

DRAFT

SUMMARY

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,
3 459A.315, 459A.320 and 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 cov-
8 ered electronic device, rather than any of its components, and attribute the
9 device to the owner of the brand as the manufacturer.

10 (2) “Collector” means an entity that collects covered electronic devices
11 as part of a manufacturer 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
14 as a wireless or corded device that provides input into, or output from, a
15 computer; or

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

18 (4)(a) “Covered electronic device” means:

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

21 (B) A desktop computer or portable computer;

22 (C) A television [*of any type having a viewable area greater than four*

1 *inches measured diagonally*];

2 (D) A computer peripheral; or

3 (E) A printer.

4 (b) “Covered electronic device” does not include:

5 (A) Any part of a motor vehicle;

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

9 (C) Telephones or personal digital assistants of any type unless the tele-
10 phone or personal digital assistant contains a viewable area greater than
11 four inches measured diagonally; or

12 (D) Any part of a clothes washer, clothes dryer, refrigerator, freezer,
13 microwave oven, conventional oven or range, dishwasher, room air condi-
14 tioner, dehumidifier or air purifier.

15 (5) “Covered entity” means any Oregon household, a business that em-
16 ploys 10 or fewer individuals, a not-for-profit organization exempt from tax-
17 ation under section 501(c)(3) of the Internal Revenue Code that employs 10
18 or fewer individuals, or any person giving seven or fewer covered electronic
19 devices to a collector at any one time.

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

27 (7)(a) “Manufacturer” means any person, irrespective of the selling tech-
28 nique used, including by means of remote sale:

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

31 (B) That sells covered electronic devices manufactured by others under a

1 brand that the seller owns;

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

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

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

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

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

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

16 (8) "Manufacturer program" means a statewide plan for collecting, trans-
17 porting and recycling covered electronic devices that is provided by a single
18 manufacturer or group of manufacturers pursuant to ORS 459A.320.

19 **(9) "Nontelelevision device" means a device described in subsection**
20 **(4)(a)(A), (B), (D) or (E) of this section.**

21 **(10) "Nontelelevision market share" means a manufacturer's per-**
22 **centage of all registered covered electronic devices except those de-**
23 **scribed in subsection (4)(a)(C) of this section that are sold in this state**
24 **during a specified time period.**

25 [(9)] **(11) "Orphan device" means a covered electronic device for which**
26 **no manufacturer can be identified.**

27 [(10)] **(12) "Person" means the United States, the state or a public or**
28 **private corporation, local government unit, public agency, individual, part-**
29 **nership, association, firm, trust, estate or other legal entity.**

30 [(11)] **(13) "Portable computer" means any of the following that has a**
31 **viewable area greater than four inches measured diagonally and that can be**

1 carried as one unit by an individual:

- 2 (a) A laptop computer;
- 3 (b) A notebook computer; or
- 4 (c) A notepad computer.

5 [(12)] (14) “Premium service” means services such as at-location system
6 upgrade services and at-home pickup services, including curbside pickup
7 service.

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

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

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

14 (C) Uses print technology such as laser, electrographic, ink jet, dot ma-
15 trix, thermal or digital sublimation.

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

17 (A) Is floor-standing;

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

19 (C) Is also a calculator;

20 (D) Can also make labels; or

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

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

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

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

30 (b) “Recycling” does not include:

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

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

3 [(15)] (17) “Recycling credit” means a credit granted to a manufacturer
4 program or a state contractor program for the collection, transport and re-
5 cycling of covered electronic devices in an amount that exceeds the
6 program’s return share by weight for a calendar year.

7 [(16)] (18) “Retailer” means a person that offers new covered electronic
8 devices for sale at retail through any means, including but not limited to
9 remote offerings such as sales outlets, catalogs or the Internet.

10 [(17)] (19) “Return share” means the minimum percentage of covered
11 electronic devices that an individual manufacturer is responsible for col-
12 lecting, transporting and recycling.

13 [(18)] (20) “Return share by weight” means the minimum total weight of
14 covered electronic devices that an individual manufacturer is responsible for
15 collecting, transporting and recycling.

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

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

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

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

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

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

31 459A.315. (1) Before January 1 of each year, a manufacturer of covered

1 electronic devices sold or offered for sale in this state shall register with the
2 Department of Environmental Quality, for a period to cover the upcoming
3 calendar year, on a form provided by the department. The registration shall
4 include:

5 (a) A list of all the brands manufactured, sold or imported by the man-
6 ufacturer, including:

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

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

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

14 (c) Any other information required by the department to implement ORS
15 459A.305 to 459A.355.

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

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

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

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

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

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

1 calendar year.

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

7 (3)(a) If a manufacturer **that** ceases to manufacture, sell or import a
8 covered electronic [*devices and covered electronic devices manufactured, sold*
9 *or imported by the manufacturer are collected for recycling under a manufac-*
10 *turer program or the state contractor program*] **device does not register that**
11 **device and the department determines the device was sold in this state**
12 **during the previous calendar year**, the manufacturer shall register with
13 the department and pay a registration fee of \$250.

14 (b) Any manufacturer described in paragraph (a) of this subsection to
15 which the department provides notification of a return share and return
16 share by weight **and a nontelevision market share or a television mar-**
17 **ket share** and that has not previously filed a registration shall, within 30
18 days of receiving the notification, file a registration with the department and
19 pay to the department a registration fee of \$250.

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

21 459A.320. (1) A manufacturer choosing to implement a manufacturer pro-
22 gram shall submit a plan to the Department of Environmental Quality at the
23 time of payment of the annual registration fee required under ORS 459A.315.

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

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

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

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

31 (d) Include convenient service in every county in this state and at least

1 one collection site for any city with a population of at least 10,000. A col-
2 lection site for a county may be the same as a collection site for a city in
3 the county. Collection sites shall be staffed and open to the public at a fre-
4 quency adequate to meet the needs of the area being served. A program may
5 provide collection service jointly with another program.

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

7 (a) Meet or exceed the requirements for collection sites described in sub-
8 section (2) of this section.

9 (b) Provide for collection, transportation and recycling of covered elec-
10 tronic devices for covered entities free of charge, except that a manufacturer
11 that provides premium service for a covered entity may charge for the addi-
12 tional cost of that premium service.

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

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

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

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

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

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

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

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

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

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

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

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

24 459A.340. The Department of Environmental Quality shall:

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

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

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

29 (c) A list that identifies which manufacturers are in compliance with ORS
30 459A.305 to 459A.355.

31 (2) Review and approve manufacturer plans that comply with ORS

1 459A.320 and are submitted annually by manufacturers choosing to imple-
2 ment a manufacturer program for recycling covered electronic devices.

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

11 *[(b) For each manufacturer except those specified in paragraph (c) of this*
12 *subsection, determine the return share and return share by weight for calendar*
13 *years through 2011 based on the best available public return share data and*
14 *public weight data from within the United States for covered electronic devices*
15 *from covered entities. For subsequent years, the return share of covered elec-*
16 *tronic devices for each manufacturer shall be based on the most recent annual*
17 *sampling or count of covered electronic devices. For subsequent years, the total*
18 *weight in pounds of covered electronic devices shall be based on the total*
19 *weight of covered electronic devices, including orphan devices and computer*
20 *peripherals, as determined by the department.]*

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

30 *[(A) May use national market data, retail and manufacturer data, consumer*
31 *research and other data to determine the percentages described in this para-*

1 *graph. The department may also require that manufacturers submit sales or*
2 *other data regarding the number of the manufacturer's covered electronic de-*
3 *vices sold in Oregon. Manufacturers must submit any data required by the*
4 *department in the format requested by the department.]*

5 *[(B) May assess a surcharge to the annual registration fee for manufactur-*
6 *ers described in this paragraph if the department determines that the sur-*
7 *charge is necessary to cover any additional costs to the department in making*
8 *the determinations described in this paragraph. The department must allocate*
9 *any assessed surcharge to the manufacturer as a percentage of the*
10 *manufacturer's return share determined pursuant to this paragraph.]*

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

12 **(A) The total weight in pounds of covered electronic devices, in-**
13 **cluding orphan devices and computer peripherals, to be collected; and**

14 **(B) Of the total weight determined under subparagraph (A) of this**
15 **paragraph, the proportion that is equal to the total weight of tele-**
16 **visions and the proportion that is equal to the total weight of**
17 **nontelevision devices.**

18 **(b) For each calendar year, determine each manufacturer's tele-**
19 **vision market share and nontelevision market share as follows:**

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

26 **(B) A manufacturer's nontelevision market share shall be deter-**
27 **mined by dividing the total weight in pounds of nontelevision devices**
28 **sold under brands manufactured, sold or imported by the manufac-**
29 **turer in this state during the previous calendar year by the total**
30 **weight in pounds of nontelevision devices sold under all brands man-**
31 **ufactured, sold or imported by all manufacturers in this state during**

1 the previous calendar year.

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

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

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

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

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

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

31 (d) By May 1 of each year, provide to each manufacturer that had a re-

1 turn share determined under this section its return share and its return
2 share by weight for the following year.

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

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

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

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

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

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

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

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

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

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

1 the previous calendar year.

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

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

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

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

24
