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**ENGROSSED SUBSTITUTE HOUSE BILL 1824**

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**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)

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

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

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

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

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

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

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

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

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

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

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

(7) The authority shall accept and utilize in the standard program any registered processor meeting the requirements of this chapter and any requirements described in the authority's operating plan or through contractual arrangements. Priority must be given to processors operating in the state of Washington. Processors utilized by the standard plan shall provide documentation to the authority at least annually regarding how they are meeting the requirements in RCW 70.95N.250 ((~~and section 26 of this act~~)), including enough detail to allow the standard plan to meet its reporting requirements in RCW 70.95N.140(2)(c) ((~~and (d)~~)), and must submit to audits conducted by or for the authority. The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products. Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters, and provide other documentation as may be required by the authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Fairly compensate processors for providing processing services;

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

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

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

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

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

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

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

(j) A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling.

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

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

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

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

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

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

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

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

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

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

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

(d) Educational and promotional efforts that were undertaken;

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

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

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

(h) A detailed accounting of the following costs of the program: (i) Program delivery, including: (A) Education and promotional efforts; (B) collection; (C) transportation; and (D) processing and labor; and (ii) program administration;

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

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

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

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

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

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

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

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

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

(3) Any person that does not comply with manufacturer registration requirements under RCW 70.95N.040, education and outreach requirements under RCW 70.95N.120, reporting requirements under RCW 70.95N.140, labeling requirements under RCW 70.95N.160, retailer responsibility requirements under RCW 70.95N.170, collector or transporter registration requirements under RCW 70.95N.240, or requirements under RCW 70.95N.250 ((~~and section 26 of this act~~)), must first receive a written warning including a copy of the requirements under this chapter and thirty days to correct the violation. After thirty days, a person must be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation.

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

(5) The department shall enforce this section.

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

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

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

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

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

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

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

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

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

(4) The directors of the department of commerce and the department of ecology serve as ex officio members and they or their designees must attend a minimum of three board meetings each year. The state agency directors serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

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

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

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

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