

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2611**

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**Introduced by Assembly Member Ma**

February 19, 2010

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~~An act to amend Section 1138.2 of the Labor Code, relating to employment.~~ *An act to amend Section 25214.10.1 of the Health and Safety Code, and to amend Section 42463 of the Public Resources Code, relating to recycling.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as amended, Ma. ~~Labor disputes.~~ *Recycling: electronic waste.*

*(1) Existing law, the Electronic Waste Recycling Act of 2003 (act), requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. Under existing law, the fees are deposited in the Electronic Waste Recovery and Recycling Account, and the Department of Resources Recycling and Recovery are continuously appropriated the money in the account to make electronic waste recovery payments and recycling payments and to make payments to manufacturers.*

*Existing law defines the term "covered electronic device" as a video display device containing a screen greater than 4 inches, measured diagonally, that is identified in the regulations that the Department of Toxic Substances Control (DTSC) is required to adopt to identify electronic devices, as defined, that the DTSC determines are 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 instead revise the definition of covered electronic device as a video display device with more than 9 square inches of screen size and would make conforming changes to the provisions requiring the adoption of regulations. Since a violation of the act is a crime, the bill would impose a state-mandated local program by revising the requirement for a 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.*

~~Existing law prohibits the issuing of a restraining order in a labor dispute when the complainant has failed to comply with an obligation imposed by law or has failed to make reasonable effort to settle the dispute through negotiation.~~

~~This bill would make a nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
 State-mandated local program: ~~no~~-yes.

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

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *With the growing popularity of personal consumer*
- 4     *electronics in California’s marketplace, technology is advancing*
- 5     *in customizable formats to meet the needs of targeted consumer*
- 6     *groups.*
- 7     (b) *As technology progresses, it is necessary and appropriate*
- 8     *to review public policies that are intended to meet the needs of*
- 9     *California, but may need to be periodically updated to include the*
- 10    *needs of underrepresented groups such as those with physical*
- 11    *impairments.*
- 12    (c) *Under the Electronic Waste Recycling Act of 2003 (Chapter*
- 13    *8.5 (commencing with Section 42460) of Part 3 of Division 30 of*
- 14    *the Public Resources Code), video displays on personal consumer*
- 15    *electronics devices, such as mobile phones, are required to be four*
- 16    *inches or smaller when measured diagonally or the device is*
- 17    *subject to the act’s fees.*

1 (d) A video screen that measures four inches diagonally may  
2 have more overall surface area than screens that have longer  
3 diagonal measurements but less overall screen size when measured  
4 for actual surface area.

5 (e) Current requirements for touchscreens on mobile phone and  
6 personal digital assistant (PDA) devices that seek to meet the  
7 requirements for exemption from electronic waste recycling fees  
8 have resulted in products that are difficult for the visually impaired  
9 to take full advantage of, due to the available small screen sizes.

10 (f) The current four-inch diagonal measurement standard is  
11 prejudicial against the visually impaired and hinders the  
12 marketability of products with screens having greater than four  
13 inch diagonal dimensions that would be otherwise better products  
14 with larger screens.

15 (g) Therefore an objective standard needs to be established that  
16 determines overall surface area for video screens that are exempted  
17 from consumer electronic waste recycling fees.

18 SEC. 2. Section 25214.10.1 of the Health and Safety Code is  
19 amended to read:

20 25214.10.1. (a) For purposes of this section, the following  
21 definitions shall apply:

22 (1) "Electronic device" means a video display device, as defined  
23 in subdivision ~~(t)~~ (u) of Section 42463 of the Public Resources  
24 Code, with a screen size of greater than ~~four inches~~ *nine square*  
25 *inches of screen size*.

26 (2) "Covered electronic device," "manufacturer," and "retailer"  
27 have the same meaning as those terms are defined in Section 42463  
28 of the Public Resources Code.

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

32 (c) (1) Except as provided in subdivision (e), a manufacturer  
33 of an electronic device that is identified in the regulations adopted  
34 by the department shall send a notice in accordance with the  
35 schedule specified in subparagraph (A) or (B), as applicable, of  
36 paragraph (3), to any retailer that sells that electronic device  
37 manufactured by the manufacturer. The notice shall identify the  
38 electronic device, and shall inform the retailer that the electronic  
39 device is a covered electronic device and is subject to a fee in  
40 accordance with subdivision (d).

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

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

5 (A) On or before October 1, 2004, the manufacturer shall send  
6 a notice covering any electronic device manufactured by that  
7 manufacturer that is identified in the regulations adopted by the  
8 department on or before July 1, 2004, that identify the electronic  
9 devices that the department determines are presumed to be, when  
10 discarded, a hazardous waste pursuant to this chapter.

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

16 (4) If a retailer sells a refurbished covered electronic device,  
17 the manufacturer is required to comply with the notice requirement  
18 of this subdivision only if the manufacturer directly supplies the  
19 refurbished covered electronic device to the retailer.

20 (d) (1) Except as provided in subdivision (e), a covered  
21 electronic device that is identified in the regulations adopted, on  
22 or before July 1, 2004, by the department, that identify electronic  
23 devices that the department determines are presumed to be, when  
24 discarded, a hazardous waste pursuant to this chapter shall, on and  
25 after January 1, 2005, be subject to Chapter 8.5 (commencing with  
26 Section 42460) of Part 3 of Division 30 of the Public Resources  
27 Code, including the fee imposed pursuant to Section 42464 of the  
28 Public Resources Code.

29 (2) Except as provided in subdivision (e), a covered electronic  
30 device identified in the regulations adopted by the department,  
31 pursuant to subdivision (b), shall, on and after July 1 of the year  
32 subsequent to the year in which the covered electronic device is  
33 first identified in the regulations, be subject to Chapter 8.5  
34 (commencing with Section 42460) of Part 3 of Division 30 of the  
35 Public Resources Code, including the fee imposed pursuant to  
36 Section 42464 of the Public Resources Code.

37 (e) (1) If the manufacturer of an electronic device that is  
38 identified in the regulations adopted by the department pursuant  
39 to subdivision (b) obtains the concurrence of the department that  
40 an electronic device, when discarded, would not be a hazardous

1 waste, in accordance with procedures set forth in Section  
2 66260.200 of Title 22 of the California Code of Regulations, the  
3 electronic device shall cease to be a covered electronic device and  
4 shall cease to be subject to subdivisions (c) and (d) on the first day  
5 of the quarter that begins not less than 30 days after the date that  
6 the department provides the manufacturer with a written  
7 nonhazardous concurrence for the electronic device pursuant to  
8 this subdivision. A manufacturer shall notify each retailer, to which  
9 that manufacturer has sold a covered electronic device, that the  
10 device has been determined pursuant to this subdivision to be  
11 nonhazardous and is no longer subject to a covered electronic  
12 recycling fee.

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

16 (A) Post on the department's *Internet* Web site a copy of the  
17 nonhazardous concurrence, including, but not limited to, an  
18 identification and description of the electronic device to which the  
19 concurrence applies.

20 (B) Send a copy of the nonhazardous concurrence, including,  
21 but not limited to, an identification and description of the electronic  
22 device to which the concurrence applies, to the ~~California~~  
23 ~~Integrated Waste Management Board~~ *Department of Resources*  
24 *Recycling and Recovery* and the State Board of Equalization.

25 (f) Notwithstanding Section 42474 of the Public Resources  
26 Code, a fine or penalty shall not be assessed on a retailer who  
27 unknowingly sells, or offers for sale, in this state a covered  
28 electronic device for which the covered electronic waste recycling  
29 fee has not been collected or paid, if the failure to collect the fee  
30 was due to the failure of the State Board of Equalization to inform  
31 the retailer that the electronic device was subject to the fee.

32 *SEC. 3. Section 42463 of the Public Resources Code is*  
33 *amended to read:*

34 42463. For the purposes of this chapter, the following terms  
35 have the following meanings, unless the context clearly requires  
36 otherwise:

37 (a) "Account" means the Electronic Waste Recovery and  
38 Recycling Account created in the Integrated Waste Management  
39 Fund under Section 42476.

40 (b) "Authorized collector" means any of the following:

1 (1) A city, county, or district that collects covered electronic  
2 devices.

3 (2) A person or entity that is required or authorized by a city,  
4 county, or district to collect covered electronic devices pursuant  
5 to the terms of a contract, license, permit, or other written  
6 authorization.

7 (3) A nonprofit organization that collects or accepts covered  
8 electronic devices.

9 (4) A manufacturer or agent of the manufacturer that collects,  
10 consolidates, and transports covered electronic devices for  
11 recycling from consumers, businesses, institutions, and other  
12 generators.

13 (5) An entity that collects, handles, consolidates, and transports  
14 covered electronic devices and has filed applicable notifications  
15 with the department pursuant to Chapter 23 (commencing with  
16 Section 66273.1) of Division 4.5 of Title 22 of the California Code  
17 of Regulations.

18 (c) “Board” means the ~~California Integrated Waste Management~~  
19 ~~Board~~ *Department of Resources Recycling and Recovery*.

20 (d) “Consumer” means a person who purchases a new or  
21 refurbished covered electronic device in a transaction that is a  
22 retail sale or in a transaction to which a use tax applies pursuant  
23 to Part 1 (commencing with Section 6001) of Division 2 of the  
24 Revenue and Taxation Code.

25 (e) “Department” means the Department of Toxic Substances  
26 Control.

27 (f) (1) Except as provided in paragraph (2), “covered electronic  
28 device” means a video display device containing a screen *with*  
29 ~~greater than four inches, measured diagonally~~ *nine square inches*  
30 *of surface*, that is identified in the regulations adopted by the  
31 department pursuant to subdivision (b) of Section 25214.10.1 of  
32 the Health and Safety Code.

33 (2) “Covered electronic device” does not include any of the  
34 following:

35 (A) A video display device that is a part of a motor vehicle, as  
36 defined in Section 415 of the Vehicle Code, or any component  
37 part of a motor vehicle assembled by, or for, a vehicle manufacturer  
38 or franchised dealer, including replacement parts for use in a motor  
39 vehicle.

1 (B) A video display device that is contained within, or a part of  
2 a piece of industrial, commercial, or medical equipment, including  
3 monitoring or control equipment.

4 (C) A video display device that is contained within a clothes  
5 washer, clothes dryer, refrigerator, refrigerator and freezer,  
6 microwave oven, conventional oven or range, dishwasher, room  
7 air-conditioner, dehumidifier, or air purifier.

8 (D) An electronic device, on and after the date that it ceases to  
9 be a covered electronic device under subdivision (e) of Section  
10 25214.10.1 of the Health and Safety Code.

11 (g) “Covered electronic waste” or “covered e-waste” means a  
12 covered electronic device that is discarded.

13 (h) “Covered electronic waste recycling fee” or “covered e-waste  
14 recycling fee” means the fee imposed pursuant to Article 3  
15 (commencing with Section 42464).

16 (i) “Covered electronic waste recycler” or “covered e-waste  
17 recycler” means any of the following:

18 (1) A person who engages in the manual or mechanical  
19 separation of covered electronic devices to recover components  
20 and commodities contained therein for the purpose of reuse or  
21 recycling.

22 (2) A person who changes the physical or chemical composition  
23 of a covered electronic device, in accordance with the requirements  
24 of Chapter 6.5 (commencing with Section 25100) of Division 20  
25 of the Health and Safety Code and the regulations adopted pursuant  
26 to that chapter, by deconstructing, size reduction, crushing, cutting,  
27 sawing, compacting, shredding, or refining for purposes of  
28 segregating components, for purposes of recovering or recycling  
29 those components, and who arranges for the transport of those  
30 components to an end user.

31 (3) A manufacturer who meets any conditions established by  
32 this chapter and Chapter 6.5 (commencing with Section 25100)  
33 of Division 20 of the Health and Safety Code for the collection or  
34 recycling of covered electronic waste.

35 (j) “Discarded” has the same meaning as defined in subdivision  
36 (b) of Section 25124 of the Health and Safety Code.

37 (k) “Electronic waste recovery payment” means an amount  
38 established and paid by the board pursuant to Section 42477.

39 (l) “Electronic waste recycling payment” means an amount  
40 established and paid by the board pursuant to Section 42478.

1 (m) “Hazardous material” has the same meaning as defined in  
2 Section 25501 of the Health and Safety Code.

3 (n) “Manufacturer” means either of the following:

4 (1) A person who manufactures a covered electronic device sold  
5 in this state.

6 (2) A person who sells a covered electronic device in this state  
7 under that person’s brand name.

8 (o) “Person” means an individual, trust firm, joint stock  
9 company, business concern, and corporation, including, but not  
10 limited to, a government corporation, partnership, limited liability  
11 company, and association. Notwithstanding Section 40170,  
12 “person” also includes a city, county, city and county, district,  
13 commission, the state or a department, agency, or political  
14 subdivision thereof, an interstate body, and the United States and  
15 its agencies and instrumentalities to the extent permitted by law.

16 (p) “Recycling” has the same meaning as defined in subdivision  
17 (a) of Section 25121.1 of the Health and Safety Code.

18 (q) “Refurbished,” when used to describe a covered electronic  
19 device, means a device that the manufacturer has tested and  
20 returned to a condition that meets factory specifications for the  
21 device, has repackaged, and has labeled as refurbished.

22 (r) “Retailer” means a person who makes a retail sale of a new  
23 or refurbished covered electronic device. “Retailer” includes a  
24 manufacturer of a covered electronic device who sells that covered  
25 electronic device directly to a consumer through any means,  
26 including, but not limited to, a transaction conducted through a  
27 sales outlet, catalog, or the Internet, or any other similar electronic  
28 means.

29 (s) (1) “Retail sale” has the same meaning as defined under  
30 Section 6007 of the Revenue and Taxation Code.

31 (2) “Retail sale” does not include the sale of a covered electronic  
32 device that is temporarily stored or used in California for the sole  
33 purpose of preparing the covered electronic device for use  
34 thereafter solely outside the state, and that is subsequently  
35 transported outside the state and thereafter used solely outside the  
36 state.

37 (t) “Vendor” means a person that makes a sale of a covered  
38 electronic device for the purpose of resale to a retailer who is the  
39 lessor of the covered electronic device to a consumer under a lease  
40 that is a continuing sale and purchase pursuant to Part 1

1 (commencing with Section 6001) of Division 2 of the Revenue  
2 and Taxation Code.

3 (u) “Video display device” means an electronic device with an  
4 output surface that displays, or is capable of displaying, moving  
5 graphical images or a visual representation of image sequences or  
6 pictures, showing a number of quickly changing images on a screen  
7 in fast succession to create the illusion of motion, including, if  
8 applicable, a device that is an integral part of the display, in that  
9 it cannot be easily removed from the display by the consumer, that  
10 produces the moving image on the screen. A video display device  
11 may use, but is not limited to, a cathode ray tube (CRT), liquid  
12 crystal display (LCD), gas plasma, digital light processing, or other  
13 image projection technology.

14 *SEC. 4. 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.*

23 ~~SECTION 1. Section 1138.2 of the Labor Code is amended to~~  
24 ~~read:~~

25 ~~1138.2. No restraining order or injunctive relief shall be granted~~  
26 ~~to a complainant involved in the labor dispute in question who has~~  
27 ~~failed to comply with an obligation imposed by law, or who has~~  
28 ~~failed to make every reasonable effort to settle that dispute either~~  
29 ~~by negotiation or with the aid of any available governmental~~  
30 ~~machinery of mediation or voluntary arbitration.~~