

**CHAPTER 339D  
ELECTRONIC DEVICE RECYCLING AND  
RECOVERY ACT**

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**Note**

Chapter heading amended by L 2009, c 183, §2; L 2022, c 151, §2.

L 2014, c 218, §8 purports to amend this chapter.

## Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

## PART I. DEFINITIONS

### Note

Section 339D-1 designated as part I by L 2009, c 183, §3.

**§339D-1 Definitions.** As used in this chapter:

"Brand" means a symbol, word, or mark that identifies an electronic device, rather than any of its components.

"Collector" means a person that accepts electronic devices for reuse or delivers the devices to a recycler for the purposes of this chapter.

"Department" means the department of health.

"Electronic device":

(1) Means:

(A) A computer, computer printer, computer monitor, or portable computer with a screen size greater than four inches measured diagonally; and

(B) Any device that is capable of receiving broadcast, cable, or satellite signals and displaying television or video programming, including any direct view or projection television with a viewable screen of nine inches or larger with display technology based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology; and

(2) Shall not include:

(A) An electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(B) An electronic device that is functionally or physically required as a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;

- (C) An electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier;
- (D) A telephone of any type including a mobile telephone; or
- (E) A global positioning system.

"Manufacturer":

(1) Means any person:

- (A) Who manufactures or manufactured electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture electronic devices for delivery exclusively to or at the order of the licensor;
- (B) Who sells or sold electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture electronic devices for delivery exclusively to or at the order of the licensor;
- (C) Who manufactures or manufactured electronic devices without affixing a brand;
- (D) Who manufactures or manufactured electronic devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use; or
- (E) For whose account electronic devices manufactured outside the United States are or were imported into the United States; provided that if at the time those electronic devices are or were imported into the United States and another person has registered as the manufacturer of the brand of the electronic devices, this subparagraph shall not apply; and

(2) Shall not include persons who sold fewer than one hundred electronic devices in the State during the previous calendar year.

"Person" means any individual, business, partnership, limited liability company, corporation, not-for-profit organization, association, government entity, public benefit corporation, or public authority.

"Recycler" means any person who engages in the recycling of electronic devices for the purposes of this chapter.

"Recycling" means processing, including disassembling, dismantling, or shredding, electronic devices or their components to recover a useable product.

"Retailer" means any person who offers electronic devices for sale, other than for resale by the purchaser, through any means, including sales outlets, catalogs, or the Internet.

"Reuse" means any operation by which an electronic device changes ownership and is used for the same purpose for which it was originally purchased.

"Sell" or "sale" means any transfer for consideration of title, including transactions conducted through sales outlets, catalogs, or the Internet, but excluding leases. [L Sp 2008, c 13, pt of §2 and §3(e); am L 2009, c 183, §§8, 16; am L 2022, c 151, §3]

## **PART II. ELECTRONIC WASTE RECYCLING--REPEALED**

**§§339D-2 to 339D-6 REPEALED.** L 2022, c 151, §17.

## **[PART III.] GENERAL PROVISIONS**

### **Revision Note**

This part, designated as part IV by L 2009, c 183, §5, is redesignated as part III pursuant to §23G-15.

**[§339D-7] Regulatory authority.** The department may adopt rules, pursuant to chapter 91, necessary to implement this chapter. [L Sp 2008, c 13, pt of §2]

**§339D-7.5 Manufacturer and agent responsibilities; regulatory compliance.** Each manufacturer shall be responsible for ensuring that the manufacturer and its agents follow all federal, state, and local regulations when collecting, transporting, and recycling electronic devices, and adopt environmentally sound recycling practices for the electronic devices. [L 2009, c 183, §7; am L 2022, c 151, §4]

**§339D-8 Enforcement.** (a) The department may conduct audits and inspections to determine compliance under this chapter. Except as provided in subsection (c), the department and the attorney general shall be empowered to enforce this chapter and take necessary action against any manufacturer or retailer for failure to comply with this chapter or rules adopted thereunder.

(b) The attorney general may file suit in the name of the State to enjoin an activity related to the sale of electronic devices in violation of this chapter.

(c) The department shall issue a warning notice to a person for the person's first violation of this chapter. The person shall comply with this chapter within sixty days of the date the warning notice was issued or be subject to the penalties provided by law or rule, including but not limited to penalties set forth in subsections (d) through (g). A retailer that receives a warning notice from the department for a violation of section 339D-24(a) shall submit proof to the department, within sixty days from the date the warning notice was issued, that its inventory of electronic devices offered for sale is in compliance with this chapter.

(d) Any retailer who sells or offers for sale an unlabeled electronic device in violation of section 339D-24, or any manufacturer that fails to comply with any provision of section 339D-23 may be assessed a penalty of up to \$10,000 for the first violation and up to \$25,000 for the second and each subsequent violation, in addition to any additional penalties required or imposed pursuant to this chapter.

(e) Except as provided in subsection (d), any person who violates any requirement of this chapter may be assessed a penalty of up to \$1,000 for the first violation and up to \$2,000 for the second and each subsequent violation, in addition to any additional penalties required or imposed pursuant to this chapter.

(f) The department shall determine additional penalties based on adverse impact to the environment, unfair competitive advantage, and other considerations that the department deems appropriate.

(g) If a manufacturer fails to meet its recycling goals pursuant to section 339D-23.1(c), the department shall impose a penalty of \$1.50 per pound for each pound not recycled. [L Sp 2008, c 13, pt of §2; am L 2009, c 183, §12; am L 2022, c 151, §5]

**§339D-9 Administrative penalties; fees.** (a) In addition to any other administrative or judicial remedy provided by this chapter or by rules adopted under this chapter for a violation thereof, the department is authorized to impose by order administrative penalties and is further authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or to bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs.

(b) Notwithstanding subsection (a), the department shall not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on consumers, manufacturers, or retailers for recovery of electronic devices except those noted in section 339D-22. [L Sp 2008, c 13, pt of §2; am L 2009, c 183, §13; am L 2011, c 43, §8; am L 2022, c 151, §6]

**§339D-10 Electronic device recycling fund.** (a) There is established in the state treasury the electronic device recycling fund into which shall be deposited all fees, payments, and penalties collected by the department pursuant to this chapter.

(b) The electronic device recycling fund shall be administered by the department of health. Moneys in the fund shall be expended by the director for the purpose of implementing and enforcing this chapter. Moneys may also be expended by the director to support county electronics collections. [L Sp 2008, c 13, pt of §2; am L 2017, c 130, §1]

## Note

The 2017 amendment applies to county electronics collections occurring on or after January 1, 2016. L 2017, c 130, §3.

**§339D-11 Financial and proprietary information; report.** (a) Notwithstanding any law to the contrary, financial or proprietary information, including trade secrets, commercial information, and business plans, submitted to the department under this chapter is confidential and is exempt from public disclosure to the extent permitted by chapter 92F.

(b) The department shall compile the information submitted by manufacturers and issue a report to the legislature no later than April 1, 2012, and annually each year thereafter. [L Sp 2008, c 13, pt of §2; am L 2009, c 183, §14; am L 2022, c 151, §7]

**§339D-12 Federal preemption.** Part IV of this chapter shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the recycling of electronic devices that substantially meets the intent of part IV of this chapter. [L Sp 2008, c 13, pt of §2; am L 2009, c 183, §15; am L 2022, c 151, §8]

## PART IV. ELECTRONIC DEVICE RECYCLING AND RECOVERY SYSTEM

### Note

Part heading amended by L 2022, c 151, §9.

**§339D-21 Applicability.** The recycling provisions of this part shall apply only to electronic devices used and discarded in the State. [L 2009, c 183, pt of §6; am L 2022, c 151, §10]

**§339D-22 Manufacturers.** (a) No manufacturer shall sell or offer for sale any new electronic device in the State unless:

- (1) The electronic device is labeled with a brand, whether licensed or owned, and the label is permanently affixed; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to subsection (b).

(b) By January 1, 2023, before selling or offering for sale any electronic device in the State, each manufacturer shall register with the department and pay

to the department a registration fee of \$5,000. Thereafter, if a manufacturer has not previously registered, the manufacturer shall register with the department prior to any offer for sale for delivery in the State of the manufacturer's new electronic device.

(c) Each manufacturer who is registered shall submit an annual renewal of its registration and payment of a registration fee of \$5,000 to the department by January 1 of each year.

(d) The registration and each renewal shall include a list of all of the manufacturer's brands of electronic devices and shall be effective on the second day of the succeeding month after receipt by the department of the registration or renewal.

(e) A manufacturer shall provide the department with contact information for the manufacturer's designated agent or employee whom the department may contact for information on the manufacturer's compliance with the requirements of this section. [L 2009, c 183, pt of §6; am L 2022, c 151, §11]

**§339D-23 Manufacturer responsibility.** (a) Beginning January 1, 2023, a manufacturer shall recycle or arrange for the recycling or reuse of any electronic device sold in the State. Manufacturers shall fully fund their recycling plan, including the collection, transportation, and recycling of all electronic devices in the State.

(b) By September 1, 2022, and annually thereafter, each manufacturer shall submit a plan to the department to establish, conduct, and manage a program for the recycling of electronic devices sold in the State, which shall be subject to the following conditions:

- (1) The plan shall not permit the charging of a fee at the point of collection if the electronic device is brought by the electronic device owner to a central location for recycling; provided that the plan may include a reasonable transportation fee if the manufacturer or manufacturer's agent removes the electronic device from the owner's premises at the owner's request and if the removal is not in conjunction with delivery of a new electronic device to the owner;
- (2) The plan shall include a description of the methods for the convenient collection of electronic devices at no cost to the owner, except as provided in paragraph (1). The recycling plan shall provide for collection services of electronic devices in each county and zip code tabulation area, as defined by the United States Census Bureau, with a population greater than twenty-five thousand. The recycling plan shall include at least one of the following:
  - (A) Staffed drop-off sites;
  - (B) Alternative collection services, including on-site pick-up services; or
  - (C) Collection events held at an easily accessible, central location;

- (3) The plan shall provide collection services at a minimum of once per month;
- (4) The plan shall not contain only a mail-back option;
- (5) The plan shall specify the use of only collectors registered with the State pursuant to section 339D-28; and
- (6) The plan shall specify the use of recyclers that have achieved and maintained third-party accredited certification from the Responsible Recycling Standard for Electronics Recyclers (R2), Standard for Responsible Recycling and Reuse of Electronic Equipment (e-Stewards), or an internationally accredited third-party environmental management standard for the safe and responsible handling of electronic devices.

(c) The department shall review each manufacturer's plan and, within sixty days of receipt of the plan, determine whether the plan complies with this part. If the plan is approved, the department shall notify the manufacturer or group of manufacturers. If the plan is rejected, the department shall notify the manufacturer or group of manufacturers and provide the reasons for the plan's rejection. Within thirty days after receipt of the department's rejection, the manufacturer or group of manufacturers may revise and resubmit the plan to the department for approval.

(d) Each manufacturer may develop its own recycling plan or may collaborate with other manufacturers; provided that the plan is implemented and fully operational by January 1, 2023.

(e) The obligations under this chapter for a manufacturer that manufactures or manufactured electronic devices, or who sells or sold electronic devices manufactured by others, under a brand that was previously used by a different person in the manufacture of electronic devices, shall extend to all electronic devices bearing that brand. [L 2009, c 183, pt of §6; am L 2022, c 151, §12]

**[§339D-23.1] Manufacturer recycling goals.** (a) The department shall use the best available information to establish the weight of all electronic devices sold in the State, including the reports submitted pursuant to section 339D-23.3, state and national sales data, and other reliable commercially available, supplemental sources of information.

(b) No later than October 1, 2022, and annually thereafter, the department shall notify each manufacturer of its recycling obligation pursuant to subsection (c).

(c) Each manufacturer shall collect and recycle electronic devices according to the following:

- (1) Beginning January 1, 2023, the equivalent of fifty per cent, by weight, of the manufacturer's electronic devices sold in the State two years prior, unless amended by rule pursuant to chapter 91;



- (2) Beginning January 1, 2024, the equivalent of sixty per cent, by weight, of the manufacturer's electronic devices sold in the State two years prior, unless amended by rule pursuant to chapter 91; and
- (3) Beginning January 1, 2025, the equivalent of seventy per cent, by weight, of the manufacturer's electronic devices sold in the State two years prior, unless amended by rule pursuant to chapter 91.
- (d) A manufacturer may collect any electronic device to meet its recycling goal.
- (e) A manufacturer may consider reused electronic devices toward achieving its recycling goals. [L 2022, c 151, pt of §1]

**[§339D-23.2] Record keeping requirements.** (a) Each manufacturer shall maintain records, for a minimum of five years, of the following:

- (1) The amount, in weight, of its annual sales of electronic devices sold in the State;
  - (2) The number of electronic devices it has collected for recycling or reuse, by county; and
  - (3) The number of electronic devices recycled or reused by each collector and recycler on behalf of the manufacturer.
- (b) Nothing in this section is intended to exempt any person from liability that the person would otherwise have under applicable law. [L 2022, c 151, pt of §1]

**[§339D-23.3] Manufacturer reporting requirements.** (a) By August 1, 2022, and annually thereafter, each manufacturer shall report to the department its sales, by weight, of the manufacturer's electronic devices sold in the State in the previous calendar year, categorized by electronic device type.

(b) If the manufacturer is unable to provide accurate sales data, the manufacturer shall explain why the data cannot be provided and shall instead report an estimate of its sales data and provide an explanation of the methods used to derive the estimate.

(c) By March 31, 2023, and annually thereafter, each manufacturer shall report to the department the total weight of all electronic devices recycled or reused, by county, in the previous calendar year. Reports shall be submitted on forms prescribed by the department. [L 2022, c 151, pt of §1]

**§339D-24 Retailer responsibility.** (a) Beginning January 1, 2023, no retailer shall sell or offer to sell any electronic device in the State unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment and the manufacturer has registered with the State.

(b) Beginning January 1, 2023, retailers shall make available to their customers information on collection services for discarded electronic devices in

the State and shall include the department's website address and toll-free telephone number. Remote retailers may include this information in a visible location on their website to fulfill this requirement.

(c) Retailers shall not be liable in any way for electronic data or other information that a consumer may have stored on an electronic device that is recovered or recycled. [L 2009, c 183, pt of §6; am L 2022, c 151, §13]

**§339D-25 Electronic device recovery system; consumer education.** (a) The department shall develop a consumer education program about the electronic device recycling program.

(b) Beginning January 1, 2023, the department shall display on its website a toll-free number and current information on electronic device recycling locations. [L 2009, c 183, pt of §6; am L 2022, c 151, §14]

**§339D-26 Environmental management.** (a) All electronic devices recovered pursuant to this part shall be recycled in a manner that complies with all applicable federal, state, and county laws and requirements.

(b) The department shall adopt by reference the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices as requirements. [L 2009, c 183, pt of §6; am L 2022, c 151, §15]

**§339D-27 State procurement.** All state and county agencies that purchase or lease any electronic device shall require each prospective offeror to certify compliance with this part. Failure to provide certification shall disqualify the prospective offeror. [L 2009, c 183, pt of §6; am L 2022, c 151, §16]

**[§339D-28] Collector registration.** (a) By January 1, 2023, each collector shall register with the department, using forms prescribed by the department, and pay to the department a registration fee of \$250. Thereafter, if a collector has not previously registered with the department, the collector shall register with the department prior to accepting electronic devices. A registration shall be valid until December 31 of each year.

(b) By January 1 of each year, each collector shall submit an annual renewal of its registration with the payment of a registration fee of \$250. [L 2022, c 151, pt of §1]

**[§339D-29] Collector record keeping requirements.** Each collector shall maintain records for a minimum of five years of the following:

- (1) The amount, in weight, of electronic devices it has collected for recycling and reuse and the amounts sent for recycling and reuse; and

(2) Bills of lading or weight tickets for all electronic devices sent for recycling or reuse. [L 2022, c 151, pt of §1]

**[§339D-30] Collector reporting requirements.** By March 31, 2024, and annually thereafter, each collector shall report to the department the weight of all electronic devices collected for recycling or reuse in the previous year. Reports shall be submitted on forms prescribed by the department and shall indicate the weight of electronic devices sent to each recycler and the number of electronic devices that were reused. [L 2022, c 151, pt of §1]

**[§339D-31] Collector responsibility.** Each collector shall possess and maintain all necessary business and environmental permits. [L 2022, c 151, pt of §1]