

AMENDED IN SENATE JULY 7, 2011
AMENDED IN ASSEMBLY MAY 3, 2011
AMENDED IN ASSEMBLY APRIL 13, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 794

Introduced by Assembly Member Wieckowski
(Principal coauthor: Assembly Member Carter)

February 17, 2011

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~~) (*department*) 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~~ *the department* 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, 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, *unless the department determines the electronic waste collector or recycler was negligent in making those efforts*. The bill would further authorize ~~CalRecycle~~ *the department* 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~~ *the department* 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~~ *the department* 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 the department~~, 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 the department~~ by the authorized collector or recycler in the form and manner determined by ~~CalRecycle the department~~.

This bill would instead require ~~CalRecycle the department~~ 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 the department's~~ review of a payment claim, submitted to ~~CalRecycle the department~~ in the form and manner determined by ~~CalRecycle the department~~. The bill would also authorize ~~CalRecycle the department~~ to conduct a selective audit of authorized collectors, covered e-waste recyclers, or manufacturers receiving payments from ~~CalRecycle the department~~ to determine whether electronic waste recovery payments or payments to manufacturers are being made by ~~CalRecycle the department~~ 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 department's~~ denial or adjustment of a payment claim by a covered e-waste recycler that is dissatisfied with ~~CalRecycle's the department'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.

- 1 (b) It is the further purpose of this chapter to enact a law that
2 establishes a program that is cost free and convenient for consumers
3 and the public to return, recycle, and ensure the safe and
4 environmentally sound disposal of covered electronic devices.
- 5 (c) It is the intent of the Legislature that the cost associated with
6 the handling, recycling, and disposal of covered electronic devices
7 is the responsibility of the producers and consumers of covered
8 electronic devices, and not local government or their service
9 providers, state government, or taxpayers.
- 10 (d) In order to reduce the likelihood of illegal disposal of these
11 hazardous materials, it is the intent of this chapter to ensure that
12 any cost associated with the proper management of covered
13 electronic devices be internalized by the producers and consumers
14 of covered electronic devices at or before the point of purchase,
15 and not at the point of discard.
- 16 (e) Manufacturers of covered electronic devices, in working to
17 achieve the goals and objectives of this chapter, should have the
18 flexibility to partner with each other and with those public sector
19 entities and business enterprises that currently provide collection
20 and processing services to develop and promote a safe and effective
21 covered electronic device recycling system for California.
- 22 (f) The producers of electronic products, components, and
23 devices should reduce and, to the extent feasible, ultimately phase
24 out the use of hazardous materials in those products.
- 25 (g) Electronic products, components, and devices, to the greatest
26 extent feasible, should be designed for extended life, repair, and
27 reuse.
- 28 (h) The purpose of the Hazardous Electronic Waste Recycling
29 Act is to provide sufficient funding for the safe, cost-free, and
30 convenient collection and recycling of 100 percent of the covered
31 electronic waste initially discarded in the state, to eliminate
32 electronic waste stockpiles and legacy devices by December 31,
33 2007, to end the illegal disposal of covered electronic devices, to
34 establish manufacturer responsibility for reporting to the board on
35 the manufacturer's efforts to phase out hazardous materials in
36 electronic devices and increase the use of recycled materials, and
37 to ensure that electronic devices sold in the state do not violate the
38 regulations adopted by the Department of Toxic Substances Control
39 pursuant to Section 25214.10 of the Health and Safety Code.

1 (i) ~~For purposes of this chapter “CalReecyle” means the~~
2 ~~Department of Resources Recycling and Recovery.~~

3 SEC. 2. Section 42474 of the Public Resources Code is
4 amended to read:

5 42474. (a) Civil liability in an amount of up to two thousand
6 five hundred dollars (\$2,500) per offense may be administratively
7 imposed by ~~CalReecyle~~ *the Department of Resources Recycling*
8 *and Recovery* for each sale of a covered electronic device for which
9 a covered electronic waste recycling fee has not been paid pursuant
10 to Section 42464.

11 (b) A civil penalty in an amount of up to five thousand dollars
12 (\$5,000) per offense may be imposed by a superior court for each
13 sale of a covered electronic device for which a covered electronic
14 waste recycling fee has not been paid pursuant to Section 42464.

15 (c) Civil liability in an amount of up to twenty-five thousand
16 dollars (\$25,000) may be administratively imposed by ~~CalReecyle~~
17 *the Department of Resources Recycling and Recovery* against
18 manufacturers for failure to comply with this chapter, except as
19 otherwise provided in subdivision (a).

20 (d) Civil liability in an amount of up to twenty-five thousand
21 dollars (\$25,000) per violation may be administratively imposed
22 by ~~CalReecyle~~ *the Department of Resources Recycling and*
23 *Recovery* against any person, including an electronic waste
24 collector or recycler, who makes a false statement or representation
25 in any document filed, submitted, maintained, or used for purposes
26 of compliance with this chapter and associated regulations. An
27 electronic waste collector or recycler who makes a false statement
28 or representation regarding the source of covered electronic waste
29 shall not be liable for that statement or representation if the
30 electronic waste collector or the recycler has made verifiable and
31 reasonable efforts to determine the source of the covered electronic
32 waste, such as, but not limited to, checking personal identification
33 or performing reasonable spot checks or audits of the veracity of
34 source documentation. *If the Department of Resources Recycling*
35 *and Recovery determines the electronic waste collector or recycler*
36 *was negligent in making those efforts to determine the source of*
37 *the covered electronic waste, the electronic waste collector or*
38 *recycler who made that false statement or representation shall*
39 *nonetheless be liable for the civil liability imposed by this*
40 *subdivision.*

1 (e) ~~CalRecycle~~*The Department of Resources Recycling and*
2 *Recovery* may revoke the approval or deny the renewal application
3 of an electronic waste collector or recycler that makes a false
4 statement or representation in a document filed, submitted,
5 maintained, or used for purposes of compliance with this chapter
6 and the regulations adopted pursuant to this chapter. Furthermore,
7 ~~CalRecycle~~*the Department of Resources Recycling and Recovery*
8 may deny an application for approval or renewal from an electronic
9 waste collector or recycler or an individual identified in the
10 application that has a history demonstrating a pattern of operation
11 in conflict with the requirements of this chapter and the regulations
12 adopted pursuant to this chapter.

13 SEC. 3. 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 (h).

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 ~~CalRecycle~~*the*
35 *Department of Resources Recycling and Recovery* and the
36 department.

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

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

6 (D) To establish the public information program specified in
7 subdivision (d).

8 (2) Any fines or penalties collected pursuant to this chapter shall
9 be deposited in the Electronic Waste Penalty Subaccount, which
10 is hereby established in the account. The funds in the Electronic
11 Waste Penalty Subaccount may be expended by ~~CalRecycle~~ *the*
12 *Department of Resources Recycling and Recovery* or the
13 department only upon appropriation by the Legislature.

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

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

24 (e) ~~CalRecycle~~ *The Department of Resources Recycling and*
25 *Recovery* shall adopt regulations specifying cancellation methods
26 for the recovery, processing, or recycling of covered electronic
27 waste.

28 (f) (1) ~~CalRecycle~~ *The Department of Resources Recycling and*
29 *Recovery* may pay an electronic waste recycling payment or
30 electronic waste recovery payment for either of the following:

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

35 (B) Source-anonymous covered electronic waste resulting from
36 load check activities, illegal disposal cleanup activities conducted
37 by an approved collector who is a local government or its
38 designated approved collector, or illegal disposal on property
39 owned or managed by an approved collector.

1 (2) ~~CalRecycle~~*The Department of Resources Recycling and*
 2 *Recovery* may pay an electronic waste recycling payment or
 3 electronic waste recovery payment for covered electronic waste
 4 only if all of the following conditions are met:

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

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

12 (C) If the covered electronic waste is processed, the covered
 13 electronic waste is processed in this state according to the
 14 cancellation method authorized by ~~CalRecycle~~ *the Department of*
 15 *Resources Recycling and Recovery*.

16 (g) ~~CalRecycle~~*The Department of Resources Recycling and*
 17 *Recovery* shall declare that the state is a market participant in the
 18 business of the recycling of covered electronic waste for all of the
 19 following reasons:

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

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

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

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

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

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

7 (2) A covered electronic device for which a payment is made
8 under this subdivision is not eligible for an electronic waste
9 recovery payment or an electronic waste recycling payment under
10 Section 42479.

11 SEC. 4. Section 42479 of the Public Resources Code is
12 amended to read:

13 42479. (a) (1) For covered electronic waste collected for
14 recycling on and after January 1, 2005, ~~CalRecycle the Department~~
15 ~~of Resources Recycling and Recovery~~ shall make electronic waste
16 recovery payments and electronic waste recycling payments for
17 the collection and recycling of covered e-waste to an authorized
18 collector or covered e-waste recycler, respectively, upon
19 completion of ~~CalRecycle's review~~ *review by the Department of*
20 *Resources Recycling and Recovery* of a payment claim submitted
21 to ~~CalRecycle the Department of Resources Recycling and~~
22 ~~Recovery~~ by the authorized collector or e-waste recycler in the
23 form and manner determined by ~~CalRecycle the Department of~~
24 ~~Resources Recycling and Recovery.~~ ~~CalRecycle~~ *The Department*
25 *of Resources Recycling and Recovery* may examine a payment
26 claim to validate the completeness, accuracy, truthfulness, and
27 compliance with applicable laws and regulations. Both of the
28 following shall be considered official records for purposes of
29 Section 1280 of the Evidence Code:

30 (A) The results of any payment claim review or subsequent
31 payment claim audit.

32 (B) Written information compiled by ~~CalRecycle the~~
33 ~~Department of Resources Recycling and Recovery~~ during a claim
34 review or subsequent claim audit.

35 (2) To the extent authorized pursuant to Section 42477, a
36 covered e-waste recycler shall make the electronic waste recovery
37 payments to an authorized collector upon receipt of a completed
38 and verified invoice submitted to the recycler by the authorized
39 collector in the form and manner determined by ~~CalRecycle the~~
40 ~~Department of Resources Recycling and Recovery.~~

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

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

8 (2) The covered e-waste recycler demonstrates to ~~CalRecycle~~
9 *the Department of Resources Recycling and Recovery* that any
10 facility utilized by the covered e-waste recycler for the handling,
11 processing, refurbishment, or recycling of covered electronic
12 devices meets all of the following standards:

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

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

18 (C) The facility has health and safety, employee training, and
19 environmental compliance plans and certifies compliance with the
20 plans.

21 (D) The facility meets or exceed the standards specified in
22 Chapter 1 (commencing with Section 1171) of Part 4 of Division
23 2, Division 4 (commencing with Section 3200), and Division 5
24 (commencing with Section 6300), of the Labor Code or, if all or
25 part of the work is to be performed in another state, the equivalent
26 requirements of that state.

27 (c) ~~CalRecycle~~ *The Department of Resources Recycling and*
28 *Recovery* may conduct a selective audit of authorized collectors,
29 covered e-waste recyclers, or manufacturers receiving payments
30 from ~~CalRecycle~~ *the Department of Resources Recycling and*
31 *Recovery* to determine whether electronic waste recovery payments,
32 electronic waste recycling payments, or payments to manufacturers
33 are being paid by ~~CalRecycle~~ *the Department of Resources*
34 *Recycling and Recovery* according to the requirements of this
35 chapter and the regulations adopted pursuant to this chapter.
36 ~~CalRecycle~~ *The Department of Resources Recycling and Recovery*
37 may collect and recover from authorized collectors, covered
38 e-waste recyclers, or manufacturers, with interest, any moneys
39 improperly paid.

- 1 (d) (1) A covered e-waste recycler wishing to contest the denial
2 or adjustment of a payment claim shall appeal that action by filing
3 a written appeal with ~~CalRecycle~~ *the Department of Resources*
4 *Recycling and Recovery* within 30 days of the date of the notice
5 denying or adjusting the claim.
- 6 (2) An appeal shall contain the covered e-waste recycler's name
7 and identification number from its proof of approval, the month
8 and year in question, a copy of the payment claim and the notice
9 denying the claim, a state of the facts and the law forming the basis
10 for appeal, a description of why ~~CalRecycle's actions~~ *the actions*
11 *of the Department of Resources Recycling and Recovery* were in
12 error, and any other documentation that supports the appeal.
- 13 (3) An appeal that is received by ~~CalRecycle~~ *the Department*
14 *of Resources Recycling and Recovery* after 30 days from the date
15 of the notice denying or adjusting the claim, or that lacks the
16 required content, shall be denied by ~~CalRecycle~~ *the Department of*
17 *Resources Recycling and Recovery* without a hearing or further
18 consideration of the appeal.
- 19 (4) ~~CalRecycle~~ *The Department of Resources Recycling and*
20 *Recovery* shall provide a hearing before the executive director, or
21 his or her designee, who shall act as a hearing officer. The hearing
22 officer shall consider the claim, the reasons for denial or adjustment
23 of the payment claim, and any additional relevant information
24 presented by the claimant or ~~CalRecycle~~ *the Department of*
25 *Resources Recycling and Recovery*. The hearing officer shall issue
26 a written decision stating the factual and legal basis for the
27 decision.