
HOUSE BILL 2811

State of Washington 59th Legislature 2006 Regular Session

By Representatives O'Brien and Morrell

Read first time 01/13/2006. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to creating a covered electronic device recycling
2 program; and adding a new chapter to Title 19 RCW.

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

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

6 (1) "Department" means the department of ecology.

7 (2) "Cathode ray tube" or "CRT" means a vacuum tube or picture tube
8 used to convert an electronic signal into a visual image.

9 (3) "Consumer" means a person who purchases a covered electronic
10 device in a transaction that is a sale.

11 (4) "Computer" means an electronic, magnetic, optical,
12 electrochemical, or other high speed data processing device performing
13 logical, arithmetic, or storage function, and may include both a
14 computer central processing unit and a monitor. "Computer" does not
15 include an automated typewriter or typesetter, a portable hand held
16 calculator or device, or other similar device.

17 (5)(a) "Covered electronic device" means desktop/personal
18 computers, computer monitors, portable computers, desktop printers,
19 televisions, and video displays.

1 (b) "Covered electronic device" does not include:
2 (i) A covered electronic device that is a part of a motor vehicle,
3 or any component part of a motor vehicle assembled by, or for, a
4 vehicle manufacturer or franchised dealer, including replacement parts
5 for use in a motor vehicle;
6 (ii) A covered electronic device that is contained within, or a
7 part of a piece of industrial, commercial, or medical equipment,
8 including monitoring or control equipment; and
9 (iii) A covered electronic device that is contained within a
10 clothes washer, clothes dryer, refrigerator, refrigerator and freezer,
11 microwave oven, conventional oven or range, dishwasher, room air
12 conditioner, dehumidifier, or air purifier.
13 (6) "Not-for-profit corporation" or "corporation" means the
14 corporation established under section 6 of this act.
15 (7) "Manufacturer" means any person who, on or after the effective
16 date of this act, and irrespective of the selling technique used,
17 including by means of remote sale: (a) Manufactures electronic
18 equipment under its own brand; (b) manufactures electronic equipment
19 without affixing a brand; (c) resells equipment produced by other
20 suppliers under its own brand and label; or (d) imports or exports
21 electronic equipment into the United States.
22 (8) "Monitor" means a separate visual display component of a
23 computer, whether sold separately or together with a computer central
24 processing unit/computer box, and includes a cathode ray tube, liquid
25 crystal display, gas plasma, digital light processing, or other image
26 projection technology, greater than nine inches when measured
27 diagonally, its case, interior wires and circuitry, cable to the
28 central processing unit, and power cord.
29 (9) "Orphan products" are covered electronic devices for which (a)
30 the manufacturer no longer exists and a successor cannot be identified,
31 or (b) no manufacturer can be identified.
32 (10) "Portable computer" means a computer and video display that
33 can be carried on a person.
34 (11) "Product category" means computer monitors, portable
35 computers, and televisions.
36 (12) "Purchase" means the taking, by sale, of title or of the right
37 to use, in exchange for consideration.

1 (13) "Recycling" means any process by which covered electronic
2 devices that would otherwise become solid waste are collected,
3 separated, and processed to be returned to use in the form of raw
4 materials or products.

5 (14) "Retailer" means a person who owns or operates a business that
6 sells new covered electronic devices by any means to an end user.

7 (15) "Reuse" means any operation by which a covered electronic
8 device changes ownership to be used for the same purpose for which it
9 was originally put on the market without additional processing or
10 remanufacturing.

11 (16) "ROHS" means restrictions on hazardous substances directive
12 2002/95/EC of the European Union, adopted by the European parliament
13 and the council of the European Union on January 27, 2003.

14 (17) "Sell" or "sale" means any transfer for consideration of title
15 or of the right to use to a consumer, by lease, donation, or sales
16 contract, including, but not limited to, transactions conducted through
17 sales outlets, catalogs, or the internet, or any other, similar
18 electronic means, and excluding wholesale transactions with
19 distributors or dealers.

20 (18) "Television" means a stand-alone display system having a
21 viewable area greater than nine inches when measured diagonally and
22 able to adhere to standard consumer video formats such as PAL, SECAM,
23 NTSC and HDTV and has the capability of selecting different broadcast
24 channels and support sound capability.

25 (19) "Video display" means an output surface having a viewable area
26 greater than nine inches when measured diagonally that displays moving
27 graphical images or a visual representation of image sequences or
28 pictures, showing a number of quickly changing images on a screen in
29 fast succession to create the illusion of motion, including, if
30 applicable, a device that is an integral part of the display (and
31 cannot be easily removed from the display by the consumer) that
32 produces the moving image on the screen. Displays typically use a
33 cathode ray tube (CRT), liquid crystal display (LCD), gas plasma,
34 digital light processing, or other image projection technology.

35 (20) "Visible fee" means a fee that is added to a new product at
36 the point of purchase and is identified to the consumer separately from
37 the product price.

1 NEW SECTION. **Sec. 2.** Beginning July 1, 2008, a covered electronic
2 device recycling fee is hereby imposed upon every sale in the state of
3 a new covered electronic device. The fee amount is established under
4 this section and may not exceed eight dollars.

5 (1) Every retailer that sells a new covered electronic device shall
6 collect at the time of sale the fee imposed under this section for each
7 new covered electronic device sold to an end user in this state.

8 (2) Each retailer shall transmit all fees collected under this
9 section, minus three percent of total fee revenues which may be
10 retained by the retailer for administrative costs associated with
11 collecting the fee, to the corporation on or before the last day of the
12 month following each quarter, accompanied by any forms prescribed by
13 the department. If a covered electronic device for which the fee has
14 been paid is returned to a retailer under warranty, the fee may be
15 refunded, and the retailer may deduct the amount of returned fee from
16 their remittance to the corporation.

17 (3) Funds collected by the corporation shall be used solely for the
18 purpose of funding collection, transportation, and recycling of covered
19 electronic devices, including the discretionary use of funds by the
20 corporation to promote the collection and recycling of covered
21 electronic devices and market development. Collected funds may not be
22 used to pay for activities associated with refurbishment or reuse of
23 covered electronic devices.

24 (4) The department shall establish separate fees for different
25 categories of products based on the estimated costs of collection,
26 transportation, and recycling for similar products. Fees collected on
27 one category of product shall not be used to subsidize the collection,
28 transportation, and recycling of different categories of covered
29 electronic devices.

30 (5) The fee imposed under this section shall be a visible fee at
31 the point of sale, and imposed after any state, local, or federal sales
32 tax.

33 (6) The corporation shall submit a plan to the department for
34 approval. The plan shall provide a funding methodology for collectors
35 and recyclers that utilizes competitive bidding to set reimbursement
36 rates. The development of the funding methodology shall be by rule and
37 must include at least two public hearings in different geographical
38 regions of the state.

1 NEW SECTION. **Sec. 3.** The corporation shall do the following:

2 (1) Establish procedures for the imposition of the visible fee on
3 covered electronic devices sold in this state;

4 (2) Beginning January 1, 2008, report to the legislature on an
5 annual basis. The purpose of the report is to update the legislature
6 regarding the progress on the implementation of this chapter, including
7 recommendations for changes to this chapter that will ensure the most
8 effective collection of electronic product recycling fees and whether
9 the cap on the fee imposed under section 3 of this act should be
10 adjusted;

11 (3) Working with the department, publish the schedule of fees for
12 covered electronic products based on product category by January 1,
13 2007, and every two years thereafter, taking into consideration the
14 following factors: (a) Current collection, transportation, and
15 recycling costs of covered electronic devices; (b) projected sales of
16 covered electronic devices; (c) projected volume of returns of covered
17 electronic devices to meet performance measures; and (d) actual
18 collection rates during the previous twelve-month period plus a yearly
19 growth projection. The corporation and the department may also take
20 into consideration any surplus funds carried forward and reduce the fee
21 when making fee amount determinations. Any changes in fee levels take
22 effect January 1st of the following year, provided the department
23 publishes the new schedule at least thirty days in advance;

24 (4) Organize and coordinate public outreach using existing funds
25 and resources appropriated to the corporation. The corporation shall
26 utilize local and/or regional authorities to reach local residents and
27 determine appropriate methods for education; and

28 (5) Achieve the mandated performance goals. The corporation must
29 establish the first year baseline performance goal as a measure of
30 pounds collected per capita, and project the performance goal for
31 subsequent years to meet the performance goals.

32 NEW SECTION. **Sec. 4.** Any party receiving funding under this
33 chapter is prohibited from charging fees for collecting and/or
34 recycling covered electronic devices, except under specified situations
35 to be addressed by the corporation in the development of its plan.
36 Such a situation may include when funding from the corporation does not

1 fully cover the net cost of collection and/or recycling of the covered
2 electronic devices. This chapter does not impact end-of-life fees in
3 effect for products not covered by the chapter.

4 NEW SECTION. **Sec. 5.** A not-for-profit corporation or corporation
5 is hereby established as a 501(c)(3) organization to administer
6 collected fee proceeds from the retail sale of covered electronic
7 devices under this chapter. The purpose of the corporation is to
8 collect fee proceeds from retailers, distribute fee proceeds, work with
9 the department in development and approval of an electronics collection
10 and recycling plan, provide reports on the program to the department
11 and the legislature, and make recommendations regarding the improvement
12 of the collection system. The corporation must submit a budget
13 annually to the department and utilize for administrative expenses no
14 more than five percent of the total funds collected.

15 NEW SECTION. **Sec. 6.** (1) The corporation plan submitted must
16 incorporate, to the extent feasible, a geographic scope to serve all
17 consumers who are subject to the fee. The plan must also rely
18 primarily on existing collection and consolidation infrastructure
19 available for handling covered electronic devices.

20 (2) The corporation is hereby established to receive funds
21 collected by the retailers, provide a funding methodology for
22 reimbursement of collectors and recyclers, and to create a recycling
23 system that results in the environmentally sound and cost-efficient
24 collection, transportation, and recycling of covered electronic
25 devices.

26 (3)(a) The corporation shall utilize the funding for the sole
27 purpose of carrying out the duties of this chapter. In the event that
28 expenses from collection, transportation, and recycling activities
29 exceed revenues, the corporation is authorized to borrow up to ten
30 percent of the projected annual net fee funds from outside sources.
31 Borrowed funds must be repaid within two years.

32 (b) By April 1, 2007, the corporation shall submit a plan to the
33 department describing the details of the program. The plan shall be
34 resubmitted to the department every two years, and presumed approved if
35 the plan includes all of the following:

1 (i) An estimate of the weight of covered electronic devices
2 expected to be recycled to meet the performance measures;

3 (ii) Details on the funding methodology to be used to fund the
4 system;

5 (iii) Details on how the state's existing solid waste and recycling
6 collection infrastructure will be used to maximize product collection
7 activities;

8 (iv) A demonstration that the collection system will provide
9 collection opportunities across the state, covering all areas where
10 products are sold; and

11 (v) Procedures for monitoring the performance of product recyclers,
12 including periodic audits, to meet the environmentally sound management
13 requirements. Corporation activities may not interfere with or
14 supersede existing roles and responsibilities of applicable state
15 regulatory agencies.

16 (c)(i) Once the corporation plan has been submitted to and approved
17 by the department, the corporation may begin to disburse the funds and
18 implement the plan. If the department, upon review of the plan, finds
19 that it fails to meet any of the requirements, or that the plan cannot
20 reasonably be expected to achieve the performance measures, then the
21 department has the authority to suspend fee collection until the plan
22 has been modified and the modifications are approved by the department.

23 (ii) Once per calendar year, the corporation shall file a report
24 with the department that describes the implementation of the system
25 during the year. The report shall identify the total weight of covered
26 electronic devices received during the preceding year by product
27 category, together with the total weight of products recycled in each
28 product category. The report shall also include a list of all parties
29 participating in the system.

30 (d) The corporation must have a board of directors consisting of
31 eleven members appointed by the department. The board members are
32 appointed for two-year terms, except that for the initial term, three
33 members are appointed to one-year terms and four members are appointed
34 to two-year terms. The department shall appoint a replacement if any
35 vacancy occurs. The board must consist of representatives of the
36 following:

37 (i) Five manufacturers of covered electronic devices;

38 (ii) Two retailers of covered electronic devices;

- 1 (iii) One recycler of covered electronic devices;
2 (iv) One environmental not-for-profit organization with experience
3 in the recycling of covered electronic devices; and
4 (v) Two government representatives, including one from local
5 government.

6 (e) The board shall select the chief executive officer along with
7 the officers of the corporation. The chief executive officer and
8 officers run the day-to-day operations of the corporation and report to
9 the board at least once a year.

10 (4) The corporation shall encourage collectors, transporters, and
11 recyclers to coordinate their efforts in order to minimize costs. All
12 contracts issued by the corporation for recyclers must be competitively
13 bid and the contracts may not prohibit or affect any contract,
14 franchise, permit, or other arrangement regarding the collection or
15 recycling of other solid or household hazardous waste.

16 NEW SECTION. **Sec. 7.** (1) The corporation may not disburse funds
17 unless the plan demonstrates that the covered electronic devices
18 collected by the applicant will be recycled, refurbished, or disposed
19 in a manner that is in compliance with all applicable federal, state,
20 and local laws, regulations, and ordinances, and that the devices will
21 not be exported for disposal in a manner that poses a significant risk
22 to the public health or the environment.

23 (2) The department shall establish performance requirements for
24 recyclers eligible to receive funds from the corporation. The
25 department shall require recycling vendors, at a minimum, to
26 demonstrate compliance with the United States environmental protection
27 agency's guidance on environmentally sound management of electronic
28 products in addition to any other requirements mandated by state law.

29 (3) The department shall keep on file and update a list of
30 recyclers approved to recycle the covered electronic devices. A copy
31 of the list, including all changes to the list since the previous year,
32 shall be sent to the corporation annually for use in fulfilling its
33 requirements under section 6 of this act.

34 (4) The department shall immediately remove from the list any
35 recycler who, as the result of an audit by the corporation or the
36 department, has failed to meet the criteria established under

1 subsection (1) of this section, or who has been convicted of violating
2 any federal, state, or local statute related to the collection,
3 transport, or processing of covered electronic products.

4 (5) The corporation and its board are not financially liable for
5 any violation of a federal, state, or local law, by a recycler
6 appearing on the list created and updated by the department.

7 NEW SECTION. **Sec. 8.** (1) Beginning July 1, 2007, a manufacturer
8 may not offer for sale in this state a covered electronic device unless
9 a visible, permanent label clearly identifying the brand or
10 manufacturer of that device is affixed to it.

11 (2) By April 1, 2007, manufacturers of covered electronic devices
12 must notify retailers or distributors that the covered electronic
13 device is subject to the advance recovery fee.

14 (3) Beginning July 1, 2007, whichever is later, it is unlawful for
15 a retailer to sell a covered electronic device in the state unless a
16 visible fee is collected and remitted back to the corporation.

17 (4) In the event that a company is found in violation of this
18 section, a civil penalty of twenty-five dollars per violation will be
19 assessed by the department. Penalty amounts and violations will be
20 calculated based on the number of individual units sold.

21 (5) Any fine collected under this chapter must be transferred to
22 the department. The money collected and distributed must be used to
23 offset enforcement expenses.

24 (6) Manufacturers and retailers, upon providing a sixty-day notice
25 to the attorney general and to a manufacturer or retailer who is not
26 collecting and remitting the fee, have the right to sue that
27 manufacturer or retailer for failure to collect and/or remit the fee to
28 the corporation. During the sixty-day notice period, if the attorney
29 general initiates action against the manufacturer or retailer, then the
30 ability of the manufacturer to sue is extinguished. Manufacturers and
31 retailers who successfully challenge a noncompliant manufacturer shall
32 be entitled to receive their litigation costs as well as double the
33 penalties assessed under this chapter.

34 NEW SECTION. **Sec. 9.** (1) The department, upon review of the
35 second annual report of the corporation, has the authority to ban the
36 disposal of covered electronic products in the state. When making that

1 determination, the department must find that the program has sufficient
2 infrastructure in place to handle the collection and processing of all
3 covered electronic products generated annually in the state. The
4 department must also take into account market development for uses of
5 the recycled materials, both within and outside the state, and other
6 factors prior to proposing a disposal ban.

7 (2) If the department does institute such a ban, the department has
8 the authority to fine anyone who knowingly disposes of a covered
9 product in violation of the ban twenty-five dollars per unauthorized
10 unit of product plus the cost of recycling that product.

11 NEW SECTION. **Sec. 10.** The corporation shall establish a market
12 development program to enhance existing, or develop new, end markets
13 for remanufactured products and recycled materials. No more than one
14 percent of the funds may be spent on this program.

15 NEW SECTION. **Sec. 11.** (1) Any state department or local
16 government that purchases or leases equipment, materials, or supplies
17 shall require each prospective bidder, to certify that it, and its
18 agents, subsidiaries, partners, joint ventures, and subcontractors for
19 the procurement, are in compliance with this chapter. Failure to
20 provide the certification renders the prospective bidder and its
21 agents, subsidiaries, partners, joint ventures, and subcontractors
22 ineligible to bid on the procurement.

23 (2) Any person awarded a contract by a state department or local
24 government that is found to be in violation of this chapter is subject
25 to the following sanctions:

26 (a) The contract must be voided by the entity to which the
27 equipment, materials, or supplies were provided;

28 (b) The contractor is ineligible to bid on any contract for a
29 period of three years; and

30 (c) If the attorney general establishes that a contractor as a
31 result of violating this chapter obtained any money, property, or
32 benefit, the court may, in addition to any other remedy, order the
33 disgorgement of the unlawfully obtained money, property, or benefit in
34 the interest of justice.

1 NEW SECTION. **Sec. 12.** (1) The fifth year collection goal is one
2 and three-quarters pounds per capita of covered electronic devices.
3 After the fifth year or upon achievement of this collection goal, the
4 department, working with the corporation, will establish the
5 performance goals as measure of pounds collected per capita for future
6 years.

7 (2) In establishing annual performance goals for the first five
8 years, the corporation shall take into consideration the time required
9 for ramping up the required infrastructure for such a system. If at
10 any point following enactment of this chapter the corporation concludes
11 that the one and three-quarters pounds per capita goal is not
12 practicable, the corporation shall report such a finding to the
13 department and the legislature and recommend that the goal be adjusted.

14 (3) The corporation is responsible for achieving the collection
15 goal.

16 NEW SECTION. **Sec. 13.** (1) Manufacturers are responsible for all
17 of the following:

18 (a) Collecting and remitting the advanced recycling fee on all
19 direct sales to final customers in the state, including telephone,
20 catalogue, and internet sales;

21 (b) Making information available to consumers describing where and
22 how to return, recycle, and dispose of the covered electronic products,
23 through the use of product operation manuals, industry or manufacturer
24 web sites, product labels, packaging inserts, or toll-free telephone
25 numbers;

26 (c) Providing recyclers with information on the type and location
27 of hazardous substances in the covered products.

28 (2) Beginning July 1, 2007, and annually thereafter, manufacturers
29 must submit a report to the department on their environmental
30 improvements. As a minimum, the report shall contain the following:

31 (a) The estimated sale of the covered products within the state in
32 the past year;

33 (b) A baseline, or set of baselines that shows the total estimated
34 amounts of lead, mercury, hexavalent chrome, and cadmium utilized in
35 ROHS exempt applications in products sold within the state in the
36 previous year;

1 (c) A baseline, or set of baselines that shows the total estimated
2 amounts of recyclable materials contained in covered electronic
3 products sold within the state in the previous year, and increases the
4 use of those materials over previous years; and

5 (d) A baseline, or set of baselines that describes any efforts to
6 design covered electronic products for recycling and goals or plans for
7 further increasing design for recycling.

8 (3) In lieu of an individual report, manufacturers may submit the
9 information in a collated report submitted via a trade association
10 provided that information about an individual company can be made
11 available to the state upon written request by the department. The
12 department can only make such a request for auditing purposes and not
13 more than once during a five-year period. The state may not make
14 public any confidential business information claimed by the
15 manufacturer in the report.

16 (4) A report submitted to another state or to the federal
17 government that contains the same information as required in this
18 section may be accepted by the department in lieu of a separate report
19 for the state.

20 NEW SECTION. **Sec. 14.** The department may adopt rules for the
21 purpose of administering this chapter.

22 NEW SECTION. **Sec. 15.** During 2014, the department shall convene
23 a stakeholder group to evaluate the program and make recommendations to
24 the legislature by January 1, 2015, as to whether to:

- 25 (1) Continue the advanced recycling fee;
26 (2) Implement another financing alternative; or
27 (3) Determine that no outside financing mechanism is required to
28 ensure that the system is financially solvent.

29 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
30 constitute a new chapter in Title 19 RCW.

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