



GOV. MSG. NO. 854

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 1809 HD2 SD1 CD1

On July 15, 2009, House Bill No. 1809, entitled "A Bill for an Act Relating to Recycling" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to mandate the recycling of televisions sold in the State by expanding the Department of Health's existing electronic device recycling program.

As I have stated in the past, I have strong concerns about establishing new State programs that are not essential to nor improve the efficiency of government. Given that we face a budget shortfall of at least \$2.73 billion over the next several years, I question how the Legislature can justify passing legislation that creates a new program and increases the demand on personnel, while at the same time making funding reductions to State departments.

In addition, I am concerned that the program created by this bill places numerous requirements on manufacturers and retailers that will increase the cost of doing business in our state. Further, the fees and increased reporting requirements mandated by this bill will likely be passed on to consumers through higher retail prices.

While I agree that it is important to encourage proper recycling methods for computers, televisions, and other electronic devices, the private sector already provides a number of options to consumers and these options continue to grow. In the Department of Health's report to the Legislature on Act 13, Special Session Laws of 2008, I note the following reference to a recycling program developed by the Sony Corporation:

"Sony established a national recycling program for consumer electronics. The Sony Take Back Recycling Program allows consumers to recycle all Sony-branded products for no fee at 75 Waste Management Recycle America eCycling drop-off centers throughout the U.S. The

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program, began on September 15, 2007 (and) was developed in collaboration with WM Recycle America, LLC, a wholly owned subsidiary of Waste Management, Inc. The program also allows consumers to recycle other manufacturers' consumer electronics products at market prices, and may include a recycling fee for some types of materials."

Given that programs such as this already exist in the private sector, there is little advantage to be gained by setting up a State-managed television recycling program.

Despite these strong concerns, I am allowing this bill to become law without my signature. If this bill does not become law, televisions would be subject to the more onerous recycling requirements of Act 13 of the 2008 Special Session. In the coming 2010 Legislative Session, I encourage the Legislature to reconsider its support for both the electronic device and television recycling programs in this bill and in Act 13 and consider repealing them.

For the foregoing reasons, I allowed House Bill No. 1809 to become law as Act 183, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda Lingle', with a stylized, flowing script.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO RECYCLING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Act 13, Special Session Laws of Hawaii 2008,
2 addresses the collection, transportation, and recycling of
3 computers, computer printers, computer monitors, and portable
4 computers that are used and discarded in the state.

5 The legislature finds that a similar comprehensive and
6 convenient television recycling and reuse program, based on
7 shared responsibility among all stakeholders, including
8 manufacturers, consumers, retailers, and government, would
9 ensure that end-of-life televisions are responsibly recycled or
10 disposed of to promote resource conservation.

11 Additionally, this Act clarifies and amends certain
12 provisions of chapter 339D, Hawaii Revised Statutes, by:

13 (1) Deleting the annual sales of "specialized computers"
14 provision for electronic device manufacturers;

15 (2) Prohibiting television manufacturers and electronic
16 device manufacturers from charging owners a fee to
17 recycle televisions and electronic devices under
18 certain circumstances;



1 (3) Requiring electronic device manufacturers and their
2 agents to be responsible for following regulations and
3 for adopting environmentally sound recycling programs;
4 and

5 (4) Requiring recycling programs for electronic devices to
6 be fully implemented and operational no later than
7 January 1, 2010.

8 The purpose of this Act is to develop an effective and
9 efficient system for recycling televisions and to require
10 manufacturers to offer this recycling service to consumers with
11 convenience. Additionally, the purpose of this Act is to amend
12 chapter 339D, Hawaii Revised Statutes, relating to electronic
13 device manufacturers for enforcement and consumer convenience
14 purposes.

15 SECTION 2. Chapter 339D, Hawaii Revised Statutes, is
16 amended by amending its title to read as follows:

17 " [{} CHAPTER 339D {}]

18 ELECTRONIC WASTE AND TELEVISION RECYCLING AND RECOVERY ACT"

19 SECTION 3. Chapter 339D, Hawaii Revised Statutes, is
20 amended by designating section 339D-1 as part I, entitled
21 "Definitions".



1 SECTION 4. Chapter 339D, Hawaii Revised Statutes, is
2 amended by designating sections 339D-2 through 339D-6 as part
3 II, entitled "Electronic Waste Recycling".

4 SECTION 5. Chapter 339D, Hawaii Revised Statutes, is
5 amended by designating sections 339D-7 through 339D-12 as part
6 IV, entitled "General Provisions".

7 SECTION 6. Chapter 339D, Hawaii Revised Statutes, is
8 amended by adding a new part to be appropriately designated and
9 to read as follows:

10 "PART III. TELEVISION RECOVERY SYSTEM

11 §339D-A Applicability. The recycling provisions of this
12 part shall apply only to covered televisions used and discarded
13 in this state by a covered entity.

14 §339D-B Television manufacturers. (a) No television
15 manufacturer shall sell or offer for sale any new covered
16 television in this state unless:

17 (1) The covered television is labeled with a brand,
18 whether licensed or owned, and the label is
19 permanently affixed; and

20 (2) The brand is included in a registration that is filed
21 with the department and that is effective pursuant to
22 subsection (b).



1 (b) By January 1, 2010, before selling or offering for
2 sale any covered television in the state, each television
3 manufacturer shall register with the department and pay to the
4 department a registration fee of \$2,500. Thereafter, if a
5 television manufacturer has not previously registered, the
6 television manufacturer shall register with the department prior
7 to any offer for sale for delivery in this state of the
8 television manufacturer's new covered televisions.

9 (c) Each television manufacturer who is registered shall
10 submit an annual renewal of its registration and payment of a
11 registration fee of \$2,500 to the department by January 1 of
12 each program year.

13 (d) The registration and each renewal shall include a list
14 of all of the television manufacturer's brands of covered
15 televisions and shall be effective on the second day of the
16 succeeding month after receipt by the department of the
17 registration or renewal.

18 (e) A television manufacturer shall provide the department
19 with contact information for the television manufacturer's
20 designated agent or employee whom the department may contact for
21 information on the television manufacturer's compliance with the
22 requirements of this section.



1 §339D-C Television manufacturer responsibility. (a)

2 Beginning January 1, 2011, a television manufacturer shall
3 recycle or arrange for the recycling of any covered television
4 sold in the state.

5 (b) By June 1, 2010, and annually thereafter, each
6 television manufacturer shall submit a plan to the department to
7 establish, conduct, and manage a program for the recycling of
8 covered televisions sold in the state, which shall be subject to
9 the following conditions:

10 (1) The plan shall not permit the charging of a fee at the
11 point of recycling if the covered television is
12 brought by the covered television owner to a central
13 location for recycling; provided that the plan may
14 include a reasonable transportation fee if the
15 television manufacturer or television manufacturer's
16 agent removes the covered electronic device from the
17 owner's premises at the owner's request and if the
18 removal is not in conjunction with delivery of a new
19 television to the owner; and

20 (2) Each television manufacturer may develop its own
21 recycling program or may collaborate with other
22 television manufacturers, so long as the program is



1 implemented and fully operational no later than
2 January 1, 2011.

3 (c) The department shall review each television
4 manufacturer's plan and, within sixty days of receipt of the
5 plan, determine whether the plan complies with this part. If
6 the plan is approved, the department shall notify the television
7 manufacturer or group of television manufacturers. If the plan
8 is rejected, the department shall notify the television
9 manufacturer or group of television manufacturers and provide
10 the reasons for the plan's rejection. Within thirty days after
11 receipt of the department's rejection, the television
12 manufacturer or group of television manufacturers may revise and
13 resubmit the plan to the department for approval.

14 (d) No later than January 31, 2012, and each year
15 thereafter, each television manufacturer shall report to the
16 department the total weight of covered televisions that the
17 television manufacturer collected in the state and recycled
18 during the previous year.

19 **§339D-D Retailer responsibility.** (a) Beginning
20 January 1, 2011, no retailer shall sell or offer to sell any
21 covered television in this state unless a visible, permanent
22 label clearly identifying the manufacturer of that device is



1 affixed to the equipment and the television manufacturer has
2 registered with the State.

3 (b) Beginning January 1, 2011, retailers shall make
4 available to their customers information on collection services
5 for discarded televisions in the state and shall include the
6 department's website address and toll-free telephone number.
7 Remote retailers may include this information in a visible
8 location on their website to fulfill this requirement.

9 (c) Retailers shall not be liable in any way for
10 electronic data or other information that a consumer may have
11 stored on a covered television that is recovered or recycled.

12 **§339D-E Television recovery system.** (a) The department
13 shall use state-specific television sales data or national
14 television sales data available from commercially available
15 analytical sources to determine each television manufacturer's
16 recycling responsibilities for covered televisions based upon
17 the television manufacturer's market share. If the department
18 uses national sales data, the department shall extrapolate data
19 for the State from national data on the basis of the State's
20 share of the national population. The department shall seek to
21 establish the most accurate determination of each television



1 manufacturer's market share and may rely on supplemental sources
2 of information to achieve this goal.

3 (b) No later than March 15, 2012, and annually thereafter,
4 the department shall notify each television manufacturer of its
5 recycling obligation. Each television manufacturer's obligation
6 shall be based on that television manufacturer's market share
7 from the previous year multiplied by the total pounds of covered
8 televisions recycled by all television manufacturers during the
9 previous program year.

10 (c) The department shall develop a consumer education
11 program about the covered television recycling program.

12 (d) Beginning January 1, 2011, the department shall
13 display on its website a toll-free number and current
14 information on covered television recycling locations.

15 **§339D-F Environmental management.** (a) All covered
16 televisions recovered pursuant to this part shall be recycled in
17 a manner that complies with all applicable federal, state, and
18 county laws and requirements.

19 (b) The department shall adopt by reference the Institute
20 of Scrap Recycling Industries, Inc.'s Electronics Recycling
21 Operating Practices as requirements.



1 §339D-G State procurement. All state and county agencies
2 that purchase or lease any covered television shall require each
3 prospective offeror to certify compliance with this part.
4 Failure to provide certification shall disqualify the
5 prospective offeror."

6 SECTION 7. Chapter 339D, Hawaii Revised Statutes, part IV,
7 is amended by adding a new section to be appropriately
8 designated and to read as follows:

9 "§339D-H Manufacturer and agent responsibilities;
10 regulatory compliance. Each electronic device manufacturer and
11 television manufacturer shall be responsible for ensuring that
12 the manufacturer and its agents follow all federal, state, and
13 local regulations when collecting, transporting, and recycling
14 covered electronic devices or covered televisions, and adopt
15 environmentally sound recycling practices for the covered
16 electronic devices or covered televisions."

17 SECTION 8. Section 339D-1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~4~~] §339D-1 [~~4~~] Definitions. As used in this chapter:

20 "Brand" means [~~symbols, words, or marks that identify~~] a
21 symbol, word, or mark that identifies a covered electronic



1 device[7] or a covered television, rather than any of its
2 components.

3 "Covered electronic device":

4 (1) Means a computer, computer printer, computer monitor,
5 or portable computer[7] with a screen size greater
6 than four inches measured diagonally; and

7 (2) Shall not include:

8 (A) A covered electronic device that is a part of a
9 motor vehicle or any component part of a motor
10 vehicle assembled by or for a motor vehicle
11 manufacturer or franchised dealer, including
12 replacement parts for use in a motor vehicle;

13 (B) A covered electronic device that is functionally
14 or physically required as a part of a larger
15 piece of equipment designed and intended for use
16 in an industrial, commercial, or medical setting,
17 including diagnostic, monitoring, or control
18 equipment;

19 (C) A covered electronic device that is contained
20 within a clothes washer, clothes dryer,
21 refrigerator, refrigerator and freezer, microwave
22 oven, conventional oven or range, dishwasher,



1 room air conditioner, dehumidifier, or air
2 purifier; or

3 (D) A telephone of any type.

4 "Covered entity" means any household, government entity,
5 business, or nonprofit organization exempt from taxation under
6 section 501(c)(3) of the United States Internal Revenue Code,
7 regardless of size or place of operation within the State.

8 "Covered television":

9 (1) Means any device that is capable of receiving
10 broadcast, cable, or satellite signals and displaying
11 television or video programming, including without
12 limitation any direct view or projection television
13 with a viewable screen of nine inches or larger with
14 display technology based on cathode ray tube, plasma,
15 liquid crystal, digital light processing, liquid
16 crystal on silicon, silicon crystal reflective
17 display, light emitting diode, or similar technology
18 marketed and intended for use by a household;

19 (2) Shall not include:

20 (A) A computer, computer printer, computer monitor,
21 or portable computer;



1 (B) A television that is a part of a motor vehicle or
2 any component part of a motor vehicle assembled
3 by or for a vehicle manufacturer or franchised
4 dealer, including replacement parts for use in a
5 motor vehicle;

6 (C) A television that is functionally or physically
7 required as a part of a larger piece of equipment
8 designed and intended for use in an industrial,
9 commercial, or medical setting, including
10 diagnostic, monitoring, or control equipment;

11 (D) A telephone of any type, including a mobile
12 telephone; or

13 (E) A global positioning system.

14 "Department" means the department of health.

15 "Electronic device manufacturer":

16 (1) Means any existing person:

17 (A) Who manufactures or manufactured covered
18 electronic devices under a brand that it owns or
19 owned or is or was licensed to use, other than a
20 license to manufacture covered electronic devices
21 for delivery exclusively to or at the order of
22 the licensor;



1 (B) Who sells or sold covered electronic devices
2 manufactured by others under a brand that the
3 seller owns or owned or is or was licensed to
4 use, other than a license to manufacture covered
5 electronic devices for delivery exclusively to or
6 at the order of the licensor;

7 (C) Who manufactures or manufactured covered
8 electronic devices without affixing a brand;

9 (D) Who manufactures or manufactured covered
10 electronic devices to which it affixes or affixed
11 a brand that it neither owns or owned nor is or
12 was licensed to use; or

13 (E) For whose account covered electronic devices
14 manufactured outside the United States are or
15 were imported into the United States; provided
16 that if at the time those covered electronic
17 devices are or were imported into the United
18 States and another person has registered as the
19 manufacturer of the brand of the covered
20 electronic devices, this paragraph shall not
21 apply;



1 (2) Shall not include persons who manufacture no more than
2 one hundred computers per year.

3 "Household" means any occupant of a single detached
4 dwelling unit or of a single unit of a multiple dwelling unit
5 who has used a covered electronic device or covered television
6 at a dwelling unit primarily for personal or home business use.

7 ~~["Manufacturer" means any existing person:~~

8 ~~(1) Who manufactures or manufactured covered electronic~~
9 ~~devices under a brand that it owns or owned or is or~~
10 ~~was licensed to use, other than a license to~~
11 ~~manufacture covered electronic devices for delivery~~
12 ~~exclusively to or at the order of the licensor;~~

13 ~~(2) Who sells or sold covered electronic devices~~
14 ~~manufactured by others under a brand that the seller~~
15 ~~owns or owned or is or was licensed to use, other than~~
16 ~~a license to manufacture covered electronic devices~~
17 ~~for delivery exclusively to or at the order of the~~
18 ~~licensor;~~

19 ~~(3) Who manufactures or manufactured covered electronic~~
20 ~~devices without affixing a brand;~~

21 ~~(4) Who manufactures or manufactured covered electronic~~
22 ~~devices to which it affixes or affixed a brand that it~~



~~neither owns or owned nor is or was licensed to use,~~

~~or~~

~~(5) For whose account covered electronic devices~~

~~manufactured outside the United States are or were~~

~~imported into the United States; provided that if at~~

~~the time such covered electronic devices are or were~~

~~imported into the United States and another person has~~

~~registered as the manufacturer of the brand of the~~

~~covered electronic devices, this paragraph shall not~~

~~apply;~~

~~provided that the term "manufacturer" shall not include persons~~

~~located in the State who manufacture specialized computers and~~

~~have sales of no more than one hundred computers per year.]~~

"Market share":

(1) Means the calculation of a television manufacturer's

prior year's sales of televisions divided by all

manufacturers' prior year's sales for all televisions,

as determined by the department;

(2) May be expressed as a percentage, a fraction, or a

decimal fraction.



1 "New covered electronic device" means a covered electronic
2 device that is manufactured after the effective date of this
3 chapter.

4 "Person" means any individual, business, partnership,
5 limited liability company, corporation, not-for-profit
6 organization, association, government entity, public benefit
7 corporation, or public authority.

8 "Program year" means a full calendar year beginning on or
9 after January 1, 2010[-], and each calendar year thereafter
10 beginning on January 1.

11 "Recover" means to reuse or recycle.

12 "Recycling" means processing (including disassembling,
13 dismantling, or shredding) covered electronic devices or covered
14 televisions or their components to recover a useable product[-
15 ~~"Recycling"~~]; provided that "recycling" does not include any
16 process defined as incineration under applicable laws and rules.

17 "Retailer" means any person who offers covered electronic
18 devices or covered televisions for sale, other than for resale
19 by the purchaser, through any means, including sales outlets,
20 catalogs, or the Internet.



1 "Sell" or "sale" means any transfer for consideration of
2 title, including transactions conducted through sales outlets,
3 catalogs, or the Internet, but excluding leases.

4 "Television manufacturer" means a person who:

- 5 (1) Manufactures for sale in the state a covered
6 television under a brand that it licenses or owns;
7 (2) Manufactures for sale in the state covered televisions
8 without affixing a brand;
9 (3) Resells into the state a covered television
10 manufactured by others under a brand that the seller
11 owns or is licensed to use;
12 (4) Imports into the United States or exports from the
13 United States a covered television for sale in the
14 state;
15 (5) Sells at retail a covered television acquired from an
16 importer described in paragraph (4), and elects to
17 register as the manufacturer for those products;
18 (6) Manufactures covered televisions and supplies them to
19 any person or persons within a distribution network
20 that includes wholesalers or retailers in this state;
21 or



1 (7) Assumes the responsibilities and obligations of a
2 television manufacturer under this chapter.

3 In the event the television manufacturer is one who
4 manufactures, sells, or resells covered televisions under a
5 brand for which it has obtained the license, then the licensor
6 or brand owner of the brand shall not be included in the
7 definition of television manufacturer under paragraph (1) or
8 (3)."

9 SECTION 9. Section 339D-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§339D-2[+] **Scope of products.** The collection,
12 transportation, and recycling provisions of this [~~chapter~~] part
13 shall apply only to covered electronic devices used and
14 discarded in this State by a covered entity."

15 SECTION 10. Section 339D-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§339D-3[+] **Sales prohibition.** (a) Beginning
18 January 1, 2010, no electronic device manufacturer or retailer
19 shall sell or offer for sale any new covered electronic device
20 for delivery in this State unless:



1 (1) The covered electronic device is labeled with a brand,
2 and the label is permanently affixed and readily
3 visible; and

4 (2) The brand is included in a registration that is filed
5 with the department and that is effective pursuant to
6 section 339D-4(b)(3).

7 (b) Beginning April 1, 2009, the department shall maintain
8 a list of each registered electronic device manufacturer and the
9 brands reported in each electronic device manufacturer's
10 registration and a list of brands for which no electronic device
11 manufacturer has registered. The lists shall be posted on the
12 department website and shall be updated by the first day of each
13 month. Each retailer who sells or offers for sale any new
14 covered electronic device for delivery in this State shall
15 review these lists prior to selling the covered electronic
16 device. A retailer is considered to have complied with
17 subsection (a) if, on the date a new covered electronic device
18 was ordered by the retailer, the brand was included on the
19 department's list of brands reported in [a] an electronic device
20 manufacturer's registration."

21 SECTION 11. Section 339D-4, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " [4] §339D-4 [4] ~~Manufacturer~~ Electronic device manufacturer
2 responsibility. (a) Beginning October 1, 2009, each electronic
3 device manufacturer shall label all new covered electronic
4 devices to be offered for sale for delivery in this State with a
5 brand, which label shall be permanently affixed and readily
6 visible.

7 (b) (1) By January 1, 2009, each electronic device
8 manufacturer of new covered electronic devices offered
9 for sale for delivery in this State shall register
10 with the department and pay to the department a
11 registration fee of \$5,000. Thereafter, if [a] an
12 electronic device manufacturer has not previously
13 registered, the electronic device manufacturer shall
14 register with the department prior to any offer for
15 sale for delivery in this State of the electronic
16 device manufacturer's new covered electronic devices.

17 (2) Each electronic device manufacturer who is registered
18 shall submit an annual renewal of its registration
19 with the payment of a registration fee of \$5,000, by
20 January 1 of each program year.

21 (3) The registration and each renewal shall include a list
22 of all of the electronic device manufacturer's brands



1 of covered electronic devices and shall be effective
2 on the second day of the succeeding month after
3 receipt by the department of the registration or
4 renewal.

5 (c) By June 1, 2009, and annually thereafter, each
6 electronic device manufacturer shall submit a plan to the
7 department to establish, conduct, and manage a program for the
8 collection, transportation, and recycling of its covered
9 electronic devices sold in the State[-], which shall be subject
10 to the following conditions:

11 (1) The plan shall not permit the charging of a fee at the
12 point of recycling if the covered electronic device is
13 brought by the covered electronic device owner to a
14 central location for recycling; provided that the plan
15 may include a reasonable transportation fee if the
16 electronic device manufacturer or electronic device
17 manufacturer's agent removes the covered electronic
18 device from the owner's premises at the owner's
19 request and if the removal is not in conjunction with
20 delivery of a new electronic device to the owner; and

21 (2) Each electronic device manufacturer may develop its
22 own recycling program or may collaborate with other



1 electronic device manufacturers, so long as the
2 program is implemented and fully operational no later
3 than January 1, 2010.

4 (d) By March 31, 2011, and annually thereafter, each
5 electronic device manufacturer shall submit to the department
6 the total weight of all covered electronic devices recycled in
7 the previous year, which may include both [a] an electronic
8 device manufacturer's own covered electronic devices and those
9 of other manufacturers.

10 (e) By July 1, 2011, and annually thereafter, the
11 department shall publish a ranking of all electronic device
12 manufacturers selling covered electronic devices in the State,
13 based upon the annual total weight of covered electronic devices
14 recycled by each electronic device manufacturer in the previous
15 year.

16 (f) The State may adopt regulations allowing a procurement
17 preference based upon [a] an electronic device manufacturer's
18 ranking.

19 (g) The department shall review each electronic device
20 manufacturer's plan and, within sixty days of receipt of the
21 plan, shall determine whether the plan complies with this
22 [~~chapter.~~] part. If the plan is approved, the department shall



1 notify the electronic device manufacturer or group of electronic
2 device manufacturers. If the plan is rejected, the department
3 shall notify the electronic device manufacturer or group of
4 electronic device manufacturers and provide the reasons for the
5 plan's rejection. Within thirty days after receipt of the
6 department's rejection, the electronic device manufacturer or
7 group of electronic device manufacturers may revise and resubmit
8 the plan to the department for approval.

9 (h) The obligations under this [~~chapter~~] part for [a] an
10 electronic device manufacturer who manufactures or manufactured
11 covered electronic devices, or who sells or sold covered
12 electronic devices manufactured by others, under a brand that
13 was previously used by a different person in the manufacture of
14 covered electronic devices, shall extend to all covered
15 electronic devices bearing that brand.

16 (i) Nothing in this [~~chapter~~] part is intended to exempt
17 any person from liability that the person would otherwise have
18 under applicable law."

19 SECTION 12. Section 339D-8, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[~~§~~] §339D-8 [~~§~~] **Enforcement.** (a) The department may
22 conduct audits and inspections to determine compliance under



1 this chapter. Except as provided in subsection (c), the
2 department and the attorney general shall be empowered to
3 enforce this chapter and take necessary action against any
4 electronic device or television manufacturer or retailer for
5 failure to comply with this chapter or rules adopted thereunder.

6 (b) The attorney general may file suit in the name of the
7 State to enjoin an activity related to the sale of covered
8 electronic devices or covered televisions in violation of this
9 chapter.

10 (c) The department shall issue a warning notice to a
11 person for the person's first violation of this chapter. The
12 person shall comply with this chapter within sixty days of the
13 date the warning notice was issued or be subject to the
14 penalties provided by law or rule[-], including, but not limited
15 to, penalties set forth in subsections (d) through (g). A
16 retailer that receives a warning notice from the department for
17 a violation of section 339D-3(a) or 339D-D(a) shall submit proof
18 to the department, within sixty days from the date the warning
19 notice was issued, that its inventory of covered electronic
20 devices or covered televisions offered for sale is in compliance
21 with this chapter.



1 (d) Any retailer who sells or offers for sale an unlabeled
2 electronic device or unlabeled covered television in violation
3 of section 339D-3 or 339D-D, respectively, or any electronic
4 device or television manufacturer that fails to comply with any
5 provision of section 339D-4 or 339D-C, respectively, may be
6 assessed a penalty of up to \$10,000 for the first violation and
7 up to \$25,000 for the second and each subsequent violation, in
8 addition to any additional penalties required or imposed
9 pursuant to this chapter.

10 (e) Except as provided in subsection (d), any person who
11 violates any requirement of this chapter may be assessed a
12 penalty of up to \$1,000 for the first violation and up to \$2,000
13 for the second and each subsequent violation, in addition to any
14 additional penalties required or imposed pursuant to this
15 chapter.

16 (f) The department shall determine additional penalties
17 based on adverse impact to the environment, unfair competitive
18 advantage, and other considerations that the department deems
19 appropriate.

20 (g) If a covered television manufacturer fails to recycle
21 its market share allocation, the department shall impose a
22 penalty of 50 cents per pound for each pound not recycled."



1 SECTION 13. Section 339D-9, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§339D-9[+] Administrative penalties[-]; fees. (a) In
4 addition to any other administrative or judicial remedy provided
5 by this chapter or by rules adopted under this chapter for a
6 violation thereof, the department is authorized to impose by
7 order administrative penalties and is further authorized to set,
8 charge, and collect administrative fines and to recover
9 administrative fees and costs, including attorney's fees and
10 costs, or to bring legal action to recover administrative fines
11 and fees and costs, including attorney's fees and costs.

12 (b) Notwithstanding subsection (a), the department shall
13 not have the authority to assess any fees, including an advanced
14 recycling fee, registration fee, or other fee, on consumers,
15 television manufacturers, or retailers for recovery of covered
16 televisions except those noted in sections 339D-B and 339-4."

17 SECTION 14. Section 339D-11, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§339D-11[+] Financial and proprietary information[-];
20 report. (a) Notwithstanding any law to the contrary, financial
21 or proprietary information, including trade secrets, commercial
22 information, and business plans, submitted to the department



1 under this chapter is confidential and is exempt from public
2 disclosure[?] to the extent permitted by chapter 92F.

3 (b) The department shall compile the information submitted
4 by covered television manufacturers and issue a report to the
5 legislature no later than April 1, 2012, and annually each year
6 thereafter."

7 SECTION 15. Section 339D-12, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§339D-12[+] **Federal preemption.** [This] (a) Part II
10 of this chapter shall be deemed repealed if a federal law or a
11 combination of federal laws takes effect that establishes a
12 national program for the collection and recycling of covered
13 electronic devices that substantially meets the intent of part
14 II of this chapter, including the creation of a financing
15 mechanism for collection, transportation, and recycling of all
16 covered electronic devices from covered entities in the United
17 States.

18 (b) Part III of this chapter shall be deemed repealed if a
19 federal law or a combination of federal laws takes effect that
20 establishes a national program for the recycling of covered
21 televisions that substantially meets the intent of part III of
22 this chapter."



1 SECTION 16. Implementation of this Act by January 1, 2011,
2 shall be deemed to satisfy the requirement for a separate plan
3 for the collection, transportation, and recycling of televisions
4 as set forth in section 3 of Act 13, Special Session Laws of
5 Hawaii 2008.

6 SECTION 17. In codifying the new sections added by
7 sections 6 and 7 of this Act, the revisor of statutes shall
8 substitute appropriate section numbers for the letters used in
9 designating the new sections in this Act.

10 SECTION 18. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 19. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 20. This Act shall take effect upon its approval.

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII

