

AMENDED IN SENATE JUNE 16, 2004  
AMENDED IN ASSEMBLY MAY 20, 2004  
AMENDED IN ASSEMBLY APRIL 20, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2901**

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

February 20, 2004

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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 Solid waste: cellular telephones~~ *cell phones*: 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 2006, 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 2006, 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 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~~ *Department of Toxic Substances Control* on July 1, ~~2006~~ 2007, and ~~every 3 years~~ *each July 1* thereafter, to ~~establish and update, as necessary, statewide used cell phone recycling goals post on its Web site an estimated California recycling rate for cell phones, as specified.~~ 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~~ *contain a severability clause.*

~~(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~~ *no.*

*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~~



1 ~~2002/95/EC, adopted by the European Parliament and the Council~~  
2 ~~of the European Union on January 27, 2003, prohibits that sale due~~  
3 ~~to the presence of certain heavy metals.~~

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

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

14 ~~SEC. 2.—~~

15 *SECTION 1.* Chapter 8.6 (commencing with Section 42490)  
16 is added to Part 3 of Division 30 of the Public Resources Code, to  
17 read:

18

19 CHAPTER 8.6. CELL PHONE RECYCLING ACT OF 2004

20

21 Article 1. General Provisions

22

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

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

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

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

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



1 (d) In order to reduce the likelihood of illegal disposal of  
2 hazardous materials, it is the intent of this chapter to ensure that all  
3 costs associated with the proper management of used cell phones  
4 is internalized by the producers and consumers of cell phones at  
5 or before the point of purchase, and not at the point of discard.

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

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

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

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

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

26 (j) *An estimated 5 percent of obsolete cell phones are currently*  
27 *being recycled through a mechanism, whereby private sector*  
28 *recyclers provide retailers with a postage paid box for mailing*  
29 *returned cell phones to the recycler at no cost to the retailers. In*  
30 *some instances, the scrap value of these used phones is sufficient*  
31 *for the recycler to either pay the retailer or make a financial*  
32 *contribution on behalf of the retailer to a nonprofit charity. It is the*  
33 *intent of the Legislature that this model system be substantially*  
34 *expanded as a result of the enactment of this act.*

35  
36 Article 2. Definitions  
37

38 42493. For the purposes of this chapter, the following terms  
39 have the following meanings, unless the context clearly requires  
40 otherwise:

- 1 ~~(a) “Board” means the California Integrated Waste~~  
 2 ~~Management Board.~~
- 3 ~~(b) “Cell phone” has the same meaning as a “cellular~~  
 4 ~~telephone,” as defined in Section 25214.50 of the Health and~~  
 5 ~~Safety Code.~~
- 6 ~~(c)~~
- 7 *(a) “Cell phone” means a wireless telephone device that is*  
 8 *designed to send or receive transmissions through a cellular*  
 9 *radiotelephone service, as defined in Section 22.99 of Title 47 of*  
 10 *the Code of Federal Regulations. A cell phone includes the*  
 11 *rechargeable battery that may be connected to that cell phone. A*  
 12 *cell phone does not include a wireless telephone device that is*  
 13 *integrated into the electrical architecture of a motor vehicle.*
- 14 *(b) “Consumer” means a purchaser or owner of a cell phone.*  
 15 *“Consumer” also includes a business, corporation, limited*  
 16 *partnership, nonprofit organization, or governmental entity, but*  
 17 *does not include an entity involved in a wholesale transaction*  
 18 *between a distributor and retailer.*
- 19 ~~(d)~~
- 20 *(c) “Department” means the Department of Toxic Substances*  
 21 *Control.*
- 22 ~~(e)~~
- 23 *(d) “Retailer” means a person who sells a cell phone in the*  
 24 *state to a consumer, including a manufacturer of a cell phone who*  
 25 *sells that cell phone directly to a consumer. A sale includes, but is*  
 26 *not limited to, transactions conducted through sales outlets,*  
 27 *catalogs, or the Internet, or any other similar electronic means, but*  
 28 *does not include a sale that is a wholesale transaction with a*  
 29 *distributor or retailer.*
- 30 ~~(f)~~
- 31 *(e) (1) “Sell” or “sale” means a transfer for consideration of*  
 32 *title or of the right to use, by lease or sales contract, including, but*  
 33 *not limited to, transactions conducted through sales outlets,*  
 34 *catalogs, or the Internet or any other, similar electronic means, but*  
 35 *does not include a wholesale transaction with a distributor or a*  
 36 *retailer.*
- 37 *(2) For purposes of this subdivision and subdivision ~~(e)~~ (d),*  
 38 *“distributor” means a person who sells a cell phone to a retailer.*
- 39 ~~(g)~~



1 (f) “Used cell phone” means a cell phone that is discarded or  
 2 disposed of, and which the department determines, when  
 3 discarded or disposed, would be a hazardous waste pursuant to  
 4 Chapter 6.5 (commencing with Section 25100) of Division 20 of  
 5 the Health and Safety Code.

6  
 7 Article 3. Cell Phone Recycling  
 8

9 42494. (a) On and after July 1, ~~2005~~ 2006, every retailer of  
 10 cell phones sold in this state shall have in place a system for the  
 11 acceptance, collection, reuse, and recycling or proper disposal of  
 12 used cell phones.

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

16 (1) The take-back from the consumer of a used cell phone that  
 17 the retailer sold or previously sold to the consumer, at no cost to  
 18 that consumer. *The retailer may require proof of purchase.*

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

22 ~~(3) The creation and maintenance of a toll-free telephone~~  
 23 ~~number and Internet Web site where a consumer may obtain~~  
 24 ~~information on no-cost opportunities to recover, reuse, and recycle~~  
 25 ~~or properly dispose of used cell phones as described in paragraphs~~  
 26 ~~(1) and (2).~~

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

30 ~~(5)~~

31 (3) If the retailer delivers a cell phone directly to a consumer  
 32 in this state, the system provides the consumer, at the time of  
 33 delivery, with a mechanism for the return of used cell phones for  
 34 reuse, recycling, or proper disposal, at no cost to the consumer.

35 (4) *Make information available to consumers about cell phone*  
 36 *recycling opportunities provided by the retailer and encourage*  
 37 *consumers to utilize those opportunities. This information may*  
 38 *include, but is not limited to, one or more of the following:*

39 (A) *Point-of-purchase signage or display.*



1 (B) Written materials provided to the consumer at the time of  
2 purchase or delivery, or both.

3 (C) Reference to the cell phone recycling opportunity in retailer  
4 advertising or other promotional materials, or both.

5 (D) Direct communications with the consumer at the time of  
6 purchase.

7 42495. On and after July 1, 2005, ~~it shall be 2006, it is~~  
8 unlawful to sell a cell phone to a consumer in this state unless the  
9 retailer of that cell phone complies with this chapter.

10 ~~42495.1. (a) On or before July 1, 2006, and annually~~  
11 ~~thereafter as determined by the department, each retailer of a cell~~  
12 ~~phone who sells cell phones in this state shall do all of the~~  
13 ~~following:~~

14 ~~(1) Include the following information in any notification~~  
15 ~~submitted to the department pursuant to regulations existing on~~  
16 ~~January 1, 2005, for universal waste handlers:~~

17 ~~(A) The number of cell phones sold by the retailer in the state~~  
18 ~~during the previous year.~~

19 ~~(B) The number of cell phones accepted and or collected from~~  
20 ~~consumers in this state for recycling or proper disposal during the~~  
21 ~~previous year.~~

22 ~~(2) Make information available to consumers, that describes~~  
23 ~~where and how to return, recycle, and dispose of a used cell phone~~  
24 ~~and opportunities and locations for the collection or return of the~~  
25 ~~cell phone, through the use of a toll-free telephone number,~~  
26 ~~Internet Web site, information labeled on the cell phone,~~  
27 ~~information included in the packaging, or information~~  
28 ~~accompanying the sale of a cell phone.~~

29 ~~(b) A retailer may comply with the reporting requirements of~~  
30 ~~paragraph (1) of subdivision (a) by submitting an aggregate report~~  
31 ~~from multiple retailers.~~

32 ~~(c) Any information submitted to the department pursuant to~~  
33 ~~subdivision (a) that is proprietary in nature or a trade secret shall~~  
34 ~~be subject to protection under state laws and regulations governing~~  
35 ~~that information.~~

36

37 Article 4.—Statewide Recycling Goals

38

39 ~~42496.4.—On July 1, 2006, and every three years thereafter, the~~  
40 ~~board shall establish, and update as necessary, statewide recycling~~



1 ~~goals for used cell phones. In implementing this section, the board~~  
2 ~~shall do all of the following:~~

3 ~~(a) Post on its Web site information on the amount of cell~~  
4 ~~phones sold in the state in the previous year as reported to the~~  
5 ~~board.~~

6 ~~(b) Post on its Web site information on the amount of used cell~~  
7 ~~phones recycled in the state in the previous year as reported to the~~  
8 ~~board.~~

9 ~~(c) Post on its Web site a recycling ratio, the numerator of~~  
10 ~~which is the amount in subdivision (a) and the denominator of~~  
11 ~~which is the amount in subdivision (b).~~

12  
13 *Article 4. Statewide Recycling Goals*

14  
15 *42496.4. On July 1, 2007, and each July 1, thereafter, the*  
16 *department shall post on its Web site an estimated California*  
17 *recycling rate for cell phones, the numerator of which shall be the*  
18 *estimated number of cell phones returned for recycling in*  
19 *California during the previous calendar year, and the denominator*  
20 *of which is the number of cell phones estimated to be sold in this*  
21 *state during the previous calendar year.*

22  
23 *Article 5. State Agency Procurement*

24  
25 *42498. (a) A state agency that purchases or leases cell phones*  
26 *shall require each prospective bidder, to certify that it, and its*  
27 *agents, subsidiaries, partners, joint venturers, and subcontractors*  
28 *for the procurement, have complied with this chapter and any*  
29 *regulations adopted pursuant to this chapter, or to demonstrate that*  
30 *this chapter is inapplicable to all lines of business engaged in by*  
31 *the bidder, its agents, subsidiaries, partners, joint venturers, or*  
32 *subcontractors.*

33 *(b) Failure to provide certification pursuant to this section shall*  
34 *render the prospective bidder and its agents, subsidiaries, partners,*  
35 *joint venturers, and subcontractors ineligible to bid on the*  
36 *procurement of cell phones.*

37 *(c) The bid solicitation documents shall specify that the*  
38 *prospective bidder is required to cooperate fully in providing*  
39 *reasonable access to its records and documents that evidence*  
40 *compliance with this chapter.*



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

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

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

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

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

18 ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
19 ~~Section 6 of Article XIII B of the California Constitution because~~  
20 ~~the only costs that may be incurred by a local agency or school~~  
21 ~~district will be incurred because this act creates a new crime or~~  
22 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
23 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
24 ~~the Government Code, or changes the definition of a crime within~~  
25 ~~the meaning of Section 6 of Article XIII B of the California~~  
26 ~~Constitution.~~

