

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 644

Introduced by Mello, 5; Haar, 21.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to recycling; to amend sections 81-1504.01
2 and 81-15,160, Reissue Revised Statutes of Nebraska; to
3 adopt the Electronics Recycling Act; to provide fees;
4 to provide for a report regarding and grants from the
5 Waste Reduction and Recycling Incentive Fund; to delete
6 obsolete provisions; to harmonize provisions; to provide
7 severability; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Electronics Recycling Act.

3 Sec. 2. The purpose of the Electronics Recycling Act is
4 to establish a comprehensive electronic device recycling system
5 that ensures the safe and environmentally sound management of
6 electronic devices and encourages the design of electronic devices
7 that are recyclable and less toxic.

8 Sec. 3. For purposes of the Electronics Recycling Act:

9 (1) Computer means a desktop, portable or laptop,
10 electronic, magnetic, optical, electrochemical, or other high-speed
11 data processing device which is capable of performing logical,
12 arithmetic, or storage functions, and includes, but is not limited
13 to, a computer central processing unit and a monitor. Computer
14 does not include an automated typewriter or typesetter, a portable
15 handheld calculator, a portable digital assistant, or other similar
16 device;

17 (2) Department means the Department of Environmental
18 Quality;

19 (3) (a) Electronic device means a computer, monitor, video
20 display device, or television, intended for use in a home or
21 residential environment and marketed to the general public; and

22 (b) Electronic device does not include:

23 (i) An electronic device that is a part of a motor
24 vehicle or any component part of a motor vehicle assembled by
25 or for a vehicle manufacturer or franchise dealer, including

1 replacement parts for use in a motor vehicle;

2 (ii) An electronic device that is functionally or
3 physically a part of a larger piece of equipment that is designed
4 or intended for use in an industrial, commercial, governmental,
5 or medical setting, including diagnostic, monitoring, or control
6 equipment;

7 (iii) An electronic device that is contained within
8 a clothes washer, clothes dryer, refrigerator, refrigerator and
9 freezer, microwave oven, conventional oven or range, dishwasher,
10 room air conditioner, dehumidifier, or air purifier; or

11 (iv) A telephone of any type unless it contains a video
12 display area greater than nine inches measured diagonally or any
13 hand-held device used to access commercial mobile radio service as
14 referenced in 47 C.F.R. 20.9, as such regulation existed on January
15 1, 2009;

16 (4) Manufacturer means a person who:

17 (a) Sells electronic devices under its own brand or label
18 for sale in the United States;

19 (b) Sells electronic devices in this state without
20 affixing a brand or label onto such device;

21 (c) Resells in this state under its own brand or label
22 electronic devices manufactured by another firm or entity, unless
23 the firm or entity which manufactured the electronic devices sold
24 under the brand or label of the reseller meets the registration
25 requirements of the act;

1 (d) Imports electronic devices into the United States. If
2 the company from whom an importer purchases the electronic device
3 has a presence or assets in the United States, that company shall
4 be deemed to be the manufacturer; or

5 (e) Manufactures electronic devices, supplies them to any
6 person within a distribution network that includes wholesalers or
7 retailers in this state, and benefits from the sale in this state
8 of such electronic devices through the distribution network;

9 (5) Monitor means a separate video display component of
10 a computer that does not contain a tuner, whether sold separately
11 or together with a computer central processing unit or computer
12 box, and includes a cathode ray tube, liquid crystal display,
13 gas plasma, digital light processing, or other image projection
14 technology having a viewable area greater than four inches when
15 measured diagonally, and its case, interior wires, and circuitry;

16 (6) Recycling means any process by which an electronic
17 device that would otherwise have become solid waste or hazardous
18 waste is collected, separated, and processed to be returned to
19 use in the form of raw materials or products or is refurbished or
20 donated for reuse;

21 (7) Television means a stand-alone display system
22 containing a cathode ray tube, liquid crystal display, gas plasma,
23 digital light processing, or other type of display primarily
24 intended to receive video programming via broadcast, having a
25 viewable area greater than four inches when measured diagonally,

1 able to adhere to standard consumer video requirements, and having
2 the capability of selecting different broadcast channels and
3 support sound capability; and

4 (8) Video display device means a device that has an
5 output surface having a viewable area greater than four inches
6 when measured diagonally that displays moving graphical images or
7 a visual representation of image sequences or pictures and shows a
8 number of quickly changing images on a screen in fast succession
9 to create the illusion of motion, including, but not limited to,
10 a device that is an integral part of the display that cannot be
11 easily removed from the display by the consumer and that produces
12 the moving image on the screen and includes technology using a
13 cathode ray tube, liquid crystal display, gas plasma, digital light
14 processing, or other image projection technology.

15 Sec. 4. Beginning July 1, 2010, no manufacturer shall
16 offer for sale in this state a new electronic device if the
17 manufacturer is not in compliance with the Electronics Recycling
18 Act.

19 Sec. 5. (1) On or before January 31, 2010, and each
20 January 31 thereafter, a manufacturer who sold at least five
21 hundred electronic devices in this state in the previous calendar
22 year shall register and certify with the department whether the
23 number of electronic devices sold in this state by the manufacturer
24 in the previous calendar year falls within subdivision (1)(a),
25 (b), or (c) of section 6 of this act and which subdivision is

1 applicable.

2 (2) On or before January 31, 2011, and each January 31
3 thereafter, in order to receive a reduction in the registration fee
4 pursuant to subsection (2) of section 6 of this act, a manufacturer
5 or group of manufacturers shall certify to the department the
6 number of electronic devices recycled as a percentage of the number
7 of electronic devices that the manufacturer or manufacturers sold
8 in this state in the previous calendar year in a manner that is
9 in compliance with all applicable federal, state, and local laws,
10 regulations, and ordinances and that the electronic devices were
11 not exported for disposal in a manner that poses a significant risk
12 to the public health or the environment.

13 Sec. 6. (1) On or before January 31, 2010, and each
14 January 31 thereafter, a manufacturer shall remit to the department
15 the following registration fee based on the number of electronic
16 devices sold in this state by the manufacturer in the previous
17 calendar year:

18 (a) One thousand dollars for sales of five hundred to one
19 thousand electronic devices;

20 (b) Seven thousand five hundred dollars for sales of more
21 than one thousand to five thousand electronic devices; or

22 (c) Twenty thousand dollars for sales of more than five
23 thousand electronic devices.

24 (2)(a) Beginning January 31, 2011, the registration fee
25 prescribed in subsection (1) of this section shall be reduced

1 pursuant to subdivision (b) of this subsection if the manufacturer
2 or group of manufacturers has certified to the department
3 the percentage of electronic devices recycled as described in
4 subsection (2) of section 5 of this act.

5 (b) If the percentage certified pursuant to subsection
6 (2) of section 5 of this act is at least ten percent and less
7 than twenty percent, the manufacturer or group of manufacturers
8 shall receive a ten percent reduction in the registration fee.
9 If the percentage certified is at least twenty percent and less
10 than thirty percent, such reduction shall be twenty percent. If
11 the percentage certified is thirty percent or more, such reduction
12 shall be fifty percent.

13 Sec. 7. The department shall:

14 (1) Collect the fees as prescribed in section 6 of this
15 act and remit such fees to the State Treasurer for credit to the
16 Waste Reduction and Recycling Incentive Fund;

17 (2) Beginning in FY2011-12 and each fiscal year
18 thereafter, review and adjust the fee structure in section 6 of
19 this act to ensure that fees are adequate to collect a minimum
20 of one million dollars and a maximum of one million five hundred
21 thousand dollars in the following fiscal year; and

22 (3) Exercise all powers necessary and appropriate to
23 carry out the Electronics Recycling Act.

24 Sec. 8. A manufacturer shall provide, at no cost to
25 the consumer, a method of returning an electronic device to

1 the manufacturer, including a postage-paid mailing package or
2 designated collection points throughout the state, and shall not
3 impose a fee or other charge on a consumer for the collection,
4 transportation, handling, recycling, or reuse of electronic devices
5 at the time and place of collection for recycling.

6 Sec. 9. The Director of Environmental Quality shall
7 discontinue the collection of fees under the Electronics Recycling
8 Act if he or she determines that a federal law has taken effect
9 and that such law is applicable to all electronic devices sold
10 in the United States and establishes a program for the collection
11 and recycling or reuse of all electronic devices discarded by
12 consumers.

13 Sec. 10. All fees remitted pursuant to the Electronics
14 Recycling Act, after deducting costs of program administration,
15 shall be used pursuant to subsection (6) of section 81-15,160
16 to award grants for education and information about electronics
17 recycling, infrastructure development, and the collection,
18 transportation, and recycling of electronic devices. Any unused
19 fees shall be carried over and available for grants in the
20 following year.

21 Sec. 11. The Environmental Quality Council may adopt
22 and promulgate rules and regulations to carry out the Electronics
23 Recycling Act.

24 Sec. 12. Section 81-1504.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 81-1504.01 The Department of Environmental Quality shall
2 provide the following information to the Governor and to the Clerk
3 of the Legislature by December 1 of each year:

4 (1) A report by type of service or aid provided by the
5 use and distribution of federal funds received by the department.
6 The report shall also include user fees, permit fees, license
7 fees, and application fees authorized by the federal Environmental
8 Protection Agency as follows:

9 (a) Actual expenditure of each grant or authorized fees
10 for the most recently completed state fiscal year, including state
11 matching funds;

12 (b) Current budget and planned use and distribution of
13 each grant and authorized fees for the current state fiscal year,
14 including state matching funds;

15 (c) A summary of the projected funding level of each
16 grant and authorized fees and the impact of federal mandates and
17 regulations upon the future use of each grant and authorized fees;
18 and

19 (d) Program summaries including statistical summaries
20 when applicable for the most recently completed state fiscal year
21 and program activity goals for the current state fiscal year;

22 (2) A summary of regulations of the federal Environmental
23 Protection Agency which the department is required to implement and
24 which do not include federal funding assistance and the possible
25 financial impact to the state and political subdivisions;

1 (3) A report by type of service or aid provided by the
2 use and distribution of state general and cash funds, including
3 user fees, permit fees, license fees, and application fees, to
4 carry out activities that are not funded by federal grants as
5 follows:

6 (a) Actual expenditure of state funds, by agency
7 sections, for the most recently completed state fiscal year,
8 including a breakdown of expenditures by personal services,
9 operations, travel, capital outlay, and consulting and contractual
10 services;

11 (b) Current budget and planned use and distribution of
12 state funds, by agency sections, for the current state fiscal
13 year, including a breakdown of expenditures for personal services,
14 operations, travel, capital outlay, and consulting and contractual
15 services;

16 (c) A summary of projected program funding needs based
17 upon the statutory requirements and public demand for services and
18 the department's assessment of anticipated needs statewide; and

19 (d) Program summaries including statistical summaries
20 when applicable for the most recently completed state fiscal year
21 and program activity goals for the current state fiscal year;

22 (4) A report regarding staff turnover by job class and
23 the department's assessment of its ability to hire and retain
24 qualified staff considering the state's personnel pay plan;

25 (5) A report listing the method used by each new or

1 existing licensee, permittee, or other person who is required by
2 the department to establish proof of financial responsibility; ~~and~~

3 (6) A report for the previous state fiscal year relating
4 to the purpose of the Nebraska Litter Reduction and Recycling
5 Act and of funds credited to the Nebraska Litter Reduction and
6 Recycling Fund; ~~and-~~

7 (7) A report for the previous state fiscal year relating
8 to the funds credited to the Waste Reduction and Recycling
9 Incentive Fund pursuant to section 7 of this act.

10 Sec. 13. Section 81-15,160, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 81-15,160 (1) The Waste Reduction and Recycling Incentive
13 Fund is created. The department shall deduct from the fund amounts
14 sufficient to reimburse itself for its costs of administration
15 of the fund. The fund shall be administered by the Department
16 of Environmental Quality. The fund shall consist of proceeds from
17 the fees imposed pursuant to the Waste Reduction and Recycling
18 Incentive Act and the Electronics Recycling Act.

19 (2) The fund may be used for purposes which include, but
20 are not limited to:

21 (a) Technical and financial assistance to political
22 subdivisions for creation of recycling systems and for modification
23 of present recycling systems;

24 (b) Recycling and waste reduction projects, including
25 public education, planning, and technical assistance;

1 (c) Market development for recyclable materials separated
2 by generators, including public education, planning, and technical
3 assistance;

4 (d) Capital assistance for establishing private and
5 public intermediate processing facilities for recyclable materials
6 and facilities using recyclable materials in new products;

7 (e) Programs which develop and implement composting of
8 yard waste and composting with sewage sludge;

9 (f) Technical assistance for waste reduction and waste
10 exchange for waste generators;

11 (g) Programs to assist communities and counties to
12 develop and implement household hazardous waste management
13 programs; and

14 (h) Capital assistance for establishing private and
15 public facilities to manufacture combustible waste products and
16 to incinerate combustible waste to generate and recover energy
17 resources, except that no disbursements shall be made under this
18 section for scrap tire processing related to tire-derived fuel.

19 ~~The State Treasurer shall transfer two million one~~
20 ~~hundred thousand dollars from the Waste Reduction and Recycling~~
21 ~~Incentive Fund to the General Fund within five days after August~~
22 ~~16, 2002.~~

23 (3) Grants up to one million dollars annually shall be
24 available until June 30, 2009, for new scrap tire projects only, if
25 acceptable scrap tire project applications are received. Eligible

1 categories of disbursement under section 81-15,161 may include, but
2 are not limited to:

3 (a) Reimbursement for the purchase of crumb rubber
4 generated and used in Nebraska, with disbursements not to exceed
5 fifty percent of the cost of the crumb rubber;

6 (b) Reimbursement for the purchase of tire-derived
7 product which utilizes a minimum of twenty-five percent recycled
8 tire content, with disbursements not to exceed twenty-five percent
9 of the product's retail cost; ~~except that persons who applied for~~
10 ~~a grant between June 1, 1999, and May 31, 2001, for the purchase~~
11 ~~of tire-derived product which utilizes a minimum of twenty-five~~
12 ~~percent recycled tire content may apply for reimbursement on or~~
13 ~~before July 1, 2002. Reimbursement shall not exceed twenty-five~~
14 ~~percent of the product's retail cost and may be funded in fiscal~~
15 ~~years 2001-02 and 2002-03;~~

16 (c) Participation in the capital costs of building,
17 equipment, and other capital improvement needs or startup costs
18 for scrap tire processing or manufacturing of tire-derived product,
19 with disbursements not to exceed fifty percent of such costs or
20 five hundred thousand dollars, whichever is less;

21 (d) Participation in the capital costs of building,
22 equipment, or other startup costs needed to establish collection
23 sites or to collect and transport scrap tires, with disbursements
24 not to exceed fifty percent of such costs;

25 (e) Cost-sharing for the manufacturing of tire-derived

1 product, with disbursements not to exceed twenty dollars per ton
2 or two hundred fifty thousand dollars, whichever is less, to any
3 person annually;

4 (f) Cost-sharing for the processing of scrap tires, with
5 disbursements not to exceed twenty dollars per ton or two hundred
6 fifty thousand dollars, whichever is less, to any person annually;

7 (g) Cost-sharing for the use of scrap tires for civil
8 engineering applications for specified projects, with disbursements
9 not to exceed twenty dollars per ton or two hundred fifty thousand
10 dollars, whichever is less, to any person annually; and

11 (h) Disbursement to a political subdivision up to one
12 hundred percent of costs incurred in cleaning up scrap tire
13 collection and disposal sites.

14 The director shall give preference to projects which
15 utilize scrap tires generated and used in Nebraska.

16 (4) Priority for grants made under section 81-15,161
17 shall be given to grant proposals demonstrating a formal
18 public/private partnership except for grants awarded from fees
19 collected under subsection (6) of section 13-2042.

20 (5) Grants awarded from fees collected under subsection
21 (6) of section 13-2042 may be renewed for up to a five-year
22 grant period. Such applications shall include an updated integrated
23 solid waste management plan pursuant to section 13-2032. Annual
24 disbursements are subject to available funds and the grantee
25 meeting established grant conditions. Priority for such grants

1 shall be given to grant proposals showing regional participation
2 and programs which address the first integrated solid waste
3 management hierarchy as stated in section 13-2018 which shall
4 include toxicity reduction. Disbursements for any one year shall
5 not exceed fifty percent of the total fees collected after rebates
6 under subsection (6) of section 13-2042 during that year.

7 (6) Grants for education and information about
8 electronics recycling, infrastructure development, and the
9 collection, transportation, and recycling of electronic devices
10 shall be awarded by the Department of Environmental Quality.

11 ~~(6)~~ (7) Any person who stores waste tires in violation
12 of section 13-2033, which storage is the subject of abatement
13 or cleanup, shall be liable to the State of Nebraska for the
14 reimbursement of expenses of such abatement or cleanup paid by the
15 Department of Environmental Quality.

16 ~~(7)~~ (8) The Department of Environmental Quality may
17 receive gifts, bequests, and any other contributions for deposit
18 in the Waste Reduction and Recycling Incentive Fund. Any money in
19 the fund available for investment shall be invested by the state
20 investment officer pursuant to the Nebraska Capital Expansion Act
21 and the Nebraska State Funds Investment Act.

22 Sec. 14. If any section in this act or any part of any
23 section is declared invalid or unconstitutional, the declaration
24 shall not affect the validity or constitutionality of the remaining
25 portions.

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- 1 Sec. 15. Original sections 81-1504.01 and 81-15,160,
- 2 Reissue Revised Statutes of Nebraska, are repealed.