# A-Engrossed
# House Bill 3220

Ordered by the House March 17
Including House Amendments dated March 17

Sponsored by Representative MARSH; Representative WALLAN

## 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.

Modifies provisions of electronics recycling program. Expands definition of covered electronic device. Establishes criteria for electronics producer responsibility programs. Repeals requirement that Department of Environmental Quality establish state contractor program. Repeals requirement that department make certain calculations used in administration of program.

Directs Environmental Quality Commission to establish fee calculated to cover costs to department of carrying out program.

Establishes that changes to program become operative on [*July 1, 2025*] **January 1, 2026**. Provides transition provisions.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to electronics recycling; creating new provisions; amending ORS 459.247, 459A.305, 459A.310, 459A.315, 459A.320, 459A.330, 459A.335, 459A.340, 459A.355 and 459A.360; repealing ORS 459A.322 and 459A.325; and prescribing an effective date.

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

## ELECTRONICS PRODUCER RESPONSIBILITY
## (Changes to Oregon E-Cycles Program)

**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*] **an electronics producer responsibility 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.*]

**(3) "Coordinating body" means an entity designated by multiple electronics producer responsibility organizations, or the Department of Environmental Quality, to coordinate activities between the electronics producer responsibility organizations to meet the requirements of ORS 459A.305 to 459A.355.**

**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.

(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;

(D) A [*computer*] peripheral; [*or*]

(E) A printer[.]**;**

**(F) A facsimile machine;**

**(G) A videocassette recorder;**

**(H) A portable digital music player that has memory capability and is battery powered;**

**(I) A digital video disc player;**

**(J) A digital video disc recorder;**

**(K) A video game console;**

**(L) A digital converter box;**

**(M) A cable receiver;**

**(N) A satellite receiver;**

**(O) A scanner;**

**(P) A small-scale server;**

**(Q) A router; or**

**(R) A modem.**

(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*] **nonprofit** organization [*exempt from taxation under section 501(c)(3) of the Internal Revenue 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) "Electronics producer responsibility organization" means an organization that represents at least five percent of all manufacturer obligations, designated by a manufacturer or group of manufacturers to act as an agent of the manufacturer or group of manufacturers for the purpose of developing and implementing an electronics producer responsibility program on behalf of the manufacturer or group of manufacturers, as required by ORS 459A.305 to 459A.355.**

**(7) "Electronics producer responsibility program" means a statewide program for collecting, transporting and recycling covered electronic devices that is implemented by an electronics producer responsibility organization pursuant to a plan approved by the department under section 6 of this 2023 Act.**

[*(6)*] **(8)** "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)*] **(9)(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 licenser.

(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.*]

**(10) "Manufacturer obligation" means a manufacturer's percentage of the total obligation of all manufacturers of covered electronic devices, as calculated under section 7 of this 2023 Act.**

**(11) "Market share" means a manufacturer's percentage of all registered covered electronic devices by weight sold within a product category during a specified time period.**

**(12) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.**

[*(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.*]

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

**(13) "Peripheral" means:**

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

**(b) Cords used with a keyboard, mouse or other device described in paragraph (a) of this subsection; or**

**(c) Other devices or equipment sold for use with a covered electronic device, as further defined by the commission by rule.**

[*(12)*] **(14)** "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.

[*(13)*] **(15)** "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.

[*(14)*] **(16)** "Premium service" means services such as at-location system upgrade services and at-home pickup services, including curbside pickup service.

[*(15)(a)*] **(17)(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.

**(18) "Product category" means a grouping of covered electronic devices, as further described by the commission by rule, for purposes of sorting covered electronic devices at collection and calculating market share.**

[*(16)(a)*] **(19)(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.

[*(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.*]

[*(18)*] **(20)** "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.

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

[*(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.*]

[*(21)(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.

[*(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)*] **(22)** "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.310 is amended to read:

459A.310. (1) ORS 459A.305 to 459A.355 apply to all manufacturers engaging in the activities set forth in ORS 459A.305 [*(7)*] **(9)** before, on or after June 7, 2007.

(2) ORS 459A.305 to 459A.355 do not apply to reused or refurbished covered electronic devices.

(3) A manufacturer may not sell or offer for sale any covered electronic device, except for [*computer*] peripherals, in or for delivery in this state unless:

**(a) Except as provided in subsection (4) of this section, the manufacturer participates in an electronics producer responsibility program that complies with the requirements of ORS 459A.305 to 459A.355;**

[*(a)*] **(b)** The covered electronic device is labeled with a brand and the label is permanently affixed and readily visible; and

[*(b)*] **(c)** The brand is included in [*the*] **a** plan that is [*filed with*] **approved by** the Department of Environmental Quality pursuant to [*ORS 459A.320*] **section 6 of this 2023 Act**.

**(4) A manufacturer is not required to participate in an electronics producer responsibility program for a given year if the manufacturer provides proof to the department's satisfaction that the manufacturer sold fewer than 50 covered electronic devices in this state during the previous year.**

**(5) The failure of an electronics producer responsibility organization to satisfy any of the responsibilities delegated to it by a manufacturer for developing and implementing an electronics producer responsibility program does not relieve the manufacturer of the manufacturer's responsibility to satisfy the requirements of ORS 459A.305 to 459A.355.**

**SECTION 3.** 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)*] **(1)** A list of all the brands **of covered electronic devices, not including peripherals,** manufactured, sold or imported by the manufacturer, including:

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

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

[*(b)*] **(2)** [*A statement of whether the manufacturer will be implementing a manufacturer program*

*or utilizing the state contractor program for recycling covered electronic devices.*] **The name of the manufacturer's designated electronics producer responsibility organization.**

[*(c)*] **(3)** 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) 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 4.** 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.*]

**(1) In the form and manner prescribed by the Department of Environmental Quality, an electronics producer responsibility organization must annually submit to the department a plan for implementing an electronics producer responsibility program.**

(2) The [*manufacturer's*] **electronics producer responsibility organization's** plan must describe how the [*manufacturer*] **electronics producer responsibility organization will implement an electronics producer responsibility program that complies with ORS 459A.305 to 459A.355, including how the electronics producer responsibility organization** 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**, as described in section 9 of this 2023 Act**.

(d)**(A)** [*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.*] **Provide convenient and equitable service throughout the state, including to rural areas and minority, lower-income and other historically underserved populations.**

**(B) At a minimum, convenient service must include a network of collection sites distributed to ensure that 95 percent of the residents of this state are within 15 miles of a collection site, and must also include:**

**(i) At least one collection site in each county;**

**(ii) In each city with a population of at least 10,000 but less than 200,000, at least one collection site, plus one additional collection site for every additional 20,000 residents of the city over 10,000; and**

**(iii) In each city with a population of 200,000 or greater, at least 10 collection sites, plus one additional collection site for every additional 50,000 residents of the city over 200,000.**

**(C)** 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*] **An electronics producer responsibility organization** may provide collection service jointly with another [*program*] **electronics producer responsibility organization**.

**(D) The department may waive the requirements of subparagraphs (B) and (C) of this paragraph with respect to a county or city if the proposed plan demonstrates to the department's satisfaction that alternative services or collection sites would provide substantially equivalent collection convenience.**

**(e) Ensure continuous improvement of the electronics producer responsibility program by:**

**(A) Establishing and working to achieve measurable program goals for:**

**(i) Collection, such as amount collected or usage rates of collection services; and**

**(ii) Maintaining high public awareness of the program.**

**(B) Evaluating every four years whether additional electronic devices should be included in, or existing devices be removed from, the program.**

**(C) For any year for which a program goal was not met, describing, with supporting data, what changes or steps the program will undertake that can ensure the program achieves its goals in the upcoming year.**

**(f) Coordinate with all other electronics producer responsibility organizations through a coordinating body in accordance with section 7 of this 2023 Act, if applicable.**

**(g) Coordinate activities with recycling and reuse programs, including nonprofit organizations that refurbish technology, to further the environmentally sound management of recycling of electronics.**

**(3) In addition to the information required under subsection (2) of this section, an electronics producer responsibility program plan must include:**

**(a) A list of all processors that will be used by the electronics producer responsibility program;**

**(b) The contact information for the electronics producer responsibility organization;**

**(c) A list of all manufacturers participating in the electronics producer responsibility program; and**

**(d) A list of all brands of covered electronic devices manufactured, sold or imported by each participating manufacturer, including:**

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

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

[*(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.*]

**(4) An electronics producer responsibility organization must:**

[*(b)*] **(a)** Provide for collection, transportation and recycling of covered electronic devices for covered entities free of charge, except that [*a manufacturer*] **an electronics producer responsibility program** that provides premium service for a covered entity may charge for the additional cost of that premium service.

[*(c)*] **(b)** Implement the plan required under this section.

**(c) Provide fair financial compensation to collection sites calculated to cover the costs of collecting, storing, managing and transporting covered electronic devices.**

**(d) Enter into agreements with all willing transfer stations, landfills and material recovery facilities, that are covered under a solid waste disposal permit issued by the department, to collect covered electronic devices in accordance with all applicable laws and the approved electronics producer responsibility program plan.**

[*(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 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 each year, the manufacturer shall provide a report*] **In the form and manner prescribed by the department, provide an annual report** to the department that:

(A) Includes the total weight of covered electronic devices, including [*orphan devices and computer*] peripherals, collected from covered entities in this state by the [*manufacturer*] **electronics producer responsibility program** during the previous [*calendar*] year;

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

[*(C) Details how the plan required under this section was implemented during the previous calendar year.*]

**(C) Includes a list of all collection sites and processors used by the electronics producer responsibility program;**

**(D) Includes the total amount, by weight, of each type of covered electronic device collected at each collection site, or if approved by the department, a grouping of collection sites, presented in a manner that assists the department in determining the rate of use of each collection site;**

**(E) Includes the results of any approved alternative methods of service in adequately meeting the needs of the applicable jurisdiction, including the date of each alternative service event and the total weight of each type of covered electronic device, including peripherals, collected at each alternative service event;**

**(F) Details how the plan required under this section was implemented during the previous year, including:**

**(i) A description of how the electronics producer responsibility organization complied with subsection (2)(e) of this section that includes whether goals have been met, a summary of public awareness activities and copies of public awareness materials developed by the electronics producer responsibility organization; and**

**(ii) A summary of any safety or security problems that occurred during the collection, transportation or disposal of covered electronic devices and the actual or potential future resolutions of those problems; and**

**(G) Includes an attestation that all covered electronic devices collected under the electronics producer responsibility program were collected and disposed of in compliance with all applicable laws, rules and regulations and in accordance with environmentally sound management standards.**

**(f) Retain all records related to the implementation and administration of the electronics producer responsibility program for not less than three years from the time the record was created and make the records available for inspection and audit by the department upon request.**

**(g) Provide, upon the request of the department, the contact information and a point of contact for each manufacturer participating in the electronics producer responsibility program.**

**(h)(A) Allow a collection site to recover collected covered electronic devices for refurbishment and resale at retail.**

**(B) An electronics producer responsibility organization may require a collection site to exclude the weight of covered electronic devices recovered for refurbishment or resale from the weight of covered electronic devices collected by the collection site for the purposes of annual reporting and determining compensation for the collection and management of covered electronic devices unless:**

**(i) The collection site is a nonprofit organization that refurbishes technologies for resale and recovers the collected covered electronic device for resale at retail, which may include online retail; or**

**(ii) The collection site recovers the collected covered electronic device for donation to an organization that refurbishes technologies for resale at retail, which may include online retail.**

**(i)(A) Prior to removing a collection site from an electronics producer responsibility program, work with other electronics producer responsibility organizations or the coordinating body, if applicable, to determine if the collection site can be added to another electronics producer responsibility program.**

**(B) If the collection site will not be added to another electronics producer responsibility program, the electronics producer responsibility organization must, 90 days prior to removing the collection site from the electronics producer responsibility program:**

**(i) Provide notice to covered entities by posting notice of the removal on the program website; and**

**(ii) Provide written notice to the department and all other collection sites in the same wasteshed.**

**(C) The department may require the electronics producer responsibility organization to**

**retain a collection site if the electronics producer responsibility organization does not provide notice as required under subparagraph (B) of this paragraph, unless the electronics producer responsibility organization demonstrates good cause for being unable to provide notice.**

**(5) The department shall review reports submitted under subsection (4)(e) of this section, and approve those reports that the department determines satisfy the requirements of subsection (4)(e) of this section. If the department does not approve a report, the department shall provide the electronics producer responsibility organization with written notice of revisions necessary for approval and the timeline for resubmittal.**

**(6) Rules adopted by the Environmental Quality Commission to implement this section may include standards for environmentally sound management practices and standards for participating collection sites.**

[*(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 5. Sections 6 to 10 of this 2023 Act are added to and made a part of ORS 459A.310 to 459A.335.**

**SECTION 6. (1) The Department of Environmental Quality shall approve an electronics producer responsibility program plan as provided in this section if the department determines that the plan satisfies the requirements of ORS 459A.320.**

**(2) Not later than 60 days after receiving a plan under ORS 359A.320, the department shall either approve, approve with conditions or reject the plan. If the department rejects the plan, the department shall provide the reason or reasons for the rejection. An electronics producer responsibility organization must submit a revised plan to the department no later than 45 days after the date of the rejection.**

**(3) No later than 45 days after receiving a revised plan under subsection (2) of this section, the department shall either approve, approve with conditions or reject the revised plan.**

**(4) If the department rejects a revised plan, the department may:**

**(a) Require the electronics producer responsibility organization to further revise the plan in accordance with a timeline set forth by the department;**

**(b) Direct changes to the revised plan; or**

**(c) Direct the manufacturer or manufacturers on whose behalf the revised plan was submitted to register with an electronics producer responsibility organization with an approved plan.**

**(5) If the department directs changes to a revised plan under subsection (4) of this section, the electronics producer responsibility organization must implement the changes or request a hearing under ORS chapter 183.**

**SECTION 7. (1) If the Department of Environmental Quality approves more than one electronics producer responsibility program plan to be implemented:**

**(a) The department shall set a timeline for all electronics producer responsibility organizations to designate a coordinating body. If all electronics producer responsibility organizations are unable to designate a coordinating body in accordance with the timeline set by the department, the department may either designate a coordinating body or extend the timeline for all electronics producer responsibility organizations to designate a coordinating body.**

**(b) The department may require changes to an approved plan to ensure that all approved plans provide for a consistent means of enabling coordination between electronics producer responsibility organizations.**

**(2) The coordinating body, or an electronics producer responsibility organization if a coordinating body is not designated under this section, shall annually calculate each manufacturer's manufacturer obligation by:**

**(a) Multiplying the manufacturer's market share for each product category by the product category's percentage of the total weight of all covered electronic devices recycled during the previous year; and**

**(b) Adding the percentages calculated under paragraph (a) of this subsection.**

**(3) The coordinating body must:**

**(a) Annually reconcile the financial obligations between all electronics producer responsibility organizations based on the manufacturer obligations of the manufacturers participating in each electronics producer responsibility program; and**

**(b) Conduct any other coordination between electronics producer responsibility organizations required by ORS 459A.305 to 459A.355 or as directed by the department.**

**(4)(a) Each electronics producer responsibility organization must work with the coordinating body and with all other electronics producer responsibility organizations to ensure the reconciliation of financial obligations for the electronics producer responsibility programs in accordance with the manufacturer obligations calculated by the coordinating body under this section and to ensure that all coordination required under ORS 459A.305 to 459A.355 is conducted.**

**(b) An electronics producer responsibility organization or a coordinating body may, after notice to the manufacturer, refer to the department any potential violations of the requirements of ORS 459A.305 to 459A.355 by the manufacturer.**

**SECTION 8. (1) The Environmental Quality Commission shall establish by rule an annual fee, which must be reasonably calculated to cover the costs to the Department of Environmental Quality of implementing, administering and enforcing ORS 459A.305 to 459A.355.**

**(2) The commission shall establish by rule a one-time plan review fee reasonably calculated to cover the costs to the department of reviewing the initial electronics producer responsibility program plan submitted to the department for approval under section 6 of this 2023 Act by each electronics producer responsibility organization. The department may not approve an initial plan under section 6 of this 2023 Act if the electronics producer responsibility organization has not paid the fee required by this subsection.**

**SECTION 9. (1) An electronics producer responsibility organization, or the coordinating body if one is designated under section 7 of this 2023 Act, shall consult with the department to develop educational resources and public awareness activities to advertise and promote, on a regular basis, recycling of covered electronic devices and collection opportunities**

**statewide. At a minimum, an electronics producer responsibility organization must:**

**(a) Promote recycling of covered electronic devices through the electronics producer responsibility program;**

**(b) Establish a toll-free telephone number and a website address that a covered entity may use to contact the electronics producer responsibility organization about the electronics producer responsibility program;**

**(c) Publicize information on the location of collection sites and all other collections services offered by the electronics producer responsibility program; and**

**(d) Engage with and work to sustain high awareness of the program in minority, lower-income, rural and other historically underserved communities.**

**(2) If the Department of Environmental Quality approves more than one electronics producer responsibility program plan, each electronics producer responsibility organization must, in conjunction with the coordinating body designated under section 7 of this 2023 Act and in consultation with the department, coordinate with all other electronics producer responsibility organizations to implement ongoing public awareness activities to ensure that covered entities can easily identify, understand and access the services provided by all electronics producer responsibility programs that are operational in this state. The public awareness activities must:**

**(a) Utilize a statewide system of promotion that allows covered entities to easily understand that all electronics producer responsibility organizations are providing services under ORS 459A.305 to ORS 459A.355; and**

**(b) Satisfy the requirements of subsection (1) of this section, including providing a single website and toll-free telephone number listing the collection services of all electronics producer responsibility programs.**

**<u>SECTION 10.</u> (1) The Department of Environmental Quality may require a manufacturer or an electronics producer responsibility organization to submit information to the department to evaluate compliance with ORS 459A.305 to 459A.355. A manufacturer or electronics producer responsibility organization must submit any data or information required by the department under this subsection in the format requested by the department.**

**(2) Trade secrets, as defined in ORS 646.461, and information protected by trademark or patent that the department receives from an electronics producer responsibility organization or manufacturer pursuant to ORS 459A.305 to 459A.355 are confidential and not subject to public disclosure under ORS 192.311 to 192.478, except that the department may disclose summarized information or aggregated data if the information or data does not directly or indirectly identify the information of a specific electronics producer responsibility organization or manufacturer. For purposes of this subsection, compilations of publicly available information, which may have economic value, are not considered to be confidential information.**

**<u>SECTION 11.</u> Section 12 of this 2023 Act is added to and made a part of ORS 459A.305 to 459A.355.**

**<u>SECTION 12.</u> The Legislative Assembly declares that electronics producer responsibility organizations providing covered entities with program services for covered electronic devices, including the use of environmentally sound management practices to collect, transport and recycle covered electronic devices, is in the best interests of the public. Therefore, the Legislative Assembly declares its intent that participation in electronics producer responsi-**

**bility programs as required by ORS 459A.305 to 459A.355 shall be exempt from state antitrust laws. The Legislative Assembly further declares its intent to provide immunity for participating in electronics producer responsibility programs as required by ORS 459A.305 to 459A.355 from federal antitrust laws. This section does not authorize any person to engage in activities or to conspire to engage in activities that constitute per se violations of state or federal antitrust laws that are not authorized under ORS 459A.305 to 459A.355.**

**SECTION 13.** ORS 459A.335 is amended to read:

459A.335. (1) A retailer may not sell or offer for sale any covered electronic device, except for [*computer*] peripherals, in or for delivery into this state unless:

(a) The covered electronic device is labeled with a brand and the label is permanently affixed and readily visible;

(b) The brand is included on the list [*posted*] **made publicly available** by the Department of Environmental Quality pursuant to ORS 459A.340 (1); and

(c) The list [*posted*] **made publicly available** by the department pursuant to ORS 459A.340 (1) specifies that the manufacturer is in compliance with the requirements of ORS 459A.305 to 459A.355.

(2) A retailer shall provide to a consumer at the time of the sale of a covered electronic device information from the department's website that provides details about where and how a consumer can recycle covered electronic devices in Oregon. The information shall be provided in printed form for in-store sales and in printable form for Internet sales and other sales where the Internet is involved.

**SECTION 14.** ORS 459A.340 is amended to read:

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

(1) Maintain and make **publicly** 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[.]**;**

**(d) Electronics producer responsibility program plans submitted to the department under ORS 459A.320;**

**(e) Revised plans submitted to the department under section 6 of this 2023 Act; and**

**(f) Reports submitted to the department under ORS 459A.320.**

**(2)(a) For each program year, determine each manufacturer's market share for each product category by dividing the total weight in pounds of covered electronic devices in a product category 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 covered electronic devices in the product category sold in this state under all brands manufactured, sold or imported by all registered manufacturers during the previous calendar year.**

**(b) 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 subsection. 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 paragraph in the format requested by the department.**

**(3) For each calendar year, provide each manufacturer's market share to the manufacturer's electronics producer responsibility organization or to the coordinating body, if a coordinating body has been designated under section 7 of this 2023 Act.**

[*(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) 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.*]

[*(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. 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) The total weight of covered electronic devices, including orphan devices and computer peripherals, collected from covered entities in this state by the state contractor program; and*]

[*(B) The total weight of each type of covered electronic device, including orphan devices and computer peripherals, collected from covered entities in 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). 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)*] **(4)** 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.*]

**SECTION 15. ORS 459A.322 and 459A.325 are repealed.**

**(Conforming Amendments)**

**SECTION 16.** ORS 459.247 is amended to read:

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

(a) Discarded or abandoned vehicles;

(b) Discarded large home or industrial appliances;

(c) Used oil;

(d) Tires;

(e) Lead-acid batteries; or

(f) Covered electronic devices.

(2) As used in this section:

(a) "Covered electronic device" [*has the meaning given that term in ORS 459A.305, except that "covered electronic device" does not include a computer peripheral or a printer as those items are defined in ORS 459A.305; and*] **means:**

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

**(B) A desktop computer or a portable computer as defined in ORS 459A.305; or**

**(C) A television as defined in ORS 459A.305.**

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

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

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

(5)(a) Each disposal site operator shall establish and implement, in accordance with any permit requirements established by the Department of Environmental Quality, a program reasonably designed to prevent acceptance of covered electronic devices for disposal. If an operator operates the disposal site in conformity with the program, the operator is presumed to have complied with the provisions of this section that prohibit knowingly accepting covered electronic devices for disposal.

(b) This section does not prevent the disposal site operator from accepting and storing, for purposes of recycling, reusing or refurbishing, covered electronic devices.

**SECTION 17.** ORS 459A.330 is amended to read:

459A.330. (1) Except as authorized in subsection (2) of this section, [*a manufacturer program, the state contractor program*] **an electronics producer responsibility program** or a collector participating in [*a manufacturer program or the state contractor program*] **an electronics producer responsibility program** may not charge a fee to covered entities for the collection, transportation or recycling of covered electronic devices.

(2) A collector that provides a premium service to a covered entity may charge for the additional cost of providing the premium service.

**SECTION 18.** ORS 459A.355 is amended to read:

459A.355. The Covered Electronic Devices Account is established separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. Moneys in the account are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of **administering,** implementing **and enforcing** ORS 459A.305 to 459A.355 and enforcing the prohibition in ORS 459.247 relating to disposal of covered electronic devices.

**SECTION 19.** ORS 459A.360 is amended to read:

459A.360. (1) The Department of Environmental Quality shall evaluate any federal law that establishes a national program for the collection and recycling of electronic devices.

(2) If the department determines that the federal law substantially meets or exceeds the requirements and intent of ORS 459A.305 to 459A.355, the department shall include information on the federal law in [*the next biennial report to the Legislative Assembly pursuant to ORS 459A.340.*] **a report to the Legislative Assembly in the manner provided by ORS 192.245.**

## TRANSITIONAL PROVISIONS

**SECTION 20. (1) Sections 6 to 10 and 12 of this 2023 Act, the amendments to ORS 459.247, 459A.305, 459A.310, 459A.315, 459A.320, 459A.330, 459A.335, 459A.340, 459A.355 and 459A.360 by sections 1 to 4, 13, 14 and 16 to 19 of this 2023 Act and the repeal of ORS 459A.322 and 459A.325 by section 15 of this 2023 Act become operative on January 1, 2026.**

**(2) The Department of Environmental Quality and the Environmental Quality Commission may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and the commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department and the commission by sections 6 to 10 and 12 of this 2023 Act, the amendments to ORS 459.247, 459A.305, 459A.310, 459A.315, 459A.320, 459A.330, 459A.335, 459A.340, 459A.355 and 459A.360 by sections 1 to 4, 13, 14 and 16 to 19 of this 2023 Act and the repeal of ORS 459A.322 and 459A.325 by section 15 of this 2023 Act.**

**SECTION 21. (1) Notwithstanding the operative date specified in section 20 of this 2023 Act, sections 6 to 10 and 12 of this 2023 Act and the amendments to ORS 459A.305 and 459A.320 by sections 1 and 4 of this 2023 Act apply to electronics producer responsibility program plans submitted to the Department of Environmental Quality pursuant to subsection (2) of this section.**

**(2) An electronics producer responsibility organization that plans to implement an electronics producer responsibility program beginning January 1, 2026, must submit an electronics producer responsibility program plan to the department no later than July 1, 2025.**

**SECTION 22. (1) Notwithstanding ORS 459A.340 (3), for the period beginning January 1, 2025, and ending December 31, 2025, the total weight of covered electronic devices to be collected shall be equal to the total weight of covered electronic devices to be collected for the 2024 calendar year determined by the Department of Environmental Quality under ORS 459A.340 (3).**

**(2) Notwithstanding ORS 459A.320 and 459A.322, the amendments to ORS 459A.320 by section 4 of this 2033 Act or the repeal of ORS 459A.322 by section 15 of this 2023 Act, a manufacturer program with a plan approved by the Department of Environmental Quality for the 2025 calendar year shall enter into an agreement with the state contractor program to settle, by December 31, 2026, all recycling credits.**

**SECTION 23. (1) Notwithstanding the amendments to ORS 459A.320 by section 4 of this 2023 Act:**

**(a) No later than March 1, 2026, a manufacturer that implements a manufacturer program for January 1, 2025, to December 31, 2025, shall provide a report to the Department of Environmental Quality that:**

**(A) Includes the total weight of covered electronic devices, including orphan devices and**

**computer peripherals, collected from covered entities in this state by the manufacturer from January 1, 2025, to December 31, 2025;**

**(B) Includes the total weight of each type of covered electronic device, including orphan devices and computer peripherals, collected from covered entities in this state by the manufacturer from January 1, 2025, to December 31, 2025; and**

**(C) Details how the manufacturer plan was implemented from January 1, 2025, to December 1, 2025.**

**(b) By July 1, 2026, a manufacturer that does not meet its return share by weight for the period beginning January 1, 2025, and ending December 31, 2025, 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.**

**(2) Notwithstanding the amendments to ORS 459A.340 by section 14 of this 2023 Act, no later than March 1, 2026, the state contractor program shall provide a report to the department that:**

**(a) Includes the total weight of covered electronic devices, including orphan devices and computer peripherals, collected from covered entities in this state by the state contractor program from January 1, 2025, to December 31, 2025; and**

**(b) Includes the total weight of each type of covered electronic device, including orphan devices and computer peripherals, collected from covered entities in this state by the state contractor program from January 1, 2025, to December 31, 2025.**

## CAPTIONS

**SECTION 24. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.**

## EFFECTIVE DATE

**SECTION 25. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.**