

ASSEMBLY BILL

No. 1535

Introduced by Assembly Member Huffman
(Principal coauthor: Assembly Member Lieber)
(Coauthors: Assembly Members Brownley, Hancock, Leno, Levine,
Saldana, and Wolk)
(Coauthor: Senator Migden)

February 23, 2007

An act to amend Section 25214.10.1 of the Health and Safety Code, and to amend Sections 42463 and 42464 of the Public Resources Code, relating to electronic waste, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1535, as introduced, Huffman. Electronic waste: personal computers.

(1) 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. These fees are deposited in the Electronic Waste Recovery and Recycling Account, and the money in the account is continuously appropriated to the California Integrated Waste Management Board and the Department of Toxic Substances Control for electronic waste recovery payments and recycling payments and for payments to manufacturers to cover the costs of collecting, consolidating, transporting, receiving, processing, and recycling covered electronic waste in this state.

The term "covered electronic device" is defined, for purposes of the act, as a video display device that the department determines is presumed to be, when discarded, a hazardous waste pursuant to the hazardous waste control laws. A violation of the act is a crime.

This bill would provide that, on and after July 1, 2008, a covered electronic device also includes a personal computer, as defined, thereby imposing a state-mandated local program by creating new crimes. A retailer would be required to collect a fee of \$6 from the consumer at the time of the retail sale of the personal computer, except as specified. Conforming changes to the act would also be made by the bill with regard to those electronic devices.

The bill would make an appropriation, because the fees imposed on the sales of personal computers would be deposited in a continuously appropriated fund.

(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: yes. 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”~~(A) *Except as provided in subparagraph*
6 *(B), “electronic device” means a video display device, as defined*
7 ~~in subdivision (t) of Section 42463 of the Public Resources Code,~~
8 with a screen size of greater than four inches.

9 (B) *On and after July 1, 2008, “electronic device” also includes*
10 *a personal computer, as defined in Section 42463 of the Public*
11 *Resources Code.*

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

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

18 (c) (1) Except as provided in subdivision (e), a manufacturer
19 of an electronic device that is identified in the regulations adopted
20 by the department shall send a notice in accordance with the

1 schedule specified in subparagraph (A) or (B), as applicable, of
2 paragraph (3), to any retailer that sells that electronic device
3 manufactured by the manufacturer. The notice shall identify the
4 electronic device, and shall inform the retailer that the electronic
5 device is a covered electronic device and is subject to a fee in
6 accordance with subdivision (d).

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

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

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

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

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

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

35 (2) Except as provided in subdivision (e), a covered electronic
36 device identified in the regulations adopted by the department,
37 pursuant to subdivision (b), shall, on and after July 1 of the year
38 subsequent to the year in which the covered electronic device is
39 first identified in the regulations, be subject to Chapter 8.5
40 (commencing with Section 42460) of Part 3 of Division 30 of the

1 Public Resources Code, including the fee imposed pursuant to
2 Section 42464 of the Public Resources Code.

3 (e) (1) If the manufacturer of an electronic device that is
4 identified in the regulations adopted by the department pursuant
5 to subdivision (b) obtains the concurrence of the department that
6 an electronic device, when discarded, would not be a hazardous
7 waste, in accordance with procedures set forth in Section
8 66260.200 of Title 22 of the California Code of Regulations, the
9 electronic device shall cease to be a covered electronic device and
10 shall cease to be subject to subdivisions (c) and (d) on the first day
11 of the quarter that begins not less than 30 days after the date that
12 the department provides the manufacturer with a written
13 nonhazardous concurrence for the electronic device pursuant to
14 this subdivision. A manufacturer shall notify each retailer, to which
15 that manufacturer has sold a covered electronic device, that the
16 device has been determined pursuant to this subdivision to be
17 nonhazardous and is no longer subject to a covered electronic
18 recycling fee.

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

22 (A) Post on the department's Web site a copy of the
23 nonhazardous concurrence, including, but not limited to, an
24 identification and description of the electronic device to which the
25 concurrence applies.

26 (B) Send a copy of the nonhazardous concurrence, including,
27 but not limited to, an identification and description of the electronic
28 device to which the concurrence applies, to the California
29 Integrated Waste Management Board and the State Board of
30 Equalization.

31 (f) Notwithstanding Section 42474 of the Public Resources
32 Code, a fine or penalty shall not be assessed on a retailer who
33 unknowingly sells, or offers for sale, in this state a covered
34 electronic device for which the covered electronic waste recycling
35 fee has not been collected or paid, if the failure to collect the fee
36 was due to the failure of the State Board of Equalization to inform
37 the retailer that the electronic device was subject to the fee.

38 SEC. 2. Section 42463 of the Public Resources Code is
39 amended to read:

1 42463. For the purposes of this chapter, the following terms
2 have the following meanings, unless the context clearly requires
3 otherwise:

4 (a) “Account” means the Electronic Waste Recovery and
5 Recycling Account created in the Integrated Waste Management
6 Fund under Section 42476.

7 (b) “Authorized collector” means any of the following:

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

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

14 (3) A nonprofit organization that collects or accepts covered
15 electronic devices.

16 (4) A manufacturer or agent of the manufacturer that collects,
17 consolidates, and transports covered electronic devices for
18 recycling from consumers, businesses, institutions, and other
19 generators.

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

25 (c) “Board” means the California Integrated Waste Management
26 Board.

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

32 (e) “Department” means the Department of Toxic Substances
33 Control.

34 (f) (1) Except as provided in ~~paragraph (2)~~ *paragraphs (2) and*
35 *(3)*, “covered electronic device” means a video display device
36 containing a screen greater than four inches, measured diagonally,
37 that is identified in the regulations adopted by the department
38 pursuant to subdivision (b) of Section 25214.10.1 of the Health
39 and Safety Code.

1 (2) *On and after July 1, 2008, “covered electronic device” also*
2 *includes a personal computer that is identified in the regulations*
3 *adopted by the department pursuant to subdivision (b) of Section*
4 *25214.10.1 of the Health and Safety Code.*

5 ~~(2)~~

6 (3) “Covered electronic device” does not include any of the
7 following:

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

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

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

20 (D) An electronic device, on and after the date that it ceases to
21 be a covered electronic device under subdivision (e) of Section
22 25214.10.1 of the Health and Safety Code.

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

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

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

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

34 (2) A person who changes the physical or chemical composition
35 of a covered electronic device, in accordance with the requirements
36 of Chapter 6.5 (commencing with Section 25100) of Division 20
37 of the Health and Safety Code and the regulations adopted pursuant
38 to that chapter, by deconstructing, size reduction, crushing, cutting,
39 sawing, compacting, shredding, or refining for purposes of
40 segregating components, for purposes of recovering or recycling

1 those components, and who arranges for the transport of those
2 components to an end user.

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

7 (j) “Discarded” has the same meaning as defined in subdivision
8 (b) of Section 25124 of the Health and Safety Code.

9 (k) “Electronic waste recovery payment” means an amount
10 established and paid by the board pursuant to Section 42477.

11 (l) “Electronic waste recycling payment” means an amount
12 established and paid by the board pursuant to Section 42478.

13 (m) “Hazardous material” has the same meaning as defined in
14 Section 25501 of the Health and Safety Code.

15 (n) “Manufacturer” means either of the following:

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

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

20 (o) “Person” means an individual, trust, firm, joint stock
21 company, business concern, and corporation, including, but not
22 limited to, a government corporation, partnership, limited liability
23 company, and association. Notwithstanding Section 40170,
24 “person” also includes a city, county, city and county, district,
25 commission, the state or a department, agency, or political
26 subdivision thereof, an interstate body, and the United States and
27 its agencies and instrumentalities to the extent permitted by law.

28 (p) (1) *“Personal computer” means a general-purpose*
29 *single-user microcomputer box or tower that is designed to be*
30 *operated by one person at a time.*

31 (2) *A “personal computer” does not include the following:*

32 (A) *A professional workstation capable of shipping with two or*
33 *more microprocessor packages or four or more cores and that is*
34 *marketed exclusively to professional users for high performance*
35 *computing.*

36 (B) *A computer server marketed exclusively to professional*
37 *users.*

38 (C) *A retail store terminal or cash register that is used at a*
39 *customer checkout in the retail industry.*

40 (p)

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

3 ~~(r)~~

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

8 ~~(s)~~

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

16 ~~(t)~~

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

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

25 ~~(u)~~

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

32 ~~(v)~~

33 (v) “Video display device” means an electronic device with an
34 output surface that displays, or is capable of displaying, moving
35 graphical images or a visual representation of image sequences or
36 pictures, showing a number of quickly changing images on a screen
37 in fast succession to create the illusion of motion, including, if
38 applicable, a device that is an integral part of the display, in that
39 it cannot be easily removed from the display by the consumer, that
40 produces the moving image on the screen. A video display device

1 may use, but is not limited to, a cathode ray tube (CRT), liquid
2 crystal display (LCD), gas plasma, digital light processing, or other
3 image projection technology.

4 SEC. 3. Section 42464 of the Public Resources Code is
5 amended to read:

6 42464. (a) On and after January 1, 2005, or as otherwise
7 provided by Section 25214.10.1 of the Health and Safety Code, a
8 consumer shall pay a covered electronic waste recycling fee upon
9 the purchase of a new or refurbished covered electronic device, in
10 the following amounts:

11 (1) Six dollars (\$6) for each covered electronic device with a
12 screen size of less than 15 inches measured diagonally.

13 (2) Eight dollars (\$8) for each covered electronic device with
14 a screen size greater than or equal to 15 inches but less than 35
15 inches measured diagonally.

16 (3) Ten dollars (\$10) for each covered electronic device with a
17 screen size greater than or equal to 35 inches measured diagonally.

18 (4) (A) *Six dollars (\$6) for each covered electronic device that*
19 *meets the definition specified in paragraph (2) of subdivision (f).*

20 (B) *Subparagraph (A) shall not become operative until July 1,*
21 *2008, or as otherwise provided by Section 25214.10.1 of the Health*
22 *and Safety Code, whichever date is later.*

23 (b) Except as provided in subdivision (d), a retailer shall collect
24 from the consumer a covered electronic waste recycling fee at the
25 time of the retail sale of a covered electronic device.

26 (c) (1) A retailer may retain 3 percent of the covered electronic
27 waste recycling fee as reimbursement for all costs associated with
28 the collection of the fee and shall transmit the remainder of the fee
29 to the state pursuant to Section 42464.4.

30 (2) If a retailer makes an election pursuant to paragraph (2) of
31 subdivision (d), and the conditions of subparagraphs (A), (B), and
32 (C) of paragraph (2) of subdivision (d) are met, the vendor, in lieu
33 of the retailer, may retain 3 percent of the covered electronic waste
34 recycling fee as reimbursement for all costs associated with the
35 collection of the fee and the vendor shall transmit the remainder
36 of the fee to the state pursuant to Section 42464.4.

37 (d) (1) If a retailer elects to pay the covered electronic waste
38 recycling fee on behalf of the consumer, the retailer shall provide
39 an express statement to that effect on the receipt given to the
40 consumer at the time of sale. If a retailer elects to pay the covered

1 electronic waste recycling fee on behalf of the consumer, the fee
2 is a debt owed by the retailer to the state, and the consumer is not
3 liable for the fee.

4 (2) A retailer may elect to pay the covered electronic waste
5 recycling fee on behalf of the consumer by paying the covered
6 electronic waste recycling fee to the retailer's vendor, but only if
7 all of the following conditions are met:

8 (A) The vendor is registered with the State Board of Equalization
9 to collect and remit the covered electronic waste recycling fee
10 pursuant to this chapter.

11 (B) The vendor holds a valid seller's permit pursuant to Article
12 2 (commencing with Section 6066) of Chapter 2 of Part 1 of
13 Division 2 of the Revenue and Taxation Code.

14 (C) The retailer pays the covered electronic waste recycling fee
15 to the vendor that is separately stated on the vendor's invoice to
16 the retailer.

17 (D) The retailer provides an express statement on the invoice,
18 contract, or other record documenting the sale that is given to the
19 consumer, that the covered electronic waste recycling fee has been
20 paid on behalf of the consumer.

21 (3) For the purpose of making the election in paragraph (2), if
22 the conditions set forth in subparagraphs (A), (B), (C), and (D) of
23 paragraph (2), are met, the covered electronic waste recycling fee
24 is a debt owed by the vendor to the state, and the retailer is not
25 liable for the fee.

26 (e) The retailer shall separately state the covered electronic
27 waste recycling fee on the receipt given to the consumer at the
28 time of sale.

29 (f) On or before August 1, 2005, and, thereafter, no more
30 frequently than annually, and no less frequently than biennially,
31 the board, in collaboration with the department, shall review, at a
32 public hearing, the covered electronic waste recycling fee and shall
33 make any adjustments to the fee to ensure that there are sufficient
34 revenues in the account to fund the covered electronic waste
35 recycling program established pursuant to this chapter. Adjustments
36 to the fee that are made on or before August 1, shall apply to the
37 calendar year beginning the following January 1. The board shall
38 base an adjustment of the covered electronic waste recycling fee
39 on both of the following factors:

1 (1) The sufficiency, and any surplus, of revenues in the account
2 to fund the collection, consolidation, and recycling of covered
3 electronic waste that is projected to be recycled in the state.

4 (2) The sufficiency of revenues in the account for the board and
5 the department to administer, enforce, and promote the program
6 established pursuant to this chapter, plus a prudent reserve not to
7 exceed 5 percent of the amount in the account.

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