

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**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 amended, 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~~ *that* 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 require that an electronic waste collector or recycler who makes a false statement or representation regarding the source of covered electronic waste is not liable for that statement or representation if the electronic waste collector or the recycler has made verifiable and reasonable efforts to determine the source of the covered electronic waste. 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 authorize CalRecycle to pay an electronic waste recycling or recovery payment for covered electronic waste generated by a person who used the covered electronic device while located in this state and source-anonymous covered electronic waste resulting from load check activities, illegal disposal cleanup activities conducted by an approved collector who is a local government or its designated approved collector, or illegal disposal on property owned or managed by an approved collector.

(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~~ by 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.

1 (c) It is the intent of the Legislature that the cost associated with  
2 the handling, recycling, and disposal of covered electronic devices  
3 is the responsibility of the producers and consumers of covered  
4 electronic devices, and not local government or their service  
5 providers, state government, or taxpayers.

6 (d) In order to reduce the likelihood of illegal disposal of these  
7 hazardous materials, it is the intent of this chapter to ensure that  
8 any cost associated with the proper management of covered  
9 electronic devices be internalized by the producers and consumers  
10 of covered electronic devices at or before the point of purchase,  
11 and not at the point of discard.

12 (e) Manufacturers of covered electronic devices, in working to  
13 achieve the goals and objectives of this chapter, should have the  
14 flexibility to partner with each other and with those public sector  
15 entities and business enterprises that currently provide collection  
16 and processing services to develop and promote a safe and effective  
17 covered electronic device recycling system for California.

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

21 (g) Electronic products, components, and devices, to the greatest  
22 extent feasible, should be designed for extended life, repair, and  
23 reuse.

24 (h) The purpose of the Hazardous Electronic Waste Recycling  
25 Act is to provide sufficient funding for the safe, cost-free, and  
26 convenient collection and recycling of 100 percent of the covered  
27 electronic waste initially discarded in the state, to eliminate  
28 electronic waste stockpiles and legacy devices by December 31,  
29 2007, to end the illegal disposal of covered electronic devices, to  
30 establish manufacturer responsibility for reporting to the board on  
31 the manufacturer's efforts to phase out hazardous materials in  
32 electronic devices and increase the use of recycled materials, and  
33 to ensure that electronic devices sold in the state do not violate the  
34 regulations adopted by the Department of Toxic Substances Control  
35 pursuant to Section 25214.10 of the Health and Safety Code.

36 (i) For purposes of this chapter "CalRecycle" means the  
37 Department of Resources Recycling and Recovery.

38 SEC. 2. Section 42474 of the Public Resources Code is  
39 amended to read:

1 42474. (a) Civil liability in an amount of up to two thousand  
2 five hundred dollars (\$2,500) per offense may be administratively  
3 imposed by CalRecycle for each sale of a covered electronic device  
4 for which a covered electronic waste recycling fee has not been  
5 paid pursuant to Section 42464.

6 (b) A civil penalty in an amount of up to five thousand dollars  
7 (\$5,000) per offense may be imposed by a superior court for each  
8 sale of a covered electronic device for which a covered electronic  
9 waste recycling fee has not been paid pursuant to Section 42464.

10 (c) Civil liability in an amount of up to twenty-five thousand  
11 dollars (\$25,000) may be administratively imposed by CalRecycle  
12 against manufacturers for failure to comply with this chapter,  
13 except as otherwise provided in subdivision (a).

14 (d) Civil liability in an amount of up to twenty-five thousand  
15 dollars (\$25,000) per violation may be administratively imposed  
16 by CalRecycle against any person, including an electronic waste  
17 collector or recycler, who makes a false statement or representation  
18 in any document filed, submitted, maintained, or used for purposes  
19 of compliance with this chapter and associated regulations. An  
20 electronic waste collector or recycler who makes a false statement  
21 or representation regarding the source of covered electronic waste  
22 shall not be liable for that statement or representation if the  
23 electronic waste collector or the recycler has made verifiable and  
24 reasonable efforts to determine the source of the covered electronic  
25 waste, such as, but not limited to, checking personal identification  
26 or performing reasonable spot checks or audits of the veracity of  
27 source documentation.

28 (e) CalRecycle may revoke the approval or deny the renewal  
29 application of an electronic waste collector or recycler that makes  
30 a false statement or representation in a document filed, submitted,  
31 maintained, or used for purposes of compliance with this chapter  
32 and the regulations adopted pursuant to this chapter. Furthermore,  
33 CalRecycle may deny an application for approval or renewal from  
34 an electronic waste collector or recycler or an individual identified  
35 in the application that has a history demonstrating a pattern of  
36 operation in conflict with the requirements of this chapter and the  
37 regulations adopted pursuant to this chapter.

38 SEC. 3. Section 42476 of the Public Resources Code is  
39 amended to read:

1 42476. (a) The Electronic Waste and Recovery and Recycling  
2 Account is hereby established in the Integrated Waste Management  
3 Fund. All fees collected pursuant to this chapter shall be deposited  
4 in the account. Notwithstanding Section 13340 of the Government  
5 Code, the funds in the account are hereby continuously  
6 appropriated, without regard to fiscal year, for the following  
7 purposes:

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

10 (2) To make electronic waste recovery payments to an  
11 authorized collector of covered electronic waste pursuant to Section  
12 42479.

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

15 (4) To make payments to manufacturers pursuant to subdivision  
16 (h).

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

20 (A) For the administration of this chapter by CalRecycle and  
21 the department.

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

26 (C) To provide funding to the department to implement and  
27 enforce Chapter 6.5 (commencing with Section 25100) of Division  
28 20 of the Health and Safety Code, as that chapter relates to covered  
29 electronic devices, and any regulations adopted by the department  
30 pursuant to that chapter.

31 (D) To establish the public information program specified in  
32 subdivision (d).

33 (2) Any fines or penalties collected pursuant to this chapter shall  
34 be deposited in the Electronic Waste Penalty Subaccount, which  
35 is hereby established in the account. The funds in the Electronic  
36 Waste Penalty Subaccount may be expended by CalRecycle or the  
37 department only upon appropriation by the Legislature.

38 (c) Notwithstanding Section 16475 of the Government Code,  
39 any interest earned upon funds in the Electronic Waste Recovery

1 and Recycling Account shall be deposited in that account for  
2 expenditure pursuant to this chapter.

3 (d) Not more than 1 percent of the funds annually deposited in  
4 the Electronic Waste Recovery and Recycling Account shall be  
5 expended for the purposes of establishing the public information  
6 program to educate the public in the hazards of improper covered  
7 electronic device storage and disposal and on the opportunities to  
8 recycle covered electronic devices.

9 (e) CalRecycle shall adopt regulations specifying cancellation  
10 methods for the recovery, processing, or recycling of covered  
11 electronic waste.

12 (f) (1) CalRecycle may pay an electronic waste recycling  
13 payment or electronic waste recovery payment for either of the  
14 following:

15 (A) Covered electronic waste generated by a person who used  
16 the covered electronic device while located in this state. Covered  
17 electronic waste generated outside of the state and subsequently  
18 brought into the state is not eligible for payment.

19 (B) Source-anonymous covered electronic waste resulting from  
20 load check activities, illegal disposal cleanup activities conducted  
21 by an approved collector who is a local government or its  
22 designated approved collector, or illegal disposal on property  
23 owned or managed by an approved collector.

24 (2) CalRecycle may pay an electronic waste recycling payment  
25 or electronic waste recovery payment for covered electronic waste  
26 only if all of the following conditions are met:

27 (A) The covered electronic waste, including any residuals from  
28 the processing of the waste, is handled in compliance with all  
29 applicable statutes and regulations.

30 (B) The manufacturer or the authorized collector or recycler of  
31 the electronic waste provide a cost free and convenient opportunity  
32 to recycle electronic waste, in accordance with the legislative intent  
33 specified in subdivision (b) of Section 42461.

34 (C) If the covered electronic waste is processed, the covered  
35 electronic waste is processed in this state according to the  
36 cancellation method authorized by CalRecycle.

37 (g) CalRecycle shall declare that the state is a market participant  
38 in the business of the recycling of covered electronic waste for all  
39 of the following reasons:

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

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

6 (3) The recycling system funded by the fee ensures that  
7 economically viable and sustainable markets are developed and  
8 supported for recovered materials and components in order to  
9 conserve resources and maximize business and employment  
10 opportunities within the state.

11 (h) (1) CalRecycle may make a payment to a manufacturer that  
12 takes back a covered electronic device from a consumer in this  
13 state for purposes of recycling the device at a processing facility.  
14 The amount of the payment made by CalRecycle shall equal the  
15 value of the covered electronic waste recycling fee paid for that  
16 device. To qualify for a payment pursuant to this subdivision, the  
17 manufacturer shall demonstrate both of the following to  
18 CalRecycle:

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

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

25 (2) A covered electronic device for which a payment is made  
26 under this subdivision is not eligible for an electronic waste  
27 recovery payment or an electronic waste recycling payment under  
28 Section 42479.

29 SEC. 4. Section 42479 of the Public Resources Code is  
30 amended to read:

31 42479. (a) (1) For covered electronic waste collected for  
32 recycling on and after January 1, 2005, CalRecycle shall make  
33 electronic waste recovery payments and electronic waste recycling  
34 payments for the collection and recycling of covered e-waste to  
35 an authorized collector or covered e-waste recycler, respectively,  
36 upon completion of CalRecycle’s review of a payment claim  
37 submitted to CalRecycle by the authorized collector or e-waste  
38 recycler in the form and manner determined by CalRecycle.  
39 CalRecycle may examine a payment claim ~~for a period not to~~  
40 ~~exceed 90 days to validate~~ *to validate the* completeness, accuracy,

1 truthfulness, and compliance with applicable laws and regulations.  
2 ~~Both~~ of the following shall be considered official records for  
3 purposes of Section 1280 of the Evidence Code:

4 (A) The results of any payment claim review or subsequent  
5 payment claim audit.

6 (B) Written information compiled by CalRecycle during a claim  
7 review or subsequent claim audit.

8 (2) To the extent authorized pursuant to Section 42477, a  
9 covered e-waste recycler shall make the electronic waste recovery  
10 payments to an authorized collector upon receipt of a completed  
11 and verified invoice submitted to the recycler by the authorized  
12 collector in the form and manner determined by CalRecycle.

13 (b) A covered e-waste recycler is eligible for a payment pursuant  
14 to this section only if the covered e-waste recycler meets all of the  
15 following requirements:

16 (1) The covered e-waste recycler is in compliance with  
17 applicable requirements of Article 6 (commencing with Section  
18 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the  
19 California Code of Regulations.

20 (2) The covered e-waste recycler demonstrates to CalRecycle  
21 that any facility utilized by the covered e-waste recycler for the  
22 handling, processing, refurbishment, or recycling of covered  
23 electronic devices meets all of the following standards:

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

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

29 (C) The facility has health and safety, employee training, and  
30 environmental compliance plans and certifies compliance with the  
31 plans.

32 (D) The facility meets or exceed the standards specified in  
33 Chapter 1 (commencing with Section 1171) of Part 4 of Division  
34 2, Division 4 (commencing with Section 3200), and Division 5  
35 (commencing with Section 6300), of the Labor Code or, if all or  
36 part of the work is to be performed in another state, the equivalent  
37 requirements of that state.

38 (c) CalRecycle may conduct a selective audit of authorized  
39 collectors, covered e-waste recyclers, or manufacturers receiving  
40 payments from CalRecycle to determine whether electronic waste

1 recovery payments, electronic waste recycling payments, or  
2 payments to manufacturers are being paid by CalRecycle according  
3 to the requirements of this chapter and the regulations adopted  
4 pursuant to this chapter. CalRecycle may collect and recover from  
5 authorized collectors, covered e-waste recyclers, or manufacturers,  
6 with interest, any moneys improperly paid.

7 (d) (1) A covered e-waste recycler ~~that is dissatisfied with~~  
8 ~~CalRecycle's denial or adjustment of a payment claim may appeal~~  
9 *wishing to contest the denial or adjustment of a payment claim*  
10 *shall appeal* that action by filing a written appeal ~~at the offices of~~  
11 *with* CalRecycle within 30 days of the date of the notice denying  
12 or adjusting the claim.

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

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

23 ~~(4) Any hearing shall be before CalRecycle's director or~~  
24 ~~designee, who shall issue a written decision stating the factual and~~  
25 ~~legal basis for the decision.~~

26 (4) *CalRecycle shall provide a hearing before the executive*  
27 *director, or his or her designee, who shall act as a hearing officer.*  
28 *The hearing officer shall consider the claim, the reasons for denial*  
29 *or adjustment of the payment claim, and any additional relevant*  
30 *information presented by the claimant or CalRecycle. The hearing*  
31 *officer shall issue a written decision stating the factual and legal*  
32 *basis for the decision.*