

**Assembly Bill No. 48**

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Passed the Assembly September 12, 2007

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*Chief Clerk of the Assembly*

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Passed the Senate September 11, 2007

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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, 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 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; (D) a spare part used for the repair and extension of the lifetime of an electronic device; and (E) an electronic or electrical lighting device. 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 technically 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.

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

SECTION 1. Section 25214.10.3 is added to the Health and Safety Code, to read:

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

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

(A) The device 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.

(B) The device falls within the scope of Article 2 of Directive 2002/96/EC, adopted by the European Parliament and the Council

of the European Union on January 27, 2003, and as amended on or before January 1, 2008, by the Commission of European Communities.

(C) The device 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.

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

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

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

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

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

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

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

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

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

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

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

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

(I) Electronic equipment or components that are exempt from the RoHS directive.

(J) Electronic or electrical lighting devices.

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

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

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

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

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

(b) (1) Unless granted an exemption pursuant to Section 25214.10.4, or except as provided in paragraphs (2) and (3), on and after January 1, 2010, a producer shall not manufacture 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.

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

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

(4) A producer shall 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 by that producer is not prohibited from sale by the RoHS directive.

(5) If electronic equipment that is exempted before January 1, 2008, from the RoHS directive, is subsequently prohibited on or after January 1, 2008, from being sold or offered for sale in the European Union pursuant to the RoHS directive, or pursuant to any amendments made to the RoHS directive on and after January 1, 2008, the department shall adopt regulations specifying that a producer of that electronic equipment sold or offered shall comply with paragraph (1) with regard to that electronic equipment at a date that is at least 24 months after the effective date of the prohibition of that sale in the European Union.

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

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

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

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

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

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

25214.10.4. (a) A producer may submit a request to the department for an exemption from the prohibition of subdivision (b) of Section 25214.10.3 for the use of a specified hazardous substance in specified electronic equipment if there is no technical feasible alternative, available at a reasonable cost, to the use of that specified hazardous substance or component containing that hazardous substance in electronic equipment. The department may grant a producer an exemption from the prohibition of subdivision (b) of Section 25214.10.3, or renew an exemption, for a period of not more than three years, if all of the following conditions are met:

(1) The producer of the electronic equipment submits a request for an initial or renewed exemption to the department that specifies the hazardous substance in the electronic equipment for which an exemption is requested, along with the supporting information required by subdivision (b).

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

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

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

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

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

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

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

(5) (A) A feasible, effective, detailed, and complete plan for the proper collection, transportation, and management of the electronic equipment at the end of its useful life, including removal and proper management of the hazardous substance contained in the product, and information fully and clearly demonstrating that the producer, individually, or in conjunction with an industry or trade group, is committed to and capable of implementing the plan. The plan shall include an education and outreach component to ensure that users of the product are aware of available collection opportunities and legal requirements for management of the product once it becomes a waste.

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

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

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

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

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

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

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

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

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











Approved \_\_\_\_\_, 2007

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*Governor*