

SB 5699 - S AMD 204

By Senators Ericksen, Billig

ADOPTED 03/12/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.95N.020 and 2006 c 183 s 2 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Authority" means the Washington materials management and
8 financing authority created under RCW 70.95N.280.

9 (2) "Authorized party" means a manufacturer who submits an
10 individual independent plan or the entity authorized to submit an
11 independent plan for more than one manufacturer.

12 (3) "Board" means the board of directors of the Washington
13 materials management and financing authority created under RCW
14 70.95N.290.

15 (4) "Collector" means an entity licensed to do business in the
16 state that gathers unwanted covered electronic products from
17 households, small businesses, school districts, small governments, and
18 charities for the purpose of recycling and meets minimum standards that
19 may be developed by the department.

20 (5) "Contract for services" means an instrument executed by the
21 authority and one or more persons or entities that delineates
22 collection, transportation, and recycling services, in whole or in
23 part, that will be provided to the citizens of the state within service
24 areas as described in the approved standard plan.

25 (6) "Covered electronic product" includes a cathode ray tube or
26 flat panel computer monitor having a viewable area greater than four
27 inches when measured diagonally, a desktop computer, a laptop or a
28 portable computer, or a cathode ray tube or flat panel television
29 having a viewable area greater than four inches when measured
30 diagonally that has been used in the state by any covered entity

1 regardless of original point of purchase. "Covered electronic product"
2 does not include: (a) A motor vehicle or replacement parts for use in
3 motor vehicles or aircraft, or any computer, computer monitor, or
4 television that is contained within, and is not separate from, the
5 motor vehicle or aircraft; (b) monitoring and control instruments or
6 systems; (c) medical devices; (d) products including materials intended
7 for use as ingredients in those products as defined in the federal
8 food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-
9 serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations
10 issued under those acts; (e) equipment used in the delivery of patient
11 care in a health care setting; (f) a computer, computer monitor, or
12 television that is contained within a clothes washer, clothes dryer,
13 refrigerator, refrigerator and freezer, microwave oven, conventional
14 oven or range, dishwasher, room air conditioner, dehumidifier, or air
15 purifier; or (g) hand-held portable voice or data devices used for
16 commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

17 (7) "Covered entity" means any household, charity, school district,
18 small business, or small government located in Washington state.

19 (8) "Curbside service" means a collection service providing
20 regularly scheduled pickup of covered electronic products from
21 households or other covered entities in quantities generated from
22 households.

23 (9) "Department" means the department of ecology.

24 (10) "Electronic product" includes a cathode ray tube or flat panel
25 computer monitor having a viewable area greater than four inches when
26 measured diagonally; a desktop computer; a laptop or a portable
27 computer; or a cathode ray tube or flat screen television having a
28 viewable area greater than four inches when measured diagonally.

29 (11) "Equivalent share" means the weight in pounds of covered
30 electronic products identified for an individual manufacturer under
31 this chapter as determined by the department under RCW 70.95N.200.

32 (12) "Household" means a single detached dwelling unit or a single
33 unit of a multiple dwelling unit and appurtenant structures.

34 (13) "Independent plan" means a plan for the collection,
35 transportation, and recycling of unwanted covered electronic products
36 that is developed, implemented, and financed by an individual
37 manufacturer or by an authorized party.

1 (14) "Manufacturer" means any person, in business or no longer in
2 business but having a successor in interest, who, irrespective of the
3 selling technique used, including by means of distance or remote sale:

4 (a) Manufactures or has manufactured a covered electronic product
5 under its own brand names or under a brand it is licensed to use for
6 sale in or into this state;

7 (b) Assembles or has assembled a covered electronic product that
8 uses parts manufactured by others for sale in or into this state under
9 the assembler's brand names;

10 (c) Resells or has resold in or into this state under its own brand
11 names a covered electronic product produced by other suppliers,
12 including retail establishments that sell covered electronic products
13 under their own brand names;

14 (d) Manufactures or manufactured a cobranded product for sale in or
15 into this state that carries the name of both the manufacturer and a
16 retailer;

17 (e) Imports or has imported a covered electronic product into the
18 United States that is sold in or into this state. However, if the
19 imported covered electronic product is manufactured by any person with
20 a presence in the United States meeting the criteria of manufacturer
21 under (a) through (d) of this subsection, that person is the
22 manufacturer. For purposes of this subsection, "presence" means any
23 person that performs activities conducted under the standards
24 established for interstate commerce under the commerce clause of the
25 United States Constitution; ~~((or))~~

26 (f) Sells at retail a covered electronic product acquired from an
27 importer that is the manufacturer as described in (e) of this
28 subsection, and elects to register in lieu of the importer as the
29 manufacturer for those products; or

30 (g) Assumes the responsibilities of a manufacturer under this
31 section. In the event the entity who assumes responsibility fails to
32 comply, the manufacturer as defined under (a) through (f) of this
33 subsection remains fully responsible.

34 (15) "New entrant" means: (a) A manufacturer of televisions that
35 have been sold in the state for less than ten years; or (b) a
36 manufacturer of desktop computers, laptop and portable computers, or
37 computer monitors that have been sold in the state for less than five
38 years. However, a manufacturer of both televisions and computers or a

1 manufacturer of both televisions and computer monitors that is deemed
2 a new entrant under either only (a) or (b) of this subsection is not
3 considered a new entrant for purposes of this chapter.

4 (16) "Orphan product" means a covered electronic product that lacks
5 a manufacturer's brand or for which the manufacturer is no longer in
6 business and has no successor in interest.

7 (17) "Plan's equivalent share" means the weight in pounds of
8 covered electronic products for which a plan is responsible. A plan's
9 equivalent share is equal to the sum of the equivalent shares of each
10 manufacturer participating in that plan.

11 (18) "Plan's return share" means the sum of the return shares of
12 each manufacturer participating in that plan.

13 (19) "Premium service" means services such as at-location system
14 upgrade services provided to covered entities and at-home pickup
15 services offered to households. "Premium service" does not include
16 curbside service.

17 (20) "Processor" means an entity engaged in disassembling,
18 dismantling, or shredding electronic products to recover materials
19 contained in the electronic products and prepare those materials for
20 reclaiming or reuse in new products in accordance with processing
21 standards established by this chapter and by the department. A
22 processor may also salvage parts to be used in new products.

23 (21) "Product type" means one of the following categories:
24 Computer monitors; desktop computers; laptop and portable computers;
25 and televisions.

26 (22) "Program" means the collection, transportation, and recycling
27 activities conducted to implement an independent plan or the standard
28 plan.

29 (23) "Program year" means each full calendar year after the program
30 has been initiated.

31 (24) "Recycling" means transforming or remanufacturing unwanted
32 electronic products, components, and by-products into usable or
33 marketable materials for use other than landfill disposal or
34 incineration. "Recycling" does not include energy recovery or energy
35 generation by means of combusting unwanted electronic products,
36 components, and by-products with or without other waste. Smelting of
37 electronic materials to recover metals for reuse in conformance with

1 all applicable laws and regulations is not considered disposal or
2 energy recovery.

3 (25) "Retailer" means a person who offers covered electronic
4 products for sale at retail through any means including, but not
5 limited to, remote offerings such as sales outlets, catalogs, or the
6 internet, but does not include a sale that is a wholesale transaction
7 with a distributor or a retailer.

8 (26) "Return share" means the percentage of covered electronic
9 products by weight identified for an individual manufacturer, as
10 determined by the department under RCW 70.95N.190.

11 (27) "Reuse" means any operation by which an electronic product or
12 a component of a covered electronic product changes ownership and is
13 used for the same purpose for which it was originally purchased.

14 (28) "Small business" means a business employing less than fifty
15 people.

16 (29) "Small government" means a city in the state with a population
17 less than fifty thousand, a county in the state with a population less
18 than one hundred twenty-five thousand, and special purpose districts in
19 the state.

20 (30) "Standard plan" means the plan for the collection,
21 transportation, and recycling of unwanted covered electronic products
22 developed, implemented, and financed by the authority on behalf of
23 manufacturers participating in the authority.

24 (31) "Transporter" means an entity that transports covered
25 electronic products from collection sites or services to processors or
26 other locations for the purpose of recycling, but does not include any
27 entity or person that hauls their own unwanted electronic products.

28 (32) "Unwanted electronic product" means a covered electronic
29 product that has been discarded or is intended to be discarded by its
30 owner.

31 (33) "White box manufacturer" means a person who manufactured
32 unbranded covered electronic products offered for sale in the state
33 within ten years prior to a program year for televisions or within five
34 years prior to a program year for desktop computers, laptop or portable
35 computers, or computer monitors.

36 (34) "Market share" means the percentage of covered electronic
37 products by weight identified for an individual manufacturer, as
38 determined by the department under RCW 70.95N.190.

1 (35) "Plan's market share" means the sum of the market shares of
2 each manufacturer participating in that plan.

3 **Sec. 2.** RCW 70.95N.040 and 2006 c 183 s 4 are each amended to read
4 as follows:

5 (1) By January 1, 2007, and annually thereafter, each manufacturer
6 must register with the department.

7 (2) A manufacturer must submit to the department with each
8 registration or annual renewal a fee to cover the administrative costs
9 of this chapter as determined by the department under RCW 70.95N.230.

10 (3) The department shall review the registration or renewal
11 application and notify the manufacturer if their registration does not
12 meet the requirements of this section. Within thirty days of receipt
13 of such a notification from the department, the manufacturer must file
14 with the department a revised registration addressing the requirements
15 noted by the department.

16 (4) The registration must include the following information:

17 (a) The name and contact information of the manufacturer submitting
18 the registration;

19 (b) The manufacturer's brand names of covered electronic products,
20 including all brand names sold in the state in the past, all brand
21 names currently being sold in the state, and all brand names for which
22 the manufacturer has legal responsibility under RCW 70.95N.100;

23 (c) The method or methods of sale used in the state; and

24 (d) Whether the registrant will be participating in the standard
25 plan or submitting an independent plan to the department for approval.

26 (5) The registrant shall submit any changes to the information
27 provided in the registration to the department within fourteen days of
28 such change.

29 (6) The department shall identify, using all reasonable means,
30 manufacturers that are in business or that are no longer in business
31 but that have a successor in interest by examining best available
32 return share data, product advertisements, and other pertinent data.
33 The department shall notify manufacturers that have been identified and
34 for whom an address has been found of the requirements of this chapter,
35 including registration and plan requirements under this section and RCW
36 70.95N.050.

1 **Sec. 3.** RCW 70.95N.050 and 2006 c 183 s 5 are each amended to read
2 as follows:

3 (1) A manufacturer must participate in the standard plan
4 administered by the authority, unless the manufacturer obtains
5 department approval for an independent plan for the collection,
6 transportation, and recycling of unwanted electronic products.

7 (2) An independent plan may be submitted by an individual
8 manufacturer or by a group of manufacturers, provided that:

9 (a) For program years 2009 through 2014, each independent plan
10 represents at least a five percent return share of covered electronic
11 products. For program year 2015 and all subsequent program years, each
12 independent plan represents at least a five percent market share of
13 covered electronic products; and

14 (b) No manufacturer may participate in an independent plan if it is
15 a new entrant or a white box manufacturer.

16 (3) An individual manufacturer submitting an independent plan to
17 the department is responsible for collecting, transporting, and
18 recycling its equivalent share of covered electronic products.

19 (4)(a) Manufacturers collectively submitting an independent plan
20 are responsible for collecting, transporting, and recycling the sum of
21 the equivalent shares of each participating manufacturer.

22 (b) Each group of manufacturers submitting an independent plan must
23 designate a party authorized to file the plan with the department on
24 their behalf. A letter of certification from each of the manufacturers
25 designating the authorized party must be submitted to the department
26 together with the plan.

27 (5) Each manufacturer in the standard plan or in an independent
28 plan retains responsibility and liability under this chapter in the
29 event that the plan fails to meet the manufacturer's obligations under
30 this chapter.

31 **Sec. 4.** RCW 70.95N.090 and 2006 c 183 s 9 are each amended to read
32 as follows:

33 (1) A program must provide collection services for covered
34 electronic products of all product types and produced by any
35 manufacturer that are reasonably convenient and available to all
36 citizens of the state residing within its geographic boundaries,

1 including both rural and urban areas. Each program must provide
2 collection service in every county of the state. A program may provide
3 collection services jointly with another plan or plans.

4 (a) For any city or town with a population of greater than ten
5 thousand, each program shall provide a minimum of one collection site
6 or alternate collection service described in subsection (3) of this
7 section or a combination of sites and alternate service that together
8 provide at least one collection opportunity for all product types. A
9 collection site for a county may be the same as a collection site for
10 a city or town in the county.

11 (b) Collection sites may include electronics recyclers and repair
12 shops, recyclers of other commodities, reuse organizations, charities,
13 retailers, government recycling sites, or other suitable locations.

14 (c) Collection sites must be staffed, open to the public at a
15 frequency adequate to meet the needs of the area being served, and on
16 an on-going basis.

17 (2) A program may limit the number of covered electronic products
18 or covered electronic products by product type accepted per customer
19 per day or per delivery at a collection site or service. All covered
20 entities may use a collection site as long as the covered entities
21 adhere to any restrictions established in the plans.

22 (3) A program may provide collection services in forms different
23 than collection sites, such as curbside services, if those alternate
24 services provide equal or better convenience to citizens and equal or
25 increased recovery of unwanted covered electronic products.

26 (4) For rural areas without commercial centers or areas with widely
27 dispersed population, a program may provide collection at the nearest
28 commercial centers or solid waste sites, collection events, mail-back
29 systems, or a combination of these options.

30 (5) For small businesses, small governments, charities, and school
31 districts that may have large quantities of covered electronic products
32 that cannot be handled at collection sites or curbside services, a
33 program may provide alternate services. At a minimum, a program must
34 provide for processing of these large quantities of covered electronic
35 products at no charge to the small businesses, small governments,
36 charities, and school districts.

1 **Sec. 5.** RCW 70.95N.110 and 2006 c 183 s 11 are each amended to
2 read as follows:

3 (1) For program years 2009 through 2014, an independent plan and
4 the standard plan must implement and finance an auditable,
5 statistically significant sampling of covered electronic products
6 entering its program every program year. The information collected
7 must include a list of the brand names of covered electronic products
8 by product type, the number of covered electronic products by product
9 type, the weight of covered electronic products that are identified for
10 each brand name or that lack a manufacturer's brand, the total weight
11 of the sample by product type, and any additional information needed to
12 assign return share.

13 (2) For program years 2009 through 2014, the sampling must be
14 conducted in the presence of the department or a third-party
15 organization approved by the department. The department may, at its
16 discretion, audit the methodology and the results.

17 (3) After the fifth program year through the 2014 program year, the
18 department may reassess the sampling required in this section. The
19 department may adjust the frequency at which manufacturers must
20 implement the sampling or may adjust the frequency at which
21 manufacturers must provide certain information from the sampling.
22 Prior to making any changes, the department shall notify the public,
23 including all registered manufacturers, and provide a comment period.
24 The department shall notify all registered manufacturers of any such
25 changes.

26 **Sec. 6.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to
27 read as follows:

28 (1) By March 1st of the second program year and each program year
29 thereafter, the authority and each authorized party shall file with the
30 department an annual report for the preceding program year.

31 (2) The annual report must include the following information:

32 (a) The total weight in pounds of covered electronic products
33 collected and recycled, by county, during the preceding program year
34 including documentation verifying collection and processing of that
35 material. For program years 2009 through 2014, the report must also
36 include the total weight in pounds, (~~includes~~) including orphan
37 products. The report must also indicate and document the weight in

1 pounds received from each nonprofit charitable organization primarily
2 engaged in the business of reuse and resale used by the plan. The
3 report must document the weight in pounds that were received in large
4 quantities from small businesses, small governments, charities and
5 school districts as described in RCW 70.95N.090(5);

6 (b) The collection services provided in each county and for each
7 city with a population over ten thousand including a list of all
8 collection sites and services operating in the state in the prior
9 program year and the parties who operated them;

10 (c) A list of processors used, the weight of covered electronic
11 products processed by each direct processor, and a description of the
12 processes and methods used to recycle the covered electronic products
13 including a description of the processing and facility locations. The
14 report must also include a list of subcontractors who further processed
15 or recycled unwanted covered electronic products, electronic
16 components, or electronic scrap (~~described in section 26(1) of this~~
17 ~~act~~), including facility locations;

18 (~~Other documentation as established under section 26(3) of~~
19 ~~this act;~~

20 (~~e~~)) Educational and promotional efforts that were undertaken;

21 (~~f~~)) (e) For program years 2009 through 2014, the results of
22 sampling and sorting as required in RCW 70.95N.110, including a list of
23 the brand names of covered electronic products by product type, the
24 number of covered electronic products by product type, the weight of
25 covered electronic products that are identified for each brand name or
26 that lack a manufacturer's brand, and the total weight of the sample by
27 product type;

28 (~~g~~)) (f) The list of manufacturers that are participating in the
29 standard plan; and

30 (~~h~~)) (g) Any other information deemed necessary by the
31 department.

32 (3) The department shall review each report within ninety days of
33 its submission and shall notify the authority or authorized party of
34 any need for additional information or documentation, or any deficiency
35 in its program.

36 (4) All reports submitted to the department must be available to
37 the general public through the internet. Proprietary information

1 submitted to the department under this chapter is exempt from public
2 disclosure under RCW 42.56.270.

3 **Sec. 7.** RCW 70.95N.180 and 2006 c 183 s 18 are each amended to
4 read as follows:

5 (1) The department shall maintain on its web site the following
6 information:

7 (a) The names of the manufacturers and the manufacturer's brands
8 that are registered with the department under RCW 70.95N.040;

9 (b) The names of the manufacturers and the manufacturer's brands
10 that are participating in an approved plan under RCW 70.95N.050;

11 (c) The names and addresses of the collectors and transporters that
12 are listed in registrations filed with the department under RCW
13 70.95N.240;

14 (d) The names and addresses of the processors used to fulfill the
15 requirements of the plans;

16 (e) For program years 2009 through 2015, return and equivalent
17 shares for all manufacturers.

18 (2) The department shall update this web site information promptly
19 upon receipt of a registration or a report.

20 **Sec. 8.** RCW 70.95N.190 and 2006 c 183 s 19 are each amended to
21 read as follows:

22 (1) For program years 2009 through 2014, the department shall
23 determine the return share for each manufacturer in the standard plan
24 or an independent plan by dividing the weight of covered electronic
25 products identified for each manufacturer by the total weight of
26 covered electronic products identified for all manufacturers in the
27 standard plan or an independent plan, then multiplying the quotient by
28 one hundred.

29 (2) For the first program year, the department shall determine the
30 return share for such manufacturers using all reasonable means and
31 based on best available information regarding return share data from
32 other states and other pertinent data.

33 (3) For (~~the second and each subsequent program year~~) 2014, the
34 department shall determine the return share for such manufacturers
35 using all reasonable means and based on the most recent sampling of

1 covered electronic products conducted in the state under RCW
2 70.95N.110.

3 (4) For program year 2015 and all subsequent program years, the
4 department shall determine market share for all manufacturers using
5 data reported by manufacturers under (a) of this subsection and
6 publicly available data.

7 (a) By March 1st of each program year, each manufacturer must
8 report to the department either:

9 (i) The total weight of covered electronic products sold by that
10 manufacturer nationwide in the prior program year; or

11 (ii) The total weight of covered electronic products sold by that
12 manufacturer within the state of Washington in the prior program year.

13 (b) The department shall determine each manufacturer's percentage
14 of market share as follows:

15 (i) Multiply the total weight reported by each manufacturer under
16 (a)(i) of this subsection by the quotient of Washington's population
17 divided by the total population of the United States;

18 (ii) Add the result determined in (b)(i) of this subsection plus
19 the total weight under (a)(ii) of this subsection; and

20 (iii) Divide both the weight in (a)(ii) of this subsection and the
21 weight in (b)(i) of this subsection by the number calculated under
22 (b)(ii) of this subsection.

23 (5) Data reported by manufacturers under subsection (4) of this
24 section is exempt from public disclosure under chapter 42.56 RCW.

25 **Sec. 9.** RCW 70.95N.200 and 2006 c 183 s 20 are each amended to
26 read as follows:

27 (1) For program years 2009 through 2015, the department shall
28 determine the total equivalent share for each manufacturer in the
29 standard plan or an independent plan by dividing the return share
30 percentage for each manufacturer by one hundred, then multiplying the
31 quotient by the total weight in pounds of covered electronic products
32 collected for that program year, allowing as needed for the additional
33 credit authorized in subsection (3) of this section. For program year
34 2016 and all subsequent program years, the department shall determine
35 the total equivalent share for each manufacturer in the standard plan
36 or an independent plan by dividing the market share percentage for each
37 manufacturer by one hundred, then multiplying the quotient by the total

1 weight in pounds of covered electronic products collected for that
2 program year, allowing as needed for the additional credit authorized
3 in subsection (3) of this section.

4 (2)(a) By June 1st of each program year, the department shall
5 notify each manufacturer of the manufacturer's equivalent share of
6 covered electronic products to be applied to the previous program year.
7 The department shall also notify each manufacturer of how its
8 equivalent share was determined.

9 (b) By June 1st of each program year, the department shall bill any
10 authorized party or authority that has not attained its plan's
11 equivalent share as determined under RCW 70.95N.220. The authorized
12 party or authority shall remit payment to the department within sixty
13 days from the billing date.

14 (c) By September 1st of each program year, the department shall pay
15 any authorized party or authority that exceeded its plan's equivalent
16 share.

17 (3) Plans that utilize the collection services of nonprofit
18 charitable organizations that qualify for a taxation exemption under
19 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.
20 501(c)(3)) that are primarily engaged in the business of reuse and
21 resale must be given an additional five percent credit to be applied
22 toward a plan's equivalent share for pounds that are received for
23 recycling from those organizations. The department may adjust the
24 percentage of credit annually.

25 **Sec. 10.** RCW 70.95N.210 and 2006 c 183 s 21 are each amended to
26 read as follows:

27 (1) By June 1, 2007, the department shall notify each manufacturer
28 of its preliminary return share of covered electronic products for the
29 first program year.

30 (2) For program years 2009 through 2014, preliminary return share
31 of covered electronic products must be announced annually by June 1st
32 of each program year for the next program year. For the 2015 program
33 year and all subsequent program years, preliminary market share of
34 covered electronic products must be sent out to each individual
35 manufacturer annually by June 1st of each program year for the next
36 program year.

1 (3) Manufacturers may challenge the preliminary return or market
2 share by written petition to the department. The petition must be
3 received by the department within thirty days of the date of
4 publication of the preliminary return or market shares.

5 (4) The petition must contain a detailed explanation of the grounds
6 for the challenge, an alternative calculation, and the basis for such
7 a calculation, documentary evidence supporting the challenge, and
8 complete contact information for requests for additional information or
9 clarification.

10 (5) Sixty days after the publication of the preliminary return or
11 market share, the department shall make a final decision on return or
12 market share, having fully taken into consideration any and all
13 challenges to its preliminary calculations.

14 (6) A written record of challenges received and a summary of the
15 bases for the challenges, as well as the department's response, must be
16 published at the same time as the publication of the final return
17 share.

18 (7) By August 1, 2007, the department shall publish the final
19 return shares for the first program year. For program years 2009
20 through 2014, by August 1st of each program year, the department shall
21 publish the final return shares for use in the coming program year.
22 For the 2015 program year and all subsequent program years, by August
23 1st of each program year, the department shall notify each manufacturer
24 of its final market shares for use in the coming program year.

25 **Sec. 11.** RCW 70.95N.230 and 2006 c 183 s 23 are each amended to
26 read as follows:

27 (1) The department shall adopt rules to determine the process for
28 manufacturers to change plans under RCW 70.95N.080.

29 (2) The department shall establish annual registration and plan
30 review fees for administering this chapter. An initial fee schedule
31 must be established by rule and be adjusted no more often than once
32 every two years. All fees charged must be based on factors relating to
33 administering this chapter and be based on a sliding scale that is
34 representative of annual sales of covered electronic products in the
35 state, either by weight or unit, or by representative market share.
36 Fees must be established in amounts to fully recover and not to exceed
37 expenses incurred by the department to implement this chapter.

1 (3) The department shall establish an annual process for local
2 governments and local communities to report their satisfaction with the
3 services provided by plans under this chapter. This information must
4 be used by the department in reviewing plan updates and revisions.

5 (4) The department may adopt rules as necessary for the purpose of
6 implementing, administering, and enforcing this chapter.

7 **Sec. 12.** RCW 70.95N.290 and 2008 c 79 s 1 are each amended to read
8 as follows:

9 (1)(a) The authority is governed by a board of directors. The
10 board of directors is comprised of eleven participating manufacturers,
11 appointed by the director of the department. For program years 2009
12 through 2014, five board positions are reserved for representatives of
13 the top ten brand owners by return share of covered electronic
14 products, and six board positions are reserved for representatives of
15 other brands, including at least one board position reserved for a
16 manufacturer who is also a retailer selling their own private label.
17 The return share of covered electronic products used to determine the
18 top ten brand owners for purposes of electing the board must be
19 determined by the department by January 1, 2007. For program years
20 2015 and beyond, five board positions are reserved for representatives
21 of the top ten brand owners by market share of covered electronic
22 products, and six board positions are reserved for representatives of
23 other brands, including at least one board position reserved for a
24 manufacturer who is also a retailer selling its own private label. The
25 market share of covered electronic products used to determine the top
26 ten brand owners for purposes of electing the board must be determined
27 by the department by October 1, 2015.

28 (b) The board must have representation from both television and
29 computer manufacturers.

30 (2) The board shall select from its membership the chair of the
31 board and such other officers as it deems appropriate.

32 (3) A majority of the board constitutes a quorum.

33 (4) The directors of the department of (~~community, trade, and~~
34 ~~economic development~~)) commerce and the department of ecology serve as
35 ex officio members. The state agency directors serving in ex officio
36 capacity may each designate an employee of their respective departments

1 to act on their behalf in all respects with regard to any matter to
2 come before the authority. Ex officio designations must be made in
3 writing and communicated to the authority director.

4 (5) The board shall create its own bylaws in accordance with the
5 laws of the state of Washington.

6 (6) Any member of the board may be removed for misfeasance,
7 malfeasance, or willful neglect of duty after notice and a public
8 hearing, unless the notice and hearing are expressly waived in writing
9 by the affected member.

10 (7) The members of the board serve without compensation but are
11 entitled to reimbursement, solely from the funds of the authority, for
12 expenses incurred in the discharge of their duties under this chapter.

13 **Sec. 13.** RCW 70.95N.300 and 2006 c 183 s 31 are each amended to
14 read as follows:

15 (1) Manufacturers participating in the standard plan shall pay the
16 authority to cover all administrative and operational costs associated
17 with the collection, transportation, and recycling of covered
18 electronic products within the state of Washington incurred by the
19 standard program operated by the authority to meet the standard plan's
20 equivalent share obligation as described in RCW 70.95N.280(5).

21 (2) The authority shall assess charges on each manufacturer
22 participating in the standard plan and collect funds from each
23 participating manufacturer for the manufacturer's portion of the costs
24 in subsection (1) of this section. For program years 2009 through
25 2015, such apportionment (~~shall~~) must be based on return share,
26 market share, any combination of return share and market share, or any
27 other equitable method. For the 2016 program year and all subsequent
28 program years, such apportionment must be based on market share. The
29 authority's apportionment of costs to manufacturers participating in
30 the standard plan may not include nor be based on electronic products
31 imported through the state and subsequently exported outside the state.
32 Charges assessed under this section must not be formulated in such a
33 way as to create incentives to divert imported electronic products to
34 ports or distribution centers in other states. The authority shall
35 adjust the charges to manufacturers participating in the standard plan
36 as necessary in order to ensure that all costs associated with the
37 identified activities are covered.

1 (3) The authority may require financial assurances or performance
2 bonds for manufacturers participating in the standard plan, including
3 but not limited to new entrants and white box manufacturers, when
4 determining equitable methods for apportioning costs to ensure that the
5 long-term costs for collecting, transporting, and recycling of a
6 covered electronic product are borne by the appropriate manufacturer in
7 the event that the manufacturer ceases to participate in the program.

8 (4) Nothing in this section authorizes the authority to assess fees
9 or levy taxes directly on the sale or possession of electronic
10 products.

11 (5) If a manufacturer has not met its financial obligations as
12 determined by the authority under this section, the authority shall
13 notify the department that the manufacturer is no longer participating
14 in the standard plan.

15 (6) For program years 2009 through 2015, the authority shall submit
16 its plan for assessing charges and apportioning cost on manufacturers
17 participating in the standard plan to the department for review and
18 approval along with the standard plan as provided in RCW 70.95N.060.

19 (7)(a) Any manufacturer participating in the standard plan may
20 appeal an assessment of charges or apportionment of costs levied by the
21 authority under this section by written petition to the director of the
22 department. The director of the department or the director's designee
23 shall review all appeals within timelines established by the department
24 and shall reverse any assessments of charges or apportionment of costs
25 if the director finds that the authority's assessments or apportionment
26 of costs was an arbitrary administrative decision, an abuse of
27 administrative discretion, or is not an equitable assessment or
28 apportionment of costs. The director shall make a fair and impartial
29 decision based on sound data. If the director of the department
30 reverses an assessment of charges, the authority must redetermine the
31 assessment or apportionment of costs.

32 (b) Disputes regarding a final decision made by the director or
33 director's designee may be challenged through arbitration. The
34 director shall appoint one member to serve on the arbitration panel and
35 the challenging party shall appoint one other. These two persons shall
36 choose a third person to serve. If the two persons cannot agree on a
37 third person, the presiding judge of the Thurston county superior court
38 shall choose a third person. The decision of the arbitration panel

1 shall be final and binding, subject to review by the superior court
2 solely upon the question of whether the decision of the panel was
3 arbitrary or capricious.

4 **Sec. 14.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each
5 amended to read as follows:

6 The following financial, commercial, and proprietary information is
7 exempt from disclosure under this chapter:

8 (1) Valuable formulae, designs, drawings, computer source code or
9 object code, and research data obtained by any agency within five years
10 of the request for disclosure when disclosure would produce private
11 gain and public loss;

12 (2) Financial information supplied by or on behalf of a person,
13 firm, or corporation for the purpose of qualifying to submit a bid or
14 proposal for (a) a ferry system construction or repair contract as
15 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
16 or improvement as required by RCW 47.28.070;

17 (3) Financial and commercial information and records supplied by
18 private persons pertaining to export services provided under chapters
19 43.163 and 53.31 RCW, and by persons pertaining to export projects
20 under RCW 43.23.035;

21 (4) Financial and commercial information and records supplied by
22 businesses or individuals during application for loans or program
23 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
24 43.168 RCW, or during application for economic development loans or
25 program services provided by any local agency;

26 (5) Financial information, business plans, examination reports, and
27 any information produced or obtained in evaluating or examining a
28 business and industrial development corporation organized or seeking
29 certification under chapter 31.24 RCW;

30 (6) Financial and commercial information supplied to the state
31 investment board by any person when the information relates to the
32 investment of public trust or retirement funds and when disclosure
33 would result in loss to such funds or in private loss to the providers
34 of this information;

35 (7) Financial and valuable trade information under RCW 51.36.120;

36 (8) Financial, commercial, operations, and technical and research

1 information and data submitted to or obtained by the clean Washington
2 center in applications for, or delivery of, program services under
3 chapter 70.95H RCW;

4 (9) Financial and commercial information requested by the public
5 stadium authority from any person or organization that leases or uses
6 the stadium and exhibition center as defined in RCW 36.102.010;

7 (10)(a) Financial information, including but not limited to account
8 numbers and values, and other identification numbers supplied by or on
9 behalf of a person, firm, corporation, limited liability company,
10 partnership, or other entity related to an application for a horse
11 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
12 license, gambling license, or lottery retail license;

13 (b) Internal control documents, independent auditors' reports and
14 financial statements, and supporting documents: (i) Of house-banked
15 social card game licensees required by the gambling commission pursuant
16 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
17 with an approved tribal/state compact for class III gaming;

18 (11) Proprietary data, trade secrets, or other information that
19 relates to: (a) A vendor's unique methods of conducting business; (b)
20 data unique to the product or services of the vendor; or (c)
21 determining prices or rates to be charged for services, submitted by
22 any vendor to the department of social and health services for purposes
23 of the development, acquisition, or implementation of state purchased
24 health care as defined in RCW 41.05.011;

25 (12)(a) When supplied to and in the records of the department of
26 commerce:

27 (i) Financial and proprietary information collected from any person
28 and provided to the department of commerce pursuant to RCW
29 43.330.050(8); and

30 (ii) Financial or proprietary information collected from any person
31 and provided to the department of commerce or the office of the
32 governor in connection with the siting, recruitment, expansion,
33 retention, or relocation of that person's business and until a siting
34 decision is made, identifying information of any person supplying
35 information under this subsection and the locations being considered
36 for siting, relocation, or expansion of a business;

37 (b) When developed by the department of commerce based on

1 information as described in (a)(i) of this subsection, any work product
2 is not exempt from disclosure;

3 (c) For the purposes of this subsection, "siting decision" means
4 the decision to acquire or not to acquire a site;

5 (d) If there is no written contact for a period of sixty days to
6 the department of commerce from a person connected with siting,
7 recruitment, expansion, retention, or relocation of that person's
8 business, information described in (a)(ii) of this subsection will be
9 available to the public under this chapter;

10 (13) Financial and proprietary information submitted to or obtained
11 by the department of ecology or the authority created under chapter
12 70.95N RCW to implement chapter 70.95N RCW;

13 (14) Financial, commercial, operations, and technical and research
14 information and data submitted to or obtained by the life sciences
15 discovery fund authority in applications for, or delivery of, grants
16 under chapter 43.350 RCW, to the extent that such information, if
17 revealed, would reasonably be expected to result in private loss to the
18 providers of this information;

19 (15) Financial and commercial information provided as evidence to
20 the department of licensing as required by RCW 19.112.110 or
21 19.112.120, except information disclosed in aggregate form that does
22 not permit the identification of information related to individual fuel
23 licensees;

24 (16) Any production records, mineral assessments, and trade secrets
25 submitted by a permit holder, mine operator, or landowner to the
26 department of natural resources under RCW 78.44.085;

27 (17)(a) Farm plans developed by conservation districts, unless
28 permission to release the farm plan is granted by the landowner or
29 operator who requested the plan, or the farm plan is used for the
30 application or issuance of a permit;

31 (b) Farm plans developed under chapter 90.48 RCW and not under the
32 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
33 RCW 42.56.610 and 90.64.190;

34 (18) Financial, commercial, operations, and technical and research
35 information and data submitted to or obtained by a health sciences and
36 services authority in applications for, or delivery of, grants under
37 RCW 35.104.010 through 35.104.060, to the extent that such information,

1 if revealed, would reasonably be expected to result in private loss to
2 providers of this information;

3 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328
4 that can be identified to a particular business;

5 (20) Financial and commercial information submitted to or obtained
6 by the University of Washington, other than information the university
7 is required to disclose under RCW 28B.20.150, when the information
8 relates to investments in private funds, to the extent that such
9 information, if revealed, would reasonably be expected to result in
10 loss to the University of Washington consolidated endowment fund or to
11 result in private loss to the providers of this information; (~~and~~)

12 (21) Financial, commercial, operations, and technical and research
13 information and data submitted to or obtained by innovate Washington in
14 applications for, or delivery of, grants and loans under chapter 43.333
15 RCW, to the extent that such information, if revealed, would reasonably
16 be expected to result in private loss to the providers of this
17 information; and

18 (22) Market share data submitted by a manufacturer under RCW
19 70.95N.190(4).

20 NEW SECTION. Sec. 15. This act takes effect January 1, 2014."

SB 5699 - S AMD

By Senators Ericksen, Billig

ADOPTED 03/12/2013

21 On page 1, line 1 of the title, after "recycling;" strike the
22 remainder of the title and insert "amending RCW 70.95N.020, 70.95N.040,
23 70.95N.050, 70.95N.090, 70.95N.110, 70.95N.140, 70.95N.180, 70.95N.190,
24 70.95N.200, 70.95N.210, 70.95N.230, 70.95N.290, 70.95N.300, and
25 42.56.270; and providing an effective date."

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