S T A T E O F N E W Y O R K

6047

2009-2010 Regular Sessions

I N S E N A T E

June 22, 2009

Introduced by Sens. THOMPSON, DIAZ, KRUEGER, ONORATO, PADAVAN, SAMPSON, SCHNEIDERMAN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to the recycling, reuse and safe handling of electronic equipment sold in the state of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "electronic equipment recycling and reuse act".

S 2. Article 27 of the environmental conservation law is amended by adding a new title 26 to read as follows:

TITLE 26

ELECTRONIC EQUIPMENT RECYCLING AND REUSE

SECTION 27-2601. DEFINITIONS.
27-2603. MANUFACTURER COLLECTION; RECYCLING SURCHARGE.
27-2605. MANUFACTURER ELECTRONIC WASTE REGISTRATION AND RESPONSIBILITIES.
27-2607. RETAILER REQUIREMENTS.
27-2609. LABELING.
27-2611. DISPOSAL BAN.
27-2613. ELECTRONIC WASTE COLLECTION, CONSOLIDATION AND RECYCLING.
27-2615. DEPARTMENT RESPONSIBILITIES.
27-2617. REPORTING REQUIREMENTS.
27-2619. PREEMPTION.
27-2621. DISPOSITION OF FEES.

S 27-2601. DEFINITIONS.

AS USED IN THIS TITLE:

1. "CATHODE RAY TUBE" MEANS A VACUUM TUBE OR PICTURE TUBE USED TO CONVERT AN ELECTRONIC SIGNAL INTO A VISUAL IMAGE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD12115-04-9

2. "COMPUTER" MEANS AN ELECTRONIC, MAGNETIC, OPTICAL, ELECTROCHEMICAL OR OTHER HIGH-SPEED DATA PROCESSING DEVICE PERFORMING A LOGICAL, ARITHMETIC OR STORAGE FUNCTION, INCLUDING A LAPTOP COMPUTER AND DESKTOP COMPUTER, AND INCLUDES ANY CABLE, CORD, OR WIRING PERMANENTLY AFFIXED TO OR INCORPORATED INTO SUCH PRODUCT, AND MAY INCLUDE BOTH A COMPUTER CENTRAL PROCESSING UNIT AND A MONITOR; BUT SUCH TERM SHALL NOT INCLUDE AN AUTOMATED TYPEWRITER OR TYPESETTER, A PORTABLE HAND-HELD CALCULATOR, A PORTABLE DIGITAL ASSISTANT, OR OTHER SIMILAR DEVICE.

3. "COMPUTER PERIPHERAL" MEANS A MONITOR; ELECTRONIC KEYBOARD; ELECTRONIC MOUSE OR SIMILAR POINTING DEVICE; FACSIMILE MACHINE, DOCUMENT SCANNER, OR PRINTER INTENDED FOR USE WITH A COMPUTER; AND INCLUDES ANY CABLE, CORD, OR WIRING PERMANENTLY AFFIXED TO OR INCORPORATED INTO ANY SUCH PRODUCT.

4. "CONSUMER" MEANS A PERSON LOCATED IN THE STATE WHO OWNS OR USES COVERED ELECTRONIC EQUIPMENT, INCLUDING BUT NOT LIMITED TO AN INDIVIDUAL, A BUSINESS, CORPORATION, LIMITED PARTNERSHIP, NOT-FOR-PROFIT ORGANIZATION, OR GOVERNMENTAL ENTITY, BUT DOES NOT INCLUDE AN ENTITY INVOLVED IN A WHOLESALE TRANSACTION BETWEEN A DISTRIBUTOR AND RETAILER.

5. "COVERED ELECTRONIC EQUIPMENT" MEANS: A COMPUTER; COMPUTER PERIPHERAL; SMALL ELECTRONIC EQUIPMENT; CATHODE RAY TUBE; CATHODE RAY TUBE DEVICE; OR TELEVISION, AS DEFINED IN THIS SECTION. "COVERED ELECTRONIC EQUIPMENT" DOES NOT INCLUDE ANY MOTOR VEHICLE OR ANY PART THEREOF; CAMERA OR VIDEO CAMERA; PORTABLE OR STATIONARY RADIO; WIRELESS TELEPHONE; HOUSEHOLD APPLIANCES SUCH AS CLOTHES WASHERS, CLOTHES DRYERS, REFRIGERATORS, FREEZERS, MICROWAVE OVENS, OVENS, RANGES OR DISHWASHERS; EQUIPMENT THAT IS FUNCTIONALLY OR PHYSICALLY PART OF A LARGER PIECE OF EQUIPMENT INTENDED FOR USE IN AN INDUSTRIAL, RESEARCH AND DEVELOPMENT OR COMMERCIAL SETTING; SECURITY OR ANTI-TERRORISM EQUIPMENT; MONITORING AND CONTROL INSTRUMENT OR SYSTEM; THERMOSTAT; HAND-HELD TRANSCEIVER; TELEPHONE OF ANY TYPE; PORTABLE DIGITAL ASSISTANT OR SIMILAR DEVICE; CALCULATOR; GLOBAL POSITIONING SYSTEM (GPS) RECEIVER OR SIMILAR NAVIGATION DEVICE; COMMERCIAL MEDICAL EQUIPMENT THAT CONTAINS WITHIN IT A CATHODE RAY TUBE, A CATHODE RAY TUBE DEVICE, A FLAT PANEL DISPLAY OR SIMILAR VIDEO DISPLAY DEVICE, AND IS NOT SEPARATE FROM THE LARGER PIECE OF EQUIPMENT; OR OTHER MEDICAL DEVICES AS THAT TERM IS DEFINED UNDER THE FEDERAL FOOD, DRUG AND COSMETIC ACT.

6. "ELECTRONIC RECYCLER" MEANS A PERSON WHO ENGAGES IN THE RECYCLING OF ELECTRONIC WASTE.

7. "ELECTRONIC WASTE" MEANS COVERED ELECTRONIC EQUIPMENT THAT HAS BEEN DISCARDED OR IS NO LONGER WANTED BY ITS OWNER, OR FOR ANY OTHER REASON ENTERS THE WASTE COLLECTION, RECOVERY, TREATMENT, PROCESSING, OR RECYCLING SYSTEM. FOR PURPOSES OF SECTION 27-2611 OF THIS TITLE, "ELECTRONIC WASTE" DOES NOT INCLUDE THE CASE, SHELL, OR OTHER ENCLOSURE OF COVERED ELECTRONIC EQUIPMENT FROM WHICH INCORPORATED ASSEMBLIES, SUB-ASSEMBLIES, COMPONENTS, MATERIALS, WIRING, CIRCUITRY AND COMMODITIES HAVE BEEN REMOVED.

8. "ELECTRONIC WASTE COLLECTION SITE" MEANS A FACILITY AT A FIXED OR TEMPORARY SITE AT WHICH ELECTRONIC WASTE IS ACCEPTED FROM CONSUMERS AND TEMPORARILY STORED FOR NOT MORE THAN FIVE DAYS IN A CALENDAR YEAR BEFORE SUCH WASTE IS TRANSPORTED TO AN ELECTRONIC WASTE CONSOLIDATION FACILITY OR ELECTRONIC WASTE RECYCLING FACILITY. ELECTRONIC WASTE COLLECTION SITES INCLUDE, BUT ARE NOT LIMITED TO, DEDICATED SITES AND FACILITIES FOR THE ACCEPTANCE OF ELECTRONIC WASTE, AND RETAIL STORES AND OUTLETS, MUNICIPAL OR PRIVATE ELECTRONIC WASTE COLLECTION SITES AND NOT-FOR-PROFIT DONATION SITES THAT HAVE AGREED TO ACCEPT ELECTRONIC WASTE.

9. "ELECTRONIC WASTE CONSOLIDATION FACILITY" MEANS A FACILITY THAT RECEIVES AND STORES ELECTRONIC WASTE FOR THE PURPOSE OF ORGANIZING, CATEGORIZING OR CONSOLIDATING ITEMS OF ELECTRONIC WASTE BEFORE SUCH WASTE IS TRANSPORTED TO AN ELECTRONIC WASTE RECYCLING FACILITY. ELECTRONIC WASTE CONSOLIDATION FACILITIES INCLUDE, BUT ARE NOT LIMITED TO, FACILITIES OF BROKERS ACTING AS INTERMEDIARIES BETWEEN ELECTRONIC WASTE BUYERS AND SELLERS, AND REGIONAL CENTERS AT WHICH ELECTRONIC WASTE IS ORGANIZED, CATEGORIZED OR CONSOLIDATED AFTER BEING TRANSPORTED TO SUCH CENTERS FROM ELECTRONIC WASTE COLLECTION SITES OR OTHER ELECTRONIC WASTE CONSOLIDATION FACILITIES.

10. "ELECTRONIC WASTE RECYCLING FACILITY" MEANS A FACILITY AT WHICH ELECTRONIC WASTE IS RECYCLED.

11. "LABEL" MEANS A MARKER ON THE SURFACE OF COVERED ELECTRONIC EQUIPMENT CONVEYING INFORMATION; FOR THE PURPOSES OF THIS TITLE, LABELS MUST BE PERMANENT AND CAN BE ATTACHED, PRINTED, ENGRAVED OR INCORPORATED IN ANY OTHER PERMANENT WAY THAT IS OBVIOUS AND VISIBLE TO USERS OF THE PRODUCT.

12. "MANUFACTURER" MEANS A PERSON WHO: (A) ASSEMBLES OR SUBSTANTIALLY ASSEMBLES COVERED ELECTRONIC EQUIPMENT FOR SALE IN THE STATE; (B) MANUFACTURES COVERED ELECTRONIC EQUIPMENT UNDER ITS OWN BRAND NAME OR UNDER ANY OTHER BRAND NAME FOR SALE IN THE STATE; (C) SELLS, UNDER ITS OWN BRAND NAME, COVERED ELECTRONIC EQUIPMENT SOLD IN THE STATE; (D) OWNS A BRAND NAME THAT IT LICENSES TO ANOTHER PERSON FOR USE ON COVERED ELECTRONIC EQUIPMENT SOLD IN THE STATE; (E) IMPORTS COVERED ELECTRONIC EQUIPMENT FOR SALE IN THE STATE; OR (F) MANUFACTURES COVERED ELECTRONIC EQUIPMENT FOR SALE IN THE STATE WITHOUT AFFIXING A BRAND NAME. "MANUFACTURER" DOES NOT MEAN A PERSON WHO ASSEMBLES OR SUBSTANTIALLY ASSEMBLES, AND SELLS LESS THAN ONE THOUSAND UNITS OF COVERED ELECTRONIC EQUIPMENT ANNUALLY IN THIS STATE, OR WHOSE PRIMARY BUSINESS IS THE SALE OF COVERED ELECTRONIC EQUIPMENT WHICH IS COMPRISED PRIMARILY OF REBUILT, REFURBISHED OR USED COMPONENTS. IF MORE THAN ONE PERSON IS A MANUFACTURER OF A BRAND OF COVERED ELECTRONIC EQUIPMENT, ANY SUCH PERSON MAY ASSUME RESPONSIBILITY FOR OBLIGATIONS OF A MANUFACTURER OF THAT BRAND UNDER THIS TITLE. IF NONE OF THOSE PERSONS ASSUMES RESPONSIBILITY FOR THE OBLIGATIONS OF A MANUFACTURER UNDER THIS TITLE, ANY AND ALL SUCH PERSONS JOINTLY AND SEVERALLY MAY BE CONSIDERED TO BE THE RESPONSIBLE MANUFACTURER OF THAT BRAND FOR PURPOSES OF THIS TITLE.

13. "MANUFACTURER'S BRANDS" MEANS A MANUFACTURER'S NAME, BRAND NAME OR BRAND LABEL, AND ALL MANUFACTURER'S NAMES, BRAND NAMES AND BRAND LABELS FOR WHICH THE MANUFACTURER HAS A LEGAL RIGHT OR INTEREST, INCLUDING THOSE NAMES, BRAND NAMES, AND BRAND LABELS OF COMPANIES THAT HAVE BEEN ACQUIRED BY THE MANUFACTURER OR IN WHICH THE MANUFACTURER ASSERTS A LEGAL INTEREST SUCH AS TRADEMARK, LICENSE, SERVICE MARK, OR PATENT.

14. "MONITOR" MEANS A SEPARATE VISUAL DISPLAY COMPONENT OF A COMPUTER, WHETHER SOLD SEPARATELY OR TOGETHER WITH A COMPUTER CENTRAL PROCESSING UNIT, AND INCLUDES A CATHODE RAY TUBE, LIQUID CRYSTAL DISPLAY, GAS PLASMA, DIGITAL LIGHT PROCESSING OR OTHER IMAGE PROJECTION TECHNOLOGY, GREATER THAN FOUR INCHES WHEN MEASURED DIAGONALLY, AND ITS CASE, INTERIOR WIRES AND CIRCUITRY, AND ANY CABLE CORD OR WIRING PERMANENTLY AFFIXED THERETO OR INCORPORATED INTO SUCH PRODUCT.

15. "PERSON" MEANS ANY INDIVIDUAL, BUSINESS ENTITY, PARTNERSHIP, COMPANY, CORPORATION, NOT-FOR-PROFIT CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY, FIRM, ORGANIZATION, OR ANY OTHER GROUP OF INDIVIDUALS, OR ANY OFFICER OR EMPLOYEE OR AGENT THEREOF.

16. "RECYCLE" MEANS TO SEPARATE, DISMANTLE OR PROCESS THE MATERIALS, COMPONENTS OR COMMODITIES CONTAINED IN ELECTRONIC WASTE FOR THE PURPOSE OF PREPARING THE MATERIALS, COMPONENTS OR COMMODITIES FOR USE OR REUSE IN NEW PRODUCTS OR COMPONENTS THEREOF, BUT NOT FOR ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF COMBUSTION, GASIFICATION, PYROLYSIS OR OTHER MEANS. RECYCLING INCLUDES THE MANUAL AND MECHANICAL SEPARATION OF ELECTRONIC WASTE TO RECOVER MATERIALS, COMPONENTS OR COMMODITIES CONTAINED THEREIN FOR THE PURPOSE OF REUSE OR RECYCLING, AND CHANGING THE PHYSICAL OR CHEMICAL COMPOSITION OF ELECTRONIC WASTE TO SEGREGATE COMPONENTS FOR PURPOSES OF RECYCLING THOSE COMPONENTS.

17. "RETAILER" MEANS A PERSON WHO SELLS COVERED ELECTRONIC EQUIPMENT TO A PERSON IN THE STATE THROUGH ANY MEANS, INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH RETAIL SALES OUTLETS, MAIL, CATALOGS, THE TELEPHONE OR THE INTERNET, OR ANY ELECTRONIC MEANS. "RETAILER" DOES NOT INCLUDE A PERSON WHO SELLS OR OFFERS FOR SALE FEWER THAN TEN ITEMS OF COVERED ELECTRONIC EQUIPMENT DURING A CALENDAR YEAR.

18. "REUSE" MEANS THE USE OF ELECTRONIC WASTE THAT IS TESTED AND CERTIFIED TO BE IN GOOD WORKING ORDER AND WHICH WAS REMOVED FROM THE WASTE STREAM FOR USE FOR THE SAME PURPOSE FOR WHICH IT WAS MANUFACTURED, INCLUDING THE CONTINUED USE OF WHOLE SYSTEMS OR COMPONENTS.

19. "SELL" OR "SALE" MEANS ANY TRANSFER FOR CONSIDERATION OF TITLE OR THE RIGHT TO USE, FROM A MANUFACTURER OR RETAILER TO A PERSON, INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH RETAIL SALES OUTLETS, CATALOGS, MAIL, THE TELEPHONE, THE INTERNET, OR ANY ELECTRONIC MEANS; THIS INCLUDES TRANSFER OF NEW PRODUCTS OR USED PRODUCTS THAT MAY HAVE BEEN REFURBISHED BY THEIR MANUFACTURER OR MANUFACTURER-APPROVED PARTY AND THAT ARE OFFERED FOR SALE BY A MANUFACTURER OR RETAILER, BUT DOES NOT INCLUDE CONSUMER-TO-CONSUMER SECOND-HAND TRANSFER. "SELL OR SALE" DOES NOT INCLUDE: (A) THE TRANSFER OF USED COVERED ELECTRONIC EQUIPMENT OR A LEASE OF COVERED ELECTRONIC EQUIPMENT; OR (B) WHOLESALE TRANSACTIONS AMONG A MANUFACTURER, WHOLESALER AND RETAILER.

20. "SMALL ELECTRONIC EQUIPMENT" MEANS ANY PORTABLE DIGITAL MUSIC PLAYER THAT HAS MEMORY CAPABILITY AND IS BATTERY-POWERED, VIDEO CASSETTE RECORDER, A DIGITAL VIDEO DISC PLAYER, DIGITAL VIDEO RECORDER, DIGITAL CONVERTER BOX, CABLE OR SATELLITE RECEIVER, OR ELECTRONIC OR VIDEO GAME CONSOLE, AND INCLUDES ANY CABLE, CORD, OR WIRING PERMANENTLY AFFIXED TO OR INCORPORATED INTO ANY SUCH PRODUCT.

21. "TELEVISION" MEANS A DISPLAY SYSTEM CONTAINING A CATHODE RAY TUBE OR ANY OTHER TYPE OF DISPLAY PRIMARILY INTENDED TO RECEIVE VIDEO PROGRAMMING VIA BROADCAST, CABLE OR SATELLITE TRANSMISSION, HAVING A VIEWABLE AREA GREATER THAN FOUR INCHES WHEN MEASURED DIAGONALLY.

S 27-2603. MANUFACTURER COLLECTION; RECYCLING SURCHARGE.

1. BEGINNING JULY FIRST, TWO THOUSAND TEN, A MANUFACTURER OF COVERED ELECTRONIC EQUIPMENT MUST ACCEPT FOR COLLECTION, HANDLING AND RECYCLING OR REUSE ELECTRONIC WASTE FOR WHICH IT IS THE MANUFACTURER AND ONE PIECE OF ELECTRONIC WASTE OF ANY MANUFACTURER'S BRAND, WITH THE PURCHASE OF COVERED ELECTRONIC EQUIPMENT OF THE SAME TYPE BY A CONSUMER. SUCH WASTE SHALL COUNT TOWARD THE AMOUNT OF ELECTRONIC WASTE REQUIRED TO BE ACCEPTED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

2. BEGINNING JULY FIRST, TWO THOUSAND TEN, EACH MANUFACTURER MUST ACCEPT FOR COLLECTION, HANDLING AND RECYCLING OR REUSE THE MANUFACTURER'S ACCEPTANCE STANDARD AS SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION.

3. STATEWIDE RECYCLING OR REUSE GOAL. (A) FOR THE PERIOD FROM JULY FIRST, TWO THOUSAND TEN THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND TEN, THE STATEWIDE RECYCLING OR REUSE GOAL FOR ELECTRONIC WASTE SHALL BE THE

PRODUCT OF THE LATEST POPULATION ESTIMATE FOR THE STATE, AS PUBLISHED BY THE U.S. CENSUS BUREAU ON JANUARY FIRST, TWO THOUSAND TEN MULTIPLIED BY THREE POUNDS MULTIPLIED BY ONE-HALF.

(B) FOR CALENDAR YEAR TWO THOUSAND ELEVEN, THE STATEWIDE RECYCLING OR REUSE GOAL FOR ALL ELECTRONIC WASTE SHALL BE THE PRODUCT OF THE LATEST POPULATION ESTIMATE, AS PUBLISHED BY THE U.S. CENSUS BUREAU MULTIPLIED BY FOUR POUNDS.

(C) FOR CALENDAR YEAR TWO THOUSAND TWELVE, THE STATEWIDE RECYCLING OR REUSE GOAL FOR ALL ELECTRONIC WASTE SHALL BE THE PRODUCT OF THE LATEST POPULATION ESTIMATE, AS PUBLISHED BY THE U.S. CENSUS BUREAU MULTIPLIED BY FIVE POUNDS.

(D) FOR CALENDAR YEAR TWO THOUSAND THIRTEEN AND ANNUALLY THEREAFTER, THE STATEWIDE RECYCLING OR REUSE GOAL FOR ALL ELECTRONIC WASTE IS THE PRODUCT OF THE BASE WEIGHT MULTIPLIED BY THE GOAL ATTAINMENT PERCENTAGE. FOR THE PURPOSES OF THIS PARAGRAPH, "BASE WEIGHT" MEANS THE GREATER OF: (I) THE AVERAGE WEIGHT OF ALL ELECTRONIC WASTE COLLECTED FOR RECYCLING OR REUSE DURING THE PREVIOUS THREE CALENDAR YEARS AS REPORTED TO THE DEPARTMENT PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 27-2617 OF THIS TITLE; OR (II) THE THREE YEAR AVERAGE OF THE SUM OF ALL ELECTRONIC WASTE COLLECTED FOR RECYCLING OR REUSE DURING THE PREVIOUS THREE CALENDAR YEARS AS REPORTED TO THE DEPARTMENT PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE, PARAGRAPH (B) OF SUBDIVISION TWO AND PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION 27-2613 OF THIS TITLE.

(E) THE "GOAL ATTAINMENT PERCENTAGE" MEANS:

(I) NINETY PERCENT IF THE BASE WEIGHT IS LESS THAN NINETY PERCENT OF THE STATEWIDE RECYCLING OR REUSE GOAL FOR THE PREVIOUS CALENDAR YEAR;

(II) NINETY-FIVE PERCENT IF THE BASE WEIGHT IS NINETY PERCENT OR GREATER, BUT DOES NOT EXCEED NINETY-FIVE PERCENT OF THE STATEWIDE RECYCLING OR REUSE GOAL FOR THE PREVIOUS CALENDAR YEAR;

(III) ONE HUNDRED PERCENT IF THE BASE WEIGHT IS NINETY-FIVE PERCENT OR GREATER, BUT DOES NOT EXCEED ONE HUNDRED FIVE PERCENT OF THE STATEWIDE RECYCLING OR REUSE GOAL FOR THE PREVIOUS CALENDAR YEAR;

(IV) ONE HUNDRED FIVE PERCENT IF THE BASE WEIGHT IS ONE HUNDRED FIVE PERCENT OR GREATER, BUT DOES NOT EXCEED ONE HUNDRED TEN PERCENT OF THE STATEWIDE RECYCLING OR REUSE GOAL FOR THE PREVIOUS CALENDAR YEAR; AND

(V) ONE HUNDRED TEN PERCENT IF THE BASE WEIGHT IS ONE HUNDRED TEN PERCENT OR GREATER OF THE STATEWIDE RECYCLING OR REUSE GOAL FOR THE PREVIOUS CALENDAR YEAR.

4. MANUFACTURER ACCEPTANCE STANDARD. (A) FOR CALENDAR YEAR TWO THOUSAND TEN, EACH MANUFACTURER'S ACCEPTANCE STANDARD IS THE PRODUCT OF THE STATEWIDE RECYCLING OR REUSE GOAL UNDER PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION MULTIPLIED BY THAT MANUFACTURER'S MARKET SHARE AS DETERMINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION.

(B) FOR CALENDAR YEAR TWO THOUSAND ELEVEN AND ANNUALLY THEREAFTER, EACH MANUFACTURER'S ACCEPTANCE STANDARD IS THE PRODUCT OF THE STATEWIDE RECYCLING OR REUSE GOAL UNDER PARAGRAPH (B), (C) OR (D) OF SUBDIVISION THREE OF THIS SECTION AS APPROPRIATE MULTIPLIED BY THAT MANUFACTURER'S MARKET SHARE PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION.

(C) EACH MANUFACTURER'S MARKET SHARE OF ELECTRONIC WASTE SHALL BE DETERMINED BY THE DEPARTMENT BASED ON THE MANUFACTURER'S PERCENTAGE SHARE OF THE TOTAL WEIGHT OF COVERED ELECTRONIC EQUIPMENT SOLD AS DETERMINED BY THE BEST AVAILABLE INFORMATION, INCLUDING, BUT NOT LIMITED TO, STATE SALES DATA REPORTED BY WEIGHT. BEGINNING JULY FIRST, TWO THOUSAND TEN, AND EVERY YEAR THEREAFTER, THE DEPARTMENT SHALL PROVIDE EACH MANUFACTURER WITH A DETERMINATION OF ITS MARKET SHARE OF ELECTRONIC

WASTE WHICH SHALL BE THE QUOTIENT OF THE TOTAL WEIGHT OF THE MANUFACTURER'S COVERED ELECTRONIC EQUIPMENT SOLD TO PERSONS IN THIS STATE BASED ON THE AVERAGE ANNUAL RETAIL SALES DURING THE PRECEDING THREE CALENDAR YEARS, AS REPORTED UNDER SECTION 27-2617 OF THIS TITLE DIVIDED BY THE TOTAL WEIGHT OF ALL MANUFACTURERS COVERED ELECTRONIC EQUIPMENT SOLD TO PERSONS IN THIS STATE BASED ON THE AVERAGE ANNUAL RETAIL SALES DURING THE PRECEDING THREE CALENDAR YEARS, AS REPORTED UNDER SECTION 27-2617 OF THIS TITLE.

5. IN THE ABSENCE OF A WAIVER BY THE DEPARTMENT PURSUANT TO SUBDIVISION THREE OF SECTION 27-2615 OF THIS TITLE, BEGINNING IN CALENDAR YEAR TWO THOUSAND TWELVE, A MANUFACTURER THAT FAILS TO MEET ITS MANUFACTURER'S ACCEPTANCE STANDARD AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION SHALL BE SUBJECT TO A RECYCLING SURCHARGE, DETERMINED AS FOLLOWS:

(A) IF A MANUFACTURER ACCEPTS AT LEAST NINETY PERCENT BUT LESS THAN ONE HUNDRED PERCENT OF ITS MANUFACTURER'S ACCEPTANCE STANDARD AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, THE SURCHARGE SHALL BE THIRTY CENTS MULTIPLIED BY THE NUMBER OF ADDITIONAL POUNDS OF ELECTRONIC WASTE THAT SHOULD HAVE BEEN ACCEPTED BY SUCH MANUFACTURER.

(B) IF A MANUFACTURER ACCEPTS AT LEAST FIFTY PERCENT BUT LESS THAN NINETY PERCENT OF ITS MANUFACTURER'S ACCEPTANCE STANDARD AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, THE SURCHARGE SHALL BE FORTY CENTS MULTIPLIED BY THE NUMBER OF ADDITIONAL POUNDS OF ELECTRONIC WASTE THAT SHOULD HAVE BEEN ACCEPTED BY SUCH MANUFACTURER.

(C) IF A MANUFACTURER ACCEPTS LESS THAN FIFTY PERCENT OF ITS MANUFACTURER'S ACCEPTANCE STANDARD AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, THE SURCHARGE SHALL BE FIFTY CENTS MULTIPLIED BY THE NUMBER OF ADDITIONAL POUNDS OF ELECTRONIC WASTE THAT SHOULD HAVE BEEN ACCEPTED BY SUCH MANUFACTURER.

6. THE RECYCLING SURCHARGE SHALL BE PAID TO THE DEPARTMENT WITH THE ANNUAL REPORT REQUIRED PURSUANT TO SECTION 27-2617 OF THIS TITLE.

7. BEGINNING WITH CALENDAR YEAR TWO THOUSAND THIRTEEN, IF A MANUFACTURER ACCEPTS MORE THAN ITS MANUFACTURER'S ACCEPTANCE STANDARD AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, THE EXCESS WEIGHT MAY BE USED AS ELECTRONIC WASTE ACCEPTANCE CREDITS AND MAY BE SOLD, TRADED, OR BANKED FOR A PERIOD NO LONGER THAN THREE CALENDAR YEARS SUCCEEDING THE YEAR IN WHICH THE CREDITS WERE EARNED; PROVIDED, HOWEVER, THAT NO MORE THAN TWENTY-FIVE PERCENT OF A MANUFACTURER'S OBLIGATION FOR ANY CALENDAR YEAR MAY BE MET WITH RECYCLING CREDITS GENERATED IN A PRIOR CALENDAR YEAR.

S 27-2605. MANUFACTURER ELECTRONIC WASTE REGISTRATION AND RESPONSIBILITIES.

1. A MANUFACTURER SHALL SUBMIT A REGISTRATION TO THE DEPARTMENT BY JANUARY FIRST, TWO THOUSAND TEN, ALONG WITH A REGISTRATION FEE OF FIVE THOUSAND DOLLARS. SUCH REGISTRATION SHALL INCLUDE:

(A) THE MANUFACTURER'S NAME, ADDRESS, AND TELEPHONE NUMBER;

(B) THE NAME AND TITLE OF AN OFFICER, DIRECTOR, OR OTHER INDIVIDUAL DESIGNATED AS THE MANUFACTURER'S CONTACT FOR PURPOSES OF THIS TITLE;

(C) A LIST IDENTIFYING THE MANUFACTURER'S BRANDS;

(D) A GENERAL DESCRIPTION OF THE MANNER IN WHICH THE MANUFACTURER WILL COMPLY WITH SECTION 27-2603 OF THIS TITLE, INCLUDING SPECIFIC INFORMATION ON THE MANUFACTURER'S ELECTRONIC WASTE ACCEPTANCE PROGRAM IN THE STATE, AND A CURRENT LIST OF LOCATIONS WITHIN THE STATE WHERE CONSUMERS MAY RETURN ELECTRONIC WASTE;

(E) SALES DATA REPORTED BY WEIGHT FOR THE MANUFACTURER'S COVERED ELECTRONIC EQUIPMENT SOLD IN THIS STATE FOR THE PREVIOUS THREE CALENDAR YEARS, CATEGORIZED BY TYPE TO THE EXTENT KNOWN. IF THE MANUFACTURER

CANNOT PROVIDE ACCURATE STATE SALES DATA, IT MUST EXPLAIN WHY SUCH DATA CANNOT BE PROVIDED, AND ESTIMATE STATE SALES DATA BY (I) DIVIDING ITS NATIONAL SALES DATA BY WEIGHT BY THE NATIONAL POPULATION ACCORDING TO THE MOST RECENT CENSUS AND MULTIPLYING THE RESULT BY THE POPULATION OF THE STATE, OR (II) ANOTHER METHOD APPROVED BY THE DEPARTMENT;

(F) A STATEMENT DISCLOSING WHETHER: (I) ANY COVERED ELECTRONIC DEVICE SOLD IN THIS STATE EXCEEDS THE MAXIMUM CONCENTRATION VALUES ESTABLISHED FOR LEAD, MERCURY, CADMIUM, HEXAVALENT CHROMIUM, POLYBROMINATED BIPHENYLS (PBBS), AND POLYBROMINATED DIPHENYL ETHERS (PBDES) UNDER THE RESTRICTION OF HAZARDOUS SUBSTANCES DIRECTIVE (ROHS) PURSUANT TO 2002/95/EC OF THE EUROPEAN PARLIAMENT AND COUNCIL AND ANY AMENDMENTS THERETO AND IF SO, A LISTING OF ANY COVERED ELECTRONIC EQUIPMENT THAT IS NOT IN COMPLIANCE WITH SUCH DIRECTIVE; OR (II) THE MANUFACTURER HAS RECEIVED AN EXEMPTION FROM ONE OR MORE OF THOSE MAXIMUM CONCENTRATION VALUES UNDER THE ROHS DIRECTIVE THAT HAS BEEN APPROVED AND PUBLISHED BY THE EUROPEAN COMMISSION; AND

(G) ANY OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE.

2. A MANUFACTURER'S REGISTRATION MUST BE UPDATED WITHIN THIRTY DAYS OF ANY MATERIAL CHANGE TO THE INFORMATION REQUIRED BY THE REGISTRATION.

3. ANY PERSON WHO BECOMES A MANUFACTURER ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN SHALL REGISTER WITH THE DEPARTMENT PRIOR TO SELLING OR OFFERING FOR SALE IN THE STATE ANY COVERED ELECTRONIC EQUIPMENT, AND MUST COMPLY WITH THE REQUIREMENTS OF THIS TITLE.

4. NO LATER THAN JULY FIRST, TWO THOUSAND TEN, A MANUFACTURER SHALL NOT SELL OR OFFER FOR SALE ELECTRONIC EQUIPMENT IN THE STATE UNLESS THE MANUFACTURER HAS REGISTERED WITH THE DEPARTMENT AND MAINTAINS AN ELECTRONIC WASTE ACCEPTANCE PROGRAM THROUGH WHICH THE MANUFACTURER, EITHER DIRECTLY OR THROUGH AN AGENT OR DESIGNEE, ACCEPTS ELECTRONIC WASTE FROM CONSUMERS IN THE STATE FOR RECYCLING. THE MANUFACTURER SHALL ENSURE THAT RETAILERS ARE NOTIFIED OF SUCH REGISTRATION. THE MANUFACTURER SHALL NOT IMPOSE A FEE ON CONSUMERS FOR THE COLLECTION, HANDLING AND RECYCLING OR REUSE OF ELECTRONIC WASTE.

5. THE ELECTRONIC WASTE ACCEPTANCE PROGRAM SHALL INCLUDE, AT A MINIMUM:

(A) COLLECTION, HANDLING AND RECYCLING OR REUSE OF COVERED ELECTRONIC EQUIPMENT PRODUCED BY THE MANUFACTURER AND OFFERED FOR RETURN BY ANY CONSUMER IN THIS STATE, FREE OF COST AND IN A MANNER CONVENIENT TO CONSUMERS. THE FOLLOWING ACCEPTANCE METHODS SHALL BE CONSIDERED REASONABLY CONVENIENT: (I) MAIL OR SHIP BACK RETURN PROGRAMS; (II) COLLECTION OR ACCEPTANCE EVENTS CONDUCTED BY THE MANUFACTURER OR THE MANUFACTURER'S AGENT OR DESIGNEE, INCLUDING EVENTS CONDUCTED THROUGH LOCAL GOVERNMENTS OR PRIVATE PARTIES; (III) FIXED ACCEPTANCE LOCATIONS SUCH AS DEDICATED ACCEPTANCE SITES OPERATED BY THE MANUFACTURER OR ITS AGENT OR DESIGNEE; (IV) AGREEMENTS WITH LOCAL GOVERNMENTS, RETAIL STORES, SALES OUTLETS AND NOT-FOR-PROFIT ORGANIZATIONS WHICH HAVE AGREED TO PROVIDE FACILITIES FOR THE COLLECTION OF ELECTRONIC WASTE; (V) COMMUNITY COLLECTION EVENTS; AND (VI) ANY COMBINATION OF THESE OR OTHER ACCEPTANCE METHODS WHICH EFFECTIVELY PROVIDE FOR THE ACCEPTANCE OF ELECTRONIC WASTE FOR RECYCLING OR REUSE THROUGH MEANS THAT ARE AVAILABLE AND REASONABLY CONVENIENT TO CONSUMERS IN THE STATE. AT A MINIMUM, THE MANUFACTURER SHALL ENSURE THAT ALL COUNTIES OF THE STATE AND ALL MUNICIPALITIES WHICH HAVE A POPULATION OF TEN THOUSAND OR GREATER HAVE AT LEAST ONE METHOD OF ACCEPTANCE THAT IS AVAILABLE WITHIN THAT MUNICIPALITY. THE DEPARTMENT MAY ESTABLISH ADDITIONAL REQUIREMENTS TO ENSURE CONVENIENT COLLECTION FROM CONSUMERS;

(B) INFORMATION ON HOW CONSUMERS CAN DESTROY ALL DATA ON ANY ELECTRONIC WASTE, EITHER THROUGH PHYSICAL DESTRUCTION OF THE HARD DRIVE OR THROUGH DATA WIPING;

(C) A PUBLIC EDUCATION PROGRAM TO INFORM CONSUMERS ABOUT THE MANUFACTURER'S ELECTRONIC WASTE ACCEPTANCE PROGRAM, INCLUDING AT A MINIMUM: (I) AN INTERNET WEBSITE AND A TOLL-FREE TELEPHONE NUMBER AND WRITTEN INFORMATION INCLUDED IN THE PACKAGE FOR, OR AT THE TIME OF SALE OF, COVERED ELECTRONIC EQUIPMENT THAT PROVIDES SUFFICIENT INFORMATION TO ALLOW A CONSUMER OF COVERED ELECTRONIC EQUIPMENT TO LEARN HOW TO RETURN THE COVERED EQUIPMENT FOR RECYCLING OR REUSE, AND IN THE CASE OF MANUFACTURERS OF COMPUTERS, HARD DRIVES AND OTHER COVERED ELECTRONIC EQUIPMENT THAT HAVE INTERNAL MEMORY ON WHICH PERSONAL OR OTHER CONFIDENTIAL DATA CAN BE STORED, SUCH WEBSITE SHALL PROVIDE INSTRUCTIONS FOR HOW CONSUMERS CAN DESTROY SUCH DATA BEFORE SURRENDERING THE PRODUCTS FOR RECYCLING OR REUSE; (II) ADVERTISEMENTS AND PRESS RELEASES IF ANY; AND

(D) ANY OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT IN ACCORDANCE WITH REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE.

6. A MANUFACTURER SHALL MAINTAIN RECORDS DEMONSTRATING COMPLIANCE WITH THIS TITLE AND MAKE THEM AVAILABLE FOR AUDIT AND INSPECTION BY THE DEPARTMENT FOR A PERIOD OF THREE YEARS.

7. A MANUFACTURER MAY SATISFY THE ELECTRONIC WASTE COLLECTION REQUIREMENTS OF THIS SECTION BY AGREEING TO PARTICIPATE IN A COLLECTIVE ELECTRONIC WASTE ACCEPTANCE PROGRAM WITH OTHER MANUFACTURERS. ANY SUCH COLLECTIVE ELECTRONIC WASTE ACCEPTANCE PROGRAM MUST MEET THE SAME REQUIREMENTS AS AN INDIVIDUAL MANUFACTURER. ANY COLLECTIVE ELECTRONIC WASTE ACCEPTANCE PROGRAM MUST INCLUDE A LIST OF MANUFACTURERS THAT ARE PARTICIPATING IN SUCH PROGRAM ALONG WITH OTHER IDENTIFYING INFORMATION AS MAY BE REQUIRED BY THE DEPARTMENT. SUCH PROGRAM SHALL SUBMIT A REGISTRATION TO THE DEPARTMENT ALONG WITH A REGISTRATION FEE OF TEN THOUSAND DOLLARS.

8. A MANUFACTURER SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THE ELECTRONIC WASTE ACCEPTANCE PROGRAM.

S 27-2607. RETAILER REQUIREMENTS.

1. AT THE LOCATION OF SALE OF COVERED ELECTRONIC EQUIPMENT, A RETAILER SHALL PROVIDE PURCHASERS OF COVERED ELECTRONIC EQUIPMENT WITH INFORMATION, IF ANY, ABOUT OPPORTUNITIES FOR THE RETURN OF ELECTRONIC WASTE THAT HAS BEEN PROVIDED TO THE RETAILER BY A MANUFACTURER.

2. NO RETAILER SHALL SELL OR OFFER FOR SALE IN THE STATE ANY COVERED ELECTRONIC EQUIPMENT UNLESS THE MANUFACTURER AND THE MANUFACTURER'S BRANDS ARE REGISTERED WITH THE DEPARTMENT PURSUANT TO SECTION 27-2605 OF THIS TITLE.

S 27-2609. LABELING.

BEGINNING JULY FIRST, TWO THOUSAND TEN, A MANUFACTURER MAY NOT OFFER FOR SALE IN THE STATE OR DELIVER TO RETAILERS FOR SUBSEQUENT SALE COVERED ELECTRONIC EQUIPMENT UNLESS IT HAS A VISIBLE, PERMANENT LABEL CLEARLY IDENTIFYING THE MANUFACTURER OF THAT EQUIPMENT.

S 27-2611. DISPOSAL BAN.

1. BEGINNING JULY FIRST, TWO THOUSAND TEN, NO MANUFACTURER, RETAILER, OR OWNER OR OPERATOR OF AN ELECTRONIC WASTE COLLECTION SITE, ELECTRONIC WASTE CONSOLIDATION FACILITY OR ELECTRONIC WASTE RECYCLING FACILITY IN THE STATE SHALL DISPOSE OF ELECTRONIC WASTE AT A SOLID WASTE MANAGEMENT FACILITY OR HAZARDOUS WASTE MANAGEMENT FACILITY, OR PLACE ELECTRONIC WASTE FOR COLLECTION WHICH IS INTENDED FOR DISPOSAL AT A SOLID WASTE MANAGEMENT FACILITY OR HAZARDOUS WASTE MANAGEMENT FACILITY.

2. BEGINNING JANUARY FIRST, TWO THOUSAND ELEVEN, NO PERSON EXCEPT FOR AN INDIVIDUAL OR HOUSEHOLD SHALL PLACE OR DISPOSE OF ANY ELECTRONIC

WASTE IN ANY SOLID WASTE MANAGEMENT FACILITY, OR PLACE ELECTRONIC WASTE FOR COLLECTION WHICH IS INTENDED FOR DISPOSAL AT A SOLID WASTE MANAGEMENT FACILITY OR HAZARDOUS WASTE MANAGEMENT FACILITY IN THIS STATE. PERSONS ENGAGED IN THE COLLECTION OF SOLID WASTE FOR DELIVERY TO A SOLID WASTE MANAGEMENT FACILITY SHALL PROVIDE WRITTEN INFORMATION TO USERS OF SUCH FACILITY ON THE PROPER METHODS FOR THE RECYCLING OF ELECTRONIC WASTE.

3. BEGINNING JANUARY FIRST, TWO THOUSAND FIFTEEN, NO INDIVIDUAL OR HOUSEHOLD SHALL PLACE OR DISPOSE OF ANY ELECTRONIC WASTE IN ANY SOLID WASTE MANAGEMENT FACILITY, OR PLACE ELECTRONIC WASTE FOR COLLECTION WHICH IS INTENDED FOR DISPOSAL AT A SOLID WASTE MANAGEMENT FACILITY OR HAZARDOUS WASTE MANAGEMENT FACILITY IN THIS STATE.

4. BEGINNING JANUARY FIRST, TWO THOUSAND ELEVEN, AN OWNER OR OPERATOR OF A SOLID WASTE MANAGEMENT FACILITY OR HAZARDOUS WASTE MANAGEMENT FACILITY SHALL EDUCATE USERS OF SUCH FACILITY ON THE PROPER METHODS FOR THE MANAGEMENT OF ELECTRONIC WASTE. SUCH EDUCATION SHALL INCLUDE:

(A) PROVIDING WRITTEN INFORMATION TO USERS OF SUCH FACILITY ON THE PROPER METHODS FOR RECYCLING OF ELECTRONIC WASTE; AND

(B) POSTING, IN CONSPICUOUS LOCATIONS AT SUCH FACILITY, SIGNS STATING THAT ELECTRONIC WASTE MAY NOT BE DISPOSED OF AT THE FACILITY.

S 27-2613. ELECTRONIC WASTE COLLECTION, CONSOLIDATION AND RECYCLING.

1. ELECTRONIC WASTE COLLECTION SITES. NO LATER THAN JULY FIRST, TWO THOUSAND TEN, EACH PERSON WHO OWNS OR OPERATES AN ELECTRONIC WASTE COLLECTION SITE IN THE STATE SHALL:

(A) REGISTER WITH THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT. THE REGISTRATION SHALL INCLUDE: (I) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE OWNERS AND THE OPERATORS OF THE ELECTRONIC WASTE COLLECTION SITE; AND (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE ELECTRONIC WASTE COLLECTION SITE. ANY PERSON WHO COMMENCES THE OPERATION OF AN ELECTRONIC WASTE COLLECTION SITE ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL REGISTER WITH THE DEPARTMENT AT LEAST THIRTY DAYS PRIOR TO RECEIVING ANY ELECTRONIC WASTE AT SUCH COLLECTION SITE. A REGISTRATION IS EFFECTIVE UPON ACCEPTANCE BY THE DEPARTMENT. IN THE CASE OF COLLECTION SITES OPERATED BY A RETAILER, A SINGLE REGISTRATION LISTING THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INDIVIDUAL COLLECTION SITES MAY BE SUBMITTED COVERING ALL THEIR COLLECTION SITES;

(B) BEGINNING MARCH FIRST, TWO THOUSAND ELEVEN, EACH PERSON OPERATING AN ELECTRONIC WASTE COLLECTION SITE SHALL SUBMIT TO THE DEPARTMENT A REPORT FOR THE PERIOD JULY FIRST, TWO THOUSAND TEN THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND TEN, AND THEREAFTER, AN ANNUAL REPORT FOR THE PREVIOUS CALENDAR YEAR, ON A FORM PRESCRIBED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING INFORMATION: (I) THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE RECEIVED FROM CONSUMERS IN THE STATE; (II) THE NAME AND ADDRESS OF EACH PERSON TO WHOM THE ELECTRONIC WASTE COLLECTION SITE SENT ELECTRONIC WASTE DURING THE PRECEDING YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE THAT WAS SENT TO EACH SUCH PERSON; AND (III) THE WEIGHT OF ELECTRONIC WASTE COLLECTED ON BEHALF OF OR PURSUANT TO AN AGREEMENT WITH EACH MANUFACTURER DURING THE PRECEDING CALENDAR YEAR. ALL QUANTITIES OF ELECTRONIC WASTE REPORTED BY THE COLLECTION SITE MUST SEPARATELY INCLUDE ELECTRONIC WASTE GENERATED BY NEW YORK STATE CONSUMERS AND ELECTRONIC WASTE RECEIVED FROM OR SHIPPED OUTSIDE THE STATE;

(C) MANAGE ELECTRONIC WASTE IN A MANNER THAT COMPLIES WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS;

(D) STORE ELECTRONIC WASTE (I) IN A FULLY ENCLOSED BUILDING WITH A ROOF, FLOOR AND WALLS, OR (II) IN A SECURE CONTAINER (E.G., PACKAGE OR

VEHICLE), THAT IS CONSTRUCTED AND MAINTAINED TO MINIMIZE BREAKAGE OF ELECTRONIC WASTE AND TO PREVENT RELEASES OF HAZARDOUS MATERIALS TO THE ENVIRONMENT;

(E) REMOVE ELECTRONIC WASTE FROM THE SITE WITHIN ONE YEAR OF THE WASTE'S RECEIPT AT THE SITE, AND MAINTAIN RECORDS DEMONSTRATING COMPLIANCE WITH THIS REQUIREMENT.

2. ELECTRONIC WASTE CONSOLIDATION FACILITIES. (A) NO LATER THAN JULY FIRST, TWO THOUSAND TEN, EACH PERSON WHO OPERATES AN ELECTRONIC WASTE CONSOLIDATION FACILITY IN THE STATE SHALL REGISTER WITH THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT. THE REGISTRATION SHALL INCLUDE: (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE OWNER AND THE OPERATOR OF THE FACILITY; AND (II) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE ELECTRONIC WASTE CONSOLIDATION FACILITY. ANY PERSON WHO COMMENCES THE OPERATION OF AN ELECTRONIC WASTE CONSOLIDATION FACILITY ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL REGISTER WITH THE DEPARTMENT AT LEAST THIRTY DAYS PRIOR TO RECEIVING ANY ELECTRONIC WASTE. A REGISTRATION IS EFFECTIVE UPON ACCEPTANCE BY THE DEPARTMENT. ANY REGISTRATION REQUIRED BY THIS PARAGRAPH SHALL BE ACCOMPANIED BY A REGISTRATION FEE OF TWO HUNDRED FIFTY DOLLARS.

(B) BEGINNING MARCH FIRST, TWO THOUSAND ELEVEN, EACH PERSON OPERATING AN ELECTRONIC WASTE CONSOLIDATION FACILITY SHALL SUBMIT TO THE DEPARTMENT A REPORT FOR THE PERIOD JULY FIRST, TWO THOUSAND TEN THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND TEN, AND THEREAFTER, AN ANNUAL REPORT FOR THE PREVIOUS CALENDAR YEAR, ON A FORM PRESCRIBED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING INFORMATION: (I) THE NAME AND ADDRESS OF EACH ELECTRONIC WASTE COLLECTION SITE FROM WHICH THE CONSOLIDATION FACILITY RECEIVED ELECTRONIC WASTE DURING THE PRECEDING YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE RECEIVED FROM EACH COLLECTION SITE; (II) THE NAME AND ADDRESS OF EACH PERSON TO WHOM THE ELECTRONIC WASTE CONSOLIDATION FACILITY SENT ELECTRONIC WASTE DURING THE PRECEDING YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE THAT WAS SENT TO EACH SUCH PERSON; (III) THE WEIGHT OF ELECTRONIC WASTE COLLECTED ON BEHALF OF OR PURSUANT TO AN AGREEMENT WITH EACH MANUFACTURER DURING THE PRECEDING CALENDAR YEAR; AND (IV) A CERTIFICATION BY THE OWNER OR OPERATOR OF THE ELECTRONIC WASTE CONSOLIDATION FACILITY THAT SUCH A FACILITY HAS COMPLIED WITH THE REQUIREMENTS OF THIS TITLE AND ALL OTHER APPLICABLE LAWS, RULES, AND REGULATIONS. ALL QUANTITIES OF ELECTRONIC WASTE REPORTED BY THE CONSOLIDATION FACILITY MUST SEPARATELY INCLUDE ELECTRONIC WASTE GENERATED BY NEW YORK STATE CONSUMERS AND ELECTRONIC WASTE RECEIVED FROM OR SHIPPED OUTSIDE THE STATE.

(C) EACH PERSON OPERATING AN ELECTRONIC WASTE CONSOLIDATION FACILITY SHALL:

(I) MANAGE ELECTRONIC WASTE IN A MANNER THAT COMPLIES WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS;

(II) STORE ELECTRONIC WASTE (A) IN A FULLY ENCLOSED BUILDING WITH A ROOF, FLOOR AND WALLS, OR (B) IN A SECURE CONTAINER (E.G., PACKAGE OR VEHICLE), THAT IS CONSTRUCTED AND MAINTAINED TO MINIMIZE BREAKAGE OF ELECTRONIC WASTE AND TO PREVENT RELEASES OF HAZARDOUS MATERIALS TO THE ENVIRONMENT;

(III) HAVE A MEANS TO CONTROL ENTRY, AT ALL TIMES, TO THE ACTIVE PORTION OF THE FACILITY;

(IV) INFORM ALL EMPLOYEES WHO HANDLE OR HAVE RESPONSIBILITY FOR MANAGING ELECTRONIC WASTE ABOUT THE PROPER HANDLING AND EMERGENCY PROCEDURES APPROPRIATE TO THE TYPE OR TYPES OF ELECTRONIC WASTE HANDLED AT THE FACILITY;

(V) REMOVE ELECTRONIC WASTE FROM THE SITE WITHIN ONE YEAR OF THE WASTE'S RECEIPT AT THE SITE, AND MAINTAIN RECORDS DEMONSTRATING COMPLIANCE WITH THIS REQUIREMENT; AND

(VI) MAINTAIN THE RECORDS REQUIRED BY PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION AND BY SUBPARAGRAPH (V) OF THIS PARAGRAPH ON SITE AND MAKE THEM AVAILABLE FOR AUDIT AND INSPECTION BY THE DEPARTMENT FOR A PERIOD OF THREE YEARS.

(D) A PERSON OPERATING AN ELECTRONIC WASTE CONSOLIDATION FACILITY SHALL NOT ENGAGE IN ELECTRONIC WASTE RECYCLING UNLESS SUCH PERSON IS ALSO REGISTERED AS AN ELECTRONIC WASTE RECYCLING FACILITY, AND COMPLIES WITH THE REQUIREMENTS OF THIS SECTION THAT ARE APPLICABLE TO EACH TYPE OF FACILITY.

(E) A PERSON OPERATING AN ELECTRONIC WASTE CONSOLIDATION FACILITY MAY ACCEPT ELECTRONIC WASTE IN THE SAME MANNER AS AN ELECTRONIC WASTE COLLECTION SITE PROVIDED THAT SUCH PERSON COMPLIES WITH THE REQUIREMENTS OF THIS SECTION THAT ARE APPLICABLE TO ELECTRONIC WASTE COLLECTION FACILITIES.

3. ELECTRONIC WASTE RECYCLING FACILITIES. (A) NO LATER THAN JULY FIRST, TWO THOUSAND TEN, EACH PERSON OPERATING AN ELECTRONIC WASTE RECYCLING FACILITY IN THE STATE SHALL REGISTER WITH THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT. THE REGISTRATION SHALL INCLUDE: (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE OWNER AND THE OPERATOR OF THE FACILITY; AND (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE ELECTRONIC WASTE RECYCLING FACILITY. ANY PERSON WHO COMMENCES THE OPERATION OF AN ELECTRONIC WASTE RECYCLING FACILITY ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL REGISTER WITH THE DEPARTMENT AT LEAST THIRTY DAYS PRIOR TO RECEIVING ANY ELECTRONIC WASTE. A REGISTRATION IS EFFECTIVE UPON ACCEPTANCE BY THE DEPARTMENT. ANY REGISTRATION REQUIRED BY THIS PARAGRAPH SHALL BE ACCOMPANIED BY A REGISTRATION FEE OF TWO HUNDRED FIFTY DOLLARS.

(B) BEGINNING MARCH FIRST, TWO THOUSAND ELEVEN, EACH PERSON OPERATING AN ELECTRONIC WASTE RECYCLING FACILITY SHALL SUBMIT TO THE DEPARTMENT A REPORT FOR THE PERIOD JULY FIRST, TWO THOUSAND TEN THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND TEN, AND THEREAFTER, AN ANNUAL REPORT FOR THE PREVIOUS CALENDAR YEAR, ON A FORM PRESCRIBED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING INFORMATION: (I) THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE RECEIVED FROM CONSUMERS IN THE STATE; (II) THE NAME AND ADDRESS OF EACH ELECTRONIC WASTE COLLECTION SITE AND ELECTRONIC WASTE CONSOLIDATION FACILITY FROM WHICH ELECTRONIC WASTE WAS RECEIVED DURING THE PRECEDING CALENDAR YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE RECEIVED FROM EACH PERSON; (III) THE NAME AND ADDRESS OF EACH PERSON TO WHOM THE FACILITY SENT ELECTRONIC WASTE OR COMPONENT MATERIALS DURING THE PRECEDING YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE OR COMPONENT MATERIALS THEREOF SENT TO EACH SUCH PERSON; (IV) THE WEIGHT OF ELECTRONIC WASTE COLLECTED ON BEHALF OF OR PURSUANT TO AN AGREEMENT WITH EACH MANUFACTURER DURING THE PRECEDING CALENDAR YEAR; AND (V) A CERTIFICATION BY THE OWNER OR OPERATOR OF THE FACILITY THAT SUCH FACILITY HAS COMPLIED WITH THE REQUIREMENTS OF THIS TITLE AND ALL OTHER APPLICABLE LAWS, RULES, AND REGULATIONS. ALL QUANTITIES OF ELECTRONIC WASTE REPORTED BY THE RECYCLING FACILITY MUST SEPARATELY INCLUDE ELECTRONIC WASTE GENERATED BY NEW YORK STATE CONSUMERS AND ELECTRONIC WASTE RECEIVED FROM OR SHIPPED OUTSIDE THE STATE.

(C) EACH PERSON OPERATING AN ELECTRONIC WASTE RECYCLING FACILITY SHALL:

(I) MANAGE AND RECYCLE ELECTRONIC WASTE IN A MANNER THAT COMPLIES WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS;

(II) STORE ELECTRONIC WASTE (A) IN A FULLY ENCLOSED BUILDING WITH A ROOF, FLOOR AND WALLS, OR (B) IN A SECURE CONTAINER (E.G., PACKAGE OR VEHICLE), THAT IS CONSTRUCTED AND MAINTAINED TO MINIMIZE BREAKAGE OF ELECTRONIC WASTE AND TO PREVENT RELEASES OF HAZARDOUS MATERIALS TO THE ENVIRONMENT;

(III) HAVE A MEANS TO CONTROL ENTRY, AT ALL TIMES, THROUGH GATES OR OTHER ENTRANCES TO THE ACTIVE PORTION OF THE FACILITY;

(IV) INFORM ALL EMPLOYEES WHO HANDLE OR HAVE RESPONSIBILITY FOR MANAGING ELECTRONIC WASTE ABOUT PROPER HANDLING AND EMERGENCY PROCEDURES APPROPRIATE TO THE TYPE OR TYPES OF ELECTRONIC WASTE HANDLED AT THE FACILITY;

(V) REMOVE ELECTRONIC WASTE FROM THE SITE WITHIN ONE YEAR OF THE WASTE'S RECEIPT AT THE SITE, AND MAINTAIN RECORDS DEMONSTRATING COMPLIANCE WITH THIS REQUIREMENT; AND

(VI) MAINTAIN THE RECORDS REQUIRED BY PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION AND BY SUBPARAGRAPH (V) OF THIS PARAGRAPH ON SITE AND MAKE THEM AVAILABLE FOR AUDIT AND INSPECTION BY THE DEPARTMENT FOR A PERIOD OF THREE YEARS.

(D) A PERSON OPERATING AN ELECTRONIC WASTE RECYCLING FACILITY MAY ALSO OPERATE SUCH FACILITY AS AN ELECTRONIC WASTE CONSOLIDATION FACILITY PROVIDED THAT SUCH PERSON COMPLIES WITH THE REQUIREMENTS OF THIS SECTION THAT ARE APPLICABLE TO EACH TYPE OF FACILITY. WHERE A FACILITY IS OPERATED FOR BOTH PURPOSES, ONLY ONE REGISTRATION FEE MUST BE PAID.

(E) A PERSON OPERATING AN ELECTRONIC WASTE RECYCLING FACILITY MAY ACCEPT ELECTRONIC WASTE IN THE SAME MANNER AS AN ELECTRONIC WASTE COLLECTION SITE PROVIDED THAT SUCH PERSON COMPLIES WITH THE REQUIREMENTS OF THIS SECTION THAT ARE APPLICABLE TO ELECTRONIC WASTE COLLECTION FACILITIES.

4. EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, NO MANUFACTURER OR PERSON OPERATING AN ELECTRONIC WASTE COLLECTION SITE, ELECTRONIC WASTE CONSOLIDATION FACILITY OR ELECTRONIC WASTE RECYCLING FACILITY SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY DATA IN ANY FORM STORED ON ELECTRONIC WASTE SURRENDERED FOR RECYCLING OR REUSE, UNLESS SUCH PERSON MISUSES OR KNOWINGLY AND INTENTIONALLY, OR WITH GROSS NEGLIGENCE, DISCLOSES THE DATA. THIS PROVISION SHALL NOT PROHIBIT ANY SUCH PERSON FROM ENTERING INTO AGREEMENTS THAT PROVIDE FOR THE DESTRUCTION OF DATA ON COVERED ELECTRONIC EQUIPMENT.

S 27-2615. DEPARTMENT RESPONSIBILITIES.

1. THE DEPARTMENT IS AUTHORIZED TO PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT AND ADMINISTER THIS TITLE. AT A MINIMUM, THE DEPARTMENT SHALL PROMULGATE RULES AND REGULATIONS ON: STANDARDS FOR REUSE; ELECTRONIC WASTE ACCEPTANCE CREDITS; WAIVERS OF THE RECYCLING SURCHARGE; AND ACCEPTABLE ALTERNATIVE METHODS FOR THE DETERMINATION OF STATE SALES DATA.

2. THE DEPARTMENT SHALL (A) MAINTAIN A LIST OF MANUFACTURERS WHO ARE REGISTERED PURSUANT TO SECTION 27-2605 OF THIS TITLE, (B) MAINTAIN A LIST OF EACH SUCH MANUFACTURER'S BRANDS, AND (C) POST SUCH LISTS ON THE DEPARTMENT'S WEBSITE.

3. THE DEPARTMENT MAY WAIVE THE RECYCLING SURCHARGE PAYABLE BY A MANUFACTURER UNDER THIS TITLE WHEN THE MANUFACTURER DEMONSTRATES IN AN APPLICATION TO THE DEPARTMENT IT WAS UNABLE TO ACCEPT THE WEIGHT OF ELECTRONIC WASTE REQUIRED BY SECTION 27-2603 OF THIS TITLE DESPITE THE MANUFACTURER'S BEST EFFORTS. THE APPLICATION SHALL BE MADE WITH THE ANNUAL REPORT REQUIRED BY SECTION 27-2617 OF THIS TITLE. THE APPLICATION

SHALL INCLUDE SUCH INFORMATION AS THE DEPARTMENT REQUIRES. A WAIVER PROVIDED PURSUANT TO THIS SUBDIVISION SHALL NOT RELIEVE A MANUFACTURER FROM THE OBLIGATION TO COMPLY WITH THE PROVISIONS OF THIS TITLE NOT SPECIFICALLY ADDRESSED IN SUCH WAIVER.

S 27-2617. REPORTING REQUIREMENTS.

1. BEGINNING MARCH FIRST, TWO THOUSAND ELEVEN, FOR THE PREVIOUS CALENDAR YEAR AND ANNUALLY THEREAFTER, A MANUFACTURER THAT OFFERS COVERED ELECTRONIC EQUIPMENT FOR SALE IN THIS STATE SHALL SUBMIT A REPORT TO THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT THAT INCLUDES THE FOLLOWING:

(A) SALES DATA REPORTED BY WEIGHT FOR THE MANUFACTURER'S COVERED ELECTRONIC EQUIPMENT SOLD IN THIS STATE FOR THE PREVIOUS THREE CALENDAR YEARS, CATEGORIZED BY TYPE TO THE EXTENT KNOWN. IF THE MANUFACTURER CANNOT PROVIDE ACCURATE STATE SALES DATA, IT MUST EXPLAIN WHY SUCH DATA CANNOT BE PROVIDED, AND ESTIMATE STATE SALES DATA BY (I) DIVIDING ITS NATIONAL SALES DATA BY WEIGHT BY THE NATIONAL POPULATION ACCORDING TO THE MOST RECENT CENSUS AND MULTIPLYING THE RESULT BY THE POPULATION OF THE STATE, OR (II) ANOTHER METHOD APPROVED BY THE DEPARTMENT;

(B) THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE COLLECTED FOR RECYCLING OR REUSE IN THIS STATE, CATEGORIZED BY THE TYPE OF COVERED ELECTRONIC EQUIPMENT COLLECTED DURING THE PRECEDING CALENDAR YEAR, THE METHODS USED TO ACCEPT THE ELECTRONIC WASTE, AND THE APPROXIMATE WEIGHT OF ELECTRONIC WASTE ACCEPTED BY EACH METHOD USED TO THE EXTENT KNOWN;

(C) ALL QUANTITIES OF ELECTRONIC WASTE REPORTED BY THE MANUFACTURER MUST SEPARATELY INCLUDE ELECTRONIC WASTE GENERATED BY NEW YORK STATE CONSUMERS AND ELECTRONIC WASTE RECEIVED FROM OR SHIPPED OUTSIDE THE STATE: (I) THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE RECEIVED DIRECTLY FROM CONSUMERS IN THE STATE THROUGH A MAIL BACK PROGRAM; (II) THE NAME AND ADDRESS OF EACH ELECTRONIC WASTE COLLECTION SITE, ELECTRONIC WASTE CONSOLIDATION FACILITY, AND ELECTRONIC WASTE RECYCLING FACILITY AT WHICH ELECTRONIC WASTE FROM CONSUMERS WAS RECEIVED ON BEHALF OF THE PRODUCER DURING THE PRECEDING CALENDAR YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE RECEIVED; AND (III) THE NAME AND ADDRESS OF EACH PERSON TO WHOM THE PRODUCER SENT ELECTRONIC WASTE OR COMPONENT MATERIALS DURING THE PRECEDING YEAR, ALONG WITH THE QUANTITY, BY WEIGHT, OF ELECTRONIC WASTE OR COMPONENT MATERIALS THEREOF SENT TO EACH SUCH PERSON;

(D) THE NUMBER OF ELECTRONIC WASTE ACCEPTANCE CREDITS PURCHASED, SOLD, BANKED AND TRADED DURING THE PRECEDING CALENDAR YEAR, THE NUMBER OF ELECTRONIC WASTE ACCEPTANCE CREDITS USED TO MEET THE REQUIREMENTS OF SECTION 27-2603 OF THIS TITLE, AND FROM WHOM THEY WERE PURCHASED AND TO WHOM THEY WERE SOLD OR TRADED, AND THE NUMBER OF ELECTRONIC WASTE ACCEPTANCE CREDITS RETAINED AS OF THE DATE OF THE REPORT;

(E) THE AMOUNT OF ANY RECYCLING SURCHARGE OWED FOR THE PRECEDING CALENDAR YEAR, WITH SUFFICIENT INFORMATION TO DEMONSTRATE THE BASIS FOR THE CALCULATION OF THE SURCHARGE;

(F) THE NAMES AND LOCATIONS OF ELECTRONIC WASTE RECYCLERS UTILIZED BY THE MANUFACTURER AND ENTITIES TO WHICH ELECTRONIC WASTE IS SENT FOR REUSE, WHETHER IN THE STATE OR OUTSIDE THE STATE, INCLUDING DETAILS ON THE METHODS OF RECYCLING OR REUSE OF ELECTRONIC WASTE, ANY DISASSEMBLY OR PHYSICAL RECOVERY OPERATION USED, AND THE ENVIRONMENTAL MANAGEMENT MEASURES IMPLEMENTED BY SUCH RECYCLER OR ENTITY;

(G) INFORMATION DETAILING THE ACCEPTANCE METHODS MADE AVAILABLE TO CONSUMERS IN MUNICIPALITIES WHICH HAVE A POPULATION OF GREATER THAN TEN THOUSAND AND IN EACH COUNTY OF THE STATE TO MEET THE REQUIREMENTS OF PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION 27-2605 OF THIS TITLE;

(H) A BRIEF DESCRIPTION OF ITS PUBLIC EDUCATION PROGRAM INCLUDING THE NUMBER OF VISITS TO THE INTERNET WEBSITE AND CALLS TO THE TOLL-FREE TELEPHONE NUMBER PROVIDED BY THE MANUFACTURER AS REQUIRED BY SECTION 27-2605 OF THIS TITLE;

(I) ANY OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT; AND

(J) A SIGNATURE BY AN OFFICER, DIRECTOR, OR OTHER INDIVIDUAL AFFIRMING THE ACCURACY OF THE REPORT.

2. THE REPORT SHALL BE ACCOMPANIED BY AN ANNUAL REPORTING FEE OF THREE THOUSAND DOLLARS, AND ANY RECYCLING SURCHARGE DUE PURSUANT TO SECTION 27-2603 OF THIS TITLE.

3. THE DEPARTMENT SHALL SUBMIT A REPORT ON IMPLEMENTATION OF THE TITLE IN THIS STATE TO THE GOVERNOR AND LEGISLATURE BY APRIL FIRST, TWO THOUSAND ELEVEN AND EVERY TWO YEARS THEREAFTER. THE REPORT MUST INCLUDE, AT A MINIMUM, AN EVALUATION OF:

(A) THE ELECTRONIC WASTE STREAM IN THE STATE;

(B) RECYCLING AND REUSE RATES IN THE STATE FOR COVERED ELECTRONIC EQUIPMENT;

(C) A DISCUSSION OF COMPLIANCE AND ENFORCEMENT RELATED TO THE REQUIREMENTS OF THIS TITLE;

(D) RECOMMENDATIONS FOR ANY CHANGES TO THIS TITLE; AND

(E) A DISCUSSION OF OPPORTUNITIES FOR BUSINESS DEVELOPMENT IN THE STATE RELATED TO THE ACCEPTANCE, COLLECTION, HANDLING AND RECYCLING OR REUSE OF ELECTRONIC EQUIPMENT IN THIS STATE.

S 27-2619. PREEMPTION.

JURISDICTION IN ALL MATTERS PERTAINING TO ELECTRONIC WASTE RECYCLING, INCLUDING BUT NOT LIMITED TO THE OBLIGATIONS OF MANUFACTURERS, RETAILERS, ELECTRONIC WASTE COLLECTION SITES, ELECTRONIC WASTE CONSOLIDATION FACILITIES AND ELECTRONIC WASTE RECYCLING FACILITIES WITH RESPECT TO ELECTRONIC WASTE RECYCLING, IS, BY THIS TITLE, VESTED EXCLUSIVELY IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY RULE OR REGULATION PROMULGATED THERETO, GOVERNING COVERED ELECTRONIC EQUIPMENT AND THE COLLECTION, REUSE, OR RECYCLING OF ELECTRONIC WASTE SHALL UPON THE EFFECTIVE DATE OF THIS TITLE BE PREEMPTED.

S 27-2621. DISPOSITION OF FEES.

ALL FEES AND CHARGES COLLECTED PURSUANT TO THIS TITLE SHALL BE DEPOSITED INTO THE ENVIRONMENTAL CONSERVATION SPECIAL REVENUE FUND TO THE CREDIT OF THE ENVIRONMENTAL REGULATORY ACCOUNT; PROVIDED, HOWEVER, THAT ANY RECYCLING SURCHARGES COLLECTED PURSUANT TO SUBDIVISION FIVE OF SECTION 27-2603 OF THIS TITLE SHALL BE DEPOSITED IN THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW TO THE CREDIT OF THE SOLID WASTE ACCOUNT, TO BE USED SOLELY FOR MUNICIPAL RECYCLING PROGRAMS.

S 3. The environmental conservation law is amended by adding a new section 71-2729 to read as follows:

S 71-2729. ENFORCEMENT OF TITLE 26 OF ARTICLE 27 OF THIS CHAPTER.

1. A. ANY CONSUMER, AS DEFINED IN TITLE TWENTY-SIX OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER, WHO VIOLATES ANY PROVISION OF, OR FAILS TO PERFORM ANY DUTY IMPOSED BY, SECTION 27-2611 OF THIS CHAPTER, SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH VIOLATION.

B. ANY PERSON, EXCEPT A CONSUMER, MANUFACTURER, OR AN OWNER OR OPERATOR OF AN ELECTRONIC WASTE COLLECTION SITE, ELECTRONIC WASTE CONSOLIDATION FACILITY, OR ELECTRONIC WASTE RECYCLING FACILITY AS THESE TERMS ARE DEFINED IN TITLE TWENTY-SIX OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER, WHO VIOLATES ANY PROVISION, OR FAILS TO PERFORM ANY DUTY IMPOSED BY

SECTION 27-2611 OF THIS CHAPTER, SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS FOR EACH VIOLATION.

C. ANY MANUFACTURER, OR ANY PERSON OPERATING AN ELECTRONIC WASTE COLLECTION SITE, AN ELECTRONIC WASTE CONSOLIDATION FACILITY, OR AN ELECTRONIC WASTE RECYCLING FACILITY AS THOSE TERMS ARE DEFINED IN TITLE TWENTY-SIX OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER, WHO:

I. FAILS TO SUBMIT ANY REPORT, REGISTRATION, FEE, OR SURCHARGE TO THE DEPARTMENT AS REQUIRED BY TITLE TWENTY-SIX OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH DAY SUCH REPORT, REGISTRATION, FEE, OR SURCHARGE IS NOT SUBMITTED; AND

II. VIOLATES ANY OTHER PROVISION OF TITLE TWENTY-SIX OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER OR FAILS TO PERFORM ANY DUTY IMPOSED BY SUCH TITLE, EXCEPT FOR SUBDIVISION FOUR OF SECTION 27-2603 OF THIS CHAPTER, SHALL BE LIABLE FOR A CIVIL PENALTY FOR EACH VIOLATION NOT TO EXCEED ONE THOUSAND DOLLARS FOR THE FIRST VIOLATION, TWO THOUSAND FIVE HUNDRED DOLLARS FOR THE SECOND VIOLATION AND FIVE THOUSAND DOLLARS FOR THE THIRD AND SUBSEQUENT VIOLATIONS OF THIS TITLE WITHIN A TWELVE-MONTH PERIOD.

D. ANY RETAILER, AS DEFINED BY SECTION 27-2601 OF THIS CHAPTER, WHO VIOLATES ANY PROVISION OF TITLE TWENTY-SIX OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER OR FAILS TO PERFORM ANY DUTY IMPOSED BY SUCH TITLE, SHALL BE LIABLE FOR A CIVIL PENALTY FOR EACH VIOLATION NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS FOR THE FIRST VIOLATION, FIVE HUNDRED DOLLARS FOR THE SECOND VIOLATION AND ONE THOUSAND DOLLARS FOR THE THIRD AND SUBSEQUENT VIOLATIONS OF THIS TITLE IN A TWELVE-MONTH PERIOD.

E. CIVIL PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS ARTICLE, OR BY THE COURT IN ANY ACTION OR PROCEEDING PURSUANT TO THIS SECTION, AND, IN ADDITION THERETO, SUCH PERSON MAY BY SIMILAR PROCESS BE ENJOINED FROM CONTINUING SUCH VIOLATION.

2. ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE PAID OVER TO THE COMMISSIONER FOR DEPOSIT TO THE CREDIT OF THE SOLID WASTE ACCOUNT OF THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

S 4. Severability. The provisions of this title shall be severable, and if any provision of this title is declared to be void or invalid by a court of competent jurisdiction, the remaining provisions shall not be affected, but shall remain in full force and effect.

S 5. This act shall take effect immediately.