

S .B. NO. 1135

JAN 24 2013

A BILL FOR AN ACT

RELATING TO RECYCLING.

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

1 SECTION 1. Hawaii's existing electronic device and
2 television recycling program was an initial step towards
3 efficient recycling of consumer electronic goods. The program,
4 however, has not been effective in maximizing the amounts of
5 electronics being recycled.

6 In the 2012 legislative session the department of health
7 proposed to expand the program to include all electrically
8 powered devices. As a result the legislature requested the
9 department to organize a task force to examine the issue.

10 The task force represented multiple stakeholders including
11 manufacturers, retailers, recyclers, trade groups, and
12 government agencies. This Act attempts to take into account the
13 range of viewpoints expressed by the group and seeks to create a
14 system that best serves Hawaii's consumers and its environment.

15 The proposed program goes far beyond existing state
16 programs in terms of product scope, consumer convenience, and
17 environmental protection and would place Hawaii in the forefront
18 of recycling efforts nationwide.

1 SECTION 2. Chapter 339D, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "CHAPTER 339D
4 ~~[ELECTRONIC WASTE AND TELEVISION]~~ ELECTRIC DEVICE RECYCLING AND
5 RECOVERY ACT"

6 SECTION 3. Chapter 339D, Part I, Hawaii Revised Statutes,
7 is amended to read as follows:

8 1. By adding five new definitions to be appropriately
9 inserted and to read:

10 "Collector" means a person that accepts electric devices
11 for reuse, or delivers the devices to a recycler for the
12 purposes of this chapter.

13 "Peripheral" means any electrically powered device intended
14 for use with a computer or television.

15 "Recycler" means any person who engages in the recycling of
16 electric devices for the purposes of this chapter.

17 "Reuse" means any operation by which an electric device
18 changes ownership and is used for the same purpose for which it
19 was originally purchased.

20 "White good" means a discarded major appliance, including,
21 but not limited to a washing machine, clothes dryer, hot water
22 heater, stove and refrigerator."

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1 2. By amending the definitions of "brand", "covered
2 electronic device", "electronic device manufacturer",
3 "recycling", and "retailer" to read:

4 ""Brand" means a symbol, word, or mark that identifies a
5 ~~[covered electronic]~~ electric device ~~[or a covered television]~~,
6 rather than any of its components.

7 "~~[Covered electronic]~~ Electric device" ~~[(1)]~~ [Means] means
8 a computer, ~~[computer printer, computer monitor,]~~ television, or
9 ~~[portable computer] peripheral [with a screen size greater than~~
10 ~~four inches measured diagonally; and]~~, further providing that:

11 (1) Effective January 1, 2015 this definition shall expand
12 to include any device containing an electric motor,
13 heating element, or a speaker; and

14 (2) Shall not include:

15 (A) [A]An ~~[covered electronic]~~ electric device that is
16 a part of a motor vehicle or any component part
17 of a motor vehicle assembled by or for a motor
18 vehicle manufacturer or franchised dealer,
19 including replacement parts for use in a motor
20 vehicle;

21 (B) [A]An ~~[covered electronic]~~ electric device that is
22 functionally or physically required as a part of
23 a larger piece of equipment designed and intended

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1 for use in an industrial, commercial, or medical
2 setting, including diagnostic, monitoring, or
3 control equipment;

4 (C) A ~~[covered electronic device that is contained~~
5 ~~within a clothes washer, clothes dryer, refrigerator,~~
6 ~~refrigerator and freezer, microwave oven, conventional oven or~~
7 ~~range, dishwasher, room air conditioner, dehumidifier, or air~~
8 ~~purifier;]~~ white good; [or] and

9 (D) ~~[A telephone of any type]~~ A device weighing less
10 than twelve ounces without packaging.

11 "Department" means the department of health.

12 "~~[Electronic device manufacturer]~~ Manufacturer":

13 ~~[(+)]~~ ~~[Means]~~ means any existing person:

14 (1) Who manufactures or manufactured ~~[covered~~
15 ~~electronic]~~ electric devices under a brand that it
16 owns or owned or is or was licensed to use, other than
17 a license to manufacture ~~[covered electronic]~~ electric
18 devices for delivery exclusively to or at the order of
19 the licensor;

20 (2) Who sells or sold ~~[covered electronic]~~ electric
21 devices manufactured by others under a brand that the
22 seller owns or owned or is or was licensed to use,
23 other than a license to manufacture ~~[covered~~

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1 ~~electronic~~] electric devices for delivery exclusively
2 to or at the order of the licensor;

3 (3) Who manufactures or manufactured [~~ecovered~~
4 ~~electronic~~] electric devices without affixing a brand;

5 (4) Who manufactures or manufactured [~~ecovered~~
6 ~~electronic~~] electric devices to which it affixes or
7 affixed a brand that it neither owns or owned nor is
8 or was licensed to use; or

9 (5) For whose account [~~ecovered electronic~~] electric
10 devices manufactured outside the United States are or
11 were imported into the United States; provided that if
12 at the time those [~~ecovered electronic~~] electric
13 devices are or were imported into the United States
14 and another person has registered as the manufacturer
15 of the brand of the [~~ecovered electronic~~] electric
16 devices, this paragraph shall not apply; and

17 [+2+] (6) Shall not include person[s] who manufacture [~~no~~
18 ~~more~~] less than one hundred computers per year.

19 "Recycling" means processing (including disassembling,
20 dismantling, or shredding) [~~ecovered electronic~~] electric devices
21 or [~~ecovered televisions~~] or their components to recover a
22 useable product[; ~~provided that "recycling" does not include any~~

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1 ~~process defined as incineration under applicable laws and~~
2 ~~rules].~~

3 "Retailer" means any person who offers [~~ecovered~~
4 ~~electronic]~~ electric devices or [~~ecovered televisions]~~ for sale,
5 other than for resale by the purchaser, through any means,
6 including sales outlets, catalogs, or the Internet."

7 3. By repealing the definitions of "covered entity",
8 "covered television", "household", "market share", "new covered
9 electronic device", "program year", "recover", and "television
10 manufacturer".

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

15 ~~"Covered television":~~

16 ~~(1) Means any device that is capable of receiving~~
17 ~~broadcast, cable, or satellite signals and displaying television~~
18 ~~or video programming, including without limitation any direct~~
19 ~~view or projection television with a viewable screen of nine~~
20 ~~inches or larger with display technology based on cathode ray~~
21 ~~tube, plasma, liquid crystal, digital light processing, liquid~~
22 ~~crystal on silicon, silicon crystal reflective display, light~~

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1 ~~emitting diode, or similar technology marketed and intended for~~
2 ~~use by a household;~~

3 ~~(2) Shall not include:~~

4 ~~(A) A computer, computer printer, computer monitor, or~~
5 ~~portable computer;~~

6 ~~(B) A television that is a part of a motor vehicle or~~
7 ~~any component part of a motor vehicle assembled by or for a~~
8 ~~vehicle manufacturer or franchised dealer, including replacement~~
9 ~~parts for use in a motor vehicle;~~

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

14 ~~(D) A telephone of any type, including a mobile~~
15 ~~telephone; or~~

16 ~~(E) A global positioning system.]~~

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

21 ~~"Market share":~~

22 ~~(1) Means the calculation of a television manufacturer's~~
23 ~~prior year's sales of televisions divided by all manufacturers'~~

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1 ~~prior year's sales for all televisions, as determined by the~~
2 ~~department;~~

3 ~~(2) May be expressed as a percentage, a fraction, or a~~
4 ~~decimal fraction.~~

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

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 ~~["Television manufacturer" means a person who:~~

13 ~~(1) Manufactures for sale in the State a covered~~
14 ~~television under a brand that it licenses or owns;~~

15 ~~(2) Manufactures for sale in the State covered televisions~~
16 ~~without affixing a brand;~~

17 ~~(3) Resells into the State a covered television~~
18 ~~manufactured by others under a brand that the seller owns or is~~
19 ~~licensed to use;~~

20 ~~(4) Imports into the United States or exports from the~~
21 ~~United States a covered television for sale in the State;~~

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1 ~~(5) Sells at retail a covered television acquired from an~~
2 ~~importer described in paragraph (4), and elects to register as~~
3 ~~the manufacturer for those products;~~

4 ~~(6) Manufactures covered televisions and supplies them to~~
5 ~~any person or persons within a distribution network that~~
6 ~~includes wholesalers or retailers in this State; or~~

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

9 ~~In the event the television manufacturer is one who~~
10 ~~manufactures, sells, or resells covered televisions under a~~
11 ~~brand for which it has obtained the license, then the licensor~~
12 ~~or brand owner of the brand shall not be included in the~~
13 ~~definition of television manufacturer under paragraph (1) or~~
14 ~~(3).]~~

15 SECTION 4. Chapter 339D, Part II, Hawaii Revised Statutes,
16 is amended to read as follows:

17 **"PART II. ~~[ELECTRONIC]~~ELECTRIC DEVICE WASTE RECYCLING**

18 **§339D-2 Scope of products.** The collection,
19 transportation, and recycling provisions of this part shall
20 apply only to ~~[covered electronic]~~ electric devices used and
21 discarded in this State. ~~[by a covered entity.]~~

22 **§339D-3 Sales prohibition.** (a) Beginning January 1,
23 ~~[2010]~~ 2014, no ~~[covered electronic]~~ manufacturer or retailer

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1 shall sell or offer for sale any new [~~covered~~
2 ~~electronic~~] electric device for delivery in this State unless:

3 (1) The [~~covered electronic~~] electric device is labeled
4 with a brand, and the label is permanently affixed and readily
5 visible; and

6 (2) The brand is included in a registration that is filed
7 with the department and that is effective pursuant to section
8 [~~339D-4(b)(3)~~] _____.

9 (b) Beginning April 1, [~~2009~~] 2014, the department shall
10 maintain a list of each registered [~~covered electronic~~]
11 manufacturer and the brands reported in each [~~electronic device~~]
12 manufacturer's registration [~~and a list of brands for which no~~
13 ~~electronic device manufacturer has registered. The lists shall~~
14 ~~be posted on the department website and shall be updated by the~~
15 ~~first day of each month~~]. Each retailer who sells or offers for
16 sale any new [~~covered electronic~~] electric device for delivery
17 in this State shall review these lists prior to selling the
18 [~~covered electronic~~] electric device. A retailer is considered
19 to have complied with subsection (a) if, on the date a new
20 [~~covered electronic~~] electric device was ordered by the
21 retailer, the brand was included on the department's list of
22 brands reported in an [~~electronic device~~] manufacturer's
23 registration.

1 §339D-4 [~~Electronic device~~] manufacturer

2 **responsibility.** (a) Beginning [~~October 1, 2009~~] January 1,
3 2014, each [~~covered electronic~~] manufacturer shall label all new
4 [~~covered electronic~~] electric devices [~~to be offered for sale~~
5 ~~for delivery in this State~~] with a brand, for which label shall
6 be permanently affixed and readily visible.

7 (b) (1) By January 1, [~~2009~~] 2014, each [~~covered~~
8 ~~electronic~~] manufacturer of new [~~covered electronic~~] electric
9 devices offered for sale for delivery in this State shall
10 register with the department and pay to the department a
11 registration fee of \$5,000. Thereafter, if an [~~electronic~~
12 ~~device~~] manufacturer has not previously registered, the [~~covered~~
13 ~~electronic~~] manufacturer shall register with the department
14 prior to any offer for sale for delivery in this State of the
15 [~~covered electronic~~] manufacturer's new [~~covered~~
16 ~~electronic~~] electric devices.

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

21 (3) The registration and each renewal shall include a
22 list of all of the [~~covered electronic~~] manufacturer's
23 brands of [~~covered electronic~~] electric devices and

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

4 (c) By ~~[June 1, 2009]~~ October 1, 2013, and annually
5 thereafter, each ~~[covered electronic]~~ manufacturer shall submit
6 a plan to the department to establish, conduct, and manage a
7 program for the collection, transportation, and recycling of its
8 ~~[covered electronic]~~ electric devices sold in the State, which
9 shall be subject to the following conditions:

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

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

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1 ~~device manufacturers, so long as the program is implemented and~~
2 ~~fully operational no later than January 1, 2010.]~~The plan shall
3 include a description of the methods for the convenient
4 collection of electric devices at no cost to the owner except
5 as provided for in subsection . The recycling plan shall
6 provide for collection services of electric devices in each
7 county of the state and zip code tabulation areas, as defined by
8 the United States Census Bureau, with a population greater than
9 twenty-five thousand. The recycling plan shall include at least
10 one of the following:

- 11 (A) Staffed drop-off site;
12 (B) Alternative collection service such as on-site
13 pick-up service; or
14 (C) Collection events held at an easily accessible,
15 central location;
16 (3) Collection services shall be provided, at a minimum
17 of, once in each quarter of the year;
18 (4) Plans that contain only a mail-back option shall not
19 be allowed;
20 (5) Plans shall specify the use of only collectors
21 registered, for the purposes of this chapter, with the
22 state

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1 (6) Plans shall specify the use of recyclers that have
2 achieved and maintained third-party accredited
3 certification from: the Responsible Recycling (R2)
4 Practices Standard, the e-Stewards Standard; or an
5 internationally accredited third-party environmental
6 management standard for the safe and responsible
7 handling of electric devices.

8 ~~(d) [By March 31, 2011, and annually thereafter, each~~
9 ~~electronic device manufacturer shall submit to the department~~
10 ~~the total weight of all covered electronic devices recycled in~~
11 ~~the previous year, which may include both an electronic device~~
12 ~~manufacturer's own covered electronic devices and those of other~~
13 ~~manufacturers.]~~Each manufacturer may develop its own recycling
14 program or may collaborate with other manufacturers, so long as
15 the program is implemented and fully operational no later than
16 January 1, 2014.

17 ~~(e) [By July 1, 2011, and annually thereafter, the~~
18 ~~department shall publish a ranking of all electronic device~~
19 ~~manufacturers selling covered electronic devices in the State,~~
20 ~~based upon the annual total weight of covered electronic devices~~
21 ~~recycled by each electronic device manufacturer in the previous~~
22 ~~year.]~~By March 31, 2011, and annually thereafter, each electric
23 device manufacturer shall submit to the department the total

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1 weight of all electric devices recycled in the previous year,
2 which may include both an manufacturer's own electric devices
3 and those of other manufacturers.

4 (f) The State may adopt regulations allowing a procurement
5 preference based upon an [~~electronic device~~] manufacturer's
6 ranking.

7 (g) The department shall review each [~~electronic device~~]
8 manufacturer's plan and, within sixty days of receipt of the
9 plan, shall determine whether the plan complies with this
10 part. If the plan is approved, the department shall notify the
11 [~~electronic device~~] manufacturer or group of [~~electronic~~
12 ~~device~~]-manufacturers. If the plan is rejected, the department
13 shall notify the [~~electronic device~~] manufacturer or group of
14 [~~electronic device~~] manufacturers and provide the reasons for
15 the plan's rejection. Within thirty days after receipt of the
16 department's rejection, the [~~electronic device~~] manufacturer or
17 group of [~~electronic device~~] manufacturers may revise and
18 resubmit the plan to the department for approval.

19 (h) The obligations under this part for an [~~electronic~~
20 ~~device~~] manufacturer who manufactures or manufactured [~~covered~~
21 ~~electronic~~] electric devices, or who sells or sold [~~covered~~
22 ~~electronic~~] electric devices manufactured by others, under a
23 brand that was previously used by a different person in the

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1 manufacture of [~~covered electronic~~] electric devices, shall
2 extend to all [~~covered electronic~~] electric devices bearing that
3 brand.

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

7 (j) The obligations under this chapter for a manufacturer
8 who manufactures or manufactured electric devices, or who sells
9 or sold electric devices manufactured by others, under a brand
10 that was previously used by a different person in the
11 manufacture of electric devices, shall extend to all electric
12 devices bearing that brand.

13 **§339D- Manufacturer recycling goals.** (a) The department
14 shall use the best available information to establish the weight
15 of all electric devices sold in the State, including but not
16 limited to the reports submitted pursuant to subsection ,
17 state and national sales data, and other reliable commercially
18 available, supplemental sources of information.

19 (b) No later than September 1, 2013, and annually
20 thereafter, the department shall notify each manufacturer of its
21 recycling obligation.

22 (c) For 2014, each manufacturer of electric devices
23 defined in subsection shall collect and recycle the

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1 equivalent of 60 per cent, by weight, of their products sold in
2 the state two years prior.

3 (1) For 2015, the goal shall be 70 per cent, by weight, of
4 their products sold in the state two years prior,
5 unless amended by rule pursuant to chapter 91.

6 (2) For 2016 and thereafter the goal shall be 80 per cent,
7 by weight, of their products sold in the state two
8 years prior, unless amended by rule pursuant to
9 chapter 91.

10 (f) For 2015, each manufacturer of electric devices
11 defined in subsection, shall collect and recycle the equivalent
12 30 per cent, by weight, of their products sold in the state two
13 years prior.

14 (1) For 2016, the goal shall be 40 per cent, by weight, of
15 their products sold in the state two years prior,
16 unless amended by rule pursuant to chapter 91.

17 (2) For 2017 and thereafter the goal shall be 50 per cent,
18 by weight, of their products sold in the state two
19 years prior, unless amended by rule pursuant to
20 chapter 91.

21 (e) Manufacturers may collect any electric device to meet
22 their recycling goal.

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1 (f) Manufacturers may count reused electric devices
2 towards their recycling goal.

3 **§339D- Manufacturer record keeping requirements.** (a)

4 Each manufacturer shall maintain records for a minimum five
5 years for the following:

6 (1) The amount, in weight, of sales of their electric
7 devices in the state annually;

8 (2) The amount of electric devices it has collected for
9 recycling or reuse by county; and

10 (3) The amount of electric devices recycled or reused by
11 each recycler on behalf of the manufacturer.

12 (b) Nothing in this part is intended to exempt any person
13 from liability that the person would otherwise have under
14 applicable law.

15 **§339D- Manufacturer reporting requirements.** (a) By August

16 1, 2013, and annually thereafter, each manufacturer shall report
17 to the department its sales, by weight, of the manufacturer's
18 electric devices sold in the state the previous calendar year,
19 categorized by product type.

20 (b) If the manufacturer is unable to provide accurate
21 sales data, it shall explain why the data cannot be provided.

22 The manufacturer shall then report an estimate of its sales data

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1 and provide an explanation on the methods used to derive the
2 estimate.

3 (c) By March 31, 2014, and annually thereafter, each
4 manufacturer shall report to the department the total weight of
5 all electric devices recycled or reused, by county, in the
6 previous year. Reports shall be submitted on forms prescribed
7 by the department.

8 **§339D- Collector registration.** (a) By January 1, 2014,
9 all collectors shall register with the department, using forms
10 prescribed by the department, and pay to the department a
11 registration fee of \$250. Thereafter, if a collector has not
12 previously registered, the collector shall register with the
13 department prior to accepting electric devices. A registration
14 shall be valid until December 31 of each year.

15 (b) Collectors shall submit an annual renewal of its
16 registration with the payment of a registration fee of \$250, by
17 January 1 of each year.

18 **§339D- Collector record keeping requirements.** Collectors
19 shall maintain records for a minimum of five years for the
20 following:

21 (1) The amount, in weight, of electric devices it has
22 collected for recycling and reuse and the amounts sent
23 for recycling and reuse; and

1 (2) Bills of lading or weight tickets for all electric
2 devices sent for recycling or reuse.

3 **§339D- Collector reporting requirements.** By March 31,
4 2015, and annually thereafter, each collector shall report to
5 the department the weight of all electric devices collected for
6 recycling or reuse in the previous year for the purposes of this
7 chapter. Reports shall be submitted on forms prescribed by the
8 department and shall indicate the weight of electric devices
9 sent to each recycler. Collectors shall also report the amount
10 of electric devices reused.

11 **§339D- Collector responsibility.** (a) Collectors shall
12 possess and maintain all necessary business and environmental
13 permits.

14 (b) All collected electric devices shall be sent for
15 recycling or reuse.

16 **[§339D-5] Retailer responsibility.** Beginning January 1,
17 2010, retailers shall make available to their customers
18 information on collection services in the State [~~including the~~
19 ~~department's website and toll-free telephone number~~]. Remote
20 retailers may include this information in a visible location on
21 their website to fulfill this requirement.

22 **[§339D-6] Department responsibility.** [~~Beginning~~] By
23 January 1, [~~2010~~] 2014, the department shall post and maintain

1 ~~[and update a website and a toll-free number with~~
2 ~~current]~~electric device recycling information on its website
3 ~~[where covered entities can return covered electronic devices~~
4 ~~for recycling].~~

5 **§339D- Department review of manufacturer recycling plans.**

6 (a) The department shall review each manufacturer's plan within
7 fourteen days of receipt of the plan to determine whether the
8 plan complies with this part.

9 (b) If approved, the department shall notify the
10 manufacturer or group of manufacturers.

11 (c) If rejected, the department shall notify the
12 manufacturer or group of manufacturers and provide the reason(s)
13 for the plan's rejection.

14 (d) Within thirty days after receipt of the department's
15 notification, the manufacturer, or group of manufacturers, shall
16 revise and resubmit the plan to the department for review. The
17 department shall review the resubmitted plan according to the
18 process defined in subsections (a), (b), and (c)."

19 SECTION 5. Chapter 339D, Part III, Hawaii Revised
20 Statutes, is amended to read as follows:

21 "[PART III.] GENERAL PROVISIONS

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1 **[§339D-7] Regulatory authority.** The department may adopt
2 rules, pursuant to chapter 91, necessary to implement this
3 chapter.

4 **[§339D-7.5] Manufacturer and agent responsibilities;**
5 **regulatory compliance.** Each [~~covered electronic~~] manufacturer
6 [~~and television manufacturer~~] shall be responsible for ensuring
7 that the manufacturer and its agents follow all federal, state,
8 and local regulations when collecting, transporting, and
9 recycling [~~covered electronic~~] electric devices [~~or covered~~
10 ~~televisions, and adopt environmentally sound recycling practices~~
11 ~~for the covered electronic devices or covered televisions~~].

12 **§339D- Audit authority.** The records of manufacturers,
13 collectors, and recyclers shall be made available, upon request,
14 for inspection by the department, a duly authorized agent of the
15 department, or the office of the auditor.

16 **§339D-8 Enforcement.** [~~(a) The department may conduct~~
17 ~~audits and inspections to determine compliance under this~~
18 ~~chapter. Except as provided in subsection (c), the department~~
19 ~~and the attorney general shall be empowered to enforce this~~
20 ~~chapter and take necessary action against any electronic device~~
21 ~~or television manufacturer or retailer for failure to comply~~
22 ~~with this chapter or rules adopted thereunder.~~

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1 ~~(b) The attorney general may file suit in the name of the~~
2 ~~State to enjoin an activity related to the sale of covered~~
3 ~~electronic devices or covered televisions in violation of this~~
4 ~~chapter.~~

5 ~~(c) The department shall issue a warning notice to a~~
6 ~~person for the person's first violation of this chapter. The~~
7 ~~person shall comply with this chapter within sixty days of the~~
8 ~~date the warning notice was issued or be subject to the~~
9 ~~penalties provided by law or rule, including, but not limited~~
10 ~~to, penalties set forth in subsections (d) through (g). A~~
11 ~~retailer that receives a warning notice from the department for~~
12 ~~a violation of section 339D-3(a) or 339D-24(a) shall submit~~
13 ~~proof to the department, within sixty days from the date the~~
14 ~~warning notice was issued, that its inventory of covered~~
15 ~~electronic devices or covered televisions offered for sale is in~~
16 ~~compliance with this chapter.~~

17 ~~(d) Any retailer who sells or offers for sale an unlabeled~~
18 ~~electronic device or unlabeled covered television in violation~~
19 ~~of section 339D-3 or 339D-24, respectively, or any electronic~~
20 ~~device or television manufacturer that fails to comply with any~~
21 ~~provision of section 339D-4 or 339D-23, respectively, may be~~
22 ~~assessed a penalty of up to \$10,000 for the first violation and~~
23 ~~up to \$25,000 for the second and each subsequent violation, in~~

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1 ~~addition to any additional penalties required or imposed~~
2 ~~pursuant to this chapter.~~

3 ~~(e) Except as provided in subsection (d), any person who~~
4 ~~violates any requirement of this chapter may be assessed a~~
5 ~~penalty of up to \$1,000 for the first violation and up to \$2,000~~
6 ~~for the second and each subsequent violation, in addition to any~~
7 ~~additional penalties required or imposed pursuant to this~~
8 ~~chapter.~~

9 ~~(f) The department shall determine additional penalties~~
10 ~~based on adverse impact to the environment, unfair competitive~~
11 ~~advantage, and other considerations that the department deems~~
12 ~~appropriate.~~

13 ~~(g) If a covered television manufacturer fails to recycle~~
14 ~~its market share allocation, the department shall impose a~~
15 ~~penalty of 50 cents per pound for each pound not recycled.]~~

16 (a) If the director determines that any person has violated or
17 is violating any provision of this chapter, any rule adopted
18 pursuant chapter 91, or any term or condition of a certification
19 or permit issued pursuant to this chapter, the director may do
20 any one or more of the following:

21 (1) Issue a field citation assessing an administrative
22 penalty and ordering corrective action immediately or
23 within a specified time;

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- 1 (2) Issue an order assessing an administrative penalty for
2 any past or current violation;
- 3 (3) Require compliance immediately or within a specified
4 time; or
- 5 (4) Commence a civil action in circuit court in which the
6 violation occurred or where the person resides or
7 maintains the person's principal place of business for
8 appropriate relief, including a temporary,
9 preliminary, or permanent injunction, the imposition
10 and collection of civil penalties, or other relief.
- 11 (b) Any order issued pursuant to this section may include
12 a suspension, modification, or revocation of a certification or
13 permit issued under this chapter, and shall state with
14 reasonable specificity the nature of the violation.
- 15 (c) Any order issued under this chapter shall become
16 final, unless not later than twenty days after the notice of
17 order is served, the person or persons named therein request in
18 writing a hearing before the director. Any penalty imposed
19 under this chapter shall become due and payable twenty days
20 after the notice of penalty is served unless the person or
21 persons named therein request in writing a hearing before the
22 director. Whenever a hearing is requested on any penalty
23 imposed under this chapter, the penalty shall become due and

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1 payable only upon completion of all review proceedings and the
2 issuance of a final order confirming the penalty in whole or in
3 part. Upon request for a hearing, the director shall require
4 that the alleged violator or violators appear before the
5 director for a hearing at a time and place specified in the
6 notice and answer the charges complained of.

7 (d) Any hearing conducted under this section shall be
8 conducted as a contested case under chapter 91. If after a
9 hearing held pursuant to this section, the director finds that a
10 violation or violations have occurred, the director shall:

- 11 (1) Affirm or modify any penalties imposed or shall modify
12 or affirm the order previously issued; or
- 13 (2) Issue an appropriate order or orders for the
14 prevention, abatement, or control of the violation
15 involved, or for the taking of such other corrective
16 action as may be appropriate. If, after a hearing on
17 an order or penalty contained in a notice, the
18 director finds that no violation has occurred or is
19 occurring, the director shall rescind the order or
20 penalty. Any order issued after hearing may prescribe
21 the date or dates by which the violation or violations
22 shall cease and may prescribe timetables for necessary

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1 action in preventing, abating, or controlling the
2 violation.

3 (e) If the amount of any penalty is not paid to the
4 department within thirty days after it becomes due and payable,
5 the director may institute a civil action in the name of the
6 State to collect the administrative penalty which shall be a
7 government realization. In any proceeding to collect the
8 administrative penalty imposed, the director need only show
9 that:

- 10 (1) Notice was given;
11 (2) A hearing was held or the time granted for requesting
12 a hearing expired without a request for a hearing;
13 (3) The administrative penalty was imposed; and
14 (4) The penalty remains unpaid.

15 (f) In connection with any hearing held pursuant to this
16 section, the director shall have the power to subpoena the
17 attendance of witnesses and the production of evidence on behalf
18 of all parties.

19 ~~§339D-9 [Administrative p]Penalties [; fees. (a) In~~
20 ~~addition to any other administrative or judicial remedy provided~~
21 ~~by this chapter or by rules adopted under this chapter for a~~
22 ~~violation thereof, the department is authorized to impose by~~
23 ~~order administrative penalties and is further authorized to set,~~

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1 ~~charge, and collect administrative fines and to recover~~
2 ~~administrative fees and costs, including attorney's fees and~~
3 ~~costs, or to bring legal action to recover administrative fines~~
4 ~~and fees and costs, including attorney's fees and costs.~~

5 ~~(b) Notwithstanding subsection (a), the department shall~~
6 ~~not have the authority to assess any fees, including an advanced~~
7 ~~recycling fee, registration fee, or other fee, on consumers,~~
8 ~~television manufacturers, or retailers for recovery of covered~~
9 ~~televisions except those noted in sections 339D-4 and 339D-22.]~~

10 (a) Any person who violates any provision of this chapter or
11 any rule adopted pursuant to this chapter shall be fined not
12 more than \$10,000 for each separate offense. Each day of each
13 violation shall constitute a separate offense. Any action taken
14 to impose or collect the penalty provided for in this section
15 shall be made through administrative, civil, or criminal
16 actions.

17 (b) If a manufacturer fails to recycle its goal amount,
18 the department shall impose a penalty of up to one dollar and
19 fifty cents per pound for each pound of the goal amount not
20 recycled.

21 **[§339D-10] [Electronic] Electric device recycling**
22 **fund.** (a) There is established in the state treasury the
23 ~~[electronic]~~ electric device recycling fund into which shall be

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1 deposited all fees, payments, and penalties collected by the
2 department pursuant to this chapter.

3 (b) The [electronic] electric device recycling fund shall
4 be 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 ~~[§339D-11 Financial and proprietary information,
8 report. (a) Notwithstanding any law to the contrary, financial
9 or 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 to the extent permitted by chapter 92F.~~

13 ~~(b) The department shall compile the information submitted
14 by covered television manufacturers and issue a report to the
15 legislature no later than April 1, 2012, and annually each year
16 thereafter.]~~

17 ~~[§339D-12 Federal preemption. (a) Part II of this
18 chapter shall be deemed repealed if a federal law or a
19 combination of federal laws takes effect that establishes a
20 national program for the collection and recycling of covered
21 electronic devices that substantially meets the intent of part
22 II of this chapter, including the creation of a financing
23 mechanism for collection, transportation, and recycling of all~~

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1 ~~covered electronic devices from covered entities in the United~~
2 ~~States.~~

3 ~~(b) Part IV of this chapter shall be deemed repealed if a~~
4 ~~federal law or a combination of federal laws takes effect that~~
5 ~~establishes a national program for the recycling of covered~~
6 ~~televisions that substantially meets the intent of part IV of~~
7 ~~this chapter.]"~~

8 SECTION 6. Chapter 339D, Part IV, Hawaii Revised Statutes,
9 is repealed.

10 SECTION 7. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act, upon its approval, shall take effect
13 on July 1, 2013.

14
15 INTRODUCED BY: 

16 BY REQUEST

17

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Report Title:

Recycling; Electric Devices

Description:

Amends and expands the Electronic Device and Television Recycling program.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO RECYCLING.

PURPOSE: The purpose of this bill is to expand the existing electronic device and television recycling program(s) to cover televisions, computers, their peripheral devices and other electrically powered devices.

MEANS: Amend Chapter 339D, Hawaii Revised Statutes.

JUSTIFICATION: The existing electronic device and television recycling program is an initial step towards efficient recycling of consumer electronic goods. The program, however, has not been effective in maximizing the amounts of electronics being recycled.

In the 2012 legislative session the department proposed to expand the program to include all electrically powered devices. The legislature instead mandated the department to organize a task force to examine the issue.

The assembled the task force includes representatives of manufacturers, retailers, recyclers, industry groups, and government agencies.

The department considered input from the task force in drafting a bill that will best serve Hawaii's consumers and environment.

Impact on the public: The proposed program would dramatically expand the universe of covered products for which recycling services will be provided. The bill also contains requirements that should make recycling programs offered by manufacturers significantly more convenient than at

present. This will increase recycling of covered products and decrease the amount of waste disposed.

Impact on the department and other agencies:

The proposed program will increase the administrative burden on the department as it will need to register and regulate manufacturers, collectors and recyclers.

GENERAL FUND: No general fund impact.

OTHER FUNDS: Funds in the Electronic Device Recycling Fund shall be transferred to the newly created Electric Device Recycling Fund.

PPBS PROGRAM
DESIGNATION: HTH-840.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.