

AMENDED IN ASSEMBLY APRIL 20, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2901

Introduced by Assembly Member Members Pavley and Kehoe
(Coauthor: Assembly Member Kehoe)
(Coauthors: Assembly Members Hancock, Jackson, Koretz, Levine,
and Lieber)
(Coauthor: Senator Kuehl)

February 20, 2004

An act to add Article 10.4 (commencing with Section 25214.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, and to add Chapter 8.6 (commencing with Section 42490) to Part 3 of Division 30 of the Public Resources Code, relating to hazardous and solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2901, as amended, Pavley. Hazardous waste: cellular telephones: recycling.

(1) Existing law prohibits the management of hazardous waste, except in accordance with the hazardous waste control laws. A violation of the hazardous waste control laws is a crime. Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device, as defined, from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. Existing law prohibits those regulations from taking effect until January 27, 2007, or on or after the date that Directive 2002/95/EC, as adopted by the European Parliament and the Council of the European Union on

January 27, 2003, takes effect, whichever date is later. Existing law requires the department to exclude certain electronic devices from the regulations.

This bill would require the department to adopt regulations to prohibit a cellular telephone, as defined, from being sold or offered for sale in this state if the cellular telephone is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of heavy metals. The bill would prohibit those regulations from taking effect until January 1, 2007, or on or after the date that Directive 2002/95/EC takes effect, whichever date is later. The bill would require the department to exclude certain cellular telephones from the regulations.

Because a violation of the regulations adopted by the department would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) Existing law requires the California Integrated Waste Management Board to administer state programs to recycle various specified materials, including the Electronic Waste Recycling Act of 2003, which governs certain electronic devices with display screens greater than 4 inches in size.

This bill would enact the Cell Phone Recycling Act of 2004 and would make it unlawful to sell, on and after July 1, 2005, a cell phone in this state to a consumer, as defined, unless the retailer of that cell phone complies with the act.

The bill would require a retailer selling a cell phone in this state to have in place, by July 1, 2005, a system ~~approved by the board~~ for the acceptance, collection, reuse, and recycling or proper disposal of used cell phones. The bill would ~~authorize the board to approve a system for the acceptance, collection, reuse, and recycling or proper disposal of a used cell phone only if~~ require the system ~~includes to include~~ specified elements ~~and the board finds that the system is at least as convenient to a consumer as the system and procedure for the sale and distribution of a new cell phone. The bill would specify procedures for the approval of those plans by the board.~~

The bill would require each retailer of a cell phone who sells a cell phone in this state, by July 1, 2006, and annually thereafter, to submit a report to the board on the number of cell phones sold by the retailer in this state during the previous calendar year and other information. A retailer would also be required to make information available to consumers that describes where and how to return, recycle, and dispose

of the cell phone and opportunities and locations for the collection or return of the cell phone, through specified means.

The bill would require the board *on and after July 1, 2006*, to annually establish and update, as necessary, statewide used cell phone recycling goals ~~and would impose civil liability for violations of specified provisions. The bill would authorize the board and the department to adopt regulations to implement the bill and would authorize these regulations to be adopted as emergency regulations, as specified.~~ The bill would impose requirements upon state agencies that purchase or lease cell phones regarding a certification of compliance with the act by prospective bidders. The bill would make the act inoperative under specified circumstances.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Article 10.4 (commencing with Section
2 25214.50) is added to Chapter 6.5 of Division 20 of the Health and
3 Safety Code, to read:

4
5 Article 10.4. Cellular Telephones
6

7 25214.50. (a) For purposes of this section, “cellular
8 telephone” means a wireless telephone device that is designed to
9 send or receive transmissions through a cellular radiotelephone
10 service, as defined in Section 22.99 of Title 47 of the Code of
11 Federal Regulations. *A cellular telephone includes the
12 rechargeable battery that may be connected to that cellular
13 telephone. A cellular telephone does not include a wireless
14 telephone device that is integrated into the electrical architecture
15 of a motor vehicle.*

16 (b) The department shall adopt regulations, in accordance with
17 this section, that prohibit a cellular telephone from being sold or

1 offered for sale in this state if the cellular telephone is prohibited
2 from being sold or offered for sale in the European Union on and
3 after its date of manufacture, to the extent that Directive
4 2002/95/EC, adopted by the European Parliament and the Council
5 of the European Union on January 27, 2003, prohibits that sale due
6 to the presence of certain heavy metals.

7 (c) The regulations adopted pursuant to subdivision (b) shall
8 take effect on January 1, 2007, or on or after the date that Directive
9 2002/95/EC, adopted by the European Parliament and the Council
10 of the European Union on January 27, 2003, takes effect,
11 whichever date is later.

12 (d) The department shall exclude, from the regulations adopted
13 pursuant to this section, the sale of a cellular telephone that
14 contains a substance that is used to comply with the consumer,
15 health, or safety requirements that are required by the
16 Underwriters Laboratories, the federal government, or the state.

17 SEC. 2. Chapter 8.6 (commencing with Section 42490) is
18 added to Part 3 of Division 30 of the Public Resources Code, to
19 read:

20
21 CHAPTER 8.6. CELL PHONE RECYCLING ACT OF 2004
22

23
24 Article 1. General Provisions
25

26 42490. This act shall be known, and may be cited as, the Cell
27 Phone Recycling Act of 2004.

28 42490.1. The Legislature finds and declares all of the
29 following:

30 (a) The purpose of this chapter is to enact a comprehensive and
31 innovative system for the reuse, recycling, and proper and legal
32 disposal of used cell phones.

33 (b) It is the further purpose of this chapter to enact a law that
34 establishes a program that is convenient for consumers and the
35 public to return, recycle, and ensure the safe and environmentally
36 sound disposal of used cell phones, and providing a system that
37 does not charge when a cell phone is returned.

38 (c) It is the intent of the Legislature that the cost associated with
39 the handling, recycling, and disposal of used cell phones be the
40 responsibility of the producers and consumers of cell phones, and

1 not local government or their service providers, state government,
2 or taxpayers.

3 (d) In order to reduce the likelihood of illegal disposal of
4 hazardous materials, it is the intent of this chapter to ensure that all
5 costs associated with the proper management of used cell phones
6 is internalized by the producers and consumers of cell phones at
7 or before the point of purchase, and not at the point of discard.

8 (e) Manufacturers and retailers of cell phones and cell phone
9 service providers, in working to achieve the goals and objectives
10 of this chapter, should have the flexibility to partner with each
11 other and with those private and nonprofit business enterprises that
12 currently provide collection and processing services to develop
13 and promote a safe and effective used cell phone recycling system
14 for California.

15 (f) The producers of cell phones should reduce and, to the
16 extent feasible, ultimately phase out the use of hazardous materials
17 in cell phones.

18 (g) Cell phones, to the greatest extent feasible, should be
19 designed for extended life, repair, and reuse.

20 (h) The purpose of this chapter is to provide for the safe, cost
21 free, and convenient collection and recycling of 100 percent of the
22 used cell phones discarded or offered for recycling in the state.

23 (i) In establishing a cost effective system for the recovery,
24 reuse, recycling and proper disposal of used cell phones, it is the
25 intent of the Legislature to encourage manufacturers, retailers and
26 service providers to build on the retailer take-back systems
27 initiated recently by some cell phone service providers.

28
29 Article 2. Definitions
30

31 42493. For the purposes of this chapter, the following terms
32 have the following meanings, unless the context clearly requires
33 otherwise:

34 (a) “Board” means the California Integrated Waste
35 Management Board.

36 (b) “Cell phone” has the same meaning as a “cellular
37 telephone,” as defined in Section 25214.50 of the Health and
38 Safety Code.

39 (c) “Consumer” means a purchaser or owner of a cell phone.
40 “Consumer” also includes a business, corporation, limited

1 partnership, nonprofit organization, or governmental entity, but
2 does not include an entity involved in a wholesale transaction
3 between a distributor and retailer.

4 (d) “Department” means the Department of Toxic Substances
5 Control.

6 (e) “Retailer” means a person who sells a cell phone in the state
7 to a consumer, including a manufacturer of a cell phone who sells
8 that cell phone directly to a consumer. A sale includes, but is not
9 limited to, transactions conducted through sales outlets, catalogs,
10 or the Internet, or any other; similar electronic means, but does not
11 include a sale that is a wholesale transaction with a distributor or
12 retailer.

13 (f) (1) “Sell” or “sale” means a transfer for consideration of
14 title or of the right to use, by lease or sales contract, including, but
15 not limited to, transactions conducted through sales outlets,
16 catalogs, or the Internet, or any other; similar electronic means, but
17 does not include a wholesale transaction with a distributor or a
18 retailer.

19 (2) For purposes of this subdivision and subdivision (e),
20 “distributor” means a person who sells a cell phone to a retailer.

21 (g) “Used cell phone” means a cell phone that is discarded or
22 disposed of, and which the department determines, when
23 discarded or disposed, would be a hazardous waste pursuant to
24 Chapter 6.5 (commencing with Section 25100) of Division 20 of
25 the Health and Safety Code.

26 Article 3. Cell Phone Recycling

27
28
29 42494. (a) On and after July 1, 2005, every retailer of cell
30 phones sold in this state shall have in place a system ~~approved by~~
31 ~~the board pursuant to this article~~ for the acceptance, collection,
32 reuse, and recycling or proper disposal of used cell phones.

33 ~~(b) The board may approve a~~ A system for the acceptance,
34 collection, reuse, and recycling or proper disposal of used cell
35 phones ~~if the system includes~~; at a minimum, *shall include* all of
36 the following elements:

37 (1) The take-back from the consumer of a used cell phone that
38 the retailer sold or previously sold to the consumer, at no cost to
39 that consumer.

(2) The take-back of a used cell phone from a consumer who is purchasing a new cell phone from that retailer, as *at* no cost to that consumer.

(3) The creation and maintenance of a toll-free telephone number and Internet Web site where a consumer may obtain information on no-cost opportunities to recover, reuse, and recycle or properly dispose of used cell phones as described in paragraphs (1) and (2).

(4) The creation and maintenance of a public education program to promote the recovery, reuse, and recycling or proper disposal of used cell phones.

(5) If the retailer delivers a cell phone directly to a consumer in this state, the system provides the consumer, at the time of delivery, with a mechanism for the return of used cell phones for reuse, recycling, or proper disposal, at no cost to the consumer.

~~(b) The board may approve a plan submitted by a retailer pursuant to this article only if the board finds that the system, with regard to the recovery, reuse, and recycling of a used cell phone, is at least as convenient to a consumer as the system and procedure for the sale and distribution of a new cell phone.~~

~~42494.1. (a) On or before March 1, 2005, a retailer shall submit a plan to the board to implement a system for the acceptance, collection, and reuse, recycling, or proper disposal of used cell phones.~~

~~(b) The board shall approve or disapprove a plan submitted pursuant to this section on or before June 1, 2005. If the board does not approve or disapprove a plan on or before June 1, 2005, that was submitted by a retailer on or before the date specified in subdivision (a), the plan shall be deemed approved by the board for purposes of this article.~~

42495. On and after July 1, 2005, it shall be unlawful to sell a cell phone to a consumer in this state unless the retailer of that cell phone complies with this chapter.

42495.1. (a) On or before July 1, 2006, and annually thereafter as determined by the board, each retailer of a cell phone who sells cell phones in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) The number of cell phones sold by the retailer in the state during the previous year.

(B) The number of cell phones accepted and or collected from consumers in this state for recycling or proper disposal *during the previous year.*

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of a used cell phone and opportunities and locations for the collection or return of the cell phone, through the use of a ~~toll-free~~ *toll-free* telephone number, Internet Web site, information labeled on the cell phone, information included in the packaging, or information accompanying the sale of a cell phone.

(b) *A retailer may comply with the reporting requirements of paragraph (1) of subdivision (a) by submitting an aggregate report from multiple retailers.*

(c) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

~~Article 4.—Administration and Enforcement~~

~~42496.—(a) Civil liability in an amount of up to two thousand five hundred dollars (\$2,500) per offense may be administratively imposed by the board for each sale of a cell phone by a retailer who is not in compliance with this chapter.~~

~~(b) A civil penalty in an amount of up to five thousand dollars (\$5,000) per offense may be imposed by a superior court for each sale of a cell phone by a retailer who is not in compliance with this chapter.~~

~~42496.1.—(a) The board shall administer this chapter in consultation with the department.~~

~~(b) The board and the department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.~~

~~(c) (1) The board and the department may adopt emergency regulations to implement this chapter.~~

~~(2) The emergency regulations adopted pursuant to this chapter shall be adopted by the board and the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board or the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the board or department, whichever occurs sooner.~~

~~(d) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board.~~

~~(e) The board and the department may prepare, publish, or issue any materials that the board determines to be necessary for the dissemination of information concerning the activities of the board under this chapter.~~

~~(f) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies, including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.~~

Article 4. Statewide Recycling Goals

42496.4. *The On and after July 1, 2006, the board shall annually establish, and update as necessary, statewide recycling goals for used cell phones. In implementing this section, the board shall do all of the following:*

(a) Post on its Web site information on the amount of cell phones sold in the state in the previous year as reported to the board.

(b) Post on its Web site information on the amount of used cell phones recycled in the state in the previous year as reported to the board.

(c) Develop and adopt recycling goals, with input from manufacturers, retailers, used cell phone recyclers, and collectors, that reflect projections of cell phone sales, rates of obsolescence, and stockpiles.

(d) Provide annually to the Legislature an estimate, for the previous calendar year, of all of the following:

(1) The number of cell phones returned for reuse or recycling by consumers in this state.

(2) The number of cell phones sold to consumers in this state.

(3) A recycling ratio, the numerator of which is the amount in paragraph (1) and the denominator of which is the amount in paragraph (2).

Article 5. State Agency Procurement

42498. (a) A state agency that purchases or leases cell phones shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of cell phones.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or

1 benefit was obtained by a contractor as a result of violating this
2 section, the court may, in addition to any other remedy, order the
3 disgorgement of the unlawfully obtained money, property, or
4 benefit in the interest of justice.

5 SEC. 3. The provisions of this act are severable. If any
6 provision of this act or its application is held invalid, that invalidity
7 shall not affect other provisions or applications that can be given
8 effect without the invalid provision or application.

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

