

House Bill 2395

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes statewide system for collection, transportation and recycling of certain electronic products. Lists electronic products required to be recycled. Prohibits retailer from selling certain electronic products unless product is labeled with manufacturer's brand. Requires manufacturer selling certain electronic products to register with Environmental Quality Commission. Requires retailer to maintain website and post information for public about product management plans. Directs Environmental Quality Commission to establish procedures and adopt rules regarding product management plans. Establishes requirements for product management plans. Establishes amount to be paid by manufacturer for product management plan that does not achieve its designated share.

A BILL FOR AN ACT

Relating to recycling of electronic devices; creating new provisions; amending ORS 459.995; and appropriating money.

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

OREGON ELECTRONIC PRODUCT STEWARDSHIP ACT OF 2007

SECTION 1. The Legislative Assembly finds that it is necessary to:

(1) Ensure the environmentally sound management of used electronic products;

(2) Encourage the design of electronic products that are more resource efficient and less toxic; and

(3) Assist state economic development by promoting the establishment of a statewide system for the collection, transportation and recycling of electronic products.

DEFINITIONS

SECTION 2. As used in sections 1 to 13 of this 2007 Act:

(1) "Brand" means:

(a) A manufacturer's name, a brand name or a brand label; and

(b) All manufacturers' names, brand names and brand labels for which a manufacturer has responsibility.

(2)(a) "Covered electronic product" means:

(A) Personal desktop and portable computers;

(B) Computer displays, including displays that use cathode ray tubes or other display mechanisms;

(C) Desktop scanners and printers; and

(D) Televisions using cathode ray tubes or other display devices.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) "Covered electronic product" does not include:

2 (A) Automated typewriters or typesetters, portable handheld calculators, portable digital
3 assistants or other similar devices.

4 (B) Parts of a motor vehicle or any component part of a motor vehicle assembled by, or
5 for, a vehicle manufacturer or franchised dealer, or replacement parts for use in a motor
6 vehicle.

7 (C) Parts that are functionally or physically a part of a larger piece of equipment de-
8 signed and intended for use in an industrial, commercial or medical setting, including diag-
9 nostic, monitoring or control equipment.

10 (D) Parts that are contained within a clothes washer, clothes dryer, refrigerator, freezer,
11 refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air
12 conditioner, dehumidifier or air purifier.

13 (3) "Designated share" means the weight, in pounds, of covered electronic products that
14 a product management plan is obligated to manage as determined by the Environmental
15 Quality Commission.

16 (4) "Manufacturer" means a person that, irrespective of the selling technique used, in-
17 cluding by means of remote sale:

18 (a) Produces or has produced covered electronic products under its own brand for sale
19 in this state;

20 (b) Sells or has sold in this state covered electronic products produced by other suppliers
21 under its own brand;

22 (c) Assembles or has assembled covered electronic products, with parts produced by
23 others, for sale in this state under the assembler's brand;

24 (d) Imports or exports covered electronic products into the United States for sale in this
25 state, except that if a company from which an importer purchases the covered electronic
26 products has a presence or assets in the United States, that company shall be deemed to be
27 the manufacturer; or

28 (e) Manufactures or supplies covered electronic products to any person within a distrib-
29 ution network that includes wholesalers or retailers in this state, for the sale in this state
30 of those covered electronic products through that distribution network.

31 (5) "Market share" means the proportion, by weight, of a manufacturer's sales of covered
32 electronic products sold in this state as determined by the commission.

33 (6)(a) "Recycling" means:

34 (A) Separating, processing, transforming or remanufacturing covered electronic pro-
35 ducts, components and by-products into usable or marketable raw materials or products; or

36 (B) Smelting materials from covered electronic products to recover metals for reuse in
37 conformance with applicable laws and rules.

38 (b) "Recycling" does not include:

39 (A) Landfill disposal or incineration uses; or

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

42 (7) "Retailer" means a person that owns or operates a business that sells covered elec-
43 tronic products to consumers.

44 (8) "Return share" means the proportion, by weight, of a manufacturer's covered elec-
45 tronic products that are returned for collection as determined by the commission.

COVERED ELECTRONIC PRODUCTS

SECTION 3. The Environmental Quality Commission by rule may require that electronic devices in addition to the covered electronic products defined in section 2 of this 2007 Act be treated as covered electronic products for the purposes of sections 1 to 13 of this 2007 Act if the commission determines that the public interest requires such treatment. The commission by rule may exempt certain electronic devices from being treated as covered electronic products under sections 1 to 13 of this 2007 Act.

RETAILER RESPONSIBILITIES

SECTION 4. (1) A retailer may not sell or offer for sale a covered electronic product in this state unless the product is labeled with the manufacturer's brand, the label is permanently affixed to the product and the label is readily visible.

(2) A retailer may not sell or offer for sale a covered electronic product in this state unless the manufacturer of the covered electronic product is a registered participant in a product management plan pursuant to sections 1 to 13 of this 2007 Act.

(3) A retailer that sells or offers for sale a covered electronic product in this state shall ensure that the manufacturer has complied with sections 1 to 13 of this 2007 Act by consulting the listing maintained by the Environmental Quality Commission on the commission's website that lists manufacturers and brands that have complied with sections 1 to 13 of this 2007 Act. A retailer shall be considered to be in compliance with subsection (2) of this section if, on the date the retailer orders a covered electronic product from a manufacturer or an agent of the manufacturer, the product brand and the product's manufacturer appear on the listing.

(4) A retailer that sells covered electronic products in this state must maintain a website and post on that website information relating to product management plans operating within this state that have been approved by the commission under section 8 of this 2007 Act. The information must:

(a) Identify specific locations where the public may recycle covered electronic products, free of charge, through product management plans;

(b) Identify the websites for manufacturers who have an independent product management plan; and

(c) Identify the website of the commission where information about the standard product management plan is provided.

(5) A retailer shall provide in printed form the information described in subsection (4) of this section to the consumer at the time of the sale of the covered electronic product.

SECTION 5. (1) Section 4 (1) of this 2007 Act becomes operative January 1, 2008.

(2) Sections 4 (2), (3), (4) and (5) of this 2007 Act becomes operative January 1, 2009.

MANUFACTURER RESPONSIBILITIES

SECTION 6. (1) A manufacturer that sells or offers for sale a covered electronic product in this state must register with the Environmental Quality Commission and pay to the Department of Environmental Quality an annual fee set by the commission not to exceed \$5,000.

1 (2)(a) A manufacturer that sells or offers for sale a covered electronic product in this
 2 state shall have a product management plan for the collection, transportation and recycling
 3 of covered electronic products.

4 (b) A manufacturer must either register an independent product management plan or
 5 register participation in the standard product management plan under section 8 of this 2007
 6 Act.

7 (c) A manufacturer that has not made application for an independent product manage-
 8 ment plan or registered in the standard product management plan will be automatically
 9 registered in the standard product management plan.

10 (d) A manufacturer that has registered an independent product management plan shall
 11 maintain and make available on a website information about the plan.

12 (e) Manufacturers wanting to change product management plans must notify the com-
 13 mission at least ____ months prior to the next calendar year.

14 **SECTION 7.** (1) Section 6 (1) of this 2007 Act becomes operative June 1, 2008.

15 (2) Section 6 (2) of this 2007 Act becomes operative January 1, 2009.

16
 17 ENVIRONMENTAL QUALITY COMMISSION

18
 19 **SECTION 8.** (1) The Environmental Quality Commission shall:

20 (a) Establish application procedures for a manufacturer to register an independent
 21 product management plan or to register participation in the standard product management
 22 plan.

23 (b) Review and approve or reject the applications described in paragraph (a) of this sub-
 24 section.

25 (c) Register approved independent product management plans or the manufacturer's
 26 participation in the standard product management plan.

27 (d) Adopt rules setting registration fees for manufacturer product management plans.
 28 Fees shall be tiered and based on a manufacturer's market share, and fees shall be paid to
 29 the Department of Environmental Quality and deposited in the Product Stewardship Ac-
 30 count.

31 (e) Maintain a list of all registered manufacturers on the commission's website.

32 (2) The commission shall establish a business plan for the implementation of sections 1
 33 to 13 of this 2007 Act. The business plan shall include performance goals, including a recycl-
 34 ing goal, for covered electronic products. The initial state recycling goal for covered elec-
 35 tronic products for the year _____ shall be _____ pounds per capita.

36 (3) The commission shall designate product management plan obligations. Each calendar
 37 year, the commission shall set a state target for the total amount of covered electronic
 38 products to be collected, transported and recycled, and shall determine the market share and
 39 return share for each registered manufacturer.

40 (4)(a) For each independent product management plan, the plan's obligation shall be the
 41 state target times the total return share of the manufacturer or group of manufacturers
 42 belonging to the independent product management plan.

43 (b) Notwithstanding paragraph (a) of this subsection, the obligation for independent
 44 product management plans during the first four calendar years is the state target times the
 45 total market share of the manufacturer or manufacturers belonging to the plan.

1 (5) For the standard product management plan, the plan's obligation shall be the state
2 target times the total of the market shares of the manufacturers belonging to the standard
3 product management plan.

4 (6) The commission shall maintain and make available on the commission's website a list
5 of manufacturers registered in the standard product management plan and a list of all in-
6 dependent product management plans registered by the commission.

7 (7) The commission shall conduct an annual review of each manufacturer's performance
8 under the respective product management plan.

9 (8) The commission shall report biennially to the Legislative Assembly on the operation
10 of the statewide system for collection, transportation and recycling of covered electronic
11 products.

12 (9) The Product Stewardship Account is established separate and distinct from the Gen-
13 eral Fund. Interest earned by the account shall be credited to the account. Moneys in the
14 account are continuously appropriated to the department and may be used only to pay the
15 administrative expenses of the department under sections 1 to 13 of this 2007 Act.

16
17 **PRODUCT STEWARDSHIP COMMITTEE**
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19 **SECTION 9.** (1) In order to carry out its responsibilities under section 8 of this 2007 Act,
20 the Environmental Quality Commission shall appoint a Product Stewardship Committee
21 composed of seven members, including:

- 22 (a) Two representing registered manufacturers;
23 (b) Two representing retailers;
24 (c) Two representing the public; and
25 (d) One representing the Department of Environmental Quality.

26 (2) The members of the committee shall elect a chairperson.

27 (3) Each member of the committee shall be appointed for a term of three years and shall
28 serve at the pleasure of the commission. Before the expiration of the term of a member, the
29 commission shall appoint a successor. A member is eligible for reappointment. If there is a
30 vacancy for any cause, the commission shall make an appointment to become immediately
31 effective.

32 (4) The members of the committee shall serve without compensation, but are entitled to
33 travel expenses pursuant to ORS 292.495.

34 (5) The duties of the committee shall be determined by the commission and shall include,
35 but not be limited to, recommending to the commission action to be taken by the commission
36 on the commission duties established by section 8 of this 2007 Act.

37 (6) The committee shall meet at least once every three months at a place, day and hour
38 determined by the committee. The committee shall also meet at other times and places
39 specified by a majority of the members of the committee or the chairperson of the commit-
40 tee. A majority of the members of the committee constitutes a quorum for the transaction
41 of business.

42
43 **PRODUCT MANAGEMENT PLANS GENERALLY**
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45 **SECTION 10.** A product management plan must:

1 (1) Provide for and finance the collection, transportation and recycling of the product
2 management plan's designated share of covered electronic products.

3 (2) Ensure the product management plan will meet performance goals established by the
4 Environmental Quality Commission.

5 (3) Provide for the promotion of, and education about, the product management plan to
6 consumers.

7 (4) Provide convenient collection sites throughout the state that accept, free of charge,
8 covered electronic products. If a product management plan offers premium services such as
9 at-location system upgrade services and at-home pickup services including curbside pickup
10 service to a customer, the plan may charge the customer for the additional cost of providing
11 the premium service.

12 (5) Provide for the collection of covered electronic products regardless of the manufac-
13 turer's brand on the product.

14 (6) Promote the local collection, reuse and recycling infrastructure that currently exists
15 for covered electronic products.

16 (7) Provide fair compensation to collectors and recycling processors.

17 (8) Provide fair compensation to persons, other than retailers and manufacturers, that
18 transport covered electronic products from collection sites to recycling processors or to
19 other locations for the purpose of recycling.

20 (9) Ensure implementation of best management practices for the recycling of covered
21 electronic products that are collected, including, but not limited to, environmentally sound
22 management practices and the prohibition of the use of prison labor in any phase of the
23 collection, transportation or recycling of the covered electronic products.

24 (10) Ensure that sufficient funds will be available to cover the end-of-life costs for col-
25 lecting, transporting and recycling a registered manufacturers' covered electronic products
26 in the event that the manufacturer ceases to participate in a product management plan.

27 (11) Support the development and promotion of covered electronic products that are re-
28 source efficient and nontoxic.

29
30 **INDEPENDENT PRODUCT MANAGEMENT PLANS**

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32 **SECTION 11.** (1) An independent product management plan must fulfill all the require-
33 ments set forth in section 10 of this 2007 Act.

34 (2) The Environmental Quality Commission shall review and approve or reject all inde-
35 pendent product management plans submitted to the commission by a manufacturer or an
36 agent of a manufacturer.

37 (3) A manufacturer or an agent of a manufacturer may submit an independent product
38 management plan for the manufacturer, or may submit a plan jointly with a group of man-
39 ufacturers.

40 (4) In order to participate in an independent product management plan, a manufacturer
41 must have an annual return share of _____.

42
43 **STANDARD PRODUCT MANAGEMENT PLAN**

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45 **SECTION 12.** (1) The Environmental Quality Commission shall establish a standard

1 **product management plan. The plan must fulfill all the requirements set forth in section 10**
 2 **of this 2007 Act. The commission shall select a provider for the standard plan.**

3 **(2) Charges to each manufacturer participating in the standard product management plan**
 4 **must be based on the actual costs of fulfilling the requirements of section 10 of this 2007 Act,**
 5 **and shall be set by the commission in proportion to the manufacturer’s market share of**
 6 **covered electronic products.**

7
 8 **PLAN PERFORMANCE**

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 10 **SECTION 13. (1) If a product management plan fails to achieve its designated share by**
 11 **the end of a calendar year, the manufacturers participating in the product management plan**
 12 **must pay \$_____ for each unmet pound of the plan’s designated share. For the standard**
 13 **product management plan, the amount required to be paid shall be recovered from the**
 14 **manufacturers participating in the plan in addition to amounts the participants may have**
 15 **already paid into the plan for the previous calendar year. Amounts shall be paid under this**
 16 **section to the Department of Environmental Quality and deposited in the Product**
 17 **Stewardship Account.**

18 **(2) A product management plan that exceeds the plan’s designated share may apply the**
 19 **excess amount to the following calendar year’s designated share.**

20
 21 **FEDERAL LAW**

22
 23 **SECTION 14. (1) The Environmental Quality Commission shall evaluate any federal law**
 24 **that establishes a national program for the collection and recycling of electronic devices.**

25 **(2) If the commission determines that the federal law substantially meets or exceeds the**
 26 **requirements and intent of sections 1 to 13 of this 2007 Act, the commission shall include**
 27 **information on the federal law in the next biennial report to the Legislative Assembly pur-**
 28 **suant to section 8 of this 2007 Act.**

29
 30 **PENALTIES**

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 32 **SECTION 15. ORS 459.995 is amended to read:**

33 **459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty**
 34 **provided by law:**

35 **(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,**
 36 **459A.005 to 459A.620, 459A.675 to 459A.685 or 646.845 or sections 1 to 13 of this 2007 Act, or any**
 37 **rule or order of the Environmental Quality Commission pertaining to the disposal, collection, stor-**
 38 **age or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining**
 39 **to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or**
 40 **order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur**
 41 **a civil penalty not to exceed \$10,000 a day for each day of the violation.**

42 **(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty**
 43 **not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate**
 44 **violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a**
 45 **separate violation.**

1 (c) For each day a city, county or metropolitan service district fails to provide the opportunity
2 to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall
3 incur a civil penalty not to exceed \$500 for each violation.

4 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665
5 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000
6 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject
7 to additional penalties under subsection (1) of this section.

8 (3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the
9 manner provided by ORS 468.135.

10
11 **MISCELLANEOUS**
12

13 **SECTION 16. The unit captions used in this 2007 Act are provided only for the conven-**
14 **ience of the reader and do not become part of the statutory law of this state or express any**
15 **legislative intent in the enactment of this 2007 Act.**
16
