State of Wisconsin
2009 - 2010 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT ,

TO 2009 SENATE BILL 107

pp 8 & 10

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AN ACT ***to amend*** 287.91 (2), 287.95 (1) and 287.97; and ***to create*** 20.370 (2) (hr), 25.49 (1m), 287.07 (5), 287.09 (2) (ar), 287.13 (5) (i) and 287.17 of the statutes; **relating to:** the sale, disposal, collection, and recycling of electronic devices, granting rule-making authority, making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

This substitute amendment relates to the collection, recycling, and disposal of certain electronic devices.

MANUFACTURERS OF VIDEO DISPLAY DEVICES, COMPUTERS, AND PRINTERS

In general

This substitute amendment imposes a number of requirements on manufacturers of consumer video display devices, consumer computers, and consumer printers (covered electronic devices). A consumer video display device is a television or a computer monitor that has a tube or screen of at least seven inches in the longest diagonal dimension and that is marketed for use by individuals.

Under the substitute amendment, beginning on December 1, 2009, a manufacturer may not sell a covered electronic device at retail, or to a retailer for

resale, unless the manufacturer registers with the Department of Natural Resources (DNR), collects and recycles or arranges for the collection and recycling of certain electronic devices, makes required reports, and pays certain fees.

Beginning on May 1, 2010, the substitute amendment also prohibits a retailer from selling a covered electronic device unless the retailer determines that the manufacturer is registered with DNR.

Registration of manufacturers

The substitute amendment requires a manufacturer to register annually with DNR. The registration must include a list of the manufacturer's brands that are sold in this state, contact information, and a certification that the manufacturer complies with the requirements in the substitute amendment. Beginning in 2010, the substitute amendment requires a manufacturer to disclose, when it registers, whether its covered electronic devices comply with European Union limitations on the presence of certain hazardous substances, including lead and mercury, in electronic devices.

The substitute amendment authorizes DNR to revoke the registration of a manufacturer that violates the requirements in the substitute amendment.

Collection and recycling; reporting

The substitute amendment requires a manufacturer of covered electronic devices to collect and recycle or arrange for the collection and recycling of certain electronic devices that were used by individuals. Collecting more electronic devices, by weight, lowers the shortfall fees that a manufacturer is required to pay, as described below. A manufacturer is not limited to collecting electronic devices made by the manufacturer and is not limited to collecting covered electronic devices. The electronic devices that are counted as satisfying a manufacturer's obligation to collect and recycle (eligible electronic devices), in addition to covered electronic devices, include computer peripherals, digital video players, and video recorders used by individuals. Electronic devices used by businesses do not count toward a manufacturer's obligation to collect and recycle.

The substitute amendment requires a manufacturer to make annual reports to DNR of the weight of its covered electronic devices sold to individuals in this state and of the weight of eligible electronic devices collected by or on behalf of the manufacturer.

Fees

The substitute amendment requires a manufacturer to pay an annual registration fee of $5,000, except that the fee for a manufacturer that sells at least 25 but fewer than 100 covered electronic devices in this state in a year is $1,250 and a manufacturer that sells fewer than 25 covered electronic devices is not required to pay a registration fee.

The substitute amendment also provides for shortfall fees. Whether a manufacturer must pay a shortfall fee and the amount of the fee is based on the weight of a manufacturer's covered electronic devices sold and the weight of eligible electronic devices recycled by or on behalf of the manufacturer. Manufacturers are allowed to count eligible electronic devices collected from individuals in rural

counties (identified in the substitute amendment) as weighing 1.25 times their actual weight.

If a manufacturer meets its target recycling weight, which is 0.8 times the weight of its covered electronic devices sold in a year, it is not required to pay a shortfall fee. If a manufacturer exceeds its target recycling weight, it receives credits, which it may use to meet its target recycling weight in any of the next three years or which it may sell to other manufacturers for that purpose.

Penalties

A manufacturer may be required to pay a forfeiture (a civil monetary penalty) of not more than $10,000 for each violation of the requirements in the substitute amendment. The maximum forfeiture for a violation by any person other than a manufacturer is $1,000.

COLLECTORS

A collector is an entity that receives eligible electronic devices from individuals and delivers them to recyclers. The substitute amendment requires a collector to register annually with DNR if the collector delivers to a recycler eligible electronic devices that will be recycled on behalf of a manufacturer. The substitute amendment requires a collector to certify annually that it complies with the requirements in the substitute amendment and with applicable health, environmental, safety, and financial responsibility requirements. The substitute amendment also requires a collector to report to DNR annually the total weight of covered electronic devices collected and the names of recyclers to whom the collector delivered covered electronic devices.

RECYCLERS

A recycler is an entity that accepts eligible electronic devices from individuals and collectors and prepares the devices for use in manufacturing or recovers useable materials from the devices. The substitute amendment requires a recycler to register annually with DNR if it recycles eligible electronic devices on behalf of a manufacturer.

The substitute amendment requires a registered recycler to comply with a number of requirements, including maintaining liability insurance, ensuring that it has funds available to wind up its business and repair any environmental contamination caused by the business, and maintaining records that show the weight of materials that it recovers from eligible electronic devices that are actually recycled and the weight of materials that are disposed of in a landfill or incinerated. The substitute amendment requires a registered recycler to certify annually that it complies with the requirements in the substitute amendment and with applicable requirements under other laws concerning health and safety training for employees and the storage, transportation, processing, and exporting of eligible electronic devices and materials recovered from those devices.

The substitute amendment prohibits a recycler from using prison labor to recycle eligible electronic devices on behalf of a manufacturer.

The substitute amendment requires a recycler to report to DNR twice annually the total weight of eligible electronic devices collected in this state that it receives for recycling on behalf of manufacturers.

RETAILERS

The substitute amendment requires a retailer to provide information to purchasers describing how eligible electronic devices can be collected and recycled and describing the prohibitions on disposing of electronic devices in landfills, as described below.

OTHER PROVISIONS

Landfill and incineration ban

Current law prohibits various items, including lead acid batteries and major appliances, from being disposed of in landfills and from being incinerated. This substitute amendment prohibits the disposal in landfills and the incineration of televisions, computer monitors, computers, computer peripherals, facsimile machines, digital video players, video recorders, and telephones with video displays. The prohibition takes effect on September 1, 2010. The substitute amendment authorizes DNR to expand the prohibition to other kinds of electronic devices if disposing of the electronic devices in landfills may be harmful to human health or the environment and also authorizes DNR to exempt a kind of electronic device from the prohibition.

Audits

This substitute amendment authorizes DNR to perform or contract for the performance of an audit of the activities of a registered collector or a registered recycler. The substitute amendment requires the collector or recycler to pay a portion of the cost of the audit.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.370 (2) (hr) of the statutes is created to read:

2 20.370 **(2)** (hr) *Electronic waste recycling.* From the recycling and renewable
3 energy fund, all moneys received under s. 287.17 (4) and (10) (j) for administration
4 of the electronic waste recycling program under s. 287.17.

5 **SECTION 2.** 25.49 (1m) of the statutes is created to read:

6 25.49 **(1m)** The moneys received under s. 287.17 (4) and (10) (j).

7 **SECTION 3.** 287.07 (5) of the statutes is created to read:

8 287.07 **(5)** ELECTRONIC DEVICES. (a) Beginning on September 1, 2010, no person
9 may dispose of in a solid waste disposal facility, burn in a solid waste treatment
10 facility, or place in a container the contents of which will be disposed of in a solid

1 waste disposal facility or burned in a solid waste treatment facility, any of the
2 following devices, unless the device is of a kind exempted by a rule promulgated
3 under s. 287.17 (10) (i):

4 1. A peripheral, as defined in s. 287.17 (1) (j).

5 3. A facsimile machine.

6 4. A digital video disc player.

7 5. A digital video player that does not use a disc and that is not a camera, as
8 defined in s. 287.17 (1) (a).

9 6. A video cassette recorder.

10 7. A video recorder that does not use a cassette and that is not a camera, as
11 defined in s. 287.17 (1) (a).

12 8. A covered electronic device, as defined in s. 287.17 (1) (f).

13 9. A telephone with a video display.

14 10. Another kind of electronic device identified by the department under s.
15 287.17 (10) (i).

16 (b) The operator of a solid waste disposal facility or a solid waste treatment
17 facility shall make a reasonable effort to manually separate, and arrange to have
18 recycled, a consumer video display device, as defined in s. 287.17 (1) (em), that is
19 readily observable in solid waste that is delivered to the facility for disposal or
20 burning unless the operator determines that one of the following applies:

21 1. Separating the device is not practical or would require the operator to
22 implement measures to protect human health or safety in addition to any measures
23 taken in the ordinary course of business.

24 2. The device has been damaged in such a way that recycling is not feasible or
25 practical.

1 **SECTION 4.** 287.09 (2) (ar) of the statutes is created to read:

2 287.09 **(2)** (ar) Provide information to persons in its region about the
3 prohibitions under s. 287.07 (5) (a), why it is important to recycle electronic devices,
4 and opportunities available to those persons for recycling electronic devices.

5 **SECTION 5.** 287.13 (5) (i) of the statutes is created to read:

6 287.13 **(5)** (i) Solid waste that consists of eligible electronic devices, as defined
7 in s. 287.17 (1) (gs), used by households.

8 **SECTION 6.** 287.17 of the statutes is created to read:

9 **287.17 Electronic waste recycling. (1)** DEFINITIONS. In this section:

10 (a) "Camera" means a device that records images and that is designed to be
11 hand-held.

12 (am) "Cathode-ray tube" means a vacuum tube used to convert an electronic
13 signal into a visual image.

14 (b) "Collection" means the act of receiving eligible electronic devices from
15 households and delivering, or arranging for the delivery of, the eligible electronic
16 devices to a recycler.

17 (c) "Collector" means a person who receives eligible electronic devices from
18 households and delivers, or arranges for the delivery of, the eligible electronic devices
19 to a recycler.

20 (d) "Computer monitor" means an electronic device that is a cathode-ray tube
21 or flat panel display primarily intended to display information from a consumer
22 computer or the Internet.

23 (e) "Consumer computer" means a high-speed data processing device for
24 performing logical, arithmetic, or storage functions that is marketed by the
25 manufacturer for use by households, except that "consumer computer" does not

include an automated typewriter or typesetter, a portable hand-held calculator or device, or other similar device.

(eg) 1. "Consumer printer" means, except as provided in subd. 2., one of the following that is marketed by the manufacturer for use by households:

a. A desktop printer.

b. A device that prints and has other functions, such as copying, scanning, or sending facsimiles, and that is designed to be placed on a work surface.

2. "Consumer printer" does not include a calculator with printing capabilities or a label maker.

(em) "Consumer video display device" means a television or computer monitor with a tube or screen that is at least 7 inches in its longest diagonal measurement and that is marketed by the manufacturer for use by households, except that "consumer video display device" does not include any of the following:

1. A television or computer monitor that is part of a motor vehicle and that is incorporated into the motor vehicle by, or for, a motor vehicle manufacturer or a franchised motor vehicle dealer.

2. A television or computer monitor that is contained within a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or stove, dishwasher, room air conditioner, dehumidifier, or air purifier.

(f) "Covered electronic device" means a consumer video display device, a consumer computer, or a consumer printer.

(g) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(gm) "Electronic device" means a device that requires electric current or electromagnetic fields to function and that contains a circuit board.

(gs) "Eligible electronic device" means a device that is one of the following and that is used by a household primarily for personal use, unless the device is of a kind exempted by a rule promulgated under s. 287.17 (10) (i):

1. A consumer computer.

2. A peripheral.

3. A facsimile machine.

4. A digital video disc player.

4m. A digital video player that does not use a disc and that is not a camera.

5. A video cassette recorder.

5m. A video recorder that does not use a cassette and that is not a camera.

6. A consumer video display device.

6m. A consumer printer.

7. Another kind of electronic device identified by the department under sub. (10) (i).

(h) "Household" means one or more individuals who occupy one dwelling unit in a detached or multiunit building.

(i) "Manufacturer" means a person who does any of the following:

1. Manufactures covered electronic devices to be sold under the person's own brand.

2. Sells covered electronic devices manufactured by others under the person's own brand.

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3. Licenses the person's brand for manufacture and sale of covered electronic devices by others.

1 (j) "Peripheral" means a keyboard or any other device, other than a consumer
2 printer, that is sold exclusively for external use with a consumer computer and that
3 provides input into or output from a consumer computer.
4 (jm) "Program quarter" means a 3-month period ending on March 31, June 30,
5 September 30, or December 31.
6 (k) "Program year" means the period from July 1 to the following June 30.
7 (L) "Recycler" means a person who accepts eligible electronic devices from
8 households and collectors for the purpose of recycling. "Recycler" does not include
9 a manufacturer who accepts products exclusively for refurbishing or repair.
10 (m) "Recycling" means preparing eligible electronic devices for use in
11 manufacturing processes or for recovery of useable materials and delivering the
12 materials for use. "Recycling" does not include destruction by incineration or other
13 processes or land disposal of recyclable materials and does not include reuse, repair,
14 or any other process through which eligible electronic devices are returned for use
15 by households in their original form.
16 (mg) "Registered collector" means a collector who is registered under sub. (7).
17 (mr) "Registered recycler" means a recycler who is registered under sub. (8).
18 (n) "Retailer" means a person who sells a covered electronic device to a
19 household in this state, in person or by mail, telephone, or the Internet, for use by
20 the household.
21 (nm) "Rural county" means a county that is not an urban county.
22 (o) "Sell" means to transfer title or right to use for consideration.
23 (p) "Television" means an electronic device, with a cathode ray-tube or flat
24 panel display, primarily intended to receive video programming via broadcast, cable,

or satellite transmission or to receive video images from surveillance or similar cameras.

(pm) "Urban county" means Brown County, Calumet County, Chippewa County, Dane County, Dodge County, Douglas County, Dunn County, Eau Claire County, Fond du Lac County, Grant County, Green County, Jefferson County, Kenosha County, LaCrosse County, Lincoln County, Manitowoc County, Marathon County, Marinette County, Milwaukee County, Outagamie County, Ozaukee County, Pierce County, Portage County, Racine County, Rock County, Sauk County, Sheboygan County, St. Croix County, Walworth County, Washington County, Waukesha County, Winnebago County, or Wood County.

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(2) REQUIREMENTS FOR SALE OF COVERED ELECTRONIC DEVICES. (a) *Manufacturers.* Beginning on December 1, 2009, a manufacturer may not sell to a household, offer to sell to a household, or deliver to retailers for subsequent sale to a household a new covered electronic device unless all of the following apply:

1. The manufacturer permanently affixes a label to the covered electronic device that is readily visible and that shows the manufacturer's brand.

2. The manufacturer is registered with the department in accordance with sub. (3).

3. The manufacturer pays the fees under sub. (4).

4. The manufacturer recycles or arranges for the recycling, by a registered recycler, of eligible electronic devices used by households in this state.

5. The manufacturer reports as required under sub. (5).

(b) *Cooperation.* A manufacturer may carry out its responsibilities under par. (a) 4. jointly with other manufacturers and may participate with other manufacturers in creating an entity to collect and recycle eligible electronic devices.

1 (c) *Retailers.* 1. Beginning on May 1, 2010, a retailer may not sell or offer for
2 sale to a household a new covered electronic device unless, before making the first
3 offer for sale, the retailer has determined that the brand of the covered electronic
4 device is listed on the department's Internet site under sub. (10) (a).

5 2. If a manufacturer's registration is revoked or expired and the retailer took
6 possession of a covered electronic device of the manufacturer before the registration
7 was revoked or expired, the retailer may sell the covered electronic device to a
8 household, but only if the sale takes place fewer than 180 days after the revocation
9 or expiration.

10 **(3)** REGISTRATION OF MANUFACTURERS. (a) To comply with sub. (2) (a) 2., a
11 manufacturer shall annually, no later than December 1 in 2009 and no later than
12 September 1 beginning in 2010, submit to the department a registration that
13 includes all of the following:

14 1. A list of the manufacturer's brands of covered electronic devices offered for
15 sale in this state.

16 2. The name, address, and contact information of an individual responsible for
17 ensuring compliance with this section.

18 3. A certification that the manufacturer has complied, and will continue to
19 comply, with the requirements of this section.

20 (b) Beginning with the registration due by September 1, 2010, a manufacturer
21 shall indicate in its registration under par. (a) which of the following applies:

22 1. The manufacturer's covered electronic devices comply with the European
23 Union directive on the restriction of the use of hazardous substances in electrical and
24 electronic equipment, 2002/95/EC or a successor directive.

1 2. The manufacturer's covered electronic devices do not comply with the
2 European Union directive on the restriction of the use of hazardous substances in
3 electrical and electronic equipment, 2002/95/EC or a successor directive.
4 (c) Notwithstanding the deadline in par. (a), a manufacturer who begins selling
5 covered electronic devices after December 1, 2009, and who has not previously
6 submitted a registration under this subsection shall submit a registration to the
7 department not more than 10 days after the day on which the manufacturer begins
8 selling or offering to sell covered electronic devices.
9 (d) If a manufacturer changes the brands that it sells or offers to sell, the
10 manufacturer shall update its registration not more than 10 days after making the
11 change.
12 (e) A complete registration is effective on receipt by the department and is valid
13 until the following September 1 unless revoked before that date.
14 (f) Within 20 business days after the receipt of a registration under this
15 subsection, the department shall review the registration submitted and notify the
16 manufacturer if the registration is not complete.
17 **(4)** MANUFACTURER RECYCLING TARGETS, FEES, AND RECYCLING CREDITS. (a)
18 *Payment.* To comply with sub. (2) (a) 3., a manufacturer shall pay fees as provided
19 in this subsection with the registration that it submits under sub. (3).
20 (b) *Registration fees.* 1. If the manufacturer sold at least 100 covered electronic
21 devices in this state during the previous program year, the manufacturer shall pay
22 a registration fee of $5,000, except, as provided under sub. (10) (k).
23 2. If the manufacturer sold at least 25 but fewer than 100 covered electronic
24 devices in this state during the previous program year, the manufacturer shall pay
25 a registration fee of $1,250.

1 3. If the manufacturer sold fewer than 25 covered electronic devices in this
2 state during the previous program year, the manufacturer is not required to pay a
3 registration fee.

4 (bm) *Shortfall fees.* In addition to the registration fee, beginning in 2010, a
5 manufacturer shall pay shortfall fees under par. (c) or (d) if the amounts calculated
6 under those provisions are positive numbers, except that a manufacturer is not
7 required to pay shortfall fees until its covered electronic devices have been sold or
8 offered for sale to households in this state for 3 full program years.

9 (c) *Annual shortfall fee in 2010.* The annual shortfall fee to be paid in 2010 by
10 a manufacturer is calculated as follows:

11 1. Determine the manufacturer's target recycling weight by multiplying the
12 number of pounds of the manufacturer's covered electronic devices sold to
13 households in this state during the program year that began 36 months before the
14 beginning of the program year in which the calculation is made, as reported under
15 sub. (5) (a), by 0.8 and multiplying the product by 0.5.

16 2. Determine the actual recycling weight equal to the weight of eligible
17 electronic devices recycled by or on behalf of the manufacturer during the last 2
18 program quarters of program year 2009-10, as determined under par. (f) 2.

19 3. Subtract the actual recycling weight, determined under subd. 2., from the
20 target recycling weight, determined under subd. 1.

21 4. Multiply the amount determined under subd. 3. by the estimated cost of
22 recycling determined as follows:

23 a. Fifty cents per pound for a manufacturer if the weight of eligible electronic
24 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
25 is less than 50 percent of the target recycling weight, determined under subd. 1.

b. Forty cents per pound for a manufacturer if the weight of eligible electronic devices recycled by or on behalf of the manufacturer, as determined under subd. 2., is at least 50 percent but not more than 90 percent of the target recycling weight, determined under subd. 1.

c. Thirty cents per pound for a manufacturer if the weight of eligible electronic devices recycled by or on behalf of the manufacturer, as determined under subd. 2., is more than 90 percent of the target recycling weight, determined under subd. 1.

(d) *Annual shortfall fee after 2010.* The annual shortfall fee to be paid by a manufacturer in a year after 2010 is calculated as follows:

1. Determine the manufacturer's target recycling weight by multiplying the number of pounds of the manufacturer's covered electronic devices sold to households in this state during the program year that began 36 months before the beginning of the program year in which the calculation is made, as reported under sub. (5) (a), by 0.8.

2. Determine the actual recycling weight by adding the weight of eligible electronic devices recycled by or on behalf of the manufacturer during the previous program year, as determined under par. (f) 1., plus the number of recycling credits that a manufacturer elects to use, as reported to the department under sub. (5) (c) 3.

3. Subtract the actual recycling weight, determined under subd. 2., from the target recycling weight, determined under subd. 1.

4. Multiply the amount determined under subd. 3. by the estimated cost of recycling determined as follows:

1 a. Fifty cents per pound for a manufacturer if the weight of eligible electronic
2 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
3 is less than 50 percent of the target recycling weight, determined under subd. 1.
4 b. Forty cents per pound for a manufacturer if the weight of eligible electronic
5 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
6 is at least 50 percent but not more than 90 percent of the target recycling weight,
7 determined under subd. 1.
8 c. Thirty cents per pound for a manufacturer if the weight of eligible electronic
9 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
10 is more than 90 percent of the target recycling weight, determined under subd. 1.
11 (e) *Recycling credits.* If, for a program year, the weight of eligible electronic
12 devices recycled by or on behalf of a manufacturer, as determined under par. (f) 1. or
13 2., exceeds the target recycling weight determined under par. (c) 1. or (d) 1., the
14 manufacturer has a number of recycling credits equal to the number of excess pounds
15 or 20 percent of the target recycling weight, whichever is less. The manufacturer
16 may use the credits for the purpose of par. (d) 2. for any of the 3 succeeding program
17 years or may sell credits to another manufacturer for use for any of the 3 succeeding
18 program years.
19 (f) *Weight recycled.* 1. The weight of eligible electronic devices recycled by or
20 on behalf of a manufacturer for a program year is the weight reported under sub. (5)
21 (b) for that program year, except that if the manufacturer reports separately the
22 weight of eligible electronic devices used by households in rural counties and used
23 by households in urban counties for a program year, the weight is determined by
24 adding the weight used by households in urban counties in that program year and
25 1.25 times the weight used by households in rural counties in that program year.

1 2. The weight of eligible electronic devices recycled by or on behalf of a
2 manufacturer for the last 2 program quarters of program year 2009-10 is the weight
3 reported under sub. (5) (b) for that period, except that if the manufacturer reports
4 separately the weight of eligible electronic devices used by households in rural
5 counties and used by households in urban counties for that period, the weight is
6 determined by adding the weight used by households in urban counties in that period
7 and 1.25 times the weight used by households in rural counties in that period.

8 **(5)** MANUFACTURERS REPORTING REQUIREMENTS. (a) *Weight of covered electronic*
9 *devices sold.* 1. Except as provided in subd. 3., with each registration that it submits
10 under sub. (3), a manufacturer shall report one of the following to the department:

11 a. The total weight of each model of its covered electronic devices sold to
12 households in this state during the program year that began 24 months before the
13 beginning of the program year in which the report is made.

14 b. The total weight of all of its covered electronic devices sold to households in
15 this state during the program year that began 24 months before the beginning of the
16 program year in which the report is made.

17 c. An estimate, based on national sales data, of the total weight of its covered
18 electronic devices sold to households in this state during the program year that began
19 24 months before the beginning of the program year in which the report is made.

20 2. A manufacturer shall include in the report required under subd. 1. a
21 description of how the manufacturer calculated the weight reported under subd. 1.

22 3. A manufacturer is not required to report under subd. 1. until its covered
23 electronic devices have been sold or offered for sale to households in this state for one
24 full program year.

1 4. The department may reject a manufacturer's report under subd. 1. if it
2 determines that the report is not complete or not reasonably accurate.
3 (b) *Weight of eligible electronic devices recycled.* With the registration that it
4 submits under sub. (3) in 2010, a manufacturer shall report to the department the
5 total weight of eligible electronic devices used by households in this state that were
6 collected by or delivered to the manufacturer for recycling by the manufacturer or
7 that were collected by or delivered to a registered recycler for recycling on behalf of
8 the manufacturer during the last 2 program quarters of the preceding program year.
9 Beginning in 2011, with the registration that it submits under sub. (3), a
10 manufacturer shall report to the department the total weight of eligible electronic
11 devices used by households in this state that were collected by or delivered to the
12 manufacturer for recycling by the manufacturer or that were collected by or
13 delivered to a registered recycler for recycling on behalf of the manufacturer during
14 the preceding program year. A manufacturer may report separately the weight of
15 eligible electronic devices used by households in rural counties and used by
16 households in urban counties for the purpose of obtaining the weight adjustment
17 under sub. (4) (f) for eligible electronic devices received from households in rural
18 counties.
19 (c) *Recycling credits.* With the registration that it submits under sub. (3),
20 beginning in 2011, a manufacturer shall report all of the following to the department:
21 1. The number of recycling credits that the manufacturer purchased during the
22 preceding program year.
23 2. The number of recycling credits that the manufacturer sold during the
24 preceding program year.

1 3. The number of recycling credits that the manufacturer elects to use in the
2 calculation of its shortfall fees under sub. (4) (d) 2.
3 4. The number of recycling credits available to the manufacturer after
4 calculating its shortfall fees under sub. (4) (d) 2.
5 **(7)** COLLECTORS. (a) *Registration.* 1. Beginning on November 1, 2009, no
6 person may operate as a collector delivering or arranging for the delivery of eligible
7 electronic devices to a registered recycler for recycling on behalf of a manufacturer
8 who is registered under sub. (3) unless the person is registered under this paragraph.
9 A person shall register by submitting annually, no later than November 1 in 2009 and
10 no later than August 1 beginning in 2010, to the department a registration, using a
11 form prescribed by the department, that includes all of the following:
12 a. The name, address, and contact information of a responsible individual.
13 b. The street address of all facilities at which the person operates as a collector.
14 c. A certification that the person has all governmental licenses or other
15 approvals that are required to operate as a collector and has complied, and will
16 continue to comply, with the requirements of this subsection and with applicable
17 health, environmental, safety, and financial responsibility requirements.
18 2. A complete registration is effective on receipt by the department and is valid
19 until the following August 1 unless suspended or revoked before that date.
20 (b) *Reports and records.* No later than August 1 of each program year,
21 beginning August 1, 2010, a registered collector shall report to the department the
22 total weight of eligible electronic devices collected in this state during the preceding
23 program year and the names of all registered recyclers to whom the collector
24 delivered eligible electronic devices. A registered collector shall maintain records of

1 the sources of eligible electronic devices it collects and of the registered recyclers to
2 whom the collector delivers eligible electronic devices.

3 (c) *Limitation.* A registered collector may not use prison labor to collect eligible
4 electronic devices the weight of which was or will be reported under sub. (5) (b).

5 **(8)** RECYCLERS. (a) *Registration.* 1. Beginning on November 1, 2009, no person
6 may operate as a recycler receiving eligible electronic devices on behalf of a
7 manufacturer who is registered under sub. (3) unless the person is registered under
8 this paragraph. A person shall register by submitting annually, no later than
9 November 1 in 2009 and no later than August 1 beginning in 2010, to the department
10 a registration, using a form prescribed by the department, that includes all of the
11 following:

12 a. The name, address, and contact information of a responsible individual.

13 b. The street address of all facilities at which the person conducts recycling.

14 c. The certification required under par. (d).

15 d. Documentation of the liability insurance required under this subsection.

16 2. A complete registration is effective on receipt by the department and is valid
17 until the following August 1 unless suspended or revoked before that date.

18 (b) *Reports and records.* 1. No later than August 1 of each program year,
19 beginning with August 1, 2010, a registered recycler shall report to the department
20 the total weight of eligible electronic devices collected in this state that the recycler
21 received for recycling on behalf of a manufacturer registered under sub. (3) during
22 the preceding program year and the name of the manufacturer.

23 2. No later than February 1 of each program year, beginning in 2011, a
24 registered recycler shall report to the department all of the following:

1 a. The total weight of eligible electronic devices collected in this state that the
2 recycler received for recycling on behalf of a manufacturer during the first 6 months
3 of the program year and the name of the manufacturer.
4 b. The total weight of eligible electronic devices collected in this state that the
5 recycler received for recycling during the first 6 months of the program year in
6 anticipation of attributing them to a manufacturer for the purposes of the program
7 under this section.
8 3. A registered recycler shall maintain records of the sources of eligible
9 electronic devices collected in this state that the recycler receives for recycling on
10 behalf of a manufacturer registered under sub. (3).
11 (c) *Operational requirements.* 1. A registered recycler shall maintain liability
12 insurance coverage in the amount of at least $1,000,000 for environmental releases,
13 accidents, and other emergencies.
14 2. A registered recycler may not use prison labor to recycle eligible electronic
15 devices the weight of which was or will be reported under sub. (5) (b).
16 3. A registered recycler shall maintain proof of financial responsibility
17 ensuring the availability of funds in an amount sufficient to cover the estimated costs
18 of paying another person to close the facilities at which recycling is conducted,
19 including managing any remaining eligible electronic devices or materials derived
20 from eligible electronic devices and performing any necessary environmental
21 cleanup. The registered recycler shall maintain, and provide to the department upon
22 request, an itemized statement of the estimated costs in a form specified by the
23 department and documentation of the source of the estimates. The registered
24 recycler may provide the proof of financial responsibility required under this
25 subdivision using one of the following:

1 a. A surety bond.

2 b. A deposit of cash, certificates of deposit, or securities issued by the federal
3 government.

4 c. An escrow account.

5 d. An irrevocable letter of credit.

6 e. An irrevocable trust.

7 4. A registered recycler shall maintain records that can be used to determine,
8 for each program year, the total weight of eligible electronic devices recycled by the
9 recycler on behalf of manufacturers under this section, the weight of materials
10 derived from those eligible electronic devices that the registered recycler sends to
11 another person for use in a manufacturing process or for recovery of useable
12 materials, and the weight of materials derived from those eligible electronic devices
13 that the registered recycler sends to be disposed of in a solid waste disposal facility
14 or burned at a solid waste treatment facility.

15 5. A registered recycler shall maintain records that do all of the following:

16 a. Identify each person who received from the registered recycler materials
17 derived from eligible electronic devices recycled on behalf of manufacturers under
18 this section.

19 b. If a person identified under subd. 5. a. does not use the materials in a
20 manufacturing process, identify each person who receives from the person identified
21 under subd. 5. a. materials derived from eligible electronic devices recycled on behalf
22 of manufacturers under this section.

23 5m. A registered recycler shall make the information under subds. 4. and 5. for
24 a program year available, upon request, to a manufacturer on behalf of whom the
25 recycler recycled eligible electronic devices under this section in that program year,

1 except that if the recycler maintains a system under which it tracks eligible
2 electronic devices recycled on behalf of one manufacturer, and the disposition of the
3 materials derived from those eligible electronic devices, separately from other
4 eligible electronic devices that it recycles, the recycler is only required to provide to
5 that manufacturer the information under subds. 4. and 5. concerning the eligible
6 electronic devices recycled on behalf of that manufacturer.

7 6. A registered recycler shall maintain records that show the actions that it
8 takes in a program year to ensure that the persons identified under subd. 5. use the
9 materials derived from eligible electronic devices in a manufacturing process or for
10 recovery of useable materials and shall make that information available upon
11 request to a manufacturer on behalf of whom the recycler recycles eligible electronic
12 devices under this section in that program year.

13 7. A registered recycler shall prepare and maintain a written contingency plan
14 for responding to releases of hazardous substances that complies with the
15 requirements in s. NR 664.0052, Wis. Adm. Code.

16 8. A registered recycler shall comply with any other operational requirement
17 in rules promulgated under par. (e).

18 (d) *Certification.* As a condition of registration under par. (a), a registered
19 recycler shall submit to the department a certification that states that the registered
20 recycler does all of the following:

21 1. Complies with par. (c).

22 2. Complies with federal, state, and local requirements concerning the storage,
23 transportation, processing, and exporting of eligible electronic devices and materials
24 derived from eligible electronic devices, including the requirements in 40 CFR
25 261.39 (a) (5) and 273.20 and requirements in rules promulgated under s. 291.05.

1 3. Complies with federal requirements under 29 CFR 1910.120 concerning
2 occupational and environmental health and safety training for employees.
3 (e) *Modifying or adding requirements by rule.* The department shall review the
4 requirements under par. (c) 1. to 7. to determine whether it is necessary to modify
5 or add to those requirements so that the requirements applicable to registered
6 recyclers are at least equivalent to nationally recognized standards for recycling
7 eligible electronic devices. If the department determines that it is necessary to
8 modify or add to the requirements under par. (c) 1. to 7., the department shall
9 promulgate rules that modify or add to the requirements so that they are at least
10 equivalent to nationally recognized standards for recycling eligible electronic
11 devices. The department may not promulgate a rule under this paragraph that takes
12 effect before the first day of the 24th month beginning after the effective date of this
13 paragraph .... [LRB inserts date].
14 **(9)** RETAILERS. A retailer who sells covered electronic devices for use by
15 households shall provide to purchasers information describing how eligible
16 electronic devices can be collected and recycled and a description of the prohibitions
17 in s. 287.07 (5) (a). A retailer may satisfy this requirement by providing a toll-free
18 number for receiving the information and a description of how to access the
19 department's Internet site under sub. (10) (a). A retailer who sells through a catalog
20 may provide the information in the catalog. A retailer who sells through the Internet
21 may provide the information on its Internet site.
22 **(9m)** RECORD KEEPING AND INSPECTION. A person subject to sub. (3), (7), (8), or
23 (9) shall maintain records related to the program under this section and reports
24 required under this section for at least 3 years. The department may inspect records

1 of a person subject to sub. (3), (7), (8), or (9) that are related to the program under this
2 section.

3 **(10)** POWERS AND DUTIES OF THE DEPARTMENT. (a) *Internet site; manufacturers.*
4 The department shall maintain an Internet site on which the department lists the
5 names of manufacturers who are registered under sub. (3) and the names of the
6 brands listed in the manufacturers' registrations. The department shall update the
7 information on the Internet site promptly upon receipt of a new or revised
8 registration. The department shall include on the Internet site a statement that this
9 section applies only to covered electronic devices sold for household use and that the
10 list of manufacturers is not a list of manufacturers qualified to sell video display
11 devices, computers, or printers for industrial, commercial, or other nonhousehold
12 uses. The department shall also include on the Internet site the contact information
13 provided by manufacturers under sub. (3) (a) 2.

14 (am) *Internet site; recyclers.* The department shall maintain an Internet site
15 on which the department lists the names of registered recyclers. The department
16 shall update the information on the Internet site promptly upon receipt of a new or
17 revised registration.

18 (b) *Providing information.* Except as provided in par. (bm), the department
19 shall make the information provided in registration statements and reports under
20 subs. (3), (5), (7), and (8) available to manufacturers, retailers, and the public.

21 (bm) *Confidentiality.* 1. The department shall keep confidential any part of a
22 record, report, or other information obtained in the administration of this section
23 upon receiving an application for confidential status by any person containing a
24 showing satisfactory to the department that the part of a record, report, or other

1 information would, if made public, divulge a method or process that is entitled to
2 protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.
3 2. If the department refuses to release information on the grounds that it is
4 confidential under subd. 1. and anyone challenges that refusal, the department shall
5 inform the person who submitted the application under subd. 1. of that challenge.
6 Unless that person authorizes the department to release the information, that
7 person shall pay the reasonable costs incurred by this state to defend the refusal to
8 release the information.
9 3. Subdivision 1. does not prevent the disclosure of any information to a
10 representative of the department for the purpose of administering this section or to
11 an officer, employee, or authorized representative of the federal government for the
12 purpose of administering federal law. When the department provides information
13 that is confidential under subd. 1. to the federal government, the department shall
14 also provide a copy of the application for confidential status.
15 (c) *Review of formula.* 1. The department shall annually review all of the
16 following:
17 a. The number by which the weight of covered electronic devices sold is
18 multiplied under sub. (4) (d) 1. to determine target recycling weight.
19 b. The estimated cost of recycling under sub. (4) (d) 4.
20 c. The registration fees under sub. (4) (b).
21 d. The multiplier for the weight of eligible electronic devices collected from
22 households in rural counties under sub. (4) (f).
23 2. If the department determines that any of the values under subd. 1. a. to d.
24 should be changed in order to improve the effectiveness of the program under this
25 section or to provide more recycling opportunities to rural areas of this state, the

1 department shall report its recommendations for changes under s. 13.172 (3) to the
2 committee of each house of the legislature with jurisdiction over solid waste policy.
3 (cm) *Report concerning sales information.* The department shall evaluate the
4 accuracy of the information provided by manufacturers under sub. (5) (a) in 2009 and
5 2010 and whether the weight of each manufacturer's covered electronic devices sold
6 in this state should be based on national sales data obtained from 3rd parties. Before
7 December 1, 2011, the department shall report the results of its evaluation to the
8 legislature under s. 13.172 (2) and to the governor.
9 (d) *Annual report.* Before December 1 of each year, beginning in 2012, the
10 department shall provide a report on the program under this section to the
11 legislature under s. 13.172 (2) and to the governor. The department shall include all
12 of the following in the report:
13 1. The total weight of eligible electronic devices recycled.
14 2. A summary of the information provided by manufacturers and recyclers
15 under subs. (5) and (8).
16 3. Information concerning the recycling programs used by manufacturers to
17 recycle eligible electronic devices.
18 4. Information concerning the collection and recycling of eligible electronic
19 devices by persons other than registered manufacturers, registered collectors, and
20 registered recyclers.
21 5. Information about any disposal of eligible electronic devices in landfills and
22 any burning of eligible electronic devices in solid waste treatment facilities in this
23 state.
24 6. A description of any actions taken to enforce the requirements of this section.

1 7. Any recommendations to apply the requirements under sub. (2) to additional
2 kinds of devices.

3 (e) *Report concerning federal legislation.* If a federal law relating to the
4 collection and recycling of covered electronic devices sold in the United States is
5 enacted, the department shall prepare a report describing the effect of the federal
6 law and shall submit the report under s. 13.172 (3) to the committee of each house
7 of the legislature with jurisdiction over solid waste policy.

8 (f) *Outreach and communication.* 1. The department shall promote public
9 participation in the collection and recycling of eligible electronic devices by and on
10 behalf of manufacturers through education and outreach activities. The department
11 shall facilitate communications between local governments, persons operating solid
12 waste collection and recycling centers, and manufacturers to ensure that
13 manufacturers are aware of eligible electronic devices that are available for
14 recycling.

15 2. The department shall assist recyclers to identify federal and state
16 requirements concerning the storage, transportation, export, and processing of
17 eligible electronic devices and materials derived from eligible electronic devices. The
18 department shall assist collectors to identify health, environmental, safety, and
19 financial responsibility requirements applicable to collectors.

20 (g) *Cooperation with other states.* The department may cooperate with other
21 states to effectuate the program under this section. The department may, with other
22 states, operate a regional system for creating, trading, and selling credits for
23 recycling eligible electronic devices.

24 (h) *Suspension and revocation.* The department may revoke the registration
25 of a manufacturer who violates sub. (2) (a), (3), (4), or (5). The department may

1 suspend or revoke the registration of a collector or recycler who violates sub. (7) or
2 (8).

3 (i) *Addition or exemption of eligible electronic devices.* If the department
4 determines that the disposal or burning of a kind of electronic device that is not listed
5 in sub. (1) (gs) in a solid waste facility may be harmful to human health or the
6 environment, the department may promulgate a rule specifying that the kind of
7 electronic device is an eligible electronic device, is subject to s. 287.07 (5) (a), or both.
8 If the department determines that the disposal or burning of a kind of electronic
9 device that is listed in sub. (1) (gs) or s. 287.07 (5) (a) in a solid waste facility is not
10 harmful to human health and is not harmful to the environment or if the department
11 determines that it is not feasible to require the recycling of a kind of electronic device
12 that is listed in sub. (1) (gs) or s. 287.07 (5) (a), the department may promulgate a rule
13 specifying that the kind of electronic device is not an eligible electronic device, is not
14 subject to s. 287.07 (5) (a), or both. The department may not promulgate a rule under
15 this paragraph that takes effect before the first day of the 24th month beginning after
16 the effective date of this paragraph .... [LRB inserts date].

17 (j) *Audits.* The department may perform or contract for the performance of an
18 audit of the activities of a registered collector or registered recycler. If the
19 department performs or contracts for the performance an audit of a collector or
20 recycler during the first 3 years in which the collector or recycler is registered under
21 sub. (7) or (8) (a), the collector or recycler shall pay 25 percent of the cost of the audit.
22 If the department performs or contracts for the performance of an audit of a collector
23 or recycler after the first 3 years in which the collector or recycler is registered, the
24 collector or recycler shall pay 50 percent of the cost of the audit.

(k) *Modification of registration fee.* The department may modify the registration fee under sub. (4) (b) 1. by rule. The department may not promulgate a rule under this paragraph that takes effect before the first day of the 24th month beginning after the effective date of this paragraph .... [LRB inserts date].

(11) PENALTIES. (a) *Manufacturer.* Any manufacturer who violates this section may be required to forfeit not more than $10,000 for each violation.

(b) *Others.* Any person, other than a manufacturer, who violates this section may be required to forfeit not more than $1,000 for each violation.

SECTION 7. 287.91 (2) of the statutes is amended to read:

287.91 **(2)** Notwithstanding sub. (1) and s. 287.95 (3) (a), the attorney general may enforce s. 287.07 (3) ~~and~~, (4), and (5) by seeking injunctive relief against any person violating those provisions.

SECTION 8. 287.95 (1) of the statutes is amended to read:

287.95 **(1)** Any person who violates s. 287.07 (1m) or (5) may be required to forfeit $50 for a first violation, may be required to forfeit $200 for a 2nd violation and may be required to forfeit not more than $2,000 for a 3rd or subsequent violation.

SECTION 9. 287.97 of the statutes is amended to read:

287.97 Penalties. Any person who violates this chapter, except s. 287.07, 287.08, 287.17, or 287.81, or any rule promulgated under this chapter, except under s. 287.07, 287.08 or 287.81, may be required to forfeit not less than $10 nor more than $1,000 for each violation.

SECTION 10. Nonstatutory provisions.

(1) PERMANENT POSITION AUTHORIZATION. The authorized FTE positions for the department of natural resources are increased by 1.0 SEG position, to be funded from

1 the appropriation under section 20.370 (2) (hr) of the statutes, as created by this act,
2 to administer the electronic waste recycling program.

3 (2) PROJECT POSITION AUTHORIZATION.

4 (a) The authorized FTE positions for the department of natural resources are
5 increased by 1.0 SEG 2-year project position, to be funded from the appropriation
6 under section 20.370 (2) (hq) of the statutes, for start up of the electronic waste
7 recycling program.

8 (b) The authorized FTE positions for the department of natural resources are
9 increased by 1.0 SEG 2-year project position, to be funded from the appropriation
10 under section 20.370 (2) (hr) of the statutes, as created by this act, for start up of the
11 electronic waste recycling program.

12 **SECTION 11. Fiscal changes.**

13 (1) FUNDING FOR POSITIONS AND ADMINISTRATION. In the schedule under section
14 20.005 (3) of the statutes for the appropriation to the department of natural
15 resources under section 20.370 (2) (hq) of the statutes, as affected by the acts of 2009,
16 the dollar amount is increased by $170,000 for the first fiscal year of the fiscal
17 biennium in which this subsection takes effect for administration of the electronic
18 waste recycling program and to increase the authorized FTE positions for the
19 department by 1.0 SEG position for administration of the electronic waste recycling
20 programs, and to fund the 1.0 FTE SEG project position authorized under SECTION
21 10 (2) (a) of this act. In the schedule under section 20.005 (3) of the statutes for the
22 appropriation to the department of natural resources under section 20.370 (2) (hq)
23 of the statutes, as affected by the acts of 2009, the dollar amount is increased by
24 $160,000 for the second fiscal year of the fiscal biennium in which this subsection

1 takes effect for administration of the electronic waste recycling program and to
2 provide continued funding for the positions authorized under this act.

3 **SECTION 12. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) SECTION 11 (1) takes effect on the day after publication or the 2nd day after
6 publication of the 2009-11 biennial budget act, whichever is later.

7 **(END)**

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa0285/P1
RCT:bjk:ph

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2009 SENATE BILL 107

Insert A

At the locations indicated, amend the bill as follows:

1. Page 8, line 18: delete "Licenses" and substitute "Except as provided in sub. (1m), licenses".

2. Page 10, line 3: after that line insert:

Insert B

"**(1m)** TRANSFER OF MANUFACTURER RESPONSIBILITIES. If a person who licenses the person's brand for manufacture and sale of covered electronic devices by another enters into a contract with the licensee under which the licensee assumes the responsibilities that arise under sub. (2) (a) from the sale of those covered electronic devices, the licensee, rather than the licensor, is the manufacturer of the covered electronic devices.".

(END)