

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****SB0773**

Introduced 2/18/2005, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 500/25-70 new

Creates the Cell Phone Recycling Act. Requires that every retailer selling cell phones in this State must have a system in place for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal. Provides that these collection systems must at a minimum provide for: (i) the retailer to take-back, at no cost to the consumer, any used cell phone that the retailer sold to the consumer, (ii) the retailer to take-back any used cell phone from a consumer who is purchasing a new cell phone, at no cost to that consumer, (iii) some mechanism, at the time of delivery, for the return of a used cell phone if the retailer delivers a cell phone directly to a consumer in this State, and (iv) information about cell phone recycling opportunities provided by the retailer that encourages the consumer to take advantage of cell phone recycling. Makes it unlawful to sell a cell phone to a consumer in this State unless the retailer complies with the requirements of the Act. Requires the Environmental Protection Agency to post on its Web site the estimated number of phones recycled each year. Sets forth that providers of cell phone services to the State must certify, as a condition of any contract with the State, that they and their subsidiaries have complied with the requirements of the Cell Phone Recycling Act. Provides that the State may assess a variety of penalties against parties contracting with the State to provide cell phone services while not complying with this Act, including voiding these contracts and seeking certain damages. Amends the Illinois Procurement Code. Makes corresponding changes to the Code to indicate that certain bids must comply with the Cell Phone Recycling Act.

LRB094 10836 RSP 41337 b

FISCAL NOTE ACT
MAY APPLY

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 1. Short title. This Act may be cited as the Cell
5 Phone Recycling Act.

6 Section 5. Purpose. The General Assembly finds and declares
7 the following:

8 (a) The purpose of this Act is to enact a comprehensive and
9 innovative system for the reuse, recycling, and proper and
10 legal disposal of used cell phones.

11 (b) It is the further purpose of this Act to establish a
12 program that is convenient for consumers and the public to
13 return, recycle, and ensure the safe and environmentally sound
14 disposal of used cell phones and provide a system that does not
15 charge when a cell phone is returned.

16 (c) It is the intent of the General Assembly that the cost
17 associated with the handling, recycling, and disposal of used
18 cell phones be the responsibility of the producers and
19 consumers of cell phones, and not local government or their
20 service providers, State government, or taxpayers.

21 (d) In order to reduce the likelihood of illegal disposal
22 of hazardous materials, it is the intent of this Act to ensure
23 that all costs associated with the proper management of used
24 cell phones are internalized by the producers and consumers of
25 cell phones at or before the point of purchase and not at the
26 point of discard.

27 (e) Manufacturers and retailers of cell phones and cell
28 phone service providers, in working to achieve the goals and
29 objectives of this Act, should have the flexibility to partner
30 with each other and with those private and nonprofit business
31 enterprises that currently provide collection and processing
32 services to develop and promote a safe and effective used cell

1 phone recycling system for Illinois.

2 (f) The producers of cell phones should reduce and, to the
3 extent feasible, ultimately phase out the use of hazardous
4 materials in cell phones.

5 (g) Cell phones, to the greatest extent feasible, should be
6 designed for extended life, repair, and reuse.

7 (h) The purpose of this Act is to provide for the safe,
8 cost free, and convenient collection, reuse, and recycling of
9 100% of the used cell phones discarded or offered for recycling
10 in the State.

11 (i) In establishing a cost effective system for the
12 recovery, reuse, recycling, and proper disposal of used cell
13 phones, it is the intent of the General Assembly to encourage
14 manufacturers, retailers, and service providers to build on the
15 retailer take-back systems initiated recently by some cell
16 phone service providers.

17 (j) An estimated 5% of obsolete cell phones are currently
18 being recycled through a mechanism whereby private sector
19 recyclers provide retailers with a postage paid box for mailing
20 returned cell phones to the recycler at no cost to the
21 retailers. In some instances, the scrap value of these used
22 phones is sufficient for the recycler to either pay the
23 retailer or make a financial contribution on behalf of the
24 retailer to a nonprofit charity. It is the intent of the
25 General Assembly that this model system be substantially
26 expanded as a result of the enactment of this Act.

27 Section 10. Definitions. For the purposes of this Act, the
28 following terms have the following meanings, unless the context
29 clearly requires otherwise:

30 "Cell phone" means a wireless telephone device that is
31 designed to send or receive transmissions through a cellular
32 radiotelephone service, as defined in Section 22.99 of Title 47
33 of the Code of Federal Regulations. "Cell phone" includes the
34 rechargeable battery that may be connected to that cell phone.
35 "Cell phone" does not include a wireless telephone device that

1 is integrated into the electrical architecture of a motor
2 vehicle.

3 "Consumer" means a purchaser or owner of a cell phone.
4 "Consumer" includes a business, corporation, limited
5 partnership, nonprofit organization, or governmental entity,
6 but does not include an entity involved in a wholesale
7 transaction between a distributor and retailer.

8 "Distributor" means a person who sells a cell phone to a
9 retailer.

10 "Retailer" means a person who conducts the sale of or sells
11 a cell phone in the State to a consumer, including a
12 manufacturer of a cell phone who conducts the sale of or sells
13 that cell phone directly to a consumer.

14 "Sale" means a transfer for consideration of title or of
15 the right to use, by lease or sales contract, including, but
16 not limited to, transactions conducted through sales outlets,
17 catalogs, or the Internet, or any other similar electronic
18 means, but does not include a wholesale transaction with a
19 distributor or a retailer.

20 "Used cell phone" means a cell phone that has been
21 previously used and is made available, by a consumer, for
22 reuse, recycling, or proper disposal.

23 Section 15. Cell phone recycling.

24 (a) On and after July 1, 2006, every retailer who sells
25 cell phones in this State must have a system in place for the
26 acceptance and collection of used cell phones for reuse,
27 recycling, or proper disposal.

28 (b) A system for the acceptance and collection of used cell
29 phones for reuse, recycling, or proper disposal must, at a
30 minimum, provide for all of the following:

31 (1) The take-back from the consumer of a used cell
32 phone that the retailer sold or previously sold to the
33 consumer, at no cost to that consumer. The retailer may
34 require proof of purchase.

35 (2) The take-back of a used cell phone from a consumer

1 who is purchasing a new cell phone from that retailer, at
2 no cost to that consumer.

3 (3) If the retailer delivers a cell phone directly to a
4 consumer in this State, the system provides the consumer,
5 at the time of delivery, with a mechanism for the return of
6 used cell phones for reuse, recycling, or proper disposal,
7 at no cost to the consumer.

8 (4) Make information available to consumers about cell
9 phone recycling opportunities provided by the retailer and
10 encourage consumers to use those opportunities. This
11 information may include, but is not limited to, one or more
12 of the following:

13 (i) Signage that is prominently displayed and
14 easily visible to the consumer.

15 (ii) Written materials provided to the consumer at
16 the time of purchase or delivery, or both.

17 (iii) Reference to the cell phone recycling
18 opportunity in retailer advertising or other
19 promotional materials, or both.

20 (iv) Direct communications with the consumer at
21 the time of purchase.

22 (c) Paragraph (4) of subdivision (b) does not apply to a
23 retailer that only sells prepaid cell phones and does not
24 provide the ability for a consumer to sign a contract for cell
25 phone service.

26 Section 20. Prohibited acts; enforcement. On and after July
27 1, 2006, it is unlawful to sell a cell phone to a consumer in
28 this State unless the retailer of that cell phone complies with
29 the provisions of this Act. The Illinois Commerce Commission
30 shall have the power to enforce the provisions of this Act and
31 to bring enforcement actions in the name of the People of the
32 State of Illinois in the circuit court in and for the county in
33 which the violation of the Act, or some part thereof, arose, or
34 in which the corporation complained of, if any, has its
35 principal place of business, or in which the person, if any,

1 complained of resides. Any fines or penalties recovered by the
2 State in an enforcement action under this Act shall be paid
3 into the State Treasury for the benefit of the general fund. A
4 violation of this Act is a business offense punishable by a
5 fine of \$1001.

6 Section 25. Statewide recycling goals. On July 1, 2007, and
7 each July 1 thereafter, the Illinois Environmental Protection
8 Agency shall post on its Web site an estimated Illinois
9 recycling rate for cell phones, the numerator of which shall be
10 the estimated number of cell phones returned for recycling in
11 Illinois during the previous calendar year, and the denominator
12 of which is the number of cell phones estimated to be sold in
13 this State during the previous calendar year.

14 Section 30. State agency procurement.

15 (a) A State agency or department that purchases or leases
16 cell phones shall require each prospective bidder, to certify
17 that it, and its agents, subsidiaries, partners, joint
18 venturers, and subcontractors for the procurement, have
19 complied with this Act and any rules adopted pursuant to this
20 Act, or to demonstrate that this Act is inapplicable to all
21 lines of business engaged in by the bidder, its agents,
22 subsidiaries, partners, joint venturers, or subcontractors.

23 (b) Failure to provide certification pursuant to this
24 Section shall render the prospective bidder and its agents,
25 subsidiaries, partners, joint venturers, and subcontractors
26 ineligible to bid on the procurement of cell phones.

27 (c) The bid solicitation documents shall specify that the
28 prospective bidder is required to cooperate fully in providing
29 reasonable access to its records and documents that evidence
30 compliance with this Act.

31 (d) Any person awarded a contract by a State agency that is
32 found to be in violation of this Section is subject to the
33 following sanctions:

34 (1) The contract shall be voided by the State agency to

1 which the equipment, materials, or supplies were provided.

2 (2) The contractor is ineligible to bid on any State
3 contract for a period of 3 years.

4 (3) If the Attorney General establishes in the name of
5 the people of the State of Illinois that any money,
6 property, or benefit was obtained by a contractor as a
7 result of violating this Section, the court may, in
8 addition to any other remedy, order the disgorgement of the
9 unlawfully obtained money, property, or benefit in the
10 interest of justice.

11 Section 35. Effect of the Act; severability. This Act shall
12 not be construed to affect any other Act, regulation, or
13 obligation relating to cell phones or used cell phones.

14 The provisions of this Act are severable. If any provision
15 of this Act or its application is held invalid, that invalidity
16 shall not affect other provisions or applications that can be
17 given effect without the invalid provision or application.

18 Section 40. The Illinois Procurement Code is amended by
19 adding Section 25-70 as follows:

20 (30 ILCS 500/25-70 new)

21 Sec. 25-70. Cell phone contracts. In addition to the
22 provisions of this Code, bids on all contracts involving the
23 purchase or lease of cell phones or cell phone services or
24 relating to cell phones are subject to the provisions contained
25 in the Cell Phone Recycling Act and the penalties contained in
26 Section 30 of that Act.