

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5699

63rd Legislature
2013 Regular Session

Passed by the Senate April 23, 2013
YEAS 48 NAYS 0

President of the Senate

Passed by the House April 9, 2013
YEAS 87 NAYS 6

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5699** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5699

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Ericksen, and Kline

Read first time 02/11/13. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to electronic product recycling; amending RCW
2 70.95N.020, 70.95N.040, 70.95N.050, 70.95N.090, 70.95N.110, 70.95N.140,
3 70.95N.180, 70.95N.190, 70.95N.200, 70.95N.210, 70.95N.230, 70.95N.290,
4 70.95N.300, and 42.56.270; and providing an effective date.

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

6 **Sec. 1.** RCW 70.95N.020 and 2006 c 183 s 2 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Authority" means the Washington materials management and
11 financing authority created under RCW 70.95N.280.

12 (2) "Authorized party" means a manufacturer who submits an
13 individual independent plan or the entity authorized to submit an
14 independent plan for more than one manufacturer.

15 (3) "Board" means the board of directors of the Washington
16 materials management and financing authority created under RCW
17 70.95N.290.

18 (4) "Collector" means an entity licensed to do business in the
19 state that gathers unwanted covered electronic products from

1 households, small businesses, school districts, small governments, and
2 charities for the purpose of recycling and meets minimum standards that
3 may be developed by the department.

4 (5) "Contract for services" means an instrument executed by the
5 authority and one or more persons or entities that delineates
6 collection, transportation, and recycling services, in whole or in
7 part, that will be provided to the citizens of the state within service
8 areas as described in the approved standard plan.

9 (6) "Covered electronic product" includes a cathode ray tube or
10 flat panel computer monitor having a viewable area greater than four
11 inches when measured diagonally, a desktop computer, a laptop or a
12 portable computer, or a cathode ray tube or flat panel television
13 having a viewable area greater than four inches when measured
14 diagonally that has been used in the state by any covered entity
15 regardless of original point of purchase. "Covered electronic product"
16 does not include: (a) A motor vehicle or replacement parts for use in
17 motor vehicles or aircraft, or any computer, computer monitor, or
18 television that is contained within, and is not separate from, the
19 motor vehicle or aircraft; (b) monitoring and control instruments or
20 systems; (c) medical devices; (d) products including materials intended
21 for use as ingredients in those products as defined in the federal
22 food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-
23 serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations
24 issued under those acts; (e) equipment used in the delivery of patient
25 care in a health care setting; (f) a computer, computer monitor, or
26 television that is contained within a clothes washer, clothes dryer,
27 refrigerator, refrigerator and freezer, microwave oven, conventional
28 oven or range, dishwasher, room air conditioner, dehumidifier, or air
29 purifier; or (g) hand-held portable voice or data devices used for
30 commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

31 (7) "Covered entity" means any household, charity, school district,
32 small business, or small government located in Washington state.

33 (8) "Curbside service" means a collection service providing
34 regularly scheduled pickup of covered electronic products from
35 households or other covered entities in quantities generated from
36 households.

37 (9) "Department" means the department of ecology.

1 (10) "Electronic product" includes a cathode ray tube or flat panel
2 computer monitor having a viewable area greater than four inches when
3 measured diagonally; a desktop computer; a laptop or a portable
4 computer; or a cathode ray tube or flat screen television having a
5 viewable area greater than four inches when measured diagonally.

6 (11) "Equivalent share" means the weight in pounds of covered
7 electronic products identified for an individual manufacturer under
8 this chapter as determined by the department under RCW 70.95N.200.

9 (12) "Household" means a single detached dwelling unit or a single
10 unit of a multiple dwelling unit and appurtenant structures.

11 (13) "Independent plan" means a plan for the collection,
12 transportation, and recycling of unwanted covered electronic products
13 that is developed, implemented, and financed by an individual
14 manufacturer or by an authorized party.

15 (14) "Manufacturer" means any person, in business or no longer in
16 business but having a successor in interest, who, irrespective of the
17 selling technique used, including by means of distance or remote sale:

18 (a) Manufactures or has manufactured a covered electronic product
19 under its own brand names for sale in or into this state;

20 (b) Assembles or has assembled a covered electronic product that
21 uses parts manufactured by others for sale in or into this state under
22 the assembler's brand names;

23 (c) Resells or has resold in or into this state under its own brand
24 names a covered electronic product produced by other suppliers,
25 including retail establishments that sell covered electronic products
26 under their own brand names;

27 (d) Manufactures or manufactured a cobranded product for sale in or
28 into this state that carries the name of both the manufacturer and a
29 retailer;

30 (e) Imports or has imported a covered electronic product into the
31 United States that is sold in or into this state. However, if the
32 imported covered electronic product is manufactured by any person with
33 a presence in the United States meeting the criteria of manufacturer
34 under (a) through (d) of this subsection, that person is the
35 manufacturer. For purposes of this subsection, "presence" means any
36 person that performs activities conducted under the standards
37 established for interstate commerce under the commerce clause of the
38 United States Constitution; ((~~or~~))

1 (f) Sells at retail a covered electronic product acquired from an
2 importer that is the manufacturer as described in (e) of this
3 subsection, and elects to register in lieu of the importer as the
4 manufacturer for those products; or

5 (g) Beginning in program year 2016, elects to assume the
6 responsibility and register in lieu of a manufacturer as defined under
7 this section. In the event the entity who assumes responsibility fails
8 to comply, the manufacturer as defined under (a) through (f) of this
9 subsection remains fully responsible.

10 (15) "New entrant" means: (a) A manufacturer of televisions that
11 have been sold in the state for less than ten years; or (b) a
12 manufacturer of desktop computers, laptop and portable computers, or
13 computer monitors that have been sold in the state for less than five
14 years. However, a manufacturer of both televisions and computers or a
15 manufacturer of both televisions and computer monitors that is deemed
16 a new entrant under either only (a) or (b) of this subsection is not
17 considered a new entrant for purposes of this chapter.

18 (16) "Orphan product" means a covered electronic product that lacks
19 a manufacturer's brand or for which the manufacturer is no longer in
20 business and has no successor in interest.

21 (17) "Plan's equivalent share" means the weight in pounds of
22 covered electronic products for which a plan is responsible. A plan's
23 equivalent share is equal to the sum of the equivalent shares of each
24 manufacturer participating in that plan.

25 (18) "Plan's return share" means the sum of the return shares of
26 each manufacturer participating in that plan.

27 (19) "Premium service" means services such as at-location system
28 upgrade services provided to covered entities and at-home pickup
29 services offered to households. "Premium service" does not include
30 curbside service.

31 (20) "Processor" means an entity engaged in disassembling,
32 dismantling, or shredding electronic products to recover materials
33 contained in the electronic products and prepare those materials for
34 reclaiming or reuse in new products in accordance with processing
35 standards established by this chapter and by the department. A
36 processor may also salvage parts to be used in new products.

37 (21) "Product type" means one of the following categories:

1 Computer monitors; desktop computers; laptop and portable computers;
2 and televisions.

3 (22) "Program" means the collection, transportation, and recycling
4 activities conducted to implement an independent plan or the standard
5 plan.

6 (23) "Program year" means each full calendar year after the program
7 has been initiated.

8 (24) "Recycling" means transforming or remanufacturing unwanted
9 electronic products, components, and by-products into usable or
10 marketable materials for use other than landfill disposal or
11 incineration. "Recycling" does not include energy recovery or energy
12 generation by means of combusting unwanted electronic products,
13 components, and by-products with or without other waste. Smelting of
14 electronic materials to recover metals for reuse in conformance with
15 all applicable laws and regulations is not considered disposal or
16 energy recovery.

17 (25) "Retailer" means a person who offers covered electronic
18 products for sale at retail through any means including, but not
19 limited to, remote offerings such as sales outlets, catalogs, or the
20 internet, but does not include a sale that is a wholesale transaction
21 with a distributor or a retailer.

22 (26) "Return share" means the percentage of covered electronic
23 products by weight identified for an individual manufacturer, as
24 determined by the department under RCW 70.95N.190.

25 (27) "Reuse" means any operation by which an electronic product or
26 a component of a covered electronic product changes ownership and is
27 used for the same purpose for which it was originally purchased.

28 (28) "Small business" means a business employing less than fifty
29 people.

30 (29) "Small government" means a city in the state with a population
31 less than fifty thousand, a county in the state with a population less
32 than one hundred twenty-five thousand, and special purpose districts in
33 the state.

34 (30) "Standard plan" means the plan for the collection,
35 transportation, and recycling of unwanted covered electronic products
36 developed, implemented, and financed by the authority on behalf of
37 manufacturers participating in the authority.

1 (31) "Transporter" means an entity that transports covered
2 electronic products from collection sites or services to processors or
3 other locations for the purpose of recycling, but does not include any
4 entity or person that hauls their own unwanted electronic products.

5 (32) "Unwanted electronic product" means a covered electronic
6 product that has been discarded or is intended to be discarded by its
7 owner.

8 (33) "White box manufacturer" means a person who manufactured
9 unbranded covered electronic products offered for sale in the state
10 within ten years prior to a program year for televisions or within five
11 years prior to a program year for desktop computers, laptop or portable
12 computers, or computer monitors.

13 (34) "Market share" means the percentage of covered electronic
14 products by weight identified for an individual manufacturer, as
15 determined by the department under RCW 70.95N.190.

16 (35) "Plan's market share" means the sum of the market shares of
17 each manufacturer participating in that plan.

18 **Sec. 2.** RCW 70.95N.040 and 2006 c 183 s 4 are each amended to read
19 as follows:

20 (1) By January 1, 2007, and annually thereafter, each manufacturer
21 must register with the department.

22 (2) A manufacturer must submit to the department with each
23 registration or annual renewal a fee to cover the administrative costs
24 of this chapter as determined by the department under RCW 70.95N.230.

25 (3) The department shall review the registration or renewal
26 application and notify the manufacturer if their registration does not
27 meet the requirements of this section. Within thirty days of receipt
28 of such a notification from the department, the manufacturer must file
29 with the department a revised registration addressing the requirements
30 noted by the department.

31 (4) The registration must include the following information:

32 (a) The name and contact information of the manufacturer submitting
33 the registration;

34 (b) The manufacturer's brand names of covered electronic products,
35 including all brand names sold in the state in the past, all brand
36 names currently being sold in the state, and all brand names for which
37 the manufacturer has legal responsibility under RCW 70.95N.100;

1 (c) The method or methods of sale used in the state; and

2 (d) Whether the registrant will be participating in the standard
3 plan or submitting an independent plan to the department for approval.

4 (5) The registrant shall submit any changes to the information
5 provided in the registration to the department within fourteen days of
6 such change.

7 (6) The department shall identify, using all reasonable means,
8 manufacturers that are in business or that are no longer in business
9 but that have a successor in interest by examining best available
10 return share data, product advertisements, and other pertinent data.
11 The department shall notify manufacturers that have been identified and
12 for whom an address has been found of the requirements of this chapter,
13 including registration and plan requirements under this section and RCW
14 70.95N.050.

15 **Sec. 3.** RCW 70.95N.050 and 2006 c 183 s 5 are each amended to read
16 as follows:

17 (1) A manufacturer must participate in the standard plan
18 administered by the authority, unless the manufacturer obtains
19 department approval for an independent plan for the collection,
20 transportation, and recycling of unwanted electronic products.

21 (2) An independent plan may be submitted by an individual
22 manufacturer or by a group of manufacturers, provided that:

23 (a) For program years 2009 through 2015, each independent plan
24 represents at least a five percent return share of covered electronic
25 products. For program year 2016 and all subsequent program years, each
26 independent plan represents at least a five percent market share of
27 covered electronic products; and

28 (b) No manufacturer may participate in an independent plan if it is
29 a new entrant or a white box manufacturer.

30 (3) An individual manufacturer submitting an independent plan to
31 the department is responsible for collecting, transporting, and
32 recycling its equivalent share of covered electronic products.

33 (4)(a) Manufacturers collectively submitting an independent plan
34 are responsible for collecting, transporting, and recycling the sum of
35 the equivalent shares of each participating manufacturer.

36 (b) Each group of manufacturers submitting an independent plan must
37 designate a party authorized to file the plan with the department on

1 their behalf. A letter of certification from each of the manufacturers
2 designating the authorized party must be submitted to the department
3 together with the plan.

4 (5) Each manufacturer in the standard plan or in an independent
5 plan retains responsibility and liability under this chapter in the
6 event that the plan fails to meet the manufacturer's obligations under
7 this chapter.

8 **Sec. 4.** RCW 70.95N.090 and 2006 c 183 s 9 are each amended to read
9 as follows:

10 (1) A program must provide collection services for covered
11 electronic products of all product types and produced by any
12 manufacturer that are reasonably convenient and available to all
13 citizens of the state residing within its geographic boundaries,
14 including both rural and urban areas. Each program must provide
15 collection service in every county of the state. A program may provide
16 collection services jointly with another plan or plans.

17 (a) For any city or town with a population of greater than ten
18 thousand, each program shall provide a minimum of one collection site
19 or alternate collection service described in subsection (3) of this
20 section or a combination of sites and alternate service that together
21 provide at least one collection opportunity for all product types. A
22 collection site for a county may be the same as a collection site for
23 a city or town in the county.

24 (b) Collection sites may include electronics recyclers and repair
25 shops, recyclers of other commodities, reuse organizations, charities,
26 retailers, government recycling sites, or other suitable locations.

27 (c) Collection sites must be staffed, open to the public at a
28 frequency adequate to meet the needs of the area being served, and on
29 an on-going basis.

30 (2) A program may limit the number of covered electronic products
31 or covered electronic products by product type accepted per customer
32 per day or per delivery at a collection site or service. All covered
33 entities may use a collection site as long as the covered entities
34 adhere to any restrictions established in the plans.

35 (3) A program may provide collection services in forms different
36 than collection sites, such as curbside services, if those alternate

1 services provide equal or better convenience to citizens and equal or
2 increased recovery of unwanted covered electronic products.

3 (4) For rural areas without commercial centers or areas with widely
4 dispersed population, a program may provide collection at the nearest
5 commercial centers or solid waste sites, collection events, mail-back
6 systems, or a combination of these options.

7 (5) For small businesses, small governments, charities, and school
8 districts that may have large quantities of covered electronic products
9 that cannot be handled at collection sites or curbside services, a
10 program may provide alternate services. At a minimum, a program must
11 provide for processing of these large quantities of covered electronic
12 products at no charge to the small businesses, small governments,
13 charities, and school districts.

14 **Sec. 5.** RCW 70.95N.110 and 2006 c 183 s 11 are each amended to
15 read as follows:

16 (1) For program years 2009 through 2014, an independent plan and
17 the standard plan must implement and finance an auditable,
18 statistically significant sampling of covered electronic products
19 entering its program every program year. The information collected
20 must include a list of the brand names of covered electronic products
21 by product type, the number of covered electronic products by product
22 type, the weight of covered electronic products that are identified for
23 each brand name or that lack a manufacturer's brand, the total weight
24 of the sample by product type, and any additional information needed to
25 assign return share.

26 (2) For program years 2009 through 2014, the sampling must be
27 conducted in the presence of the department or a third-party
28 organization approved by the department. The department may, at its
29 discretion, audit the methodology and the results.

30 (3) After the fifth program year through the 2014 program year, the
31 department may reassess the sampling required in this section. The
32 department may adjust the frequency at which manufacturers must
33 implement the sampling or may adjust the frequency at which
34 manufacturers must provide certain information from the sampling.
35 Prior to making any changes, the department shall notify the public,
36 including all registered manufacturers, and provide a comment period.

1 The department shall notify all registered manufacturers of any such
2 changes.

3 **Sec. 6.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to
4 read as follows:

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

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

9 (a) The total weight in pounds of covered electronic products
10 collected and recycled, by county, during the preceding program year
11 including documentation verifying collection and processing of that
12 material. The total weight in pounds includes orphan products. The
13 report must also indicate and document the weight in pounds received
14 from each nonprofit charitable organization primarily engaged in the
15 business of reuse and resale used by the plan. The report must
16 document the weight in pounds that were received in large quantities
17 from small businesses, small governments, charities and school
18 districts as described in RCW 70.95N.090(5);

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

23 (c) A list of processors used, the weight of covered electronic
24 products processed by each direct processor, and a description of the
25 processes and methods used to recycle the covered electronic products
26 including a description of the processing and facility locations. The
27 report must also include a list of subcontractors who further processed
28 or recycled unwanted covered electronic products, electronic
29 components, or electronic scrap (~~described in section 26(1) of this~~
30 ~~act~~), including facility locations;

31 (~~Other documentation as established under section 26(3) of~~
32 ~~this act;~~

33 (~~e~~)) Educational and promotional efforts that were undertaken;

34 (~~f~~)) (e) For program years 2009 through 2014, the results of
35 sampling and sorting as required in RCW 70.95N.110, including a list of
36 the brand names of covered electronic products by product type, the
37 number of covered electronic products by product type, the weight of

1 covered electronic products that are identified for each brand name or
2 that lack a manufacturer's brand, and the total weight of the sample by
3 product type;

4 ~~((g))~~ (f) The list of manufacturers that are participating in the
5 standard plan; and

6 ~~((h))~~ (g) Any other information deemed necessary by the
7 department.

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

12 (4) All reports submitted to the department must be available to
13 the general public through the internet. Proprietary information
14 submitted to the department under this chapter is exempt from public
15 disclosure under RCW 42.56.270.

16 **Sec. 7.** RCW 70.95N.180 and 2006 c 183 s 18 are each amended to
17 read as follows:

18 (1) The department shall maintain on its web site the following
19 information:

20 (a) The names of the manufacturers and the manufacturer's brands
21 that are registered with the department under RCW 70.95N.040;

22 (b) The names of the manufacturers and the manufacturer's brands
23 that are participating in an approved plan under RCW 70.95N.050;

24 (c) The names and addresses of the collectors and transporters that
25 are listed in registrations filed with the department under RCW
26 70.95N.240;

27 (d) The names and addresses of the processors used to fulfill the
28 requirements of the plans;

29 (e) For program years 2009 through 2015, return and equivalent
30 shares for all manufacturers.

31 (2) The department shall update this web site information promptly
32 upon receipt of a registration or a report.

33 **Sec. 8.** RCW 70.95N.190 and 2006 c 183 s 19 are each amended to
34 read as follows:

35 (1) For program years 2009 through 2015, the department shall
36 determine the return share for each manufacturer in the standard plan

1 or an independent plan by dividing the weight of covered electronic
2 products identified for each manufacturer by the total weight of
3 covered electronic products identified for all manufacturers in the
4 standard plan or an independent plan, then multiplying the quotient by
5 one hundred.

6 (2) For the first program year, the department shall determine the
7 return share for such manufacturers using all reasonable means and
8 based on best available information regarding return share data from
9 other states and other pertinent data.

10 (3) For ~~((the second and each subsequent program year))~~ 2014, the
11 department shall determine the return share for such manufacturers
12 using all reasonable means and based on the most recent sampling of
13 covered electronic products conducted in the state under RCW
14 70.95N.110.

15 (4)(a) For program year 2016 and all subsequent program years, the
16 department shall determine market share by weight for all manufacturers
17 using any combination of the following data:

18 (i) Generally available market research data;

19 (ii) Sales data supplied by manufacturers for brands they
20 manufacture or sell; or

21 (iii) Sales data provided by retailers for brands they sell.

22 (b) The department shall determine each manufacturer's percentage
23 of market share by dividing each manufacturer's total pounds of covered
24 electronic products sold in Washington by the sum total of all pounds
25 of covered electronic products sold in Washington by all manufacturers.

26 (5) Data reported by manufacturers under subsection (4) of this
27 section is exempt from public disclosure under chapter 42.56 RCW.

28 **Sec. 9.** RCW 70.95N.200 and 2006 c 183 s 20 are each amended to
29 read as follows:

30 (1) For program years 2009 through 2015, the department shall
31 determine the total equivalent share for each manufacturer in the
32 standard plan or an independent plan by dividing the return share
33 percentage for each manufacturer by one hundred, then multiplying the
34 quotient by the total weight in pounds of covered electronic products
35 collected for that program year, allowing as needed for the additional
36 credit authorized in subsection (3) of this section. For program year
37 2016 and all subsequent program years, the department shall determine

1 the total equivalent share for each manufacturer in the standard plan
2 or an independent plan by dividing the market share percentage for each
3 manufacturer by one hundred, then multiplying the quotient by the total
4 weight in pounds of covered electronic products collected for that
5 program year, allowing as needed for the additional credit authorized
6 in subsection (3) of this section.

7 (2)(a) By June 1st of each program year, the department shall
8 notify each manufacturer of the manufacturer's equivalent share of
9 covered electronic products to be applied to the previous program year.
10 The department shall also notify each manufacturer of how its
11 equivalent share was determined.

12 (b) By June 1st of each program year, the department shall bill any
13 authorized party or authority that has not attained its plan's
14 equivalent share as determined under RCW 70.95N.220. The authorized
15 party or authority shall remit payment to the department within sixty
16 days from the billing date.

17 (c) By September 1st of each program year, the department shall pay
18 any authorized party or authority that exceeded its plan's equivalent
19 share.

20 (3) Plans that utilize the collection services of nonprofit
21 charitable organizations that qualify for a taxation exemption under
22 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.
23 501(c)(3)) that are primarily engaged in the business of reuse and
24 resale must be given an additional five percent credit to be applied
25 toward a plan's equivalent share for pounds that are received for
26 recycling from those organizations. The department may adjust the
27 percentage of credit annually.

28 **Sec. 10.** RCW 70.95N.210 and 2006 c 183 s 21 are each amended to
29 read as follows:

30 (1) By June 1, 2007, the department shall notify each manufacturer
31 of its preliminary return share of covered electronic products for the
32 first program year.

33 (2) For program years 2009 through 2014, preliminary return share
34 of covered electronic products must be announced annually by June 1st
35 of each program year for the next program year. For the 2015 program
36 year and all subsequent program years, preliminary market share of

1 covered electronic products must be sent out to each individual
2 manufacturer annually by June 1st of each program year for the next
3 program year.

4 (3) Manufacturers may challenge the preliminary return or market
5 share by written petition to the department. The petition must be
6 received by the department within thirty days of the date of
7 publication of the preliminary return or market shares.

8 (4) The petition must contain a detailed explanation of the grounds
9 for the challenge, an alternative calculation, and the basis for such
10 a calculation, documentary evidence supporting the challenge, and
11 complete contact information for requests for additional information or
12 clarification.

13 (5) Sixty days after the publication of the preliminary return or
14 market share, the department shall make a final decision on return or
15 market share, having fully taken into consideration any and all
16 challenges to its preliminary calculations.

17 (6) A written record of challenges received and a summary of the
18 bases for the challenges, as well as the department's response, must be
19 published at the same time as the publication of the final return
20 share.

21 (7) By August 1, 2007, the department shall publish the final
22 return shares for the first program year. For program years 2009
23 through 2014, by August 1st of each program year, the department shall
24 publish the final return shares for use in the coming program year.
25 For the 2015 program year and all subsequent program years, by August
26 1st of each program year, the department shall notify each manufacturer
27 of its final market shares for use in the coming program year.

28 **Sec. 11.** RCW 70.95N.230 and 2006 c 183 s 23 are each amended to
29 read as follows:

30 (1) The department shall adopt rules to determine the process for
31 manufacturers to change plans under RCW 70.95N.080.

32 (2) The department shall establish annual registration and plan
33 review fees for administering this chapter. An initial fee schedule
34 must be established by rule and be adjusted no more often than once
35 every two years. All fees charged must be based on factors relating to
36 administering this chapter and be based on a sliding scale that is
37 representative of annual sales of covered electronic products in the

1 state, either by weight or unit, or by representative market share.
2 Fees must be established in amounts to fully recover and not to exceed
3 expenses incurred by the department to implement this chapter.

4 (3) The department shall establish an annual process for local
5 governments and local communities to report their satisfaction with the
6 services provided by plans under this chapter. This information must
7 be used by the department in reviewing plan updates and revisions.

8 (4) The department may adopt rules as necessary for the purpose of
9 implementing, administering, and enforcing this chapter.

10 **Sec. 12.** RCW 70.95N.290 and 2008 c 79 s 1 are each amended to read
11 as follows:

12 (1)(a) The authority is governed by a board of directors. The
13 board of directors is comprised of eleven participating manufacturers,
14 appointed by the director of the department. For program years 2009
15 through 2015, five board positions are reserved for representatives of
16 the top ten brand owners by return share of covered electronic
17 products, and six board positions are reserved for representatives of
18 other brands, including at least one board position reserved for a
19 manufacturer who is also a retailer selling their own private label.
20 The return share of covered electronic products used to determine the
21 top ten brand owners for purposes of electing the board must be
22 determined by the department by January 1, 2007. For program years
23 2016 and beyond, five board positions are reserved for representatives
24 of the top ten brand owners by market share of covered electronic
25 products, and six board positions are reserved for representatives of
26 other brands, including at least one board position reserved for a
27 manufacturer who is also a retailer selling its own private label. The
28 market share of covered electronic products used to determine the top
29 ten brand owners for purposes of electing the board must be determined
30 by the department by October 1, 2015.

31 (b) The board must have representation from both television and
32 computer manufacturers.

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

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

36 (4) The directors of the department of (~~community, trade, and~~
37 ~~economic development~~) commerce and the department of ecology serve as

1 ex officio members. The state agency directors serving in ex officio
2 capacity may each designate an employee of their respective departments
3 to act on their behalf in all respects with regard to any matter to
4 come before the authority. Ex officio designations must be made in
5 writing and communicated to the authority director.

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

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

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

15 **Sec. 13.** RCW 70.95N.300 and 2006 c 183 s 31 are each amended to
16 read as follows:

17 (1) Manufacturers participating in the standard plan shall pay the
18 authority to cover all administrative and operational costs associated
19 with the collection, transportation, and recycling of covered
20 electronic products within the state of Washington incurred by the
21 standard program operated by the authority to meet the standard plan's
22 equivalent share obligation as described in RCW 70.95N.280(5).

23 (2) The authority shall assess charges on each manufacturer
24 participating in the standard plan and collect funds from each
25 participating manufacturer for the manufacturer's portion of the costs
26 in subsection (1) of this section. For program years 2009 through
27 2015, such apportionment ((shall)) must be based on return share,
28 market share, any combination of return share and market share, or any
29 other equitable method. For the 2016 program year and all subsequent
30 program years, such apportionment must be based on market share. The
31 authority's apportionment of costs to manufacturers participating in
32 the standard plan may not include nor be based on electronic products
33 imported through the state and subsequently exported outside the state.
34 Charges assessed under this section must not be formulated in such a
35 way as to create incentives to divert imported electronic products to
36 ports or distribution centers in other states. The authority shall

1 adjust the charges to manufacturers participating in the standard plan
2 as necessary in order to ensure that all costs associated with the
3 identified activities are covered.

4 (3) The authority may require financial assurances or performance
5 bonds for manufacturers participating in the standard plan, including
6 but not limited to new entrants and white box manufacturers, when
7 determining equitable methods for apportioning costs to ensure that the
8 long-term costs for collecting, transporting, and recycling of a
9 covered electronic product are borne by the appropriate manufacturer in
10 the event that the manufacturer ceases to participate in the program.

11 (4) Nothing in this section authorizes the authority to assess fees
12 or levy taxes directly on the sale or possession of electronic
13 products.

14 (5) If a manufacturer has not met its financial obligations as
15 determined by the authority under this section, the authority shall
16 notify the department that the manufacturer is no longer participating
17 in the standard plan.

18 (6) For program years 2009 through 2015, the authority shall submit
19 its plan for assessing charges and apportioning cost on manufacturers
20 participating in the standard plan to the department for review and
21 approval along with the standard plan as provided in RCW 70.95N.060.

22 (7)(a) Any manufacturer participating in the standard plan may
23 appeal an assessment of charges or apportionment of costs levied by the
24 authority under this section by written petition to the director of the
25 department. The director of the department or the director's designee
26 shall review all appeals within timelines established by the department
27 and shall reverse any assessments of charges or apportionment of costs
28 if the director finds that the authority's assessments or apportionment
29 of costs was an arbitrary administrative decision, an abuse of
30 administrative discretion, or is not an equitable assessment or
31 apportionment of costs. The director shall make a fair and impartial
32 decision based on sound data. If the director of the department
33 reverses an assessment of charges, the authority must redetermine the
34 assessment or apportionment of costs.

35 (b) Disputes regarding a final decision made by the director or
36 director's designee may be challenged through arbitration. The
37 director shall appoint one member to serve on the arbitration panel and
38 the challenging party shall appoint one other. These two persons shall

1 choose a third person to serve. If the two persons cannot agree on a
2 third person, the presiding judge of the Thurston county superior court
3 shall choose a third person. The decision of the arbitration panel
4 shall be final and binding, subject to review by the superior court
5 solely upon the question of whether the decision of the panel was
6 arbitrary or capricious.

7 **Sec. 14.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each
8 amended to read as follows:

9 The following financial, commercial, and proprietary information is
10 exempt from disclosure under this chapter:

11 (1) Valuable formulae, designs, drawings, computer source code or
12 object code, and research data obtained by any agency within five years
13 of the request for disclosure when disclosure would produce private
14 gain and public loss;

15 (2) Financial information supplied by or on behalf of a person,
16 firm, or corporation for the purpose of qualifying to submit a bid or
17 proposal for (a) a ferry system construction or repair contract as
18 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
19 or improvement as required by RCW 47.28.070;

20 (3) Financial and commercial information and records supplied by
21 private persons pertaining to export services provided under chapters
22 43.163 and 53.31 RCW, and by persons pertaining to export projects
23 under RCW 43.23.035;

24 (4) Financial and commercial information and records supplied by
25 businesses or individuals during application for loans or program
26 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
27 43.168 RCW, or during application for economic development loans or
28 program services provided by any local agency;

29 (5) Financial information, business plans, examination reports, and
30 any information produced or obtained in evaluating or examining a
31 business and industrial development corporation organized or seeking
32 certification under chapter 31.24 RCW;

33 (6) Financial and commercial information supplied to the state
34 investment board by any person when the information relates to the
35 investment of public trust or retirement funds and when disclosure
36 would result in loss to such funds or in private loss to the providers
37 of this information;

1 (7) Financial and valuable trade information under RCW 51.36.120;

2 (8) Financial, commercial, operations, and technical and research
3 information and data submitted to or obtained by the clean Washington
4 center in applications for, or delivery of, program services under
5 chapter 70.95H RCW;

6 (9) Financial and commercial information requested by the public
7 stadium authority from any person or organization that leases or uses
8 the stadium and exhibition center as defined in RCW 36.102.010;

9 (10)(a) Financial information, including but not limited to account
10 numbers and values, and other identification numbers supplied by or on
11 behalf of a person, firm, corporation, limited liability company,
12 partnership, or other entity related to an application for a horse
13 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
14 license, gambling license, or lottery retail license;

15 (b) Internal control documents, independent auditors' reports and
16 financial statements, and supporting documents: (i) Of house-banked
17 social card game licensees required by the gambling commission pursuant
18 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
19 with an approved tribal/state compact for class III gaming;

20 (11) Proprietary data, trade secrets, or other information that
21 relates to: (a) A vendor's unique methods of conducting business; (b)
22 data unique to the product or services of the vendor; or (c)
23 determining prices or rates to be charged for services, submitted by
24 any vendor to the department of social and health services for purposes
25 of the development, acquisition, or implementation of state purchased
26 health care as defined in RCW 41.05.011;

27 (12)(a) When supplied to and in the records of the department of
28 commerce:

29 (i) Financial and proprietary information collected from any person
30 and provided to the department of commerce pursuant to RCW
31 43.330.050(8); and

32 (ii) Financial or proprietary information collected from any person
33 and provided to the department of commerce or the office of the
34 governor in connection with the siting, recruitment, expansion,
35 retention, or relocation of that person's business and until a siting
36 decision is made, identifying information of any person supplying
37 information under this subsection and the locations being considered
38 for siting, relocation, or expansion of a business;

1 (b) When developed by the department of commerce based on
2 information as described in (a)(i) of this subsection, any work product
3 is not exempt from disclosure;

4 (c) For the purposes of this subsection, "siting decision" means
5 the decision to acquire or not to acquire a site;

6 (d) If there is no written contact for a period of sixty days to
7 the department of commerce from a person connected with siting,
8 recruitment, expansion, retention, or relocation of that person's
9 business, information described in (a)(ii) of this subsection will be
10 available to the public under this chapter;

11 (13) Financial and proprietary information submitted to or obtained
12 by the department of ecology or the authority created under chapter
13 70.95N RCW to implement chapter 70.95N RCW;

14 (14) Financial, commercial, operations, and technical and research
15 information and data submitted to or obtained by the life sciences
16 discovery fund authority in applications for, or delivery of, grants
17 under chapter 43.350 RCW, to the extent that such information, if
18 revealed, would reasonably be expected to result in private loss to the
19 providers of this information;

20 (15) Financial and commercial information provided as evidence to
21 the department of licensing as required by RCW 19.112.110 or
22 19.112.120, except information disclosed in aggregate form that does
23 not permit the identification of information related to individual fuel
24 licensees;

25 (16) Any production records, mineral assessments, and trade secrets
26 submitted by a permit holder, mine operator, or landowner to the
27 department of natural resources under RCW 78.44.085;

28 (17)(a) Farm plans developed by conservation districts, unless
29 permission to release the farm plan is granted by the landowner or
30 operator who requested the plan, or the farm plan is used for the
31 application or issuance of a permit;

32 (b) Farm plans developed under chapter 90.48 RCW and not under the
33 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
34 RCW 42.56.610 and 90.64.190;

35 (18) Financial, commercial, operations, and technical and research
36 information and data submitted to or obtained by a health sciences and
37 services authority in applications for, or delivery of, grants under

1 RCW 35.104.010 through 35.104.060, to the extent that such information,
2 if revealed, would reasonably be expected to result in private loss to
3 providers of this information;

4 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328
5 that can be identified to a particular business;

6 (20) Financial and commercial information submitted to or obtained
7 by the University of Washington, other than information the university
8 is required to disclose under RCW 28B.20.150, when the information
9 relates to investments in private funds, to the extent that such
10 information, if revealed, would reasonably be expected to result in
11 loss to the University of Washington consolidated endowment fund or to
12 result in private loss to the providers of this information; (~~and~~)

13 (21) Financial, commercial, operations, and technical and research
14 information and data submitted to or obtained by innovate Washington in
15 applications for, or delivery of, grants and loans under chapter 43.333
16 RCW, to the extent that such information, if revealed, would reasonably
17 be expected to result in private loss to the providers of this
18 information; and

19 (22) Market share data submitted by a manufacturer under RCW
20 70.95N.190(4).

21 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2014.

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