

Senate Bill 541

Sponsored by Senator MORSE; Senator AVAKIAN (at the request of Marcy Eastham, Northwest US Government Affairs Manager, Hewlett-Packard Company)

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 administered by Department of Environmental Quality for collection, transportation and recycling of certain electronic devices. Defines consumer as individual, business that employs 10 or fewer individuals or nonprofit organization. Requires manufacturers of covered electronic devices to register for participation in manufacturer program or contractor program. Requires manufacturer or group of manufacturers to provide collection sites. Directs department to provide consumer information explaining system for recycling covered electronic devices. Requires retailers to display and provide consumers with information on system for recycling covered electronic devices.

Prohibits charging of fee for collection of covered electronic devices, with exception for collectors who provide premium service.

Authorizes Environmental Quality Commission to adopt rules to implement system for recycling covered electronic devices.

Imposes civil penalty for disposal of, or knowingly accepting for disposal, covered electronic devices at solid waste disposal site. Imposes civil penalties for other violations of provisions related to collection and recycling of electronic devices.

A BILL FOR AN ACT

1
2 Relating to recycling of electronic devices; creating new provisions; and amending ORS 459.247 and
3 459.995.

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

SECTION 1. The Legislative Assembly finds that:

6 (1) **It is necessary to encourage the design of electronic devices that are more resource-**
7 **efficient, more recyclable and less environmentally toxic;**

8 (2) **The development and availability of a statewide system that conveniently serves both**
9 **urban and rural areas of Oregon for the collection and recycling of electronic devices at the**
10 **end of their useful lives is in the best interest of the state; and**

11 (3) **A statewide collection and recycling system should be financed by the manufacturers**
12 **of those electronic devices.**

DEFINITIONS

SECTION 2. As used in sections 2 to 11 of this 2007 Act:

16 (1) **"Brand" means a manufacturer's name, a brand name or a brand label or all man-**
17 **ufacturers' names, brand names and brand labels for which a manufacturer has responsibil-**
18 **ity.**

20 (2) **"Collector" means an entity that collects covered electronic devices for the purpose**
21 **of reuse or recycling and that meets standards or contract requirements set forth by the**
22 **Department of Environmental Quality.**

23 (3)(a) **"Consumer" means an individual, a business that employs 10 or fewer individuals**

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 or a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code.

2 (b) "Consumer" does not include a public body as defined in ORS 174.109 or a federal
3 agency.

4 (4) "Contractor program" means a statewide program for collecting, transporting and
5 recycling covered electronic devices that is provided by the department for manufacturers
6 who pay a recycling fee to the department for the purposes of sections 2 to 11 of this 2007
7 Act.

8 (5)(a) "Covered electronic device" means:

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

11 (B) A desktop computer or portable computer; or

12 (C) A television of any type having a viewable area greater than four inches when
13 measured diagonally.

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

15 (A) Any part of a motor vehicle;

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

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

21 (6) "Manufacturer" means a person:

22 (a) That produces covered electronic devices under a brand that it owns or is licensed to
23 use, other than a license to manufacture covered electronic devices for delivery exclusively
24 to or at the order of the licensor;

25 (b) That sells covered electronic devices manufactured by others under a brand that the
26 seller owns or is licensed to use, other than a license to manufacture covered electronic de-
27 vices for delivery exclusively to or at the order of the licensor;

28 (c) That produces covered electronic devices without affixing a brand;

29 (d) That produces covered electronic devices to which it affixes a brand that it neither
30 owns nor is licensed to use; or

31 (e) For whose account covered electronic devices produced outside the United States are
32 imported into the United States. This paragraph does not apply if, at the time the covered
33 electronic devices are imported into the United States, another person is registered as the
34 manufacturer of the brand of the covered electronic devices pursuant to section 4 (2) of this
35 2007 Act.

36 (7) "Manufacturer program" means a statewide program for collecting, transporting and
37 recycling covered electronic devices that is provided by a single manufacturer, or group of
38 manufacturers, for the purposes of sections 2 to 11 of this 2007 Act.

39 (8) "Obligation" means the quantity of covered electronic devices, by weight, that an in-
40 dividual manufacturer is required to recycle in a year, calculated by adding the manufac-
41 turer's annual return share by weight to the weight of a percentage of orphan product.

42 (9) "Orphan product" means a covered electronic device whose manufacturer cannot be
43 identified or whose manufacturer is no longer in business and has no successor in interest.

44 (10) "Portable computer" means any of the following that has a viewable area greater
45 than four inches measured diagonally and that can be carried as one unit by an individual:

- 1 (a) A laptop computer;
- 2 (b) A notebook computer;
- 3 (c) A notepad computer; or
- 4 (d) Any similar electronic device.

5 (11) "Premium service" means services such as at-location system upgrade services and
6 at-home pickup services, including curbside pickup service.

7 (12)(a) "Recycling" means:

8 (A) Separating, processing, transforming or remanufacturing covered electronic devices,
9 components and by-products into usable or marketable raw materials or products; or

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

12 (b) "Recycling" does not include:

13 (A) Landfill disposal or incineration uses; or

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

16 (13) "Retailer" means a person that owns or operates a business that sells covered elec-
17 tronic devices to consumers.

18 (14) "Return share" means the percentage of covered electronic devices that an individual
19 manufacturer is responsible for collecting, transporting and recycling.

20 (15) "Return share by weight" means the total weight of covered electronic devices that
21 an individual manufacturer is responsible for collecting, transporting and recycling.

22 (16) "Sell" or "sale" means:

23 (a) Any transfer of title for consideration in this state that is not a lease; or

24 (b) Any transfer of title for consideration through remote sales conducted through sales
25 outlets, catalogs or the Internet, or any similar electronic means, that is not a lease.

26
27 **MANUFACTURERS**

28
29 **SECTION 3.** A manufacturer of covered electronic devices sold in this state shall label
30 each covered electronic device with the manufacturer's brand. The label shall be perma-
31 nently affixed and readily visible.

32 **SECTION 4.** (1) Before January 1 of each year, a manufacturer of covered electronic de-
33 vices sold in this state shall register with the Department of Environmental Quality, for a
34 period to cover the upcoming calendar year, on a form provided by the department. Any
35 manufacturer to whom the department provides notification of a return share and return
36 share by weight determined pursuant to section 10 (4) of this 2007 Act and that has not
37 previously filed a registration shall file a registration with the department within 30 days of
38 receiving such notification. The registration shall include:

39 (a) A list all of the brands being offered for sale in this state by the manufacturer.

40 (b) A statement of whether the manufacturer will be implementing a manufacturer pro-
41 gram under section 5 of this 2007 Act or utilizing the contractor program under section 6
42 of this 2007 Act for recycling covered electronic devices.

43 (c) Any other information required by the department to implement sections 2 to 11 of
44 this 2007 Act.

45 (2)(a) Not later than July 1 of each year, a manufacturer of covered electronic devices

1 sold in this state shall pay an annual registration fee to the department.

2 (b) For calendar years 2008 to 2011, the manufacturer registration fee shall be \$5,000.

3 (c) For calendar years 2012 and beyond, the Environmental Quality Commission may
 4 modify the registration fee collected by the department under this section so that the total
 5 of registration fees collected approximately matches the department's costs, excluding costs
 6 incurred under section 10 (6) of this 2007 Act, of implementing sections 2 to 11 of this 2007
 7 Act.

8 **SECTION 5.** (1) A manufacturer choosing to implement a manufacturer program shall
 9 submit a plan at the time of payment of the annual registration fee required under section
 10 4 of this 2007 Act. The plan must describe how the manufacturer will finance, manage and
 11 conduct a statewide program that uses environmentally sound management practices to
 12 collect, transport and recycle covered electronic devices.

13 (2) The Department of Environmental Quality shall accept or reject a plan submitted by
 14 a manufacturer under this section.

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

16 (a) Meet or exceed the requirements for collection sites described in section 8 of this 2007
 17 Act.

18 (b) Implement the plan required under this section.

19 (c) Advertise and promote collection opportunities statewide and on a regular basis.

20 (4) A group of manufacturers may choose to implement a manufacturer program as one
 21 entity, but in doing so shall meet the sum of their individual obligations under sections 2 to
 22 11 of this 2007 Act, provided that the plan represents at least five percent of the total of all
 23 return share by weight determined by the department pursuant to section 10 (4) of this 2007
 24 Act.

25 (5) A manufacturer with less than five percent return share, as determined by the de-
 26 partment pursuant to section 10 (4) of this 2007 Act, is required to choose the contractor
 27 program under section 6 of this 2007 Act, unless the manufacturer is part of a group of
 28 manufacturers as described in subsection (4) of this section.

29 **SECTION 5a.** Section 5 of this 2007 Act is amended to read:

30 **Sec. 5.** (1) A manufacturer choosing to implement a manufacturer program shall submit a plan
 31 at the time of payment of the annual registration fee required under section 4 of this 2007 Act. The
 32 plan must describe how the manufacturer will finance, manage and conduct a statewide program
 33 that uses environmentally sound management practices to collect, transport and recycle covered
 34 electronic devices.

35 (2) The Department of Environmental Quality shall accept or reject a plan submitted by a
 36 manufacturer under this section.

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

38 (a) Meet or exceed the requirements for collection sites described in section 8 of this 2007 Act.

39 (b) Implement the plan required under this section.

40 (c) Advertise and promote collection opportunities statewide and on a regular basis.

41 (d) Conduct a statistically significant sampling of the manufacturer's covered electronic
 42 devices collected and recycled during the previous calendar year. The manufacturer shall
 43 report the results of the sampling to the department no later than March 1 of each year.
 44 The report must include:

45 (A) A list of the manufacturer's brands;

1 **(B) The weight of covered electronic devices identified with each brand;**

2 **(C) The weight of covered electronic devices that lack the manufacturer's brand; and**

3 **(D) Any other information the department requires to determine the manufacturer's**
 4 **annual return share and designated obligation.**

5 (4) A group of manufacturers may choose to implement a manufacturer program as one entity,
 6 but in doing so shall meet the sum of their individual obligations under sections 2 to 11 of this 2007
 7 Act, provided that the plan represents at least five percent of the total of all return share by weight
 8 determined by the department pursuant to section 10 (4) of this 2007 Act.

9 **(5) By July 1 of each year, a manufacturer that does not meet its obligation for the**
 10 **previous calendar year shall pay the department for the amount not achieved at a rate de-**
 11 **termined by the department to be equivalent to the amount the manufacturer would have**
 12 **paid to be part of the contractor program under section 6 of this 2007 Act.**

13 [(5)] **(6) A manufacturer with less than five percent return share, as determined by the depart-**
 14 **ment pursuant to section 10 (4) of this 2007 Act, is required to choose the contractor program under**
 15 **section 6 of this 2007 Act, unless the manufacturer is part of a group of manufacturers as described**
 16 **in subsection (4) of this section.**

17 **SECTION 6. (1) By July 1 of each year, a manufacturer who is part of the contractor**
 18 **program shall pay a recycling fee to the Department of Environmental Quality in an amount**
 19 **determined by the department to cover the costs of collecting, transporting and recycling the**
 20 **manufacturer's annual return share of covered electronic devices.**

21 **(2) The department shall base the recycling fee required under this section on the cost**
 22 **of implementing the contractor program and the manufacturer's annual return share of**
 23 **covered electronic devices. The department shall:**

24 **(a) Determine the manufacturer's annual return share for calendar years 2008 and 2009,**
 25 **utilizing data compiled by counties and from other states; and**

26 **(b) Determine the manufacturer's annual return share for calendar years 2010 and**
 27 **thereafter utilizing data reported to the department by manufacturers.**

28 **SECTION 7. (1) Except as authorized in subsection (2) of this section, a manufacturer**
 29 **program, the contractor program or a collector participating in a manufacturer program or**
 30 **the contractor program may not charge a fee to consumers for the collection, transportation**
 31 **or recycling of covered electronic devices.**

32 **(2) A collector who provides a premium service to a consumer may charge the consumer**
 33 **for the additional cost of providing the premium service.**

34 **SECTION 8. (1) A manufacturer program shall provide to consumers convenient and**
 35 **available collection sites for covered electronic devices in both rural and urban areas. A**
 36 **manufacturer program shall address how service shall be provided to consumers in every**
 37 **county in this state. A manufacturer program may provide a collection site jointly with an-**
 38 **other manufacturer program.**

39 **(2) A manufacturer program shall provide at least one collection site for any city with a**
 40 **population of at least 10,000. A collection site for a county may be the same as a collection**
 41 **site for a city in the county.**

42 **(3) Collection sites may include electronics recyclers, repair shops, recyclers of other**
 43 **commodities, reuse organizations, charities or thrifts, retailers, disposal sites, recycling**
 44 **sites, transfer stations or other suitable locations.**

45 **(4)(a) Collection sites shall be staffed and open to the public at a frequency adequate to**

1 meet the needs of the area being served.

2 (b) Collection sites may limit the number of covered electronic devices accepted per
3 person per day.

4
5 **RETAILERS**

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7 **SECTION 9.** (1) A retailer may not sell or offer for sale a covered electronic device from
8 a manufacturer who is not on the list posted by the Department of Environmental Quality
9 pursuant to section 10 of this 2007 Act.

10 (2) A retailer shall post, in a location visible to the consumer, information provided by
11 the department and the manufacturer that describes where and how a consumer can recycle
12 covered electronic devices.

13 (3) A retailer shall provide in printed form the information described in subsection (2)
14 of this section to the consumer at the time of the sale of a covered electronic device.

15
16 **DEPARTMENT OF ENVIRONMENTAL QUALITY**
17 **AND ENVIRONMENTAL QUALITY COMMISSION**

18
19 **SECTION 10.** The Department of Environmental Quality shall:

20 (1) Maintain and make available on its Internet website a list of manufacturers who have
21 registered with the department and are in compliance with sections 2 to 11 of this 2007 Act.

22 (2) Determine the registration fee to be paid by each manufacturer under section 4 of
23 this 2007 Act.

24 (3) Review and approve plans submitted annually by manufacturers choosing to imple-
25 ment a manufacturer program for recycling covered electronic devices.

26 (4) Determine the return share and return share by weight. The return share shall in-
27 clude a proportionate estimated share of orphan product and historic waste.

28 (5) Provide statewide information about opportunities for collection and recycling of
29 covered electronic devices.

30 (6) Establish a contractor program for the collection of up to _____ covered electronic
31 devices per person per day and the recycling of those covered electronic devices. The con-
32 tractor program shall, to the extent practicable, use existing local collection and recycling
33 infrastructure that follows environmentally sound management practices.

34 (7) Determine the recycling fee to be paid by each manufacturer that participates in the
35 contractor program under section 6 of this 2007 Act.

36 (8) In consultation with the Environmental Quality Commission, report biennially to the
37 Legislative Assembly on the operation of the statewide system for collection, transportation
38 and recycling of covered electronic devices.

39 **SECTION 11.** The Environmental Quality Commission may adopt rules necessary to im-
40 plement a convenient and comprehensive statewide system for the collection, transportation
41 and recycling of covered electronic devices.

42 **SECTION 12.** (1) The Department of Environmental Quality shall evaluate any federal law
43 that establishes a national program for the collection and recycling of electronic devices.

44 (2) If the department determines that the federal law substantially meets or exceeds the
45 requirements and intent of sections 2 to 11 of this 2007 Act, the department shall include

1 **information on the federal law in the next biennial report to the Legislative Assembly pur-**
 2 **suant to section 10 of this 2007 Act.**

3
 4 **PENALTIES**

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 6 **SECTION 13.** ORS 459.247 is amended to read:

7 459.247. (1) No person shall dispose of and no disposal site operator shall knowingly accept for
 8 disposal the following types of solid waste at a solid waste disposal site:

- 9 (a) Discarded or abandoned vehicles;
- 10 (b) Discarded large home or industrial appliances;
- 11 (c) Used oil;
- 12 (d) Tires; [*or*]
- 13 (e) Lead-acid batteries[.]; **or**
- 14 **(f) Covered electronic devices.**

15 (2) As used in this section[.];

16 **(a) "Covered electronic device" has the meaning given that term in section 2 of this 2007**
 17 **Act; and**

18 **(b) "Used oil" has the meaning given that term in ORS 459A.555.**

19 (3) Nothing in this section shall prohibit a disposal site operator from accepting and storing, for
 20 purposes of recycling or recovering, any of the types of solid waste listed in subsection (1) of this
 21 section.

22 **(4) The Environmental Quality Commission may postpone the prohibition under sub-**
 23 **section (1)(f) of this section in any area of this state where the commission determines there**
 24 **is an inadequate system for the collection, transportation and recycling of covered electronic**
 25 **devices.**

26 **SECTION 14.** ORS 459.995 is amended to read:

27 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
 28 provided by law:

29 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
 30 459A.005 to 459A.620, 459A.675 to 459A.685 or 646.845 **or sections 3 to 9 of this 2007 Act**, or any
 31 rule or order of the Environmental Quality Commission pertaining to the disposal, collection, stor-
 32 age or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining
 33 to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or
 34 order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur
 35 a civil penalty not to exceed \$10,000 a day for each day of the violation.

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

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

43 **(d) Any person who violates the provisions of ORS 459.247 (1)(f) shall incur a civil penalty**
 44 **not to exceed \$500 for each violation. Each covered electronic device that is disposed of im-**
 45 **properly shall be a separate violation.**

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

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

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MISCELLANEOUS

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

13 **SECTION 16.** (1) Section 9 (1) of this 2007 Act applies to covered electronic devices sold
14 by a retailer on or after January 1, 2009.

15 (2) The amendments to ORS 459.995 by section 14 of this 2007 Act apply to violations of
16 section 9 (1) of this 2007 Act occurring on or after January 1, 2009.

17 **SECTION 17.** The amendments to section 5 of this 2007 Act by section 5a of this 2007 Act
18 become operative on January 1, 2010.

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