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By Representatives Cooper, Rockefeller, Campbell, O'Brien, Sullivan, Dunshee, Wood, Ruderman, Romero, Dickerson, Edwards and Linville

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1 AN ACT Relating to electronic waste; adding a new section to
2 chapter 70.95 RCW; adding a new chapter to Title 70 RCW; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Advisory committee" means the electronics advisory committee
8 created in section 5 of this act.

9 (2) "Collective recovery plan" means a plan in which more than one
10 manufacturer has agreed to participate. A collective recovery plan
11 must represent the plan for all brands of electronic products
12 manufactured by the participating manufacturers.

13 (3) "Computer peripherals" means printers, keyboards, mice,
14 scanners, speakers, cables, or other accessories that are primarily
15 designed to be attached to a personal computer.

16 (4) "Department" means the department of ecology.

17 (5) "Director" means the director of the department of ecology.

18 (6) "Electronic products" means all televisions, computer monitors,

1 laptop computers, central processing units, handheld computers,
2 cellular phones, and computer peripherals.

3 (7) "Electronic waste" means electronic products that have been
4 discarded by its owner, or that has been otherwise entered into the
5 solid waste stream.

6 (8) "End of life fee" means a fee charged to the last consumer to
7 use an electronic product, designed primarily for financing the
8 implementation of a plan required by this chapter.

9 (9) "Environment" includes all of the state's natural resources,
10 including land, air, water resources, and plant and animal species, and
11 the habitat upon which they depend.

12 (10) "Environmentally friendly products" means electronic products
13 with lower impacts on the environment throughout its life cycle.
14 "Environmentally friendly products" includes products with fewer toxic
15 constituents, that use fewer toxic chemicals in the manufacturing
16 process, that contain recycled or remanufactured parts, that are
17 designed for easy disassembly and recycling, that are easy to upgrade
18 or reuse, and that are designed for a longer life.

19 (11) "Front end financing" means costs recovered at the time of
20 sale, either internalized into the final sale price, or specifically
21 itemized and added to the final sale price.

22 (12) "Hazardous electronic waste" means electronic equipment,
23 components, constituent subunits, or materials from which the subunits
24 are made, that contain concentrations of toxic materials exceeding the
25 regulatory levels established in Title 40 C.F.R. part 261.24 as it
26 existed on the effective date of this act, using the toxic
27 characteristic leaching procedure.

28 (13) "Orphan waste" means electronic waste that was manufactured
29 by, or bears the brand of, a manufacturer that is no longer in
30 business.

31 (14) "Manufacturer" means any person who, as of the effective date
32 of this act: (a) Manufactures and sells electronic equipment under its
33 own brand; (b) manufactures and sells electronic equipment without
34 affixing a brand; or (c) resells equipment produced by other suppliers
35 under its own brand and label. The term "manufacturer" applies
36 regardless of the selling technique used, including distance
37 communication.

1 (15) "Plan" or "plans" means both the electronic waste recovery and
2 recycling plan required under section 2 of this act that are filed by
3 individual manufacturers and collective recovery plans.

4 (16) "Processed" means the removal and separation from electronics,
5 and the management according to existing state and federal regulations,
6 of batteries, printed circuit boards, toner and ink cartridges,
7 plastics containing brominated flame retardants, cathode ray tubes,
8 liquid crystal displays of a surface greater than one hundred square
9 centimeters, mercury-containing devices, copper wiring, lead solder,
10 and external electrical cables.

11 (17) "Recycling" means the use of previously manufactured materials
12 including metals, glass, and plastics, as feedstock in the
13 manufacturing of new products. "Recycling" does not include energy
14 recovery or energy generation by means of combusting electronic waste
15 with or without other waste.

16 (18) "Reuse" means any operation by which electronic waste or
17 components of electronic waste are used for the same purposes for which
18 they were originally created, including the continued use of the
19 equipment or components of the equipment that are returned to
20 collection points, recyclers, or manufacturers.

21 NEW SECTION. **Sec. 2.** (1) Except as provided in this section,
22 every manufacturer must develop, submit to the department, implement,
23 and finance the implementation of a plan for the collection and the
24 recycling or reuse of sixty-five percent, by weight, of all electronic
25 waste from its own products each year. The plan must provide and
26 promote convenient, strategically located fixed collection sites to
27 serve urban and rural populations throughout the state. Collection
28 sites may include electronics recyclers and repair shops, recyclers of
29 other commodities, reuse organizations, municipal recycling centers,
30 retailers, or other suitable locations. Rural areas without commercial
31 centers, unincorporated communities, or areas with widely dispersed
32 population may be served by collections at the nearest commercial
33 centers where electronics are sold or by mail-back systems.

34 (2) A manufacturer may satisfy the plan requirements of this
35 chapter by agreeing to participate in a collective recovery plan with
36 other manufacturers. The collective recovery plan must meet the same

1 standards and requirements of the plans submitted by individual
2 manufacturers.

3 (3) All plans required by this chapter must include, at a minimum:

4 (a) A description of the collection system, including the methods
5 of convenient collection;

6 (b) A public education element to inform the public about the
7 collection system, including details about meeting all consumer
8 notification and labeling requirements;

9 (c) Details for implementing and financing the collection,
10 recovery, recycling, and reuse of all electronic products sold by that
11 manufacturer in the state;

12 (d) Documentation of the willingness of all necessary parties to
13 implement the agreement, including the parties that will participate in
14 the collection, treatment, recovery, reuse, and recycling of the
15 electronic products;

16 (e) Assurances that the system, and all necessary parties, will
17 operate in compliance with local, state, and federal waste management
18 rules and regulations;

19 (f) Descriptions of the performance measures that will be used and
20 reported by the manufacturer to demonstrate that the plan is meeting
21 the required recovery and recycling rates for its own brand of
22 electronic products at end of life, as well as other measures of the
23 plan's effectiveness;

24 (g) Descriptions of additional or alternative actions that will be
25 taken if performance measures are not met;

26 (h) Details for financing the manufacturer's proportional share of
27 orphan waste;

28 (i) Ideas for the creation of economic incentives for the design of
29 environmentally friendly products; and

30 (j) Annual sales data on the number and type of electronic products
31 sold by the manufacturer in Washington over the ten years preceding the
32 filing of the plan for televisions, and five years preceding the filing
33 of the plan for computers, cell phones, and other electronic products.

34 (4) The manufacturers are responsible for all of the costs
35 associated with the development and implementation of the plans. These
36 costs include cost for collection and public education and outreach.
37 If the costs are passed on to consumers, it must be done so with front

1 end financing, and not with an end of life fee. No funds shall be
2 collected, managed, or generated by a state governmental entity.

3 (5) Manufacturers must finance the management of orphan waste. The
4 costs of managing such waste shall be shared proportionally by the
5 manufacturers respective to the manufacturer's market share, by
6 electronic product type, at the time that the waste management costs
7 are incurred. The proportional share of the responsibility for orphan
8 waste may be adjusted on an annual basis by the department, in
9 consultation with the advisory committee.

10 NEW SECTION. **Sec. 3.** (1) All plans required by this chapter must
11 be submitted to the department and the advisory committee by September
12 30, 2004, and reviewed by the department by December 31, 2004, with
13 implementation by manufacturers beginning by June 30, 2005. The
14 department and advisory committee shall evaluate plans based on the
15 plan's sufficiency in light of all of the required elements. The
16 advisory committee shall develop a means for scoring initial
17 submissions and providing feedback to manufacturers for integration
18 into final plans.

19 (2) After June 30, 2005, a manufacturer must have a plan that is
20 approved by the department before that manufacturer is able to sell an
21 electronic product in Washington.

22 (3) If a manufacturer with an approved plan fails to meet the
23 recovery and recycling goals of the plan, the department may require
24 the manufacturer to implement additional procedures, including the
25 additional or alternative actions identified in the manufacturer's
26 plan. If the additional procedures fail to accomplish the recovery
27 goal, the department may prohibit the manufacturer from selling
28 electronic products in the state.

29 NEW SECTION. **Sec. 4.** (1) All manufacturers must submit an initial
30 report to the advisory committee by December 31, 2005, and each
31 December 31st thereafter. The reports must contain, at a minimum:

- 32 (a) The quantities of electronic products sold by that manufacturer
33 in the state during the previous year;
- 34 (b) The weight of the electronic waste recovered in the previous
35 year;
- 36 (c) The weight of recovered electronic waste that is reused;

- 1 (d) The weight of recovered electronic waste that is recycled;
- 2 (e) Progress reports towards making more environmentally friendly
- 3 products;
- 4 (f) The results of any performance measures included in the plan;
- 5 (g) Identification of the end markets for collected electronic
- 6 waste;
- 7 (h) Educational and promotional efforts that will be undertaken;
- 8 and
- 9 (i) Any other information deemed necessary by the department.

10 (2) The advisory committee and the department must review all
11 reports and provide a notice of adequate compliance or deficiency to
12 manufacturers within six months.

13 (3) All reports submitted to the department and the advisory
14 committee must be available to the general public through the internet.
15 However, the manufacturer submitting the report may indicate which
16 portions, if any, it considers proprietary and, if the department
17 concurs that the information meets state legal requirements for
18 confidentiality, those sections of the report shall not be made public.

19 NEW SECTION. **Sec. 5.** (1) The electronics advisory committee is
20 created to oversee the electronic recovery and recycling program. The
21 advisory committee shall receive plans, review annual reports submitted
22 pursuant to section 4 of this act, and report annually to the
23 department and the legislature on recommended adjustments to recycling
24 and recovery goals, products that are required to be covered with a
25 plan, and any regulatory changes.

26 (2) The advisory committee must be composed of eleven members, all
27 appointed by the governor. Two members must be representatives of
28 manufacturers, two members must be representatives of electronics
29 recyclers or processors, two members must be representatives of
30 environmental or public interest organizations, two members must be
31 representatives of local government, including at least one local
32 government located east of the crest of the Cascades, and three members
33 must be at-large citizen members with no qualification criteria.

34 (3) Members of the advisory committee shall serve four-year
35 renewable terms.

36 (4) Members of the advisory committee serve as volunteers, and are
37 not eligible for compensation.

1 (5) Staff to the advisory committee must be provided by the
2 department.

3 NEW SECTION. **Sec. 6.** (1) Manufacturers shall phase out the use of
4 lead, mercury, beryllium, cadmium, hexavalent chromium, brominated
5 flame retardants, and polyvinyl chloride in electronic products by
6 January 1, 2007. Phased-out substances must be replaced by more
7 environmentally friendly substances. Additional substances and phase
8 out dates may be adopted in rule by the department at the
9 recommendation of the advisory committee.

10 (2) The department, in consultation with the advisory committee,
11 may grant a limited-term exemption from the phase out requirements of
12 this section if a manufacturer sufficiently demonstrates that it is
13 technically impossible to find an alternative to a particular
14 substance. Upon the granting of an exemption, the department must
15 assign an expiration date for the exemption that ensures the
16 manufacturer will invest in research and development to identify an
17 appropriate alternative. An exemption can be rescinded by the
18 department if it becomes possible to execute the phase out before the
19 assigned expiration of the exemption.

20 NEW SECTION. **Sec. 7.** By June 30, 2005, all electronic products
21 sold in Washington must bear a clear label, or be packaged with
22 informational materials, provided by the manufacturer, that provides
23 the consumer or end user with information relating to the following:

- 24 (1) The hazardous materials contained in the electronic product and
25 its parts and subparts;
- 26 (2) The restrictions relating to the disposal of electronic
27 products in landfills, incinerators, and other means that are not a
28 part of the manufacturer's approved plans; and
- 29 (3) A toll-free phone number or internet site where consumers can
30 obtain information and instructions concerning the safe disposition of
31 the electronic product through the manufacturer's plan.

32 NEW SECTION. **Sec. 8.** (1) Every plan required by this chapter must
33 include a consumer education element. The consumer education element
34 must be designed to ensure that the users of electronic products
35 understand:

1 (a) The prohibition on disposal of electronic waste by any means
2 other than as listed in the manufacturer's plan;

3 (b) The electronic waste return and collection systems that are
4 available;

5 (c) The potential effects on the environment and human health that
6 could result from the presence and improper disposal of hazardous
7 substances contained in electronic equipment;

8 (d) The consumer's role in contributing to the reuse, recycling,
9 and other forms of electronic waste recovery.

10 (2)(a) All manufacturers must demonstrate through independent
11 polling that at least eighty-five percent public awareness has been
12 achieved for each of that manufacturer's covered electronic products
13 within two years following a plan's implementation. Manufacturers may
14 satisfy this subsection by collectively undertaking demonstrations of
15 public awareness as long as the polling instrument is designed to
16 identify the public awareness of a majority of the manufacturer's plans
17 or a majority of the electronic products.

18 (b) The design, protocols, and implementation of the public opinion
19 polling required by this subsection must be approved by the advisory
20 committee.

21 NEW SECTION. **Sec. 9.** Every plan required by this chapter must
22 include a provision for facilitating the correct and environmentally
23 sound treatment of electronic waste. Manufacturers must demonstrate
24 adequate measures to provide information to recyclers and processors
25 about their electronic products. Within one year of the introduction
26 of a new electronic product, the manufacturer must provide new
27 information to recyclers and processors regarding the end of life
28 treatment of the new product, including directions for disassembly,
29 information about material content, and safety concerns.

30 NEW SECTION. **Sec. 10.** No plan required under this chapter may
31 include the use of prison labor unless the manufacturer can demonstrate
32 that:

33 (1) They provide all occupational safety, health, and environmental
34 protections required of private enterprise, nonprison labor operations;
35 and

1 (2) Prison labor does not unfairly compete with private sector
2 operations by providing a hidden subsidy not available to a private
3 recycling infrastructure.

4 NEW SECTION. **Sec. 11.** The legislature finds that exporting
5 electronic waste to other nations with environmental standards that are
6 less stringent than the United States does not safely remove that waste
7 from the global environment. Therefore, all plans submitted pursuant
8 to this chapter are encouraged to prohibit the export of hazardous
9 electronic waste to foreign countries.

10 NEW SECTION. **Sec. 12.** All persons processing electronic waste as
11 part of an approved plan must protect the health and safety of their
12 employees and contractors by, at a minimum, providing evidence of
13 compliance with all state and federal occupational health and safety
14 laws and regulations.

15 NEW SECTION. **Sec. 13.** Manufacturers or an organization of
16 manufacturers that participate in a collective recovery plan under this
17 chapter shall not be found liable or guilty under any state rule of
18 trade or commerce for any activities required by this chapter.

19 NEW SECTION. **Sec. 14.** The department of general administration
20 shall establish purchasing and procurement policies that require the
21 vendors of electronic products sold to the state to take back the
22 electronic waste when the equipment becomes obsolete, is discarded, or
23 is otherwise removed from service. Purchasing and procurement policies
24 must also establish a preference for electronic products that meet
25 environmental performance standards relating to the reduction or
26 elimination of hazardous materials.

27 NEW SECTION. **Sec. 15.** If a national system for the collection and
28 recycling of electronic products or orphan waste that meets the same or
29 similar standards as this chapter is implemented, the department must
30 notify the appropriate committees of the legislature and provide a
31 recommendation as to whether the state should allow the national
32 agreements or requirements to preempt this chapter.

1 NEW SECTION. **Sec. 16.** Nothing in this chapter restricts the
2 ability of a manufacturer, importer, or domestic distributor from
3 transporting electronic products through the state, or storing
4 electronic products in the state for later distribution outside of the
5 state.

6 NEW SECTION. **Sec. 17.** The department may adopt rules to implement
7 this chapter.

8 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.95 RCW
9 to read as follows:

10 Unprocessed electronic products and hazardous electronic waste, as
11 those terms are defined in section 1 of this act, shall not be disposed
12 of in landfills, incinerators, and other municipal solid waste disposal
13 systems after January 1, 2007.

14 NEW SECTION. **Sec. 19.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 20.** Sections 1 through 17 and 19 of this act
19 constitute a new chapter in Title 70 RCW.

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