Sec. 6. Retailers
- Sec. 7. Department
- Sec. 8. Consumers
- Sec. 9. Sound Environmental Management
- Sec. 10. State Procurement
- Sec. 11. Federal Preemption

**SECTION 2. FINDINGS AND PURPOSES.**

The Legislature makes the following findings and states the following purposes for this Act:

a. Computers and video display devices are critical elements to the strength and growth of this state’s economic prosperity and our quality of life. Many of these products can be refurbished and reused, and many such obsolete products contain valuable materials that can be recycled. Developing and implementing an appropriate state computer and video display device recovery system is important to our state’s resource conservation, worker health and safety, and economic prosperity goals.

b. The purpose of this Act is to establish a comprehensive and convenient computer and video display device recovery program based on individual producer responsibility and shared responsibility among consumers, retailers, and government. The

purposes of this recovery system are to ensure that end-of-life computers and video display devices are responsibly retired, to promote resource conservation through the development of an effective and efficient system for collecting and recycling such products, and to encourage manufacturers to offer such service to consumers with convenience and at no charge.

### **SECTION 3. DEFINITIONS.**

a. “Brand” means symbols, words, or marks that identify a covered device, rather than any of its components.

b. “Collect” or “collection” means to collect a covered device, including, but not limited to, collection through a mail-back program, collection site or collection event.

*The approach here is intended to balance consumer convenience with manufacturer responsibility in order to maximize efficient and effective collection and recycling of unwanted devices. Manufacturers would have flexibility to adopt whatever collection system works best for them – some might adopt their own, some might join with other manufacturers, some could form a third party organization, and some might partner with non profit organizations.*

c. “Covered consumer” means any occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit (a household) who has used a covered device primarily for personal or home business use.

*The bill is intended to apply to require companies to offer collection of consumer IT products from individual consumers rather than from businesses. Businesses already are responsible for complying with state and federal solid waste laws. Moreover businesses already can avail themselves of manufacturers’ product recovery services.*

d. “Covered device” means a desktop or notebook computer, or computer monitor, but does not include a television (including a cathode ray tube or flatpanel based television), a part of a motor vehicle, a personal digital assistant (PDA), a telephone, or a medical device that contains a video display device.

*This legislative approach covers computers and video display devices. It does not attempt to include other very different products, such as TVs, phones, or PDAs. The goal of this legislative approach is to offer a simple, convenient recovery system. Adding other products would make this too complex and likely unworkable.*

*TVs are excluded because returned TVs are older, bulkier, heavier, less likely to be refurbished and reused, and of less value for components than returned consumer IT products. It makes more sense to adopt separate solutions to address such different products. TVs are defined here to be telecommunication system devices that can broadcast and receive moving pictures and sound over a distance, and include a TV tuner.*

e. “Department” means the state department of environmental protection.

f. “Manufacturer” means any existing person: (i) who manufactures or manufactured covered devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered devices for delivery exclusively to or at the order of the licensor; (ii) who sells or sold covered devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered devices for delivery exclusively to or at the order of the licensor; (iii) who manufactures or manufactured covered devices without affixing a brand; (iv) who manufactures or manufactured covered devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use; or (v) for whose account covered devices, manufactured outside the United States, are or were imported into the United States, provided, however, if at the time such covered devices are or were imported into the United States, another person has offered to collect such covered devices under a recovery plan pursuant to subsection c of section 5, then this clause (v) shall not apply.

*This bill is intended to create a legislative framework for producer responsibility for recovery by manufacturers of their own brand consumer IT products. The bill’s intent is to ensure that some manufacturers do not avoid their responsibility and unduly burden other manufacturers.*

*The bill is intended to address producer responsibility for recovery by manufacturers of their own brand consumer IT products. Each product must be branded with the manufacturer’s logo so that it will be identifiable to consumers and retailers – and to the state for enforcement purposes.*

g. “Person” means any individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or public authority.

h. “Recover” means to reuse or recycle; and “recoverer” means a person or entity that reuses or recycles.

i. “Retail sales” means sales of products through sales outlets, via the Internet, mail order or any other means, whether or not the seller has a physical presence in this state. Sales include sales of new, used, refurbished and other products.

*Retailers have only two responsibilities under this legislation: to check to make sure that any computer or video display device they sell is labeled with a manufacturer's brand and that such manufacturer is on the state's website of manufacturers with recovery plans. Defining retail sales to be more than just in store sales reflects the current market and is needed for the bill to be effective.*

j. "Retailer" means a person who owns or operates a business that sells covered devices to a covered consumer, including through sales outlets, catalogs or the Internet, whether or not the seller has a physical presence in this state.

k. "Sell" or "sale" means any transfer for consideration of title including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not mean leases.

l. "Television" means any telecommunication system device that can receive moving pictures and sound broadcast over a distance, and includes a TV tuner. Display devices that are peripheral to a computer but nevertheless contain a TV tuner are considered televisions.

*This approach focuses on computers and video display devices. TVs are excluded because returned TVs are older bulkier heavier less likely to be refurbished and reused and of less value for components than returned IT products. It makes more sense to adopt separate solutions to address such different products.*

#### **SECTION 4. APPLICABILITY.**

The collection and recovery provisions of this Act apply to covered devices used and returned by covered consumers in this state. Notwithstanding the prohibition for sales in subdivisions a. and b. of Section 5 below, sales to persons that are not covered consumers are not prohibited if each of the following conditions are met: (a) the manufacturer never sold covered products to covered consumers; (b) the manufacturer never offered for sale through retailers covered products to covered consumers; and (c) each sale, after the effective date of this Act, of covered products to persons that are not covered consumers includes a provision in the terms of sale to recover such products at end of life.

#### **SECTION 5. MANUFACTURERS.**

a. *Sale Prohibition.* No manufacturer shall sell or offer for sale a covered device in this state unless the manufacturer has adopted and is implementing a recovery plan.

b. *Label.* No manufacturer shall sell or offer for sale any covered device in this state unless the covered device is labeled with the manufacturer's brand. The label shall be permanently affixed and readily visible.

*The simplest way to implement this bill is for manufacturers to have to place their brand label on their computers and video display devices before they can be sold in the state. Consumers,*

*retailers and enforcement officials can then know who is responsible for that product. To avoid adding to the complexities of labeling issues manufacturers do not have to include information about the recovery plan on the label. Instead through the manufacturers' and the state's information and education programs consumers will be directed to the manufacturers' websites for more detailed collection and recycling information.*

c. *Recovery Plan.* No manufacturer shall sell or offer for sale any covered device in this state unless the manufacturer has a recovery plan under which the manufacturer offers to collect from a covered consumer and recover each covered device that is labeled with the manufacturer's brand at no charge to the covered consumer. A group of manufacturers, working together, may jointly implement a recovery program. The manufacturer's recovery plan under this subsection may use existing collection and consolidation infrastructure for handling covered devices and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, nonprofit corporations, retailers, recyclers, or other suitable operations.

***This is the critical element to implementation of the bill. Each manufacturer has to determine what it will do to comply with the bill. The bill does not require the government to approve a manufacturer's recovery plan – but the failure to adopt a recovery plan and the failure to properly collect and recycle unwanted covered devices are violations and enforceable.***

d. *Collection.*

(i) The recovery plan must offer covered device collection services that are reasonably convenient and available, and designed to meet the collection needs of covered consumers in the state.

(ii) Each of the following methods of providing covered device collection services is reasonably convenient to covered consumers:

(1) A mail-back systems, offered by the manufacturer or its designee, whereby the covered consumer can return an end of life covered device through the mail or private common carrier, for shipment back to the manufacturer or its designee;

(2) Physical collection sites, which the manufacturer or its designee keeps open to allow covered consumers to return end of life covered devices;

(3) Collection events, whereby the manufacturer or its designee provides covered consumers the opportunity to return end-of-life covered devices; or

(4) Any combination of the above described systems, or any other take back program approved by the Department.

*The approach here is intended to balance consumer convenience (by providing alternative collection systems) with manufacturer responsibility (by encouraging creation of efficient and effective collection and recycling infrastructure for unwanted devices).*

*Manufacturers would have flexibility to adopt whatever collection system works best for them – some might adopt their own, some might join with other manufacturers, some could form a third-party organization, and some might partner with non-profit organizations. Collection for the consumer should be reasonably convenient, but (to ensure manufacturers have flexibility to identify the most efficient and effective system) the standard for convenience should not require any particular approach over another (such as requiring physical locations and not allowing at-home pickup). Use of any of the three different examples of convenient systems to meet the requirements of this section is intended to balance the needs of manufacturers and consumers, in both urban and rural areas.*

*The bill is intended to ensure manufacturers have sufficient flexibility to adopt whatever collection system works best for them – some might adopt their own, some might join with other manufacturers, some could form a third-party organization, and some might partner with non-profit organizations. Manufacturers are not required to implement any one solution but have the ability to innovate and find ways that are more efficient. This allows the growth of business models to facilitate compliance systems, drives costs out of the system while encouraging new ways of collecting, and fosters partnerships with others with sufficient capabilities to assist in collection and recovery.*

e. *Recovery Program Collection Services.* Each manufacturer’s recovery program shall state with specificity the collection services to be used by the manufacturer.

(i) If a manufacturer or its designee offers a mail-back system, either individually or by working together with a group of manufacturers, the manufacturer or manufacturers shall provide for shipment from a covered consumer at no cost to the covered consumer back to the manufacturer or manufacturers or its designee on any covered device manufactured by the manufacturer or manufacturers. If a manufacturer provides for a mail-back system meeting the requirements of this sub-section, it shall be deemed to meet the requirements of a recover program as set forth in Section 5, subsection (d)(ii)(1).

(ii) If a manufacturer does not offer a mail-back system, either individually or by working together with a group of manufacturers as set forth in Section 5d(ii)(1), it shall submit a plan for approval by the Department that offers reasonably convenient collections as set forth in Section 5d(ii)(2), Section 5d(ii)(3), and Section 5d(ii)(4) above. The Department shall review the plan for geographic distribution and frequency of collections. The Department shall notify the manufacturer within 30 days of whether or not the manufacturer’s plan complies with the requirements of Section 5(c). If the Department does not approve the plan, the Department shall state with specificity the reasons the plan does not comply. The manufacturer shall respond to the Department within 20 days. If the Department and the manufacturer do not agree on whether the plan

should be approved, the Department's decision is subject to review under the provisions of the Administrative Procedures Act.

f. *Filing of Recovery Program.* The manufacturer shall file with the Department a copy of its recovery program setting forth in detail the methods of covered device collection to be implemented by the manufacturer. The recovery program shall be filed with the Department by September 1 of the year before the recovery program is to be implemented by the manufacturer. The recovery program must include a statement that the manufacturer will not dispose of covered devices in landfills and a statement that the manufacturer will not transfer covered devices to computer equipment recycling facilities that dispose of covered devices in landfills. The recovery program shall provide details of meeting the labeling requirements. The manufacturer shall file with the Department changes made in its recovery program.

g. *Education.* Each manufacturer shall, as part of its recovery plan, inform covered consumers in this state about where and how to return and recover covered devices. Each manufacturer shall include collection and recovery information on its website, shall provide such information to the department, and may also include such information in the covered device's packaging or accompanying the sale of the covered device. Inclusion on the state's website is not a determination by the state that the manufacturer's recovery plan or actual recovery are in compliance with this Act or other laws.

*The idea here is to make the unwanted product's collection convenient. If the consumer knows the name of the manufacturer which should be easily determinable from the label on the product the consumer can then just go to that manufacturer's website and find out all they need to know about using the recovery program. The state environmental department (or its designee) also will have on its website a link to the manufacturer's information. Manufacturers can also include instructions elsewhere such as in product packaging.*

h. *Annual Report.* No later than March 1 of each year, each manufacturer shall annually report to the Department the weight of covered devices collected and recovered during the previous calendar year. The report also shall include documentation verifying whether or not the collection and recovery of such material complies with the provisions of Section 9. The report shall include a summary of the recovery program implemented by the manufacturer during the previous calendar year, describing with specificity the methods of recovery implemented by the manufacturer. The report shall include the location and dates of collection events, if any, and the location of collection sites, if any.

*This legislation requires public reporting in order to ensure transparency and accountability. Manufacturers are to report to the state agency annually on their progress and the agency reports annually to the state legislature on the manufacturers' progress. Reporting is the proper way to measure performance of the program.. Reporting will allow the state and the public to see how each manufacturer and the program as a whole are performing. With this baseline information the state can then assess how the program is working and make any amendments.*

i. *Data Security.* Manufacturers shall not be liable in any way for any damage suffered for data or other information that a covered consumer leaves on a covered device that is collected or recovered.

*Manufacturers (and their agents) need to be able to take possession of systems without incurring costly potential liability from information that consumers might leave on their systems.*

i. *Multiple Manufacturers.* Where more than one person is within the definition of manufacturer of a brand of a covered device under subsection f of section 3, any one or more such persons may assume responsibility for and satisfy the obligations of a manufacturer under this title with respect to covered devices bearing that brand. In the event that no person assumes responsibility for and satisfies the obligations of a manufacturer under this title with respect to covered devices bearing that brand, the department may consider any one or more persons within such definition to be the manufacturer of that brand.

j. *Liability under applicable law.* Nothing in this title is intended to exempt any person from liability he or she would otherwise have under applicable law.

## **SECTION 6. RETAILERS.**

a. *Sale Prohibition.* No retailer shall sell or offer for sale a covered device in this state unless the covered device is labeled in accordance with Section 5b and such device's manufacturer is included on the state list of manufacturers with recovery plans.

*Retailers have only two responsibilities under this legislation: to check to make sure that any computer or video display device it sells is labeled with a manufacturer's brand and that such manufacturer is on the state's website of manufacturers with recovery plans. If a product is sold without such a label or that product's manufacturer is not on the state website of manufacturers with recovery plans, the state may fine the retailer and seize its products (including those in the retailer's inventory). Without this mechanism, there is no other practical means of preventing improper disposal of end of life consumer IT products.*

b. *Data Security.* Retailers shall not be liable in any way for data or other information that a covered consumer leaves on a covered device that is collected or recovered.

*Retailers do not have responsibility under this bill for recovery of end of life consumer IT products and so should not have responsibility for information that consumers might leave on their systems.*

## **SECTION 7. DEPARTMENT.**

a. *Education.* The department shall educate covered consumers about collection and recovery of covered devices.

*This legislation allows state governments to focus on just two things: educating the public about the benefits of proper collection and recycling and how to find manufacturers' information for returning consumer IT products and enforcing the law*

b. *Website.* The department shall host, or designate another person to host, a website for consumers about the collection and recovery of covered devices that shall provide information about and links to manufacturers' collection and recovery information, including their recovery plans, and information about and links to information for covered devices, including information about collection events, collection sites, and community recycling programs. Inclusion on the state's website is not a determination by the state that the manufacturer's recovery plan or actual recovery are in compliance with this Act or other laws.

*To fulfill its education role, the state will offer a one-stop website to help consumers easily find instructions on how to properly return their covered devices. The state could designate a site hosted and managed by a third party. The state could even work with other states and designate a group, such as the National Recycling Coalition, that would post all such instructions in one place nationally.*

c. *List of Registered Manufacturers.* The department, on or before the first day of January in each year commencing in 2009, shall make available (a) a list of registered manufacturers who have adopted and implemented a recovery plan, as required by this title; and (b) a separate list of manufacturers whose registered recovery plan permits covered consumers to return for collection and recovery other manufacturers' brands of covered electronic devices, including orphan devices, beyond those brands required to be recovered by such manufacturer. Manufacturers shall be included on this list of beyond-brand collection plans if the plan provides recycling grants, collection events, or if such plan requires the covered consumer who purchases a new covered electronic device from the manufacturer to return the other manufacturers' branded covered electronic device, for which return to the manufacturer may require the covered consumer to pay for transportation/shipping, or if such plan provides for use of other collection and/or recovery methods that are approved by the department.

d. *Filing of Recovery Programs.* The Department shall accept for filing each recovery program and annual report filed by a manufacturer. The Department shall make all recovery programs and annual reports available to the public.

e. *Schedule of Collection Events.* Upon receipt of the manufacturers' filed recovery programs, the Department shall produce a schedule of collection events.

f. *Department Annual Report.* The Department shall by July 1 of each year produce an annual report of the recovery program annual reports filed by the manufacturers. The Department's Annual Report shall be transmitted to the Legislature by July 1 of each year.

*This legislation requires public reporting in order to ensure transparency and accountability. Manufacturers are to report to the state agency annually on their progress and the agency reports annually to the state legislature on the manufacturers' progress. Reporting is the proper way to measure performance of the program. Reporting will allow the state and the public to see how each manufacturer and the program as a whole are performing. With this baseline information the state can then assess how the program is working and make any amendments.*

g. *Enforcement.* The department may conduct audits and inspections to determine compliance under this Act. The department and the attorney general, as appropriate, shall enforce the provisions of this Act and take enforcement action against any manufacturer, retailer, or recoverer for failure to comply with any provisions of this Act, including assessing appropriate injunctive relief and administrative, civil, and criminal penalties.

h. *Penalty for Manufacturers.* Any manufacturer who fails to label its new covered devices as required by subsection b of section 5 or adopt and implement a recovery plan as required by section 5 may be assessed a penalty of up to ten thousand dollars for the first violation and up to twenty-five thousand dollars for the second and each subsequent violation, in addition to being responsible for any penalties required by or imposed pursuant to this title.

i. *Penalty for Other Persons.* Except as provided in subsection h. directly above, any person who violates any requirement of this title may be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation, in addition to being responsible for any penalties required by or imposed pursuant to this title.

j. *Determination of Penalties.* The department shall determine the appropriate penalties, as provided in this subsection, based on adverse impact to the environment, unfair competitive advantage, and other such considerations as the department deems appropriate.

k. *Violation of Sales Prohibition.* Any violation of the sales prohibitions of this title may be enjoined in an action, in the name of the state, brought by the attorney general.

*Enforcement will be critical to ensuring a level and fair playing field for all entrants. In addition to using audits and inspections, the state's job will be made easier because this system is transparent: those manufacturers who are legitimate will have their names on their products and will have their recovery information on their and the state's websites for all to see. The state can verify whether the system is working by auditing and inspecting manufacturers' products and websites, retailers, and recyclers.*

*This legislation offers several routes for enforcement. The state would be able to enforce against manufacturers, as they have the greatest responsibility under this approach, for failure to label products that the manufacturer offers for sale, for failure to adopt and implement a recovery plan, for failure to offer adequate information to the public and the state, for failure to annually report to the state on its recovery, for failure to properly collect and recover covered devices, and for failure to document proper collection and recovery. The state could enforce against a retailer for offering for sale or selling products without a manufacturer label, or for offering for sale or selling products from manufacturers who are not included on the state's website of manufacturers with recovery plans. In addition, the state also could enforce against recyclers for failure to properly recover covered devices in compliance with applicable federal, state, and local laws and requirements.*

*The state does not have the authority to assess any fees for recovery of IT devices, but it could use the funds from penalties for administration.*

l. *Financial and Proprietary Information.* Financial or proprietary information submitted to the department under this Act is exempt from public disclosure, in accordance with state law.

m. *Rules.* The department may adopt such rules and regulations as are necessary to implement the provisions of this Act.

n. *No Fees.* The department does not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on covered consumers, manufacturers, retailers, or recoverers for collection or recovery of covered devices.

## **SECTION 8. CONSUMERS.**

a. *Data Security.* Covered consumers remain responsible for any data or other information that may be on a covered device that is collected or recovered.

*The only obligations consumers have under this bill are to retain responsibility for any information that may remain on their IT products and to package their IT products and deliver them to a mail-back or drop off facility. Manufacturers (and their agents) need to be able to take possession of systems without incurring costly potential liability from*

*information that consumers might leave on their systems.*

b. *Education.* Consumers also are encouraged to learn about proper recovery of their end-of-life covered devices by visiting the department's and manufacturers' websites.

## **SECTION 9. SOUND ENVIRONMENTAL MANAGEMENT.**

a. *Compliance.* All covered devices collected pursuant to this Act shall be recovered in a manner that is in compliance with all applicable federal, state, and local laws and requirements and with the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices

b. *Recovery Standards.* – The Department shall adopt by reference the Institute of Scrap Recycling Industries, Inc.'s, Electronics Recycling Operating Practices, as amended, as the Department's standards for a recovery that is done in an environmentally sound manner and that is protective of worker health and safety.

c. *Recoverer Certification.* – Recovery of covered devices under this Part may be undertaken only by recoverers that are certified under the Institute of Scrap Recycling Industries, Inc.'s, Recycling Industry Operating Standard, as amended."

*ISRI's Electronic Recycling Operating Practices (available at [www.isri.org](http://www.isri.org)) are the leading industry standards for recovery in an environmentally sound manner that is protective of worker health and safety..*

## **SECTION 10. STATE PROCUREMENT.**

a. *Compliance.* No state agency shall contract for the purchase of covered electronic devices manufactured by any manufacturer that is not on the department's list of registered manufacturers or that has been otherwise ruled non-compliant with this title.

(i) Any person who submits a bid for a contract with a state agency for the purchase or lease of covered devices must be in compliance with this Act.

(ii) A state agency that purchases or leases covered devices shall require each prospective bidder to certify compliance with this Act. Failure to provide such certification shall render the prospective bidder ineligible to bid on the procurement of covered devices.

b. *State Purchasing Preferences.* In the case of contracts for the purchase of covered electronic devices through a competitive process, whenever the responsive and responsible offeror having the lowest price or best value offer will supply covered electronic devices manufactured by a manufacturer that is not listed on the department's list of manufacturers with beyond-brand collection plans in subsection c of Section 7 and another responsive and responsible offeror will supply covered electronic devices manufactured by a manufacturer that is listed on the department's list of manufacturers

with beyond-brand collection plans in subsection c of Section 7, the contracting entity shall award such contract to the offeror that will supply covered electronic devices manufactured by a manufacturer that is listed on the department's list of manufacturers with beyond-brand collection plans in subsection c of Section 7.

*This bill would require that manufacturers who want to sell covered devices to the state must comply with all the provisions of this new law. This approach incentivizes manufacturers to help recover covered devices that are not their own brand (including orphan products) by giving manufacturers preference in the state procurement process if they undertake collection events, offer recycling grants, or offer to take back any brand with purchase.*

*Based on data from collection events and programs around the country, the portion of orphan electronic products returned is approximately 10%. As manufacturers step up to the plate to take back their own and others' products, and as manufacturers and communities continue to hold collection events, orphan products should continue to decline. Any legislation should encourage manufacturers to take back others' products (which will include some orphans), such as through collection events, recycling grants, and manufacturer initiatives to take back any brand with purchase. This approach would require the state to give preference in procurement decisions to manufacturers that undertake such efforts to address orphan and historic products.*

b. *Rulemaking.* The state's procurement agency shall adopt rules to implement this section's provisions.

## **SECTION 11. FEDERAL PREEMPTION.**

This Act shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered devices that substantially meets the intent of this Act.

*Although each state might seek to address this important resource recovery issue on its own, the most efficient and effective approach is not a state-by-state one but a national solution. The National Center for Electronics Recycling has calculated that having different state programs carries significant costs above and beyond what would be needed for a uniform national approach (\$25 million per year in such "dead weight" costs with just the four current state programs), which consumers and manufacturers bear through increased fees and product costs.*