

ACT 13

S.B. NO. 2843

A Bill for an Act Relating to Electronic Device Recycling.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Available estimates suggest that over 100,000,000 computers, monitors, and televisions become obsolete each year, and this number is growing. If improperly managed, these used electronics can harm the environment and human health. These electronics contain valuable resources such as copper, gold, and aluminum, and if the electronics are disposed of in landfills, these valuable resources are lost for future use. Additionally, research shows that toxic substances with known adverse health effects, such as lead, have the potential to leach from discarded electronics in landfills. In Hawaii, an additional problem is presented by the limited amount

of space in our state's landfills. Valuable space could be saved by providing a method to encourage recycling of used and discarded electronics.

The purpose of this Act is to encourage recycling of electronic devices sold within the State by establishing an electronic device recycling program.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ELECTRONIC WASTE RECYCLING ACT**

§ -1 Definitions. As used in this chapter:

“Brand” means symbols, words, or marks that identify a covered electronic device, rather than any of its components.

“Covered entity” means any household, government entity, business, or non-profit organization exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code, regardless of size or place of operation within the State.

“Covered electronic device”:

- (1) Means a computer, computer printer, computer monitor, or portable computer, with a screen size greater than four inches measured diagonally; and
- (2) Shall not include:
 - (A) A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
 - (B) A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;
 - (C) A covered electronic 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; or
 - (D) A telephone of any type.

“Department” means the department of health.

“Household” means any occupant of a single detached dwelling unit or of a single unit of a multiple dwelling unit who has used a covered electronic device at a dwelling unit primarily for personal or home business use.

“Manufacturer” means any existing person:

- (1) Who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;
- (2) Who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;
- (3) Who manufactures or manufactured covered electronic devices without affixing a brand;
- (4) Who manufactures or manufactured covered electronic 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.

“New covered electronic device” means a covered electronic device that is manufactured after the effective date of this chapter.

“Person” means any individual, business, partnership, limited liability company, corporation, not-for-profit organization, association, government entity, public benefit corporation, or public authority.

“Program year” means a full calendar year beginning on or after January 1, 2010.

“Recycling” means processing (including disassembling, dismantling, or shredding) covered electronic devices or their components to recover a useable product. “Recycling” does not include any process defined as incineration under applicable laws and rules.

“Retailer” means any person who offers covered electronic devices for sale, other than for resale by the purchaser, through any means, including sales outlets, catalogs, or the Internet.

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

§ -2 Scope of products. The collection, transportation, and recycling provisions of this chapter shall apply only to covered electronic devices used and discarded in this State by a covered entity.

§ -3 Sales prohibition. (a) Beginning January 1, 2010, no manufacturer or retailer shall sell or offer for sale any new covered electronic device for delivery in this State unless:

- (1) The covered electronic device is labeled with a brand, and the label is permanently affixed and readily visible; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to section -4(b)(3).

(b) Beginning April 1, 2009, the department shall maintain a list of each registered manufacturer and the brands reported in each manufacturer’s registration and a list of brands for which no manufacturer has registered. The lists shall be posted on the department website and shall be updated by the first day of each month. Each retailer who sells or offers for sale any new covered electronic device for delivery in this State shall review these lists prior to selling the covered electronic device. A retailer is considered to have complied with subsection (a) if, on the date a new covered electronic device was ordered by the retailer, the brand was included on the department’s list of brands reported in a manufacturer’s registration.

§ -4 Manufacturer responsibility. (a) Beginning October 1, 2009, each manufacturer shall label all new covered electronic devices to be offered for sale for delivery in this State with a brand, which label shall be permanently affixed and readily visible.

- (b) (1) By January 1, 2009, each manufacturer of new covered electronic devices offered for sale for delivery in this State shall register with the department and pay to the department a registration fee of \$5,000.

Thereafter, if a manufacturer has not previously registered, the manufacturer shall register with the department prior to any offer for sale for delivery in this State of the manufacturer's new covered electronic devices.

- (2) Each manufacturer who is registered shall submit an annual renewal of its registration with the payment of a registration fee of \$5,000, by January 1 of each program year.
- (3) The registration and each renewal shall include a list of all of the manufacturer's brands of covered electronic devices and shall be effective on the second day of the succeeding month after receipt by the department of the registration or renewal.

(c) By June 1, 2009, and annually thereafter, each manufacturer shall submit a plan to the department to establish, conduct, and manage a program for the collection, transportation, and recycling of its covered electronic devices sold in the State.

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

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

(f) The State may adopt regulations allowing a procurement preference based upon a manufacturer's ranking.

(g) The department shall review each manufacturer's plan and, within sixty days of receipt of the plan, shall determine whether the plan complies with this chapter. If the plan is approved, the department shall notify the manufacturer or group of manufacturers. If the plan is rejected, the department shall notify the manufacturer or group of manufacturers and provide the reasons for the plan's rejection. Within thirty days after receipt of the department's rejection, the manufacturer or group of manufacturers may revise and resubmit the plan to the department for approval.

(h) The obligations under this chapter for a manufacturer who manufactures or manufactured covered electronic devices, or who sells or sold covered electronic devices manufactured by others, under a brand that was previously used by a different person in the manufacture of covered electronic devices, shall extend to all covered electronic devices bearing that brand.

(i) Nothing in this chapter is intended to exempt any person from liability that the person would otherwise have under applicable law.

§ -5 Retailer responsibility. Beginning January 1, 2010, retailers shall make available to their customers information on collection services in the State, including the department's website and toll-free telephone number. Remote retailers may include this information in a visible location on their website to fulfill this requirement.

§ -6 Department responsibility. (a)¹ Beginning January 1, 2010, the department shall maintain and update a website and a toll-free number with current information on where covered entities can return covered electronic devices for recycling.

§ -7 Regulatory authority. The department may adopt rules, pursuant to chapter 91, necessary to implement this chapter.

§ -8 Enforcement. (a) Except as provided in subsection (c), the department and the attorney general shall be empowered to enforce this chapter and take necessary action against any manufacturer or retailer for failure to comply with this chapter or rules adopted thereunder.

(b) The attorney general may file suit to enjoin an activity related to the sale of covered electronic devices in violation of this chapter.

(c) The department shall issue a warning notice to a person for the person's first violation of this chapter. The person shall comply with this chapter within sixty days of the date the warning notice was issued or be subject to the penalties provided by law or rule. A retailer that receives a warning notice from the department for a violation of section -3(a) shall submit proof to the department, within sixty days from the date the warning notice was issued, that its inventory of covered electronic devices offered for sale is in compliance with this chapter.

§ -9 Administrative penalties. In addition to any other administrative or judicial remedy provided by this chapter or by rules adopted under this chapter for a violation thereof, the department is authorized to impose by order administrative penalties and is further authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or to bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs.

§ -10 Electronic device recycling fund. (a) There is established in the state treasury the electronic device recycling fund into which shall be deposited all fees, payments, and penalties collected by the department pursuant to this chapter.

(b) The electronic device recycling fund shall be administered by the department of health. Moneys in the fund shall be expended by the director solely for the purpose of implementing and enforcing this chapter.

§ -11 Financial and proprietary information. Notwithstanding any law to the contrary, financial or proprietary information, including trade secrets, commercial information, and business plans, submitted to the department under this chapter is confidential and is exempt from public disclosure.

§ -12 Federal preemption. This chapter shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered electronic devices that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic devices from covered entities in the United States."

SECTION 3. There is established within the department of health a temporary working group which shall consist of:

- (1) The director of health or the director's designee; and
- (2) A representative of each manufacturer of televisions, whether cathode ray tube-based or flat panel-based, that are sold or offered for sale in the State as of the effective date of this Act.

(b)² The working group shall develop a plan to establish, conduct, and manage a program for the collection, transportation, and recycling of televisions sold in the State, to be implemented no later than January 1, 2010. The department of health shall provide necessary administrative, professional, technical, and clerical assistance to the working group.

(c) The working group shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

(d) The working group shall dissolve on June 30, 2009.

(e) If a separate plan for the collection, transportation, and recycling of televisions is not implemented before January 1, 2011, the definition of "covered electronic device" found in section -1 as enacted pursuant to section 2 of this Act shall be amended to include televisions and to read as follows:

"Covered electronic device":

- (1) Means a computer, computer printer, computer monitor, portable computer, or television with a screen size greater than four inches measured diagonally; and
- (2) Shall not include:
 - (A) A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
 - (B) A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;
 - (C) A covered electronic 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; or
 - (D) A telephone of any type.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

Notes

1. No subsection (b).
2. No subsection (a).