



GOV. MSG. NO. 889

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2843 SD2 HD3 CD1, without my approval, and with the statement of objections relating to the measure.

SB2843 SD2 HD3 CD1

A BILL FOR AN ACT RELATING TO ELECTRONIC  
DEVICE RECYCLING.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2843

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2843, entitled "A Bill for an Act Relating to Electronic Device Recycling."

The purpose of this bill is to encourage the recycling of certain electronic devices by creating a statewide electronic device recycling program.

This bill is objectionable because it contains an exemption that appears to be unconstitutional. The exemption is found in the bill's definition of "manufacturers." Pursuant to this definition, "persons located in the State who manufacture specialized computers and have sales of no more than one hundred computers per year" are not obligated to comply with the bill nor are they subject to any regulations adopted by the Department of Health's electronic device recycling program. This exemption appears to be unconstitutional for several reasons.

First, the exemption may fail a rational basis test for equal protection under the Fourteenth Amendment to the United States Constitution and Section 5 of Article I of the Hawaii Constitution. The distinction made between in-state and out-of-state manufacturers violates the principle that all persons must be afforded the equal protection of the laws.

Second, the dormant commerce clause, rooted in Section 8 of Article I of the United States Constitution and federal case law, prohibits states from enacting legislation that would

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inhibit or interfere with interstate commerce. A law that has the effect of favoring in-state interests over the interests of those who may be out-of-state, places an impermissible burden on the out-of-state interests and is considered protectionist. Here, the exemption for manufacturers who produce fewer than one hundred specialized computers is limited to manufacturers who are "located in the State." Because of the disparate impact on out-of-state manufacturers, this exemption appears to violate the United States Constitution.

The Fourteenth Amendment to the United States Constitution and Section 5 of Article I of the Hawaii Constitution protect the right of every person to receive due process of law. This bill's failure to define "specialized computers" (as distinct from any other kind of computer) renders the exemption for in-state manufacturers void for vagueness. Though this bill only provides administrative penalties and injunctive relief, the ambiguity that surrounds such an important term is significant enough to warrant concern. Without an explicit standard that provides a person of average intelligence enough information to make an informed decision about whether or not he or she qualifies for the exemption, the exemption appears to be unconstitutionally vague.

Additionally, this bill establishes a State-run program that places numerous requirements on manufacturers and retailers that will increase the cost of doing business in our state. While I agree that it is important to encourage proper recycling methods for electronic devices, such as computers, the private sector already provides a number of options to consumers and those options continue to grow. Many manufacturers and industry associations provide extensive information on their websites

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about where and how to recycle their electronic products. As a result, I do not believe the development of a State-run program is necessary at this time.

For the foregoing reasons, I am returning Senate Bill No. 2843 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO ELECTRONIC DEVICE RECYCLING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Available estimates suggest that over  
2 100,000,000 computers, monitors, and televisions become obsolete  
3 each year, and this number is growing. If improperly managed,  
4 these used electronics can harm the environment and human  
5 health. These electronics contain valuable resources such as  
6 copper, gold, and aluminum, and if the electronics are disposed  
7 of in landfills, these valuable resources are lost for future  
8 use. Additionally, research shows that toxic substances with  
9 known adverse health effects, such as lead, have the potential  
10 to leach from discarded electronics in landfills. In Hawaii, an  
11 additional problem is presented by the limited amount of space  
12 in our state's landfills. Valuable space could be saved by  
13 providing a method to encourage recycling of used and discarded  
14 electronics.

15           The purpose of this Act is to encourage recycling of  
16 electronic devices sold within the State by establishing an  
17 electronic device recycling program.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 ELECTRONIC WASTE RECYCLING ACT

6 § -1 Definitions. As used in this chapter:

7 "Brand" means symbols, words, or marks that identify a  
8 covered electronic device, rather than any of its components.

9 "Covered entity" means any household, government entity,  
10 business, or nonprofit organization exempt from taxation under  
11 section 501(c)(3) of the United States Internal Revenue Code,  
12 regardless of size or place of operation within the State.

13 "Covered electronic device":

14 (1) Means a computer, computer printer, computer monitor,  
15 or portable computer, with a screen size greater than  
16 four inches measured diagonally; and

17 (2) Shall not include:

18 (A) A covered electronic device that is a part of a  
19 motor vehicle or any component part of a motor  
20 vehicle assembled by or for a motor vehicle  
21 manufacturer or franchised dealer, including  
22 replacement parts for use in a motor vehicle;



1 (B) A covered electronic device that is functionally  
2 or physically a part of a larger piece of  
3 equipment designed and intended for use in an  
4 industrial, commercial, or medical setting,  
5 including diagnostic, monitoring, or control  
6 equipment;

7 (C) A covered electronic device that is contained  
8 within a clothes washer, clothes dryer,  
9 refrigerator, refrigerator and freezer, microwave  
10 oven, conventional oven or range, dishwasher,  
11 room air conditioner, dehumidifier, or air  
12 purifier; or

13 (D) A telephone of any type.

14 "Department" means the department of health.

15 "Household" means any occupant of a single detached  
16 dwelling unit or of a single unit of a multiple dwelling unit  
17 who has used a covered electronic device at a dwelling unit  
18 primarily for personal or home business use.

19 "Manufacturer" means any existing person:

20 (1) Who manufactures or manufactured covered electronic  
21 devices under a brand that it owns or owned or is or  
22 was licensed to use, other than a license to



- 1 manufacture covered electronic devices for delivery  
2 exclusively to or at the order of the licensor;
- 3 (2) Who sells or sold covered electronic devices  
4 manufactured by others under a brand that the seller  
5 owns or owned or is or was licensed to use, other than  
6 a license to manufacture covered electronic devices  
7 for delivery exclusively to or at the order of the  
8 licensor;
- 9 (3) Who manufactures or manufactured covered electronic  
10 devices without affixing a brand;
- 11 (4) Who manufactures or manufactured covered electronic  
12 devices to which it affixes or affixed a brand that it  
13 neither owns or owned nor is or was licensed to use;  
14 or
- 15 (5) For whose account covered electronic devices  
16 manufactured outside the United States are or were  
17 imported into the United States; provided that if at  
18 the time such covered electronic devices are or were  
19 imported into the United States and another person has  
20 registered as the manufacturer of the brand of the  
21 covered electronic devices, this paragraph shall not  
22 apply;





1 provided that the term "manufacturer" shall not include persons  
2 located in the State who manufacture specialized computers and  
3 have sales of no more than one hundred computers per year.

4 "New covered electronic device" means a covered electronic  
5 device that is manufactured after the effective date of this  
6 chapter.

7 "Person" means any individual, business, partnership,  
8 limited liability company, corporation, not-for-profit  
9 organization, association, government entity, public benefit  
10 corporation, or public authority.

11 "Program year" means a full calendar year beginning on or  
12 after January 1, 2010.

13 "Recycling" means processing (including disassembling,  
14 dismantling, or shredding) covered electronic devices or their  
15 components to recover a useable product. "Recycling" does not  
16 include any process defined as incineration under applicable  
17 laws and rules.

18 "Retailer" means any person who offers covered electronic  
19 devices for sale, other than for resale by the purchaser,  
20 through any means, including sales outlets, catalogs, or the  
21 Internet.



1 "Sell" or "sale" means any transfer for consideration of  
2 title, including transactions conducted through sales outlets,  
3 catalogs, or the Internet, but excluding leases.

4 **§ -2 Scope of products.** The collection, transportation,  
5 and recycling provisions of this chapter shall apply only to  
6 covered electronic devices used and discarded in this State by a  
7 covered entity.

8 **§ -3 Sales prohibition.** (a) Beginning January 1, 2010,  
9 no manufacturer or retailer shall sell or offer for sale any new  
10 covered electronic device for delivery in this State unless:

11 (1) The covered electronic device is labeled with a brand,  
12 and the label is permanently affixed and readily  
13 visible; and

14 (2) The brand is included in a registration that is filed  
15 with the department and that is effective pursuant to  
16 section -4(b)(3).

17 (b) Beginning April 1, 2009, the department shall maintain  
18 a list of each registered manufacturer and the brands reported  
19 in each manufacturer's registration and a list of brands for  
20 which no manufacturer has registered. The lists shall be posted  
21 on the department website and shall be updated by the first day  
22 of each month. Each retailer who sells or offers for sale any



1 new covered electronic device for delivery in this State shall  
2 review these lists prior to selling the covered electronic  
3 device. A retailer is considered to have complied with  
4 subsection (a) if, on the date a new covered electronic device  
5 was ordered by the retailer, the brand was included on the  
6 department's list of brands reported in a manufacturer's  
7 registration.

8       **§ -4 Manufacturer responsibility.** (a) Beginning  
9 October 1, 2009, each manufacturer shall label all new covered  
10 electronic devices to be offered for sale for delivery in this  
11 State with a brand, which label shall be permanently affixed and  
12 readily visible.

13       (b) (1) By January 1, 2009, each manufacturer of new  
14 covered electronic devices offered for sale for  
15 delivery in this State shall register with the  
16 department and pay to the department a registration  
17 fee of \$5,000. Thereafter, if a manufacturer has not  
18 previously registered, the manufacturer shall register  
19 with the department prior to any offer for sale for  
20 delivery in this State of the manufacturer's new  
21 covered electronic devices.



1 (2) Each manufacturer who is registered shall submit an  
2 annual renewal of its registration with the payment of  
3 a registration fee of \$5,000, by January 1 of each  
4 program year.

5 (3) The registration and each renewal shall include a list  
6 of all of the manufacturer's brands of covered  
7 electronic devices and shall be effective on the  
8 second day of the succeeding month after receipt by  
9 the department of the registration or renewal.

10 (c) By June 1, 2009, and annually thereafter, each  
11 manufacturer shall submit a plan to the department to establish,  
12 conduct, and manage a program for the collection,  
13 transportation, and recycling of its covered electronic devices  
14 sold in the State.

15 (d) By March 31, 2011, and annually thereafter, each  
16 manufacturer shall submit to the department the total weight of  
17 all covered electronic devices recycled in the previous year,  
18 which may include both a manufacturer's own covered electronic  
19 devices and those of other manufacturers.

20 (e) By July 1, 2011, and annually thereafter, the  
21 department shall publish a ranking of all manufacturers selling  
22 covered electronic devices in the State, based upon the annual



1 total weight of covered electronic devices recycled by each  
2 manufacturer in the previous year.

3 (f) The State may adopt regulations allowing a procurement  
4 preference based upon a manufacturer's ranking.

5 (g) The department shall review each manufacturer's plan  
6 and, within sixty days of receipt of the plan, shall determine  
7 whether the plan complies with this chapter. If the plan is  
8 approved, the department shall notify the manufacturer or group  
9 of manufacturers. If the plan is rejected, the department shall  
10 notify the manufacturer or group of manufacturers and provide  
11 the reasons for the plan's rejection. ~~Within thirty days after~~  
12 receipt of the department's rejection, the manufacturer or group  
13 of manufacturers may revise and resubmit the plan to the  
14 department for approval.

15 (h) The obligations under this chapter for a manufacturer  
16 who manufactures or manufactured covered electronic devices, or  
17 who sells or sold covered electronic devices manufactured by  
18 others, under a brand that was previously used by a different  
19 person in the manufacture of covered electronic devices, shall  
20 extend to all covered electronic devices bearing that brand.



1 (i) Nothing in this chapter is intended to exempt any  
2 person from liability that the person would otherwise have under  
3 applicable law.

4 § -5 **Retailer responsibility.** Beginning January 1,  
5 2010, retailers shall make available to their customers  
6 information on collection services in the State, including the  
7 department's website and toll-free telephone number. Remote  
8 retailers may include this information in a visible location on  
9 their website to fulfill this requirement.

10 § -6 **Department responsibility.** (a) Beginning  
11 January 1, 2010, the department shall maintain and update a  
12 website and a toll-free number with current information on where  
13 covered entities can return covered electronic devices for  
14 recycling.

15 § -7 **Regulatory authority.** The department may adopt  
16 rules, pursuant to chapter 91, necessary to implement this  
17 chapter.

18 § -8 **Enforcement.** (a) Except as provided in subsection  
19 (c), the department and the attorney general shall be empowered  
20 to enforce this chapter and take necessary action against any  
21 manufacturer or retailer for failure to comply with this chapter  
22 or rules adopted thereunder.



1 (b) The attorney general may file suit to enjoin an  
2 activity related to the sale of covered electronic devices in  
3 violation of this chapter.

4 (c) The department shall issue a warning notice to a  
5 person for the person's first violation of this chapter. The  
6 person shall comply with this chapter within sixty days of the  
7 date the warning notice was issued or be subject to the  
8 penalties provided by law or rule. A retailer that receives a  
9 warning notice from the department for a violation of section

10 -3(a) shall submit proof to the department, within sixty  
11 days from the date the warning notice was issued, that its  
12 inventory of covered electronic devices offered for sale is in  
13 compliance with this chapter.

14 § -9 **Administrative penalties.** In addition to any other  
15 administrative or judicial remedy provided by this chapter or by  
16 rules adopted under this chapter for a violation thereof, the  
17 department is authorized to impose by order administrative  
18 penalties and is further authorized to set, charge, and collect  
19 administrative fines and to recover administrative fees and  
20 costs, including attorney's fees and costs, or to bring legal  
21 action to recover administrative fines and fees and costs,  
22 including attorney's fees and costs.



1           **§ -10 Electronic device recycling fund.** (a) There is  
2 established in the state treasury the electronic device  
3 recycling fund into which shall be deposited all fees, payments,  
4 and penalties collected by the department pursuant to this  
5 chapter.

6           (b) The electronic device recycling fund shall be  
7 administered by the department of health. Moneys in the fund  
8 shall be expended by the director solely for the purpose of  
9 implementing and enforcing this chapter.

10           **§ -11 Financial and proprietary information.**

11 Notwithstanding any law to the contrary, financial or  
12 proprietary information, including trade secrets, commercial  
13 information, and business plans, submitted to the department  
14 under this chapter is confidential and is exempt from public  
15 disclosure.

16           **§ -12 Federal preemption.** This chapter shall be deemed  
17 repealed if a federal law or a combination of federal laws takes  
18 effect that establishes a national program for the collection  
19 and recycling of covered electronic devices that substantially  
20 meets the intent of this chapter, including the creation of a  
21 financing mechanism for collection, transportation, and





1 recycling of all covered electronic devices from covered  
2 entities in the United States."

3 SECTION 3. There is established within the department of  
4 health a temporary working group which shall consist of:

5 (1) The director of health or the director's designee; and

6 (2) A representative of each manufacturer of televisions,  
7 whether cathode ray tube-based or flat panel-based,  
8 that are sold or offered for sale in the State as of  
9 the effective date of this Act.

10 (b) The working group shall develop a plan to establish,  
11 conduct, and manage a program for the collection,  
12 transportation, and recycling of televisions sold in the State,  
13 to be implemented no later than January 1, 2010. The department  
14 of health shall provide necessary administrative, professional,  
15 technical, and clerical assistance to the working group.

16 (c) The working group shall submit a report of its  
17 findings and recommendations, including any proposed  
18 legislation, to the legislature no later than twenty days prior  
19 to the convening of the regular session of 2009.

20 (d) The working group shall dissolve on June 30, 2009.

21 (e) If a separate plan for the collection, transportation,  
22 and recycling of televisions is not implemented before January



1 1, 2011, the definition of "covered electronic device" found in  
2 section -1 as enacted pursuant to section 2 of this Act shall  
3 be amended to include televisions and to read as follows:

4 "Covered electronic device":

5 (1) Means a computer, computer printer, computer monitor,  
6 portable computer, or television with a screen size  
7 greater than four inches measured diagonally; and

8 (2) Shall not include:

9 (A) A covered electronic device that is a part of a  
10 motor vehicle or any component part of a motor  
11 vehicle assembled by or for a motor vehicle  
12 manufacturer or franchised dealer, including  
13 replacement parts for use in a motor vehicle;

14 (B) A covered electronic device that is functionally  
15 or physically a part of a larger piece of  
16 equipment designed and intended for use in an  
17 industrial, commercial, or medical setting,  
18 including diagnostic, monitoring, or control  
19 equipment;

20 (C) A covered electronic device that is contained  
21 within a clothes washer, clothes dryer,  
22 refrigerator, refrigerator and freezer, microwave



1 oven, conventional oven or range, dishwasher,  
2 room air conditioner, dehumidifier, or air  
3 purifier; or

4 (D) A telephone of any type.

5 SECTION 4. If any provision of this Act, or the  
6 application thereof to any person or circumstance is held  
7 invalid, the invalidity does not affect other provisions or  
8 applications of the Act, which can be given effect without the  
9 invalid provision or application, and to this end the provisions  
10 of this Act are severable.

11 SECTION 5. ~~This Act does not affect rights and duties that~~  
12 matured, penalties that were incurred, and proceedings that were  
13 begun, before its effective date.

14 SECTION 6. This Act shall take effect on July 1, 2008.

