

ASSEMBLY BILL

No. 147

**Introduced by Assembly Member Saldana
(Coauthors: Assembly Members Block, Chesbro, Huffman, Ma,
and Nava)**

January 22, 2009

An act to amend Section 25214.10.1 of, and to add Section 25214.10.3 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as introduced, Saldana. Hazardous waste: electronic waste.

(1) Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device 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 requires these regulations to take effect January 1, 2007, or on or after the date that the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003 (Directive 2002/95/EC), takes effect, whichever date is later. Existing law defines the term “electronic device,” for purposes of those provisions, to have the same meaning, with reference to the Electronic Waste Recycling Act of 2003, as “covered electronic device” which is defined as a video display device that is identified by the department, pursuant to specified regulations, as a presumed hazardous waste when discarded.

A violation of the hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would require a manufacturer of an electronic device to prepare and, at the request of the department, submit to the department within 28 days of the date of the request, technical documentation or other information showing that the electronic device sold or offered for sale by that manufacturer is not prohibited from sale.

This bill would define the term “RoHS Directive” to mean that directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment, cited as Directive 2002/95/EC, as amended on or before January 1, 2010. The bill would define the term “electronic equipment” to mean a device that is dependent on electric currents or electromagnetic fields to work properly or that is a device for the generation, transfer, or measurement of electric currents or fields and that is produced or distributed for sale to a consumer or for the personal use, consumption, or enjoyment of a consumer for use in or around a permanent or temporary household or residence or a school, for use in recreation, or for other purposes or in other locations.

The bill would exclude from the definition of “electronic equipment” certain electronic devices, including fixed-installation devices that are electrical or mechanical, or electrical and mechanical, as specified, an electronic device that is a video display device, or an electronic or electrical lighting device.

The bill would require a producer, as defined, to prepare and, at the request of the department, submit to the department, within 28 days of the date of the request, technical documentation or other information showing that electronic equipment sold or offered for sale by that producer is not prohibited from sale by the RoHS Directive, along with other specified information, or, under specified conditions, submit available information relating to the hazardous substance content and hazardous characteristics of the equipment. The department would be prohibited from imposing any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by the provision imposing this requirement.

The bill would require the department to treat as confidential any information that is a trade secret, as defined, that is provided to the department pursuant to the bill’s requirements, and that is identified as a trade secret at the time of submission, in the same manner as the procedures adopted by the department with regard to hazardous waste handling and disposal. The department would be required to make available, pursuant to the California Public Records Act, any information that is not a trade secret or that is not identified as a trade secret.

Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(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. Section 25214.10.1 of the Health and Safety Code
2 is amended to read:

3 25214.10.1. (a) For purposes of this section, the following
4 definitions shall apply:

5 (1) “Electronic device” means a video display device, as defined
6 in subdivision-~~(t)~~ (u) of Section 42463 of the Public Resources
7 Code, with a screen size of greater than four inches.

8 (2) “Covered electronic device,” “manufacturer,” and “retailer”
9 have the same meaning as those terms are defined in Section 42463
10 of the Public Resources Code.

11 (3) “Trade secret” has the same meaning as defined in Section
12 25173.

13 (b) The department shall adopt regulations that identify
14 electronic devices that the department determines are presumed
15 to be, when discarded, a hazardous waste pursuant to this chapter.

16 (c) (1) Except as provided in subdivision (e), a manufacturer
17 of an electronic device that is identified in the regulations adopted
18 by the department shall send a notice in accordance with the
19 schedule specified in subparagraph (A) or (B), as applicable, of
20 paragraph (3), to any retailer that sells that electronic device
21 manufactured by the manufacturer. The notice shall identify the
22 electronic device, and shall inform the retailer that the electronic
23 device is a covered electronic device and is subject to a fee in
24 accordance with subdivision (d).

25 (2) A manufacturer subject to this subdivision shall also send
26 a copy of the notice to the State Board of Equalization.

(3) The notice required by this subdivision shall be sent in accordance with the following schedule:

(A) On or before October 1, 2004, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer that is identified in the regulations adopted by the department on or before July 1, 2004, that identify the electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(B) On or before April 1, 2005, and on or before every April 1 of each year thereafter, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer identified in the regulations adopted by the department pursuant to subdivision (b) on or before December 31 of the prior year.

(4) If a retailer sells a refurbished covered electronic device, the manufacturer is required to comply with the notice requirement of this subdivision only if the manufacturer directly supplies the refurbished covered electronic device to the retailer.

(d) (1) Except as provided in subdivision (e), a covered electronic device that is identified in the regulations adopted, on or before July 1, 2004, by the department, that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(2) Except as provided in subdivision (e), a covered electronic device identified in the regulations adopted by the department, pursuant to subdivision (b), shall, on and after July 1 of the year subsequent to the year in which the covered electronic device is first identified in the regulations, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(e) (1) If the manufacturer of an electronic device that is identified in the regulations adopted by the department pursuant to subdivision (b) obtains the concurrence of the department that an electronic device, when discarded, would not be a hazardous waste, in accordance with procedures set forth in Section 66260.200 of Title 22 of the California Code of Regulations, the

1 electronic device shall cease to be a covered electronic device and
2 shall cease to be subject to subdivisions (c) and (d) on the first day
3 of the quarter that begins not less than 30 days after the date that
4 the department provides the manufacturer with a written
5 nonhazardous concurrence for the electronic device pursuant to
6 this subdivision. A manufacturer shall notify each retailer, to which
7 that manufacturer has sold a covered electronic device, that the
8 device has been determined pursuant to this subdivision to be
9 nonhazardous and is no longer subject to a covered electronic
10 recycling fee.

11 (2) No later than 10 days after the date that the department issues
12 a written nonhazardous concurrence to the manufacturer, the
13 department shall do both of the following:

14 (A) Post on the department's Web site a copy of the
15 nonhazardous concurrence, including, but not limited to, an
16 identification and description of the electronic device to which the
17 concurrence applies.

18 (B) Send a copy of the nonhazardous concurrence, including,
19 but not limited to, an identification and description of the electronic
20 device to which the concurrence applies, to the California
21 Integrated Waste Management Board and the State Board of
22 Equalization.

23 *(f) (1) A manufacturer shall prepare and, at the request of the*
24 *department, submit to the department within 28 days of the date*
25 *of the request, technical documentation or other information*
26 *showing that the electronic device sold or offered for sale by that*
27 *manufacturer is not prohibited from sale pursuant to this section*
28 *along with other available information relating to hazardous*
29 *characteristics of the device.*

30 *(2) The department shall treat as confidential any information*
31 *provided pursuant to this section that is a trade secret and that is*
32 *identified as a trade secret at the time of submission by a*
33 *manufacturer, in the same manner as the procedures adopted by*
34 *the department pursuant to Section 25173 with regard to hazardous*
35 *waste handling and disposal. Any information that is not a trade*
36 *secret, or that is not identified by the manufacturer as a trade*
37 *secret, shall be made available to the public upon request pursuant*
38 *to the California Public Records Act (Chapter 3.5 (commencing*
39 *with Section 6250) of Division 7 of Title 1 of the Government*
40 *Code).*

1 ~~(f)~~—

2 (g) Notwithstanding Section 42474 of the Public Resources
3 Code, a fine or penalty shall not be assessed on a retailer who
4 unknowingly sells, or offers for sale, in this state a covered
5 electronic device for which the covered electronic waste recycling
6 fee has not been collected or paid, if the failure to collect the fee
7 was due to the failure of the State Board of Equalization to inform
8 the retailer that the electronic device was subject to the fee.

9 SEC. 2. Section 25214.10.3 is added to the Health and Safety
10 Code, to read:

11 25214.10.3. (a) For the purposes of this section, the following
12 definitions shall apply:

13 (1) “Electronic equipment” means a device that meets both of
14 the following conditions:

15 (A) The device is dependent on electric currents or
16 electromagnetic fields to work properly or is a device for the
17 generation, transfer, or measurement of electric currents or fields.

18 (B) The device, or component part thereof, is produced or
19 distributed for either of the following purposes:

20 (i) For sale to a consumer for use in or around a permanent or
21 temporary household or residence or a school, for use in recreation,
22 or for other purposes or in other locations.

23 (ii) For the personal use, consumption, or enjoyment of a
24 consumer in or around a permanent or temporary household or
25 residence or a school, in recreation, or for other purposes or in
26 other locations.

27 (2) “Electronic equipment” does not include any of the
28 following:

29 (A) A fixed-installation device that is electrical or mechanical,
30 or electrical and mechanical, that is electrically wired directly to
31 a fixed electrical system, or connected to a fixed mechanical system
32 of a structure, or both a fixed electrical and fixed mechanical
33 system, and that cannot be readily disconnected without altering
34 the electrical or mechanical system connections, or both the
35 electrical and mechanical system connections. An electronic device
36 that is portable and uses an electrical plug as the means to connect
37 to an electrical source is not a fixed-installation electrical or
38 mechanical device, or both an electrical and mechanical device.

39 (B) An “electronic device” as defined in Section 25214.10.

40 (C) Electronic or electrical lighting devices.

1 (3) “Hazardous substance” means any substance for which the
2 RoHS Directive prohibits the sale, or offering for sale, of electronic
3 equipment containing that substance.

4 (4) “Producer” means a person who, irrespective of the selling
5 technique used, does any of following:

6 (A) Manufactures and sells electronic equipment under the
7 producer’s own brand.

8 (B) Resells, under the producer’s own brand, electronic
9 equipment produced by other suppliers. For the purposes of this
10 section, a person who resells electronic equipment is not the
11 producer of that electronic equipment, if the brand of the producer
12 appears on the equipment, as provided in subparagraph (A).

13 (5) “RoHS Directive” means the directive on the restriction of
14 the use of certain hazardous substances in electrical and electronic
15 equipment RoHS, and is cited as Directive 2002/95/EC, adopted
16 by the European Parliament and the Council of the European Union
17 on January 27, 2003, on the restriction of certain hazardous
18 substances in electronic equipment, as amended on or before
19 January 1, 2010 (13.2.2003 Official Journal of the European
20 Union).

21 (6) “Trade secret” has the same meaning as defined in Section
22 25173.

23 (b) (1) A producer shall prepare and, at the request of the
24 department, submit to the department within 28 days of the date
25 of the request, technical documentation or other information
26 showing that electronic equipment sold or offered for sale by that
27 producer is not prohibited from sale by the RoHS Directive along
28 with other available information relating to hazardous
29 characteristics of the equipment.

30 (2) If the electronic equipment offered for sale in this state is
31 not offered for sale in the European Union and documentation
32 showing that the equipment is not prohibited from sale by the
33 RoHS Directive is not available, the producer shall submit to the
34 department available information relating to the hazardous
35 substance content and hazardous characteristics of the equipment.

36 (c) The department shall treat as confidential any information
37 provided pursuant to this section that is a trade secret and that is
38 identified as a trade secret at the time of submission by a producer,
39 in the same manner as the procedures adopted by the department
40 pursuant to Section 25173 with regard to hazardous waste handling

1 and disposal. Any information that is not a trade secret, or that is
2 not identified by the producer as a trade secret, shall be made
3 available to the public upon request pursuant to the California
4 Public Records Act (Chapter 3.5 (commencing with Section 6250)
5 of Division 7 of Title 1 of the Government Code).

6 (d) The department shall not impose any requirements or
7 conditions that are in addition to, or more stringent than, the
8 requirements and conditions expressly authorized by this section.

9 SEC. 3. 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.