

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 626

Introduced by Mello, 5.

Read first time January 19, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to recycling; to amend section 81-1504.01,
2 Reissue Revised Statutes of Nebraska, and sections
3 13-2039 and 81-15,160, Revised Statutes Cumulative
4 Supplement, 2010; to adopt the Electronics Recycling and
5 Job Creation Act; to prohibit landfill disposal of
6 certain electronic devices as prescribed; to provide for
7 reports and for grants from the Waste Reduction and
8 Recycling Incentive Fund; to provide duties for the
9 Director of Environmental Quality; to harmonize
10 provisions; to provide severability; to repeal the
11 original sections; and to declare an emergency.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Electronics Recycling and Job Creation Act.

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

8 Sec. 3. For purposes of the Electronics Recycling and Job
9 Creation Act:

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

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

20 (3)(a) Electronic device means a computer, monitor, video
21 display device, television, peripheral, portable digital video disc
22 player, stereo, or tape player, intended for use in a home or
23 residential environment and marketed to the general public.

24 (b) Electronic device does not include:

25 (i) A device that is a part of a motor vehicle or any

1 component part of a motor vehicle assembled by or for a vehicle
2 manufacturer or franchise dealer, including replacement parts for use
3 in a motor vehicle;

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

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

12 (iv) A telephone of any type unless it contains a video
13 display area greater than nine inches measured diagonally or any
14 hand-held device used to access commercial mobile radio service as
15 referenced in 47 C.F.R. 20.9, as such regulation existed on January
16 1, 2011;

17 (4) Manufacturer means a person who:

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

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

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

1 requirements of the act;

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

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

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

17 (6) Peripheral means a keyboard, a printer, a mouse, or
18 any other device that (a) is sold exclusively for external use with a
19 computer and (b) provides input or output into or from a computer;

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

25 (8) Television means a stand-alone display system

1 containing a cathode ray tube, liquid crystal display, gas plasma,
2 digital light processing, or other type of display primarily intended
3 to receive video programming via broadcast, having a viewable area
4 greater than four inches when measured diagonally, able to adhere to
5 standard consumer video requirements, and having the capability of
6 selecting different broadcast channels and support sound capability;
7 and

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

19 Sec. 4. Beginning July 1, 2012, no manufacturer shall
20 offer for sale in this state a new electronic device if the
21 manufacturer is not in compliance with the Electronics Recycling and
22 Job Creation Act.

23 Sec. 5. (1) On or before January 31, 2012, and each
24 January 31 thereafter, a manufacturer who sold at least five hundred
25 electronic devices in this state in the previous calendar year shall

1 register with and certify to the department the number of electronic
2 devices sold in this state by the manufacturer in the previous
3 calendar year.

4 (2) On or before January 31, 2013, and each January 31
5 thereafter, in order to receive a reduction in the registration fee
6 pursuant to subsection (2) of section 6 of this act, a manufacturer
7 shall certify to the department the number of pounds of electronic
8 devices recycled as a percentage of the number of pounds of
9 electronic devices that the manufacturer sold in this state in the
10 previous calendar year in a manner that is in compliance with
11 subdivision (3) of section 8 of this act.

12 Sec. 6. (1) On or before January 31, 2012, and each
13 January 31 thereafter, a manufacturer shall remit to the department
14 the following registration fee based on the number of electronic
15 devices sold in this state by the manufacturer in the previous
16 calendar year:

17 (a) One thousand two hundred fifty dollars for sales of
18 twenty-five but not more than two hundred fifty electronic devices;

19 (b) Five thousand dollars for sales of more than two
20 hundred fifty but not more than one thousand electronic devices; and

21 (c) Ten thousand dollars for sales of more than one
22 thousand electronic devices.

23 (2) Beginning January 31, 2013, the registration fee
24 prescribed in subsection (1) of this section shall be reduced by
25 fifty percent if the percentage of electronic devices certified under

1 section 5 of this act is not less than sixty percent.

2 (3) This section shall not be construed to permit
3 manufacturers to cease recycling electronic devices after its
4 certified percentage pursuant to subsection (2) of section 5 of this
5 act reaches sixty percent.

6 Sec. 7. On and after July 1, 2012, no person shall
7 operate as a recycler in Nebraska unless that person has registered
8 with the department on a form prescribed by the department and paid a
9 registration fee of fifty dollars. Registration information shall
10 include the name, address, telephone number, and location of all
11 recycling facilities under the direct control of the recycler that
12 may receive electronic devices from households and a certification
13 that the recycler has complied and will continue to comply with the
14 requirements of the Electronics Recycling and Job Creation Act. A
15 registered recycler may conduct recycling activities that are
16 consistent with the act. A registration is effective upon receipt by
17 the department and is valid until the ensuing July 1. As part of the
18 registration process, each recycler shall certify that the recycler
19 uses no correctional facility inmates to recycle electronic devices.

20 Sec. 8. The department shall:

21 (1) Collect the fees as prescribed in sections 6 and 7 of
22 this act and remit such fees to the State Treasurer for credit to the
23 Waste Reduction and Recycling Incentive Fund;

24 (2) Beginning in fiscal year 2013-14 and each fiscal year
25 thereafter, review and adjust the fee structure in section 6 of this

1 act to ensure that fees are adequate to collect a minimum of one
2 million dollars and a maximum of one million five hundred thousand
3 dollars in the following fiscal year;

4 (3) Adopt and promulgate rules and regulations containing
5 standards for recycling or reuse of electronic devices in this state.
6 Such standards shall meet or exceed the standards contained in
7 Responsible Recycling Practices for Use in Accredited Certification
8 Programs for Electronics Recyclers issued by the United States
9 Environmental Protection Agency; and

10 (4) Exercise all powers necessary and appropriate to
11 carry out the Electronics Recycling and Job Creation Act.

12 Sec. 9. A manufacturer shall provide, at no cost to the
13 consumer, a method of returning an electronic device to the
14 manufacturer, including a postage-paid mailing package or designated
15 collection points throughout the state, and shall not impose a fee or
16 other charge on a household or a school for the collection,
17 transportation, handling, recycling, or reuse of electronic devices
18 at the time and place of collection for recycling. A recycler may
19 charge a fee to any customer other than a household or a school for
20 curbside or other collection services.

21 Sec. 10. The Director of Environmental Quality shall
22 discontinue the collection of fees under the Electronics Recycling
23 and Job Creation Act if he or she determines that a federal law has
24 taken effect that is applicable to all electronic devices sold in the
25 United States and establishes a program for the collection and

1 recycling or reuse of all electronic devices discarded by consumers.

2 Sec. 11. All fees remitted pursuant to the Electronics
3 Recycling and Job Creation Act, after deducting costs of program
4 administration, shall be used pursuant to subsection (6) of section
5 81-15,160 to award grants for creation and retention of jobs in the
6 electronics recycling industry, education and information about
7 electronics recycling, infrastructure development, and the
8 collection, transportation, and recycling of electronic devices. Any
9 unused fees shall be carried over and available for grants in the
10 following year. Grants awarded under this section may be awarded to
11 either public or private entities and shall be equally distributed
12 among the congressional districts as such districts existed on
13 January 1, 2011.

14 Sec. 12. The Environmental Quality Council may adopt and
15 promulgate rules and regulations to carry out the Electronics
16 Recycling and Job Creation Act.

17 Sec. 13. Section 13-2039, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 13-2039 (1)(a) A landfill may accept yard waste without
20 condition from December 1 through March 31 of each year.

21 (b) A landfill may accept yard waste year-round if such
22 yard waste:

23 (i) Will be used for the production and recovery of
24 methane gas for use as fuel (A) with the approval of the department
25 and (B) at a landfill operating as a solid waste management facility

1 with a permit issued pursuant to the department's rules and
2 regulations; or

3 (ii) Has been separated at its source from other solid
4 waste and will be used for the purpose of soil conditioning or
5 composting.

6 (c) State and local governmental entities responsible for
7 the maintenance of public lands shall give preference to the use of
8 composted materials in all land maintenance activities. This section
9 does not prohibit the use of yard waste as land cover or as soil-
10 conditioning material.

11 (2) Land disposal of lead-acid batteries and waste oil is
12 prohibited.

13 (3)(a) Land disposal of waste tires in any form is
14 prohibited except tires that are nonrecyclable. For purposes of this
15 subsection, nonrecyclable tire means a press-on solid tire, a solid
16 pneumatic shaped tire, or a foam pneumatic tire.

17 (b) On and after September 1, 2003, placing or causing
18 the placement or disposal of scrap tires in any form into the waters
19 of the state is prohibited except as provided in section 13-2033.

20 (c) Tires are not considered disposed if they are (i)
21 processed into crumb rubber form and reused or recycled in
22 manufactured products such as, but not limited to, products used for
23 schools, playgrounds, and residential, lawn, and garden applications,
24 (ii) used as safety barriers for race courses for motorized vehicles,
25 on the condition that the tires are bolted together and properly

1 wrapped, and not in loose, compressed, or baled form, (iii) used as
2 tire-derived fuel, (iv) retreaded, (v) processed into chip or shred
3 form and used as drainage media in landfill construction or septic
4 drain fields, (vi) used as a raw material in steelmaking, or (vii)
5 processed into shred form and used as an alternative daily cover in a
6 landfill or for a civil engineering project if such project is
7 designed and constructed in compliance with the Engineers and
8 Architects Regulation Act and prior approval for such project is
9 obtained from the department by the tire shredder and the end user,
10 except that departmental approval is not necessary for a tire project
11 involving three thousand five hundred or fewer passenger tire
12 equivalents of waste tires if the department receives notification of
13 the project not later than thirty days prior to any construction on
14 such project. The notification shall contain the name and address of
15 the tire shredder and end user, the location of the project, a
16 description of the type of project, the number of passenger tire
17 equivalents of waste tires to be used, and any additional information
18 the council determines is necessary to accomplish the purposes of the
19 Integrated Solid Waste Management Act.

20 A race sponsor using tires as safety barriers pursuant to
21 subdivision (3)(c)(ii) of this section prior to October 1, 2006,
22 shall file an approved tire disposal plan with the department on or
23 before January 1, 2007. A race sponsor using tires as safety barriers
24 on or after October 1, 2006, shall file an approved tire disposal
25 plan with the department prior to the sponsor's first such use of

1 tires. An approved tire disposal plan shall provide for the disposal
2 of tires which cease to be used as safety barriers in accordance with
3 subsection (3) of section 13-2033, and any such race sponsor who
4 ceases to use tires as safety barriers or whose facility ceases
5 operation shall dispose of such tires in accordance with his or her
6 approved tire disposal plan. Any modification to an approved tire
7 disposal plan shall be submitted to and approved by the department
8 prior to implementation of such modified plan. An approved tire
9 disposal plan shall continue in effect as long as such sponsor uses
10 tires as safety barriers.

11 (4) Land disposal of discarded household appliances is
12 prohibited.

13 (5) Land disposal of unregulated hazardous wastes, except
14 household hazardous wastes, which are exempt from the regulations
15 under the Environmental Protection Act is prohibited unless such
16 disposal occurs at a licensed hazardous waste disposal facility.

17 (6) On and after July 1, 2016, a person may not dispose
18 of an electronic device as defined in section 3 of this act
19 containing a cathode-ray tube in a landfill. On or before July 1,
20 2015, the department shall report to the Legislature on the
21 development of the electronics recycling industry in Nebraska.

22 ~~(6)-(7)~~ For purposes of this section, land disposal shall
23 include, but not be limited to, incineration at a landfill.

24 Sec. 14. 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 of
3 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. The
6 report shall also include user fees, permit fees, license fees, and
7 application fees authorized by the federal Environmental Protection
8 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 and
21 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 user
3 fees, permit fees, license fees, and application fees, to carry out
4 activities that are not funded by federal grants as follows:

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

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

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

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

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

24 (5) A report listing the method used by each new or
25 existing licensee, permittee, or other person who is required by the

1 department to establish proof of financial responsibility; ~~and~~

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

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

9 Sec. 15. Section 81-15,160, Revised Statutes Cumulative
10 Supplement, 2010, is amended to read:

11 81-15,160 (1) The Waste Reduction and Recycling Incentive
12 Fund is created. The department shall deduct from the fund amounts
13 sufficient to reimburse itself for its costs of administration of the
14 fund. The fund shall be administered by the Department of
15 Environmental Quality. The fund shall consist of proceeds from the
16 fees imposed pursuant to the Waste Reduction and Recycling Incentive
17 Act.

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

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

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

25 (c) Market development for recyclable materials separated

1 by generators, including public education, planning, and technical
2 assistance;

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

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

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

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

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

17 (i) Grants for reimbursement of costs to cities of the
18 second class, villages, and counties of five thousand or fewer
19 population for the deconstruction of abandoned buildings. Eligible
20 deconstruction costs will be related to the recovery and processing
21 of recyclable or reusable material from the abandoned buildings.

22 (3) Grants up to one million dollars annually shall be
23 available until June 30, 2014, for new scrap tire projects only, if
24 acceptable scrap tire project applications are received. Eligible
25 categories of disbursement under section 81-15,161 may include, but

1 are not limited to:

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

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

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

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

24 (e) Cost-sharing for the manufacturing of tire-derived
25 product, with disbursements not to exceed twenty dollars per ton or

1 two hundred fifty thousand dollars, whichever is less, to any person
2 annually;

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

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

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

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

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

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

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

6 (6) Grants from fees collected under the Electronics
7 Recycling and Job Creation Act and from funds awarded pursuant to
8 subsection (7) of this section shall be awarded by the Department of
9 Environmental Quality for creation and retention of jobs in the
10 electronics recycling industry, education and information about
11 electronics recycling, infrastructure development, and the
12 collection, transportation, and recycling of electronic devices.

13 (7) The Director of Environmental Quality shall apply for
14 a grant in the amount of five hundred thousand dollars from the
15 Nebraska Environmental Trust Fund prior to the application deadline
16 for each fiscal year beginning with fiscal year 2011-12 through
17 fiscal year 2016-17. Funds received from such grants shall be
18 remitted to the State Treasurer for credit to the Waste Reduction and
19 Recycling Incentive Fund and shall be used for the purposes described
20 in subsection (6) of this section.

21 ~~(6)-(8)~~ Any person who stores waste tires in violation of
22 section 13-2033, which storage is the subject of abatement or
23 cleanup, shall be liable to the State of Nebraska for the
24 reimbursement of expenses of such abatement or cleanup paid by the
25 Department of Environmental Quality.

1 ~~(7)~~(9) The Department of Environmental Quality may
2 receive gifts, bequests, and any other contributions for deposit in
3 the Waste Reduction and Recycling Incentive Fund. Transfers may be
4 made from the fund to the General Fund at the direction of the
5 Legislature. Any money in the Waste Reduction and Recycling Incentive
6 Fund available for investment shall be invested by the state
7 investment officer pursuant to the Nebraska Capital Expansion Act and
8 the Nebraska State Funds Investment Act.

9 Sec. 16. If any section in this act or any part of any
10 section is declared invalid or unconstitutional, the declaration
11 shall not affect the validity or constitutionality of the remaining
12 portions.

13 Sec. 17. Original section 81-1504.01, Reissue Revised
14 Statutes of Nebraska, and sections 13-2039 and 81-15,160, Revised
15 Statutes Cumulative Supplement, 2010, are repealed.

16 Sec. 18. Since an emergency exists, this act takes effect
17 when passed and approved according to law.