



Testimony
Oregon Senate Bill 740
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I appreciate this opportunity to present testimony on behalf of the Equipment Leasing Association (ELA), the trade association for the equipment leasing and finance industry, on Senate Bill 740 that would levy fluctuating advance recycling fees on the sale or lease for the first in-state use of eligible electronic products defined as central processing units, computer monitors, laptop computers, televisions with video displays having a viewable area greater than nine inches when measured diagonally and printers. These funds would establish the Electronic Product Stewardship Account. ELA members engage in business-to-business transactions financing equipment and would be fee collectors under this bill drafted on a consumer retail model designed for wastes from households rather than the commercial sector in which our members operate.

Senate Bill 740 is another contribution to a growing patchwork of electronic waste recycling proposals based on the California electronic recycling program implemented on January 1, 2005. SB 740 converts the confusing sliding scale of fees in the California program into a seemingly limitless range of fees based on each individual product. Equipment lessors already struggling to comply with 3 fee levels in California will face the prospect of far greater complexity in Oregon.

Our association urges drafters of SB 740 to reassess this adoption of greater administrative and compliance complexity. ELA presents outcomes oriented testimony developed after examining electronic waste fee experience and alternate proposals in other states. From this assessment ELA adopted a policy that provides flexibility to work with states within basic principles under which the association could endorse and support legislation that rectifies problems currently faced. Senate Bill 740 does not provide the uniformity and simplicity needed for our endorsement but we outline below basic principles under which we could offer that support. ELA asserts recycling fees imposed on consumers and collected at the point of sale should have the following elements:

- the fee allows for a bi-lateral election between equipment supplier (vendor, wholesaler or manufacturer) and lessor to pay the fee at point of purchase rather than point of lease.
- statutory uniformity with like equipment subject to fees in other states,
- the scope of equipment is certain and identifiable to the lessor,
- collection responsibility provides clarity



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Voluntary election between equipment supplier and lessor

Equipment lessors are not retailers as contemplated in Senate Bill 740. Leasing also poses issues different from Internet and catalogue sales that completely escape the recycling fee. Lessors do not have physical possession of equipment prior to lease.

Senate Bill 740 gives wide discretion after enactment to state government in determining what equipment falls within parameters established by the bill. To comply with the fee equipment lessors will need to rely on equipment descriptions and information often contained in vendor invoices that do not follow explanatory information issued by government. As we've learned in the California program on which this legislation is founded, it is challenging at best and impossible on occasion for equipment lessors to reach an informed decision on what equipment may or may not be covered. Without specific language addressing the commercial equipment leasing marketplace, Senate Bill 740 will hinder good faith efforts by equipment lessors to comply with the recycling fee.

Recognition of the vendor relationship within a commercial leasing context will assist in making upfront consumer fees more acceptable in leasing transactions. The leasing vendor provision offered in this testimony recognizes the working relationship between a financing source and a vendor leasing firm that promotes leasing to their customers. Such a leasing provision is needed to make SB 740 more user friendly in the business-to-business environment. This leasing provision is limited to purchase transactions for the purpose of lease. Since many suppliers of equipment to lessors also sell at retail, our industry distinguishes these sellers as vendors. The limitation to purchases for the purpose of leasing is advised to forestall potential objection that this provision might apply in traditional retail environments. Our intention is to remedy problems faced by equipment lessors and to limit application of the provision to purchases of leased equipment so as not to create unintentional consequences to other industries.

ELA wishes to work with bill drafters in a flexible manner to craft a vendor provision that meets these goals. Following is one example of text that may be considered to recognize vendor programs in which a leasing company finances equipment:

"A lessor who purchases an electronic device (subject to this Act) in a wholesale transaction for the purpose of leasing to others, may contract to pay the advanced electronic waste recycling fee to the equipment vendor at time of purchase, provided such vendor is registered with the State for purposes of complying with this Act. The vendor shall separately state the advanced electronic waste recycling fee on the invoice given to the lessor at the time of sale and the lessor shall provide a statement in the lease agreement or on an invoice to document compliance with the fee. Nothing in this election shall alter the lessors' right to collect the fee from the consumer."



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Statutory Uniformity with like equipment subject to fees in other states

Senate Bill 740 varies from the equipment categories covered in the California statute upon which it is modeled as well as equipment classifications in legislation filed in several other states. It replicates ambiguities about specific equipment covered by the fee inviting Oregon state government to mire industry in the same uncertainties about what equipment is subject to the fee as currently is faced in California.

As industry has learned, ambiguity in statutory descriptions of what equipment is deemed covered will drop the issue into a regulatory process that pits marketplace determinations of equipment type against a conflicting bureaucratic interpretation. We seek statutory uniformity with like equipment subject to fees in other states and offer to work with you to achieve it.

The scope of equipment is certain and identifiable to the lessor

Just as the statutory designation of central processing units, computer monitors, laptop computers, televisions with video displays having a viewable area greater than nine inches when measured diagonally and computer printers varies with equipment types elsewhere, the extent to which these terms are interpreted following enactment will produce more hurdles pitting manufacturers against state bureaucracy with equipment lessors caught in the middle at times unable to determine what equipment is covered by the fee and potentially subject to penalties through no fault of their own. These issues should be resolved prior to enactment of a recycling fee rather than positioning our industry to grapple with bureaucratic indecision such as we currently face in California in the program upon which this legislation is based. Allow me to illustrate.

We saw the same latitude given to state government in California. In that program certain equipment categories regardless of manufacturer are subject to the fee and three months after implementation industry is battling with state government over exactly what equipment is covered. SB 740 promises more of the same confusion with lessors out of compliance due to no fault of their own.

Let's look at some examples. Designation of laptop computers has generated questions in another state relating to classification of a personal digital assistant device or PDA. The problem occurs because the Department of Environmental Quality will make the determination of when an electronic device is no longer considered a PDA and becomes a computer. Will a PDA larger than a cell phone with a keyboard be deemed a laptop computer? You can have the same problem in reverse by asking when does a device stop being a computer covered by the fee and become a PDA? Most standard PDA's have peripheral keyboards you can attach. How does that impact the application of a recycling fee? These decisions are left to the regulatory process.



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Laptops keep getting smaller while PDA's can get fairly large with models that unfold or pop open. PDA's are equipped with stripped down versions of Word, Excel, Outlook, Explorer, and even programs with web organizer capabilities. If a product can be held in the palm of my hand, yet is powerful enough to out perform an old computer in my basement, how do I decide what to call it? If it's a PDA because it's less powerful than modern, top of the line desktops, then is my old computer suddenly a PDA as well? Does whether or not the device receives input from the user have any bearing on if it's defined as a computer?

What about computers on wheelchairs to assist handicapped people in communicating? They have a keyboard and a display screen. Is that considered a personal computer covered by the fee? Does the fact that such a device is necessary to maintain the person's quality of life have any impact on how it's defined as a computer?

Senate Bill 740 establishes a procedure ensuring much wrangling as the Department of Environmental Quality struggles to separate personal computers applicable to the fee from a Personal Digital Assistant that escapes it together with classifying other electronic innovations that defy easy description. In fact, SB 740 promises to establish separate fees for each equipment designation. These issues should be resolved prior to enactment rather than positioning our industry to grapple with bureaucratic indecision. Equipment lessors will be caught in the middle of these skirmishes simply attempting to stay in compliance while the debate swirls around them as is currently the predicament faced under the law on which Senate Bill 740 is founded.

Collection responsibility provides clarity

Senate Bill 740 takes the lack of clarity currently faced under the statute upon which it is based and magnifies the prospect of mistakes in fee collection beyond the situation now faced in California. The unworkable sliding fee scale centered on diagonal screen size used in California is replaced by an even more multi-tiered system establishing different fee amounts for each product category, as yet undefined.

The Department of Environmental Quality will establish a fee for each product category reflecting the cost of recycling or disposal of the products in that category not to exceed \$10 per product. Inexhaustible variations of fees below \$10 are anticipated. Experience in other states demonstrates most recycling costs will exceed \$10 causing the Department of Environmental Quality to shall recommend a higher fee per product to the Legislative Assembly. Let's take a look at experience with fees proposed outside Oregon.



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The California program was initiated with a fee schedule of \$6, \$8 and \$10 per piece of equipment, which prior to remittance of even the first quarter fees has already been deemed too low for projected costs. Similar experience would be expected in Oregon. This forecasted deficit in California excludes the \$30 million budgeted for revenue officials to gear even up prior to implementation. The California fee is expected to increase next year to at least \$12, \$16 and \$20. Oregon Department of Environmental Quality requests to the Legislative Assembly for individual fees greater than \$10 would appear to be a foregone conclusion.

Testimony on a comparable proposal based on the California program was presented to the Nebraska Natural Resources Committee on Wednesday, February 9. The sponsor estimated a \$25 cost to recycle or dispose each piece of electronic equipment with 30% of all fees going to program administration rather than recycling or disposal payments.

The sponsor of recycling fee legislation in Maryland also anticipated similar fee levels in the \$20-\$25 range. However, in a change of direction from adherence to the California model, the recycling fee was removed from the bill in the Maryland Senate Education, Health & Environment Affairs Committee on Wednesday, March 2. It was replaced with a manufacturer responsibility program under which computer manufacturers would be required to register and failure to sign up could result in a prohibition of marketing products in Maryland. Each manufacturer upon registration would outline the manner in which their products would be recycled or disposed. The Maryland Department of the Environment would grant certification to manufacturers with an environmental take back compliance plan. Those manufacturers not gaining certification would make payment covering costs borne by the state to dispose of their products. Manufacturers failing to register could not market products in Maryland. The Maryland departure from an upfront fee is a variation on the manufacturer responsibility program adopted by Maine.

It would appear that drafters of Senate Bill 740 may have also anticipated higher fees as the penalty section would impose a civil penalty of up to \$25 per eligible electronic product disposed of, plus the cost of recycling the product, on a person who knowingly disposes of an eligible electronic product in violation of a ban established pursuant to the law. Compliance with the varying fees is the issue for equipment lessors and text of Senate Bill 740 establishes a system of multiple fees per product that will present challenges when attempting to comply.



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In the California program upon which SB 740 is founded the state is unable to authoritatively designate broad equipment categories regardless of manufacturer that are subject to the fee versus exemption and three months after implementation industry is battling with state government over exactly what equipment is covered. Under the proposal before us Oregon promises even more uncertainty by establishing a profusion of fee levels based upon broad categories of electronic equipment produced by any number of manufacturers. We've learned in California that state government is unable to stipulate equipment categories by all manufacturers and respectfully question the ability to further carve up these designations. Why do we care? It is the equipment lessor that will be out of compliance on fee payments due to no fault of their own.

In an effort to smooth compliance problems Senate Bill 740 calls upon the Department of Environmental Quality to convene an advisory committee consisting of manufacturers and sellers of eligible electronic products, representatives of reuse and recycling businesses and others interested in and affected by provisions of the bill. This committee shall review the effectiveness of the efforts to collect, reuse and recycle eligible electronic products as well as periodically evaluate the advance recycling fee.

I have participated in similar efforts at government and industry dialogue in California with frustrating results. For instance, last month in Sacramento I joined manufacturers in a meeting to examine exemptions granted to certain equipment from the recycling fee for medical, industrial and commercial equipment. Manufacturers defended their interpretation and the original intent of the exemption during an intense and animated dialogue lasting over 90 minutes. Throughout the session, state government challenged the industry's analysis of the statute.

As manufacturers argued with state bureaucracy, the ELA emphasized equipment lessors are caught in the middle in some instances unable to determine on what equipment they should collect the fee and are potentially subject to penalties through no fault of their own. Most of the equipment in question would be transactions in which lessors will not necessarily track the manufacturer of a particular monitor when medical equipment descriptions and invoices do not lend clarity. In addition, what monitor is shipped may simply depend on a matter of convenience.

Manufacturers were instrumental in negotiating language of the law in California and thus have a firm understanding of the statute and its intent. Nonetheless, industry and government representatives examined the statute at our meeting drawing different conclusions. Pictures of equipment were used and the two sides still could not always reach agreement on application of the recycling fee.



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Senate Bill 740 promises to expand upon this administrative tangle by selecting an inexhaustible number of fees based upon differing products. The battle between manufacturers and state government will move up to Oregon in expanded form with equipment lessors again caught in the middle simply attempting to comply with fee collection. Determining what equipment is covered is reminiscent of the old story about the blind men describing an elephant - the one who touched the leg said an elephant is like a tree, the one who touched the trunk said it was like a snake, etc. SB 740 gives final determination to state government and we have learned government viewpoints of what equipment is covered by a fee are different from manufacturers.

The preceding look at bureaucratic complexity to be replicated and expanded upon in Oregon is on top of concerns that the commercial leasing sector needs to have resolved. To focus on the issue ELA offers the following basic questions that should be answered prior to enactment of an advance recycling fee. They will be supplemented as the process of examining a recycling fee proceeds.

- Will a state web-site provide a centralized list of all equipment by all manufacturing sources subject to this fee?
- Is credit allowed if the consumer defaults?
- Can a lessor assign the obligation to pay this fee to the lessee?
- Is the fee imposed if the leased assets are first located in another state and moved to Oregon?
- Would equipment moving into Oregon after initial use occurred in another state be subject to the fee?
- If the answer above is yes, will Oregon give a credit for a recycling fee already paid to the other state such as California?
- Is credit allowed if the equipment is moved out of Oregon?
- How would a lessor document if the sale were for resale? Will the lessor be required to maintain some type of exemption certificate?
- Will Oregon allow a temporary storage exemption for a consumer's (the person the fee is imposed upon) deployment stations? If yes, why is it not mentioned in SB 740?
- Will a lease renewal be subject to the fee?
- Will this fee apply to devices that are delivered to a customs broker or forwarding agent in Oregon for shipment to a foreign destination?
- Will leases to federal government instrumentalities or State of Oregon agencies be subject to the fee? How will you handle sales to the Federal Government, which in turn are resold by the government in the PX?
- Should the fee show up as an individual line item for multiple products or should it be a sum total?



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- Is the fee due if the retailer donates equipment to Oregon consumers?
- May a manufacturer administer the recycling fee by collecting it from the leasing company and remitting it to the state with fees collected on their direct sales?
- In some instances equipment covered under Senate Bill 740 may be shipped to one or many configuration sites [which may be outside of Oregon] that set up the equipment, install software, etc., and then the customer ships the equipment to an Oregon location. The equipment lessor may not be notified until after the lease commencement that the equipment has been moved to Oregon. Does the lessor have a responsibility to collect the fee upon learning after the fact that the equipment has entered Oregon?
- If equipment enters an Oregon configuration site for set up prior to delivery in another state will the fee be charged in a transaction wherein the Oregon lessor is owner of the equipment which will not be put to use in Oregon? If yes, should lessors employ configuration sites in adjoining states to avoid fee application?
- Looking to the California program on which Senate Bill 740 is modeled, legislative spokespersons told industry that equipment shipped to in-state configuration sites prior to delivery out of state would not be subject to the fee. Upon implementation the bureaucracy expressed intent to tax all equipment in such sites regardless of use in the state. If equipment in a California configuration site is shipped for first use in Oregon will Oregon give credit for the fee already paid to California?

Oregon Should Take A Leadership Role

Under SB 740 the Department periodically determines if a national program exists to replace this state recycling system. Would it not be better for Oregon to initiate a multi-state remedy rather than wait for it to occur? Oregon could take a cue from Northeastern states that are banding together for just this purpose. The Council of State Governments - Eastern Regional Conference has committed to assist state legislators in the Northeast to craft model legislation for filing in all 10 states in the next legislative session. States involved are Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

Among the unique features of this effort is that state legislators *asked* for this project. They recognize the need for regionally consistent legislation and asked for help in formulating it. Oregon can take the same leadership position in the Northwest and coordinate activities with Council of State Governments - Eastern Regional Conference. Perhaps the Council of State Governments - Western Regional Conference would have an interest.



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Summary

It is the lack of uniformity and simplicity in Senate Bill 740 that will subject equipment lessors to undue administrative burdens and makes them liable for penalties for noncompliance due to no fault of the lessor. Explicit directives by government and manufacturers regarding specific equipment covered by a fee, unambiguous application of exemptions and enactment of a voluntary vendor amendment can help facilitate compliance by commercial equipment lessors. ELA can endorse and support legislation that rectifies problems foreseen in Oregon, which could result from a collaborative process with other states to examine management of electronic waste in an environmentally safe manner. I hope we have the opportunity to assist prior to enactment of a recycling fee.

Thank you for your attention and I would welcome any questions.