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Senate Bills 897 and 898 (as introduced 11-8-07)
Sponsor: Senator Valde Garcia (S.B. 897)
Senator Patricia L. Birkholz (S.B. 898)
Committee: Natural Resources and Environmental Affairs

Date Completed: 9-17-08

CONTENT

Senate Bills 897 and 898 would add Part 173 (Electronics) to the Natural Resources and Environmental Protection Act to do the following:

- Prohibit a manufacturer from selling electronic devices (computers and video display devices) in Michigan without registering with the Department of Environmental Quality (DEQ) and paying a registration fee, beginning December 1, 2008.**
- Require the DEQ to maintain on its website a list of registered manufacturers.**
- Prohibit a retailer from selling an electronic device from a manufacturer that was not on the list.**
- Prohibit a person from recycling household electronic waste without submitting to the DEQ a registration certifying that the recycler met specified guidelines for the environmentally sound management of household electronic waste, beginning January 1, 2010.**
- Prescribe a civil fine for a person who violated Part 173.**
- Require manufacturer registration fees and civil fines to be deposited in a Recycling Trust Fund for administrative expenses and grants for recycling and waste diversion programs.**
- Grant a recycler immunity from liability for the recovery or use of data from an information storage device included in electronic waste.**

The bills are tie-barred to each other. They are described below in further detail.

Senate Bill 897

Under proposed Part 173, beginning December 1, 2008, a manufacturer could not sell or offer for sale to any person in Michigan a new electronic device unless it was labeled with the manufacturer's name or brand label, and the manufacturer had registered with the DEQ and paid the required registration fee.

A manufacturer's registration would have to be submitted on a form provided by the DEQ and would have to include all of the following:

- The manufacturer's name, address, and telephone number.
- Each brand name under which the manufacturer sold or offered for sale electronic devices in Michigan.

-- Whether the manufacturer had implemented a household electronic device takeback program.

If the manufacturer had implemented a takeback program, the registration also would have to include information given to consumers on who and where to return the manufacturer's devices, the means by which that information was disseminated to consumers, and, beginning with the first registration submitted more than one year after the program's implementation, a report on the implementation during the previous year, including all of the following:

- The total weight of the electronic devices received by the program from people in Michigan during the previous year.
- The total number of devices received from people in Michigan and recycled or reused during the previous year.
- The processes and methods used to recycle or reuse the devices.
- The identity of any recycler with whom the manufacturer contracted for the recycling of electronic devices received from people in Michigan.

Information regarding the recyclers would be exempt from the Freedom of Information Act, and the DEQ could not disclose it unless otherwise required by law or court order.

A manufacturer would have to submit a registration to the DEQ by January 1 of each year. If the manufacturer had implemented a takeback program, it would have to update the registration before making any significant change in the program.

A registration would have to be accompanied by a fee as follows:

- \$10,000 for the initial registration.
- \$5,000 for each subsequent annual registration, if the manufacturer did not conduct a takeback program in the previous year.
- \$500 for each subsequent annual registration if the manufacturer conducted a takeback program in the previous year.

Revenue from the registration fees would have to be deposited in the Recycling Trust Fund created in Section 17503 (proposed by Senate Bill 890). The revenue would have to be spent, pursuant to that section, to reimburse the DEQ for the expenses of administering Part 173, and for grants for recycling or other waste diversion programs for household electronic waste.

If a manufacturer's registration did not meet the requirements of Part 173 and rules promulgated under it, the DEQ would have to notify the manufacturer of the insufficiency. Within 60 days after receiving the notice, the manufacturer would have to submit a revised registration that addressed the insufficiencies.

The DEQ would have to maintain on its website a list of registered manufacturers.

A retailer could not sell or offer for sale to any person in Michigan a new electronic device from a manufacturer that did not appear on the DEQ's list.

The bill would define "manufacturer" as a person who is the brand owner of an electronic device brand sold or offered for sale in Michigan, by any means, including transactions conducted through sales outlets, catalogs, or the internet; and who manufactured an average of more than 1,000 electronic devices per year in the immediately preceding three-year period. "Electronic device" would mean a computer or video display device. "Computer" would mean a desktop personal computer or laptop computer, including a computer monitor. The term would not either of the following:

- A personal digital assistant device.
- A computer peripheral device, including a mouse or other similar pointing device, a printer, or detachable keyboard.

"Video display device" would mean an electronic device with an output surface consisting of a screen greater than four inches measured diagonally that displays or is capable of displaying moving graphical images or a quickly changing sequence of images that creates the illusion of motion. The term would include a device that is an integral part of the display, that the consumer cannot easily remove, and that produces the moving image on the screen. A video display device could use a cathode-ray tube, liquid crystal display, gas plasma, digital light processing, or other image-projection technology. The term would not include a device that is part of a motor vehicle or that is contained within a household appliance or within commercial, industrial, or medical equipment.

"Household electronic device takeback program" would mean a program that meets all of the following requirements:

- A manufacturer or the manufacturer's designee accepts from a consumer any household electronic device labeled with the manufacturer's name brand label that has reached the end of its useful life for the consumer.
- A consumer is not required to pay a separate fee when he or she returns the device to the manufacturer or the designee.
- The manufacturer gives a consumer information on how and where to return a labeled device, including collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's devices when they are sold or provide that information via a toll-free telephone number.
- The collection of devices is reasonably convenient and meets the needs of Michigan consumers.

Examples of collection methods that alone or combined would meet the convenience requirements would include systems for the consumer to return household electronic devices by mail, deposit at a local physical collection site that was kept open and staffed on a continuing basis, or deposit during periodic local collection events.

Senate Bill 898

Under the bill, beginning January 1, 2010, a person could not recycle household electronic waste unless the person had registered with the DEQ. A recycler in violation of the prohibition would not be eligible for a recycling or waste diversion program grant under Senate Bill 897.

A recycler's registration would have to be submitted on a form provided by the DEQ and would have to include all of the following:

- The name, address, telephone number, and location of all recycling facilities under the recycler's direct control that could receive household electronic waste.
- A certification by the recycler that it substantially met the "Guidelines for Environmentally Sound Management of Televisions and Computer Monitors" published by the Maine Department of Environmental Protection as of the bill's effective date.

Pursuant to the Administrative Procedures Act (APA), the DEQ could promulgate rules setting forth different or additional guidelines for environmentally sound management of household electronic waste. The Department would have to post the current guidelines on its website and provide a copy upon request without charge.

Submitting a false certificate would be a violation of proposed Part 173.

A person who violated Part 173 would be subject to a civil fine of up to \$5,000 for each violation. Each day on which a violation occurred would represent a separate violation. A fine could not be assessed against a retailer unless the retailer that committed the violation had been issued three warnings. A fine would have to be deposited in the Recycling Trust Fund.

The DEQ could promulgate rules to implement Part 173 pursuant to the APA. The Department would have to enforce Part 173, and could inspect a recycler's operations to assess compliance with the Natural Resources and Environmental Protection Act.

Except to the extent otherwise required by law or provided by a contract, a recycler would not be liable for the recovery or use of any data from an information storage device included in electronic waste.

Proposed MCL 324.17301-324.17307 (S.B. 897)
Proposed MCL 324.17309-324.17319 (S.B. 898)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would generate an unknown amount of revenue for the State to be used for recycling electronic waste. The registration fees would be deposited into the Recycling Trust Fund and used for administration of a manufacturer registration program, inspections of recyclers to assess compliance, and grants for recycling or other waste diversion programs for household electronic waste. The amount of fees collected would depend on the number of manufacturers that registered with the Department of Environmental Quality and how many of those maintained a takeback program for household electronic devices.

According to the United States Census Bureau, in 2002 there were 349 manufacturers of household electronic devices (electronic computers and terminals) based in the United States that would likely be subject to the provisions of the bill if they wanted to sell their products in Michigan. If all of these manufacturers registered with the State of Michigan, a total of \$3,490,000 would be collected from the initial \$10,000 registration fee. Some major computer manufacturers are not based in the United States and are not included in this number.

An indeterminate amount of revenue would be generated from violations of this part. Money collected from civil fines for violations would be deposited into the Recycling Trust Fund.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.