



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4128

by Rep. Mike Fortner

SYNOPSIS AS INTRODUCED:

415 ILCS 151/1-3 new
415 ILCS 151/1-5
415 ILCS 151/1-10
415 ILCS 151/1-25
415 ILCS 151/1-30
415 ILCS 151/1-33 new
415 ILCS 151/1-84.5 new
415 ILCS 151/1-87 new
415 ILCS 151/1-84 rep.
740 ILCS 10/5

from Ch. 38, par. 60-5

Amends the Consumer Electronics Recycling Act. Provides that a manufacturer or manufacturer clearinghouse acting in accordance with the Act when engaged in activities related to a manufacturer e-waste program shall not be subject to damages, liability, or scrutiny under federal antitrust law or the Illinois Antitrust Act. Makes corresponding changes in the Illinois Antitrust Act. Adds provisions concerning the allocation of financial responsibility for manufacturers participating in a manufacturer clearinghouse. Contains provisions requiring the Environmental Protection Agency to calculate the responsibility of participating manufacturers using a specified formula. Repeals provisions concerning the allocation of financial responsibilities among manufacturers and abolishes the Advisory Financial Responsibility Allocation Task Force. Adds provisions concerning manufacturer clearinghouses. Makes changes to provisions concerning the information that must be included on a manufacturer registration form. Makes other changes. Effective immediately.

LRB100 15275 MJP 30195 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Consumer Electronics Recycling Act is
5 amended by changing Sections 1-5, 1-10, 1-25, and 1-30 and by
6 adding Sections 1-3, 1-33, 1-84.5, and 1-87 as follows:

7 (415 ILCS 151/1-3 new)

8 Sec. 1-3. Findings; purpose.

9 (a) The General Assembly finds all of the following:

10 (1) Many older and obsolete consumer electronic
11 products contain materials which may pose environmental
12 and health risks that should be managed.

13 (2) Consumer electronic products contain metals,
14 plastics, glass, and other potentially valuable materials.
15 The reuse and recycling of these materials can conserve
16 natural resources and energy.

17 (3) The recycling and reuse of the covered electronic
18 devices defined under this Act falls within the State of
19 Illinois' interest in the proper management of such
20 products.

21 (4) Illinois counties and municipalities may face
22 significant cost burdens in collecting and processing
23 obsolete electronic products for reuse and recycling.

1 (5) Manufacturers of electronic products should share
2 responsibility for the proper management of obsolete
3 consumer electronic products.

4 (6) Illinois counties and municipalities, and the
5 citizens of Illinois, will benefit from the implementation
6 of a program or programs for the proper management of
7 obsolete consumer electronic products operated by
8 manufacturers that are actively overseen by the State.

9 (7) It is the intent of the State to allow
10 manufacturers to coordinate their activities and programs
11 related to the proper management of obsolete covered
12 electronic devices as defined under this Act under strict
13 State supervision regardless of the effect the
14 manufacturers' actions or such coordination will have on
15 competition.

16 (8) It is in the best interest of the State to promote
17 the coordination of manufacturer activities and programs
18 related to the proper management of obsolete covered
19 electronic devices through participation in a manufacturer
20 clearinghouse as set forth in the Act.

21 (b) The purpose of this Act is to further the interest of
22 the State of Illinois in the proper management of obsolete
23 consumer electronic products by setting forth procedures by
24 which the recycling and processing for reuse of covered
25 electronic devices will be accomplished by manufacturers for
26 those counties and municipalities that wish to opt-in to

1 electronic product manufacturer-run recycling and processing
2 programs that are approved and overseen by the State of
3 Illinois.

4 (415 ILCS 151/1-5)

5 (Section scheduled to be repealed on December 31, 2026)

6 Sec. 1-5. Definitions. As used in this Act:

7 "Agency" means the Illinois Environmental Protection
8 Agency.

9 "Best practices" means standards for collecting and
10 preparing items for shipment and recycling. "Best practices"
11 may include standards for packaging for transport, load size,
12 acceptable load contamination levels, non-CED items included
13 in a load, and other standards as determined under Section 1-85
14 of this Act. "Best practices" shall consider the desired intent
15 to preserve existing collection programs and relationships
16 when possible.

17 "Collector" means a person who collects residential CEDs at
18 any program collection site or one-day collection event and
19 prepares them for transport.

20 "Computer", often referred to as a "personal computer" or
21 "PC", means a desktop or notebook computer as further defined
22 below and used only in a residence, but does not mean an
23 automated typewriter, electronic printer, mobile telephone,
24 portable hand-held calculator, portable digital assistant
25 (PDA), MP3 player, or other similar device. "Computer" does not

1 include computer peripherals, commonly known as cables, mouse,
2 or keyboard. "Computer" is further defined as either:

3 (1) "Desktop computer", which means an electronic,
4 magnetic, optical, electrochemical, or other high-speed
5 data processing device performing logical, arithmetic, or
6 storage functions for general purpose needs that are met
7 through interaction with a number of software programs
8 contained therein, and that is not designed to exclusively
9 perform a specific type of logical, arithmetic, or storage
10 function or other limited or specialized application.
11 Human interface with a desktop computer is achieved through
12 a stand-alone keyboard, stand-alone monitor, or other
13 display unit, and a stand-alone mouse or other pointing
14 device, and is designed for a single user. A desktop
15 computer has a main unit that is intended to be
16 persistently located in a single location, often on a desk
17 or on the floor. A desktop computer is not designed for
18 portability and generally utilizes an external monitor,
19 keyboard, and mouse with an external or internal power
20 supply for a power source. Desktop computer does not
21 include an automated typewriter or typesetter; or

22 (2) "Notebook computer", which means an electronic,
23 magnetic, optical, electrochemical, or other high-speed
24 data processing device performing logical, arithmetic, or
25 storage functions for general purpose needs that are met
26 through interaction with a number of software programs

1 contained therein, and that is not designed to exclusively
2 perform a specific type of logical, arithmetic, or storage
3 function or other limited or specialized application.
4 Human interface with a notebook computer is achieved
5 through a keyboard, video display greater than 4 inches in
6 size, and mouse or other pointing device, all of which are
7 contained within the construction of the unit that
8 comprises the notebook computer; supplemental stand-alone
9 interface devices typically can also be attached to the
10 notebook computer. Notebook computers can use external,
11 internal, or batteries for a power source. Notebook
12 computer does not include a portable hand-held calculator,
13 or a portable digital assistant or similar specialized
14 device. A notebook computer has an incorporated video
15 display greater than 4 inches in size and can be carried as
16 one unit by an individual. A notebook computer is sometimes
17 referred to as a laptop computer.

18 (3) "Tablet computer", which means an electronic,
19 magnetic, optical, electrochemical, or other high-speed
20 data processing device performing logical, arithmetic, or
21 storage functions for general purpose needs that are met
22 through interaction with a number of software programs
23 contained therein, and that is not designed to exclusively
24 perform a specific type of logical, arithmetic, or storage
25 function or other limited or specialized application.
26 Human interface with a tablet computer is achieved through

1 a touch screen and video display screen greater than 6
2 inches in size (all of which are contained within the unit
3 that comprises the tablet computer). Tablet computers may
4 use an external or internal power source. "Tablet computer"
5 does not include a portable hand-held calculator, a
6 portable digital assistant, or a similar specialized
7 device.

8 "Computer monitor" means an electronic device that is a
9 cathode-ray tube or flat panel display primarily intended to
10 display information from a computer and is used only in a
11 residence.

12 "County recycling coordinator" means the individual who is
13 designated as the recycling coordinator for a county in a waste
14 management plan developed pursuant to the Solid Waste Planning
15 and Recycling Act.

16 "Covered electronic device" or "CED" means any computer,
17 computer monitor, television, printer, electronic keyboard,
18 facsimile machine, videocassette recorder, portable digital
19 music player that has memory capability and is battery powered,
20 digital video disc player, video game console, electronic
21 mouse, scanner, digital converter box, cable receiver,
22 satellite receiver, digital video disc recorder, or
23 small-scale server sold at retail. "Covered electronic device"
24 does not include any of the following:

25 (1) an electronic device that is a part of a motor
26 vehicle or any component part of a motor vehicle assembled

1 by or for a vehicle manufacturer or franchised dealer,
2 including replacement parts for use in a motor vehicle;

3 (2) an electronic device that is functionally or
4 physically part of a larger piece of equipment or that is
5 taken out of service from an industrial, commercial
6 (including retail), library checkout, traffic control,
7 kiosk, security (other than household security),
8 governmental, agricultural, or medical setting, including
9 but not limited to diagnostic, monitoring, or control
10 equipment; or

11 (3) an electronic device that is contained within a
12 clothes washer, clothes dryer, refrigerator, refrigerator
13 and freezer, microwave oven, conventional oven or range,
14 dishwasher, room air conditioner, dehumidifier, water
15 pump, sump pump, or air purifier. To the extent allowed
16 under federal and State laws and regulations, a CED that is
17 being collected, recycled, or processed for reuse is not
18 considered to be hazardous waste, household waste, solid
19 waste, or special waste.

20 "Covered electronic device category" or "CED category"
21 means each of the following 8 categories of residential CEDs:

22 (1) computers and small-scale servers;

23 (2) computer monitors;

24 (3) televisions;

25 (4) printers, facsimile machines, and scanners;

26 (5) digital video disc players, digital video disc

1 recorders, and videocassette recorders;

2 (6) video game consoles;

3 (7) digital converter boxes, cable receivers, and
4 satellite receivers; and

5 (8) electronic keyboards, electronic mice, and
6 portable digital music players that have memory capability
7 and are battery powered.

8 "Manufacturer" means a person, or a successor in interest
9 to a person, under whose brand or label a CED is or was sold at
10 retail. For any CED sold at retail under a brand or label that
11 is licensed from a person who is a mere brand owner and who
12 does not sell or produce a CED, the person who produced the CED
13 or his or her successor in interest is the manufacturer. For
14 any CED sold at retail under the brand or label of both the
15 retail seller and the person that produced the CED, the person
16 that produced the CED, or his or her successor in interest, is
17 the manufacturer.

18 "Manufacturer clearinghouse" means an entity that prepares
19 and submits a manufacturer e-waste program plan to the Agency,
20 and oversees the manufacturer e-waste program, on behalf of a
21 group of 2 or more manufacturers that collectively establish
22 and operate an e-waste program for the purpose of complying
23 with this Act and that collectively represent, ~~representing~~ at
24 least 50% of the manufacturers' total obligations under this
25 Act for a program year, ~~that are cooperating with one another~~
26 ~~to collectively establish and operate an e waste program for~~

1 ~~the purpose of complying with this Act.~~

2 "Manufacturer e-waste program" means any program
3 established, financed, and operated by a manufacturer,
4 individually or collectively as part of a manufacturer
5 clearinghouse, to transport and subsequently recycle, in
6 accordance with the requirements of this Act, residential CEDs
7 collected at program collection sites and one-day collection
8 events.

9 "Municipal joint action agency" means a municipal joint
10 action agency created under Section 3.2 of the
11 Intergovernmental Cooperation Act.

12 "One-day collection event" means a one-day event used as a
13 substitute for a program collection site pursuant to Section
14 1-15 of this Act.

15 "Person" means an individual, partnership, co-partnership,
16 firm, company, limited liability company, corporation,
17 association, joint stock company, trust, estate, political
18 subdivision, State agency, or any other legal entity; or a
19 legal representative, agent, or assign of that entity. "Person"
20 includes a unit of local government.

21 "Printer" means desktop printers, multifunction printer
22 copiers, and printer/fax combinations taken out of service from
23 a residence that are designed to reside on a work surface, and
24 include various print technologies, including without
25 limitation laser and LED (electrographic), ink jet, dot matrix,
26 thermal, and digital sublimation, and "multi-function" or

1 "all-in-one" devices that perform different tasks, including
2 without limitation copying, scanning, faxing, and printing.
3 Printers do not include floor-standing printers, printers with
4 optional floor stand, point of sale (POS) receipt printers,
5 household printers such as a calculator with printing
6 capabilities or label makers, or non-stand-alone printers that
7 are embedded into products that are not CEDs.

8 "Program collection site" means a physical location that is
9 included in a manufacturer e-waste program and at which
10 residential CEDs are collected and prepared for transport by a
11 collector during a program year in accordance with the
12 requirements of this Act. Except as otherwise provided in this
13 Act, "program collection site" does not include a retail
14 collection site.

15 "Program year" means a calendar year. The first program
16 year is 2019.

17 "Recycler" means any person who transports or subsequently
18 recycles residential CEDs that have been collected and prepared
19 for transport by a collector at any program collection site or
20 one-day collection event.

21 "Recycling" has the meaning provided under Section 3.380 of
22 the Environmental Protection Act. "Recycling" includes any
23 process by which residential CEDs that would otherwise be
24 disposed of or discarded are collected, separated, or processed
25 and returned to the economic mainstream in the form of raw
26 materials or products.

1 "Residence" means a dwelling place or home in which one or
2 more individuals live.

3 "Residential covered electronic device" or "residential
4 CED" means any covered electronic device taken out of service
5 from a residence in the State.

6 "Retail collection site" means a private sector collection
7 site operated by a retailer collecting on behalf of a
8 manufacturer.

9 "Retailer" means a person who first sells, through a sales
10 outlet, catalogue, or the Internet, a covered electronic device
11 at retail to an individual for residential use or any permanent
12 establishment primarily where merchandise is displayed, held,
13 stored, or offered for sale to the public.

14 "Sale" means any retail transfer of title for consideration
15 of title including, but not limited to, transactions conducted
16 through sales outlets, catalogs, or the Internet or any other
17 similar electronic means. "Sale" does not include financing or
18 leasing.

19 "Small-scale server" means a computer that typically uses
20 desktop components in a desktop form designed primarily to
21 serve as a storage host for other computers. To be considered a
22 small-scale server, a computer must: be designed in a pedestal,
23 tower, or other form that is similar to that of a desktop
24 computer so that all data processing, storage, and network
25 interfacing is contained within one box or product; be designed
26 to be operational 24 hours per day and 7 days per week; have

1 very little unscheduled downtime, such as on the order of hours
2 per year; be capable of operating in a simultaneous multi-user
3 environment serving several users through networked client
4 units; and be designed for an industry-accepted operating
5 system for home or low-end server applications.

6 "Television" means an electronic device that contains a
7 cathode-ray tube or flat panel screen the size of which is
8 greater than 4 inches when measured diagonally and is intended
9 to receive video programming via broadcast, cable, satellite,
10 Internet, or other mode of video transmission or to receive
11 video from surveillance or other similar cameras.

12 (Source: P.A. 100-362, eff. 8-25-17; 100-433, eff. 8-25-17.)

13 (415 ILCS 151/1-10)

14 (Section scheduled to be repealed on December 31, 2026)

15 Sec. 1-10. Manufacturer e-waste program.

16 (a) For program year 2019 and each program year thereafter,
17 each manufacturer shall, individually or collectively as part
18 of a manufacturer clearinghouse, provide a manufacturer
19 e-waste program to transport and subsequently recycle, in
20 accordance with the requirements of this Act, residential CEDs
21 collected at, and prepared for transport from, the program
22 collection sites and one-day collection events included in the
23 program during the program year.

24 (b) Each manufacturer e-waste program must include, at a
25 minimum, the following:

1 (1) satisfaction of the convenience standard described
2 in Section 1-15 of this Act;

3 (2) instructions for designated county recycling
4 coordinators and municipal joint action agencies to
5 annually file notice to participate in the program;

6 (3) transportation and subsequent recycling of the
7 residential CEDs collected at, and prepared for transport
8 from, the program collection sites and one-day collection
9 events included in the program during the program year; and

10 (4) submission of a report to the Agency, by March 1,
11 2020, and each March 1 thereafter, which includes:

12 (A) the total weight of all residential CEDs
13 transported from program collection sites and one-day
14 collection events throughout the State during the
15 preceding program year by CED category;

16 (B) the total weight of residential CEDs
17 transported from all program collection sites and
18 one-day collection events in each county in the State
19 during the preceding program year by CED category; and

20 (C) the total weight of residential CEDs
21 transported from all program collection sites and
22 one-day collection events in each county in the State
23 during that preceding program year and that was
24 recycled.

25 (c) Each manufacturer e-waste program shall make the
26 instructions required under paragraph (2) of subsection (b)

1 available on its website by December 1, 2017, and the program
2 shall provide to the Agency a hyperlink to the website for
3 posting on the Agency's website.

4 (d) Nothing in this Act shall prevent a manufacturer from
5 accepting, through a manufacturer e-waste program, residential
6 CEDs collected through a curbside collection program that is
7 operated pursuant to an agreement between a third party and a
8 unit of local government located within a county or municipal
9 joint action agency that has elected to participate in a
10 manufacturer e-waste program.

11 (Source: P.A. 100-362, eff. 8-25-17; 100-433, eff. 8-25-17.)

12 (415 ILCS 151/1-25)

13 (Section scheduled to be repealed on December 31, 2026)

14 Sec. 1-25. Manufacturer e-waste program plans.

15 (a) By July 1, 2018, and by July 1 of each year thereafter
16 for the upcoming program year, beginning with program year
17 2019, each manufacturer shall, individually or through ~~as~~ a
18 manufacturer clearinghouse, submit to the Agency a
19 manufacturer e-waste program plan, which includes, at a
20 minimum, the following:

21 (1) the contact information for the individual who will
22 serve as the point of contact for the manufacturer e-waste
23 program;

24 (2) the identity of each county that has elected to
25 participate in the manufacturer e-waste program during the

1 program year;

2 (3) for each county, the location of each program
3 collection site and one-day collection event included in
4 the manufacturer e-waste program for the program year;

5 (4) the collector operating each program collection
6 site and one-day collection event included in the
7 manufacturer e-waste program for the program year;

8 (5) the recyclers that manufacturers plan to use during
9 the program year to transport and subsequently recycle
10 residential CEDs under the program, with the updated list
11 of recyclers to be provided to the Agency no later than
12 December 1 preceding each program year; ~~and~~

13 (6) an explanation of any deviation by the program from
14 the standard program collection site distribution set
15 forth in subsection (a) of Section 1-15 of this Act for the
16 program year, along with copies of all written agreements
17 made pursuant to paragraphs (1) or (2) of subsection (b) of
18 Section 1-15 for the program year; and

19 (7) if a group of 2 or more manufacturers are
20 participating in a manufacturer clearinghouse,
21 certification that the methodology used for allocating
22 responsibility for the transportation and recycling of
23 residential CEDs by manufacturers participating in the
24 manufacturer clearinghouse for the program year will be in
25 compliance with the allocation methodology established
26 under Section 1-84.5 of this Act.

1 (b) Within 60 days after receiving a manufacturer e-waste
2 program plan, the Agency shall review the plan and approve the
3 plan or disapprove the plan.

4 (1) If the Agency determines that the program
5 collection sites and one-day collection events specified
6 in the plan will satisfy the convenience standard set forth
7 in Section 1-15 of this Act, then the Agency shall approve
8 the manufacturer e-waste program plan and provide written
9 notification of the approval to the individual who serves
10 as the point of contact for the manufacturer. The Agency
11 shall make the approved plan available on the Agency's
12 website.

13 (2) If the Agency determines the plan will not satisfy
14 the convenience standard set forth in Section 1-15 of this
15 Act, then the Agency shall disapprove the manufacturer
16 e-waste program plan and provide written notification of
17 the disapproval and the reasons for the disapproval to the
18 individual who serves as the point of contact for the
19 manufacturer. Within 30 days after the date of disapproval,
20 the manufacturer shall submit a revised manufacturer
21 e-waste program plan that addresses the deficiencies noted
22 in the Agency's disapproval.

23 (c) Manufacturers shall assume financial responsibility
24 for carrying out their e-waste program plans, including, but
25 not limited to, financial responsibility for providing the
26 packaging materials necessary to prepare shipments of

1 collected residential CEDs in compliance with subsection (e) of
2 Section 1-45, as well as financial responsibility for bulk
3 transportation and recycling of collected residential CEDs.
4 (Source: P.A. 100-362, eff. 8-25-17; 100-433, eff. 8-25-17.)

5 (415 ILCS 151/1-30)

6 (Section scheduled to be repealed on December 31, 2026)

7 Sec. 1-30. Manufacturer registration.

8 (a) By April 1, 2018, and by April 1 of each year
9 thereafter for the upcoming program year, beginning with
10 program year 2019, each manufacturer who sells CEDs in the
11 State must register with the Agency by: (i) submitting to the
12 Agency a \$5,000 registration fee; and (ii) completing and
13 submitting to the Agency the registration form prescribed by
14 the Agency. Information on the registration form shall include,
15 without limitation, all of the following:

16 (1) a list of all of the brands and labels under which
17 the manufacturer's CEDs are sold or offered for sale in the
18 State; and

19 (2) the total weights, by CED category, of ~~residential~~
20 CEDs sold in the United States to individuals during the
21 calendar year or 2 years before the applicable program year
22 ~~or offered for sale~~ under any of the manufacturer's brands
23 or labels ~~in the United States during the calendar year~~
24 ~~immediately preceding the applicable program year.~~

25 If, during a program year, any of the manufacturer's CEDs

1 are sold or offered for sale in the State under a brand that is
2 not listed in the manufacturer's registration, then, within 30
3 days after the first sale or offer for sale under that brand,
4 the manufacturer must amend its registration to add the brand.
5 All registration fees collected by the Agency pursuant to this
6 Section shall be deposited into the Solid Waste Management
7 Fund.

8 (b) The Agency shall post on its website a list of all
9 registered manufacturers.

10 (c) Beginning in program year 2019, a manufacturer whose
11 CEDs are sold or offered for sale in this State for the first
12 time on or after April 1 of a program year must register with
13 the Agency within 30 days after the date the CEDs are first
14 sold or offered for sale in the State.

15 (d) Beginning in program year 2019, manufacturers shall
16 ensure that only recyclers that have registered with the Agency
17 and meet the recycler standards set forth in Section 1-40 are
18 used to transport or recycle residential CEDs collected at any
19 program collection site or one-day collection event.

20 (e) Beginning in program year 2019, no manufacturer may
21 sell or offer for sale a CED in this State unless the
22 manufacturer is registered and operates a manufacturer program
23 either individually or as part of the manufacturer
24 clearinghouse as required in this Act.

25 (f) Beginning in program year 2019, no manufacturer may
26 sell or offer for sale a CED in this State unless the

1 manufacturer's brand name is permanently affixed to, and is
2 readily visible on, the CED.

3 (g) In accordance with a contract or agreement with a
4 county, municipality, or municipal joint action agency that has
5 elected to participate in a manufacturer e-waste program under
6 this Act, manufacturers may, either individually or through the
7 manufacturer clearinghouse, audit program collection sites and
8 proposed program collection sites for compliance with the terms
9 and conditions of the contract or agreement. Audits shall be
10 conducted during normal business hours, and a manufacturer or
11 its designee shall provide reasonable notice to the collection
12 site in advance of the audit. Audits of all program collection
13 sites may include, among other things, physical site location
14 visits and inspections and review of processes, procedures,
15 technical systems, reports, and documentation reasonably
16 related to the collecting, sorting, packaging, and recycling of
17 residential CEDs in compliance with this Act.

18 (h) Nothing in this Act shall require a manufacturer or
19 manufacturer e-waste program to collect, transport, or recycle
20 any CEDs other than residential CEDs, or to accept for
21 transport or recycling any pallet or bulk container of
22 residential CEDs that has not been prepared by the collector
23 for shipment in accordance with subsection (e) of Section 1-45.
24 (Source: P.A. 100-362, eff. 8-25-17; 100-433, eff. 8-25-17.)

25 (415 ILCS 151/1-33 new)

1 Sec. 1-33. Manufacturer clearinghouse.

2 (a) A manufacturer e-waste program plan submitted by a
3 manufacturer clearinghouse may take into account and
4 incorporate individual plans or operations of one or more
5 manufacturers that are participating in the manufacturer
6 clearinghouse.

7 (b) If a manufacturer clearinghouse allocates
8 responsibility to manufacturers for manufacturers'
9 transportation and recycling of residential CEDs during a
10 program year as part of a manufacturer e-waste program plan,
11 then the manufacturer clearinghouse shall identify the
12 allocation methodology in its plan submission to the Agency
13 pursuant to Section 1-25 of this Act for review and approval.
14 Any allocation of responsibility among manufacturers for the
15 collection of covered electronic devices shall be in accordance
16 with the allocation methodology established pursuant to
17 Section 1-84.5 of this Act.

18 (c) A manufacturer clearinghouse shall have no authority to
19 enforce manufacturer compliance with the requirements of this
20 Act, including compliance with the allocation methodology set
21 forth in a manufacturer e-waste program plan, but shall, upon
22 prior notice to the manufacturer, refer any potential
23 non-compliance to the Agency. A manufacturer clearinghouse may
24 develop and implement policies and procedures that exclude from
25 participation in the manufacturer clearinghouse any
26 manufacturers found by the Illinois Pollution Control Board or

1 a court of competent jurisdiction to have failed to comply with
2 this Act.

3 (415 ILCS 151/1-84.5 new)

4 Sec. 1-84.5. Manufacturer clearinghouse; allocation of
5 financial responsibility.

6 (a) As used in this Section, unless the context otherwise
7 requires:

8 "Adjusted total proportional responsibility" means the
9 percentage calculated for each participating manufacturer for
10 a program year under subsection (f) of this Section.

11 "Market share" means the percentage that results from
12 dividing:

13 (1) the product of the total weight reported for a CED
14 category by a manufacturer, for the calendar year 2 years
15 before the applicable program year, under paragraph (2) of
16 subsection (a) of Section 1-30 of this Act, multiplied by
17 the population adjustment factor for that year; by

18 (2) the product of the total weight reported for that
19 CED category by all manufacturers, for the calendar year 2
20 years before the applicable program year, under paragraph
21 (2) of subsection (a) of Section 1-30 of this Act,
22 multiplied by the population adjustment factor for that
23 year.

24 "Participating manufacturer" means a manufacturer that a
25 manufacturer clearinghouse has listed, pursuant to subsection

1 (c) of this Section, as a participant in the manufacturer
2 clearinghouse for a program year.

3 "Population adjustment factor" means the percentage that
4 results when (i) the population of Illinois, as reported in the
5 most recent federal decennial census, is divided by (ii) the
6 population of the United States, as reported in the most recent
7 federal decennial census.

8 "Return share" means the percentage, by weight, of each CED
9 category that is returned to the program collection sites and
10 one-day collection events operated by or on behalf of either a
11 manufacturer clearinghouse or one or more of its participating
12 manufacturers during the calendar year 2 years before the
13 applicable program year, as reported to the Agency under
14 Section 1-10 of this Act; except that, for program year 2019
15 and program year 2020, "return share" means the percentage, by
16 weight, of each CED category that is estimated by the
17 manufacturer clearinghouse to be returned to those sites and
18 events during the applicable program year, as reported to the
19 Agency under subsection (b) of this Section.

20 "Unadjusted total proportional responsibility" means the
21 percentage calculated for each participating manufacturer
22 under subsection (e) of this Section.

23 (b) By March 1, 2018, each manufacturer clearinghouse shall
24 provide the Agency with a statement of the return share for
25 each CED category for program year 2019, and by March 1, 2019,
26 each manufacturer clearinghouse shall provide the Agency with a

1 statement of the return share for each CED category for program
2 year 2020.

3 (c) If a manufacturer clearinghouse submits to the Agency a
4 manufacturer e-waste program plan under Section 1-25 of this
5 Act, then the manufacturer clearinghouse shall include in the
6 plan a list of manufacturers that have agreed to participate in
7 the manufacturer clearinghouse for the upcoming program year.

8 (d) By November 1, 2018, and each November 1 thereafter,
9 the Agency shall provide each manufacturer clearinghouse with a
10 statement of the unadjusted total proportional responsibility
11 and adjusted total proportional responsibility of each of its
12 participating manufacturers for the upcoming program year.

13 (e) For each program year, the Agency shall calculate the
14 unadjusted total proportional responsibility of each
15 participating manufacturer as follows:

16 (1) For each CED category, the Agency shall multiply
17 (i) the participating manufacturer's market share for the
18 CED category by (ii) the return share for the CED category,
19 to arrive at the category-specific proportional
20 responsibility of the participating manufacturer for the
21 CED category.

22 (2) The Agency shall then, for each participating
23 manufacturer, sum the category-specific proportional
24 responsibilities of the participating manufacturer
25 calculated under paragraph (1), to arrive at the
26 participating manufacturer's unadjusted total proportional

1 responsibility.

2 (f) If the sum of all unadjusted total proportional
3 responsibilities of a manufacturer clearinghouse's
4 participating manufacturers for a program year accounts for
5 less than 100% of the return share for that year, then the
6 Agency shall divide the unallocated return share among
7 participating manufacturers in proportion to their unadjusted
8 total proportional responsibilities, to arrive at the adjusted
9 total proportional responsibility for each participating
10 manufacturer.

11 (415 ILCS 151/1-87 new)

12 Sec. 1-87. Antitrust. A manufacturer or manufacturer
13 clearinghouse acting in accordance with the provisions of this
14 Act may negotiate, enter into contracts with, or conduct
15 business with each other and with any other entity developing,
16 implementing, operating, participating in, or performing any
17 other activities related to a manufacturer e-waste program
18 approved pursuant to this Act, and the manufacturer,
19 manufacturer clearinghouse, and any entity developing,
20 implementing, operating, participating in, or performing any
21 other activities related to a manufacturer e-waste program
22 approved pursuant to this Act are not subject to damages,
23 liability, or scrutiny under federal antitrust law or the
24 Illinois Antitrust Act, regardless of the effects of their
25 actions on competition. The supervisory activities described

1 in this Act are sufficient to confirm that activities of the
2 manufacturers, manufacturer clearinghouse, and any entity
3 developing, implementing, operating, participating in, or
4 performing any other activities related to a manufacturer
5 e-waste program that is approved pursuant to Section 1-25 are
6 authorized and actively supervised by the State.

7 (415 ILCS 151/1-84 rep.)

8 Section 10. The Consumer Electronics Recycling Act is
9 amended by repealing Section 1-84.

10 Section 15. The Illinois Antitrust Act is amended by
11 changing Section 5 as follows:

12 (740 ILCS 10/5) (from Ch. 38, par. 60-5)

13 Sec. 5. No provisions of this Act shall be construed to
14 make illegal:

15 (1) the activities of any labor organization or of
16 individual members thereof which are directed solely to
17 labor objectives which are legitimate under the laws of
18 either the State of Illinois or the United States;

19 (2) the activities of any agricultural or
20 horticultural cooperative organization, whether
21 incorporated or unincorporated, or of individual members
22 thereof, which are directed solely to objectives of such
23 cooperative organizations which are legitimate under the

1 laws of either the State of Illinois or the United States;

2 (3) the activities of any public utility, as defined in
3 Section 3-105 of the Public Utilities Act to the extent
4 that such activities are subject to a clearly articulated
5 and affirmatively expressed State policy to replace
6 competition with regulation, where the conduct to be
7 exempted is actively supervised by the State itself;

8 (4) The activities of a telecommunications carrier, as
9 defined in Section 13-202 of the Public Utilities Act, to
10 the extent those activities relate to the provision of
11 noncompetitive telecommunications services under the
12 Public Utilities Act and are subject to the jurisdiction of
13 the Illinois Commerce Commission or to the activities of
14 telephone mutual concerns referred to in Section 13-202 of
15 the Public Utilities Act to the extent those activities
16 relate to the provision and maintenance of telephone
17 service to owners and customers;

18 (5) the activities (including, but not limited to, the
19 making of or participating in joint underwriting or joint
20 reinsurance arrangement) of any insurer, insurance agent,
21 insurance broker, independent insurance adjuster or rating
22 organization to the extent that such activities are subject
23 to regulation by the Director of Insurance of this State
24 under, or are permitted or are authorized by, the Insurance
25 Code or any other law of this State;

26 (6) the religious and charitable activities of any

1 not-for-profit corporation, trust or organization
2 established exclusively for religious or charitable
3 purposes, or for both purposes;

4 (7) the activities of any not-for-profit corporation
5 organized to provide telephone service on a mutual or
6 co-operative basis or electrification on a co-operative
7 basis, to the extent such activities relate to the
8 marketing and distribution of telephone or electrical
9 service to owners and customers;

10 (8) the activities engaged in by securities dealers who
11 are (i) licensed by the State of Illinois or (ii) members
12 of the National Association of Securities Dealers or (iii)
13 members of any National Securities Exchange registered
14 with the Securities and Exchange Commission under the
15 Securities Exchange Act of 1934, as amended, in the course
16 of their business of offering, selling, buying and selling,
17 or otherwise trading in or underwriting securities, as
18 agent, broker, or principal, and activities of any National
19 Securities Exchange so registered, including the
20 establishment of commission rates and schedules of
21 charges;

22 (9) the activities of any board of trade designated as
23 a "contract market" by the Secretary of Agriculture of the
24 United States pursuant to Section 5 of the Commodity
25 Exchange Act, as amended;

26 (10) the activities of any motor carrier, rail carrier,

1 or common carrier by pipeline, as defined in the Common
2 Carrier by Pipeline Law of the Public Utilities Act, to the
3 extent that such activities are permitted or authorized by
4 the Act or are subject to regulation by the Illinois
5 Commerce Commission;

6 (11) the activities of any state or national bank to
7 the extent that such activities are regulated or supervised
8 by officers of the state or federal government under the
9 banking laws of this State or the United States;

10 (12) the activities of any state or federal savings and
11 loan association to the extent that such activities are
12 regulated or supervised by officers of the state or federal
13 government under the savings and loan laws of this State or
14 the United States;

15 (13) the activities of any bona fide not-for-profit
16 association, society or board, of attorneys, practitioners
17 of medicine, architects, engineers, land surveyors or real
18 estate brokers licensed and regulated by an agency of the
19 State of Illinois, in recommending schedules of suggested
20 fees, rates or commissions for use solely as guidelines in
21 determining charges for professional and technical
22 services;

23 (14) Conduct involving trade or commerce (other than
24 import trade or import commerce) with foreign nations
25 unless:

26 (a) such conduct has a direct, substantial, and

1 reasonably foreseeable effect:

2 (i) on trade or commerce which is not trade or
3 commerce with foreign nations, or on import trade
4 or import commerce with foreign nations; or

5 (ii) on export trade or export commerce with
6 foreign nations of a person engaged in such trade
7 or commerce in the United States; and

8 (b) such effect gives rise to a claim under the
9 provisions of this Act, other than this subsection
10 (14).

11 (c) If this Act applies to conduct referred to in
12 this subsection (14) only because of the provisions of
13 paragraph (a)(ii), then this Act shall apply to such
14 conduct only for injury to export business in the
15 United States which affects this State; ~~or~~

16 (15) the activities of a unit of local government or
17 school district and the activities of the employees, agents
18 and officers of a unit of local government or school
19 district; or

20 (16) the activities of a manufacturer, manufacturer
21 clearinghouse, or any entity developing, implementing,
22 operating, participating in, or performing any other
23 activities related to a manufacturer e-waste program
24 approved pursuant to the Consumer Electronics Recycling
25 Act, to the extent that such activities are permitted or
26 authorized by this Act or are subject to regulation by the

1 Consumer Electronics Recycling Act and are subject to the
2 jurisdiction of and regulation by the Illinois Pollution
3 Control Board or the Illinois Environmental Protection
4 Agency.

5 (Source: P.A. 90-185, eff. 7-23-97; 90-561, eff. 12-16-97.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.