

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 960

Introduced by Assembly Member Bonnie Lowenthal

February 18, 2011

An act to amend Sections 42463, 42476, and 42476.5 of, and to repeal and add Section 42476.6 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as amended, Bonnie Lowenthal. Recycling: electronic waste.

(1) Existing law, the Electronic Waste Recycling Act of 2003, requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. These fees are deposited in the Electronic Waste Recovery and Recycling Account, and the Department of Resources Recycling and Recovery (CalRecycle) is continuously appropriated the money in the account to, among other things, make electronic waste recovery payments and recycling payments. CalRecycle is authorized to make these payments only if certain conditions are met. A violation of the act is a crime.

This bill would define the terms “electronic waste” and “electronic device” and would additionally require, as a condition of CalRecycle making those payments, that ~~the recycler make certain demonstrations regarding the export of electronic devices from which that waste was derived and the export of all other electronic waste handled by the recycler~~ *CalRecycle determine that the recycler has demonstrated to the Department of Toxic Substances Control that all electronic waste*

handled by the recycler making the claim has been managed in a specified manner, among other things.

(2) Existing law requires a person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, to comply with specified notification requirements and make specified demonstrations. Existing law exempts from these ~~requirements~~ *requirements* a component part of a covered electronic device that is exported and reused or recycled.

The bill would revise the requirements imposed on exportation to additionally include a person who exports electronic waste or a previously used electronic device and would also include, in the provision, an export intended for reuse. The bill would impose a state-mandated local program by creating a new crime.

The bill would repeal the existing exemption for exportation of component parts that are reused or recycled and would instead require the department to adopt regulations exempting materials or component parts of electronic waste or previously used electronic devices that meet certain conditions. The bill would also make conforming changes to reference to CalRecycle.

(3) 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 42463 of the Public Resources Code is
- 2 amended to read:
- 3 42463. For the purposes of this chapter, the following terms
- 4 have the following meanings, unless the context clearly requires
- 5 otherwise:
- 6 (a) "Account" means the Electronic Waste Recovery and
- 7 Recycling Account created in the Integrated Waste Management
- 8 Fund under Section 42476.
- 9 (b) "Authorized collector" means any of the following:

1 (1) A city, county, or district that collects covered electronic
2 devices.

3 (2) A person or entity that is required or authorized by a city,
4 county, or district to collect covered electronic devices pursuant
5 to the terms of a contract, license, permit, or other written
6 authorization.

7 (3) A nonprofit organization that collects or accepts covered
8 electronic devices.

9 (4) A manufacturer or agent of the manufacturer that collects,
10 consolidates, and transports covered electronic devices for
11 recycling from consumers, businesses, institutions, and other
12 generators.

13 (5) An entity that collects, handles, consolidates, and transports
14 covered electronic devices and has filed applicable notifications
15 with the department pursuant to Chapter 23 (commencing with
16 Section 66273.1) of Division 4.5 of Title 22 of the California Code
17 of Regulations.

18 (c) “CalRecycle” means the Department of Resources Recycling
19 and Recovery.

20 (d) “Consumer” means a person who purchases a new or
21 refurbished covered electronic device in a transaction that is a
22 retail sale or in a transaction to which a use tax applies pursuant
23 to Part 1 (commencing with Section 6001) of Division 2 of the
24 Revenue and Taxation Code.

25 (e) Notwithstanding Section 40118, “Department” means the
26 Department of Toxic Substances Control.

27 (f) (1) “Electronic waste” means an electronic device, as
28 specified in paragraph (2) that is discarded, and is identified as
29 hazardous waste because it meets either of the following
30 conditions:

31 (A) Exhibits toxicity, as specified in the regulations adopted
32 pursuant to Chapter 6.5 (commencing with Section 25100) of
33 Chapter 6.5 of Division 20 of the Health and Safety Code.

34 (B) Is listed as hazardous waste pursuant to the regulations
35 adopted pursuant to Chapter 6.5 (commencing with Section 25100)
36 of Division 20 of the Health and Safety Code.

37 (2) “Electronic device” includes, but is not limited to, cash
38 registers, oscilloscopes computers, computer peripherals,
39 telephones, answering machines, radios, stereo equipment, tape
40 players, recorders, phonographs, video cassette players or recorders,

compact disc players or recorders, calculators, appliances, and any of the devices specified in subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision ~~(e)~~ (g).

(3) “Electronic waste and electronic device do not include any of the following:

(A) “Covered electronic waste” as defined in this section.

(B) A major appliance, as defined in Section 42166.

(C) A device that is comprised largely of metal, qualifies as “scrap metal” as defined in Section 66260.10 of Title 22 of the California Code of Regulations, and is recycled.

(g) (1) Except as provided in paragraph (2), “covered electronic device” means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) “Covered electronic device” does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(h) “Covered electronic waste” or “covered e-waste” means a covered electronic device that is discarded.

(i) “Covered electronic waste recycling fee” or “covered e-waste recycling fee” means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(j) “Covered electronic waste recycler” or “covered e-waste recycler” means any of the following:

1 (1) A person who engages in the manual or mechanical
2 separation of covered electronic devices to recover components
3 and commodities contained therein for the purpose of reuse or
4 recycling.

5 (2) A person who changes the physical or chemical composition
6 of a covered electronic device, in accordance with the requirements
7 of Chapter 6.5 (commencing with Section 25100) of Division 20
8 of the Health and Safety Code and the regulations adopted pursuant
9 to that chapter, by deconstructing, size reduction, crushing, cutting,
10 sawing, compacting, shredding, or refining for purposes of
11 segregating components, for purposes of recovering or recycling
12 those components, and who arranges for the transport of those
13 components to an end user.

14 (3) A manufacturer who meets any conditions established by
15 this chapter and Chapter 6.5 (commencing with Section 25100)
16 of Division 20 of the Health and Safety Code for the collection or
17 recycling of covered electronic waste.

18 (k) “Discarded” has the same meaning as defined in subdivision
19 (b) of Section 25124 of the Health and Safety Code.

20 (l) “Electronic waste recovery payment” means an amount
21 established and paid by CalRecycle pursuant to Section 42477.

22 (m) “Electronic waste recycling payment” means an amount
23 established and paid by CalRecycle pursuant to Section 42478.

24 (n) “Hazardous material” has the same meaning as defined in
25 Section 25501 of the Health and Safety Code.

26 (o) “Manufacturer” means either of the following:

27 (1) A person who manufactures a covered electronic device sold
28 in this state.

29 (2) A person who sells a covered electronic device in this state
30 under that person’s brand name.

31 (p) “Person” means an individual, trust, firm, joint stock
32 company, business concern, and corporation, including, but not
33 limited to, a government corporation, partnership, limited liability
34 company, and association. Notwithstanding Section 40170,
35 “person” also includes a city, county, city and county, district,
36 commission, the state or a department, agency, or political
37 subdivision thereof, an interstate body, and the United States and
38 its agencies and instrumentalities to the extent permitted by law.

39 (q) “Recycling” has the same meaning as defined in subdivision
40 (a) of Section 25121.1 of the Health and Safety Code.

(r) “Refurbished,” when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(s) “Retailer” means a person who makes a retail sale of a new or refurbished covered electronic device. “Retailer” includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(t) (1) “Retail sale” has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) “Retail sale” does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(u) “Vendor” means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(v) “Video display device” means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

SEC. 2. Section 42476 of the Public Resources Code is amended to read:

42476. (a) The Electronic Waste and Recovery and Recycling Account is hereby established in the Integrated Waste Management

1 Fund. All fees collected pursuant to this chapter shall be deposited
2 in the account. Notwithstanding Section 13340 of the Government
3 Code, the funds in the account are hereby continuously
4 appropriated, without regard to fiscal year, for the following
5 purposes:

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

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

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

13 (4) To make payments to manufacturers pursuant to subdivision
14 ~~(g)~~ (h).

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

18 (A) For the administration of this chapter by CalRecycle and
19 the department.

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

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

29 (D) To establish the public information program specified in
30 subdivision (d).

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

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

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

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

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

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

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

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

~~(4) The recycler demonstrates and CalRecycle determines that no amount or component of the covered electronic device from which the covered electronic waste was derived is exported to a state or country in violation of the laws or requirements of that state or country.~~

~~(5) The recycler demonstrates and~~

(4) CalRecycle determines that *the recycler has demonstrated to the department that* all electronic waste handled by the recycler making the claim has been managed consistent with Section 42476.5 and that the recycler or any other entity exporting any portion of the covered electronic waste for which payment is claimed or any electronic waste is in compliance with the requirements of Section 42476.5.

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

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

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

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

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

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

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

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

27 SEC. 3. Section 42476.5 of the Public Resources Code is
28 amended to read:

29 42476.5. Except as provided in the regulations adopted pursuant
30 to Section 42476.6, a person who exports covered electronic waste,
31 a covered electronic device, electronic waste, or a previously used
32 electronic device intended for reuse, recycling, or disposal, to a
33 foreign country, or to another state for ultimate export to a foreign
34 country, shall do all of the following at least 60 days prior to
35 export:

36 (a) Notify the department of the destination, disposition,
37 contents, and volume of the waste, or device intended for recycling
38 or disposal to be exported, and include with the notification the
39 demonstrations required pursuant to subdivisions (b) to (e),
40 inclusive.

1 (b) Demonstrate that the waste or device is being exported for
2 the purposes of recycling or disposal.

3 (c) Demonstrate that the importation of the waste or device is
4 not prohibited by an applicable law in the state or country of
5 destination and that any import will be conducted in accordance
6 with all applicable laws. As part of this demonstration, required
7 import and operating licenses, permits, or other appropriate
8 authorization documents shall be forwarded to the department.

9 (d) Demonstrate that the exportation of the waste or device is
10 conducted in accordance with applicable United States or
11 applicable international law.

12 (e) (1) Demonstrate that the waste or device will be managed
13 within the country of destination only at facilities whose operations
14 meet or exceed the binding decisions and implementing guidelines
15 of the Organization for Economic Cooperation and Development
16 for the environmentally sound management of the waste or device
17 being exported.

18 (2) The demonstration required by this subdivision applies to
19 any country of destination, notwithstanding that the country is not
20 a member of the Organization for Economic Cooperation and
21 Development.

22 SEC. 4. Section 42476.6 of the Public Resources Code is
23 repealed.

24 SEC. 5. Section 42476.6 is added to the Public Resources Code,
25 to read:

26 42476.6. (a) It is the intent of the Legislature that only materials
27 or component parts of electronic waste or previously used
28 electronic devices that are ready for reuse or recycling back into
29 new materials or products without further processing or handling
30 and that pose no risk to public health or the environment are exempt
31 from the requirements of Section 42476.5.

32 (b) The department shall adopt regulations ~~providing that~~
33 *provide* guidance to exporters on materials and components ~~to and~~
34 exempt from the requirements of Section 42476.5 only materials
35 or component parts of electronic waste, covered electronic waste,
36 previously used electronic devices, and previously used covered
37 electronic devices that are ready for reuse or recycling back into
38 new materials or products without further processing or handling
39 and that pose no risk to public health or the environment.

1 SEC. 6. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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