
ENGROSSED SUBSTITUTE HOUSE BILL 1824

State of Washington

65th Legislature

2017 Regular Session

By House Environment (originally sponsored by Representatives Peterson, Lovick, Kagi, Ortiz-Self, Tarleton, Robinson, Stanford, Ormsby, and Doglio)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to electronic product recycling; amending RCW
2 70.95N.010, 70.95N.280, 70.95N.250, 70.95N.060, 70.95N.260,
3 70.105.080, and 70.95N.290; and reenacting and amending RCW
4 70.95N.140.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.95N.010 and 2006 c 183 s 1 are each amended to
7 read as follows:

8 The legislature finds that a convenient, safe, and
9 environmentally sound system for the collection, transportation, and
10 recycling of covered electronic products must be established. The
11 legislature further finds that the system must encourage the design
12 of electronic products that are less toxic and more recyclable. The
13 legislature further finds that the responsibility for this system
14 must be shared among all stakeholders, with manufacturers financing
15 the collection, transportation, and recycling system. The legislature
16 further finds that the authority that is charged with developing,
17 financing, and implementing this system must perform these functions
18 with full public disclosure and that the department must exercise
19 strong oversight of the performance of the authority.

1 **Sec. 2.** RCW 70.95N.280 and 2006 c 183 s 29 are each amended to
2 read as follows:

3 (1) The Washington materials management and financing authority
4 is established as a public body corporate and politic, constituting
5 an instrumentality of the state of Washington exercising essential
6 governmental functions.

7 (2) The authority shall plan and implement a collection,
8 transportation, and recycling program for manufacturers that have
9 registered with the department their intent to participate in the
10 standard program as required under RCW 70.95N.040.

11 (3) Membership in the authority is comprised of registered
12 participating manufacturers. Any registered manufacturer who does not
13 qualify or is not approved to submit an independent plan, or whose
14 independent plan has not been approved by the department, is a member
15 of the authority. All new entrants and white box manufacturers are
16 also members of the authority.

17 (4) The authority shall act as a business management organization
18 on behalf of the citizens of the state to manage financial resources
19 and contract for services for collection, transportation, and
20 recycling of covered electronic products.

21 (5) The authority's standard plan is responsible for collecting,
22 transporting, and recycling the sum of the equivalent shares of each
23 participating manufacturer.

24 (6) The authority shall accept into the standard program covered
25 electronic products from any registered collector who meets the
26 requirements of this chapter. The authority shall compensate
27 registered collectors for the reasonable costs associated with
28 collection, but is not required to compensate nor restricted from
29 compensating the additional collection costs resulting from the
30 additional convenience offered to customers through premium and
31 curbside services.

32 (7) The authority shall accept and utilize in the standard
33 program any registered processor meeting the requirements of this
34 chapter and any requirements described in the authority's operating
35 plan or through contractual arrangements. Priority must be given to
36 processors operating in the state of Washington. Processors utilized
37 by the standard plan shall provide documentation to the authority at
38 least annually regarding how they are meeting the requirements in RCW
39 70.95N.250 (~~and section 26 of this act~~), including enough detail to
40 allow the standard plan to meet its reporting requirements in RCW

1 70.95N.140(2)(c) (~~and (d)~~), and must submit to audits conducted by
2 or for the authority. The authority shall compensate such processors
3 for the reasonable costs, as determined by the authority, associated
4 with processing unwanted electronic products. Such processors must
5 demonstrate that the unwanted electronic products have been received
6 from registered collectors or transporters, and provide other
7 documentation as may be required by the authority.

8 (8) Except as specifically allowed in this chapter, the authority
9 shall operate without using state funds or lending the credit of the
10 state or local governments.

11 (9) The authority shall develop innovative approaches to improve
12 materials management efficiency in order to ensure and increase the
13 use of secondary material resources within the economy.

14 **Sec. 3.** RCW 70.95N.250 and 2006 c 183 s 25 are each amended to
15 read as follows:

16 (1) The authority and each authorized party shall ensure that
17 each processor used directly by the authority or the authorized party
18 to fulfill the requirements of their respective standard plan or
19 independent plan has provided the authority or the authorized party a
20 written statement that the processor will comply with the
21 requirements of this section (~~and section 26 of this act~~).

22 (2)(a) The department shall establish by rule performance
23 standards for environmentally sound management for processors
24 directly used to fulfill the requirements of an independent plan or
25 the standard plan. Performance standards may include financial
26 assurance to ensure proper closure of facilities consistent with
27 environmental standards.

28 (b) A transporter, collector, or processor may not be utilized in
29 an independent plan or the standard plan for a minimum period of
30 three years following a violation if the transporter, collector, or
31 processor:

32 (i) Is determined by the department to have willfully violated,
33 after July 1, 2017, either:

34 (A) Chapter 70.105 RCW for activities associated with covered
35 electronic products; or

36 (B) These performance standards or RCW 70.95N.240 for activities
37 related to the export of covered electronic products or for
38 activities that resulted in significant harm to the environment or
39 human health; and

1 (ii) Has ever previously been penalized by the department for a
2 willful violation under either:

3 (A) Chapter 70.105 RCW for activities associated with covered
4 electronic products; or

5 (B) These performance standards or RCW 70.95N.240 for activities
6 related to the export of covered electronic products or for
7 activities that resulted in significant harm to the environment or
8 human health.

9 (3) The department shall establish by rule guidelines regarding
10 nonrecycled residual that may be properly disposed after covered
11 electronic products have been processed.

12 (4) The department (~~may audit~~) shall periodically audit
13 transporters, collectors, and processors that are utilized to fulfill
14 the requirements of an independent plan or the standard plan.

15 (5) No plan or program required under this chapter may include
16 the use of federal or state prison labor for processing.

17 **Sec. 4.** RCW 70.95N.060 and 2006 c 183 s 6 are each amended to
18 read as follows:

19 (1) All initial independent plans and the initial standard plan
20 required under RCW 70.95N.050 must be submitted to the department by
21 February 1, 2008. The department shall review each independent plan
22 and the standard plan.

23 (2) The authority submitting the standard plan and each
24 authorized party submitting an independent plan to the department
25 must pay a fee to the department to cover the costs of administering
26 and implementing this chapter. The department shall set the fees as
27 described under RCW 70.95N.230.

28 (3) The fees in subsection (2) of this section apply to the
29 initial plan submission and plan updates and revisions required in
30 RCW 70.95N.070.

31 (4) Within ninety days after receipt of a plan, the department
32 shall determine whether the plan complies with this chapter. If the
33 plan is approved, the department shall send a letter of approval. If
34 a plan is rejected, the department shall provide the reasons for
35 rejecting the plan to the authority or authorized party. The
36 authority or authorized party must submit a new plan within sixty
37 days after receipt of the letter of disapproval.

38 (5) An independent plan and the standard plan must contain the
39 following elements:

1 (a) Contact information for the authority or authorized party and
2 a comprehensive list of all manufacturers participating in the plan
3 and their contact information;

4 (b) A description of the collection, transportation, and
5 recycling systems and service providers used, including a description
6 of how the authority or authorized party will:

7 (i) Seek to use businesses within the state, including retailers,
8 charities, processors, and collection and transportation services;

9 (ii) Fairly compensate collectors for providing collection
10 services; and

11 (iii) Fairly compensate processors for providing processing
12 services;

13 (c) The method or methods for the reasonably convenient
14 collection of all product types of covered electronic products in
15 rural and urban areas throughout the state, including how the plan
16 will provide for collection services in each county of the state and
17 for a minimum of one collection site or alternate collection service
18 for each city or town with a population greater than ten thousand. A
19 collection site for a county may be the same as a collection site for
20 a city or town in the county;

21 (d) A description of how the plan will provide service to small
22 businesses, small governments, charities, and school districts in
23 Washington;

24 (e) The processes and methods used to recycle covered electronic
25 products including a description of the processing that will be used
26 and the facility location;

27 (f) Documentation of audits of each processor used in the plan
28 and compliance with processing standards established under RCW
29 70.95N.250 (~~and section 26 of this act~~);

30 (g) A description of the accounting and reporting systems that
31 will be employed to track progress toward the plan's equivalent
32 share;

33 (h) A timeline describing start-up, implementation, and progress
34 towards milestones with anticipated results;

35 (i) A public information campaign to inform consumers about how
36 to recycle their covered electronic products at the end of the
37 product's life; and

38 (j) A description of how manufacturers participating in the plan
39 will communicate and work with processors utilized by that plan to

1 promote and encourage design of electronic products and their
2 components for recycling.

3 (6) The standard plan shall address how it will incorporate and
4 fairly compensate registered collectors providing curbside or premium
5 services such that they are not compensated at a lower rate for
6 collection costs than the compensation offered other collectors
7 providing drop-off collection sites in that geographic area.

8 (7) All transporters, collectors, and processors used to fulfill
9 the requirements of this section must be registered as described in
10 RCW 70.95N.240.

11 (8) The department must periodically review the standard plan and
12 all revisions to the plan.

13 **Sec. 5.** RCW 70.95N.140 and 2013 c 305 s 6 and 2013 c 292 s 1 are
14 each reenacted and amended to read as follows:

15 (1) By March 1st of the second program year and each program year
16 thereafter, the authority and each authorized party shall file with
17 the department an annual report for the preceding program year.

18 (2) The annual report must include the following information:

19 (a) The total weight in pounds of each type of covered electronic
20 products collected and recycled, by county, during the preceding
21 program year including documentation verifying collection and
22 processing of that material. The total weight in pounds includes
23 orphan products. The report must also indicate and document the
24 weight in pounds received from each nonprofit charitable organization
25 primarily engaged in the business of reuse and resale used by the
26 plan. The report must document the weight in pounds that were
27 received in large quantities from small businesses, small
28 governments, charities and school districts as described in RCW
29 70.95N.090(5);

30 (b) The collection services provided in each county and for each
31 city with a population over ten thousand including a list of all
32 collection sites and services operating in the state in the prior
33 program year and the parties who operated them;

34 (c)(i) A list of processors used, the weight of covered
35 electronic products processed by each direct processor, and a
36 description of the processes and methods used to recycle the covered
37 electronic products including a description of the processing and
38 facility locations. The report must also include a list of
39 subcontractors who further processed or recycled unwanted covered

1 electronic products or electronic components, including facility
2 locations.

3 (ii) An estimate of the weight of each type of material recovered
4 as a result of the processing of recycled covered electronic
5 products. Recovered materials catalogued under this subsection must
6 include, at a minimum: Cathode ray tube glass, circuit boards,
7 batteries, mercury-containing devices, plastics, and metals.

8 (iii) An estimate of the percentage, by weight, of all collected
9 products that ultimately are reused, recycled, or end up as residual
10 waste that is disposed of in another manner;

11 (d) Educational and promotional efforts that were undertaken;

12 (e) For program years 2009 through 2014, the results of sampling
13 and sorting as required in RCW 70.95N.110, including a list of the
14 brand names of covered electronic products by product type, the
15 number of covered electronic products by product type, the weight of
16 covered electronic products that are identified for each brand name
17 or that lack a manufacturer's brand, and the total weight of the
18 sample by product type;

19 (f) The list of manufacturers that are participating in the
20 standard plan;

21 (g) A description of program revenues and costs, including: (i)
22 The total cost of the program; and (ii) the average cost of the
23 program per pound of covered electronic product collected;

24 (h) A detailed accounting of the following costs of the program:

25 (i) Program delivery, including: (A) Education and promotional
26 efforts; (B) collection; (C) transportation; and (D) processing and
27 labor; and (ii) program administration;

28 (i) A description of the methods used by the program to collect,
29 transport, recycle, and process covered electronic products; (~~and~~)

30 (j) The contracted rates for services and allocated volumes for
31 each transporter and processor, a description of the procurement
32 process including rate submittal, and a description of the
33 methodology and rationale by which transporter and processor volumes
34 were allocated; and

35 (k) Any other information deemed necessary by the department.

36 (3) The department shall review each report within ninety days of
37 its submission and shall notify the authority or authorized party of
38 any need for additional information or documentation, or any
39 deficiency in its program.

1 (4) The department shall annually review the information
2 submitted in subsection (2)(j) of this section with a view to
3 ensuring that the plan is using competitive processes that promote
4 cost-effective and environmentally sound transport and processing of
5 covered electronic products.

6 (5) All reports submitted to the department must be available to
7 the general public through the internet. Proprietary information
8 submitted to the department under this chapter is exempt from public
9 disclosure under RCW 42.56.270.

10 **Sec. 6.** RCW 70.95N.260 and 2006 c 183 s 27 are each amended to
11 read as follows:

12 (1) No manufacturer may sell or offer for sale a covered
13 electronic product in or into the state unless the manufacturer of
14 the covered electronic product is participating in an approved plan.
15 The department shall send a written warning to a manufacturer that
16 does not have an approved plan or is not participating in an approved
17 plan as required under RCW 70.95N.050. The written warning must
18 inform the manufacturer that it must participate in an approved plan
19 within thirty days of the notice. Any violation after the initial
20 written warning shall be assessed a penalty of up to ten thousand
21 dollars for each violation.

22 (2) If the authority or any authorized party fails to implement
23 their approved plan, the department must assess a penalty of up to
24 five thousand dollars for the first violation along with notification
25 that the authority or authorized party must implement its plan within
26 thirty days of the violation. After thirty days, the authority or any
27 authorized party failing to implement their approved plan must be
28 assessed a penalty of up to ten thousand dollars for the second and
29 each subsequent violation.

30 (3) Any person that does not comply with manufacturer
31 registration requirements under RCW 70.95N.040, education and
32 outreach requirements under RCW 70.95N.120, reporting requirements
33 under RCW 70.95N.140, labeling requirements under RCW 70.95N.160,
34 retailer responsibility requirements under RCW 70.95N.170, collector
35 or transporter registration requirements under RCW 70.95N.240, or
36 requirements under RCW 70.95N.250 (~~and section 26 of this act~~),
37 must first receive a written warning including a copy of the
38 requirements under this chapter and thirty days to correct the
39 violation. After thirty days, a person must be assessed a penalty of

1 up to one thousand dollars for the first violation and up to two
2 thousand dollars for the second and each subsequent violation.

3 (4) All penalties levied under this section and RCW 70.105.080(3)
4 must be deposited into the electronic products recycling account
5 created under RCW 70.95N.130.

6 (5) The department shall enforce this section.

7 **Sec. 7.** RCW 70.105.080 and 1995 c 403 s 631 are each amended to
8 read as follows:

9 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
10 43.05.150, every person who fails to comply with any provision of
11 this chapter or of the rules adopted thereunder shall be subjected to
12 a penalty in an amount of not more than ten thousand dollars per day
13 for every such violation. Each and every such violation shall be a
14 separate and distinct offense. In case of continuing violation, every
15 day's continuance shall be a separate and distinct violation. Every
16 person who, through an act of commission or omission, procures, aids,
17 or abets in the violation shall be considered to have violated the
18 provisions of this section and shall be subject to the penalty herein
19 provided.

20 (2) The penalty provided for in this section shall be imposed
21 pursuant to the procedures in RCW 43.21B.300.

22 (3) Penalties issued under this chapter to a processor for
23 activities involving covered electronic products under the
24 requirements of chapter 70.95N RCW must be deposited consistent with
25 RCW 70.95N.260(4). For purposes of this subsection, "processor" and
26 "covered electronic product" have the same meaning as defined in RCW
27 70.95N.020.

28 **Sec. 8.** RCW 70.95N.290 and 2013 c 305 s 12 are each amended to
29 read as follows:

30 (1)(a) The authority is governed by a board of directors. The
31 board of directors is comprised of eleven participating
32 manufacturers, appointed by the director of the department. For
33 program years 2009 through 2015, five board positions are reserved
34 for representatives of the top ten brand owners by return share of
35 covered electronic products, and six board positions are reserved for
36 representatives of other brands, including at least one board
37 position reserved for a manufacturer who is also a retailer selling
38 their own private label. The return share of covered electronic

1 products used to determine the top ten brand owners for purposes of
2 electing the board must be determined by the department by January 1,
3 2007. For program years 2016 and beyond, five board positions are
4 reserved for representatives of the top ten brand owners by market
5 share of covered electronic products, and six board positions are
6 reserved for representatives of other brands, including at least one
7 board position reserved for a manufacturer who is also a retailer
8 selling its own private label. The market share of covered electronic
9 products used to determine the top ten brand owners for purposes of
10 electing the board must be determined by the department by October 1,
11 2015.

12 (b) The board must have representation from both television and
13 computer manufacturers.

14 (2) The board shall select from its membership the chair of the
15 board and such other officers as it deems appropriate.

16 (3) A majority of the board constitutes a quorum.

17 (4) The directors of the department of commerce and the
18 department of ecology serve as ex officio members and they or their
19 designees must attend a minimum of three board meetings each year.

20 The state agency directors serving in ex officio capacity may each
21 designate an employee of their respective departments to act on their
22 behalf in all respects with regard to any matter to come before the
23 authority. Ex officio designations must be made in writing and
24 communicated to the authority director.

25 (5) The board shall create its own bylaws in accordance with the
26 laws of the state of Washington.

27 (6) Any member of the board may be removed for misfeasance,
28 malfeasance, or willful neglect of duty after notice and a public
29 hearing, unless the notice and hearing are expressly waived in
30 writing by the affected member.

31 (7) The members of the board serve without compensation but are
32 entitled to reimbursement, solely from the funds of the authority,
33 for expenses incurred in the discharge of their duties under this
34 chapter.

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