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INTRODUCED BY Assembly Members Pavley and Kehoe
(Coauthors: Assembly Members Hancock, Jackson, Koretz, Levine,
and Lieber)
(Coauthors: Senators Kuehl and Romero)

FEBRUARY 20, 2004

An act to add Chapter 8.6 (commencing with Section 42490) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2901, Pavley. Solid waste: cell phones: recycling.

Existing law requires the California Integrated Waste Management Board to administer state programs to recycle various specified materials, including the Electronic Waste Recycling Act of 2003, which governs certain electronic devices with display screens greater than 4 inches in size.

This bill would enact the Cell Phone Recycling Act of 2004 and would make it unlawful to sell, on and after July 1, 2006, a cell phone in this state to a consumer, as defined, unless the retailer of that cell phone complies with the act.

The bill would require a retailer selling a cell phone in this state to have in place, by July 1, 2006, a system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal. The bill would require the system to include specified elements.

The bill would require the Department of Toxic Substances Control on July 1, 2007, and each July 1 thereafter, to post on its Web site an estimated California recycling rate for cell phones, as specified.

The bill would impose requirements upon state agencies that purchase or lease cell phones regarding a certification of compliance with the act by prospective bidders. The bill would contain a severability clause.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 8.6 (commencing with Section 42490) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.6. CELL PHONE RECYCLING ACT OF 2004
Article 1. General Provisions

42490. This act shall be known, and may be cited as, the Cell Phone Recycling Act of 2004.

42490.1. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of used cell phones.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of used cell phones, and providing a system that does not charge when a cell phone is returned.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of used cell phones be the responsibility of the producers and consumers of cell phones, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the intent of this chapter to ensure that all costs associated with the proper management of used cell phones is internalized by the producers and consumers of cell phones at or before the point of purchase, and not at the point of discard.

(e) Manufacturers and retailers of cell phones and cell phone service providers, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used cell phone recycling system for California.

(f) The producers of cell phones should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in cell phones.

(g) Cell phones, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of this chapter is to provide for the safe, cost free, and convenient collection, reuse, and recycling of 100 percent of the used cell phones discarded or offered for recycling in the state.

(i) In establishing a cost effective system for the recovery, reuse, recycling and proper disposal of used cell phones, it is the intent of the Legislature to encourage manufacturers, retailers and service providers to build on the retailer take-back systems initiated recently by some cell phone service providers.

(j) An estimated 5 percent of obsolete cell phones are currently being recycled through a mechanism, whereby private sector recyclers provide retailers with a postage paid box for mailing returned cell phones to the recycler at no cost to the retailers. In some instances, the scrap value of these used phones is sufficient for the recycler to either pay the retailer or make a financial contribution on behalf of the retailer to a nonprofit charity. It is the intent of the Legislature that this model system be substantially expanded

as a result of the enactment of this act.

Article 2. Definitions

42493. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Cell phone" means a wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service, as defined in Section 22.99 of Title 47 of the Code of Federal Regulations. A cell phone includes the rechargeable battery that may be connected to that cell phone. A cell phone does not include a wireless telephone device that is integrated into the electrical architecture of a motor vehicle.

(b) "Consumer" means a purchaser or owner of a cell phone. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Retailer" means a person who sells a cell phone in the state to a consumer, including a manufacturer of a cell phone who sells that cell phone directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(e) (1) "Sell" or "sale" means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), "distributor" means a person who sells a cell phone to a retailer.

(f) "Used cell phone" means a cell phone that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

Article 3. Cell Phone Recycling

42494. (a) On and after July 1, 2006, every retailer of cell phones sold in this state shall have in place a system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal.

(b) A system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) The take-back from the consumer of a used cell phone that the retailer sold or previously sold to the consumer, at no cost to that consumer. The retailer may require proof of purchase.

(2) The take-back of a used cell phone from a consumer who is purchasing a new cell phone from that retailer, at no cost to that consumer.

(3) If the retailer delivers a cell phone directly to a consumer in this state, the system provides the consumer, at the time of delivery, with a mechanism for the return of used cell phones for reuse, recycling, or proper disposal, at no cost to the consumer.

(4) Make information available to consumers about cell phone recycling opportunities provided by the retailer and encourage consumers to utilize those opportunities. This information may include, but is not limited to, one or more of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials provided to the consumer at the time of purchase or delivery, or both.

(C) Reference to the cell phone recycling opportunity in retailer advertising or other promotional materials, or both.

(D) Direct communications with the consumer at the time of purchase.

(c) Paragraph (4) of subdivision (b) does not apply to a retailer that only sells prepaid cell phones and does not provide the ability for a consumer to sign a contract for cell phone service.

42495. On and after July 1, 2006, it is unlawful to sell a cell phone to a consumer in this state unless the retailer of that cell phone complies with this chapter.

Article 4. Statewide Recycling Goals

42496.4. On July 1, 2007, and each July 1, thereafter, the department shall post on its Web site an estimated California recycling rate for cell phones, the numerator of which shall be the estimated number of cell phones returned for recycling in California during the previous calendar year, and the denominator of which is the number of cell phones estimated to be sold in this state during the previous calendar year.

Article 5. State Agency Procurement

42498. (a) A state agency that purchases or leases cell phones shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of cell phones.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of

the unlawfully obtained money, property, or benefit in the interest of justice.

Article 6. Effect of Act

42499. This chapter shall not be construed to affect Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, any regulation adopted pursuant to that chapter, or any obligation imposed on a person pursuant to that chapter, relating to cell phones or used cell phones.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.