

Assembly Bill No. 575

Passed the Assembly May 26, 2005

Chief Clerk of the Assembly

Passed the Senate July 1, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 42463, 42464, and 42464.2 of, and to add Section 42464.8 to, the Public Resources Code, relating to electronic waste, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 575, Wolk. Electronic waste recycling.

Existing law, the Electronic Waste Recycling Act of 2003, requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. Under existing law, the fees are deposited in the Electronic Waste Recovery and Recycling Account, and the California Integrated Waste Management Board and the Department of Toxic Substances Control are continuously appropriated the money in the account to make electronic waste recovery payments and recycling payments to cover the net cost of an authorized collector in operating a free and convenient system for collecting, consolidating, and transporting covered electronic wastes, and to make electronic waste recycling payments to cover an e-waste recycler's net cost of receiving, processing, and recycling covered electronic waste. Existing law defines the term "retailer" as a person who makes a retail sale of a covered electronic device.

This bill would define the term "vendor" as a person who makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the device to a consumer under a lease that is a continuing sale and purchase. The bill would allow a retailer to elect to pay the covered electronic waste recycling fee on behalf of the consumer by paying the covered electronic waste recycling fee to the retailer's vendor. The bill would provide that if the retailer makes this election, the covered electronic waste recycling fee is a debt owed by the vendor to the state, and the retailer is not liable for the fee. The bill would provide that if the retailer makes this election, the vendor may retain 3 percent of the covered electronic waste recycling fee for costs associated with the collection of the fee.

This bill would authorize the State Board of Equalization to disclose the name, address, account number, and account status of a person registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 42463 of the Public Resources Code is amended to read:

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Account” means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) “Authorized collector” means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) “Board” means the California Integrated Waste Management Board.

(d) “Consumer” means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant

to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(e) “Department” means the Department of Toxic Substances Control.

(f) (1) Except as provided in paragraph (2), “covered electronic device” means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) “Covered electronic device” does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(g) “Covered electronic waste” or “covered e-waste” means a covered electronic device that is discarded.

(h) “Covered electronic waste recycling fee” or “covered e-waste recycling fee” means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) “Covered electronic waste recycler” or “covered e-waste recycler” means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with

the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) “Discarded” has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(k) “Electronic waste recovery payment” means an amount established and paid by the board pursuant to Section 42477.

(l) “Electronic waste recycling payment” means an amount established and paid by the board pursuant to Section 42478.

(m) “Hazardous material” has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) “Manufacturer” means any of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person’s brand name.

(o) “Person” means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, “person” also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(p) “Recycling” has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(q) “Refurbished,” when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(r) “Retailer” means a person who makes a retail sale of a new or refurbished covered electronic device. “Retailer” includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(s) (1) “Retail sale” has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) “Retail sale” does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t) “Vendor” means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1(commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(u) “Video display device” means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

SEC. 2. Section 42464 of the Public Resources Code is amended to read:

42464. (a) On and after January 1, 2005, or as otherwise provided by Section 25214.10.1 of the Health and Safety Code, a consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

(1) Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(b) Except as provided in subdivision (d), a retailer shall collect from the consumer a covered electronic waste recycling fee at the time of the retail sale of a covered electronic device.

(c) (1) A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(2) If a retailer makes an election pursuant to paragraph (2) of subdivision (d), and the conditions of subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (d) are met, the vendor, in lieu of the retailer, may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and the vendor shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(d) (1) If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the retailer shall provide an express statement to that effect on the receipt given to the consumer at the time of sale. If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable for the fee.

(2) A retailer may elect to pay the covered electronic waste recycling fee on behalf of the consumer by paying the covered electronic waste recycling fee to the retailer's vendor, but only if all of the following conditions are met:

(A) The vendor is registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee pursuant to this chapter.

(B) The vendor holds a valid seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

(C) The retailer pays the covered electronic waste recycling fee to the vendor that is separately stated on the vendor's invoice to the retailer.

(D) The retailer provides an express statement on the invoice, contract, or other record documenting the sale that is given to the consumer, that the covered electronic waste recycling fee has been paid on behalf of the consumer.

(3) For the purpose of making the election in paragraph (2), if the conditions set forth in subparagraphs (A), (B), (C), and (D) of paragraph (2), are met, the covered electronic waste recycling fee is a debt owed by the vendor to the state, and the retailer is not liable for the fee.

(e) The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1, shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

SEC. 3. Section 42464.2 of the Public Resources Code is amended to read:

42464.2. The State Board of Equalization shall collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the

purposes of this section, the reference in the Fee Collection Procedures Law to “feepayer” shall include a retailer, a consumer, and a vendor, in the case of a retailer’s election pursuant to paragraph (2) of subdivision (d) of Section 42464.

SEC. 4. Section 42464.8 is added to the Public Resources Code, to read:

42464.8. Notwithstanding Section 55381 of the Revenue and Taxation Code, the State Board of Equalization may disclose the name, address, account number, and account status of a person registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify, at the earliest possible time, the application of existing electronic waste recycling laws to commercial lease transactions since January 1, 2005, thereby encouraging the recycling of electronic waste and protecting public health and safety and the environment, it is necessary that this act take effect immediately.

Approved _____, 2005

Governor