

House Bill 3114

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

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**.

Makes changes to requirements for recycling certain electronic devices.

A BILL FOR AN ACT

1
2 Relating to covered electronic devices recycling; amending ORS 459A.305, 459A.315, 459A.320 and
3 459A.340.

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

5 **SECTION 1.** ORS 459A.305 is amended to read:

6 459A.305. As used in ORS 459A.305 to 459A.355:

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

10 (2) "Collector" means an entity that collects covered electronic devices as part of a manufac-
11 turer program or the state contractor program.

12 (3) "Computer peripheral" means:

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

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

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

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

19 (B) A desktop computer or portable computer;

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

22 (D) A computer peripheral; or

23 (E) A printer.

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

25 (A) Any part of a motor vehicle;

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

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

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

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 (5) "Covered entity" means any Oregon household, a business that employs 10 or fewer individ-
 2 uals, a not-for-profit organization exempt from taxation under section 501(c)(3) of the Internal Re-
 3 venue Code that employs 10 or fewer individuals, or any person giving seven or fewer covered
 4 electronic devices to a collector at any one time.

5 (6) "Environmentally sound management practices" means practices that comply with all appli-
 6 cable laws, including but not limited to adequate record keeping, tracking the fate of recycled ma-
 7 terials, performance audits and inspections, provisions for reuse and refurbishment, compliance with
 8 worker health and safety requirements, maintaining liability insurance and financial assurances and
 9 practices that may be adopted by rule by the Environmental Quality Commission.

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

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

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

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

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

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

23 (b) "Manufacturer" does not include a person:

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

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

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

30 **(9) "Nontelevision device" means a device described in subsection (4)(a)(A), (B), (D) or (E)**
 31 **of this section.**

32 **(10) "Nontelevision market share" means a manufacturer's percentage of all registered**
 33 **covered electronic devices except those described in subsection (4)(a)(C) of this section that**
 34 **are sold in this state during a specified time period.**

35 [(9)] (11) "Orphan device" means a covered electronic device for which no manufacturer can be
 36 identified.

37 [(10)] (12) "Person" means the United States, the state or a public or private corporation, local
 38 government unit, public agency, individual, partnership, association, firm, trust, estate or other legal
 39 entity.

40 [(11)] (13) "Portable computer" means any of the following that has a viewable area greater than
 41 four inches measured diagonally and that can be carried as one unit by an individual:

42 (a) A laptop computer;

43 (b) A notebook computer; or

44 (c) A notepad computer.

45 [(12)] (14) "Premium service" means services such as at-location system upgrade services and

1 at-home pickup services, including curbside pickup service.

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

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

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

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

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

10 (A) Is floor-standing;

11 (B) Is a point of sale receipt printer;

12 (C) Is also a calculator;

13 (D) Can also make labels; or

14 (E) Is embedded in something other than a covered electronic device.

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

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

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

21 (b) “Recycling” does not include:

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

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

25 [(15)] **(17)** “Recycling credit” means a credit granted to a manufacturer program or a state
26 contractor program for the collection, transport and recycling of covered electronic devices in an
27 amount that exceeds the program’s return share by weight for a calendar year.

28 [(16)] **(18)** “Retailer” means a person that offers new covered electronic devices for sale at retail
29 through any means, including but not limited to remote offerings such as sales outlets, catalogs or
30 the Internet.

31 [(17)] **(19)** “Return share” means the minimum percentage of covered electronic devices that an
32 individual manufacturer is responsible for collecting, transporting and recycling.

33 [(18)] **(20)** “Return share by weight” means the minimum total weight of covered electronic de-
34 vices that an individual manufacturer is responsible for collecting, transporting and recycling.

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

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

39 [(20)] **(22)** “State contractor program” means a statewide program for collecting, transporting
40 and recycling covered electronic devices that is provided by the Department of Environmental
41 Quality for manufacturers who pay a recycling fee to the department pursuant to ORS 459A.325.

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

44 **(24) “Television market share” means a manufacturer’s percentage of the registered**
45 **covered electronic devices described in subsection (4)(a)(C) of this section that are sold in**

1 **this state during a specified time period.**

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

3 459A.315. (1) Before January 1 of each year, a manufacturer of covered electronic devices sold
4 or offered for sale in this state shall register with the Department of Environmental Quality, for a
5 period to cover the upcoming calendar year, on a form provided by the department. The registration
6 shall include:

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

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

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

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

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

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

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

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

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

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

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

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

29 (3)(a) If a manufacturer **that** ceases to manufacture, sell or import a covered electronic [*devices*
30 *and covered electronic devices manufactured, sold or imported by the manufacturer are collected for*
31 *recycling under a manufacturer program or the state contractor program*] **device does not register**
32 **that device and the department determines the device was sold in this state during the pre-**
33 **vious calendar year**, the manufacturer shall register with the department and pay a registration
34 fee of \$250.

35 (b) Any manufacturer described in paragraph (a) of this subsection to which the department
36 provides notification of a return share and return share by weight **and a nontelevision market**
37 **share or a television market share** and that has not previously filed a registration shall, within
38 30 days of receiving the notification, file a registration with the department and pay to the depart-
39 ment a registration fee of \$250.

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

41 459A.320. (1) A manufacturer choosing to implement a manufacturer program shall submit a plan
42 to the Department of Environmental Quality at the time of payment of the annual registration fee
43 required under ORS 459A.315.

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

45 (a) Finance, manage and conduct a statewide program to collect covered electronic devices from

1 covered entities in this state.

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

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

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

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

12 (a) Meet or exceed the requirements for collection sites described in subsection (2) of this sec-
13 tion.

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

17 (c) Implement the plan required under this section.

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

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

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

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

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

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

37 (4) A group of manufacturers may choose to implement a manufacturer program as one entity,
38 if in doing so the manufacturers meet the sum of their individual return shares by weight under ORS
39 459A.340 (3) and that sum is at least five percent.

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

44 (6) A manufacturer participating in the state contractor program under ORS 459A.340 shall no-
45 tify the department at the time of its registration each year.

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

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

4 459A.340. The Department of Environmental Quality shall:

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

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

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

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

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

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

19 *[(b) For each manufacturer except those specified in paragraph (c) of this subsection, determine the
 20 return share and return share by weight for calendar years through 2011 based on the best available
 21 public return share data and public weight data from within the United States for covered electronic
 22 devices from covered entities. For subsequent years, the return share of covered electronic devices for
 23 each manufacturer shall be based on the most recent annual sampling or count of covered electronic
 24 devices. For subsequent years, the total weight in pounds of covered electronic devices shall be based
 25 on the total weight of covered electronic devices, including orphan devices and computer peripherals,
 26 as determined by the department.]*

27 *[(c) For each manufacturer whose manufacture of covered electronic devices as defined in ORS
 28 459A.305 (4)(a)(C) exceeds its manufacture of covered electronic devices as defined in ORS 459A.305
 29 (4)(a)(A) and (B), determine the return share and return share by weight based on the total return
 30 share and return share by weight determined under paragraph (a) of this subsection for all manufac-
 31 turers described in this paragraph, allocated according to each manufacturer's percentage of the total
 32 number of covered electronic devices described in ORS 459A.305 (4)(a)(C) sold in this state the previous
 33 calendar year. The department:]*

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

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

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

45 **(A) The total weight in pounds of covered electronic devices, including orphan devices**

1 and computer peripherals, to be collected; and

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

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

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

12 (B) A manufacturer’s nontelevision market share shall be determined by dividing the
 13 total weight in pounds of nontelevision devices sold under brands manufactured, sold or im-
 14 ported by the manufacturer in this state during the previous calendar year by the total
 15 weight in pounds of nontelevision devices sold under all brands manufactured, sold or im-
 16 ported by all manufacturers in this state during the previous calendar year.

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

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

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

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

34 (C) A manufacturer’s return share by weight for nontelevision devices shall be equal to
 35 the product of the manufacturer’s nontelevision market share as determined under para-
 36 graph (b)(B) of this subsection multiplied by the total weight of nontelevision devices to be
 37 collected as determined under paragraph (a)(B) of this subsection.

38 (D) A manufacturer’s return share shall be equal to the quotient of the manufacturer’s
 39 return share by weight divided by the sum total of the return shares by weight for all man-
 40 ufacturers.

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

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

45 (a) To the extent practicable, use existing local collection, transportation and recycling

1 infrastructure[;].

2 (b) Utilize environmentally sound management practices to collect, transport and recycle cov-
 3 ered electronic devices[;].

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

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

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

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

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

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

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

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

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

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

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

39