

Enrolled House Bill 3114

Sponsored by COMMITTEE ON ECONOMIC DEVELOPMENT (at the request of Consumer Technology Association)

CHAPTER

AN ACT

Relating to covered electronic devices recycling; amending ORS 459A.305, 459A.315, 459A.320 and 459A.340.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 459A.305 is amended to read:
459A.305. As used in ORS 459A.305 to 459A.355:

(1) "Brand" means a name, symbols, words or marks that identify a covered electronic device, rather than any of its components, and attribute the device to the owner of the brand as the manufacturer.

(2) "Collector" means an entity that collects covered electronic devices as part of a manufacturer program or the state contractor program.

(3) "Computer peripheral" means:

(a) A keyboard or mouse sold exclusively for external use with a computer as a wireless or corded device that provides input into, or output from, a computer; or

(b) Cords used with a keyboard or mouse described in paragraph (a) of this subsection.

(4)(a) "Covered electronic device" means:

(A) A computer monitor of any type having a viewable area greater than four inches measured diagonally;

(B) A desktop computer or portable computer;

(C) A television [*of any type having a viewable area greater than four inches measured diagonally*];

(D) A computer peripheral; or

(E) A printer.

(b) "Covered electronic device" does not include:

(A) Any part of a motor vehicle;

(B) Any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment;

(C) Telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or

(D) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

(5) "Covered entity" means any Oregon household, a business that employs 10 or fewer individuals, a not-for-profit organization exempt from taxation under section 501(c)(3) of the Internal Re-

venue Code that employs 10 or fewer individuals, or any person giving seven or fewer covered electronic devices to a collector at any one time.

(6) “Environmentally sound management practices” means practices that comply with all applicable laws, including but not limited to adequate record keeping, tracking the fate of recycled materials, performance audits and inspections, provisions for reuse and refurbishment, compliance with worker health and safety requirements, maintaining liability insurance and financial assurances and practices that may be adopted by rule by the Environmental Quality Commission.

(7)(a) “Manufacturer” means any person, irrespective of the selling technique used, including by means of remote sale:

(A) That manufactures covered electronic devices under a brand that it owns or is licensed to use;

(B) That sells covered electronic devices manufactured by others under a brand that the seller owns;

(C) That manufactures covered electronic devices without affixing a brand;

(D) That manufactures covered electronic devices to which it affixes a brand that it does not own; or

(E) On whose account covered electronic devices manufactured outside the United States are imported into the United States. This subparagraph does not apply if, at the time the covered electronic devices are imported into the United States, another person is registered as the manufacturer of the brand of the covered electronic devices.

(b) “Manufacturer” does not include a person:

(A) With a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor.

(B) That manufactures only computer peripherals and no other covered electronic devices.

(8) “Manufacturer program” means a statewide plan for collecting, transporting and recycling covered electronic devices that is provided by a single manufacturer or group of manufacturers pursuant to ORS 459A.320.

(9) “Nontelevision device” means a device described in subsection (4)(a)(A), (B), (D) or (E) of this section.

(10) “Nontelevision market share” means a manufacturer’s percentage of all registered covered electronic devices except those described in subsection (4)(a)(C) of this section that are sold in this state during a specified time period.

[(9)] (11) “Orphan device” means a covered electronic device for which no manufacturer can be identified.

[(10)] (12) “Person” means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or other legal entity.

[(11)] (13) “Portable computer” means any of the following that has a viewable area greater than four inches measured diagonally and that can be carried as one unit by an individual:

(a) A laptop computer;

(b) A notebook computer; or

(c) A notepad computer.

[(12)] (14) “Premium service” means services such as at-location system upgrade services and at-home pickup services, including curbside pickup service.

[(13)(a)] (15)(a) “Printer” means a device that:

(A) Is used to make reproductions, or is multifunctional and performs one or more operations such as scanning or faxing in addition to making reproductions;

(B) Is designed to be placed on a desk or other work surface and may include an optional floor stand; and

(C) Uses print technology such as laser, electrographic, ink jet, dot matrix, thermal or digital sublimation.

(b) “Printer” does not include a device used to make reproductions that:

- (A) Is floor-standing;
- (B) Is a point of sale receipt printer;
- (C) Is also a calculator;
- (D) Can also make labels; or
- (E) Is embedded in something other than a covered electronic device.

[(14)(a)] **(16)(a)** “Recycling” means:

(A) Processing through disassembling, dismantling, shredding, transforming or remanufacturing covered electronic devices, components and by-products into usable or marketable raw materials or products in a manner such that the original products may lose their identity; or

(B) Smelting materials from components removed from covered electronic devices to recover metals for reuse in conformance with applicable laws and rules.

(b) “Recycling” does not include:

(A) Landfill disposal or incineration of covered electronic devices; or

(B) Energy recovery or energy generation by means of combusting covered electronic devices, components and by-products with or without other waste.

[(15)] **(17)** “Recycling credit” means a credit granted to a manufacturer program or a state contractor program for the collection, transport and recycling of covered electronic devices in an amount that exceeds the program’s return share by weight for a calendar year.

[(16)] **(18)** “Retailer” means a person that offers new covered electronic devices for sale at retail through any means, including but not limited to remote offerings such as sales outlets, catalogs or the Internet.

[(17)] **(19)** “Return share” means the minimum percentage of covered electronic devices that an individual manufacturer is responsible for collecting, transporting and recycling.

[(18)] **(20)** “Return share by weight” means the minimum total weight of covered electronic devices that an individual manufacturer is responsible for collecting, transporting and recycling.

[(19)(a)] **(21)(a)** “Sell” or “sale” means any transfer of title for consideration, including but not limited to remote sales conducted through sales outlets, catalogs or the Internet, or any other similar electronic means.

(b) “Sell” or “sale” does not include leases.

[(20)] **(22)** “State contractor program” means a statewide program for collecting, transporting and recycling covered electronic devices that is provided by the Department of Environmental Quality for manufacturers who pay a recycling fee to the department pursuant to ORS 459A.325.

(23) “Television” means a television of any type having a viewable area greater than four inches measured diagonally.

(24) “Television market share” means a manufacturer’s percentage of the registered covered electronic devices described in subsection (4)(a)(C) of this section that are sold in this state during a specified time period.

SECTION 2. ORS 459A.315 is amended to read:

459A.315. (1) Before January 1 of each year, a manufacturer of covered electronic devices sold or offered for sale in this state shall register with the Department of Environmental Quality, for a period to cover the upcoming calendar year, on a form provided by the department. The registration shall include:

(a) A list of all the brands manufactured, sold or imported by the manufacturer, including:

(A) Those brands being offered for sale in this state by the manufacturer; and

(B) Those brands that were offered for sale in this state by the manufacturer during the previous calendar year.

(b) A statement of whether the manufacturer will be implementing a manufacturer program or utilizing the state contractor program for recycling covered electronic devices.

(c) Any other information required by the department to implement ORS 459A.305 to 459A.355.

(2)(a) Not later than July 1 of each year, a manufacturer of covered electronic devices sold or offered for sale in this state shall pay an annual registration fee to the department.

(b) For calendar years 2008 through 2011, the manufacturer registration fee shall be:

(A) \$15,000 for manufacturers selling more than one percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(B) \$5,000 for manufacturers selling at least 0.1 percent but not more than one percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(C) \$200 for manufacturers selling at least 0.01 percent but less than 0.1 percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(D) \$40 for manufacturers selling less than 0.01 percent of the total number of units of covered electronic devices sold in this state the previous calendar year.

(c) For calendar years 2012 and beyond, the Environmental Quality Commission may modify the registration fees under this section so that the total of registration fees collected approximately matches the department's costs in implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340 (4).

[(3)(a) If a manufacturer ceases to manufacture, sell or import covered electronic devices and covered electronic devices manufactured, sold or imported by the manufacturer are collected for recycling under a manufacturer program or the state contractor program, the manufacturer shall register with the department and pay a registration fee of \$250.]

[(b) Any manufacturer described in paragraph (a) of this subsection to which the department provides notification of a return share and return share by weight and that has not previously filed a registration shall, within 30 days of receiving the notification, file a registration with the department and pay to the department a registration fee of \$250.]

(3) If a manufacturer that ceases to manufacture, sell or import a covered electronic device:

(a) Has not registered the device with the department and the department determines that the device was sold in this state during the previous calendar year, the manufacturer shall register the device with the department and pay a registration fee of \$250.

(b) Has not registered with the department and receives notification from the department of a return share and a return share by weight, or a nontelevision market share or a television market share, the manufacturer shall register with the department within 30 days of receiving the notification and pay a registration fee of \$250.

SECTION 3. ORS 459A.320 is amended to read:

459A.320. (1) A manufacturer choosing to implement a manufacturer program shall submit a plan to the Department of Environmental Quality at the time of payment of the annual registration fee required under ORS 459A.315.

(2) The manufacturer's plan must describe how the manufacturer will:

(a) Finance, manage and conduct a statewide program to collect covered electronic devices from covered entities in this state.

(b) Provide for environmentally sound management practices to collect, transport and recycle covered electronic devices.

(c) Provide for advertising and promotion of collection opportunities statewide and on a regular basis.

(d) Include convenient service in every county in this state and at least one collection site for any city with a population of at least 10,000. A collection site for a county may be the same as a collection site for a city in the county. Collection sites shall be staffed and open to the public at a frequency adequate to meet the needs of the area being served. A program may provide collection service jointly with another program.

(3) A manufacturer choosing to implement a manufacturer program shall:

(a) Meet or exceed the requirements for collection sites described in subsection (2) of this section.

(b) Provide for collection, transportation and recycling of covered electronic devices for covered entities free of charge, except that a manufacturer that provides premium service for a covered entity may charge for the additional cost of that premium service.

(c) Implement the plan required under this section.

(d) Conduct a statistically significant sampling or actual count of the covered electronic devices, except for computer peripherals, collected and recycled by the manufacturer each calendar year using a methodology approved by the department. The manufacturer shall report the results of the sampling or count to the department[*, in accordance with the approved sampling methodology or as directed by the department,*] **at least annually or as required by the department. The sampling or count methodology must take into account information including but not limited to the device type, weight and brand of each unit sampled.**

(e) **In addition to the report required by paragraph (d) of this subsection and no later than March 1 of [the following calendar year. The report must include:] each year, the manufacturer shall provide a report to the department that:**

[A] *A list of all brands identified during the sampling or count by the manufacturer;*

[B] **(A) Includes the total weight of covered electronic devices [identified for each brand during the sampling or count; and], including orphan devices and computer peripherals, collected from covered entities in this state by the manufacturer during the previous calendar year;**

[C] **(B) Includes the total weight of each type of covered electronic [devices] device, including orphan devices and computer peripherals, collected from covered entities in [the] this state by the manufacturer during the previous calendar year[.]; and**

[e] **(C) [By March 1 of each year, provide a report to the department that] Details how the plan required under this section was implemented during the previous calendar year.**

(4) A group of manufacturers may choose to implement a manufacturer program as one entity, if in doing so the manufacturers meet the sum of their individual return shares by weight under ORS 459A.340 (3) and that sum is at least five percent.

(5) By July 1 of each year, a manufacturer that does not meet its return share by weight for the previous calendar year shall pay the department for the amount not achieved at a rate determined by the department to be equivalent to the amount the manufacturer would have paid, plus 10 percent, to be part of the state contractor program under ORS 459A.340.

(6) A manufacturer participating in the state contractor program under ORS 459A.340 shall notify the department at the time of its registration each year.

(7) Except as provided in subsection (4) of this section, a manufacturer with less than a five percent return share is required to participate in the state contractor program under ORS 459A.340.

SECTION 4. ORS 459A.340 is amended to read:

459A.340. The Department of Environmental Quality shall:

(1) Maintain and make available on its website the following lists, which must be updated by the first day of each month:

(a) A list of registered manufacturers and their brands;

(b) A list of brands for which no manufacturer has registered; and

(c) A list that identifies which manufacturers are in compliance with ORS 459A.305 to 459A.355.

(2) Review and approve manufacturer plans that comply with ORS 459A.320 and are submitted annually by manufacturers choosing to implement a manufacturer program for recycling covered electronic devices.

[3(a) *Determine the return share and return share by weight for each calendar year for each manufacturer. The return share shall be determined by dividing the total weight of covered electronic devices of that manufacturer's brands by the total weight of covered electronic devices for all manufacturers' brands. The return share by weight shall be determined by multiplying the return share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices and computer peripherals, as determined by the department.*]

[b) *For each manufacturer except those specified in paragraph (c) of this subsection, determine the return share and return share by weight for calendar years through 2011 based on the best available public return share data and public weight data from within the United States for covered electronic devices from covered entities. For subsequent years, the return share of covered electronic devices for each manufacturer shall be based on the most recent annual sampling or count of covered electronic*

devices. For subsequent years, the total weight in pounds of covered electronic devices shall be based on the total weight of covered electronic devices, including orphan devices and computer peripherals, as determined by the department.]

[(c) For each manufacturer whose manufacture of covered electronic devices as defined in ORS 459A.305 (4)(a)(C) exceeds its manufacture of covered electronic devices as defined in ORS 459A.305 (4)(a)(A) and (B), determine the return share and return share by weight based on the total return share and return share by weight determined under paragraph (a) of this subsection for all manufacturers described in this paragraph, allocated according to each manufacturer's percentage of the total number of covered electronic devices described in ORS 459A.305 (4)(a)(C) sold in this state the previous calendar year. The department:]

[(A) May use national market data, retail and manufacturer data, consumer research and other data to determine the percentages described in this paragraph. The department may also require that manufacturers submit sales or other data regarding the number of the manufacturer's covered electronic devices sold in Oregon. Manufacturers must submit any data required by the department in the format requested by the department.]

[(B) May assess a surcharge to the annual registration fee for manufacturers described in this paragraph if the department determines that the surcharge is necessary to cover any additional costs to the department in making the determinations described in this paragraph. The department must allocate any assessed surcharge to the manufacturer as a percentage of the manufacturer's return share determined pursuant to this paragraph.]

(3)(a) For each calendar year, determine:

(A) The total weight in pounds of covered electronic devices, including orphan devices and computer peripherals, to be collected; and

(B) Of the total weight determined under subparagraph (A) of this paragraph, the proportion that is equal to the total weight of televisions and the proportion that is equal to the total weight of nontelevision devices.

(b) For each calendar year, determine each manufacturer's television market share and nontelevision market share as follows:

(A) A manufacturer's television market share shall be determined by dividing the total weight in pounds of televisions sold in this state under brands manufactured, sold or imported by the manufacturer during the previous calendar year by the total weight in pounds of televisions sold in this state under all brands manufactured, sold or imported by all registered manufacturers during the previous calendar year.

(B) A manufacturer's nontelevision market share shall be determined by dividing the total weight in pounds of nontelevision devices sold in this state under brands manufactured, sold or imported by the manufacturer during the previous calendar year by the total weight in pounds of nontelevision devices sold in this state under all brands manufactured, sold or imported by all registered manufacturers during the previous calendar year.

(C) The department may use national market data prorated for Oregon, retail or manufacturer data, consumer research or any other data from the previous calendar year, as determined by the department, to make the determinations described in this paragraph. The department may require a manufacturer to submit sales or other data regarding the number and weight of covered electronic devices sold in this state by the manufacturer. A manufacturer must submit any data required by the department under this subparagraph in the format requested by the department.

(c) Determine the return share and return share by weight each calendar year for each manufacturer as follows:

(A) A manufacturer's return share by weight shall be equal to the sum of the manufacturer's return share by weight for televisions as calculated under subparagraph (B) of this paragraph and the manufacturer's return share by weight for nontelevision devices as calculated under subparagraph (C) of this paragraph.

(B) A manufacturer's return share by weight for televisions shall be equal to the product of the manufacturer's television market share as determined under paragraph (b)(A) of this subsection multiplied by the total weight of television devices to be collected as determined under paragraph (a)(B) of this subsection.

(C) A manufacturer's return share by weight for nontelevision devices shall be equal to the product of the manufacturer's nontelevision market share as determined under paragraph (b)(B) of this subsection multiplied by the total weight of nontelevision devices to be collected as determined under paragraph (a)(B) of this subsection.

(D) A manufacturer's return share shall be equal to the quotient of the manufacturer's return share by weight divided by the sum total of the return shares by weight for all manufacturers.

(d) By May 1 of each year, provide to each manufacturer that had a return share determined under this section its return share and its return share by weight for the following year.

(4) Establish a state contractor program for the collection, transportation and recycling of covered electronic devices from covered entities in this state. The state contractor program shall:

(a) To the extent practicable, use existing local collection, transportation and recycling infrastructure[;].

(b) Utilize environmentally sound management practices to collect, transport and recycle covered electronic devices[;].

(c) Provide for covered entities, free of charge, convenient and available collection services and sites for covered electronic devices in both rural and urban areas[;].

(d) Advertise and promote collection opportunities statewide and on a regular basis[; and].

(e) Conduct a statistically significant sampling or actual count of the covered electronic devices, except for computer peripherals, collected and recycled by the state contractor program during each calendar year using a methodology approved by the department [*and prepare a report no later than March 1 of the following calendar year that includes:*]. **The state contractor shall report the results of the sampling or count to the department at least annually or as required by the department. The methodology must take into account information including but not limited to the device type, weight and brand of each unit sampled.**

(f) No later than March 1 of the following calendar year, report, for the previous calendar year:

[*(A) A list of all brands identified during the sampling or count;*]

[*(B)*] **(A) The total weight of covered electronic devices [*identified for each brand during the sampling or count; and*], including orphan devices and computer peripherals, collected from covered entities in this state by the state contractor program; and**

[*(C)*] **(B) The total weight of each type of covered electronic [*devices*] device, including orphan devices and computer peripherals, collected from covered entities in [*the*] this state by the state contractor program during the previous calendar year.**

(5) Determine a manufacturer's annual registration fee for purposes of ORS 459A.315 (2) [*using national market data prorated for Oregon based on statewide population*]. **In determining a manufacturer's annual registration fee, the department may use national market data prorated for Oregon, retail or manufacturer data, consumer research or any other data from the previous calendar year, as determined by the department. The department may require a manufacturer to submit sales or other data regarding the number of covered electronic devices sold in this state by the manufacturer. A manufacturer must submit any data required by the department under this subsection in the format requested by the department.**

(6) Determine the recycling fee to be paid under ORS 459A.325 by each manufacturer that participates in the state contractor program established pursuant to subsection (4) of this section. The department shall determine the recycling fees based on the manufacturer's annual return share and return share by weight as determined under subsection (3) of this section.

(7) Maintain on its website information on collection opportunities for covered electronic devices, including collection site locations and hours. The information must be made available in a printable format for retailers.

(8) Report biennially to the Legislative Assembly on the operation of the statewide system for collection, transportation and recycling of covered electronic devices.

Passed by House April 10, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

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Peter Courtney, President of Senate

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Approved:

.....M,....., 2019

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Kate Brown, Governor

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Bev Clarno, Secretary of State