

SB 746

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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 746

(SENATOR FACEMYER, *original sponsor*)

[Passed March 8, 2008; in effect ninety days from passage.]

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AN ACT to amend and reenact §22-15A-2 and §22-15A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §22-15A-24, §22-15A-25, §22-15A-26, §22-15A-27, §22-15A-28 and §22-15A-29, all relating to implementing a takeback program for certain electronic devices with manufacturers; providing incentives for recycling certain electronics; providing an opportunity for counties and municipalities to increase recycling efforts;

establishing a registration program for manufacturers of certain electronic goods; assessing registration fees; authorizing civil and administrative penalties; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

That §22-15A-2 and §22-15A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §22-15A-24, §22-15A-25, §22-15A-26, §22-15A-27, §22-15A-28 and §22-15A-29, all to read as follows:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-2. Definitions.

1 Unless the context clearly indicates a different
2 meaning or defined elsewhere in this chapter, as used in
3 this article:

4 (1) "Beneficial use" means the use or reuse of whole
5 waste tires or tire derived material which are reused in
6 constructing retaining walls, rebuilding highway
7 shoulders and subbase, building highway crash
8 attenuation barriers and other civil engineering
9 applications, feed hopper or watering troughs for
10 livestock, other agricultural uses approved by the
11 Department of Environmental Protection, playground
12 equipment, boat or truck dock construction, house or
13 building construction, go-cart, motorbike or race track
14 barriers, recapping, alternative daily cover or similar
15 types of beneficial applications: *Provided*, That waste
16 tires may not be reused as fencing, as erosion control
17 structures, along stream banks or river banks or reused

18 in any manner where human health or the environment,
19 as determined by the Secretary of the Department of
20 Environmental Protection, is put at risk.

21 (2) "Brand" means the name, symbol, logo,
22 trademark, or other information that identifies a
23 product rather than the components of the product.

24 (3) "Collected for commercial purposes" means taking
25 solid waste for disposal from any person for
26 remuneration regardless of whether or not the person
27 taking the solid waste is a common carrier by motor
28 vehicle governed by article two, chapter twenty-four-a
29 of this code.

30 (4) "Computer" means a desktop, personal computer
31 or laptop computer, including the computer monitor.
32 Computer does not include a personal digital assistant
33 device, computer peripheral devices such as a mouse or
34 other similar pointing device, a printer or a detachable
35 keyboard.

36 (5) "Court" means any circuit, magistrate or
37 municipal court.

38 (6) "Covered electronic device" means a television,
39 computer or video display device with a screen that is
40 greater than four inches measured diagonally.
41 "Covered electronic device" does not include a video
42 display device that is part of a motor vehicle or that is
43 contained within a household appliance or commercial,
44 industrial or medical equipment.

45 (7) "Department" means the Department of
46 Environmental Protection.

47 (8) "Litter" means all waste material, including, but
48 not limited to, any garbage, refuse, trash, disposable
49 package, container, can, bottle, paper, covered
50 electronic devices, ashes, cigarette or cigar butt, carcass
51 of any dead animal or any part thereof or any other
52 offensive or unsightly matter, but not including the
53 wastes of primary processes of mining, logging,
54 sawmilling, farming or manufacturing.

55 (9) "Litter receptacle" means those containers
56 suitable for the depositing of litter at each respective
57 public area designated by the secretary's rules
58 promulgated pursuant to subsection (e), section three of
59 this article.

60 (10) "Manufacturer" means a person that is the brand
61 owner of a covered electronic device or television sold
62 or offered for sale in this state by any means, including
63 transactions conducted through retail sales outlets,
64 catalogs or the internet.

65 (11) "Person" means a natural person, corporation,
66 firm, partnership, association or society and the plural
67 as well as the singular.

68 (12) "Public area" means an area outside of a
69 municipality, including public road and highway
70 rights-of-way, parks and recreation areas owned or
71 controlled by this state or any county of this state or an
72 area held open for unrestricted access by the general
73 public.

74 (13) "Recyclable materials" means those materials
75 that would otherwise become solid waste for disposal in
76 a refuse disposal system and which may be collected,

77 separated or processed and returned to the marketplace
78 in the form of raw materials or products.

79 (14) "Remediate or Remediation" means to remove all
80 litter, solid waste and tires located above grade at a
81 site: *Provided*, That remediation does not include clean
82 up of hazardous waste.

83 (15) "Television" means any telecommunication
84 system device that can receive moving pictures and
85 sound broadcast over a distance and includes a
86 television tuner or a video display device peripheral to
87 a computer in which the display contains a television
88 tuner.

89 (16) "Secretary" means the Secretary of the
90 Department of Environmental Protection.

91 (17) "Video display device" means an electronic
92 device with an output surface that displays or is
93 capable of displaying moving graphical images or
94 visual representations of image sequences or pictures
95 that show a number of quickly changing images on a
96 screen to create the illusion of motion. Video display
97 device includes a device that is an integral part of the
98 display and cannot easily be removed from the display
99 by the consumer and that produces the moving image
100 on the screen. A "video display device" may use a
101 cathode-ray tube (CRT), liquid crystal display (LCD),
102 gas plasma, digital light processing, other
103 image-projection technology or imaging display
104 technologies.

105 (18) "Waste tire" means any continuous solid or
106 pneumatic rubber covering designed to encircle the

107 wheel of a vehicle but which has been discarded,
108 abandoned or is no longer suitable for its original,
109 intended purpose nor suitable for recapping, or other
110 beneficial use because of wear, damage or defect. A tire
111 is no longer considered to be suitable for its original
112 intended purpose when it fails to meet the minimum
113 requirements to pass a West Virginia motor vehicle
114 safety inspection. Used tires located at a commercial
115 recapping facility or tire dealer for the purpose of being
116 reused or recapped are not waste tires.

117 (19) "Waste tire monofill or monofill" means an
118 approved solid waste facility where no solid waste
119 except waste tires are placed for the purpose of long
120 term storage for eventual retrieval for marketing
121 purposes.

122 (20) "Waste tire processing facility" means a solid
123 waste facility or manufacturer that accepts waste tires
124 generated by sources other than the owner or operator
125 of the facility for processing by such means as
126 cryogenics, pyrolysis, pyroprocessing cutting, splitting,
127 shredding, quartering, grinding or otherwise breaking
128 down waste tires for the purposes of disposal, reuse,
129 recycling and/or marketing.

130 (21) "Waters of the state" means generally, without
131 limitation, natural or artificial lakes, rivers, streams;
132 creeks, branches, brooks, ponds, impounding reservoirs,
133 springs, wells, watercourses and wetlands.

**§22-15A-5. Litter pickup and removal; education; government
recycling responsibilities; monitoring and
evaluation; study commission; repeal; report to
Legislature.**

1 (a) *Litter pickup and removal.* —

2 (1) Each county commission and the Regional Jail
3 Authority may establish a jail or prison inmate program
4 including a regular litter pickup work regimen under
5 proper supervision pursuant to section four, article
6 fifteen, chapter seventeen of this code. Funding for
7 these programs shall be from the Litter Control Fund.
8 Funding requirements may include salaries for
9 additional personnel needed for the program. The
10 program may include the cooperative help of the
11 Division of Highways or any other voluntary state,
12 local, private, civic or public agency for personnel,
13 equipment or materials in establishing a county or
14 regionwide, continual program of inmate litter pickup.
15 Upon final approval of the projected cost of the
16 program for a given fiscal year, the secretary shall
17 disburse the approved amount to the county or
18 Regional Jail Authority. The funds will be used by the
19 Authority to reimburse the county commission or
20 Regional Jail Authority for its expenses related to the
21 program and to pay other costs related to the use of
22 inmates for litter pickup. Nothing contained herein
23 shall preclude a county or counties from expending
24 whatever additional funds its commission or
25 commissions may deem appropriate from any other
26 revenue source in furtherance of said program.

27 (2) All persons involved with litter pickup may
28 separate identifiable recyclable materials from other
29 litter collected. The funds resulting from the sale of
30 those recyclable materials shall be returned to the
31 Litter Control Fund.

32 (3) The county or regional solid waste authority may

33 also contract with local governments, civic
34 organizations or chief correctional officers in any
35 county to implement litter pickup and removal
36 pursuant to this act when the state offender workforce
37 is not available. In such cases, the contract provisions
38 shall require that identifiable recyclable materials shall
39 be separated from other litter collected, with resulting
40 funds returned to the Litter Control Fund. Priority
41 shall be given to those contracts that maximize the use
42 of community service hours by inmates and youth
43 employment programs.

44 (b) *Education.* —

45 (1) The Department of Education in cooperation with
46 the Department of Environmental Protection shall
47 distribute educational materials to the schools based on
48 the goals of litter clean up and proper solid waste
49 disposal, the rationale for the goals and how primary
50 and secondary school students can contribute to the
51 achievement of the goals. The Department of
52 Education shall further incorporate this information
53 into the curriculum of the public school system as
54 appropriate.

55 (2) The Division of Highways and local governments
56 shall conduct public awareness programs to notify the
57 public of the provisions of this law and how they can
58 participate, to inform them as to the rationale behind
59 the provisions of this law, to advise them of other
60 avenues for achievement of the noted goals and to
61 encourage their participation.

62 (3) The Department of Environmental Protection and
63 the Solid Waste Management Board shall provide

64 technical assistance to local governments in the
65 implementation of this law.

66 (c) *Government recycling responsibilities.* —

67 (1) All state agencies and regional planning councils
68 may establish and implement aluminum container,
69 glass and paper recycling programs at their public
70 facilities. To the extent practicable, programs for other
71 metals, plastics, covered electronic devices, rubber and
72 other recyclable materials may be established and
73 implemented. The moneys collected from the sale of
74 such materials shall be deposited and accounted for in
75 the Litter Control Fund pursuant to the authority of
76 section four of this article.

77 (2) To further promote recycling and reduction of the
78 waste stream, county and municipal governments shall
79 consider the establishment of recycling programs as
80 provided in this section in the operation of their
81 facilities and shall evaluate the cost effectiveness of:

82 (A) Procedures that separate identifiable recyclable
83 materials from solid waste collected; and

84 (B) Programs that provide for:

85 (i) The establishment of a collection place for
86 recyclables at all landfills and other interim solid waste
87 collection sites and arrangements for the material
88 collected to be recycled;

89 (ii) Public notification of such places and
90 encouragement to participate;

91 (iii) The use of rate differentials at landfills to
92 facilitate public participation in on-site recycling
93 programs.

94 (3) In preparing the recycling plan as required under
95 this subsection, the county may address methods for the
96 separate collection and recycling of covered electronic
97 devices, including efforts by the county with
98 manufacturers, recyclers, retailers or other local
99 governments for the collection and recycling of covered
100 electronic devices.

101 (d) Each affected agency and local government shall
102 monitor and evaluate the programs implemented
103 pursuant to this law.

104 (e) The secretary shall submit a report to the Speaker
105 of the House and the President of the Senate not later
106 than the first day of March, two thousand six, and every
107 five years thereafter regarding the effectiveness of the
108 programs authorized by this law.

**§22-15A-24. Covered manufacturers; prohibited sales;
effective date.**

1 (a) This section, along with sections twenty-five,
2 twenty-six, twenty-seven, twenty-eight and twenty-
3 nine of this article apply to a manufacturer that
4 manufactured an average of more than one thousand
5 covered electronic devices per year in the three-year
6 period immediately preceding the initial registration
7 required in section twenty-five of this article.

8 (b) On or after the first day of July, two thousand
9 nine, a manufacturer may not sell or lease or offer for

10 sale or lease to any person in the state a new covered
11 electronic device or television unless:

12 (1) The covered electronic device is labeled with the
13 name of the manufacturer or the manufacturer's brand
14 label; and

15 (2) The manufacturer has registered with and
16 submitted a registration fee to the secretary as provided
17 in section twenty-five of this article.

18 (c) If a manufacturer is subject to the requirements of
19 sections twenty-four, twenty-five and twenty-six of this
20 article, a retailer may not sell or lease or offer for sale
21 or lease to any person in the state a new covered
22 electronic device unless the manufacturer has complied
23 with the requirements of this section and sections
24 twenty-five and twenty-six of this article.

**§22-15A-25. Manufacturer registration; registration fees;
creating the Covered Electronic Devices
Takeback Fund.**

1 (a) Each manufacturer wishing to sell or lease covered
2 electronic devices shall register with the secretary no
3 later than the first day of January, two thousand nine,
4 and each year thereafter. The secretary shall provide a
5 registration form which at a minimum shall include:

6 (1) The name, address and telephone number of the
7 manufacturer;

8 (2) The brand names under which the manufacturer
9 sells or offers for sale covered electronic devices or
10 televisions in the state;

11 (3) Whether the manufacturer has implemented
12 takeback or recycling program for its covered electronic
13 devices or televisions or both;

14 (4) If the manufacturer has implemented a takeback
15 or recycling program for its covered electronic devices,
16 the manufacturer must provide a toll-free number and
17 website address that provides information about the
18 takeback or recycling program, including a detailed
19 description of how a person may return a covered
20 electronic device for recycling, refurbishing or reuse.

21 (5) The secretary may request additional information
22 necessary to further the goals of this program.

23 (b) One year after the implementation of the program
24 and each year thereafter, the manufacturer must submit
25 a report to the secretary on the implementation of the
26 program during the prior year, including:

27 (1) The total weight of covered electronic devices
28 received by the program from West Virginia during the
29 prior year;

30 (2) The total number of covered electronic devices
31 from West Virginia recycled, refurbished and reused
32 during the prior year either by actual count or by using
33 average product weights;

34 (3) The processes and methods used to recycle,
35 refurbish or reuse the covered electronic devices
36 received from West Virginia; and

37 (4) If the manufacturer has implemented a covered
38 electronic device or television takeback program, be

39 updated prior to any significant change in the program.

40 (c) The covered electronic device manufacturer
41 registration fee is:

42 (1) Ten thousand dollars for the initial registration by
43 the manufacturer that has not implemented a takeback
44 program and is due no later than the first day of
45 January, two thousand nine;

46 (2) Three thousand dollars for the initial registration
47 by the manufacturer that has implemented a takeback
48 program and is due no later than the first day of
49 January, two thousand nine;

50 (3) Five thousand dollars for each subsequent annual
51 registration by a manufacturer that did not have an
52 implemented covered electronic device takeback
53 program in the prior year; and

54 (4) Five hundred for each subsequent annual
55 registration by a manufacturer that had implemented
56 and maintained a covered electronic device takeback
57 program in the prior year.

58 (d) All registration fees collected shall be deposited in
59 a special account in the State Treasury to be known as
60 the Covered Electronic Devices Takeback Fund which
61 is to be administered by the secretary. Expenditures
62 from the fund shall be for recycling grants to counties
63 and municipalities for recycling or other programs that
64 divert covered electronic devices from the waste stream
65 and for the secretary's administrative expense in
66 administering the requirements of sections twenty-four,
67 twenty-five, twenty-six, twenty-seven and twenty-eight

68 of this article. Expenditures are not authorized from
69 collections but are to be made only in accordance with
70 the appropriation by the Legislature and in accordance
71 with the provisions of article three, chapter twelve of
72 this code and upon fulfillment of the provisions of
73 article two, chapter eleven-b of this code: *Provided*,
74 That for the fiscal year ending the thirtieth day of June,
75 two thousand nine, expenditures are authorized from
76 collections rather than pursuant to appropriation by
77 the Legislature.

78 (e) The secretary shall review the registration
79 submitted under this section. If the registration does
80 not meet the requirements of this section and the rules
81 adopted by the secretary, the secretary shall notify the
82 manufacturer of the insufficiency.

83 (f) Within sixty days after receipt of a notice of
84 insufficiency, the manufacturer shall submit a revised
85 registration that addresses the insufficiencies noted by
86 the secretary.

87 (g) The secretary shall maintain a list of registered
88 covered electronic device manufacturers.

89 (h) The secretary shall publish the list of registered
90 covered electronic device manufacturers online to
91 provide retailers easy access to the manufacturers
92 authorized to sell their products in this state.

§22-15A-26. Manufacturers' takeback programs.

1 (a) Before a manufacturer may offer a covered
2 electronic device for sale or lease in this state, the
3 manufacturer may:

4 (1) Adopt and implement a takeback program; and

5 (2) Affix a permanent, readily visible label to the
6 covered electronic device or television with the
7 manufacturer's brand.

8 (b) The takeback program shall enable a consumer to
9 recycle covered electronic devices or televisions without
10 paying a separate recycling fee at the time of recycling
11 and shall include provisions for;

12 (1) The manufacturer's collection from a consumer of
13 any covered electronic device that has reached the end
14 of its useful life and is labeled with the manufacturer's
15 brand; and

16 (2) Recycling or reuse of covered electronic devices
17 collected under subdivision one of this section.

18 (c) The collection of covered electronic devices
19 provided under the takeback program must be
20 reasonable, convenient and available to consumers in
21 the state and designed to meet the collection needs of
22 consumers in the state. Examples of collection methods
23 that alone or combined meet the convenience
24 requirements of this section include:

25 (1) A system by which the manufacturer or the
26 manufacturer's designee offers the consumer a system
27 for returning covered electronic devices by mail at no
28 charge to the consumer.

29 (2) A system using a physical collection site that the
30 manufacturer or the manufacturer's designee operates
31 and to which the consumer may return covered

32 electronic devices.

33 (3) A system using collection events held by the
34 manufacturer or the manufacturer's designee at which
35 the consumer may return covered electronic devices.

36 (d) Collection services under this section may use
37 existing collection infrastructure for handling covered
38 electronic devices and should encourage the inclusion
39 of systems jointly managed by a group of
40 manufacturers, electronic recyclers and repair shops,
41 recyclers of other commodities, reuse organizations,
42 not-for-profit corporations, retailers, recyclers and
43 other suitable operations. If a manufacturer or its
44 designee offers a mail-back system as described in this
45 section, either individually, by working together with a
46 group of manufacturers or by working with others, it
47 shall be deemed to meet the convenience requirements
48 of this section.

49 (e) The takeback program shall include information
50 for the consumer on how and where to return the
51 manufacturer's covered electronic device. The
52 manufacturer shall include collection, recycling and
53 reuse information on the manufacturer's publicly
54 available website. The manufacturer shall provide
55 collection, recycling and reuse information to the
56 secretary. The manufacturer may include collection,
57 recycling and reuse information in the packaging or in
58 the other materials that accompany the manufacturer's
59 covered electronic devices when the equipment is sold.

60 (f) If more than one person is a manufacturer of a
61 certain brand of covered electronic devices as defined
62 in section two of this article, any of persons may assume

63 responsibility for and satisfy the obligations of a
64 manufacturer under this article for that brand. If none
65 of those persons assumes responsibility or satisfies the
66 obligations of a manufacturer for the covered electronic
67 devices of that brand, the secretary may consider any of
68 those persons to be the responsible manufacturer for
69 purposes of sections twenty-four, twenty-five, twenty-
70 six and twenty-seven of this article.

**§22-15A-27. Civil actions and administrative fines; powers
and duties of secretary.**

1 (a) *Civil action.* — In addition to being subject to
2 injunctive relief under this article, a manufacturer who
3 violates any provision of section twenty-four or
4 twenty-five of this article or of any rule adopted
5 pursuant to section twenty-four or twenty-five of this
6 article is liable for a civil penalty not to exceed ten
7 thousand dollars to be collected in a civil action
8 brought by the secretary. Venue for such actions shall
9 be in the circuit court of Kanawha County. Each day a
10 violation occurs is a separate violation.

11 (b) *Administrative action.* — (1) In addition to any
12 other remedies available at law and after an opportunity
13 for a hearing which may be waived in writing by the
14 person accused of a violation, the secretary may impose
15 a penalty for violation of any provision of section
16 twenty-four or twenty-five of this article or any rule
17 adopted thereunder. The secretary's decision may be
18 appealed to the Environmental Quality Board.

19 (2) The penalty imposed on a person under this
20 subsection shall be up to one thousand dollars for each
21 violation, but not to exceed a total of fifty thousand

22 dollars a year. Each day a violation occurs is a separate
23 violation under this subsection.

24 (3) Any penalty imposed under this subsection is
25 payable to the State of West Virginia and collectible in
26 any manner provided by law for the collection of debts.

27 (4) Any penalty collected under this section shall be
28 placed in the Covered Electronic Devices Takeback
29 Fund.

30 (c) *Powers and duties of secretary.* — The secretary
31 may conduct audits and inspections to determine
32 compliance with the provisions of sections twenty-four
33 and twenty-five of this article and may take
34 enforcement action as provided herein. The secretary
35 may remove a manufacturer from the registration list
36 for failure to pay any penalty imposed under this
37 section and upheld on appeal.

§22-15A-28. Retailer penalties.

1 (a) The secretary may assess against any retailer that
2 sells covered electronic devices not authorized for sale
3 in this state a penalty up to five hundred dollars for
4 each violation, but not to exceed five thousand total for
5 the year. The secretary's decision may be appealed to
6 the Environmental Quality Board.

7 (b) A fine under subsection (a) of this section may be
8 assessed only after the retailer that committed the
9 violation has been issued three warnings from the
10 secretary regarding the violation.

11 (c) Each day on which a violation occurs or continues

12 is a separate violation under this section.

13 (d) All penalties assessed under this section shall be
14 deposited into the Covered Electronic Devices
15 Takeback Fund.

§22-15A-29. Rulemaking.

1 The secretary shall propose for promulgation
2 emergency and legislative rules in accordance with the
3 provisions of article three, chapter twenty-nine-a of
4 this code necessary to implement the provisions of
5 sections twenty-four through twenty-eight, inclusive, of
6 this article by the first day of January, two thousand
7 nine.

A handwritten signature in black ink, appearing to be "John J. ...", is located at the bottom of the page. The signature is written in a cursive style and is somewhat faint.

Enr. Com. Sub. for S. B. No. 746] 20

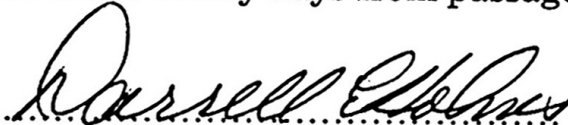
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

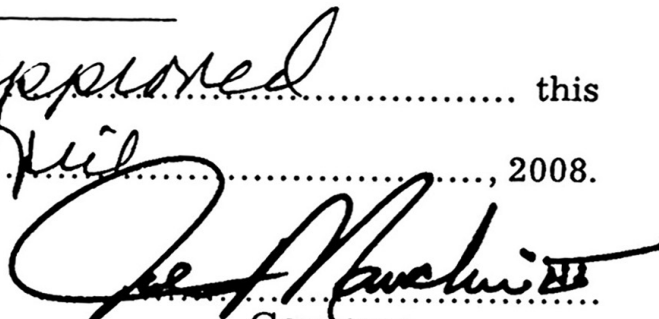

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is* approved this
the *18th* Day of *April*, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 10:05 am