

September 24, 2012

**ASSEMBLY BILL NO. 1459
(First Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1459 (First Reprint) with my recommendations for reconsideration.

This bill makes numerous revisions to the Electronic Waste Management Act ("Act") to improve the Department of Environmental Protection's ("DEP") administration of the Act and to reduce unnecessary and onerous requirements imposed on the regulated community.

I commend the sponsors' efforts to streamline government and to reduce unnecessary regulatory burdens. Indeed, common sense regulatory reform and red-tape cutting measures have been a hallmark of my Administration. Nevertheless, I recommend two amendments to this bill that will improve the Act's fairness while ensuring that compliance is encouraged and wrongful conduct is deterred.

First, to ensure fairness in DEP's administration of the Act, a television manufacturer's recycling responsibility should be measured in terms of the weight of televisions manufactured, not units, thereby ensuring that the Act's requirements are appropriately distributed among industry participants.

Second, this bill increases the maximum penalty that may be assessed to a violator of the Act from \$1,000 to \$50,000. I agree with the legislative sponsors that a \$1,000 maximum fine is not a deterrent to improper conduct. However, a maximum civil administrative penalty of \$25,000 is more in-line with other DEP maximum civil administrative penalties, will serve as a substantial deterrent to wrongful conduct, and will assuredly encourage compliance with the Act.

Therefore, I herewith return Assembly Bill No. 1459 (First Reprint) and recommend that it be amended as follows:

- Page 2, Section 1, Line 29: After "number" insert "and weight"
- Page 2, Section 1, Line 31: After "share" insert "by weight"
- Page 14, Section 9, Line 15: Delete "\$50,000" and insert "\$25,000"
- Page 15, Section 9, Line 3: Delete "\$50,000" and insert "\$25,000"
- Page 15, Line 42: Insert new section:
- "11. Section 2 of P.L.2007, c.347 (C.13:1E-99.95) is amended to read as follows:
2. As used in sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L.2008, c.130 (C.13:1E-99.96a):
- "Authorized recycler" means a person who: (1) engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of re-use or recycling; or (2) changes the physical or chemical composition of a covered electronic device by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for the purpose of segregating components, and for the purpose of recovering or recycling those components, and who arranges for the transport of those components to an end user.
- "Brand" means symbols, words, or marks that identify a covered electronic device, rather than any of its components.
- "Business concern" means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization. "Business concern" shall not include a small business enterprise.

"Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

"Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor, but the term shall not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other similar device.

"Consumer" means a person who purchases a covered electronic device in a transaction that is a retail sale. "Consumer" shall not include any business concern purchasing covered electronic devices.

"Covered electronic device" means a desktop or personal computer, computer monitor, portable computer, or television sold to a consumer. A "covered electronic device" shall not include any of the following: (1) an electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle; (2) an electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment; (3) an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (4) a telephone of any type unless it contains a video display area greater than four inches measured diagonally.

"Department" means the Department of Environmental Protection.

"Local government unit" means any county or municipality, or any agency, instrumentality, authority or corporation of any county or municipality, including, but not limited to, sewerage, utilities and improvement authorities, or any other political subdivision of the State.

"Manufacturer" means any person: (1) who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (2) who sells or sold covered electronic 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 electronic devices for delivery exclusively to or at the order of the licensor; (3) who manufactures or manufactured covered electronic devices without affixing a brand; (4) who manufactures or manufactured covered electronic devices to which the person affixes or affixed a brand that the person neither owns or owned nor is or was licensed to use; (5) for whose account covered electronic devices manufactured outside the United States are or were imported into the United States, provided however, if, at the time such covered electronic devices are or were imported into the United States, another person has registered as the manufacturer of the brand of the covered electronic devices pursuant to subsection b. of section 9 of P.L.2007, c.347 (C.13:1E-99.102), then paragraph (5) of this definition shall not apply; or (6) a person who

assumes the obligations and responsibilities for any manufacturer pursuant to paragraphs (1) through (5) of this definition.

"Market share" means a television manufacturer's national sales of televisions expressed as a percentage of the total weight of all television manufacturers' national sales based on the best available public data.

"Monitor" means a separate video display component of a computer, whether sold separately or together with a computer central processing unit and computer box, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology, greater than four inches measured diagonally, and its case, interior wires and circuitry, cable to the central processing unit, and power cord.

"Obligation" means: (1) the return share in weight, identified for an individual manufacturer, as determined by the department pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105); or (2) the market share, identified for an individual television manufacturer, as determined by the department pursuant to subsection c. of section 3 of P.L.2007, c.347 (C.13:1E-99.96).

"Orphan device" means a covered electronic device for which no manufacturer can be identified, or for which the original manufacturer no longer exists.

"Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government department, partnership, limited liability company, or association.

"Portable computer" means a computer and video display

greater than four inches in size that can be carried as one unit by an individual, including a laptop computer.

"Program year" means a full calendar year beginning on or after January 1, 2011.

"Purchase" means the taking, by sale, of title in exchange for consideration.

"Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products. "Recycling" shall not include energy recovery or energy generation by means of incinerating electronic waste whether apart or in combination with other wastes.

"Registrant" means a manufacturer of covered electronic devices that is in full compliance with the requirements of this act.

"Retail sales" means the sale of covered electronic devices through sales outlets, via the Internet, mail order, or other means, whether or not the retailer has a physical presence in this State.

"Retailer" means a person who owns or operates a business that sells new covered electronic devices in this State by any means to a consumer.

"Return share" means the proportion of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the department pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105).

"Return share in weight" means the total weight of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the

department pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105).

"Sale" or "sell" 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, and excluding leases.

"Small business enterprise" means any business which has its principal place of business in this State, is independently owned and operated, and employs the equivalent of fewer than 50 full-time employees.

"Television" means a stand-alone display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, having a viewable area greater than four inches measured diagonally, able to adhere to standard consumer video formats and having the capability of selecting different broadcast channels and support sound capability.

"Video display" means an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display and cannot be easily removed from the display by the consumer that produces the moving image on the screen. A "video display" typically uses a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology."

Page 15, Section 11, Line 43:

Delete "11" and insert "12"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor