

JAN 22 2008

A BILL FOR AN ACT

RELATING TO ELECTRONIC DEVICE RECYCLING.

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

1 SECTION 1. Available estimates suggest that over one
2 hundred million computers, monitors, and televisions become
3 obsolete each year, and this number is growing. If improperly
4 managed, these used electronics can harm the environment and
5 human health. These electronics contain valuable resources such
6 as copper, gold, and aluminum, and if the electronics are
7 disposed in landfills, these valuable resources are lost for
8 future use. Additionally, research shows that toxic substances
9 with known adverse health effects, such as lead, have the
10 potential to leach from discarded electronics in landfills. In
11 Hawaii, an additional problem is presented by the limited amount
12 of space in our State's landfills. Valuable space could be
13 saved by providing a method to encourage recycling of used and
14 discarded electronics.

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



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

4 "CHAPTER

5 ELECTRONIC WASTE RECYCLING ACT

6 § -1 Definitions. As used in this chapter:

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

9 "Covered entity" means any household, business that employs
10 ten or fewer individuals, or not-for-profit organization exempt
11 from taxation under section 501(c)(3) of the United States
12 Internal Revenue Code that employs ten or fewer individuals.

13 "Covered electronic device":

14 (1) Means a computer monitor or television, whether
15 cathode ray tube based or flat panel based, or a
16 portable computer, with a screen size greater than
17 four inches measured diagonally; and

18 (2) Shall not include:

19 (A) A covered electronic device that is a part of a
20 motor vehicle or any component part of a motor
21 vehicle assembled by or for a motor vehicle



1 manufacturer or franchised dealer, including
2 replacement parts for use in a motor vehicle;

3 (B) A covered electronic device that is functionally
4 or physically a part of a larger piece of
5 equipment designed and intended for use in an
6 industrial, commercial, or medical setting,
7 including diagnostic, monitoring, or control
8 equipment;

9 (C) A covered electronic device that is contained
10 within a clothes washer, clothes dryer,
11 refrigerator, refrigerator and freezer, microwave
12 oven, conventional oven or range, dishwasher,
13 room air conditioner, dehumidifier, or air
14 purifier; or

15 (D) A telephone of any type, unless it contains a
16 video display area greater than four inches
17 measured diagonally.

18 "Department" means the department of health.

19 "Household" means any occupant of a single detached
20 dwelling unit or of a single unit of a multiple dwelling unit
21 who has used a covered electronic device at a dwelling unit
22 primarily for personal or home business use.



- 1 "Manufacturer" means any existing person:
- 2 (1) Who manufactures or manufactured covered electronic
3 devices under a brand that it owns or owned or is or
4 was licensed to use, other than a license to
5 manufacture covered electronic devices for delivery
6 exclusively to or at the order of the licensor;
- 7 (2) Who sells or sold covered electronic devices
8 manufactured by others under a brand that the seller
9 owns or owned or is or was licensed to use, other than
10 a license to manufacture covered electronic devices
11 for delivery exclusively to or at the order of the
12 licensor;
- 13 (3) Who manufactures or manufactured covered electronic
14 devices without affixing a brand;
- 15 (4) Who manufactures or manufactured covered electronic
16 devices to which it affixes or affixed a brand that it
17 neither owns or owned nor is or was licensed to use;
18 or
- 19 (5) For whose account covered electronic devices
20 manufactured outside the United States are or were
21 imported into the United States; provided that if at
22 the time such covered electronic devices are or were



1 imported into the United States and another person has
2 registered as the manufacturer of the brand of the
3 covered electronic devices, this paragraph shall not
4 apply.

5 "New covered electronic device" means a covered electronic
6 device that is manufactured after the effective date of this
7 chapter.

8 "Orphan device" means a covered electronic device for which
9 no manufacturer can be identified.

10 "Person" means any individual, business, partnership,
11 limited liability company, corporation, not-for-profit
12 organization, association, government entity, public benefit
13 corporation, or public authority.

14 "Program year" means a full calendar year beginning on or
15 after January 1, 2010.

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

21 "Retailer" means any person who offers covered electronic
22 devices for sale, other than for resale by the purchaser,



1 through any means including, but not limited to, sales outlets,
2 catalogs, or the Internet.

3 "Return share" means the proportion of covered electronic
4 devices for which an individual manufacturer is responsible to
5 collect, transport, and recycle, as determined by the department
6 pursuant to section -7(a).

7 "Return share in weight" means the total weight of covered
8 electronic devices for which an individual manufacturer is
9 responsible to collect, transport, and recycle, as determined by
10 the department pursuant to section -7(b).

11 "Sell" or "sale" means any transfer for consideration of
12 title including, but not limited to, transactions conducted
13 through sales outlets, catalogs, or the Internet, but excluding
14 leases.

15 § -2 **Scope of products.** The collection, transportation,
16 and recycling provisions of this chapter shall apply only to
17 covered electronic devices used and discarded in this State by a
18 covered entity.

19 § -3 **Sales prohibition.** (a) Beginning January 1, 2010,
20 no manufacturer or retailer shall sell or offer for sale any new
21 covered electronic device 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 -4(b)(3).

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

20 § -4 **Manufacturer responsibility.** (a) Beginning
21 January 1, 2009, each manufacturer shall label all new covered
22 electronic devices to be offered for sale for delivery in this



1 State with a brand, which label shall be permanently affixed and
2 readily visible.

3 (b) (1) By January 1, 2009, each manufacturer of new covered
4 electronic devices offered for sale for delivery in
5 this State shall register with the department and pay
6 to the department a registration fee of \$5,000.
7 Thereafter, if a manufacturer has not previously
8 registered, the manufacturer shall register with the
9 department prior to any offer for sale for delivery in
10 this State of the manufacturer's new covered
11 electronic devices. Any manufacturer to whom the
12 department provides notification of a return share and
13 return share in weight pursuant to section -7(c)
14 and who has not previously registered shall register
15 with the department within thirty days of receiving
16 notification.

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

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



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

4 (c) (1) By June 1, 2009, each manufacturer to whom the
5 department provides, by April 1, 2009, a return share
6 in weight that is greater than zero shall:

7 (A) Submit an additional fee to the department, which
8 shall be calculated by multiplying the
9 manufacturer's return share in weight by the cost
10 per pound for collection, transportation, and
11 recycling of covered electronic devices
12 determined by the department pursuant to section
13 -7(g); or

14 (B) Submit a plan to the department to establish,
15 conduct, and manage a program for the collection,
16 transportation, and recycling of its return share
17 in weight of covered electronic devices, provided
18 that the plan represents at least five per cent
19 of the total return shares in weight determined
20 by the department pursuant to section -7(b)
21 for the applicable program year. The program
22 shall collect only covered electronic devices



1 that have been used and discarded in this State
2 by a covered entity.

3 (2) By February 15, 2011, or by February 15 of any year
4 thereafter, each manufacturer to whom the department
5 provides a return share in weight that is greater than
6 zero shall comply by March 15 of that year, with
7 paragraph (1)(A) or (B).

8 (d) Each manufacturer's plan shall include:

9 (1) Methods that will be used to collect covered
10 electronic devices, including the names and locations
11 of proposed collection services;

12 (2) The processes that will be used to recycle covered
13 electronic devices, including a description of the
14 recycling processes that will be used and the names
15 and locations of recyclers to be directly utilized by
16 the plan;

17 (3) Means that will be utilized to publicize collection
18 services, including specification of a website or
19 toll-free telephone number that provides information
20 about the manufacturer's program in sufficient detail
21 to allow covered entities to learn how to return their
22 covered electronic devices for recycling; and



1 (4) The intention of the manufacturer to fulfill its
2 return share in weight through operation of its own
3 plan, either individually or with other manufacturers.

4 (e) A group of manufacturers jointly submitting a plan
5 shall collect, transport, and recycle the sum of the return
6 shares in weight of each participating manufacturer.

7 (f) A manufacturer's plan may establish reasonable limits
8 on the number of covered electronic devices by product type
9 accepted from a covered entity in any one day or in any one
10 delivery pursuant to a collection program.

11 (g) The department shall review each manufacturer's plan
12 and, within sixty days of receipt of the plan, shall determine
13 whether the plan complies with this chapter. If the plan is
14 approved, the department shall notify the manufacturer or group
15 of manufacturers. If the plan is rejected, the department shall
16 notify the manufacturer or group of manufacturers and provide
17 the reasons for the plan's rejection. Within thirty days after
18 receipt of the department's rejection, the manufacturer or group
19 of manufacturers may revise and resubmit the plan to the
20 department for approval. Upon approval of a plan by the
21 department, the payment of the additional fee based up on the
22 return share in weight shall be waived for each manufacturer



1 participating in the plan. If a manufacturer or group of
2 manufacturers does not resubmit a plan after rejection of the
3 plan by the department or if, after resubmission of a plan by a
4 manufacturer or group of manufacturers to the department, the
5 department rejects the plan, each participating manufacturer in
6 the proposed plan shall pay the additional fee required by
7 subsection (c)(1)(A) to the department within thirty days of the
8 department's final rejection of the plan.

9 (h) If a manufacturer or group of manufacturers fails to
10 collect, transport, and recycle, at no fee or charge to covered
11 entities, the return share in weight of each manufacturer
12 participating in its plan, the manufacturer or group of
13 manufacturers shall be required to submit to the department a
14 payment to cover the cost of collecting, transporting, and
15 recycling the unmet portion of the return share in weight. This
16 payment shall be equal to the quantity of the unmet portion, in
17 pounds, plus an additional ten per cent of such quantity,
18 multiplied by the cost per pound for collection, transportation,
19 and recycling of covered electronic devices as determined by the
20 department pursuant to section -7(g).

21 (i) If a manufacturer or group of manufacturers collects,
22 transports, and recycles, at no fee or charge to covered



1 entities, in excess of the return share in weight of each
2 manufacturer participating in its plan, the manufacturer or
3 group of manufacturers may apply credits to meeting the
4 following program year's return share in weight for the
5 manufacturer or group of manufacturers or may sell credits to
6 another manufacturer or group of manufacturers. These credits
7 shall be equal to the quantity in pounds of the excess portion.

8 (j) Where more than one person is within the definition of
9 manufacturer of a brand of a covered electronic device under
10 section -1, any one or more such persons may assume
11 responsibility for and satisfy the obligations of a manufacturer
12 under this chapter with respect to covered electronic devices
13 bearing that brand. In the event that no person assumes
14 responsibility for and satisfies the obligations of a
15 manufacturer under this chapter with respect to covered
16 electronic devices bearing that brand, the department may
17 consider any one or more persons within such definition to be
18 the manufacturer of that brand.

19 (k) The obligations under this chapter for a manufacturer
20 who manufactures or manufactured covered electronic devices, or
21 who sells or sold covered electronic devices manufactured by
22 others, under a brand that was previously used by a different



1 person in the manufacture of covered electronic devices shall
2 extend to all covered electronic devices bearing that brand.

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

6 § -5 **Sampling and reporting.** (a) Beginning January 30,
7 2011, the department shall annually:

8 (1) Have completed an auditable, statistically significant
9 sampling of covered electronic devices collected from
10 covered entities in this State by the department
11 during the previous program year. The sampling
12 information collected shall consist of a list of
13 brands of covered electronic devices and the weight of
14 covered electronic devices that are identified for
15 each brand. The department's sampling shall be
16 conducted in accordance with a procedure established
17 by the department and may be conducted by a third-
18 party organization, including a recycler, to be
19 determined by the department. The department, at its
20 discretion, may be present at the sampling and may
21 audit the methodology and the results of the third-
22 party organization. The costs associated with the



1 sampling shall be recovered from the electronic device
2 recycling fund established pursuant to section -13;
3 and

4 (2) Determine the total weight of covered electronic
5 devices, including orphan devices, collected from
6 covered entities in this State by the department
7 during the previous program year.

8 (b) If a manufacturer or group of manufacturers conducts
9 its own collection, transportation, and recycling program for
10 covered electronic devices, the manufacturer or group of
11 manufacturers shall submit a report to the department annually
12 by January 30, beginning the year after the program is
13 initiated. The report shall include:

14 (1) The results of an auditable, statistically significant
15 sampling of covered electronic devices collected from
16 covered entities in this State by the manufacturer or
17 group of manufacturers during the previous program
18 year. The sampling information reported shall consist
19 of a list of brands of covered electronic devices and
20 the weight of covered electronic devices that are
21 identified for each brand; and



1 (2) The total weight of covered electronic devices,
2 including orphan devices, collected from covered
3 entities in this State by the manufacturer or group of
4 manufacturers during the previous program year and
5 documentation verifying collection and recycling of
6 such devices.

7 § **-6 Retailer responsibility.** Beginning January 1,
8 2010, retailers shall make available to their customers
9 information on collection services in the State, including the
10 department's website and toll-free telephone number. Remote
11 retailers may include this information in a visible location on
12 their website to fulfill this requirement.

13 § **-7 Department responsibility.** (a) The department
14 shall determine the return share for each program year for each
15 manufacturer by dividing the weight of covered electronic
16 devices identified for each manufacturer by the total weight of
17 covered electronic devices identified for all manufacturers.
18 For the first program year, the return share of covered
19 electronic devices identified for each manufacturer shall be
20 based on the best available public return share data from the
21 United States, including data from other states, for covered
22 electronic devices from covered entities. For the second and



1 each subsequent program year, the return share of covered
2 electronic devices identified for each manufacturer shall be
3 based on the most recent samplings of covered electronic devices
4 conducted in this State pursuant to section -5.

5 (b) The department shall determine the return share in
6 weight for each program year for each manufacturer for whom a
7 return share is determined pursuant to subsection (a) by
8 multiplying the return share for that manufacturer by the total
9 weight in pounds of covered electronic devices, including orphan
10 devices, collected from covered entities the previous program
11 year. For the first program year, the total weight in pounds of
12 covered electronic devices shall be based on the best available
13 public weight data from the United States, including data from
14 other states, for covered electronic devices from covered
15 entities. For the second and each subsequent program year, the
16 total weight in pounds of covered electronic devices shall be
17 based on the total weight of covered electronic devices,
18 including orphan devices, determined by the department pursuant
19 to section -5.

20 (c) By April 1, 2009, the department shall notify each
21 manufacturer for whom a return share is determined pursuant to
22 subsection (a) of its return share and its return share in



1 weight for the first program year. Annually thereafter, by
2 February 15, beginning in 2011, the department shall notify each
3 manufacturer for whom a return share is determined pursuant to
4 subsection (a) of its return share and its return share in
5 weight for the second and subsequent program years.

6 (d) The department shall prepare and implement its plan to
7 establish, conduct, and manage a program for the collection,
8 transportation, and recycling of covered electronic devices from
9 covered entities in this State for those manufacturers without
10 approved plans.

11 (1) The department, after reviewing manufacturers' plans,
12 shall ensure that its plan, in combination with
13 manufacturers' plans, provides for covered electronic
14 devices collection services that are reasonably
15 convenient and available to all covered entities in
16 this State residing within its geographic boundaries,
17 including both rural and urban areas. The plan may
18 provide collection services jointly with one or more
19 manufacturers.

20 (2) The department's plan shall encourage the use of
21 existing in-state collection infrastructure for
22 handling covered electronic devices to the extent that



1 the infrastructure is cost effective and complies with
2 applicable environmental, health, and safety laws and
3 rules. The department's plan may establish reasonable
4 limits on the number of covered electronic devices by
5 product type accepted from a covered entity in any one
6 day or in any one delivery pursuant to a collection
7 program.

8 (3) The department's plan shall include methods that will
9 be used to collect covered electronic devices,
10 including the names and locations of proposed
11 collection services, and the processes that will be
12 used to recycle covered electronic devices, including
13 a description of the recycling processes that will be
14 used and the names and locations of recyclers to be
15 directly utilized by the plan.

16 (4) The department shall organize, conduct, and coordinate
17 public outreach for the department's plan.

18 (e) Annually, by March 1, beginning in 2011, the
19 department shall complete and make publicly available an annual
20 report for the previous program year that includes:

21 (1) The return shares and return shares in weight
22 determined by the department;



- 1 (2) The total weight of covered electronic devices,
2 including orphan devices, determined by the department
3 and reported to the department;
- 4 (3) The total amount of registration fees received by the
5 department, additional fees received by the
6 department, payments received by the department, and
7 penalties paid to the department under this chapter;
- 8 (4) The total amount of costs incurred by the department
9 to implement and enforce this chapter;
- 10 (5) A list of all parties whom the department has paid for
11 collection, transportation, and recycling services,
12 the amount of payments the department has made to
13 those parties, and the purpose of those payments; and
- 14 (6) Information that the department has received on
15 collection services operated in this State by or on
16 behalf of the department or by or on behalf of
17 manufacturers or groups of manufacturers and the
18 parties who operate them.
- 19 (f) Beginning January 1, 2010, the department shall
20 maintain and update a website and a toll-free telephone number
21 with current information on where covered entities can return
22 covered electronic devices for recycling.



1 (g) By April 1, 2009, the department shall set the cost
2 per pound for collection, transportation, and recycling of
3 covered electronic devices to reasonably approximate market
4 costs for these services, which cost per pound is used to
5 calculate the additional fee required by section -4(c)(1)(A)
6 and the payment required by section -4(h).

7 Beginning January 1, 2011, and annually thereafter, the
8 department may adjust the cost per pound as necessary to
9 reasonably approximate market costs for the collection,
10 transportation, and recycling of covered electronic devices.
11 Prior to setting or adjusting the cost per pound, the department
12 shall notify the public, including all registered manufacturers,
13 of the proposed cost per pound and provide a public comment
14 period. By November 1 prior to the program year for which the
15 revised cost per pound is to be used, the department shall
16 notify all registered manufacturers of any adjustments to the
17 cost per pound.

18 (h) Beginning June 1, 2009, and annually thereafter, the
19 department shall identify manufacturers and brands for which a
20 manufacturer is responsible, including by examining best
21 available return share data and other pertinent data. Unless
22 the manufacturer has registered with the department, the



1 department shall notify each identified manufacturer of the
2 requirements of this chapter.

3 (i) The department annually shall determine whether new
4 covered electronic devices with no brand affixed, or with a
5 brand affixed that is not included in a registration filed with
6 the department, are being sold or offered for sale by retailers
7 for delivery in this State.

8 § -8 Fees for collection, transportation, or recycling
9 of covered electronic devices. No fee or charge may be imposed
10 by a manufacturer or group of manufacturers upon covered
11 entities for collection, transportation, and recycling of
12 covered electronic devices until the manufacturer or group of
13 manufacturers has collected, transported, and recycled the sum
14 of the return shares in weight of each manufacturer
15 participating in the plan.

16 § -9 Contracts for collection, transportation, and
17 recycling of covered electronic devices. The department may
18 enter into contracts with any person for the collection,
19 transportation, or recycling of covered electronic devices.

20 Contracts shall include provisions to ensure the following,
21 in so far as these provisions are covered by the contract:



1 (1) The covered electronic devices are collected from a
2 covered entity located in this State and were used and
3 discarded in this State by a covered entity;

4 (2) The collection, transportation, and recycling of the
5 covered electronic devices are conducted in accordance
6 with federal, state, and county laws and regulations;
7 and

8 (3) Records of the information determined to meet the
9 requirements of this chapter are kept and provided to
10 the department.

11 § -10 Disposal ban; recycler responsibility. (a)

12 Beginning January 1, 2010, no person shall place or dispose of
13 any covered electronic device in any solid waste disposal
14 facility.

15 (b) Recyclers shall comply with applicable federal, state,
16 and county laws and regulations in recycling covered electronic
17 devices collected pursuant to this chapter.

18 § -11 Enforcement. (a) Any manufacturer that fails to
19 label its new covered electronic devices with a brand pursuant
20 to section -4(a), fails to register with the department and
21 pay a registration fee pursuant to section -4(b), or fails to
22 comply with any requirement of section -4(c) may be assessed



1 a penalty of up to \$10,000 for the first violation and up to
2 \$25,000 for the second and each subsequent violation, in
3 addition to being responsible for any fees, payments, and
4 penalties required by or imposed pursuant to this chapter.

5 (b) Except as provided in subsection (a), any person who
6 violates any requirement of this chapter may be assessed a
7 penalty of up to \$1,000 for the first violation and up to \$2,000
8 for the second and each subsequent violation, in addition to
9 being responsible for any fees, payments, and penalties required
10 by or imposed pursuant to this chapter.

11 (c) Penalties shall be paid to the department.

12 (d) The department shall enforce this chapter.

13 (e) Any violation of the sales prohibitions of this
14 chapter may be enjoined in an action brought by the attorney
15 general.

16 § -12 **Regulatory authority.** The department may adopt
17 rules, pursuant to chapter 91, necessary to implement this
18 chapter.

19 § -13 **Electronic device recycling fund.** (a) There is
20 established in the state treasury the electronic device
21 recycling fund into which shall be deposited all fees, payments,



1 and penalties collected by the department pursuant to this
2 chapter.

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

7 § -14 **Financial and proprietary information.**

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

13 § -15 **Federal preemption.** This chapter shall be deemed
14 repealed if a federal law or a combination of federal laws takes
15 effect that establishes a national program for the collection
16 and recycling of covered electronic devices that substantially
17 meets the intent of this chapter, including the creation of a
18 financing mechanism for collection, transportation, and
19 recycling of all covered electronic devices from covered
20 entities in the United States."

21 SECTION 3. If any provision of this Act, or the
22 application thereof to any person or circumstance is held



1 invalid, the invalidity does not affect other provisions or
2 applications of the Act, which can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun, before its effective date.

8 SECTION 5. This Act shall take effect on July 1, 2008.

9

INTRODUCED BY:

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Report Title:

Electronic Device Recycling

Description:

Establishes a state program for collection, recycling, enforcement, and monitoring of covered electronic devices; establishes program funding through the electronic device recycling fund.

