

ASSEMBLY, No. 2862

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 10, 2010

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

SYNOPSIS

Revises “Electronic Waste Management Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/15/2010)

1 AN ACT concerning electronic waste and amending P.L.2007,
2 c.347, and P.L.2008, c.130, and supplementing P.L.1977, c.443
3 (C.26:3A2-21 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) is amended to
9 read as follows:

10 3. a. Beginning on January 1, 2010, and each January 1
11 thereafter, each manufacturer of televisions offered for sale for
12 delivery in this State shall register with the department and pay a
13 registration fee of \$5,000. Each television manufacturer's
14 registration and renewal shall include a list of all of the brands
15 under which its televisions are sold. All fees collected pursuant to
16 this subsection shall be allocated to the department to be used in the
17 administration of the "Electronic Waste Management Act,"
18 P.L.2007, c.347 (C.13:1E-99.94 et seq.).

19 b. Each registered television manufacturer shall submit an
20 annual renewal of its registration to the department and pay to the
21 department a registration renewal fee of \$5,000 by January 1 of
22 each program year. Each registered television manufacturer's
23 renewal shall include an annual report. All fees collected pursuant
24 to this subsection shall be allocated to the department to be used in
25 the administration of P.L.2007, c.347.

26 c. In addition to reporting all brands under which its televisions
27 are sold, regardless of whether the brand is owned or licensed, the
28 registered television manufacturer's annual report shall include the
29 total number of all new televisions sold in the State in the previous
30 program year. The department shall determine a registered
31 television manufacturer's market share.

32 d. A registered television manufacturer shall inform the
33 department, in writing, as soon as it becomes aware that it will
34 cease selling televisions in the State.

35 e. By June 1, 2010, each registered television manufacturer or
36 group of registered television manufacturers shall submit a plan to
37 the department to collect, transport and recycle used televisions
38 based on the television manufacturer's market share. Every plan
39 shall be filed with a television manufacturer's annual registration,
40 and shall include:

41 (1) Methods that will be used to collect the used televisions
42 including proposed collection services;

43 (2) The processes and methods that will be used to recycle
44 recovered used televisions including a description of the recycling
45 processes that will be used, including the name and location of all
46 authorized recyclers to be directly utilized by the plan;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above
bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (3) Means that will be utilized to publicize the collection
2 services, including specification of a website or toll-free telephone
3 number that provides information about the registrant's recycling
4 program in sufficient detail to allow consumers to learn how to
5 return their used televisions for recycling, including limitations
6 placed by collection sites on the number of used televisions
7 permitted for drop-off by consumers; and

8 (4) The intention of the registrant to fulfill its obligation through
9 its own operations, either individually or with other registered
10 television manufacturers, or by contract with for-profit or not-for-
11 profit corporations, or local government units.

12 The department shall hold confidential any information obtained
13 pursuant to this subsection when shown by a registered television
14 manufacturer that the information, if made public, would divulge
15 competitive business information, methods or processes entitled to
16 protection as trade secrets of the registered television manufacturer.

17 Recovered used televisions shall not be sent to prisons for
18 recycling either directly or through intermediaries and nothing in
19 this section shall be construed to allow for the recycling of used
20 televisions by prisoners. Any person committed to a jail, prison, or
21 other institution for the detention of persons charged with or
22 convicted of an offense shall be disqualified from being an
23 authorized recycler.

24 By January 1, 2011, each registered television manufacturer or
25 group of registered television manufacturers shall commence its
26 used television recycling program to implement and finance the
27 collection, transportation, and recycling of used televisions. The
28 used television recycling program shall accept all types and all
29 brands of used televisions, including orphan devices.

30 f. Each registrant's plan or plan jointly submitted by a group of
31 registrants shall be reviewed to determine its compliance with
32 subsection e. of this section and approved by the department. The
33 department may reject the plan, in whole or in part, and may impose
34 additional requirements as a condition of approval.

35 g. If a registered television manufacturer fails to comply with
36 all the conditions and terms of an approved plan, the registered
37 television manufacturer shall be prohibited from selling or offering
38 for sale televisions in this State.

39 h. **[Registered television manufacturers that collect, transport,**
40 **and recycle used televisions in excess of their market share may sell**
41 **credits to another registrant or apply that excess to the following**
42 **year's recycling program.] Registered television manufacturers that**
43 **collect, transport, and recycle used televisions in excess of their**
44 **market share may sell credits to another registrant or apply that**
45 **excess to the following year's recycling program; provided that no**
46 **more than 25 percent of a manufacturer's obligation for any**
47 **program year may be met with credits generated in a prior program**
48 **year. No manufacturer or group of manufacturers, as the case may**

1 be, may cease implementing its plan required pursuant to subsection
2 e. of this section and approved by the department, during any
3 program year by using credits.

4 i. Nothing in this act is intended to exempt any person from
5 liability the person would otherwise have under applicable law.

6 j. If less than 100 televisions are sold by a manufacturer in the
7 previous program year, the department shall not require a
8 manufacturer to pay the registration fee or registration renewal fee,
9 as appropriate, in the subsequent year, pursuant to subsections a. or
10 b. of this section.

11 (cf: P.L.2008, c.130, s.2)

12

13 2. Section 3 of P.L.2008, c.130 (C.13:1E-99.96a) is amended to
14 read as follows:

15 3. a. The department shall prepare a plan every three years
16 that: (1) establishes used television per-capita collection and
17 recycling goals; and (2) identifies any necessary State actions to
18 expand collection opportunities to achieve the used television per-
19 capita collection and recycling goals. The plan shall be posted on
20 the department's Internet website and submitted, pursuant to section
21 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

22 b. The department shall prepare an annual report, which shall
23 be posted on the department's Internet website and submitted,
24 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
25 Legislature.

26 The annual report shall include the following:

27 (1) Progress toward achieving the overall annual total recovery
28 and recycling goals described in the plan prepared pursuant to
29 subsection a. of this section; and

30 (2) An evaluation of the effectiveness of existing used television
31 collection and processing infrastructure.

32 c. **【The used television recovery and recycling program**
33 **implemented to effectuate the provisions of P.L.2007, c.347**
34 **(C.13:1E-99.94 et al.) and its associated regulations shall be fully**
35 **audited by an independent, certified public accountant at the end of**
36 **each calendar year and the audit report shall be submitted, pursuant**
37 **to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.】**
38 (Deleted by amendment, P.L. , c.) (pending before the
39 Legislature as this bill).

40 (cf: P.L.2008, c.130, s.3)

41

42 3. Section 8 of P.L.2007, c.347 (C.13:1E-99.101) is amended
43 to read as follows:

44 8. Beginning on January 1, 2011, no person shall sell or offer
45 for sale in this State a new covered electronic device, including a
46 television, if the covered electronic device is prohibited from being
47 sold or offered for sale in the European Union on or after its date of
48 manufacture due to the concentration of one or more heavy metals

1 in the covered electronic device exceeding its maximum
2 concentration value, as specified in the Commission of European
3 Communities' Decision of August 18, 2005, amending Directive
4 2002/95/EC (European Union document 2005/618/EC), or as
5 specified in a subsequent amendment to the Directive. The sale or
6 offer for sale of a new covered electronic device that exceeds the
7 European Union heavy metal maximum concentration value on or
8 after its date of manufacture shall be permitted if the use of the
9 heavy metal is necessary to comply with consumer, health, or safety
10 requirements imposed by the Underwriters Laboratories or federal
11 or State law.

12 (cf: P.L.2008, c.130, s.6)

13

14 4. Section 9 of P.L.2007, c.347 (C.13:1E-99.102) is amended
15 to read as follows:

16 9. a. (1) By January 30, 2012, and by each January 30
17 thereafter, the department shall:

18 (a) have completed an auditable, statistically **【significant】** valid
19 sampling of covered electronic devices collected from consumers in
20 this State during the previous program year. The sampling
21 information collected shall consist of a list of brands of covered
22 electronic devices and the weight of covered electronic devices that
23 are identified for each brand. The department's sampling shall be
24 conducted in accordance with a procedure established by the
25 department and may be conducted by a third-party organization
26 including an authorized recycler, to be determined by the
27 department. The department may, at its discretion, be present at the
28 sampling and may audit the methodology and the results of the
29 third-party organization. The costs associated with the sampling
30 shall be recovered from the fees paid by manufacturers to the
31 department; and

32 (b) determine the total weight of covered electronic devices,
33 including orphan devices, collected from consumers in this State
34 during the previous program year.

35 (2) If a manufacturer or group of manufacturers conducts its
36 own sampling of covered electronic devices, the manufacturer or
37 group of manufacturers shall submit a report to the department
38 annually by March 1, beginning the year after the program is
39 initiated. The report shall include:

40 (a) the results of an auditable, statistically **【significant】** valid
41 sampling of covered electronic devices collected from consumers in
42 this State by the manufacturer or group of manufacturers during the
43 previous program year. The sampling information reported shall
44 consist of a list of brands of covered electronic devices and the
45 weight of covered electronic devices that are identified for each
46 brand; and

47 (b) the total weight of covered electronic devices, including
48 orphan devices, collected from consumers in this State by the

1 manufacturer or group of manufacturers during the previous
2 program year and documentation verifying collection and recycling
3 of such devices.

4 b. By February 1, 2010, and each January 1 thereafter, each
5 manufacturer of covered electronic devices offered for sale for
6 delivery in this State shall register with the department and pay a
7 registration fee of \$5,000. Any manufacturer to whom the
8 department provides notification of a return share and return share
9 in weight pursuant to subsection a. of section 12 of P.L.2007, c.347
10 (C.13:1E-99.105) and who has not previously filed a registration
11 shall file a registration with the department within 30 days of
12 receiving such notification from the department. Each
13 manufacturer's registration and renewal shall include a list of all of
14 the manufacturer's brands of covered electronic devices.

15 The provisions of this section shall not apply to any
16 manufacturer or retailer of televisions offered for sale for delivery
17 in this State.

18 c. If less than 100 covered electronic devices are sold by a
19 manufacturer in the previous program year, the department shall not
20 require a manufacturer to pay the registration fee or registration
21 renewal fee, as appropriate, in the subsequent year, pursuant to this
22 subsection b. of this section.

23 (cf: P.L.2008, c.130, s.7)

24

25 5. Section 10 of P.L.2007, c.347 (C.13:1E-99.103) is amended
26 to read as follows:

27 10. a. By June 1, 2010, each manufacturer to whom the
28 department provides, by April 2, 2010, a return share in weight that
29 is greater than zero shall submit a plan to the department to collect,
30 transport and recycle covered electronic devices.

31 b. Each manufacturer to whom the department provides, by
32 February 15, 2012 or by February 15 of any year thereafter, a return
33 share in weight that is greater than zero shall, by March 15 of that
34 year, comply with the requirements of subsection a. of this section.

35 c. An individual manufacturer submitting a plan pursuant to
36 subsection a. of this section shall collect, transport, and recycle its
37 return share in weight.

38 d. A group of manufacturers jointly submitting a plan pursuant
39 to subsection a. of this section shall collect, transport, and recycle
40 the sum of the obligations of each participating manufacturer.

41 e. Every plan shall be filed with a manufacturer's annual
42 registration, and shall include:

43 (1) Methods that will be used to collect the covered electronic
44 devices including proposed collection services;

45 (2) The processes and methods that will be used to recycle
46 recovered covered electronic devices including a description of the
47 recycling processes that will be used, including the name and

1 location of all authorized recyclers to be directly utilized by the
2 plan;

3 (3) The processes and methods that will be used to recycle
4 recovered covered electronic devices which originated from
5 transactions between business concerns;

6 (4) Means that will be utilized to publicize the collection
7 services, including specification of a website or toll-free telephone
8 number that provides information about the manufacturer's program
9 in sufficient detail to allow consumers to learn how to return their
10 covered electronic devices for recycling; and

11 (5) The intention of the registrant to fulfill its obligation through
12 operation of its own plan, either individually or with other
13 manufacturers.

14 The department shall hold confidential any information obtained
15 pursuant to this subsection when shown by a manufacturer that the
16 information, if made public, would divulge competitive business
17 information, methods or processes entitled to protection as trade
18 secrets of the manufacturer.

19 Recovered covered electronic devices shall not be sent to prisons
20 for recycling either directly or through intermediaries and nothing
21 in this section shall be construed to allow for the recycling of
22 covered electronic devices by prisoners. Any person committed to a
23 jail, prison, or other institution for the detention of persons charged
24 with or convicted of an offense shall be disqualified from engaging
25 in the manual or mechanical separation of covered electronic
26 devices to recover components and commodities contained therein
27 for the purpose of re-use or recycling.

28 By January 1, 2011, each manufacturer or group of
29 manufacturers required to submit a plan, pursuant to subsection a.
30 of this section, shall commence its covered electronic device
31 recycling program to implement and finance the collection,
32 transportation, and recycling of covered electronic devices other
33 than televisions. The covered electronic device recycling program
34 shall accept all types and all brands of used covered electronic
35 devices, including orphan devices.

36 f. Each manufacturer's plan or plan jointly submitted by a
37 group of manufacturers shall be reviewed to determine its
38 compliance with subsection e. of this section and approved by the
39 department. The department may reject the plan, in whole or in
40 part, and may impose additional requirements as a condition of
41 approval.

42 g. If a manufacturer fails to comply with all the conditions and
43 terms of an approved plan, the manufacturer shall be prohibited
44 from selling or offering for sale in this State a covered electronic
45 device.

46 h. [Manufacturers that collect, transport, and recycle covered
47 electronic devices in excess of their obligation may sell credits to
48 another registrant or apply that excess to the following year's

1 recycling obligation.】 Manufacturers that collect, transport, and

2 recycle covered electronic devices in excess of their obligation may

3 sell credits to another registrant or apply that excess to the

4 following year's recycling obligation; provided that no more than 25

5 percent of a manufacturer's obligation for any program year may be

6 met with credits generated in a prior program year. No

7 manufacturer or group of manufacturers, as the case may be, may

8 cease implementing its plan required pursuant to subsection e. of

9 this section and approved by the department, during any program

10 year by using credits.

11 i. (Deleted by amendment, P.L.2008, c.130)

12 j. (Deleted by amendment, P.L.2008, c.130)

13 k. Nothing in this act is intended to exempt any person from

14 liability the person would otherwise have under applicable law.

15 l. The provisions of this section shall not apply to any

16 manufacturer or retailer of televisions offered for sale for delivery

17 in this State.

18 (cf: P.L.2008, c.130, s.8)

19

20 6. Section 12 of P.L.2007, c.347 (C.13:1E-99.105) is amended

21 to read as follows:

22 12. a. (1) The department shall determine the return share for

23 each program year for each manufacturer by dividing the weight of

24 covered electronic devices identified for each manufacturer by the

25 total weight of covered electronic devices identified for all

26 manufacturers. For the first program year, the return share of

27 covered electronic devices identified for each manufacturer shall be

28 based on the best available public return share data from the United

29 States, including data from other states, for covered electronic

30 devices from consumers. For the second and each subsequent

31 program year, the return share of covered electronic devices

32 identified for each manufacturer shall be based on the most recent

33 samplings of covered electronic devices conducted in this State

34 pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-

35 99.102).

36 (2) The department shall determine the return share in weight

37 for each program year for each manufacturer for whom a return

38 share is determined pursuant to paragraph (1) of this subsection by

39 multiplying the return share for each such manufacturer by the total

40 weight in pounds of covered electronic devices, including orphan

41 devices, collected from consumers the previous program year. For

42 the first program year, the total weight in pounds of covered

43 electronic devices shall be based on the best available public weight

44 data from the United States, including data from other states, for

45 covered electronic devices from consumers. For the second and

46 each subsequent program year, the total weight in pounds of

47 covered electronic devices shall be based on the total weight of

48 covered electronic devices, including orphan devices, determined

1 by the department pursuant to subsection a. of section 9 of
2 P.L.2007, c.347 (C.13:1E-99.102).

3 (3) By April 2, 2011, the department shall provide each
4 manufacturer for whom a return share is determined pursuant to
5 paragraph (1) of this subsection with its return share and its return
6 share in weight for the first program year. Annually thereafter, by
7 February 15, beginning in 2013, the department shall provide each
8 manufacturer for whom a return share is determined pursuant to
9 paragraph (1) of this subsection with its return share and its return
10 share in weight for the second and subsequent program years.

11 b. (Deleted by amendment, P.L.2008, c.130)

12 c. (1) The department shall ensure that at least one electronics
13 collection opportunity is available in each county throughout the
14 State and in such a manner as to be convenient, to the maximum
15 extent practicable and feasible, to all consumers in the county.

16 (2) The department shall ensure that collection sites do not place
17 unreasonable limits on the number of covered electronic devices
18 permitted for drop-off by consumers.

19 d. (1) Beginning on January 1, 2011, the department shall
20 maintain a list of registrants and the brands reported in each
21 manufacturer's registration, and post the list on the department's
22 Internet website that is updated at least once a month.

23 (2) The department shall organize and coordinate public
24 education and outreach.

25 e. The department shall prepare a plan every three years that:
26 (1) establishes per-capita collection and recycling goals; and (2)
27 identifies any necessary State actions to expand collection
28 opportunities to achieve the per-capita collection and recycling
29 goals. The plan shall be posted on the department's Internet website
30 and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
31 19.1), to the Legislature.

32 f. The department shall prepare an annual report, which shall
33 be posted on the department's Internet website and submitted,
34 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
35 Legislature.

36 The annual report shall include the following:

37 (1) The total weight of covered electronic devices collected in
38 the State the previous calendar year;

39 (2) Progress toward achieving the overall annual total recovery
40 and recycling goals described in the plan prepared pursuant to
41 subsection e. of this section;

42 (3) A complete listing of all collection sites operating in the
43 State in the prior calendar year, the parties that operated them, and
44 the amount of material by weight collected at each site;

45 (4) An evaluation of the effectiveness of the education and
46 outreach program; and

47 (5) An evaluation of the existing collection and processing
48 infrastructure.

1 g. **【**The program implemented to effectuate the provisions of
2 this act and its associated regulations shall be fully audited by an
3 independent, certified public accountant at the end of each calendar
4 year and the audit report shall be submitted, pursuant to section 2 of
5 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.**】** (Deleted by
6 amendment, P.L. , c.) (pending before the Legislature as this
7 bill).

8 h. The provisions of this section shall not apply to any
9 manufacturer or retailer of televisions offered for sale for delivery
10 in this State.

11 (cf: P.L.2008, c.130, s.10)

12

13 7. Section 13 of P.L.2007, c.347 (C.13:1E-106) is amended to
14 read as follows:

15 13. a. The department shall maintain an Internet website and
16 toll-free number complete with up-to-date listings of where
17 consumers can bring covered electronic devices for recycling under
18 the provisions of this act.

19 b. (Deleted by amendment, P.L.2008, c.130)

20 c. **【**No more frequently than annually and no less frequently
21 than biennially, the department shall review, at a public hearing, the
22 covered electronic device recycling goals and registration fees.
23 Recommended changes to the covered electronic device recycling
24 goals and registration fees shall be included in the annual reports
25 required pursuant to section 3 of P.L.2008, c.130 (C.13:1E-99.96a)
26 and subsection f. of section 12 of P.L.2007, c.347 (C.13:1E-
27 99.105).**】** (Deleted by amendment, P.L. , c.) (pending before
28 the Legislature as this bill).

29 d. No fees or costs may be charged to consumers for the
30 collection, transportation, or recycling of covered electronic devices
31 except that a nominal fee may be charged to a consumer if a
32 financial incentive, such as a coupon, of equal or greater value is
33 provided . Any authorized recycler may charge fees to schools or
34 local government units for the reasonable costs incurred by the
35 authorized recycler for the collection, transportation, or recycling of
36 covered electronic devices.

37 (cf: P.L.2008, c.130, s.11)

38

39 8. Section 17 of P.L.2007, c.347 (C.13:1E-99.110) is amended
40 to read as follows:

41 17. a. **【**The State, including the Attorney General and the
42 department, shall be authorized to initiate independent action to
43 enforce any provision of this act, including failure by a
44 manufacturer to remit the registration fee required pursuant to
45 section 3 of P.L.2007, c.347 (C.13:1E-99.96) or section 9 of
46 P.L.2007, c.347 (C.13:1E-99.102), or any fee required pursuant to
47 subsection b. of section 18 of P.L.2007, c.347 (C.13:1E-99.111) to

1 the department. Any funds awarded by the court shall be used first
2 to offset enforcement expenses. Money in excess of the
3 enforcement expenses shall be deposited into a separate account,
4 and shall be dedicated for use by the department solely for the
5 purposes of administering and enforcing the provisions of this act
6 and any rules or regulations adopted pursuant thereto.】 (Deleted by
7 amendment, P.L. , c.) (pending before the Legislature as this
8 bill).

9 b. 【Any person who violates the provisions of this act shall be
10 subject to a penalty of not less than \$500 nor more than \$1,000 for
11 each offense, to be collected in a civil action by a summary
12 proceeding under the "Penalty Enforcement Law of 1999,"
13 P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court
14 of competent jurisdiction wherein injunctive relief has been
15 requested. The Superior Court shall have jurisdiction to enforce the
16 provisions of the "Penalty Enforcement Law of 1999" in connection
17 with this act.

18 If the violation is of a continuing nature, each day during which
19 it continues constitutes an additional, separate, and distinct offense.

20 The department may institute a civil action for injunctive relief
21 to enforce this act and to prohibit and prevent a violation of this act,
22 and the court may proceed in the action in a summary manner.】
23 (Deleted by amendment, P.L. , c.) (pending before the
24 Legislature as this bill).

25 c. Violations of the act include, but are not limited to:

26 (1) the sale of a new covered electronic device by any person
27 that is not in full compliance with the provisions of this act;

28 (2) the use of a qualified collection program to recycle covered
29 electronic devices not discarded within the State, or region as
30 provided in section 19 of P.L.2007, c.347 (C.13:1E-99.112);

31 (3) the knowing failure to report or accurately report any data
32 required to be reported to the department pursuant to this act; **【and】**

33 (4) the non-payment of any fee required pursuant to this act ;

34 (5) failure to register, pursuant to subsection a. of section 3 of
35 P.L.2007, c.347 (C.13:1E-99.96) or pursuant to subsection b. of
36 section 9 of P.L.2007, c.347 (C.13:1E-99.102); and

37 (6) failure to submit or implement a plan pursuant to section 3
38 or 10 of P.L.2007, c.347 (C.13:1E-99.96 or C.13:1E-99.103) .

39 d. The "Electronic Waste Management Act," P.L.2007, c.347
40 (C.13:1E-99.94 et seq.), and any rule or regulation adopted pursuant
41 thereto, shall be enforced by the department and may be enforced
42 by any certified local health agency. Whenever the commissioner
43 finds that a person has violated any provision of P.L.2007, c.347, or
44 any rule or regulation adopted pursuant thereto, the commissioner
45 may:

46 (1) issue an order, in accordance with subsection e. of this
47 section, requiring the person found to be in violation to comply;

1 (2) bring a civil action in accordance with subsection f. of this
2 section;

3 (3) levy a civil administrative penalty in accordance with
4 subsection g. of this section; or

5 (4) bring an action for a civil penalty in accordance with
6 subsection h. of this section.

7 e. Whenever, on the basis of available information, the
8 commissioner finds that a person has violated any provision of
9 P.L.2007, c.347, or any rule or regulation adopted thereto, the
10 commissioner may issue an administrative enforcement order: (1)
11 specifying the provision or provisions of P.L.2007, c.347, or the
12 rule or regulation, of which the person is in violation; (2) citing the
13 action which constituted the violation; (3) requiring compliance
14 with the provision or provisions violated; and (4) providing notice
15 to the person of the right to a hearing on the matters contained in
16 the administrative enforcement order. The ordered party shall have
17 35 days from receipt of the order within which to deliver to the
18 commissioner a written request for a hearing. An order shall be
19 effective upon receipt and any person to whom such order is
20 directed shall comply with the order immediately. A request for
21 hearing shall not automatically stay the effect of the order.

22 f. The commissioner is authorized to, and a certified local
23 health agency may, institute a civil action in Superior Court for
24 appropriate relief from any violation of the provisions of P.L.2007,
25 c.347, or any rule or regulation adopted thereof. Such relief may
26 include, singly or in combination:

27 (1) a temporary or permanent injunction;

28 (2) recovery of reasonable costs of any investigation or
29 inspection which led to the discovery of the violation, and for the
30 reasonable costs of preparing and bringing a civil action
31 commenced under this subsection;

32 (3) recovery of reasonable costs incurred by the State in
33 removing, correcting, or terminating the adverse effects resulting
34 from any violation of the provisions of P.L.2007, c.347, or any rule
35 or regulation adopted pursuant thereto, for which a civil action has
36 been commenced and brought under this subsection;

37 (4) recovery of compensatory damages caused by a violation of
38 the provisions of P.L.2007, c.347, or any rule or regulation adopted,
39 for which a civil action has been commenced and brought under this
40 subsection. Assessments under this subsection shall be paid to the
41 State Treasurer, or to the certified local health agency, as the case
42 may be, except that compensatory damages may be paid by specific
43 order of the court to any persons who have been aggrieved by the
44 violation. If a proceeding is instituted by a certified local health
45 agency, notice thereof shall be served upon the commissioner in the
46 same manner as if the commissioner were a named party to the
47 action or proceeding. The department may intervene as a matter of
48 right in any proceeding brought by a certified local health agency.

1 g. (1) Except as authorized otherwise in paragraph (2) of this
2 subsection, the commissioner is authorized to assess a civil
3 administrative penalty of not less than \$500 nor more than \$1,000
4 for each violation, provided that each day during which the
5 violation continues shall constitute an additional, separate and
6 distinct offense.

7 (2) For any violation of sections 3, 7, 8, 10 or 11 of P.L.2007,
8 c.347 (C.13:1E-99.96, C.13:1E-99.100, C.13:1E-99.101, C.13:1E-
9 99.103, or C.13:1E-99.104) or subsection a. or b. of section 6,
10 subsection b. of section 9, or subsection a. of section 15 of
11 P.L.2007, c.347 (C.13:1E-99.99, C.13:1E-99.102, C.13:1E-99.108),
12 the commissioner is authorized to assess a civil administrative
13 penalty not to exceed \$50,000 for each day during which a violation
14 continues. In assessing a civil administrative penalty, the
15 commissioner shall consider the severity of the violation, the
16 measures taken to prevent further violations, and whether the
17 penalty will maintain an appropriate deterrent.

18 Prior to assessment of a civil administrative penalty, the person
19 committing the violation shall be notified by certified mail or
20 personal service that the penalty is being assessed. The notice shall
21 identify the section of the statute, rule, regulation, or order violated;
22 recite the facts alleged to constitute a violation; state the basis for
23 the amount of the civil administrative penalties to be assessed; and
24 affirm the rights of the alleged violator to a hearing. The ordered
25 party shall have 35 days from receipt of the notice within which to
26 deliver to the commissioner a written request for a hearing. After
27 the hearing and upon finding that a violation has occurred, the
28 commissioner may issue a final order after assessing the amount of
29 the fine specified in the notice. If no hearing is requested, the
30 notice shall become a final order after the expiration of the 35-day
31 period. Payment of the assessment is due when a final order is
32 issued or the notice becomes a final order. The authority to levy an
33 administrative order is in addition to all other enforcement
34 provisions in P.L.2007, c.347, and the payment of any assessment
35 shall not be deemed to affect the availability of any other
36 enforcement provisions in connection with the violation for which
37 the assessment is levied. The department may compromise any
38 civil administrative penalty assessed under this section in an
39 amount and with conditions the department determines appropriate.

40 h. A person who violates any provision of P.L.2007, c.347, or
41 any rule or regulation adopted pursuant thereto, or an administrative
42 order issued pursuant to subsection e. of this section, or a court
43 order issued pursuant to subsection f. of this section, or who fails to
44 pay a civil administrative penalty in full pursuant to subsection g. of
45 this section, or who knowingly makes any false or misleading
46 statement on any application, record, report, or other document
47 required to be submitted to the department, shall be subject, upon
48 order of a court, to a civil penalty not to exceed \$50,000 per day of

1 the violation, and each day during which the violation continues
2 shall constitute an additional, separate, and distinct offense. Any
3 civil penalty imposed pursuant to this subsection may be collected
4 with costs in a summary proceeding pursuant to the "Penalty
5 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
6 or may be collected in a civil action commenced by a certified local
7 health agency, or the commissioner, as the case may be. In addition
8 to any penalties, costs or interest charges, the Superior Court, or the
9 municipal court as the case may be, may assess against the violator
10 the amount of economic benefit accruing to the violator from the
11 violation.

12 i. As used in this section, "certified local health agency" shall
13 have the same meaning as set forth in section 3 of P.L.1977, c.443
14 (C.26:3A2-23).
15 (cf: P.L.2008, c.130, s.14)

16
17 9. (New section) In addition to the environmental health laws
18 that are enforced by a certified local health agency pursuant to
19 section 7 of P.L.1977, c.443 (C.26:3A2-25), a certified local health
20 agency may agree to enforce the provisions of P.L.2007, c.347
21 (C.13:1E-99.94 et seq.) as provided in section 17 of P.L.2007, c.347
22 (C.13:1E-99.110).

23
24 10. This act shall take effect immediately.

25 26 27 STATEMENT

28
29 This bill would amend the "Electronic Waste Management Act,"
30 P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty
31 provisions, adjusting the credit-trading program, reallocating the
32 funds collected under registration fees, authorizing enforcement of
33 the act by certified local health agencies, and removing audit and
34 public hearing requirements under current law.

35 Under the bill, the Department of Environmental Protection
36 (DEP) would use the registration fees from manufacturers to
37 support the administration of the program. In addition, the bill
38 would exempt manufacturers who sell less than 100 televisions or
39 less than 100 covered electronic devices in the previous program
40 year from paying the \$5,000 registration or registration renewal fee.
41 Any manufacturer who sells 100 or more units, after being
42 exempted from fees, would be required to pay the registration fee or
43 the registration renewal fee for any year in which 100 or more units
44 are sold.

45 This bill would limit the provision of law allowing
46 manufacturers that collect electronics in excess of their obligation
47 to either sell credits to other manufacturers or apply the credits to
48 the next year's obligation by providing that no more than 25 percent

1 of a manufacturer's obligation for any program year may be met
2 with credits generated in a prior program year. The bill further
3 provides that no manufacturer or group of manufacturers, as the
4 case may be, may cease implementing its plan during any program
5 year by using credits.

6 The bill would also allow the sale or offer for sale of new
7 electronic devices that exceed the European Union heavy metal
8 maximum concentration value on or after the date of manufacture if
9 the use of the heavy metal is necessary to comply with consumer,
10 health, or safety requirements imposed by the Underwriters
11 Laboratories or federal or State law. The bill would also allow a
12 nominal fee to be charged to a consumer for the collection,
13 transportation, or recycling of a covered electronic device if a
14 financial incentive, such as a coupon, of equal or greater value is
15 provided.

16 Current law provides that a person in violation of this act may be
17 subject to a civil penalty of not less than \$500 nor more than \$1,000
18 for each offense, and the DEP is required to seek relief in Superior
19 Court to enforce the statute. This bill would change the penalty
20 provision to authorize the DEP to issue administrative orders, levy
21 administrative penalties, bring a civil action seeking a court order,
22 and bring an action for a civil penalty to enforce the act. The bill
23 also authorizes the commissioner to assess a civil administrative
24 penalty not to exceed \$50,000, for certain violations of the act, such
25 as failure to register or submit or implement a plan. For other
26 violations, the commissioner is authorized to assess a civil
27 administrative penalty of not less than \$500 nor more than \$1,000
28 for each violation. In addition, the bill would authorize a court to
29 impose a civil penalty for violations of the act of up to \$50,000 per
30 day. Further, certified local health agencies would be authorized
31 but may not be mandated to enforce the act.

32 Finally, the bill would also delete provisions that required: (1)
33 the used television recovery and recycling program to be fully
34 audited by an independent, certified public accountant each
35 calendar year; and (2) the DEP to hold a public hearing every one to
36 two years to review the covered electronic device recycling goals
37 and registration fees.