

**ELECTRONIC DEVICE RECYCLING**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. McCoy**

House Sponsor: Ralph Becker

---

**LONG TITLE**

**General Description:**

This bill requires the recycling of certain types of electronic devices.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires an electronic device manufacturer to:
  - affix its brand to electronic devices sold in Utah;
  - register with the division and pay a registration fee;
  - annually renew its registration and pay a renewal fee; and
  - if the manufacturer has a recycling plan, conduct and report a sampling of collected electronic devices;
- ▶ requires an electronic device manufacturer to:
  - pay a fee for the collection, transportation, and recycling of its electronic devices; or
  - submit a plan to the division and collect, transport, and recycle its electronic devices;
- ▶ requires the Division of Solid and Hazardous Waste to:
  - maintain a list of registered manufacturers and their brands;
  - identify manufacturers and brands of electronic devices;
  - produce an annual report;



- 28                   • maintain a website and telephone number with information about recycling
- 29 electronic devices;
- 30                   • determine the electronic devices being sold in the state; and
- 31                   • conduct a sampling of collected electronic devices;
- 32               ▶ authorizes the Solid and Hazardous Waste Control Board to:
- 33                   • enter into contracts for the collection, transportation, and recycling of electronic
- 34 devices;
- 35                   • develop a plan to collect, transport, and recycle electronic devices from
- 36 manufacturers without a plan and orphan devices;
- 37                   • adopt rules; and
- 38                   • expend money from the Electronic Device Recycling Fund;
- 39               ▶ requires the board's executive secretary to:
- 40                   • determine the manufacturer's return share and return share in weight of
- 41 electronic devices;
- 42                   • establish fees; and
- 43                   • enforce the part;
- 44               ▶ creates a restricted special revenue fund called the Electronic Device Recycling
- 45 Fund;
- 46               ▶ prohibits the sale of electronic devices from unregistered manufacturers;
- 47               ▶ requires electronic device retailers to:
- 48                   • review a list kept by the division of registered manufacturers; and
- 49                   • make information available to consumers about electronic device collection;
- 50               ▶ prohibits the disposal of electronic devices in regulated solid waste disposal
- 51 facilities; and
- 52               ▶ exempts the issuance of a notice of violation or order under the Electronic Device
- 53 Recycling Act from the Administrative Procedures Act.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on January 1, 2008.

**Utah Code Sections Affected:**

AMENDS:

**19-1-105**, as enacted by Chapter 112, Laws of Utah 1991

**63-46b-1**, as last amended by Chapter 187, Laws of Utah 2006

ENACTS:

**19-6-1101**, Utah Code Annotated 1953

**19-6-1102**, Utah Code Annotated 1953

**19-6-1103**, Utah Code Annotated 1953

**19-6-1104**, Utah Code Annotated 1953

**19-6-1105**, Utah Code Annotated 1953

**19-6-1106**, Utah Code Annotated 1953

**19-6-1107**, Utah Code Annotated 1953

**19-6-1108**, Utah Code Annotated 1953

**19-6-1109**, Utah Code Annotated 1953

**19-6-1110**, Utah Code Annotated 1953

**19-6-1111**, Utah Code Annotated 1953

**19-6-1112**, Utah Code Annotated 1953

---

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **19-1-105** is amended to read:

**19-1-105. Divisions of department -- Control by division directors.**

(1) The following divisions are created within the department:

(a) the Division of Air Quality, to administer Title 19, Chapter 2;

(b) the Division of Drinking Water, to administer Title 19, Chapter 4;

(c) the Division of Environmental Response and Remediation, to administer Title 19, Chapter 6, Parts 3 and 4;

(d) the Division of Radiation, to administer Title 19, Chapter 3;

(e) the Division of Solid and Hazardous Waste, to administer Title 19, Chapter 6, Parts 1, 2, ~~and~~ 5, and 11; and

(f) the Division of Water Quality, to administer Title 19, Chapter 5.

(2) Each division is under the immediate direction and control of a division director appointed by the executive director.

(3) (a) Each division director shall possess the necessary administrative skills and training to adequately qualify ~~[him]~~ the division director for ~~[his]~~ the position. ~~[He]~~

(b) The division director shall have graduated from an accredited college or university with:

~~[(a)]~~ (i) a four-year degree in physical or biological science or engineering;

~~[(b)]~~ (ii) a related degree; or

~~[(c)]~~ (iii) a degree in law.

(4) Each director may be removed at the will of the executive director.

Section 2. Section **19-6-1101** is enacted to read:

### **Part 11. Electronic Device Recycling Act**

#### **19-6-1101. Title.**

This part is known as the "Electronic Device Recycling Act."

Section 3. Section **19-6-1102** is enacted to read:

#### **19-6-1102. Definitions.**

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-6-103.

(2) (a) "Brand" means a symbol, word, or mark that identifies an electronic device.

(b) "Brand" does not mean any symbol, word, or mark that identifies a component of an electronic device.

(3) "Consumer" means:

(a) a household located in the state;

(b) a business located in the state that employs ten or fewer individuals; or

(c) an organization located in the state that:

(i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and

(ii) employs ten or fewer individuals.

(4) "Division" means the Division of Solid and Hazardous Waste created in Section 19-1-105.

(5) (a) "Electronic device" means a computer monitor, portable computer, telephone, or television with a screen size greater than four inches, measured diagonally.

(b) "Electronic device" does not include an electronic device that is:

121 (i) part of a motor vehicle;

122 (ii) part of a larger piece of equipment used in an industrial, commercial, or medical  
123 setting, such as diagnostic, monitoring, or control equipment; or

124 (iii) contained within a clothes washer or dryer, refrigerator, freezer, microwave oven,  
125 conventional oven or range, dishwasher, or air conditioner, dehumidifier, or purifier.

126 (6) "Executive secretary" means the executive secretary of the Solid and Hazardous  
127 Waste Control Board appointed under Section 19-6-107.

128 (7) "Fund" means the Electronic Device Recycling Fund created in Section 19-6-1106.

129 (8) "Household" means an occupant of a single detached dwelling unit or a single unit  
130 of a multiple dwelling unit who uses an electronic device at the dwelling unit primarily for  
131 personal or home business use.

132 (9) "Manufacturer" means a person who:

133 (a) manufactures an electronic device:

134 (i) under a brand that the manufacturer owns or is licensed to use, unless the  
135 manufacturer manufactures the device under a license for delivery exclusively to or at the order  
136 of the licensor;

137 (ii) without affixing a brand; or

138 (iii) to which the manufacturer affixes a brand that the manufacturer neither owns nor  
139 is licensed to use;

140 (b) sells an electronic device manufactured by another under a brand that the seller  
141 owns or is licensed to use, unless the manufacturer manufactures the device under a license for  
142 delivery exclusively to or at the order of the licensor; or

143 (c) has an electronic device manufactured outside the United States imported into the  
144 United States, unless at the time of importation another person is registered with the division as  
145 the manufacturer of that brand.

146 (10) "New electronic device" means an electronic device that is manufactured after  
147 January 1, 2008.

148 (11) "Orphan device" means an electronic device for which no manufacturer can be  
149 identified.

150 (12) "Program year" means a full calendar year beginning on January 1, 2009 and every  
151 January 1 thereafter.

152       (13) (a) "Recycling" means disassembling, dismantling, processing, or shredding an  
153 electronic device to recover a useable product.

154       (b) "Recycling" does not include incineration.

155       (14) "Recycling fee" means the fee calculated by multiplying a manufacturer's return  
156 share in weight by the recycling rate.

157       (15) "Recycling rate" means the cost per pound to collect, transport, and recycle  
158 electronic devices used by consumers and discarded in the state.

159       (16) (a) "Retailer" means a person who offers an electronic device for sale through any  
160 means, including sales outlets, catalogs, or the Internet for delivery in the state.

161       (b) "Retailer" does not mean a person who offers an electronic device for sale for resale  
162 by the purchaser.

163       (17) "Return share" means the proportion of electronic devices used by consumers and  
164 discarded in the state for which a manufacturer is responsible to collect, transport, and recycle.

165       (18) "Return share in weight" means the total weight of electronic devices used by  
166 consumers and discarded in the state for which a manufacturer is responsible to collect,  
167 transport, and recycle.

168       Section 4. Section **19-6-1103** is enacted to read:

169       **19-6-1103. Board to make rules, establish plan, enter contracts.**

170       (1) By following the procedures and requirements of Title 63, Chapter 46a, Utah  
171 Administrative Rulemaking Act, the board shall adopt rules:

172       (a) governing administrative proceedings under this part;

173       (b) establishing standards and requirements for:

174       (i) electronic device collection;

175       (ii) recyclers and the recycling process; and

176       (iii) the sampling and reporting required by Section 19-6-1108;

177       (c) specifying the form and content of a manufacturer's plan;

178       (d) specifying the documentation and procedures for the sale or application of credits  
179 allowed by Section 19-6-1107; and

180       (e) establishing criteria by which the board will choose a person to be held responsible  
181 as the manufacturer as allowed by Section 19-6-1107.

182       (2) (a) The board shall prepare and implement a plan to establish a program for the

183 collection, transportation, and recycling of electronic devices from consumers for those  
184 manufacturers without approved plans and for orphan devices.

185 (b) (i) The board's program, in combination with the manufacturers' programs, shall  
186 provide electronic device collection services that are reasonably convenient and available to all  
187 consumers.

188 (ii) The program may provide collection services jointly with a manufacturer.

189 (iii) The board's plan shall encourage the use of existing collection infrastructure to the  
190 extent that the infrastructure is cost effective and complies with all applicable environmental,  
191 health, and safety statutes and rules.

192 (c) The board's plan may establish reasonable limits on the number of electronic  
193 devices by product type accepted from a consumer in any one day or in any one delivery  
194 according to the collection program.

195 (d) The board's plan shall describe:

196 (i) the methods that will be used to collect electronic devices, including the name and  
197 location of the collection service; and

198 (ii) the recycling process, including the name and location of the recycler.

199 (3) (a) By following the procedures and requirements of Title 63, Chapter 56, Utah  
200 Procurement Code, the board may enter into contracts with any person for the collection,  
201 transportation, or recycling of electronic devices.

202 (b) Contracts shall include provisions to ensure that:

203 (i) the electronic devices collected from a consumer were used by a consumer and  
204 discarded in the state;

205 (ii) the collection, transportation, and recycling of the electronic devices are conducted  
206 in accordance with federal, state, and local laws;

207 (iii) prisoner labor is not used in the collection, transportation, and recycling of  
208 electronic devices;

209 (iv) the recycling and disposal of the electronic devices will not pose significant risk to  
210 the public health or the environment; and

211 (v) records of the information needed to meet the requirements of Section 19-6-1108  
212 are kept and provided to the division.

213 Section 5. Section **19-6-1104** is enacted to read:

**19-6-1104. Executive secretary to establish fees and determine return share and return share in weight.**

(1) By following the procedures and requirements of Section 63-38-3.2, the executive secretary shall establish:

(a) a registration fee of at least \$5,000;

(b) a renewal fee; and

(c) the recycling rate.

(2) (a) The executive secretary shall determine the return share for each program year for each manufacturer by dividing the weight of electronic devices identified for each manufacturer by the total weight of electronic devices identified for all manufacturers.

(b) The return share identified for each manufacturer shall be based on:

(i) the best available public return share data from the United States, including data from other states, for the first program year; and

(ii) the most recent sampling of electronic devices required by Section 19-6-1108 for the second and each subsequent program year.

(3) (a) The executive secretary shall determine the return share in weight for each program year for each manufacturer for whom a return share is determined according to Subsection (2) by multiplying the return share for each manufacturer by the total weight in pounds of electronic devices, including orphan devices, collected from consumers during the previous program year.

(b) The total weight in pounds of electronic devices shall be based on:

(i) the best available public weight data from the United States, including data from other states for the first program year; and

(ii) the total weight of electronic devices, including orphan devices, determined by the division according to Subsection 19-6-1108(2) and reported to the division as required by Subsection 19-6-1108(3) for the second and each subsequent program year.

(4) The executive secretary shall provide each manufacturer for whom a return share is determined with the manufacturer's return share and return share in weight:

(a) by April 1 for the first program year; and

(b) by February 15 for the second and subsequent program years.

Section 6. Section **19-6-1105** is enacted to read:



**19-6-1105. Division responsibilities.**

(1) (a) Beginning April 1, 2008, the division shall maintain a list of:

(i) registered manufacturers and the brands included in the manufacturer's registration;

and

(ii) brands for which no manufacturer has registered.

(b) The division shall post the lists on the department's website and shall update the lists by the first day of each month.

(2) (a) By June 1, 2008 and at least annually thereafter, the division shall identify, using all reasonable means, manufacturers and brands for which a manufacturer is responsible, by examining best available return share data and other pertinent data.

(b) The division shall notify each identified, unregistered manufacturer of the requirements of this part.

(3) At least annually the division shall determine whether a new covered electronic device with no brand affixed, or with a brand affixed that is not included in a manufacturer's registration, is being sold or offered for sale for delivery in the state by a retailer.

(4) (a) The division shall organize, conduct, and coordinate public outreach for the board's program to collect, transport, and recycle electronic devices.

(b) Beginning January 1, 2009, the division shall provide current information about where consumers can return electronic devices for recycling by way of the department's website and a toll-free telephone number.

(5) Beginning on March 1, 2010, the division shall annually complete and make publicly available an annual report for the previous program year that includes:

(a) the return shares and return shares in weight;

(b) the total weight of electronic devices, including orphan devices;

(c) all deposits to the fund;

(d) the total amount of costs incurred by the board, executive secretary, and division to administer this part;

(e) a list of all parties whom the board has paid for collection, transportation, and recycling services, including the amount and purpose of the payments; and

(f) information that the division has received on collection services operated by or on behalf of the board or a manufacturer.

Section 7. Section **19-6-1106** is enacted to read:

**19-6-1106. Electronic Device Recycling Fund.**

(1) There is created a restricted special revenue fund known as the Electronic Device Recycling Fund.

(2) The fund shall consist of:

(a) registration, renewal, and recycling fees required by Section 19-6-1107;

(b) payments required by Subsection 19-6-1107(8);

(c) civil penalties collected according to Section 19-6-1112; and

(d) interest and earnings on fund monies.

(3) The board shall authorize the expenditure of fund monies:

(a) to a person with whom the board has contracted for the collection, transportation, or recycling of electronic devices;

(b) for the administration and enforcement of this part; and

(c) for the administrative costs of the fund.

Section 8. Section **19-6-1107** is enacted to read:

**19-6-1107. Manufacturer responsibilities.**

(1) Each manufacturer shall permanently affix a readily visible brand to all new electronic devices that will be offered for sale for delivery in the state.

(2) (a) (i) Each manufacturer of an electronic device offered for sale for delivery in the state shall register with the division and pay a registration fee.

(ii) The registration shall include a list of all of the manufacturer's electronic device brands.

(b) A manufacturer who receives notice of the manufacturer's return share and return share in weight and who has not previously registered shall register with the division within 30 days of receiving the notification.

(c) (i) Each manufacturer shall renew the manufacturer's registration with the division and pay the renewal fee by January 10 of each program year.

(ii) The renewal shall update the list of the manufacturer's electronic device brands.

(3) (a) Except as provided by Subsection (3)(b), each manufacturer to whom the division provides a return share in weight that is greater than zero shall submit to the division, by June 1 for the first program year and by March 15 for the second and subsequent program

307 years:

308 (i) a recycling fee; or

309 (ii) a plan to establish a program for the collection, transportation, and recycling of its

310 return share in weight.

311 (b) (i) A manufacturer does not need to submit a plan as required by Subsection

312 (3)(a)(ii) if the manufacturer:

313 (A) has an approved plan from a previous program year; and

314 (B) submits a statement of intent to continue the existing program.

315 (ii) If the manufacturer failed to collect its return share in weight for the previous

316 program year, the department may reject the statement of intent and require the manufacturer to

317 submit a new plan.

318 (4) Each manufacturer's plan shall:

319 (a) describe:

320 (i) the method that will be used to collect electronic devices, including the name and

321 location of the collection service;

322 (ii) the recycling process, including the name and location of the recycler;

323 (iii) the means that will be used to publicize collection services, including a website or

324 toll-free telephone number that provides information about the manufacturer's program in

325 sufficient detail to allow a consumer to learn how to return an electronic device for recycling;

326 and

327 (iv) the intention of the manufacturer to fulfill its return share in weight through

328 operation of its own program, either individually or with other manufacturers; and

329 (b) represent at least 5% of the total return shares in weight for the applicable program

330 year.

331 (5) A group of manufacturers jointly submitting a plan shall collect, transport, and

332 recycle the sum of the return shares in weight of each participating manufacturer.

333 (6) (a) A manufacturer's plan may establish reasonable limits on the number of

334 electronic devices by product type accepted from a consumer in any one day or in any one

335 delivery according to the collection program.

336 (b) A manufacturer may not charge a consumer for the collection, transportation, or

337 recycling of an electronic device until the manufacturer has collected, transported, or recycled

its return share for that program year.

(7) (a) The executive secretary shall:

(i) review each manufacturer's plan; and

(ii) within 60 days of receiving the plan, approve or reject the plan based on whether the plan complies with this part and rules adopted as authorized by this part.

(b) The executive secretary shall notify the manufacturer if the plan is approved and waive the recycling fee for each manufacturer participating in the plan.

(c) (i) The executive secretary shall notify the manufacturer if the plan is rejected and provide the reasons for the plan's rejection.

(ii) The manufacturer may submit a revised plan within 30 days after receiving notice of the plan's rejection.

(iii) A manufacturer shall pay the recycling fee within 30 days after the executive secretary:

(A) rejects the plan if the manufacturer does not submit a revised plan; or

(B) rejects the revised plan.

(8) (a) If a manufacturer with an approved plan fails to collect, transport, and recycle the manufacturer's return share in weight, the manufacturer shall submit to the division a payment to cover the cost of collecting, transporting, and recycling the unmet portion.

(b) The payment shall be calculated by multiplying the unmet portion, in pounds, plus an additional 10% of the quantity, by the recycling rate.

(9) If a manufacturer collects, transports, and recycles, at no charge to the consumer, electronic devices used by consumers and discarded in the state in excess of its return share in weight, the manufacturer may:

(a) apply the credits, equal to the quantity in pounds of the excess, to meeting the following program year's return share in weight for the manufacturer; or

(b) sell the credits to another manufacturer.

(10) (a) Where more than one person is within the definition of manufacturer for an electronic device brand, any person may assume responsibility for and satisfy the obligations of a manufacturer under this part with respect to an electronic device bearing that brand.

(b) If no person assumes responsibility for and satisfies the obligations of a manufacturer under this part with respect to an electronic device bearing that brand, the board

369 may consider any one person within the definition to be the manufacturer of the brand.

370 (11) The requirements of this part for a manufacturer using a brand that was previously  
371 used by a different person in the manufacture of an electronic device shall extend to all  
372 electronic devices bearing that brand.

373 Section 9. Section **19-6-1108** is enacted to read:

374 **19-6-1108. Sampling and reporting.**

375 (1) (a) Beginning January 30, 2010 the division shall annually complete an auditable,  
376 statistically significant sampling of electronic devices collected from consumers by the division  
377 during the previous program year.

378 (b) The sampling information collected shall consist of a list of electronic device  
379 brands and the weight of electronic devices that are identified for each brand.

380 (c) The sampling shall be conducted in accordance with a procedure established by the  
381 board and may be conducted by a third party organization selected by the division, including a  
382 recycler.

383 (d) The division may:

384 (i) be present at the sampling; and

385 (ii) audit the methodology and the results of the sampling.

386 (e) The costs associated with the sampling shall be recovered from the fund.

387 (2) Beginning January 30, 2010, the division shall annually determine the total weight  
388 of covered electronic devices, including orphan devices, collected from consumers by the  
389 division during the previous program year.

390 (3) (a) If a manufacturer conducts its own collection, transportation, and recycling  
391 program, the manufacturer shall annually submit a report to the division by January 30,  
392 beginning the year after the program is initiated.

393 (b) The report shall include:

394 (i) the results of an auditable, statistically significant sampling of electronic devices  
395 collected from consumers by the manufacturer, including a list of electronic device brands and  
396 the weight of electronic devices that are identified for each brand; and

397 (ii) the total weight of electronic devices, including orphan devices, collected from  
398 consumers by the manufacturer during the previous program year and documentation verifying  
399 the collection and recycling of the electronic devices.

Section 10. Section **19-6-1109** is enacted to read:

**19-6-1109. Sales prohibition and retailer responsibility.**

(1) Beginning January 1, 2009, a manufacturer or retailer may only sell or offer for sale for delivery in the state a new electronic device with a brand:

(a) that is permanently affixed and readily visible; and

(b) for which a manufacturer has registered as required by Section 19-6-1107.

(2) (a) Before selling a new electronic device, a retailer shall review the list maintained by the division of:

(i) registered manufacturers and the brands included in the manufacturer's registration;

and

(ii) the brands for which no manufacturer has registered.

(b) A retailer has complied with the requirement of Subsection (2)(a) if, on the date the retailer orders the electronic device, the brand appeared on the list of brands reported in a manufacturer's registration.

(3) (a) Beginning January 1, 2009, a retailer shall make available to its customers information on collection services, including the department's website and toll-free telephone number.

(b) A remote retailer may include this information in a visible location on its website.

Section 11. Section **19-6-1110** is enacted to read:

**19-6-1110. Disposal ban -- Recycler responsibility.**

(1) Beginning January 1, 2009, no person may dispose of an electronic device in any solid waste disposal facility that is regulated by this title.

(2) Recyclers shall comply with applicable federal, state, and local laws in recycling electronic devices collected under this part.

Section 12. Section **19-6-1111** is enacted to read:

**19-6-1111. Confidentiality of financial and proprietary information.**

A person who is required by this part to submit a record to the division, board, or executive secretary and wants the record protected under Title 63, Chapter 2, Government Records Access and Management Act, shall follow the procedures and requirements of Section 63-2-308.

Section 13. Section **19-6-1112** is enacted to read:

**19-6-1112. Civil penalties -- Enforcement.**

(1) Except as provided by Subsection (2), a person who violates any requirement of this part and rules adopted as authorized by this part is subject to a civil penalty of not more than \$1,000 for the first violation and not more than \$2,000 for the second and each subsequent violation as determined in an administrative proceeding conducted according to the board's rules.

(2) A manufacturer is subject to a civil penalty of not more than \$10,000 for the first violation and not more than \$25,000 for the second and each subsequent violation, as determined in an administrative proceeding conducted according to the board's rules, if the manufacturer fails to:

(a) label its new electronic devices with a brand, as required by Section 19-6-1107;

(b) register with the division and pay the registration fee, as required by Section 19-6-1107; or

(c) comply with any requirement of Section 19-6-1108.

(3) The board shall deposit the civil penalties it collects into the fund.

(4) As authorized by the board, the executive secretary may:

(a) enforce a rule by issuing a notice, an order, or both, which may be subsequently amended or revoked by the board; and

(b) initiate an administrative action to compel compliance with this part and any rules adopted as authorized by this part.

(5) The board may request the attorney general to bring an action for injunctive relief and enforcement of this part, including the imposition of the civil penalty.

Section 14. Section **63-46b-1** is amended to read:

**63-46b-1. Scope and applicability of chapter.**

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Chapter 3a, Architects Licensing Act, Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55, Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;



(h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63, Chapter 30d, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, ~~or~~ Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, or Title 19, Chapter 6, Part 11, Electronic Device Recycling Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603;

(q) state agency action relating to the collection of water commissioner fees and

delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities pursuant to a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1); and

(u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action.

(3) This chapter does not affect a legal remedy otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63-46b-21 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63-46b-21 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or

governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

Section 15. **Effective date.**

This bill takes effect on January 1, 2008.

---

---

**Legislative Review Note**  
**as of 1-22-07 4:27 PM**

**Office of Legislative Research and General Counsel**

---

---

**S.B. 76 - Electronic Device Recycling****Fiscal Note**

2007 General Session

State of Utah

---

---

**State Impact**

Provisions of this bill creates a restricted special revenue fund known as the Electrical Device Recycling Fund. Manufactures of electronic devices are required to register with the Solid and Hazardous Waste Division of the Department of Environmental Quality and pay a one time registration fee of at least \$5,000 that would be deposited into the new EDRF account. It is estimated that 35 manufactures would register the first year for a total of \$175,000. Revenues in subsequent years are dependent upon renewal fees. The amount cannot yet be determined but would be less than collections in FY 2008. To begin to implement provisions of this bill, it is estimated to cost the Division \$43,300 in FY 2008 for staff and related costs. The FY 2009 expenses are estimated to be \$86,600 to administer the program.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
Restricted Funds	\$0	\$43,300	\$86,600	\$0	\$175,000	\$0
<b>Total</b>	<b>\$0</b>	<b>\$43,300</b>	<b>\$86,600</b>	<b>\$0</b>	<b>\$175,000</b>	<b>\$0</b>

**Individual, Business and/or Local Impact**

Manufactures of electronic devices are required to pay a one time registration fee of at least \$5,000 and subsequent renewal fees, not yet determined. The program costs may eventually be passed on the consumers. Impact on local governmental entities will depend on how they may choose to participate in the process.