

AMENDED IN SENATE SEPTEMBER 7, 2007

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AMENDED IN SENATE AUGUST 23, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 48

Introduced by Assembly Member Saldana
(Coauthors: Assembly Members Alarcon, Berg, Hancock, Huffman,
Laird, Leno, Levine, Lieber, Nava, and Ruskin)
(Coauthor: Senator Kuehl)

December 4, 2006

An act to add Sections 25214.10.3 and 25214.10.4 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 48, as amended, Saldana. Hazardous waste: electronic equipment.

(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 or offered for sale in the European Union on and after its date of manufacture, due to the presence of certain heavy metals, as specified. Existing law requires these regulations to take effect January 1, 2007, or on or after the date the Directive 2002/95/EC, 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 purposes 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” to mean that directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment and would define the term “electronic equipment” for purposes of the bill’s requirements to mean a device that is dependent on electric currents or electromagnetic fields to work properly or that is a device for the generation, transfer, or measurement of electric currents or fields; that falls within the scope of Article 2 of Directive 2002/96/EC; that is designed for use with a voltage rating that does not exceed 1,000 volts for alternating current and 1,500 volts for direct current; and that falls within the scope of Article 2.1 of the RoHS directive. The bill would exclude fixed-installation devices that are electrical or mechanical, or electrical and mechanical, as specified, from the definition of “electronic equipment.” The bill would also exclude electrical and electronic equipment in aeronautical and aerospace applications, and certain refrigeration equipment from that definition.

The bill would prohibit a producer, as defined, on and after January 1, 2010, from ~~selling or offering~~ *manufacturing* for sale in this state electronic equipment that contains a hazardous substance for which the RoHS directive would prohibit the sale or offering for sale of that electronic equipment in the European Union pursuant to the RoHS directive. A producer would be required to prepare and, at the request of the department, submit to the department, within 28 days of the date of the request, technical documentation or other information showing that electronic equipment sold or offered for sale is not prohibited from sale by the RoHS directive.

The bill would exempt, from those provisions electronic equipment that is: (A) an electronic device that is a video display device or an electronic device, or a component of such a device, that is not subject to the RoHS directive; (B) a medical device that contains a substance that is used to comply with consumer, health, or safety requirements that are required by the Underwriters Laboratories Inc., 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; *and (E) electronic or electrical lighting devices*. If electronic devices are exempted before January 1, 2008, by

the RoHS directive are subsequently subjected to the RoHS directive after that date, the department would be required to adopt regulations requiring a producer to comply with those prohibitions at a date that is at least 24 months after the effective date of the sale prohibition in the European Union.

The bill would require the department's implementation and enforcement of these provisions to be consistent with all 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 also delay until January 1, 2011, the implementation of the bill's requirements for a producer of a major appliance, and until January 2013, for a producer of welding equipment who submits a specified certification to the department. The department would be authorized to require a producer who submits such a certification to pay a fee of not more than \$200 to the department.

The bill would allow a producer to submit a request to the department for an exemption from the bill's requirements, for the use of specified hazardous substances in specified electronic equipment, if there is no technical feasible alternative, available at a reasonable cost, to the use of those hazardous substances or components containing those hazardous substances in the electronic equipment. The department would be authorized to grant or renew an exemption, for a period of not more than 3 years, if the producer submits specified information to the department, including a plan for the proper collection, transportation, and management of the electronic equipment at the end of its useful life. The bill would specify procedures for the granting of an exemption, including procedures for the reimbursement of the department and the protection of trade secrets.

Since a violation of the bill's requirements 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 25214.10.3 is added to the Health and
2 Safety Code, to read:

3 25214.10.3. (a) For the purposes of this section and Section
4 25214.10.4, the following definitions shall apply:

5 (1) “Electronic equipment” 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 measurement of electric currents or fields.

10 (B) The device falls within the scope of Article 2 of Directive
11 2002/96/EC, adopted by the European Parliament and the Council
12 of the European Union on January 27, 2003, and as amended on
13 or before January 1, 2008, by the Commission of European
14 Communities.

15 (C) The device is designed for use with a voltage rating that
16 does not exceed 1,000 volts for alternating current and 1,500 volts
17 for direct current.

18 (D) The device falls within the scope of Article 2.1 of the RoHS
19 directive.

20 (2) “Electronic equipment” does not include any of the
21 following:

22 (A) A fixed-installation device that is electrical or mechanical,
23 or electrical and mechanical, that is electrically wired directly to
24 the fixed electrical system, or connected to the fixed mechanical
25 system of a structure, or both the fixed electrical and mechanical
26 system, and that cannot be readily disconnected without altering
27 the electrical or mechanical system connections, or both the
28 electrical and mechanical system connections. An electronic device
29 that is portable and uses an electrical plug as the means to connect
30 to an electrical source is not a fixed-installation electrical or
31 mechanical device, or both electrical and mechanical device.

32 (B) Electrical and electronic equipment in all military,
33 commercial, and general aeronautical and aerospace applications,
34 including equipment used to test or monitor aeronautical or
35 aerospace applications.

36 (C) Commercial refrigeration equipment that is subject to the
37 recycling requirements of Article 10.1 (commencing with Section
38 25211).

1 (D) An “electronic device” as defined in Section 25214.10.

2 (E) A medical device that meets both of the following
3 conditions:

4 (i) Is listed under category 8 of Annex 1A of Directive
5 2002/96/EC, adopted by the European Parliament and the Council
6 of the European Union on January 27, 2003, or is defined as a
7 medical device under the federal Food, Drug, and Cosmetic Act
8 (Chapter 9 (commencing with Section 301) of Title 21 of the
9 United States Code).

10 (ii) Contains a substance that is used to comply with the
11 consumer, health, or safety requirements that are required by the
12 Underwriters Laboratories Inc., the federal government, or the
13 state.

14 (F) Electronic equipment that was initially manufactured and
15 sold on or before January 1, 2010, and then subsequently
16 refurbished and sold or recovered from the initial consumer and
17 reused, or otherwise resold.

18 (G) Electronic equipment that was initially manufactured for
19 sale on or before January 1, 2010, and then subsequently leased,
20 resold, financed, brokered, or distributed.

21 (H) Electronic equipment that is a replacement or spare part for
22 electronic equipment that was initially manufactured and sold on
23 or before January 1, 2010.

24 (I) Electronic equipment ~~that is~~ *or components that are* exempt
25 from the RoHS directive.

26 (J) *Electronic or electrical lighting devices.*

27 (3) “Hazardous substance” means any substance for which the
28 RoHS directive prohibits the sale, or offering for sale, of electronic
29 equipment containing that substance.

30 (4) “Producer” means a person who, irrespective of the selling
31 technique used, does any of following:

32 (A) Manufactures and sells electronic equipment under the
33 producer’s own brand.

34 (B) Resells, under the producer’s own brand, electronic
35 equipment produced by other suppliers. For the purposes of this
36 section, a person who resells electronic equipment is not the
37 producer of that electronic equipment, if the brand of the producer
38 appears on the equipment, as provided in subparagraph (A).

39 (5) “RoHS directive” means the directive on the restriction of
40 the use of certain hazardous substances in electrical and electronic

1 equipment RoHS, and is cited as Directive 2002/95/EC, adopted
2 by the European Parliament and the Council of the European Union
3 on January 27, 2003, on the restriction of certain hazardous
4 substances in electronic equipment, as amended on or before
5 January 1, 2008, (13.2.2003 Official Journal of the European
6 Union).

7 (b) (1) Unless granted an exemption pursuant to Section
8 25214.10.4, or except as provided in paragraphs (2) and (3), on
9 and after January 1, 2010, a producer shall not ~~sell or offer~~
10 *manufacture* for sale, in this state, electronic equipment that
11 contains a hazardous substance for which the RoHS directive would
12 prohibit the sale, or offering for sale, of that electronic equipment
13 in the European Union.

14 (2) A producer of a major appliance, as defined in Section 42166
15 of the Public Resources Code, that is electronic equipment *as*
16 *defined in this section* and subject to the recycling requirements
17 of Article 10.1 (commencing with Section 25211), shall have until
18 January 1, 2011, to comply with the requirements of this section
19 with regard to that major appliance.

20 (3) A producer of welding equipment, as used in accordance,
21 with Section 4795 of Title 8 of the Code of California Regulations,
22 may, for each affected model, no later than November 30, 2009,
23 certify under penalty of perjury to the department that the producer
24 is making efforts to comply with this section. A model of welding
25 equipment for which a certificate is submitted to the department
26 shall have until January 1, 2013, to comply with the requirements
27 of this section. The department may require a producer to submit
28 a fee for certification of not more than two hundred dollars (\$200)
29 per certificate for the department's costs of accepting and
30 acknowledging that certificate.

31 (4) A producer shall prepare and, at the request of the
32 department, submit to the department, within 28 days of the date
33 of the request, technical documentation or other information
34 showing that electronic equipment sold or offered for sale by that
35 producer is not prohibited from sale by the RoHS directive.

36 (5) If electronic equipment that is exempted before January 1,
37 2008, from the RoHS directive, is subsequently prohibited on or
38 after January 1, 2008, from being sold or offered for sale in the
39 European Union pursuant to the RoHS directive, or pursuant to
40 any amendments made to the RoHS directive on and after January

1 1, 2008, the department shall adopt regulations specifying that a
2 producer of that electronic equipment sold or offered shall comply
3 with paragraph (1) with regard to that electronic equipment at a
4 date that is at least 24 months after the effective date of the
5 prohibition of that sale in the European Union.

6 (c) The department shall implement and enforce this section
7 and Section 25214.10.4, in accordance with all of the following:

8 (1) The department shall not prohibit the manufacture or sale
9 of electronic equipment that is different than, or otherwise not
10 prohibited by the RoHS directive.

11 (2) The department shall not impose any requirements or
12 conditions that are in addition to, or more stringent than, the
13 requirements and conditions expressly authorized by this section.

14 (3) (A) The department's implementation and enforcement
15 section shall be consistent with any uniform implementation
16 guidelines for the RoHS directive that are adopted by the European
17 Union, by its member states, or by both.

18 (B) If the department finds that any section of the RoHS
19 directive is not consistently implemented by the member states of
20 the European Union, the department's implementation and
21 enforcement of this section and Section 25214.10.4 shall be
22 consistent with the provisions of the Statutory Instrument 2005
23 No. 2748 of the United Kingdom, as in effect on July 1, 2006.

24 SEC. 2. Section 25214.10.4 is added to the Health and Safety
25 Code, to read:

26 25214.10.4. (a) A producer may submit a request to the
27 department for an exemption from the prohibition of subdivision

28 (b) of Section 25214.10.3 for the use of a specified hazardous
29 substance in specified electronic equipment if there is no technical
30 feasible alternative, available at a reasonable cost, to the use of
31 that specified hazardous substance or component containing that
32 hazardous substance in electronic equipment. The department may
33 grant a producer an exemption from the prohibition of subdivision
34 (b) of Section 25214.10.3, or renew an exemption, for a period of
35 not more than three years, if all of the following conditions are
36 met:

37 (1) The producer of the electronic equipment submits a request
38 for an initial or renewed exemption to the department that specifies
39 the hazardous substance in the electronic equipment for which an

1 exemption is requested, along with the supporting information
2 required by subdivision (b).

3 (2) The supporting information submitted by the producer
4 pursuant to subdivision (b) demonstrates that the electronic
5 equipment is eligible for the exemption.

6 (3) The producer requesting the exemption enters into a cost
7 reimbursement agreement with the department, pursuant to
8 subdivision (e), and complies with the terms of that agreement.

9 (b) The supporting information that a producer shall submit to
10 the department, before the department may grant or renew an
11 exemption pursuant to this section, shall include all of the
12 following:

13 (1) The name of the producer requesting the exemption and the
14 name, position, and contact information for the person who is the
15 producer’s contact person on all matters concerning the exemption.

16 (2) An identification and description of the hazardous substance,
17 including the quantity of those hazardous substance, and the
18 electronic equipment for which the exemption is requested.

19 (3) For each use for which an exemption is requested,
20 information that fully and clearly demonstrates that there is no
21 technically feasible alternative, available at a reasonable cost, to
22 the use of that hazardous substance, or component containing that
23 hazardous substance in the electronic equipment. This information
24 shall include, but is not limited to, a description of past, current,
25 and planned future efforts to seek or develop those alternatives, a
26 description of all alternatives that have been considered, and an
27 explanation of the technical or economic reasons as to why each
28 alternative is not satisfactory.

29 (4) Information that fully and clearly demonstrates that the use
30 of the specified hazardous substance in the electronic equipment
31 is constructed so as to prevent the release of the specified hazardous
32 substance to the environment.

33 (5) (A) A feasible, effective, detailed, and complete plan for
34 the proper collection, transportation, and management of the
35 electronic equipment at the end of its useful life, including removal
36 and proper management of the hazardous substance contained in
37 the product, and information fully and clearly demonstrating that
38 the producer, individually, or in conjunction with an industry or
39 trade group, is committed to and capable of implementing the plan.
40 The plan shall include an education and outreach component to

1 ensure that users of the product are aware of available collection
2 opportunities and legal requirements for management of the product
3 once it becomes a waste.

4 (B) An exemption granted pursuant to this section shall become
5 null and void if the producer individually, or in conjunction with
6 an industry or trade group, has not implemented the plan submitted
7 in support of the exemption request within six months of the
8 effective date of the exemption.

9 (6) A copy of all similar exemption requests, including
10 supporting documentation, submitted by the applicant to other
11 jurisdictions, and a copy of that jurisdiction’s response to the
12 exemption request.

13 (c) A producer who requests an exemption, or an exemption
14 renewal, pursuant to this section shall enter into a written
15 agreement with the department in accordance with the procedures
16 set fourth in Article 9.2 (commencing with Section 25206.1), for
17 reimbursement of all costs incurred by the department in processing
18 and responding to the request.

19 (d) (1) The department shall treat as confidential any
20 information provided pursuant to this section that is a trade secret
21 and that is identified at the time of submission by a producer, in
22 the same manner as the procedures adopted by the department
23 pursuant to Section 25173 with regard to hazardous waste handling
24 and disposal. Any information that is not a trade secret, or that is
25 not identified by the producer as a trade secret, shall be made
26 available to the public upon request pursuant to the California
27 Public Records Act (Chapter 3.5 (commencing with Section 6250)
28 of Division 7 of Title 1 of the Government Code).

29 (2) For purposes of this section “trade secret” has the same
30 meaning as defined in Section 25173.

31 (e) (1) The department shall grant or deny an exemption
32 requested pursuant to this section no later than 180 calendar days
33 after receiving the exemption request, including all information
34 determined by the department to be necessary to determine if the
35 exemption request complies with the requirements of this section.

36 (2) An exemption shall not be deemed to have been granted if
37 the department fails to grant or deny the exemption request within
38 the time limit specified in paragraph (1).

1 (3) Nothing in this subdivision shall preclude the applicant and
2 the department from mutually agreeing to an extension of the time
3 limit specified in paragraph (1).

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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