

ACT 183

H.B. NO. 1809

A Bill for an Act Relating to Recycling.

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

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

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

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

- (1) Deleting the annual sales of “specialized computers” provision for electronic device manufacturers;
- (2) Prohibiting television manufacturers and electronic device manufacturers from charging owners a fee to recycle televisions and electronic devices under certain circumstances;
- (3) Requiring electronic device manufacturers and their agents to be responsible for following regulations and for adopting environmentally sound recycling programs; and
- (4) Requiring recycling programs for electronic devices to be fully implemented and operational no later than January 1, 2010.

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

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

“CHAPTER 339D”
ELECTRONIC WASTE AND TELEVISION RECYCLING AND
RECOVERY ACT”

SECTION 3. Chapter 339D, Hawaii Revised Statutes, is amended by designating section 339D-1 as part I, entitled “Definitions”.

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

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

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

“PART III. TELEVISION RECOVERY SYSTEM

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

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

- (1) The covered television is labeled with a brand, whether licensed or owned, and the label is permanently affixed; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to subsection (b).

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

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

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

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

§339D-C Television manufacturer responsibility. (a) Beginning January 1, 2011, a television manufacturer shall recycle or arrange for the recycling of any covered television sold in the state.

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

- (1) The plan shall not permit the charging of a fee at the point of recycling if the covered television is brought by the covered television owner to a central location for recycling; provided that the plan may include a reasonable transportation fee if the television manufacturer or television manufacturer's agent removes the covered electronic device from the owner's premises at the owner's request and if the removal is not in conjunction with delivery of a new television to the owner; and
- (2) Each television manufacturer may develop its own recycling program or may collaborate with other television manufacturers, so long as the program is implemented and fully operational no later than January 1, 2011.

(c) The department shall review each television manufacturer's plan and, within sixty days of receipt of the plan, determine whether the plan complies with this part. If the plan is approved, the department shall notify the television manufacturer or group of television manufacturers. If the plan is rejected, the department shall notify the television manufacturer or group of television manufacturers and provide the reasons for the plan's rejection. Within thirty

days after receipt of the department's rejection, the television manufacturer or group of television manufacturers may revise and resubmit the plan to the department for approval.

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

§339D-D Retailer responsibility. (a) Beginning January 1, 2011, no retailer shall sell or offer to sell any covered television in this state unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to the equipment and the television manufacturer has registered with the State.

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

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

§339D-E Television recovery system. (a) The department shall use state-specific television sales data or national television sales data available from commercially available analytical sources to determine each television manufacturer's recycling responsibilities for covered televisions based upon the television manufacturer's market share. If the department uses national sales data, the department shall extrapolate data for the State from national data on the basis of the State's share of the national population. The department shall seek to establish the most accurate determination of each television manufacturer's market share and may rely on supplemental sources of information to achieve this goal.

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

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

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

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

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

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

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

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

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

“[§339D-1] Definitions. As used in this chapter:

“Brand” means ~~[symbols, words, or marks that identify]~~ a symbol, word, or mark that identifies a covered electronic device[;] or a covered television, rather than any of its components.

“Covered electronic device”:

- (1) Means a computer, computer printer, computer monitor, or portable computer[;] with a screen size greater than four inches measured diagonally; and
- (2) Shall not include:
 - (A) A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
 - (B) A covered electronic device that is functionally or physically required as a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;
 - (C) A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or
 - (D) A telephone of any type.

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

“Covered television”:

- (1) Means any device that is capable of receiving broadcast, cable, or satellite signals and displaying television or video programming, including without limitation any direct view or projection television with a viewable screen of nine inches or larger with display technology based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for use by a household;
- (2) Shall not include:
 - (A) A computer, computer printer, computer monitor, or portable computer;
 - (B) A television that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufac-

turer or franchised dealer, including replacement parts for use in a motor vehicle;

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

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

(E) A global positioning system.

“Department” means the department of health.

“Electronic device manufacturer”:

(1) Means any existing person:

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

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

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

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

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

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

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

[“Manufacturer” means any existing person:

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

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

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

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

(5) For whose account covered electronic devices manufactured outside the United States are or were imported into the United States; provided that if at the time such covered electronic devices are or were

imported into the United States and another person has registered as the manufacturer of the brand of the covered electronic devices; this paragraph shall not apply; provided that the term "manufacturer" shall not include persons located in the State who manufacture specialized computers and have sales of no more than one hundred computers per year.]

"Market share":

(1) Means the calculation of a television manufacturer's prior year's sales of televisions divided by all manufacturers' prior year's sales for all televisions, as determined by the department;

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

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

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

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

"Recover" means to reuse or recycle.

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

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

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

"Television manufacturer" means a person who:

(1) Manufactures for sale in the state a covered television under a brand that it licenses or owns;

(2) Manufactures for sale in the state covered televisions without affixing a brand;

(3) Resells into the state a covered television manufactured by others under a brand that the seller owns or is licensed to use;

(4) Imports into the United States or exports from the United States a covered television for sale in the state;

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

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

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

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

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

“[H§339D-2] Scope of products. The collection, transportation, and recycling provisions of this [chapter] part shall apply only to covered electronic devices used and discarded in this State by a covered entity.”

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

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

- (1) The covered electronic device is labeled with a brand, and the label is permanently affixed and readily visible; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to section 339D-4(b)(3).

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

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

“[H§339D-4] Manufacturer] Electronic device manufacturer responsibility.

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

- (b) (1) By January 1, 2009, each electronic device manufacturer of new covered electronic devices offered for sale for delivery in this State shall register with the department and pay to the department a registration fee of \$5,000. Thereafter, if [a] an electronic device manufacturer has not previously registered, the electronic device manufacturer shall register with the department prior to any offer for sale for delivery in this State of the electronic device manufacturer's new covered electronic devices.
- (2) Each electronic device manufacturer who is registered shall submit an annual renewal of its registration with the payment of a registration fee of \$5,000, by January 1 of each program year.
- (3) The registration and each renewal shall include a list of all of the electronic device manufacturer's brands of covered electronic devices and shall be effective on the second day of the succeeding month after receipt by the department of the registration or renewal.

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

- (1) The plan shall not permit the charging of a fee at the point of recycling if the covered electronic device is brought by the covered electronic device owner to a central location for recycling; provided that the plan may include a reasonable transportation fee if the electronic device manufacturer or electronic device manufacturer's agent removes the covered electronic device from the owner's premises at the owner's request and if the removal is not in conjunction with delivery of a new electronic device to the owner; and
- (2) Each electronic device manufacturer may develop its own recycling program or may collaborate with other electronic device manufacturers, so long as the program is implemented and fully operational no later than January 1, 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"[§339D-11] Financial and proprietary information[-]; report. (a) Notwithstanding any law to the contrary, financial or proprietary information, including trade secrets, commercial information, and business plans, submitted to the department under this chapter is confidential and is exempt from public disclosure[-] to the extent permitted by chapter 92F.

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

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

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

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

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

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

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

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.