

**ASSEMBLY BILL**

**No. 794**

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**Introduced by Assembly Member Wieckowski**

February 17, 2011

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An act to amend Sections 42461, 42474, 42476, and 42479 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 794, as introduced, Wieckowski. Solid waste: hazardous electronic waste.

(1) Existing law establishes the Electronic Waste Recycling Act of 2003, which regulates the disposal and recycling of electronic waste. The act further makes it unlawful to sell, on and after July 1, 2004, a covered electronic device in this state to a consumer, as defined, unless the Department of Resources Recycling and Recovery (CalRecycle) or the Department of Toxic Substances Control determines that the manufacture of that device is in compliance with the act. The act further prohibits the sale of a covered electronic device, after January 1, 2005, that is not labeled, as specified. The act contains legislative findings and declarations that declare that one of the purposes of the act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100% of the covered electronic waste discarded or offered for recycling in the state, to, among other things, eliminate electronic waste stockpiles and legacy devices by December 31, 2007.

This bill would revise those findings and declarations to declare that one of the purposes of the act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100% of the covered electronic waste initially discarded in the state, to, among other

things, eliminate electronic waste stockpiles and legacy devices by December 31, 2007.

(2) The act imposes various civil penalties in an amount of up to \$25,000 to be administratively imposed by the Department of Resources Recycling and Recovery for specified violations of the act.

This bill would additionally authorize CalRecycle to impose a civil penalty in an amount of up to \$25,000 per violation against any person, including an e-waste collector or recycler, who makes a false statement or representation in a document filed, submitted, maintained, or used for purposes of compliance with the act and associated regulations. The bill would further authorize CalRecycle to revoke the approval or deny the renewal application of a covered e-waste collector or recycler that makes a false statement or representation, or to deny an application from an applicant or an individual identified in the application that has a history demonstrating a pattern of operation in conflict with the act and the regulations adopted pursuant to the act.

(3) The act authorizes CalRecycle to pay an electronic waste recycling payment or electronic waste recovery payment for covered waste if specified conditions are met, including, among other things, that the covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations.

This bill would also include among those specified conditions that are required to be met for CalRecycle to pay an electronic waste recycling or recovery payment, that the covered electronic waste is generated by a person who either used the covered electronic device in this state or used the device in another state and subsequently relocated to this state.

(4) The act requires CalRecycle, for covered electronic waste collected for recycling on and after January 1, 2005, to make those electronic waste recycling and recovery payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to CalRecycle by the authorized collector or recycler in the form and manner determined by CalRecycle.

This bill would instead require CalRecycle to make those electronic waste recycling and recovery payments for the collection and recycling of covered e-waste to an authorized collector or covered e-waste recycler, respectively, upon completion of CalRecycle's review of a

payment claim, submitted to CalRecycle in the form and manner determined by CalRecycle. The bill would also authorize CalRecycle to conduct a selective audit of authorized collectors, covered e-waste recyclers, or manufacturers receiving payments from CalRecycle to determine whether electronic waste recovery payments or payments to manufacturers are being made to CalRecycle according to the requirements of the act and the regulations adopted pursuant to that act, and would prescribe procedures for the appeal of the CalRecycle's denial or adjustment of a payment claim by a covered e-waste recycler that is dissatisfied with CalRecycle's action in that regard.

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

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

1 SECTION 1. Section 42461 of the Public Resources Code is  
2 amended to read:  
3 42461. The Legislature finds and declares all of the following:  
4 (a) The purpose of this chapter is to enact a comprehensive and  
5 innovative system for the reuse, recycling, and proper and legal  
6 disposal of covered electronic devices, and to provide incentives  
7 to design electronic devices that are less toxic, more recyclable,  
8 and that use recycled materials.  
9 (b) It is the further purpose of this chapter to enact a law that  
10 establishes a program that is cost free and convenient for consumers  
11 and the public to return, recycle, and ensure the safe and  
12 environmentally-sound disposal of covered electronic devices.  
13 (c) It is the intent of the Legislature that the cost associated with  
14 the handling, recycling, and disposal of covered electronic devices  
15 is the responsibility of the producers and consumers of covered  
16 electronic devices, and not local government or their service  
17 providers, state government, or taxpayers.  
18 (d) In order to reduce the likelihood of illegal disposal of these  
19 hazardous materials, it is the intent of this chapter to ensure that  
20 any cost associated with the proper management of covered  
21 electronic devices be internalized by the producers and consumers  
22 of covered electronic devices at or before the point of purchase,  
23 and not at the point of discard.  
24 (e) Manufacturers of covered electronic devices, in working to  
25 achieve the goals and objectives of this chapter, should have the

1 flexibility to partner with each other and with those public sector  
2 entities and business enterprises that currently provide collection  
3 and processing services to develop and promote a safe and effective  
4 covered electronic device recycling system for California.

5 (f) The producers of electronic products, components, and  
6 devices should reduce and, to the extent feasible, ultimately phase  
7 out the use of hazardous materials in those products.

8 (g) Electronic products, components, and devices, to the greatest  
9 extent feasible, should be designed for extended life, repair, and  
10 reuse.

11 (h) The purpose of the Hazardous Electronic Waste Recycling  
12 Act is to provide sufficient funding for the safe, cost-free, and  
13 convenient collection and recycling of 100 percent of the covered  
14 electronic waste *initially* discarded ~~or offered for recycling~~ in the  
15 state, to eliminate electronic waste stockpiles and legacy devices  
16 by December 31, 2007, to end the illegal disposal of covered  
17 electronic devices, to establish manufacturer responsibility for  
18 reporting to the board on the manufacturer's efforts to phase out  
19 hazardous materials in electronic devices and increase the use of  
20 recycled materials, and to ensure that electronic devices sold in  
21 the state do not violate the regulations adopted by the Department  
22 of Toxic Substances Control pursuant to Section 25214.10 of the  
23 Health and Safety Code.

24 (i) *For purposes of this chapter "CalRecycle" means the*  
25 *Department of Resources Recycling and Recovery.*

26 SEC. 2. Section 42474 of the Public Resources Code is  
27 amended to read:

28 42474. (a) Civil liability in an amount of up to two thousand  
29 five hundred dollars (\$2,500) per offense may be administratively  
30 imposed by ~~the board~~ *CalRecycle* for each sale of a covered  
31 electronic device for which a covered electronic waste recycling  
32 fee has not been paid pursuant to Section 42464.

33 (b) A civil penalty in an amount of up to five thousand dollars  
34 (\$5,000) per offense may be imposed by a superior court for each  
35 sale of a covered electronic device for which a covered electronic  
36 waste recycling fee has not been paid pursuant to Section 42464.

37 (c) Civil liability in an amount of up to twenty-five thousand  
38 dollars (\$25,000) may be administratively imposed by ~~the board~~  
39 *CalRecycle* against manufacturers for failure to comply with this  
40 chapter, except as otherwise provided in subdivision (a).

1 (d) Civil liability in an amount of up to twenty-five thousand  
2 dollars (\$25,000) per violation may be administratively imposed  
3 by CalRecycle against any person, including an electronic waste  
4 collector or recycler, who makes a false statement or  
5 representation in any document filed, submitted, maintained, or  
6 used for purposes of compliance with this chapter and associated  
7 regulations.

8 (e) CalRecycle may revoke the approval or deny the renewal  
9 application of a electronic waste collector or recycler that makes  
10 a false statement or representation in a document filed, submitted,  
11 maintained, or used for purposes of compliance with this chapter  
12 and the regulations adopted pursuant to this chapter. Furthermore,  
13 CalRecycle may deny an application for approval or renewal from  
14 an electronic waste collector or recycler or an individual identified  
15 in the application that has a history demonstrating a pattern of  
16 operation in conflict with the requirements of this chapter and the  
17 regulations adopted pursuant to this chapter.

18 SEC. 3. Section 42476 of the Public Resources Code is  
19 amended to read:

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

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

29 (2) To make electronic waste recovery payments to an  
30 authorized collector of covered electronic waste pursuant to Section  
31 42479.

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

34 (4) To make payments to manufacturers pursuant to subdivision  
35 ~~(g)~~ (h).

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

39 (A) For the administration of this chapter by ~~the board~~  
40 CalRecycle and the department.

1 (B) To reimburse the State Board of Equalization for its  
 2 administrative costs of registering, collecting, making refunds, and  
 3 auditing retailers and consumers in connection with the covered  
 4 electronic waste recycling fee imposed under Section 42464.

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

10 (D) To establish the public information program specified in  
 11 subdivision (d).

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

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

22 (d) Not more than 1 percent of the funds annually deposited in  
 23 the Electronic Waste Recovery and Recycling Account shall be  
 24 expended for the purposes of establishing the public information  
 25 program to educate the public in the hazards of improper covered  
 26 electronic device storage and disposal and on the opportunities to  
 27 recycle covered electronic devices.

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

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

34 (1) *The covered electronic waste is generated by a person who*  
 35 *either used the covered electronic device while located in this state*  
 36 *or used the covered electronic device in another state and*  
 37 *subsequently relocated to this state.*

38 (2) *The covered* electronic waste, including any residuals from  
 39 the processing of the waste, is handled in compliance with all  
 40 applicable statutes and regulations.

1     ~~(2)~~  
2     (3) The manufacturer or the authorized collector or recycler of  
3 the electronic waste provide a cost free and convenient opportunity  
4 to recycle electronic waste, in accordance with the legislative intent  
5 specified in subdivision (b) of Section 42461.

6     ~~(3)~~  
7     (4) If the covered electronic waste is processed, the covered  
8 electronic waste is processed in this state according to the  
9 cancellation method authorized by ~~the board~~ *CalRecycle*.

10    ~~(4) The board declares~~

11    (g) *CalRecycle shall declare* that the state is a market participant  
12 in the business of the recycling of covered electronic waste for all  
13 of the following reasons:

14    ~~(A)~~

15    (1) The fee is collected from the state’s consumers for covered  
16 electronic devices sold for use in the state.

17    ~~(B)~~

18    (2) The purpose of the fee and subsequent payments is to prevent  
19 damage to the public health and the environment from waste  
20 generated in the state.

21    ~~(C)~~

22    (3) The recycling system funded by the fee ensures that  
23 economically viable and sustainable markets are developed and  
24 supported for recovered materials and components in order to  
25 conserve resources and maximize business and employment  
26 opportunities within the state.

27    ~~(g)~~

28    (h) (1) ~~The board~~ *CalRecycle* may make a payment to a  
29 manufacturer that takes back a covered electronic device from a  
30 consumer in this state for purposes of recycling the device at a  
31 processing facility. The amount of the payment made by ~~the board~~  
32 *CalRecycle* shall equal the value of the covered electronic waste  
33 recycling fee paid for that device. To qualify for a payment  
34 pursuant to this subdivision, the manufacturer shall demonstrate  
35 both of the following to ~~the board~~ *CalRecycle*:

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

38    (B) The covered electronic waste for which a payment is  
39 claimed, including any residuals from the processing of the waste,

1 has been, and will be, handled in compliance with all applicable  
2 statutes and regulations.

3 (2) A covered electronic device for which a payment is made  
4 under this subdivision is not eligible for an electronic waste  
5 recovery payment or an electronic waste recycling payment under  
6 Section 42479.

7 SEC. 4. Section 42479 of the Public Resources Code is  
8 amended to read:

9 42479. (a) (1) For covered electronic waste collected for  
10 recycling on and after January 1, 2005, ~~the board~~ *CalRecycle* shall  
11 make electronic waste recovery payments and electronic waste  
12 recycling payments for the collection and recycling of covered  
13 ~~electronic waste e-waste~~ to an authorized collector or covered  
14 ~~electronic waste e-waste~~ recycler, respectively, upon receipt of  
15 ~~a completed and verified invoice~~ *completion of CalRecycle's review*  
16 *of payment claim* submitted to ~~the board~~ *CalRecycle* by the  
17 authorized collector or *e-waste* recycler in the form and manner  
18 determined by ~~the board~~ *CalRecycle*. *CalRecycle may examine a*  
19 *payment claim for a period not to exceed 90 days to validate*  
20 *completeness, accuracy, truthfulness, and compliance with*  
21 *applicable laws and regulations. All of the following shall be*  
22 *considered official records for purposes of Section 1280 of the*  
23 *Evidence Code:*

24 (A) *The results of any payment claim review or subsequent*  
25 *payment claim audit.*

26 (B) *Written information compiled by CalRecycle during a claim*  
27 *review or subsequent claim audit.*

28 (C) *Written information compiled by CalRecycle during a claim*  
29 *review or subsequent claim audit.*

30 (2) To the extent authorized pursuant to Section 42477, a  
31 ~~covered electronic waste e-waste~~ recycler shall make the electronic  
32 waste recovery payments to an authorized collector upon receipt  
33 of a completed and verified invoice submitted to the recycler by  
34 the authorized collector in the form and manner determined by the  
35 ~~board~~ *CalRecycle*.

36 (b) ~~At~~ *A covered*, e-waste recycler is eligible for a payment  
37 pursuant to this section only if the covered e-waste recycler meets  
38 all of the following requirements:

39 (1) The *covered* e-waste recycler is in compliance with  
40 applicable requirements of Article 6 (commencing with Section

1 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the  
2 California Code of Regulations.

3 (2) The *covered* e-waste recycler demonstrates to ~~the board~~  
4 *CalRecycle* that any facility utilized by the covered e-waste recycler  
5 for the handling, processing, refurbishment, or recycling of covered  
6 electronic devices meets all of the following standards:

7 (A) The facility has been inspected by the department within  
8 the past 12 months and had been found to be operating in  
9 conformance with all applicable laws, regulations, and ordinances.

10 (B) The facility is accessible during normal business hours for  
11 unannounced inspections by state or local agencies.

12 (C) The facility has health and safety, employee training, and  
13 environmental compliance plans and certifies compliance with the  
14 plans.

15 (D) The facility meets or exceed the standards specified in  
16 Chapter 1 (commencing with Section 1171) of Part 4 of Division  
17 2, Division 4 (commencing with Section 3200), and Division 5  
18 (commencing with Section 6300), of the Labor Code or, if all or  
19 part of the work is to be performed in another state, the equivalent  
20 requirements of that state.

21 (c) *CalRecycle may conduct a selective audit of authorized*  
22 *collectors, covered e-waste recyclers, or manufacturers receiving*  
23 *payments from CalRecycle to determine whether electronic waste*  
24 *recovery payments, electronic waste recycling payments, or*  
25 *payments to manufacturers are being paid by CalRecycle according*  
26 *to the requirements of this chapter and the regulations adopted*  
27 *pursuant to this chapter. CalRecycle may collect and recover from*  
28 *authorized collectors, covered e-waste recyclers, or manufacturers,*  
29 *with interest, any moneys improperly paid.*

30 (d) (1) *A covered e-waste recycler that is dissatisfied with*  
31 *CalRecycle's denial or adjustment of a payment claim may appeal*  
32 *that action by filing a written appeal at the offices of CalRecycle*  
33 *within 30 days of the date of the notice denying or adjusting the*  
34 *claim.*

35 (2) *An appeal shall contain the covered e-waste recycler's name*  
36 *and identification number from its proof of approval, the month*  
37 *and year in question, a copy of the payment claim and the notice*  
38 *denying the claim, a state of the facts and the law forming the basis*  
39 *for appeal, a description of why CalRecycle's actions were in error,*  
40 *and any other documentation that supports the appeal.*

1     (3) *An appeal that is received by CalRecycle after 30 days from*  
2 *the date of the notice denying or adjusting the claim, or that lacks*  
3 *the required content, shall be denied by CalRecycle without a*  
4 *hearing or further consideration of the appeal.*

5     (4) *Any hearing shall be before CalRecycle’s director or*  
6 *designee, who shall issue a written decision stating the factual*  
7 *and legal basis for the decision.*