

H. B. 4571

(By Delegates Manypenny, Mahan, Guthrie, Brown and Doyle)
[Introduced February 16, 2012; referred to the
Committee on the Judiciary the Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §22-15B-1, §22-15B-2,
§22-15B-3, §22-15B-4, §22-15B-5, §22-15B-6, §22-15B-7, §22-
15B-8, §22-15B-9, §22-15B-10, §22-15B-11, §22-15B-12, §22-15B-
13, §22-15B-14, §22-15B-15, §22-15B-16, §22-15B-17 and §22-
15B-18, all relating to the imposition of advanced recovery
fees on consumers for the purchase of electronic devices;
definitions; administration by the Department of Environmental
Protection; the creation of an E-Cycle Fund account; fee
schedules for authorized collectors and recyclers and
disbursements to authorized collectors, recyclers and
manufacturers; manufacturer responsibilities; establishment of
electronic device drop off centers in each county; civil
penalties and sanctions; requirements when exporting covered
electronic devices; and rule-making authority.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §22-15B-1, §22-15B-2,
4 §22-15B-3, §22-15B-4, §22-15B-5, §22-15B-6, §22-15B-7, §22-15B-8,
5 §22-15B-9, §22-15B-10, §22-15B-11, §22-15B-12, §22-15B-13, §22-15B-
6 14, §22-15B-15, §22-15B-16, §22-15B-17 and §22-15B-18, all to read
7 as follows:

8 **ARTICLE 15B. ADVANCED RECOVERY FEES AND COVERED ELECTRONIC DEVICE**
9 **RECYCLING.**

10 **§22-15B-1. Legislative findings and purpose.**

11 The Legislature finds and declares all of the following:

12 (a) Electronic waste represents one of the fastest growing
13 and hazardous components of West Virginia's waste streams.

14 (b) According to the United States Environmental Protection
15 Agency, in 2009, an estimated four-hundred thirty-eight million new
16 electronic products were sold in the United States; five million
17 short tons of electronic products were in storage; two million
18 three hundred seventy thousand short tons of electronic products
19 were ready for end-of-life management; and only twenty-five percent
20 of these tons were collected for recycling.

21 (c) Due to the presence of toxic lead, mercury and other
22 hazardous or potentially hazardous materials in electronic waste,
23 this waste poses a particular threat to public health and the

1 environment when improperly discarded.

2 (d) Electronic waste recovered for recycling has been found
3 to have been illegally handled and discarded in developing
4 countries, posing a significant threat to public health, worker
5 safety and the environment in those countries.

6 (e) The collection, handling and management of electronic
7 waste that is currently recovered represents a growing problem for
8 government and nonprofit organizations, including Goodwill
9 Industries and the Salvation Army.

10 (f) The high technology sector represents a vital and
11 important part of West Virginia's economy.

12 (g) The purpose of this article is to enact a comprehensive
13 and innovative system for the reuse, recycling and proper and legal
14 disposal of covered electronic devices.

15 (h) It is the further purpose of this article to enact a law
16 that establishes a program that is cost free and convenient for
17 consumers and the public to return, recycle and ensure the safe and
18 environmentally-sound disposal of covered electronic devices.

19 (i) It is the intent of the Legislature that the cost
20 associated with the handling, recycling and disposal of covered
21 electronic devices is the responsibility of the producers and
22 consumers of covered electronic devices and not local government or
23 their service providers, state government or taxpayers.

24 (j) In order to reduce the likelihood of illegal disposal of

1 these hazardous materials, it is the intent of this article to
2 ensure that the cost associated with the proper management of
3 covered electronic devices be internalized by the producers and
4 consumers of covered electronic devices at or before the point of
5 purchase and not at the point of discard.

6 (k) The purpose of this article is to provide sufficient
7 funding for the safe, cost-free and convenient collection and
8 recycling of one hundred percent of the covered electronic waste
9 discarded or offered for recycling in the state, to eliminate
10 electronic waste stockpiles by December 31, 2016, and to end the
11 illegal disposal of covered electronic devices.

12 **§22-15B-2. Definitions.**

13 "Account" means the E-Cycle Fund Account administered by the
14 Department of Environmental Protection.

15 "Authorized collector" means any of the following:

16 (1) A city or county that collects covered electronic
17 devices;

18 (2) A person or entity that is required or authorized by a
19 city or county to collect covered electronic devices pursuant to
20 the terms of a contract, license, permit or other written
21 authorization;

22 (3) A nonprofit organization that collects or accepts covered
23 electronic devices;

24 (4) A manufacturer or agent of the manufacturer that

1 collects, consolidates and transports covered electronic devices
2 for recycling from consumers, businesses, institutions and other
3 generators; and

4 (5) Any other entity that collects, handles, consolidates and
5 transports covered electronic equipment and has filed all
6 applicable documents with the secretary.

7 "Consumer" means a person who purchases a new or refurbished
8 covered electronic device in a transaction that is a retail sale.

9 "Department" means the West Virginia Department of
10 Environmental Protection.

11 "Covered electronic device", except as hereinafter provided,
12 means a video display device containing a screen greater than four
13 inches, measured diagonally. "Covered electronic device" does not
14 include any of the following:

15 (1) A video display device that is a part of a motor vehicle
16 or any component part of a motor vehicle assembled by, or for, a
17 vehicle manufacturer or franchise dealer, including replacement
18 parts for use in a motor vehicle.

19 (2) A video display device that is contained within, or a
20 part of, a piece of industrial, commercial or medical equipment,
21 including monitoring or control equipment.

22 (3) A video display device that is contained within a clothes
23 washer, clothes dryer, refrigerator, refrigerator and freezer,
24 microwave oven, conventional oven or range, dishwasher, room air

1 conditioner, dehumidifier or air purifier.

2 "Covered electronic waste" or "covered e-waste" means a
3 covered electronic device that is discarded.

4 "Covered electronic waste recycling fee" or "covered e-waste
5 recycling fee" or "advanced recycling fee" means the fee imposed
6 under this article.

7 "Covered electronic waste recycler" or "covered e-waste
8 recycler" is a person who has been certified by an accredited
9 company that certifies recyclers of electronic equipment under the
10 Responsible Recycling (R2) Practices for Use in Accredited
11 Certification Programs for Electronics Recyclers and means any of
12 the following:

13 (1) A person who engages in the manual or mechanical
14 separation of covered electronic devices to recover components and
15 commodities therein for the purpose of reuse or recycling;

16 (2) A person who changes the physical or chemical composition
17 of a covered electronic devise by deconstructing, size reduction,
18 crushing, cutting, sawing, compacting, shredding or refining for
19 purposes of segregating components, for purposes of recovering or
20 recycling those components and who arranges for the transport of
21 those components to an end user;

22 (3) A manufacturer who meets the conditions established by
23 this article.

24 "Electronic waste recovery payment" means an amount

1 established and paid by the department under this article.

2 "Electronic waste recycling payment" means an amount
3 established and paid by the department under this article.

4 "Manufacturer" means either of the following:

5 (1) A person who manufactures a covered electronic device
6 sold in this state; or

7 (2) A person who sells a covered electronic device in this
8 state under that person's brand name.

9 "Person" means an individual, trust firm, joint stock company,
10 business concern and corporation including, but not limited to, a
11 government corporation, partnership, limited liability company and
12 association. "Person" also includes a city, county, city and
13 county, commission, the state or a department, agency, or political
14 subdivision thereof, an interstate body and the United States and
15 its agencies and instrumentalities to the extent permitted by law.

16 "Recycling" means using, reusing or reclaiming a recyclable
17 material. "Recycling" also means, for purposes of this article,
18 the collecting, transporting, storing, transferring, handling,
19 segregating, processing, using or reusing or reclaiming of
20 recyclable material to produce recycled material.

21 "Refurbished" when used to describe a covered electronic
22 device means a device that the manufacturer has tested and returned
23 to a condition that meets factory specifications for the device,
24 has repackaged and has labeled as refurbished.

1 "Retailer" means a person who makes a retail sale of a new or
2 refurbished covered electronic device. "Retailer" includes a
3 manufacturer of a covered electronic device who sells that covered
4 electronic device directly to a consumer through any means
5 including, but not limited to, a transaction conducted through a
6 sales outlet, catalog, the Internet or any other similar electronic
7 means.

8 "Retail sale" or "sale at retail" means a sale for any purpose
9 other than resale in the regular course of business in the form of
10 tangible personal property. "Retail sale" does not include the
11 sale of a covered electronic device that is temporarily stored or
12 used in West Virginia for the sole purpose of preparing the covered
13 electronic device for use thereafter solely outside the state and
14 that is subsequently transported outside the state and thereafter
15 used solely outside the state.

16 "Secretary" means the cabinet secretary of the West Virginia
17 Department of Environmental Protection.

18 "Vendor" means a person that makes a sale of a covered
19 electronic device for the purpose of resale to a retailer who is
20 the lessor of the covered electronic device to a consumer under a
21 lease that is a continuing sale and purchase.

22 "Video display device" means an electronic device with an
23 output surface that displays, or is capable of displaying, moving
24 graphical images or a visual representation of image sequences or

1 pictures, showing a number of quickly changing images on a screen
2 in fast succession to create the illusion of motion, including, if
3 applicable, a device that is an integral part of the display, in
4 that it cannot be easily removed from the display by the consumer,
5 that produces the moving image on the screen. A video display
6 device may use, but is not limited to, a cathode ray tube (CRT),
7 liquid crystal display (LCD), gas plasma, digital light processing
8 or other image projection technology.

9 **§22-15B-3. Administration of article; rule-making authority;**
10 **dissemination of information; expertise.**

11 (a) The department shall administer and enforce this article.

12 (b) The department shall propose rules for legislative
13 approval in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code to implement this article.

15 (c) The department shall adopt regulations that ensure the
16 protection of any proprietary information submitted to the
17 department by a manufacturer of covered electronic devices.

18 (d) The department may prepare, publish or issue any
19 materials that it determines to be necessary for the dissemination
20 of information concerning the activities of the department under
21 this article.

22 (e) In carrying out this article, the department may solicit
23 and use any and all expertise available in other state agencies.

24 **§22-15B-4. Covered electronic waste recycling fee imposed on**

1 purchase of new or refurbished covered electronic
2 device; amount; transmittal to secretary; and
3 statement of fee.

4 (a) On September 1, 2012, a consumer shall pay a covered
5 electronic waste recycling fee upon the purchase of a new or
6 refurbished covered electronic device, in the following amounts:

7 (1) Eight dollars for each covered electronic device with a
8 screen size of less than fifteen inches measured diagonally;

9 (2) Sixteen dollars for each covered electronic device with
10 a screen size greater than or equal to fifteen but less than
11 thirty-five inches measured diagonally; and

12 (3) Twenty-five dollars for each covered electronic device
13 with a screen size greater than or equal to thirty-five inches
14 measured diagonally.

15 (b) Except as provided in subdivision (d) of this section, a
16 retailer shall collect from the consumer a covered electronic waste
17 recycling fee at the time of the retail sale of a covered
18 electronic device.

19 (c) (1) A retailer may retain three percent of the covered
20 electronic waste recycling fee as reimbursement for all costs
21 associated with the collection of the fee and transmit the
22 remainder of the fee to the secretary for deposit in the account.

23 (2) If a retailer makes an election pursuant to subdivision
24 (2), subsection (d) of this section, and the conditions of

1 paragraphs (A), (B) and (C), subdivision (2), subsection (d) of
2 this section are met, the vendor, in lieu of the retailer, may
3 retain three percent of the covered electronic waste recycling fee
4 as reimbursement for all costs associated with the collection of
5 the fee and the vendor shall transmit the remainder of the fee to
6 the department.

7 (d) (1) If a retailer elects to pay the covered electronic
8 waste recycling fee on behalf of the consumer, the retailer shall
9 provide an express statement to that effect on the receipt given to
10 the consumer at the time of sale. If a retailer elects to pay the
11 covered electronic waste recycling fee on behalf of the consumer,
12 the fee is a debt owed by the retailer to the state and the
13 consumer is not liable for the fee.

14 (2) A retailer may elect to pay the covered electronic waste
15 recycling fee on behalf of the consumer by paying the covered
16 electronic waste recycling fee to the retailer's vendor but only if
17 all of the following conditions are met:

18 (A) The vendor is registered with the department to collect
19 and remit the covered electronic waste recycling fee pursuant to
20 this article;

21 (B) The vendor holds a valid seller's permit;

22 (C) The retailer pays the covered electronic waste recycling
23 fee to the vendor that is separately stated on the vendor's invoice
24 to the retailer; and

1 (D) The retailer provides an express statement on the
2 invoice, contract or other record documenting the sale that is
3 given to the consumer, that the covered electronic waste recycling
4 fee has been paid on behalf of the consumer.

5 (3) For the purpose of making the election in subdivision (2)
6 of this subsection, if the conditions set forth in paragraphs (A),
7 (B), (C) and (D) of subdivision (2) of this subsection are met, the
8 covered electronic waste recycling fee is a debt owed by the vendor
9 to the state and the retailer is not liable for the fee.

10 (e) The retailer shall separately state the covered
11 electronic waste recycling fee on the receipt given to the consumer
12 at the time of sale.

13 (f) On and after September 1, 2012, a person may not sell a
14 new or refurbished covered electronic device to a consumer in this
15 state if the department determines that the manufacturer of that
16 covered electronic device is not in compliance with this article.

17 (g) On and after September 1, 2012, a person may not sell or
18 offer for sale in this state a new or refurbished covered
19 electronic device unless the device is labeled with the name of the
20 manufacturer or the manufacturer's brand label so that it is
21 readily visible.

22 **§22-15B-5. Collection of fee by the Department of Environmental**
23 **Protection.**

24 (a) The Department of Environmental Protection shall collect

1 the electronic waste recycling fee and maintain these fees in a
2 separate fund called the E-Cycle Fund.

3 (b) The covered electronic waste recycling fee is due and
4 payable quarterly on or before the last day of the month following
5 each calendar quarter. The payments shall be accompanied by a
6 return in the form as prescribed by the department.

7 (c) The department may require the payment of the fee and the
8 filing of returns for other than quarterly periods.

9 (d) On or before September 1, 2014, and, thereafter,
10 biennially, the department shall review, at a public hearing, the
11 covered electronic waste recycling fee and make any adjustments to
12 the fee to ensure that there are sufficient revenues in the account
13 to fund the covered electronic waste recycling program established
14 pursuant to this article. Adjustments to the fee that are made on
15 or before September 1, shall apply to the calendar year beginning
16 the following January 1. The department shall base an adjustment
17 of the covered electronic waste recycling fee on both of the
18 following factors:

19 (1) The sufficiency, and any surplus, of revenues in the
20 account to fund the collection, consolidation and recycling of
21 covered electronic waste that is projected to be recycled in the
22 state; and

23 (2) The sufficiency of revenues in the account for the
24 department to administer, enforce and promote the program plus a

1 prudent reserve not to exceed five percent of the amount in the
2 account.

3 **§22-15B-6. Duties of manufacturer; information and report; and**
4 **protection of information.**

5 (a) On or before September 1, 2013, and at least once
6 annually thereafter as determined by the department, each
7 manufacturer of a covered electronic device sold in this state
8 shall do all of the following:

9 (1) Submit to the department a report than includes all of
10 the following information:

11 (A) An estimate of the number of covered electronic devices
12 sold by the manufacturer in the state during the previous year;

13 (B) A baseline or set of baselines that show the total
14 estimated amounts of mercury, cadmium, lead, hexavalent, chromium
15 and PBB's used in covered electronic devices manufactured by the
16 manufacturer in that year and the reduction in the use of those
17 hazardous materials from the previous year;

18 (C) A baseline or set of baselines that show the total
19 estimated amount of recyclable materials contained in covered
20 electronic devices sold by the manufacturer in that year and the
21 increase in the use of those recyclable materials from the previous
22 year;

23 (D) A baseline or a set of baselines that describe any
24 efforts to design covered electronic devices for recycling and

1 goals and plans for further increasing design for recycling;

2 (E) A list of those retailers including, but not limited to,
3 Internet and catalog retailers, to which the manufacturer provided
4 a notice covering any electronic device manufactured by that
5 manufacturer that is identified in the rules adopted by the
6 department and that identify the electronic devices that the
7 department determines are presumed to be, when discarded, a
8 hazardous waste;

9 (2) Make information available to consumers that describes
10 where and how to return, recycle and dispose of the covered
11 electronic device and opportunities and locations for the
12 collection or return of the device, through the use of a toll-free
13 telephone number, Internet Website, information labeled on the
14 device, information included in the packaging or information
15 accompanying the sale of covered electronic device.

16 (b) Any information submitted to the department pursuant to
17 subsection (a) of this section that is proprietary in nature or a
18 trade secret is subject to protection under state laws and rules
19 governing that information.

20 (c) A manufacturer of a covered electronic device shall
21 comply with the notification requirements set forth in paragraph
22 (E), subdivision (1), subsection (a) of this section.

23 **§22-15B-7. Statewide applicability of fee; local collection or**
24 **recycling programs.**

1 (a) The imposition of a covered electronic waste recycling
2 fee is a matter of statewide interest and concern and is applicable
3 uniformly throughout the state. A city, county, city and county or
4 other public agency may not adopt, implement or enforce an
5 ordinance, resolution, regulation or rule requiring a consumer,
6 manufacturer or retailer to recycle covered electronic devices or
7 imposing a covered electronic waste recycling fee upon a
8 manufacturer, retailer or consumer unless expressly authorized
9 under this article.

10 (b) Nothing in the section prohibits the adoption,
11 implementation or enforcement of any local ordinance, resolution,
12 regulation or rule governing curbside or drop off recycling
13 programs operated by or pursuant to a contract with a city, county,
14 city and county or other public agency including any action
15 relating to fees for these programs. Nothing in this section
16 affects any contract, franchise, permit, license or other
17 arrangement regarding the collection or recycling of solid waste or
18 household hazardous waste.

19 **§22-15B-8. Fee declared not to be a tax.**

20 The Legislature declares that the imposition of a covered
21 electronic waste recycling fee would not result in the imposition
22 of a tax within the meaning of Article X of the West Virginia
23 Constitution because the amount and nature of the fee has a fair
24 and reasonable relationship to the adverse environmental burdens

1 imposed by the disposal of covered electronic devices and there is
2 a sufficient nexus between the fee imposed and the use of those
3 fees to support the recycling and reuse of these devices.

4 **§22-15B-9. Civil penalties.**

5 (a) Civil liability in an amount of up to \$2,500 per offense
6 may be administratively imposed by the department for each sale of
7 a covered electronic device for which a covered electronic waste
8 recycling fee has not been paid pursuant to section four of this
9 article.

10 (b) A civil penalty in an amount of up to \$5,000 per offense
11 may be imposed by a circuit court for each sale of a covered
12 electronic device for which a covered electronic waste recycling
13 fee has not been paid pursuant to section four of this article.

14 (c) Civil liability in an amount of up to \$25,000 may be
15 administratively imposed by the department against manufacturers
16 for failure to comply with this article except as otherwise
17 provided in subsection (a) of this section.

18 **§22-15B-10. Electronic waste working group.**

19 The department shall convene a covered electronic waste work
20 group comprised of representatives from manufacturers of covered
21 electronic devices and other interested parties to develop and, by
22 September 1, 2013, advise the department on environmental
23 purchasing criteria that may be used by state agencies to identify
24 covered electronic devices with reduced environmental impacts. In

1 defining criteria, the group shall consider the environmental
2 impacts of products over their entire life cycle as well as
3 tradeoffs in other product attributes such as safety, product
4 functionality and cost. The group shall also consider any federal
5 product evaluation or rating system or market based system to
6 promote the development and sale of environmentally conscious
7 products.

8 **§22-15B-11. Annual statewide recycling goals for covered**
9 **electronic waste; implementation.**

10 (a) The department shall annually establish, and update as
11 necessary, statewide recycling goals for covered electronic waste.
12 In implementing this section, the department shall do all of the
13 following:

14 (1) Post on its website information on the amount of covered
15 electronic devices sold in the state in the previous year as
16 reported to the department;

17 (2) Post on its website information on the amount of covered
18 electronic waste recycled in the state in the previous year as
19 reported to the department; and

20 (3) Develop and adopt recycling goals with input from
21 manufacturers, retailers, covered electronic waste recyclers and
22 collectors, that reflect projections of covered electronic device
23 sales, rates of obsolescence and stockpiles.

24 (b) Nothing in this section authorizes the department to

1 establish any recycling rates or dates by which a manufacturer of
2 covered electronic devices shall comply with this article, or to
3 impose any other recycling goal or target on a manufacturer of
4 those devices.

5 **§22-15B-12. E-Cycle Fund created; deposit and expenditure of**
6 **funds; interest; cancellation methods; conditions**
7 **for payment; state as market participant.**

8 (a) The E-Cycle Fund is hereby established in the Department
9 of Environmental Protection. All fees collected pursuant to this
10 article shall be deposited in the account. Notwithstanding any
11 other code provision to the contrary, the funds in the account are
12 hereby continuously appropriated, without regard to fiscal year,
13 for the following purposes:

14 (1) To make electronic waste recovery payments to an
15 authorized collector of covered electronic waste pursuant to
16 section fourteen of this article;

17 (2) To make electronic waste recycling payments to covered
18 electronic waste recyclers pursuant to section fifteen of this
19 article; and

20 (3) To make payments to manufacturers pursuant to subsection
21 (g) of this section.

22 (b) (1) The money in the account may be expended for the
23 following purposes only upon appropriation by the Legislature in
24 the annual budget:

1 (A) For the administration of the article by the department;

2 (B) To reimburse the department for its administrative costs
3 of registering, collecting, making refunds and auditing retailers
4 and consumers in connection with the covered electronic waste
5 recycling fee imposed under section four of this article;

6 (C) To establish the public information program specified in
7 subsection (d) of this section.

8 (2) Any fines or penalties collected pursuant to this article
9 shall be deposited in the E-Cycle Penalty Subaccount which is
10 hereby established in the account. The funds in the E-Cycle
11 Penalty Subaccount may be expended by the department only upon
12 appropriation by the Legislature.

13 (c) Notwithstanding any other code provisions to the
14 contrary, any interest earned upon funds in the E-Cycle Fund
15 Account shall be deposited in that account for expenditure under
16 this article.

17 (d) Not more than one percent of the funds annually deposited
18 in the account may be expended for the purposes of establishing the
19 public information program to educate the public in the hazards of
20 improper covered electronic device storage and disposal and on the
21 opportunities to recycle covered electronic devices.

22 (e) The department shall adopt rules specifying cancellations
23 methods for the recovery, processing or recycling or covered
24 electronic waste consistent with Responsible Recycling (R2)

1 Practices for Use in Accredited Certification Programs for
2 Electronic Recyclers.

3 (f) The department may pay an electronic waste recycling
4 payment or electronic waste recovery payment for covered electronic
5 waste only if all of the following conditions are met:

6 (1) The covered electronic waste, including any residuals
7 from the processing of the waste, is handled in compliance with all
8 applicable statutes and regulations;

9 (2) The entity performing the recycling has been certified by
10 an accredited company for certifying recyclers of electronic
11 equipment under the Responsible Recycling (R2) Practices for Use in
12 Accredited Certification Programs for Electronics Recyclers;

13 (3) The manufacturer or the authorized collector or recycler
14 of the electronic waste provides a cost free and convenient
15 opportunity to recycle electronic waste which will include, at a
16 minimum, one electronic device drop off center in each county and,
17 in addition, a minimum of one drop off center in cities with
18 populations of fifteen thousand or greater. The drop off center
19 required in a county when there is also a drop off center in one or
20 more of the county's cities, shall be strategically located so that
21 it serves the rural consumers of the county; and

22 (4) If the covered electronic waste is processed, the covered
23 electronic waste is processed in this state according to
24 cancellation methods approved by Responsible Recycling (R2)

1 Practices for Use in Accredited Certification Programs for
2 Electronics Recyclers and authorized by the department.

3 (f) The department declares that the state is a market
4 participant in the business of the recycling of covered electronic
5 waste for all of the following reasons:

6 (1) The fee is collected from the state's consumers for
7 covered electronic devices sold for use in the state;

8 (2) The purpose of the fee and subsequent payments is to
9 prevent damage to the public health and the environment from waste
10 generated in the state; and

11 (3) The recycling system funded by the fee ensures that
12 economically viable and sustainable markets are developed and
13 supported for recovered materials and components in order to
14 conserve resources and maximize business and employment
15 opportunities within the state.

16 \ (g) (1) The department may make a payment to a manufacturer
17 that takes back a covered electronic device from a consumer in this
18 state for purposes of recycling the device at a processing
19 facility. The amount of the payment made by the department shall
20 equal the value of the covered electronic waste recycling fee paid
21 for that device. To qualify for a payment under this subsection,
22 the manufacturer shall demonstrate the following to the department:

23 (A) The covered electronic device for which payment is
24 claimed was used in this state;

1 (B) The covered electronic waste for which a payment is
2 claimed, including any residuals from the processing the waste, has
3 been and will be handled in compliance will all applicable statutes
4 and regulations; and

5 (C) The manufacturer has a certification, or contracts with
6 a recycler that has a certification, from an accredited company for
7 certifying recyclers under the Responsible Recycling (R2) Practice
8 for Use in Accredited Certification Programs for Electronic
9 Recyclers.

10 **§22-15B-13. Duties of person exporting covered electronic waste.**

11 (a) A person who exports covered electronic waste, or a
12 covered electronic device intended for recycling or disposal, to a
13 foreign country, or to another state for ultimate export to a
14 foreign country, shall do all of the following at least sixty days
15 prior to export:

16 (b) Notify the department of the destination, disposition,
17 contents and volume of waste, or device intended for recycling or
18 disposal to be exported, and include with the notification the
19 following demonstrations:

20 (1) Demonstrate that the waste or device is being exported
21 for the purposes of recycling or disposal;

22 (2) Demonstrate that the importation of the waste or device
23 is not prohibited by an applicable law in the state or country of
24 destination and that any import will be conducted in accordance

1 with all applicable laws. As part of this demonstration, required
2 import and operating licenses, permits or other appropriate
3 authorization documents shall be forwarded to the department;

4 (3) Demonstrate that the exportation of the waste or device
5 is conducted in accordance with applicable United States or
6 applicable international law; and

7 (4) Demonstrate that the waste or device will be managed
8 within the country of destination only at facilities whose
9 operations meet or exceed the binding decisions and implementing
10 guidelines of the Organization for Economic Cooperation and
11 Development for the environmentally sound management of the waste
12 or device being exported, notwithstanding that the destination
13 country is not a member of the Organization for Economic
14 Cooperation and Development.

15 (c) This section does not apply to a component part of a
16 covered electronic device that is exported to an authorized
17 collector or recycler and that is reused or recycled into a new
18 electronic component.

19 **§22-15B-14. Electronic waste recovery payment schedule; coverage**
20 **of net cost for authorized collector to collect,**
21 **consolidate and transport covered electronic waste.**

22 (a) On September 1, 2013, and on September 1 every two years
23 thereafter, the department shall establish an electronic waste
24 recovery payment schedule for covered electronic wastes generated

1 in this state to cover the net cost for an authorized collector to
2 operate a free and convenient system for collecting, consolidating
3 and transporting covered electronic wastes generated in the state.

4 (b) The department shall make the electronic waste recovery
5 payments either directly to an authorized collector or to a covered
6 electronic waste recycler for payment to an authorized collector
7 pursuant to this article.

8 **§22-15B-15. Covered electronic waste recycling payment schedule;**
9 **coverage of net cost for recycler to receive,**
10 **process and recycle each major category or covered**
11 **electronic waste from authorized collector.**

12 (a) Except as provided in subsection (b) of this section, on
13 September 1, 2013, and on September 1 every two years thereafter,
14 the department shall establish a covered electronic waste recycling
15 payment schedule for covered electronic wastes generated in this
16 state to cover the average net cost for an electronic waste
17 recycler to receive, process and recycle each major category, as
18 determined by the department, of covered electronic waste received
19 from an authorized collector. The department shall make the
20 electronic waste recycling payments to a covered electronic waste
21 recycler pursuant to this article.

22 (b) Until the department adopts a payment schedule that
23 covers the average net cost for an electronic waste recycler to

1 receive, process and recycle each major category, as determined by
2 the department, of covered electronic waste received from an
3 authorized collector, the amount of the covered electronic waste
4 recycling payment shall to be equal to \$.16 per pound of the total
5 weight of covered electronic waste received from an authorized
6 collector and subsequently processed for recycling.

7 **§22-15B-16. Payment process; eligibility for payment.**

8 (a) (1) For covered electronic waste collected for recycling on
9 and after September 1, 2013, the department shall make electronic
10 waste recovery payments and electronic waste recycling payments for
11 the collection and recycling of covered electronic waste to an
12 authorized collector or covered electronic waste recycler,
13 respectively, upon receipt of a completed and verified invoice
14 submitted to the department by an authorized collector or recycler
15 in the form and manner determined by the department.

16 (2) To the extent authorized by section fourteen of this
17 article, a covered electronic waste recycler shall make the
18 electronic waste recovery payments to an authorized collector upon
19 receipt of a completed and verified invoice submitted to the
20 recycler by the authorized collector in the form and manner
21 determined by the department.

22 (b) An e-waste recycler is eligible for a payment pursuant to
23 this section only if the e-waste recycler demonstrates to the
24 department that any facility utilized by the e-waste recycler for

1 the handling, processing, refurbishment or recycling of covered
2 electronic devices meets all of the following standards:

3 (1) The facility has been inspected by the department within
4 the past twelve months and found to be operating in conformance
5 with all applicable laws, rules and ordinances;

6 (2) The facility has a valid certification issued by an
7 accredited company for certifying recyclers under the Responsible
8 Recycling (R2) Practice for Use in Accredited Certification
9 Programs for Electronic Recyclers;

10 (3) The facility is accessible during normal business hours
11 for unannounced inspections by state or local agencies; and

12 (4) The facility has health and safety, employee training and
13 environmental compliance plans and certifies compliance with the
14 plans.

15 **§22-15B-17. Compliance with chapter by prospective bidders;**
16 **violations.**

17 (a)(1) A state agency that purchases or leases covered
18 electronic devices shall require each prospective bidder to certify
19 that it, and its agents, subsidiaries, partners, joint venturer and
20 subcontractors for the procurement, have complied with this article
21 and rules adopted pursuant to this article or to demonstrate that
22 this article is inapplicable to all lines of business engaged in by
23 the bidder, its agents, subsidiaries, partners, joint venturers or
24 subcontractors.

1 (2) The certification requirement set forth in subdivision
2 (1) of this subsection does not apply to credit card purchases of
3 goods of \$2,500 or less. The total amount of exemption authorized
4 herein shall not exceed \$7,500 per year for each company from which
5 a state agency is purchasing goods by credit card. It is the
6 responsibility of each state agency to monitor the use of this
7 exemption and adhere to these restrictions on these purchases.

8 (b) Failure to provide certification pursuant to this section
9 shall render the prospective bidder and its agents, subsidiaries,
10 partners, joint venturers and subcontractors ineligible to bid on
11 the procurement of covered electronic devices.

12 (c) The bid solicitation documents shall specify that the
13 prospective bidder is required to cooperate fully in providing
14 reasonable access to its records and documents that evidence
15 compliance with this article.

16 (d) Any person awarded a contract by a state agency that is
17 found to be in violation of this section is subject to all or any
18 of the following sanctions:

19 (1) The contract shall be voided by the state agency to which
20 the equipment, materials or supplies were provided;

21 (2) The contractor is ineligible to bid on any state contract
22 for a period of three years; or

23 (3) If the Attorney General establishes in the name of the
24 people of the State of West Virginia that any money, property or

1 benefit was obtained by a contractor as a result of violating this
2 section, the court may, in addition to any other remedy, order the
3 forfeiture of the unlawfully obtained money, property or benefit in
4 the interest of justice.

5 **§22-15B-18. Article not to be implemented under certain**
6 **circumstances.**

7 (a) Except as provided in section nineteen of this article,
8 the department may not implement this article if either of the
9 following occur:

10 (1) A federal law or a combination of federal laws, takes
11 effect and does all of the following:

12 (A) Establishes a program for the collection, recycling and
13 proper disposal of covered electronic waste that is applicable to
14 all covered electronic devices sold in the United States;

15 (B) Provides revenues to the state to support the collection,
16 recycling and proper disposal of covered electronic waste in an
17 amount that is equal to or greater than the revenues that would be
18 generated by the fees imposed under this article; and

19 (C) Requires covered electronic device manufacturers,
20 retailers, handlers, processors and recyclers to dispose of those
21 devices in a manner that is in compliance with all applicable
22 federal, state and local laws and prohibits the devices from being
23 exported for disposal in a manner that poses a significant risk to
24 the public health or the environment; or

1 (2) A trial court issues a judgment which is not appealed or
2 an appellate court issues an order affirming a judgment of a trial
3 court, holding that out-of-state manufacturers or retailers, or
4 both, may not be required to collect the fee authorized by this
5 article. The out-of-state manufacturers or retailers, or both,
6 shall continue to collect the fee during the appellate process.

7 (b) Except as provided in subsection (c) of this section, the
8 provisions of this article become inoperative on the date that
9 either of the events described in subsection (a) of this section
10 occurs and, if both occur, the earlier date.

11 (c) On the date specified in subsection (b) of this section,
12 the provisions of this article remain operative only for the
13 collection of fees, the liability for which accrues prior to that
14 date, making refunds, effecting credits, the disposition of moneys
15 collected and commencing an action or proceeding pursuant to this
16 article.

NOTE: The purpose of this bill is to create a comprehensive recycling program for electronic devices which is funded by consumer fees on electronic devices at time of purchase and administered by the Department of Environmental Protection with rule-making authority.

This article is new; therefore, it has been completely underscored.