

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1391

Introduced by Assembly Member Brownley

February 23, 2007

An act to amend Section ~~5411.5~~ of, and to add Section 5411.6 to, the Health and Safety Code, and to amend Sections 13201 and 13271 of the ~~Water~~ 42476 of, and to add Section 42457.6 to, the Public Resources Code, relating to ~~water~~ *electronic waste*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1391, as amended, Brownley. ~~Water quality~~. *Electronic waste*.

The Electronic Waste Recycling Act of 2003 requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer. Those fees are deposited in the Electronic Waste Recovery and Recycling Account, and the California Integrated Waste Management Board and the Department of Toxic Substances Control are continuously appropriated the money in the account to make electronic waste recovery payments and recycling payments and to make payments to manufacturers, to cover the costs of collecting, consolidating, transporting, receiving, processing, and recycling covered electronic waste in this state.

The act requires each manufacturer of a covered electronic device to make information available to consumers, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information

accompanying the sale of covered electronic devices. A violation of the act is a crime.

This bill would require a retailer that sells a covered electronic device to provide a customer at the point of sale of the covered electronic device with the board's Internet Web site, which describes where and how to return, recycle, and dispose of a covered electronic device and locations for the collection or return of the device. A retailer would be required to provide this information to a customer at the point of sale of a covered electronic device through a sign or written material, or on the sales receipt. This provision would be operative on July 1, 2009.

By establishing these requirements on a retailer of a covered electronic device, the bill would impose a state-mandated local program by creating a new crime.

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.

~~(1) Existing law generally requires a person who, without regard to intent or negligence, causes or permits any sewage or other waste, or the effluent of treated sewage or other waste, to be discharged in or on any waters of the state, or discharged in or deposited where it is, or probably will be, discharged in or on any waters of the state, as soon as that person has knowledge of the discharge, to immediately notify the local health officer or the director of environmental health of the discharge. A person who fails to notify in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine that is not less than \$500 nor more than \$1,000, or imprisonment for less than one year, or both.~~

~~This bill, instead, would provide that a person who fails to notify in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine of not more than \$5,000 or imprisonment in a county jail for less than one year, or both. The bill would also subject that person to a civil penalty in an amount not to exceed \$1,000. The bill would provide that a person who willfully violates, or knowingly or intentionally fails to notify in accordance with, these requirements is guilty of a misdemeanor that is punishable by a fine of not more than \$20,000 or imprisonment in a county jail for up to one year, or both.~~

The bill would also subject that person to a civil penalty in an amount not to exceed \$5,000.

~~(2) The Porter-Cologne Water Quality Control Act generally requires a person who causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, as soon as that person has knowledge of the discharge and other requirements are met, to immediately notify the Office of Emergency Services of the discharge in accordance with specified spill reporting requirements. The act requires the Office of Emergency Services to immediately notify the appropriate California regional water quality control board and the local health officer and administrator of environmental health of the discharge. A person who fails to notify in accordance with these requirements, with a certain exception, is guilty of a misdemeanor that is punishable by a fine of not more than \$20,000, imprisonment for not more than one year, or both.~~

This bill, instead, would require that person, as soon as that person has knowledge of the described discharge, to immediately notify the local health officer and the Office of Emergency Services of the discharge. The Office of Emergency Services would then be required to immediately notify the appropriate regional board and the director of environmental health of the discharge. The bill would impose a state-mandated local program by expanding the definition of a crime.

~~(3) The bill would provide that a person shall not be subject to criminal liability imposed under both (1) and (2), above, for the same act or failure to act.~~

~~(4) The act prescribes specific eligibility requirements for 8 of the 9 members of a California regional water quality control board.~~

This bill would require that member of the regional board for which no specific eligibility requirements are established to have special competence in the area of public health.

~~(5) 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 42457.6 is added to the Public Resources
2 Code, to read:

3 42457.6. (a) A retailer that sells a covered electronic device
4 shall provide a customer at the point of sale of the covered
5 electronic device with the board's Internet Web site, which
6 describes where and how to return, recycle, and dispose of a
7 covered electronic device and opportunities and locations for the
8 collection or return of a covered electronic device. The retailer
9 shall provide this information to a customer at the point of sale of
10 a covered electronic device through a sign or written material, or
11 on the sales receipt.

12 (b) This section shall become operative on July 1, 2009.

13 SEC. 2. Section 42476 of the Public Resources Code is
14 amended to read:

15 42476. (a) The Electronic Waste and Recovery and Recycling
16 Account is hereby established in the Integrated Waste Management
17 Fund. All fees collected pursuant to this chapter shall be deposited
18 in the account. Notwithstanding Section 13340 of the Government
19 Code, the funds in the account are hereby continuously
20 appropriated, without regard to fiscal year, for the following
21 purposes:

22 (1) To pay refunds of the covered electronic waste recycling
23 fee imposed under Section 42464.

24 (2) To make electronic waste recovery payments to an
25 authorized collector of covered electronic waste pursuant to Section
26 42479.

27 (3) To make electronic waste recycling payments to covered
28 electronic waste recyclers pursuant to Section 42479.

29 (4) To make payments to manufacturers pursuant to subdivision
30 (g).

31 (b) (1) The money in the account may be expended for the
32 following purposes only upon appropriation by the Legislature in
33 the annual Budget Act:

34 (A) For the administration of this chapter by the board and the
35 department.

36 (B) To reimburse the State Board of Equalization for its
37 administrative costs of registering, collecting, making refunds, and

1 auditing retailers and consumers in connection with the covered
2 electronic waste recycling fee imposed under Section 42464.

3 (C) To provide funding to the department to implement and
4 enforce Chapter 6.5 (commencing with Section 25100) of Division
5 20 of the Health and Safety Code, as that chapter relates to covered
6 electronic devices, and any regulations adopted by the department
7 pursuant to that chapter.

8 (D) To establish the public information program specified in
9 subdivision (d).

10 (2) Any fines or penalties collected pursuant to this chapter shall
11 be deposited in the Electronic Waste Penalty Subaccount, which
12 is hereby established in the account. The funds in the Electronic
13 Waste Penalty Subaccount may be expended by the board or
14 department only upon appropriation by the Legislature.

15 (c) Notwithstanding Section 16475 of the Government Code,
16 any interest earned upon funds in the Electronic Waste Recovery
17 and Recycling Account shall be deposited in that account for
18 expenditure pursuant to this chapter.

19 (d) Not more than 1 percent of the funds annually deposited in
20 the Electronic Waste Recovery and Recycling Account shall be
21 expended for the purposes of establishing the public information
22 program to educate the public in the hazards of improper covered
23 electronic device storage and disposal and on the opportunities to
24 recycle covered electronic devices, *including the development of*
25 *the information required to be provided to retailers and their*
26 *customers pursuant to Section 42457.6.*

27 (e) The board shall adopt regulations specifying cancellation
28 methods for the recovery, processing, or recycling of covered
29 electronic waste.

30 (f) The board may pay an electronic waste recycling payment
31 or electronic waste recovery payment for covered electronic waste
32 only if all of the following conditions are met:

33 (1) The covered electronic waste, including any residuals from
34 the processing of the waste, is handled in compliance with all
35 applicable statutes and regulations.

36 (2) The manufacturer or the authorized collector or recycler of
37 the electronic waste provide a cost free and convenient opportunity
38 to recycle electronic waste, in accordance with the legislative intent
39 specified in subdivision (b) of Section 42461.

1 (3) If the covered electronic waste is processed, the covered
2 electronic waste is processed in this state according to the
3 cancellation method authorized by the board.

4 (4) The board declares that the state is a market participant in
5 the business of the recycling of covered electronic waste for all of
6 the following reasons:

7 (A) The fee is collected from the state's consumers for covered
8 electronic devices sold for use in the state.

9 (B) The purpose of the fee and subsequent payments is to
10 prevent damage to the public health and the environment from
11 waste generated in the state.

12 (C) The recycling system funded by the fee ensures that
13 economically viable and sustainable markets are developed and
14 supported for recovered materials and components in order to
15 conserve resources and maximize business and employment
16 opportunities within the state.

17 (g) (1) The board may make a payment to a manufacturer that
18 takes back a covered electronic device from a consumer in this
19 state for purposes of recycling the device at a processing facility.
20 The amount of the payment made by the board shall equal the
21 value of the covered electronic waste recycling fee paid for that
22 device. To qualify for a payment pursuant to this subdivision, the
23 manufacturer shall demonstrate both of the following to the board:

24 (A) The covered electronic device for which payment is claimed
25 was used in this state.

26 (B) The covered electronic waste for which a payment is
27 claimed, including any residuals from the processing of the waste,
28 has been, and will be, handled in compliance with all applicable
29 statutes and regulations.

30 (2) A covered electronic device for which a payment is made
31 under this subdivision is not eligible for an electronic waste
32 recovery payment or an electronic waste recycling payment under
33 Section 42479.

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

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 SECTION 1. ~~Section 5411.5 of the Health and Safety Code is~~
4 ~~amended to read:~~

5 5411.5. ~~(a) Any person who, without regard to intent or~~
6 ~~negligence, causes or permits any sewage or other waste, or the~~
7 ~~effluent of treated sewage or other waste to be discharged in or on~~
8 ~~any waters of the state, or discharged in or deposited where it is,~~
9 ~~or probably will be, discharged in or on any waters of the state, as~~
10 ~~soon as that person has knowledge of the discharge, shall~~
11 ~~immediately notify the local health officer or the director of~~
12 ~~environmental health of the discharge.~~

13 ~~(b) Except as provided in subdivision (c), any person who fails~~
14 ~~to provide the notice required by this section is guilty of a~~
15 ~~misdemeanor, and shall be punished by a fine of not more than~~
16 ~~five thousand dollars (\$5,000) or imprisonment in a county jail for~~
17 ~~less than one year, or both.~~

18 ~~(c) Any person who willfully violates, or knowingly or~~
19 ~~intentionally fails to provide the notice required by, this section is~~
20 ~~guilty of a misdemeanor, and shall be punished by a fine of not~~
21 ~~more than twenty thousand dollars (\$20,000) or imprisonment in~~
22 ~~a county jail for less than one year, or both.~~

23 ~~(d) The notification required by this section shall not apply to~~
24 ~~a discharge authorized by law and in compliance with waste~~
25 ~~discharge requirements or other requirements established by the~~
26 ~~appropriate regional water quality control board or the State Water~~
27 ~~Resources Control Board.~~

28 ~~(e) A person shall not be subject to criminal liability imposed~~
29 ~~pursuant to this section and to criminal liability imposed pursuant~~
30 ~~to Section 13271 of the Water Code for the same act or failure to~~
31 ~~act.~~

32 SEC. 2 ~~Section 5411.6 is added to the Health and Safety Code,~~
33 ~~to read:~~

34 5411.6. ~~(a) Except as provided in subdivision (b), a person~~
35 ~~who, without regard to intent or negligence, fails to provide the~~
36 ~~notice required by subdivision (a) of Section 5411.5 is subject to~~
37 ~~a civil penalty imposed by the court in an amount not to exceed~~
38 ~~one thousand dollars (\$1,000).~~

39 ~~(b) A person who willfully violates, or knowingly or~~
40 ~~intentionally fails to provide the notice required by, subdivision~~

1 (a) of Section 5411.5 is subject to a civil penalty imposed by the
2 court in an amount not to exceed five thousand dollars (\$5,000).

3 (e) The remedies described in this section are in addition to,
4 and do not supersede or limit, any other civil or criminal remedy.

5 SEC. 3 Section 13201 of the Water Code is amended to read:

6 13201. (a) There is a regional board for each of the regions
7 described in Section 13200. Each board shall consist of the
8 following nine members appointed by the Governor, each of whom
9 shall represent and act on behalf of all the people and shall reside
10 or have a principal place of business within the region:

11 (1) One person associated with water supply, conservation, and
12 production.

13 (2) One person associated with irrigated agriculture.

14 (3) One person associated with industrial water use.

15 (4) One person associated with municipal government. Upon
16 the next vacancy occurring in this office on or after January 1,
17 2004, this person shall be a city council member or mayor.

18 (5) One person associated with county government. Upon the
19 next vacancy occurring in this office on or after January 1, 2004,
20 this person shall be a county supervisor.

21 (6) One person from a responsible nongovernmental
22 organization associated with recreation, fish, or wildlife.

23 (7) Three persons not specifically associated with any of the
24 foregoing categories, two of whom shall have special competence
25 in areas related to water quality problems, and one of whom shall
26 have special competence in the area of public health.

27 (b) All persons appointed to a regional board shall be subject
28 to Senate confirmation, but shall not be required to appear before
29 any committee of the Senate for purposes of such confirmation
30 unless specifically requested to appear by the Senate Committee
31 on Rules.

32 (c) Insofar as practicable, appointments shall be made in such
33 manner as to result in representation on the board from all parts
34 of the region.

35 (d) Notwithstanding subdivision (a), if appointments cannot be
36 made pursuant to paragraph (5) of subdivision (a) because of the
37 requirements of Section 13388, those appointments may be made
38 of persons not specifically associated with any category.

39 SEC. 4. Section 13271 of the Water Code is amended to read:

1 ~~13271. (a) (1) Except as provided by subdivision (b), any~~
2 ~~person who, without regard to intent or negligence, causes or~~
3 ~~permits any hazardous substance or sewage to be discharged in or~~
4 ~~on any waters of the state, or discharged or deposited where it is,~~
5 ~~or probably will be, discharged in or on any waters of the state,~~
6 ~~shall, as soon as that person has knowledge of the discharge,~~
7 ~~immediately notify the local health officer and the Office of~~
8 ~~Emergency Services of the discharge in accordance with the spill~~
9 ~~reporting provision of the state toxic disaster contingency plan~~
10 ~~adopted pursuant to Article 3.7 (commencing with Section 8574.16)~~
11 ~~of Chapter 7 of Division 1 of Title 2 of the Government Code.~~

12 ~~(2) The Office of Emergency Services shall immediately notify~~
13 ~~the appropriate regional board and the director of environmental~~
14 ~~health of the discharge. The regional board shall notify the state~~
15 ~~board as appropriate.~~

16 ~~(3) Upon receiving notification of a discharge pursuant to this~~
17 ~~section, the local health officer and the director of environmental~~
18 ~~health shall immediately determine whether notification of the~~
19 ~~public is required to safeguard public health and safety. If so, the~~
20 ~~local health officer and the director of environmental health shall~~
21 ~~immediately notify the public of the discharge by posting notices~~
22 ~~or other appropriate means. The notification shall describe~~
23 ~~measures to be taken by the public to protect the public health.~~

24 ~~(b) The notification required by this section shall not apply to~~
25 ~~a discharge that is in compliance with waste discharge requirements~~
26 ~~or other provisions of this division.~~

27 ~~(e) Any person who fails to provide the notice required by this~~
28 ~~section is guilty of a misdemeanor and shall be punished by a fine~~
29 ~~of not more than twenty thousand dollars (\$20,000) or~~
30 ~~imprisonment in a county jail for not more than one year, or both.~~
31 ~~Except where a discharge to the waters of this state would have~~
32 ~~occurred but for cleanup or emergency response by a public agency,~~
33 ~~this subdivision shall not apply to any discharge to land that does~~
34 ~~not result in a discharge to the waters of this state.~~

35 ~~(d) Notification received pursuant to this section or information~~
36 ~~obtained by use of that notification shall not be used against any~~
37 ~~person providing the notification in any criminal case, except in~~
38 ~~a prosecution for perjury or giving a false statement.~~

39 ~~(e) For substances listed as hazardous wastes or hazardous~~
40 ~~material pursuant to Section 25140 of the Health and Safety Code,~~

1 the state board, in consultation with the Department of Toxic
2 Substances Control, shall by regulation establish reportable
3 quantities for purposes of this section. The regulations shall be
4 based on what quantities should be reported because they may
5 pose a risk to public health or the environment if discharged to
6 groundwater or surface water. Regulations need not set reportable
7 quantities on all listed substances at the same time. Regulations
8 establishing reportable quantities shall not supersede waste
9 discharge requirements or water quality objectives adopted
10 pursuant to this division, and shall not supersede or affect in any
11 way the list, criteria, and guidelines for the identification of
12 hazardous wastes and extremely hazardous wastes adopted by the
13 Department of Toxic Substances Control pursuant to Chapter 6.5
14 (commencing with Section 25100) of Division 20 of the Health
15 and Safety Code. The regulations of the Environmental Protection
16 Agency for reportable quantities of hazardous substances for
17 purposes of the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, as amended (42 U.S.C.
19 Sec. 9601 et seq.) shall be in effect for purposes of the enforcement
20 of this section until the time that the regulations required by this
21 subdivision are adopted.

22 (f) (1) The state board shall adopt regulations establishing
23 reportable quantities of sewage for purposes of this section. The
24 regulations shall be based on the quantities that should be reported
25 because they may pose a risk to public health or the environment
26 if discharged to groundwater or surface water. Regulations
27 establishing reportable quantities shall not supersede waste
28 discharge requirements or water quality objectives adopted
29 pursuant to this division. For purposes of this section, “sewage”
30 means the effluent of a municipal wastewater treatment plant or a
31 private utility wastewater treatment plant, as those terms are
32 defined in Section 13625, except that sewage does not include
33 recycled water, as defined in subdivisions (c) and (d) of Section
34 13529.2.

35 (2) A collection system owner or operator, as defined in
36 paragraph (1) of subdivision (a) of Section 13193, in addition to
37 the reporting requirements set forth in this section, shall submit a
38 report pursuant to subdivision (c) of Section 13193.

39 (g) Except as otherwise provided in this section and Section
40 8589.7 of the Government Code, a notification made pursuant to

1 ~~this section shall satisfy any immediate notification requirement~~
2 ~~contained in any permit issued by a permitting agency. When~~
3 ~~notifying the local health officer and the Office of Emergency~~
4 ~~Services, the person shall include all of the notification information~~
5 ~~required in the permit.~~

6 ~~(h) For the purposes of this section, the reportable quantity for~~
7 ~~perchlorate shall be 10 pounds or more by discharge to the~~
8 ~~receiving waters, unless a more restrictive reporting standard for~~
9 ~~a particular body of water is adopted pursuant to subdivision (e).~~

10 ~~(i) A person shall not be subject to criminal liability imposed~~
11 ~~pursuant to this section and to criminal liability imposed pursuant~~
12 ~~to Section 5411.5 of the Health and Safety Code for the same act~~
13 ~~or failure to act.~~

14 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
15 ~~Section 6 of Article XIII B of the California Constitution because~~
16 ~~the only costs that may be incurred by a local agency or school~~
17 ~~district will be incurred because this act creates a new crime or~~
18 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
19 ~~for a crime or infraction, within the meaning of Section 17556 of~~
20 ~~the Government Code, or changes the definition of a crime within~~
21 ~~the meaning of Section 6 of Article XIII B of the California~~
22 ~~Constitution.~~