

AMENDED IN ASSEMBLY MAY 20, 2004

AMENDED IN ASSEMBLY APRIL 20, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2901

Introduced by Assembly Members Pavley and Kehoe
(Coauthors: Assembly Members Hancock, Jackson, Koretz,
Levine, and Lieber)
(Coauthor: Senator Kuehl)

February 20, 2004

An act to add Article 10.4 (commencing with Section 25214.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, and to add Chapter 8.6 (commencing with Section 42490) to Part 3 of Division 30 of the Public Resources Code, relating to hazardous and solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2901, as amended, Pavley. Hazardous waste: cellular telephones: recycling.

(1) Existing law prohibits the management of hazardous waste, except in accordance with the hazardous waste control laws. A violation of the hazardous waste control laws is a crime. Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device, as defined, from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. Existing law prohibits those regulations from taking effect until January 27, 2007, or on or after the date that Directive 2002/95/EC, as adopted by the

European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later. Existing law requires the department to exclude certain electronic devices from the regulations.

This bill would require the department to adopt regulations to prohibit a cellular telephone, as defined, from being sold or offered for sale in this state if the cellular telephone is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of heavy metals. The bill would prohibit those regulations from taking effect until January 1, 2007, or on or after the date that Directive 2002/95/EC takes effect, whichever date is later. The bill would require the department to exclude certain cellular telephones from the regulations.

Because a violation of the regulations adopted by the department would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) Existing law requires the California Integrated Waste Management Board to administer state programs to recycle various specified materials, including the Electronic Waste Recycling Act of 2003, which governs certain electronic devices with display screens greater than 4 inches in size.

This bill would enact the Cell Phone Recycling Act of 2004 and would make it unlawful to sell, on and after July 1, 2005, a cell phone in this state to a consumer, as defined, unless the retailer of that cell phone complies with the act.

The bill would require a retailer selling a cell phone in this state to have in place, by July 1, 2005, a system for the acceptance, collection, reuse, and recycling or proper disposal of used cell phones. The bill would require the system to include specified elements.

The bill would require each retailer of a cell phone who sells a cell phone in this state, by July 1, 2006, and annually thereafter, to ~~submit a report to the board on~~ *include* the number of cell phones sold by the retailer in this state during the previous calendar year and other information *in any notification submitted to the department pursuant to regulations for universal waste handlers in existence on January 1, 2005*. A retailer would also be required to make information available to consumers that describes where and how to return, recycle, and dispose of the cell phone and opportunities and locations for the collection or return of the cell phone, through specified means.



The bill would require the board on ~~and after~~ July 1, 2006, *and every 3 years thereafter*, to ~~annually~~ establish and update, as necessary, statewide used cell phone recycling goals. The bill would impose requirements upon state agencies that purchase or lease cell phones regarding a certification of compliance with the act by prospective bidders. The bill would make the act inoperative under specified circumstances.

~~(2)~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.4 (commencing with Section
2 25214.50) is added to Chapter 6.5 of Division 20 of the Health and
3 Safety Code, to read:

4

5

Article 10.4. Cellular Telephones

6

7 25214.50. (a) For purposes of this section, “cellular
8 telephone” means a wireless telephone device that is designed to
9 send or receive transmissions through a cellular radiotelephone
10 service, as defined in Section 22.99 of Title 47 of the Code of
11 Federal Regulations. A cellular telephone includes the
12 rechargeable battery that may be connected to that cellular
13 telephone. A cellular telephone does not include a wireless
14 telephone device that is integrated into the electrical architecture
15 of a motor vehicle.

16 (b) The department shall adopt regulations, in accordance with
17 this section, that prohibit a cellular telephone from being sold or
18 offered for sale in this state if the cellular telephone is prohibited
19 from being sold or offered for sale in the European Union on and
20 after its date of manufacture, to the extent that Directive
21 2002/95/EC, adopted by the European Parliament and the Council



1 of the European Union on January 27, 2003, prohibits that sale due
2 to the presence of certain heavy metals.

3 (c) The regulations adopted pursuant to subdivision (b) shall
4 take effect on January 1, 2007, or on or after the date that Directive
5 2002/95/EC, adopted by the European Parliament and the Council
6 of the European Union on January 27, 2003, takes effect,
7 whichever date is later.

8 (d) The department shall exclude, from the regulations adopted
9 pursuant to this section, the sale of a cellular telephone that
10 contains a substance that is used to comply with the consumer,
11 health, or safety requirements that are required by the
12 Underwriters Laboratories, the federal government, or the state.

13 SEC. 2. Chapter 8.6 (commencing with Section 42490) is
14 added to Part 3 of Division 30 of the Public Resources Code, to
15 read:

16
17 CHAPTER 8.6. CELL PHONE RECYCLING ACT OF 2004
18

19
20 Article 1. General Provisions
21

22 42490. This act shall be known, and may be cited as, the Cell
23 Phone Recycling Act of 2004.

24 42490.1. The Legislature finds and declares all of the
25 following:

26 (a) The purpose of this chapter is to enact a comprehensive and
27 innovative system for the reuse, recycling, and proper and legal
28 disposal of used cell phones.

29 (b) It is the further purpose of this chapter to enact a law that
30 establishes a program that is convenient for consumers and the
31 public to return, recycle, and ensure the safe and environmentally
32 sound disposal of used cell phones, and providing a system that
33 does not charge when a cell phone is returned.

34 (c) It is the intent of the Legislature that the cost associated with
35 the handling, recycling, and disposal of used cell phones be the
36 responsibility of the producers and consumers of cell phones, and
37 not local government or their service providers, state government,
38 or taxpayers.

39 (d) In order to reduce the likelihood of illegal disposal of
40 hazardous materials, it is the intent of this chapter to ensure that all



1 costs associated with the proper management of used cell phones
2 is internalized by the producers and consumers of cell phones at
3 or before the point of purchase, and not at the point of discard.

4 (e) Manufacturers and retailers of cell phones and cell phone
5 service providers, in working to achieve the goals and objectives
6 of this chapter, should have the flexibility to partner with each
7 other and with those private and nonprofit business enterprises that
8 currently provide collection and processing services to develop
9 and promote a safe and effective used cell phone recycling system
10 for California.

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

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

16 (h) The purpose of this chapter is to provide for the safe, cost
17 free, and convenient collection and recycling of 100 percent of the
18 used cell phones discarded or offered for recycling in the state.

19 (i) In establishing a cost effective system for the recovery,
20 reuse, recycling and proper disposal of used cell phones, it is the
21 intent of the Legislature to encourage manufacturers, retailers and
22 service providers to build on the retailer take-back systems
23 initiated recently by some cell phone service providers.

24

25 Article 2. Definitions

26

27 42493. For the purposes of this chapter, the following terms
28 have the following meanings, unless the context clearly requires
29 otherwise:

30 (a) "Board" means the California Integrated Waste
31 Management Board.

32 (b) "Cell phone" has the same meaning as a "cellular
33 telephone," as defined in Section 25214.50 of the Health and
34 Safety Code.

35 (c) "Consumer" means a purchaser or owner of a cell phone.
36 "Consumer" also includes a business, corporation, limited
37 partnership, nonprofit organization, or governmental entity, but
38 does not include an entity involved in a wholesale transaction
39 between a distributor and retailer.



1 (d) “Department” means the Department of Toxic Substances
2 Control.

3 (e) “Retailer” means a person who sells a cell phone in the state
4 to a consumer, including a manufacturer of a cell phone who sells
5 that cell phone directly to a consumer. A sale includes, but is not
6 limited to, transactions conducted through sales outlets, catalogs,
7 or the Internet, or any other similar electronic means, but does not
8 include a sale that is a wholesale transaction with a distributor or
9 retailer.

10 (f) (1) “Sell” or “sale” means a transfer for consideration of
11 title or of the right to use, by lease or sales contract, including, but
12 not limited to, transactions conducted through sales outlets,
13 catalogs, or the Internet, or any other similar electronic means, but
14 does not include a wholesale transaction with a distributor or a
15 retailer.

16 (2) For purposes of this subdivision and subdivision (e),
17 “distributor” means a person who sells a cell phone to a retailer.

18 (g) “Used cell phone” means a cell phone that is discarded or
19 disposed of, and which the department determines, when
20 discarded or disposed, would be a hazardous waste pursuant to
21 Chapter 6.5 (commencing with Section 25100) of Division 20 of
22 the Health and Safety Code.

23

24 Article 3. Cell Phone Recycling

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26 42494. (a) On and after July 1, 2005, every retailer of cell
27 phones sold in this state shall have in place a system for the
28 acceptance, collection, reuse, and recycling or proper disposal of
29 used cell phones.

30 (b) A system for the acceptance, collection, reuse, and
31 recycling or proper disposal of used cell phones at a minimum
32 shall include all of the following elements:

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

36 (2) The take-back of a used cell phone from a consumer who
37 is purchasing a new cell phone from that retailer, at no cost to that
38 consumer.

39 (3) The creation and maintenance of a toll-free telephone
40 number and Internet Web site where a consumer may obtain



1 information on no-cost opportunities to recover, reuse, and recycle
2 or properly dispose of used cell phones as described in paragraphs
3 (1) and (2).

4 (4) The creation and maintenance of a public education
5 program to promote the recovery, reuse, and recycling or proper
6 disposal of used cell phones.

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

11 42495. On and after July 1, 2005, it shall be unlawful to sell
12 a cell phone to a consumer in this state unless the retailer of that
13 cell phone complies with this chapter.

14 42495.1. (a) On or before July 1, 2006, and annually
15 thereafter as determined by the ~~board~~ department, each retailer of
16 a cell phone who sells cell phones in this state shall do all of the
17 following:

18 ~~(1) Submit to the board a report that includes all of the~~
19 ~~following information:~~

20 (1) *Include the following information in any notification*
21 *submitted to the department pursuant to regulations existing on*
22 *January 1, 2005 for universal waste handlers:*

23 (A) The number of cell phones sold by the retailer in the state
24 during the previous year.

25 (B) The number of cell phones accepted and or collected from
26 consumers in this state for recycling or proper disposal during the
27 previous year.

28 (2) Make information available to consumers, that describes
29 where and how to return, recycle, and dispose of a used cell phone
30 and opportunities and locations for the collection or return of the
31 cell phone, through the use of a toll-free telephone number,
32 Internet Web site, information labeled on the cell phone,
33 information included in the packaging, or information
34 accompanying the sale of a cell phone.

35 (b) A retailer may comply with the reporting requirements of
36 paragraph (1) of subdivision (a) by submitting an aggregate report
37 from multiple retailers.

38 (c) Any information submitted to the ~~board~~ department
39 pursuant to subdivision (a) that is proprietary in nature or a trade



1 secret shall be subject to protection under state laws and
2 regulations governing that information.

3

4 Article 4. Statewide Recycling Goals

5 42496.4. ~~On and after July 1, 2006, the board shall annually~~
6 ~~July 1, 2006, and every three years thereafter, the board shall~~
7 establish, and update as necessary, statewide recycling goals for
8 used cell phones. In implementing this section, the board shall do
9 all of the following:

10 (a) Post on its Web site information on the amount of cell
11 phones sold in the state in the previous year as reported to the
12 board.

13 (b) Post on its Web site information on the amount of used cell
14 phones recycled in the state in the previous year as reported to the
15 board.

16 ~~(c) Develop and adopt recycling goals, with input from~~
17 ~~manufacturers, retailers, used cell phone recyclers, and collectors,~~
18 ~~that reflect projections of cell phone sales, rates of obsolescence,~~
19 ~~and stockpiles.~~

20 ~~(d) Provide annually to the Legislature an estimate, for the~~
21 ~~previous calendar year, of all of the following:~~

22 ~~(1) The number of cell phones returned for reuse or recycling~~
23 ~~by consumers in this state.~~

24 ~~(2) The number of cell phones sold to consumers in this state.~~

25 ~~(3) A recycling ratio, the numerator of which is the amount in~~
26 ~~paragraph (1) and the denominator of which is the amount in~~
27 ~~paragraph (2).~~

28 (c) Post on its Web site a recycling ratio, the numerator of
29 which is the amount in subdivision (a) and the denominator of
30 which is the amount in subdivision (b).

31

32 Article 5. State Agency Procurement

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34 42498. (a) A state agency that purchases or leases cell phones
35 shall require each prospective bidder, to certify that it, and its
36 agents, subsidiaries, partners, joint venturers, and subcontractors
37 for the procurement, have complied with this chapter and any
38 regulations adopted pursuant to this chapter, or to demonstrate that
39 this chapter is inapplicable to all lines of business engaged in by



1 the bidder, its agents, subsidiaries, partners, joint venturers, or
2 subcontractors.

3 (b) Failure to provide certification pursuant to this section shall
4 render the prospective bidder and its agents, subsidiaries, partners,
5 joint venturers, and subcontractors ineligible to bid on the
6 procurement of cell phones.

7 (c) The bid solicitation documents shall specify that the
8 prospective bidder is required to cooperate fully in providing
9 reasonable access to its records and documents that evidence
10 compliance with this chapter.

11 (d) Any person awarded a contract by a state agency that is
12 found to be in violation of this section is subject to the following
13 sanctions:

14 (1) The contract shall be voided by the state agency to which
15 the equipment, materials, or supplies were provided.

16 (2) The contractor is ineligible to bid on any state contract for
17 a period of three years.

18 (3) If the Attorney General establishes in the name of the
19 people of the State of California that any money, property, or
20 benefit was obtained by a contractor as a result of violating this
21 section, the court may, in addition to any other remedy, order the
22 disgorgement of the unlawfully obtained money, property, or
23 benefit in the interest of justice.

24 SEC. 3. The provisions of this act are severable. If any
25 provision of this act or its application is held invalid, that invalidity
26 shall not affect other provisions or applications that can be given
27 effect without the invalid provision or application.

28 SEC. 4. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

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