

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1535

Introduced by Assembly Member Huffman
(Principal coauthor: Assembly Member Lieber)
(Coauthors: Assembly Members Brownley, Hancock, Leno, Levine,
Saldana, and Wolk)
(Coauthor: Senator Migden)

February 23, 2007

An act to amend Section 25214.10.1 of the Health and Safety Code, ~~and to amend Sections 42463 and 42464 of the Public Resources Code, and to amend Sections 42464.2 and 42465.2 of, to amend, repeal and add Section 42464 of, and to repeal Section 42465.3 of, the Public Resources Code,~~ relating to electronic waste, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1535, as amended, Huffman. Electronic waste: ~~personal computers: fee payment.~~

(1) 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. These fees are deposited in the Electronic Waste Recovery and Recycling Account, and the ~~money moneys~~ in the account ~~is are~~ continuously appropriated to the California Integrated Waste Management Board and the Department of Toxic Substances Control for electronic waste recovery payments and recycling payments and for payments to manufacturers to cover the costs of collecting, consolidating, transporting, receiving, processing, and recycling covered electronic waste in this state. *The*

board is required to review the amount of the fee at least biennially and to adjust the fee based on the sufficiency of revenues in the account to fund the collection, consolidation, and recycling of electronic waste and to administer, enforce, and promote the act, plus a specified prudent reserve.

~~The term “covered electronic device” is defined, for purposes of the act, as a video display device that the department determines is presumed to be, when discarded, a hazardous waste pursuant to the hazardous waste control laws. A violation of the act is a crime.~~

~~This bill would provide that, on and after July 1, 2008, a covered electronic device also includes a personal computer, as defined, thereby imposing a state-mandated local program by creating new crimes. A retailer would be required to collect a fee of \$6 from the consumer at the time of the retail sale of the personal computer, except as specified instead require, as of July 1, 2009, the manufacturer of the covered electronic device to pay the fee on every new or refurbished covered electronic device sold or offered for sale in this state by the manufacturer. Conforming changes to the act would be also be made by the bill with regard to those electronic devices the payment of the fee by a manufacturer. The bill would impose a state-mandated local program by creating a new crime with regard to the payment of the fee.~~

~~The bill would also require the board, when reviewing the amount of the fee, to consider, when adjusting the fee, the relative average cost of recycling a covered electronic device for each of 3 designated device categories, classified by screen size.~~

~~The bill would make an appropriation, because the increased fees imposed on the sales of personal computers authorized by the bill would be deposited in a continuously appropriated fund.~~

~~(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: yes. Fiscal committee: yes.
State-mandated local program: yes.~~

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

- 1 *SECTION 1. Section 25214.10.1 of the Health and Safety Code*
- 2 *is amended to read:*

1 25214.10.1. (a) For purposes of this section, the following
2 definitions shall apply:

3 (1) “Electronic device” means a video display device, as defined
4 in subdivision-(t) (u) of Section 42463 of the Public Resources
5 Code, with a screen size of greater than four inches.

6 (2) “Covered electronic device,” “manufacturer,” and “retailer”
7 have the same meaning as those terms are defined in Section 42463
8 of the Public Resources Code.

9 (b) The department shall adopt regulations that identify
10 electronic devices that the department determines are presumed
11 to be, when discarded, a hazardous waste pursuant to this chapter.

12 ~~(c) (1) Except as provided in subdivision (c), a manufacturer~~
13 ~~of an electronic device that is identified in the regulations adopted~~
14 ~~by the department shall send a notice in accordance with the~~
15 ~~schedule specified in subparagraph (A) or (B), as applicable, of~~
16 ~~paragraph (3), to any retailer that sells that electronic device~~
17 ~~manufactured by the manufacturer. The notice shall identify the~~
18 ~~electronic device, and shall inform the retailer that the electronic~~
19 ~~device is a covered electronic device and is subject to a fee in~~
20 ~~accordance with subdivision (d).~~

21 ~~(2) A manufacturer subject to this subdivision shall also send~~
22 ~~a copy of the notice to the State Board of Equalization.~~

23 ~~(3) The notice required by this subdivision shall be sent in~~
24 ~~accordance with the following schedule:~~

25 ~~(A) On or before October 1, 2004, the manufacturer shall send~~
26 ~~a notice covering any electronic device manufactured by that~~
27 ~~manufacturer that is identified in the regulations adopted by the~~
28 ~~department on or before July 1, 2004, that identify the electronic~~
29 ~~devices that the department determines are presumed to be, when~~
30 ~~discarded, a hazardous waste pursuant to this chapter.~~

31 ~~(B) On or before April 1, 2005, and on or before every April~~
32 ~~1 of each year thereafter, the manufacturer shall send a notice~~
33 ~~covering any electronic device manufactured by that manufacturer~~
34 ~~identified in the regulations adopted by the department pursuant~~
35 ~~to subdivision (b) on or before December 31 of the prior year.~~

36 ~~(4) If a retailer sells a refurbished covered electronic device,~~
37 ~~the manufacturer is required to comply with the notice requirement~~
38 ~~of this subdivision only if the manufacturer directly supplies the~~
39 ~~refurbished covered electronic device to the retailer.~~

40 (d)

1 (c) (1) Except as provided in subdivision ~~(e)~~ (d), a covered
2 electronic device that is identified in the regulations adopted, on
3 or before July 1, 2004, by the department, that identify electronic
4 devices that the department determines are presumed to be, when
5 discarded, a hazardous waste pursuant to this chapter shall, on and
6 after January 1, 2005, be subject to Chapter 8.5 (commencing with
7 Section 42460) of Part 3 of Division 30 of the Public Resources
8 Code, including the fee imposed pursuant to Section 42464 of the
9 Public Resources Code.

10 (2) Except as provided in subdivision ~~(e)~~ (d), a covered
11 electronic device identified in the regulations adopted by the
12 department, pursuant to subdivision (b), shall, on and after July 1
13 of the year subsequent to the year in which the covered electronic
14 device is first identified in the regulations, be subject to Chapter
15 8.5 (commencing with Section 42460) of Part 3 of Division 30 of
16 the Public Resources Code, including the fee imposed pursuant to
17 Section 42464 of the Public Resources Code.

18 ~~(e)~~

19 (d) (1) If the manufacturer of an electronic device that is
20 identified in the regulations adopted by the department pursuant
21 to subdivision (b) obtains the concurrence of the department that
22 an electronic device, when discarded, would not be a hazardous
23 waste, in accordance with procedures set forth in Section
24 66260.200 of Title 22 of the California Code of Regulations, the
25 electronic device shall cease to be a covered electronic device and
26 shall cease to be subject to ~~subdivisions (c) and (d)~~ *subdivision (c)* on
27 the first day of the quarter that begins not less than 30 days after
28 the date that the department provides the manufacturer with a
29 written nonhazardous concurrence for the electronic device
30 pursuant to this subdivision. ~~A manufacturer shall notify each
31 retailer, to which that manufacturer has sold a covered electronic
32 device, that the device has been determined pursuant to this
33 subdivision to be nonhazardous and is no longer subject to a
34 covered electronic recycling fee.~~

35 (2) No later than 10 days after the date that the department issues
36 a written nonhazardous concurrence to the manufacturer, the
37 department shall do both of the following:

38 (A) Post on the department's Web site a copy of the
39 nonhazardous concurrence, including, but not limited to, an

1 identification and description of the electronic device to which the
2 concurrence applies.

3 (B) Send a copy of the nonhazardous concurrence, including,
4 but not limited to, an identification and description of the electronic
5 device to which the concurrence applies, to the California
6 Integrated Waste Management Board and the State Board of
7 Equalization.

8 (f)

9 (e) Notwithstanding Section 42474 of the Public Resources
10 Code, a fine or penalty shall not be assessed on a ~~retailer~~
11 *manufacturer* who unknowingly sells, or offers for sale, in this
12 state a covered electronic device for which the covered electronic
13 waste recycling fee has not been collected or paid, if the failure to
14 collect the fee was due to the failure of the State Board of
15 Equalization to inform the ~~retailer~~ *manufacturer* that the electronic
16 device was subject to the fee.

17 *SEC. 2. Section 42464 of the Public Resources Code is*
18 *amended to read:*

19 42464. (a) On and after January 1, 2005, or as otherwise
20 provided by Section 25214.10.1 of the Health and Safety Code, a
21 consumer shall pay a covered electronic waste recycling fee upon
22 the purchase of a new or refurbished covered electronic device, in
23 the following amounts:

24 (1) Six dollars (\$6) for each covered electronic device with a
25 screen size of less than 15 inches measured diagonally.

26 (2) Eight dollars (\$8) for each covered electronic device with
27 a screen size greater than or equal to 15 inches but less than 35
28 inches measured diagonally.

29 (3) Ten dollars (\$10) for each covered electronic device with a
30 screen size greater than or equal to 35 inches measured diagonally.

31 (b) Except as provided in subdivision (d), a retailer shall collect
32 from the consumer a covered electronic waste recycling fee at the
33 time of the retail sale of a covered electronic device.

34 (c) (1) A retailer may retain 3 percent of the covered electronic
35 waste recycling fee as reimbursement for all costs associated with
36 the collection of the fee and shall transmit the remainder of the fee
37 to the state pursuant to Section 42464.4.

38 (2) If a retailer makes an election pursuant to paragraph (2) of
39 subdivision (d), and the conditions of subparagraphs (A), (B), and
40 (C) of paragraph (2) of subdivision (d) are met, the vendor, in lieu

1 of the retailer, may retain 3 percent of the covered electronic waste
2 recycling fee as reimbursement for all costs associated with the
3 collection of the fee and the vendor shall transmit the remainder
4 of the fee to the state pursuant to Section 42464.4.

5 (d) (1) If a retailer elects to pay the covered electronic waste
6 recycling fee on behalf of the consumer, the retailer shall provide
7 an express statement to that effect on the receipt given to the
8 consumer at the time of sale. If a retailer elects to pay the covered
9 electronic waste recycling fee on behalf of the consumer, the fee
10 is a debt owed by the retailer to the state, and the consumer is not
11 liable for the fee.

12 (2) A retailer may elect to pay the covered electronic waste
13 recycling fee on behalf of the consumer by paying the covered
14 electronic waste recycling fee to the retailer’s vendor, but only if
15 all of the following conditions are met:

16 (A) The vendor is registered with the State Board of Equalization
17 to collect and remit the covered electronic waste recycling fee
18 pursuant to this chapter.

19 (B) The vendor holds a valid seller’s permit pursuant to Article
20 2 (commencing with Section 6066) of Chapter 2 of Part 1 of
21 Division 2 of the Revenue and Taxation Code.

22 (C) The retailer pays the covered electronic waste recycling fee
23 to the vendor that is separately stated on the vendor’s invoice to
24 the retailer.

25 (D) The retailer provides an express statement on the invoice,
26 contract, or other record documenting the sale that is given to the
27 consumer, that the covered electronic waste recycling fee has been
28 paid on behalf of the consumer.

29 (3) For the purpose of making the election in paragraph (2), if
30 the conditions set forth in subparagraphs (A), (B), (C), and (D) of
31 paragraph (2), are met, the covered electronic waste recycling fee
32 is a debt owed by the vendor to the state, and the retailer is not
33 liable for the fee.

34 (e) The retailer shall separately state the covered electronic
35 waste recycling fee on the receipt given to the consumer at the
36 time of sale.

37 (f) On or before August 1, 2005, and, thereafter, no more
38 frequently than annually, and no less frequently than biennially,
39 the board, in collaboration with the department, shall review, at a
40 public hearing, the covered electronic waste recycling fee and shall

1 make any adjustments to the fee to ensure that there are sufficient
2 revenues in the account to fund the covered electronic waste
3 recycling program established pursuant to this chapter. Adjustments
4 to the fee that are made on or before August 1, shall apply to the
5 calendar year beginning the following January 1. The board shall
6 base an adjustment of the covered electronic waste recycling fee
7 on both of the following factors:

8 (1) The sufficiency, and any surplus, of revenues in the account
9 to fund the collection, consolidation, and recycling of covered
10 electronic waste that is projected to be recycled in the state.

11 (2) The sufficiency of revenues in the account for the board and
12 the department to administer, enforce, and promote the program
13 established pursuant to this chapter, plus a prudent reserve not to
14 exceed 5 percent of the amount in the account.

15 *(g) This section shall become inoperative on July 1, 2009, and,
16 as of January 1, 2010, is repealed, unless a later enacted statute,
17 that becomes operative on or before January 1, 2010, deletes or
18 extends the dates on which it becomes inoperative and is repealed.*

19 *SEC. 3. Section 42464 is added to the Public Resources Code,
20 to read:*

21 *42464. (a) On and after July 1, 2009, or as otherwise provided
22 by Section 25214.10.1 of the Health and Safety Code, a
23 manufacturer shall pay a covered electronic waste recycling fee
24 on every new or refurbished covered electronic device sold or
25 offered for sale in this state by the manufacturer or by a retailer,
26 in the following amounts:*

27 *(1) Six dollars (\$6) for each covered electronic device with a
28 screen size of less than 15 inches measured diagonally.*

29 *(2) Eight dollars (\$8) for each covered electronic device with
30 a screen size greater than or equal to 15 inches but less than 35
31 inches measured diagonally.*

32 *(3) Ten dollars (\$10) for each covered electronic device with a
33 screen size greater than or equal to 35 inches measured diagonally.*

34 *(b) On or before August 1, 2009, and thereafter, no more
35 frequently than annually, and no less frequently than biennially,
36 the board, in collaboration with the department, shall review, at
37 a public hearing, the covered electronic waste recycling fee and
38 shall make any adjustments to the fee to ensure that there are
39 sufficient revenues in the account to fund the covered electronic
40 waste recycling program established pursuant to this chapter.*

1 *Adjustments to the fee that are made on or before August 1, shall*
2 *apply to the calendar year beginning the following January 1. The*
3 *board shall base an adjustment of the covered electronic waste*
4 *recycling fee on all of the following factors:*

5 *(1) The sufficiency, and any surplus, of revenues in the account*
6 *to fund the collection, consolidation, and recycling of covered*
7 *electronic waste that is projected to be recycled in the state.*

8 *(2) The sufficiency of revenues in the account for the board and*
9 *the department to administer, enforce, and promote the program*
10 *established pursuant to this chapter, plus a prudent reserve not to*
11 *exceed 5 percent of the amount in the account.*

12 *(3) The relative average cost of recycling a covered electronic*
13 *device for each category specified in paragraphs (1) to (3),*
14 *inclusive, of subdivision (a).*

15 *(c) A manufacturer is not required to pay the covered electronic*
16 *waste fee for a covered electronic device for which a payment has*
17 *been made pursuant to this section.*

18 *(d) This section shall become operative July 1, 2009.*

19 *SEC. 4. Section 42464.2 of the Public Resources Code is*
20 *amended to read:*

21 *42464.2. (a) The State Board of Equalization shall collect the*
22 *covered electronic waste recycling fee pursuant to the Fee*
23 *Collection Procedures Law (Part 30 (commencing with Section*
24 *55001) of Division 2 of the Revenue and Taxation Code). For the*
25 *purposes of this section, the reference in the Fee Collection*
26 *Procedures Law to “feepayer” shall include a retailer, a consumer,*
27 *and a vendor, in the case of a retailer’s election pursuant to*
28 *paragraph (2) of subdivision (d) of Section 42464 means a*
29 *manufacturer.*

30 *(b) The State Board of Equalization shall adopt a form for*
31 *reporting, and determine the manner in which a retailer shall*
32 *report, to a manufacturer the number of reporting sales of covered*
33 *electronic devices sold by the manufacturer to the retailer that*
34 *were subsequently sold by that retailer.*

35 *(c) A retailer shall provide a manufacturer with report of each*
36 *covered electronic device that the retailer purchased from the*
37 *manufacturer and subsequently sold, in accordance with the form*
38 *adopted, and in the manner determined, by the State Board of*
39 *Equalization.*

1 SEC. 5. Section 42465.2 of the Public Resources Code is
2 amended to read:

3 42465.2. (a) On or before July 1, 2005, or as specified
4 otherwise in Section 25214.10.1 of the Health and Safety Code,
5 and at least once annually thereafter, as determined by the board,
6 each manufacturer of a covered electronic device sold in this state
7 shall do all of the following:

8 (1) Submit to the board a report that includes all of the following
9 information:

10 (A) An estimate of the number of covered electronic devices
11 sold by the manufacturer in the state during the previous year.

12 (B) A baseline or set of baselines that show the total estimated
13 amounts of mercury, cadmium, lead, hexavalent chromium, and
14 PBB's used in covered electronic devices manufactured by the
15 manufacturer in that year and the reduction in the use of those
16 hazardous materials from the previous year.

17 (C) A baseline or set of baselines that show the total estimated
18 amount of recyclable materials contained in covered electronic
19 devices sold by the manufacturer in that year and the increase in
20 the use of those recyclable materials from the previous year.

21 (D) A baseline or a set of baselines that describe any efforts to
22 design covered electronic devices for recycling and goals and plans
23 for further increasing design for recycling.

24 ~~(E) A list of those retailers, including, but not limited to, Internet
25 and catalog retailers, to which the manufacturer provided a notice
26 in the prior 12 months pursuant to Section 42465.3 and subdivision
27 (e) of Section 25214.10.1 of the Health and Safety Code.~~

28 (2) Make information available to consumers, that describes
29 where and how to return, recycle, and dispose of the covered
30 electronic device and opportunities and locations for the collection
31 or return of the device, through the use of a toll-free telephone
32 number, Internet Web site, information labeled on the device,
33 information included in the packaging, or information
34 accompanying the sale of covered electronic device.

35 (b) (1) For the purposes of complying with paragraph (1) of
36 subdivision (a), a manufacturer may submit a report to the board
37 that includes only those covered electronic devices that include
38 applications of the compounds listed in subparagraph (B) of
39 paragraph (1) of subdivision (a) that are exempt from the Directive
40 2002/95/EC adopted by the European Parliament and the Council

1 of the European Union on January 27, 2003, and any amendments
2 made to that directive, if both of the following conditions are met,
3 as modified by Section ~~24214.10~~ 25214.10 of the Health and Safety
4 Code:

5 (A) The manufacturer submits written verification to the
6 department that demonstrates, to the satisfaction of the department,
7 that the manufacturer is in compliance with Directive 2002/95/EC,
8 and any amendments to that directive, for those covered electronic
9 devices for which it is not submitting a report to the board pursuant
10 to this subdivision.

11 (B) The department certifies that the manufacturer is in
12 compliance with Directive 2002/95/EC, and any amendments to
13 that directive, for those covered electronic devices for which the
14 manufacturer is not submitting a report to the board pursuant to
15 this subdivision.

16 (2) When reporting pursuant to this subdivision, a manufacturer
17 is required only to report on specific applications of compounds
18 used in covered electronic devices that are exempt from Directive
19 2002/95/EC.

20 (c) Any information submitted to the board pursuant to
21 subdivision (a) that is proprietary in nature or a trade secret shall
22 be subject to protection under state laws and regulations governing
23 that information.

24 *SEC. 6. Section 42465.3 of the Public Resources Code is*
25 *repealed.*

26 ~~42465.3. A manufacturer of a covered electronic device shall~~
27 ~~comply with the notification requirements of subdivision (c) of~~
28 ~~Section 25214.10.1 of the Health and Safety Code.~~

29 *SEC. 7. No reimbursement is required by this act pursuant to*
30 *Section 6 of Article XIII B of the California Constitution because*
31 *the only costs that may be incurred by a local agency or school*
32 *district will be incurred because this act creates a new crime or*
33 *infraction, eliminates a crime or infraction, or changes the penalty*
34 *for a crime or infraction, within the meaning of Section 17556 of*
35 *the Government Code, or changes the definition of a crime within*
36 *the meaning of Section 6 of Article XIII B of the California*
37 *Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in
Assembly, February 23, 2007 (JR11)**

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