

## ACT 151

H.B. NO. 1640

A Bill for an Act Relating to Recycling.

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

SECTION 1. Chapter 339D, Hawaii Revised Statutes, is amended by adding seven new sections to part IV to be appropriately designated and to read as follows:

**“§339D-A Manufacturer recycling goals.** (a) The department shall use the best available information to establish the weight of all electronic devices sold in the State, including the reports submitted pursuant to section 339D-C, state and national sales data, and other reliable commercially available, supplemental sources of information.

(b) No later than October 1, 2022, and annually thereafter, the department shall notify each manufacturer of its recycling obligation pursuant to subsection (c).

(c) Each manufacturer shall collect and recycle electronic devices according to the following:

- (1) Beginning January 1, 2023, the equivalent of fifty per cent, by weight, of the manufacturer’s electronic devices sold in the State two years prior, unless amended by rule pursuant to chapter 91;
- (2) Beginning January 1, 2024, the equivalent of sixty per cent, by weight, of the manufacturer’s electronic devices sold in the State two years prior, unless amended by rule pursuant to chapter 91; and
- (3) Beginning January 1, 2025, the equivalent of seventy per cent, by weight, of the manufacturer’s electronic devices sold in the State two years prior, unless amended by rule pursuant to chapter 91.

(d) A manufacturer may collect any electronic device to meet its recycling goal.

(e) A manufacturer may consider reused electronic devices toward achieving its recycling goals.

**§339D-B Record keeping requirements.** (a) Each manufacturer shall maintain records, for a minimum of five years, of the following:

- (1) The amount, in weight, of its annual sales of electronic devices sold in the State;
- (2) The number of electronic devices it has collected for recycling or reuse, by county; and
- (3) The number of electronic devices recycled or reused by each collector and recycler on behalf of the manufacturer.

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

**§339D-C Manufacturer reporting requirements.** (a) By August 1, 2022, and annually thereafter, each manufacturer shall report to the department its sales, by weight, of the manufacturer’s electronic devices sold in the State in the previous calendar year, categorized by electronic device type.

(b) If the manufacturer is unable to provide accurate sales data, the manufacturer shall explain why the data cannot be provided and shall instead report an estimate of its sales data and provide an explanation of the methods used to derive the estimate.

(c) By March 31, 2023, and annually thereafter, each manufacturer shall report to the department the total weight of all electronic devices recycled

or reused, by county, in the previous calendar year. Reports shall be submitted on forms prescribed by the department.

**§339D-D Collector registration.** (a) By January 1, 2023, each collector shall register with the department, using forms prescribed by the department, and pay to the department a registration fee of \$250. Thereafter, if a collector has not previously registered with the department, the collector shall register with the department prior to accepting electronic devices. A registration shall be valid until December 31 of each year.

(b) By January 1 of each year, each collector shall submit an annual renewal of its registration with the payment of a registration fee of \$250.

**§339D-E Collector record keeping requirements.** Each collector shall maintain records for a minimum of five years of the following:

- (1) The amount, in weight, of electronic devices it has collected for recycling and reuse and the amounts sent for recycling and reuse; and
- (2) Bills of lading or weight tickets for all electronic devices sent for recycling or reuse.

**§339D-F Collector reporting requirements.** By March 31, 2024, and annually thereafter, each collector shall report to the department the weight of all electronic devices collected for recycling or reuse in the previous year. Reports shall be submitted on forms prescribed by the department and shall indicate the weight of electronic devices sent to each recycler and the number of electronic devices that were reused.

**§339D-G Collector responsibility.** Each collector shall possess and maintain all necessary business and environmental permits.”

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

**“ELECTRONIC [WASTE AND TELEVISION] DEVICE RECYCLING AND RECOVERY ACT”**

SECTION 3. Section 339D-1, Hawaii Revised Statutes, is amended to read as follows:

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

“Brand” means a symbol, word, or mark that identifies [a covered] an 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, mi-~~

~~errowave 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 manufacturer 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.]~~

~~“Collector” means a person that accepts electronic devices for reuse or delivers the devices to a recycler for the purposes of this chapter.~~

~~“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.~~

~~“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.]~~

~~“Electronic device”:~~

- (1) Means:

- (A) A computer, computer printer, computer monitor, or portable computer with a screen size greater than four inches measured diagonally; and

- (B) Any device that is capable of receiving broadcast, cable, or satellite signals and displaying television or video programing, including 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; and

- (2) Shall not include:

- (A) An 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) An 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) An 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;

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

- (E) A global positioning system.

~~“Manufacturer”:~~

- (1) Means any person:

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

- (B) Who sells or sold 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 electronic devices for delivery exclusively to or at the order of the licensor;

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

(D) Who manufactures or manufactured 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 electronic devices manufactured outside the United States are or were imported into the United States; provided that if at the time those electronic devices are or were imported into the United States and another person has registered as the manufacturer of the brand of the electronic devices, this subparagraph shall not apply; and

(2) Shall not include persons who sold fewer than one hundred electronic devices in the State during the previous calendar year.

“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.]

“Recycler” means any person who engages in the recycling of electronic devices for the purposes of this chapter.

“Recycling” means processing [~~(f)~~, including disassembling, dismantling, or shredding~~)] covered], electronic devices [or covered televisions] or their components to recover a useable product~~]; 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.

“Reuse” means any operation by which an electronic device changes ownership and is used for the same purpose for which it was originally purchased.

“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 4. Section 339D-7.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§339D-7.5]]~~ **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 5. Section 339D-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) to (d) to read:

“(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-24(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-24, ~~[respectively,]~~ or any ~~[electronic device or television]~~ manufacturer that fails to comply with any provision of section ~~[339D-4 or]~~ 339D-23~~[, 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.”

2. By amending subsection (g) to read:

“(g) If a ~~[covered television]~~ manufacturer fails to ~~[recycle its market share allocation,]~~ meet its recycling goals pursuant to section 339D-A(c), the department shall impose a penalty of ~~[50 cents]~~ \$1.50 per pound for each pound not recycled.”

SECTION 6. Section 339D-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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]~~ electronic devices except those noted in ~~[sections 339D-4 and]~~ section 339D-22.”

SECTION 7. Section 339D-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

“~~§339D-12 Federal preemption.~~ [(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 IV~~ 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] electronic devices that substantially meets the intent of ~~part IV~~ of this chapter.”

SECTION 9. Chapter 339D, part IV, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“~~PART IV. TELEVISION~~ ELECTRONIC DEVICE RECYCLING AND RECOVERY SYSTEM”

SECTION 10. Section 339D-21, Hawaii Revised Statutes, is amended to read as follows:

“~~§339D-21~~ Applicability. The recycling provisions of this part shall apply only to [covered televisions] electronic devices used and discarded in [this] the State [by a covered entity].”

SECTION 11. Section 339D-22, Hawaii Revised Statutes, is amended to read as follows:

“~~§339D-22 Television manufacturers.~~ Manufacturers. (a) No [television] manufacturer shall sell or offer for sale any new [covered television] electronic device in [this] the State unless:

- (1) The [covered television] electronic device 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,~~ 2023, before selling or offering for sale any [covered television] electronic device in the State, each [television] manufacturer shall register with the department and pay to the department a registration fee of ~~[\$2,500.]~~ \$5,000. 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] the State of the [television] manufacturer's new [covered televisions.] electronic device.

(c) Each [television] manufacturer who is registered shall submit an annual renewal of its registration and payment of a registration fee of ~~[\$2,500]~~ \$5,000 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] electronic devices 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."

SECTION 12. Section 339D-23, Hawaii Revised Statutes, is amended to read as follows:

~~"[§339D-23]—Television manufacturer~~ **Manufacturer responsibility.**

(a) Beginning January 1, [2011,] 2023, a [television] manufacturer shall recycle or arrange for the recycling or reuse of any ~~[covered television]~~ electronic device sold in the State. Manufacturers shall fully fund their recycling plan, including the collection, transportation, and recycling of all electronic devices in the State.

(b) By ~~[June 1, 2010,]~~ September 1, 2022, 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]~~ 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 [reeycling] collection if the [covered television] electronic device is brought by the [covered television] electronic device 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] electronic device 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.]~~

(2) The plan shall include a description of the methods for the convenient collection of electronic devices at no cost to the owner, except as provided in paragraph (1). The recycling plan shall provide for collection services of electronic devices in each county and zip code tabulation area, as defined by the United States Census Bureau, with a population greater than twenty-five thousand. The recycling plan shall include at least one of the following:

(A) Staffed drop-off sites;

(B) Alternative collection services, including on-site pick-up services; or

(C) Collection events held at an easily accessible, central location;

(3) The plan shall provide collection services at a minimum of once per month;

(4) The plan shall not contain only a mail-back option;

(5) The plan shall specify the use of only collectors registered with the State pursuant to section 339D-D; and

(6) The plan shall specify the use of recyclers that have achieved and maintained third-party accredited certification from the Responsible Recycling Standard for Electronics Recyclers (R2), Standard for Responsible Recycling and Reuse of Electronic Equipment (e-Stewards), or an internationally accredited third-party environmental management standard for the safe and responsible handling of electronic devices.

(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.] Each manufacturer may develop its own recycling plan or may collaborate with other manufacturers; provided that the plan is implemented and fully operational by January 1, 2023.~~

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

SECTION 13. Section 339D-24, Hawaii Revised Statutes, is amended to read as follows:

~~"[§339D-24]~~ **Retailer responsibility.** (a) Beginning January 1, ~~[2011,]~~ 2023, no retailer shall sell or offer to sell any ~~[covered television]~~ electronic device in ~~[this] the~~ 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,]~~ 2023, retailers shall make available to their customers information on collection services for discarded ~~[televisions]~~ electronic devices 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]~~ an electronic device that is recovered or recycled."

SECTION 14. Section 339D-25, Hawaii Revised Statutes, is amended to read as follows:

~~"[§339D-25]—Television] Electronic device recovery system[-]; consumer education.~~ [(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.~~

~~(e)] (a)~~ The department shall develop a consumer education program about the ~~[covered television]~~ electronic device recycling program.

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~~[(d)]~~ (b) Beginning January 1, ~~[2011,]~~ 2023, the department shall display on its website a toll-free number and current information on ~~[covered television]~~ electronic device recycling locations.”

SECTION 15. Section 339D-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All ~~[covered televisions]~~ electronic devices recovered pursuant to this part shall be recycled in a manner that complies with all applicable federal, state, and county laws and requirements.”

SECTION 16. Section 339D-27, Hawaii Revised Statutes, is amended to read as follows:

~~“[§339D-27]~~ **State procurement.** All state and county agencies that purchase or lease any ~~[covered television]~~ electronic device shall require each prospective offeror to certify compliance with this part. Failure to provide certification shall disqualify the prospective offeror.”

SECTION 17. Chapter 339D, part II, Hawaii Revised Statutes, is repealed.

SECTION 18. In codifying the new sections added by section 1 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 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 20. This Act shall take effect on July 1, 2022.

(Approved June 27, 2022.)

**Note**

1. Edited pursuant to HRS §23G-16.5.