

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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February 28, 2008

This is a draft of the substitute amendment to the electronics recycling bill.

Under this draft, a manufacturer cannot count electronic waste that is recycled on its behalf unless the recycler is registered with DNR. To be registered, a recycler must comply with several requirements, including having an environmental management system. The draft also authorizes DNR to add additional operational requirements by rule. Someone might challenge the constitutionality of this aspect of the proposal as it applies to recyclers that are located outside of this state.

It might be argued that this state is attempting to apply its laws outside of its jurisdiction. It might also be argued that this aspect of the draft violates the Interstate Commerce Clause. I am aware that Minnesota registers out-of-state recyclers for the purpose of its electronics recycling law, but the Minnesota law requires that recyclers comply with their own state and local laws (as well as federal laws). For the most part, the Minnesota law does not impose independent requirements on how recyclers operate. It is difficult to predict the outcome of any court challenge, especially one based on the Interstate Commerce Clause, and I have not had time to research the issue. However, I am aware that courts have invalidated laws that could result in conflicting requirements imposed by different states with the result that interstate commerce could be "bogged down." That might be the case here.

An alternative approach might be to provide for the regulation of persons in this state who recycle electronic devices separately from the producer responsibility program.

Please contact me with any questions or redraft instructions.

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