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AMENDED IN ASSEMBLY MAY 31, 2006

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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2202

Introduced by Assembly Member Saldana
(Coauthors: Assembly Members Lieber, Koretz, and Pavley)
(Coauthor: Senator Kuehl)

February 22, 2006

An act to amend Section 25214.10 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2202, as amended, Saldana. Hazardous waste: electronic devices.

(1) Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. Existing law ~~require~~ *requires* these regulations to take effect January 1, 2007, or on or after the date the 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 defines the term "electronic device," for purpose of those provisions, with reference to the Electronic Waste Recycling Act of 2003, which

defines the term “electronic device” as a video display device, as specified, that is identified by the department, pursuant to specified regulations, as a presumed hazardous waste when discarded.

A violation of the hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would define the term “ROHS ~~Directive~~ *directive*” to mean that directive and would revise the definition of “electronic device” for purposes of that sale prohibition to mean, instead, a device that is dependent on electric currents or electromagnetic fields to work properly or is a device for the generation, transfer, or measurement of electric currents or fields, that falls ~~under the categories set out in Annex IA to~~ *within the scope of Article 2 of Directive 2002/96/EC*, that is designed for use with a voltage rating that does not exceed 1000 volts for alternating current and 1500 volts for direct current, and that falls within the scope of, ~~and meets a definition specified in, Article 2.1 of the ROHS Directive~~ *directive*. *The bill would exclude fixed installation electrical, or mechanical, or both electrical and mechanical devices, as defined, from “electric device.”*

The bill would exempt, from the regulations adopted pursuant to those provisions, an electronic device, or a component of such a device, that is: (A) not subject to the ROHS ~~Directive~~ *directive*; (B) *a device, including a medical device, that contain a substance that is used to comply with consumer, health, or safety requirements that are required by the Underwriters Laboratory, the federal government, or the state*; (C) *a device that is refurbished or sold for reuse*; and (D) *a spare part used for the repair and extension of the lifetime of an electronic device*. *The bill would provide that electronic devices that are initially exempted by the ROHS directive but are subsequently subjected to the ROHS directive may not be prohibited from sale in the state until at least 24 months after the effective date of the sale prohibition in the European Union.* The bill would require the regulations adopted by the department, *except for those applicable to video display devices, as defined*, to implement the changes made by the bill to take effect on January 1, 2010.

The bill would require the department’s implementation of these provisions to be consistent with any uniform implementation guidelines for the ROHS directive that are adopted by the European Union or by its member states, and would require the department, *if it finds that the ROHS directive is not consistently implemented by the*

member states of the European Union, to implement these provisions consistent with a specified document.

The bill would require the department to adopt regulations establishing a process by which manufacturers or distributors of electronic devices may seek and exemption or time extension from the sales prohibitions.

Since a violation of those regulations would be a crime, the bill would impose a state mandated local program by creating a new crime.

(2) 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. Section 25214.10 of the Health and Safety Code
2 is amended to read:

3 25214.10. (a) For purposes of this section, the following
4 definitions shall apply:

5 (1) "Electronic device" means a device that meets all of the
6 following conditions:

7 (A) The device is dependent on electric currents or
8 electromagnetic fields to work properly or is a device for the
9 generation, transfer, or measurements of electric currents or
10 fields.

11 (B) The device falls ~~under the categories set out in Annex IA~~
12 ~~to~~ *within the scope of Article 2 of Directive 2002/96/EC*, adopted
13 by the European Parliament and the Council of the European
14 Union on January 27, 2003, and as amended thereafter by the
15 Commission of European Communities.

16 (C) The device is designed for use with a voltage rating that
17 does not exceed 1000 volts for alternating current and 1500 volts
18 for direct current.

19 (D) The device, ~~or a component of the device,~~ falls within the
20 scope of Article ~~2~~ *2.1* of the ROHS directive ~~and meets the~~

1 definition of “electrical and electronic equipment” of point (a) of
2 Article 3 of the ROHS directive.

3 (2) “Electronic device” does not include a fixed installation
4 electrical, or mechanical, or both electrical and mechanical
5 device that is a device electrically wired directly to the fixed
6 electrical system, or connected to fixed mechanical system of a
7 structure, or both the fixed electrical and mechanical system;
8 and cannot be readily disconnected without altering the
9 electrical, or mechanical system connections, or both the
10 electrical and mechanical system connections. An electronic
11 device that is portable and uses an electrical plug as the means
12 to connect to an electrical source is not a fixed installation
13 electrical, or mechanical, or both electrical and mechanical
14 device.

15 (2)

16 (3) “ROHS directive” means Directive 2002/95/EC, adopted
17 by the European Parliament and the Council of the European
18 Union on January 27, 2003, on the restriction of certain
19 hazardous substances in electrical and electronic equipment, as
20 amended thereafter by the Commission of European
21 Communities. (13.2.2003 Official Journal of the European
22 Union).

23 (b) (1) The department shall adopt regulations, in accordance
24 with this section, that prohibit an electronic device from being
25 sold or offered for sale in this state if the electronic device is
26 prohibited from being sold or offered for sale in the European
27 Union on and after its date of manufacture, to the extent that the
28 ROHS Directive *directive*, prohibits that sale due to the presence
29 of certain heavy metals, except as provided in paragraph (2).

30 (2) An electronic device, or a component of an electronic
31 device, that is exempt from the ROHS directive is exempt from
32 any regulation adopted pursuant to paragraph (1).

33 (3) *If an electronic device, or a component of an electronic*
34 *device, that is initially exempted from the ROHS directive is*
35 *subsequently prohibited from being sold or offered for sale in the*
36 *European Union pursuant to the ROHS directive, that electronic*
37 *device or component shall not be prohibited from sale in the state*
38 *until at least 24 months after the effective date of the prohibition*
39 *in the European Union.*

1 (c) (1) ~~Except as provided in paragraph (2), the~~ *The*
2 regulations adopted pursuant to subdivision (b) *as applied to a*
3 *video display device, as defined in subdivision (t) of Section*
4 *42463 of the Public Resources Code, with a screen size of*
5 *greater than four inches, shall take effect January 1, 2007, or on*
6 *or after the date the ROHS-Directive directive takes effect,*
7 *whichever date is later.*

8 (2) ~~The~~ *Except as provided in paragraph (1), the* regulations
9 adopted to implement the changes made in this section by the act
10 of the 2005-06 Regular Session of the Legislature amending this
11 section shall take effect January 1, 2010.

12 (d) The department shall exclude, from the regulations
13 adopted pursuant to this section, the sale of an electronic device;
14 *including, but not limited to, a medical device that is listed under*
15 *category 8 of Annex 1A of Directive 2002/96/EC, adopted by the*
16 *European Parliament and the Council of the European Union on*
17 *January 27, 2003, or as defined under the Federal Food, Drug,*
18 *and Cosmetic Act, Chapter 9 (commencing with Section 301) of*
19 *Title 21 of the United States Code; that contains a substance that*
20 *is used to comply with the consumer, health, or safety*
21 *requirements that are required by the Underwriters Laboratories,*
22 *the federal government, or the state.*

23 (e) In adopting regulations pursuant to this section, the
24 department may not ~~require~~ *prohibit* the manufacture or sale of
25 an electronic device that is different than, or otherwise not
26 prohibited by, the ROHS directive.

27 (f) (1) The department may not adopt any regulations
28 pursuant to this section that impose any requirements or
29 conditions that are in addition to, or more stringent than, the
30 requirements and conditions expressly authorized by this section.

31 (2) In complying with this subdivision, the department shall
32 use, in addition to any other information deemed relevant by the
33 department, the published decisions of the Technical Adaptation
34 Committee and European Union member states that interpret the
35 requirements of the ROHS ~~Directive~~ *directive*.

36 (g) (1) The department's implementation of this section shall
37 be consistent with any uniform implementation guidelines for the
38 ROHS directive that are adopted by the European Union, by its
39 member states, or by both.

1 (2) If the department finds that *any section of* the ROHS
 2 directive is not consistently implemented by the member states of
 3 the European Union, the department’s implementation of this
 4 section shall be consistent with the provisions of the Statutory
 5 Instrument 2005 No. 2748 of the United Kingdom, as in effect on
 6 July 1, 2006.

7 (h) (1) *The department shall adopt regulations establishing a*
 8 *process whereby a manufacturer or distributor of an electronic*
 9 *device or component may seek an exemption or time extension to*
 10 *a sales prohibition pursuant to this section upon demonstration*
 11 *to the department that the device or component meets the criteria*
 12 *developed pursuant to paragraph (2).*

13 (2) *In developing a process, including criteria, for evaluating*
 14 *a request for exemption and time extension, the department shall*
 15 *consult with effected stakeholders, including representatives from*
 16 *the manufacturers, distributors, and environmental groups.*

17 (i) (1) *In order to support the refurbishment and reuse of*
 18 *electronic devices, the department shall adopt regulations*
 19 *allowing an exemption from any sales prohibition pursuant to*
 20 *this section for devices that are refurbished, or sold for reuse, or*
 21 *both refurbished and sold for reuse.*

22 (2) *The department shall adopt regulations allowing for an*
 23 *exemption from the regulations adopted pursuant to this section*
 24 *for spare parts used for the repair and extension of the lifetime of*
 25 *an electronic device.*

26 SEC. 2. No reimbursement is required by this act pursuant to
 27 Section 6 of Article XIII B of the California Constitution because
 28 the only costs that may be incurred by a local agency or school
 29 district will be incurred because this act creates a new crime or
 30 infraction, eliminates a crime or infraction, or changes the
 31 penalty for a crime or infraction, within the meaning of Section
 32 17556 of the Government Code, or changes the definition of a
 33 crime within the meaning of Section 6 of Article XIII B of the
 34 California Constitution.

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