

AMENDED IN SENATE AUGUST 15, 2011

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, *and to add Section 42461.5 to*, 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 (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 the department to impose a civil penalty in an amount of up to \$25,000 per violation against any person, including an ~~e-waste~~ *authorized* collector or *covered electronic waste (e-waste)* 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~~ *authorized* collector or *covered e-waste* 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~~ *authorized* collector or ~~the~~ *covered e-waste* recycler has made verifiable and reasonable efforts to determine the source of the covered electronic waste, unless the department determines the ~~electronic-waste~~ *authorized* collector or *covered e-waste* recycler was negligent in ~~making those efforts~~ *ensuring the accuracy of the source of the waste*. The bill would further authorize the department to revoke the approval or deny the renewal application of a ~~covered e-waste~~ *authorized* collector or *covered e-waste* 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 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. *A violation of the act, including the regulations adopted pursuant to the act, is a crime.*

~~This bill would also authorize~~ *allow* the department to pay an electronic waste recycling or recovery payment ~~for only for~~ covered electronic waste *for which the authorized collector or covered e-waste recycler demonstrates to have been* 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~~ *and would prohibit the department from making those payments for covered electronic waste generated outside of the state and brought into the state. The bill would require the department to establish the documentation requirements necessary for an authorized collector or covered e-waste recycler to demonstrate that covered electronic waste was generated in the state and eligible for payment. Because a violation of these requirements would be a crime, the bill would impose a state-mandated local program.*

(4) The act requires 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 the department by the authorized collector or recycler in the form and manner determined by the department.

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

claim by a covered e-waste recycler that is dissatisfied with the department’s action in that regard.

(5) 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: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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
26 flexibility to partner with each other and with those public sector
27 entities and business enterprises that currently provide collection

1 and processing services to develop and promote a safe and effective
2 covered electronic device recycling system for California.

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

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

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

21 *SEC. 2. Section 42461.5 is added to the Public Resources Code,*
22 *to read:*

23 *42461.5. The Legislature finds and declares that the changes*
24 *made by Assembly Bill 794 of the 2011–12 Regular Session of the*
25 *Legislature to subdivision (h) of Section 42461, subdivision (f) of*
26 *Section 42476, and subdivision (a) of Section 42479 make technical*
27 *clarifications that implement the Legislature's intent when this*
28 *chapter was first enacted in 2003.*

29 ~~SEC. 2.~~

30 *SEC. 3. Section 42474 of the Public Resources Code is*
31 *amended to read:*

32 42474. (a) Civil liability in an amount of up to two thousand
33 five hundred dollars (\$2,500) per offense may be administratively
34 imposed by the Department of Resources Recycling and Recovery
35 for each sale of a covered electronic device for which a covered
36 electronic waste recycling fee has not been paid pursuant to Section
37 42464.

38 (b) A civil penalty in an amount of up to five thousand dollars
39 (\$5,000) per offense may be imposed by a superior court for each

1 sale of a covered electronic device for which a covered electronic
2 waste recycling fee has not been paid pursuant to Section 42464.

3 (c) Civil liability in an amount of up to twenty-five thousand
4 dollars (\$25,000) may be administratively imposed by the
5 Department of Resources Recycling and Recovery against
6 manufacturers for failure to comply with this chapter, except as
7 otherwise provided in subdivision (a).

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

35 (e) The Department of Resources Recycling and Recovery may
36 revoke the approval or deny the renewal application of an ~~electronic~~
37 ~~waste collector or recycler~~ *authorized collector or covered*
38 *electronic waste recycler* that makes a false statement or
39 representation in a document filed, submitted, maintained, or used
40 for purposes of compliance with this chapter and the regulations

1 adopted pursuant to this chapter. Furthermore, the Department of
2 Resources Recycling and Recovery may deny an application for
3 approval or renewal from an ~~electronic waste collector or recycler~~
4 *authorized collector or covered electronic waste recycler* or an
5 individual identified in the application that has a history
6 demonstrating a pattern of operation in conflict with the
7 requirements of this chapter and the regulations adopted pursuant
8 to this chapter.

9 ~~SEC. 3.~~

10 *SEC. 4.* Section 42476 of the Public Resources Code is
11 amended to read:

12 42476. (a) The Electronic Waste and Recovery and Recycling
13 Account is hereby established in the Integrated Waste Management
14 Fund. All fees collected pursuant to this chapter shall be deposited
15 in the account. Notwithstanding Section 13340 of the Government
16 Code, the funds in the account are hereby continuously
17 appropriated, without regard to fiscal year, for the following
18 purposes:

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

21 (2) To make electronic waste recovery payments to an
22 authorized collector of covered electronic waste pursuant to Section
23 42479.

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

26 (4) To make payments to manufacturers pursuant to subdivision
27 (h).

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

31 (A) For the administration of this chapter by the Department of
32 Resources Recycling and Recovery and the department.

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

37 (C) To provide funding to the department to implement and
38 enforce Chapter 6.5 (commencing with Section 25100) of Division
39 20 of the Health and Safety Code, as that chapter relates to covered

1 electronic devices, and any regulations adopted by the department
2 pursuant to that chapter.

3 (D) To establish the public information program specified in
4 subdivision (d).

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

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

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

21 (e) The Department of Resources Recycling and Recovery shall
22 adopt regulations specifying cancellation methods for the recovery,
23 processing, or recycling of covered electronic waste.

24 (f) (1) The Department of Resources Recycling and Recovery
25 may pay an electronic waste recycling payment or ~~electronic waste~~
26 ~~recovery payment for either of the following:~~

27 ~~(A) Covered electronic waste generated by a person who used~~
28 ~~the covered electronic device while located in this state. Covered~~
29 ~~electronic waste generated outside of the state and subsequently~~
30 ~~brought into the state is not eligible for payment.~~

31 ~~(B) Source-anonymous covered electronic waste resulting from~~
32 ~~load check activities, illegal disposal cleanup activities conducted~~
33 ~~by an approved collector who is a local government or its~~
34 ~~designated approved collector, or illegal disposal on property~~
35 ~~owned or managed by an approved collector. *electronic waste*~~
36 ~~*recovery payment only for covered electronic waste for which the*~~
37 ~~*authorized collector or covered electronic waste recycler*~~
38 ~~*demonstrates was generated by a person who used the covered*~~
39 ~~*electronic device while located in this state. The department shall*~~
40 ~~*not pay an electronic waste recycling payment or electronic waste*~~

1 *recovery payment for covered electronic waste generated outside*
2 *of the state and subsequently brought into the state.*

3 (2) *The Department of Resources Recycling and Recovery shall*
4 *establish the documentation requirements that are necessary for*
5 *an authorized collector or covered electronic waste recycler to*
6 *demonstrate that covered electronic waste was generated by a*
7 *person who used the electronic waste while located in the state*
8 *and is eligible for payment.*

9 ~~(2)~~

10 (3) The Department of Resources Recycling and Recovery may
11 pay an electronic waste recycling payment or electronic waste
12 recovery payment for covered electronic waste only if all of the
13 following conditions are met:

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

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

21 (C) If the covered electronic waste is processed, the covered
22 electronic waste is processed in this state according to the
23 cancellation method authorized by the Department of Resources
24 Recycling and Recovery.

25 (g) The Department of Resources Recycling and Recovery shall
26 declare that the state is a market participant in the business of the
27 recycling of covered electronic waste for all of the following
28 reasons:

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

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

34 (3) The recycling system funded by the fee ensures that
35 economically viable and sustainable markets are developed and
36 supported for recovered materials and components in order to
37 conserve resources and maximize business and employment
38 opportunities within the state.

39 (h) (1) The Department of Resources Recycling and Recovery
40 may make a payment to a manufacturer that takes back a covered

1 electronic device from a consumer in this state for purposes of
2 recycling the device at a processing facility. The amount of the
3 payment made by the Department of Resources Recycling and
4 Recovery shall equal the value of the covered electronic waste
5 recycling fee paid for that device. To qualify for a payment
6 pursuant to this subdivision, the manufacturer shall demonstrate
7 both of the following to the Department of Resources Recycling
8 and Recovery:

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

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

15 (2) A covered electronic device for which a payment is made
16 under this subdivision is not eligible for an electronic waste
17 recovery payment or an electronic waste recycling payment under
18 Section 42479.

19 ~~SEC. 4.~~

20 *SEC. 5.* Section 42479 of the Public Resources Code is
21 amended to read:

22 42479. (a) (1) For covered electronic waste collected for
23 recycling on and after January 1, 2005, the Department of
24 Resources Recycling and Recovery shall make electronic waste
25 recovery payments and electronic waste recycling payments for
26 the collection and recycling of covered e-waste to an authorized
27 collector or covered e-waste recycler, respectively, upon
28 completion of review by the Department of Resources Recycling
29 and Recovery of a payment claim submitted to the Department of
30 Resources Recycling and Recovery by the authorized collector or
31 e-waste recycler in the form and manner determined by the
32 Department of Resources Recycling and Recovery. The Department
33 of Resources Recycling and Recovery may examine a payment
34 claim to validate the completeness, accuracy, truthfulness, and
35 compliance with applicable laws and regulations. Both of the
36 following shall be considered official records for purposes of
37 Section 1280 of the Evidence Code:

38 (A) The results of any payment claim review or subsequent
39 payment claim audit.

1 (B) Written information compiled by the Department of
2 Resources Recycling and Recovery during a claim review or
3 subsequent claim audit.

4 (2) To the extent authorized pursuant to Section 42477, a
5 covered e-waste recycler shall make the electronic waste recovery
6 payments to an authorized collector upon receipt of a completed
7 and verified invoice submitted to the recycler by the authorized
8 collector in the form and manner determined by the Department
9 of Resources Recycling and Recovery.

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

13 (1) The covered e-waste recycler is in compliance with
14 applicable requirements of Article 6 (commencing with Section
15 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the
16 California Code of Regulations.

17 (2) The covered e-waste recycler demonstrates to the Department
18 of Resources Recycling and Recovery that any facility utilized by
19 the covered e-waste recycler for the handling, processing,
20 refurbishment, or recycling of covered electronic devices meets
21 all of the following standards:

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

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

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

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

36 (c) The Department of Resources Recycling and Recovery may
37 conduct a selective *post-payment* audit of authorized collectors,
38 covered e-waste recyclers, or manufacturers receiving payments
39 from the Department of Resources Recycling and Recovery to
40 determine whether electronic waste recovery payments, electronic

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

8 (d) (1) A covered e-waste recycler wishing to contest the denial
9 or adjustment of a payment claim shall appeal that action by filing
10 a written appeal with the Department of Resources Recycling and
11 Recovery within 30 days of the date of the notice denying or
12 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 the actions of the Department of
18 Resources Recycling and Recovery were in error, and any other
19 documentation that supports the appeal.

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

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

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

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

O