

Computer TakeBack Campaign analysis and position statement on California SB20 September 19, 2003

The goal of the **Computer Take-Back Campaign** is to protect the health and well being of electronics users, workers, and the communities where electronics are produced and discarded by requiring consumer electronics manufacturers and brand owners to take full responsibility for the life cycle of their products, through effective public policy requirements or enforceable agreements.

We will accomplish this goal by establishing extended producer responsibility (EPR) as the policy tool to promote sustainable production and consumption of consumer electronics. We also seek to stop the irresponsible export of computers and consumer electronics, which is damaging to both people and the environment. Our commitment to EPR has allowed the CTBC to win the confidence of our campaign supporters, government officials and recyclers. It is embodied in our platform and has guided the CTBC position in negotiations in the NEPSI process. It is the basis of the CTBC “Pledge of True Stewardship” which we are asking recyclers to achieve.

The CTBC is committed to EPR because it makes sense – but also because it works on the ground. EPR is being used successfully in a growing number of countries in Europe and Asia to manage the recycling of electric and electronic products. EPR puts responsibility for waste handling and recycling not on taxpayers or only consumers but on the party with the greatest ability to provide solutions: *the product brand owner*. At the same time, EPR protects the public interest by providing controls to ensure that brand-owners meet tough environmental and social justice standards. Moreover, by shifting financial responsibility on to the brand owners, EPR creates a powerful market incentive to reduce product management and end-of-life costs by improving product design in order to eliminate toxic and hazardous materials and improve recyclability and re-use.

The CTBC has developed a checklist of “Essential Elements of Legislation” for e-waste recycling. The checklist is useful for evaluating proposed legislation for its effectiveness in advancing EPR. See http://www.computertakeback.com/legislation_and_policy/essentials.cfm for the full position.

How does California SB 20 perform against the CTBC checklist?

While California’s Senate Bill 20 meets some of the CTBC principles, it FAILS to adopt an EPR approach. For this reason, the CTBC cannot support SB 20 and does not see the legislation as a model bill at the state or federal level. State legislatures can and must do better to protect taxpayers, local government and the environment from the electronic waste crisis we face. Legislation such as SB 20, sets a poor example for other US states and leads the United States down the wrong road in the international arena, putting us further behind Europe and Asia in this growing policy area.

Here we provide an overview of sixteen measures of comprehensive e-waste policy developed by the Computer TakeBack Campaign, and grade SB20 on how it performs relative to those measures:

1. Definition

Effective legislation must define “electronic equipment” sufficiently broad to embrace legacy waste (old TVs, computers, etc.) and anticipate new gadgetry likely to come on the market; the definition of electronic equipment should include anything with a circuit board, complex circuitry, signal processing, or electronics that contains one or more hazardous substances.

SB 20: FAIL – it leaves out most electronic products!

The scope of the Bill is very narrow, covering only CRTs and other video displays only. It does not cover other electronic equipment, such as computers, printers, servers, etc. CRTs are a declining share of the market; meanwhile, LCD and other flat panel displays have not yet been officially deemed hazardous. It would be more fair and equitable to include all electronic products, rather than singling out only the televisions and computer monitors. A broader definition will better anticipate new products entering the marketplace. The narrow scope of SB 20 puts human health and the environment at risk. CRT’s are considered hazardous waste because the lead glass can potentially leach into groundwater and is dangerous to human health and the environment. Consumer electronic products that contain circuit boards also fail the leaching (TCLP test) and therefore should be included in SB20.

2. Producer Responsibility

Effective legislation must require development and implementation of a system of brand owner/producer financial responsibility for equipment currently entering the marketplace. Legislation should state a non-specific requirement that brand owners, producers and distributors, or a consortium of brand owners, develop an approved system for financing the environmentally superior collection and recycling of discarded electronic equipment, with applicable rates and dates, and leave the specific details to be developed by affected companies.

SB 20: FAIL –the producer is not responsible!

SB 20 effectively absolves producers of all responsibility, since the retailers collect the fee, the state-managed Electronic Waste Recovery and Recycling Account manages the money and local governments manage the collection. SB 20 is not an EPR program. It is a traditional recycling program, financed with a consumer fee and managed by government.

3. Performance Measures

Effective legislation must set performance measures and timetables for meeting these performance goals. Performance could be measured in one of several ways, including:

- *collection, recovery and recycling of a percentage of the brand owners products;*

- *collection, recovery and recycling of an amount per person based on the population of the state in question (e.g., 4 kilograms per person per year, which is the standard in Europe);*
- *a level of service and convenience, measured by a required number of drop-off or collection locations per unit of population*

SB 20: Qualified FAIL – The only goals are statewide, not based on individual producer goals

Recycling targets are essential to ensure accountability and to spur better product design. Because Europe and Japan have ratcheted-up recycling targets, brand owners there have set up recycling and disassembly plants and introduced recycled plastic in new cars, for example.

Under SB 20, producers will have no such incentive in California because the bill includes no performance measures. The bill does require that the board shall annually establish, and update as necessary, statewide recycling goals for covered electronic waste, but this is not the same as goals for individual producers. At the end of the session, industry representatives muscled their way out of accepting responsibility for achieving recycling goals. The burden of meeting the statewide goals strictly fall on the board, local government and retailers. A special clause in (42475.4 (b))SB20 states that the California Waste Management Board does not have the authority to set performance standards or establish any recycling rates or dates by which a manufacturer of covered electronic devices shall comply, or to impose any other recycling goal or target on a manufacturer of those devices.

4. Comprehensive Scope – All manufacturers and brand owners must be covered
Effective legislation would frame a system for e-waste collection and recycling that applies to all brand owners regardless of sales channels, and to all end users.

SB 20: PASS – All manufacturers and brand owners are covered

The coverage applies to (A) A person who manufactures a covered electronic device sold in this state, or (B) A person who sells a covered electronic device in this state under a person's brand name.

5. Legacy Waste

Effective legislation must also create and finance a system of brand owner/producer responsibility for our stockpiles of so-called “legacy waste,” electronic equipment sold and discarded prior to the effective date of the legislation. Financing for such a system should be based on market share or other means of allocation across the industry.

SB 20: FAIL – SB20 depends on consumer financing for clean-up legacy waste

SB 20 provides financing for historic waste only through the consumer fee, which is added on to current sales. This means consumers, and not the companies who manufactured the hazardous electronic waste, will foot the bill for cleaning-up the mess. SB20 doesn't distinguish between historic and future electronic waste,

which lets companies like IBM off the hook. IBM is responsible for a major portion of the historic waste, however, they will not pay their fair share, since their current sales of CRTs is very minimal.

6. No Taxpayer Liability

Effective legislation must ensure that government and taxpayers are held harmless from all costs associated with collection, handling, transportation, storage, recycling, and disposal of discarded electronics, as well as oversight and enforcement of systems established to handle these products.

SB 20: Potential **FAILURE** – **The fees currently set in SB 20 -- \$6 to \$10 depending on the size of the screen -- are so low, and applied only to a small fraction of waste electronic products, that they will not cover the full costs of collection and recycling. While the legislation does allow the Waste Board to raise fees to cover costs, if they fail to do so, taxpayers will have to pick up the shortfall.** The bill requires that the Waste Management Board manage fees and fines collected under the act, expend the moneys and to administer the act, and provisions regulating covered devices. SB20 also creates a state mandated local program requiring county and regional governments to submit a plan identifying actions to promote the collection, consolidation, recovery and recycling of covered electronic waste.

7. Disposal Bans

Effective legislation must ban electronic equipment from landfills and incinerators. Landfill bans have been put in place by a handful of states but are not, by themselves, an effective solution to the problem.

SB 20: Prior **PASS** – **Already covered through regulation by California Department of Toxics**

On April 3, 2001 the California Department of Toxics Substances Control clarified that cathode ray tubes found in electronic devices are banned from California landfills.

8. Toxics Reduction

Effective legislation must phase out specific hazardous materials from the manufacture of electronic equipment, including but not limited to lead, mercury, polyvinyl chloride, and brominated flame retardants.

SB 20: **PASS**

This is one of the best provisions of the legislation, since it adopts the approach incorporated in the European Union's Directive on Restriction of Hazardous Substances. No product can be sold in California unless it meets the toxic phase out standards of the EU directive.

9. Labeling

Effective legislation must require labeling of electronic equipment containing hazardous materials. Legislation should also require labeling or information provided to consumers about the system for managing discarded products.

SB 20: FAIL – The only labeling requirements are that producers must have their brand name on their products, but it does not require that the toxic materials be labeled.

10. Responsible Recycling

Effective legislation should establish verifiable performance standards for electronic recyclers, including reporting and penalties for violations, worker health and safety and other criteria, to ensure that materials are managed in an environmentally superior manner.

SB 20: Qualified PASS – There is language included which is designed to prohibit prison recycling, which has been an important issue to the CTBC. There are also provisions for reporting and penalties for violations.

11. Procurement

Effective legislation should establish procurement requirements for public agencies' information technology purchases, relating to product specifications and end of life product management.

SB 20: Qualified PASS – Article 7 declares that manufacturers are ineligible to bid on the procurement of covered electronic devices unless they are in full compliance with the provisions of the bill. The bill also convenes a Covered Electronic Waste Working Group to develop purchasing criteria for “covered devices” (CRT). This Working Group will develop and advise the Board and the state Consumer Services Agency on environmental purchasing criteria that may be used by the state agencies to identify covered electronic devices with reduced environmental impacts.

12. No Waste Export

Effective legislation should, to the extent possible, prohibit export to non-OECD countries of non-working CRTs and CRT glass waste for any reason.

SB 20: FAIL – The final bill does not ban export, though it may appear to do so, and may open loopholes that not only perpetuate export but could reward

such export through transfer of the imposed fee to exporters. The language must be strengthened to close these loopholes.

13. Governance and Enforcement

Effective legislation must include means for ensuring compliance and enforcement. Legislation should require specific periodic reporting by producers selling in the state, as well as public availability of all such reports. Legislation could require a multi-stakeholder advisory board to review these reports and make additional recommendations. Legislation could prohibit sales in the state, or sales to state agencies and units of government, for failure to abide by the terms of the legislation.

SB 20: **PASS** – Article 4 requires annual reporting to the California Waste Board the volume of sales, the amount of hazardous materials contained in products, and goals for improved design. Civil liability in the amount of \$2,500 to \$25,000 may be imposed by the Board or by Superior court on those who fail to comply with the provisions (42474 (a)).

14. Economic Development

Effective legislation could harness the economic power of recycling and reuse industries by establishing preferences/incentives for local economic development and job creation through electronics recycling.

SB 20: **FAIL** – **no economic development provisions included**

15. Recycled Content

Effective legislation should close the electronics recycling loop by requiring recycled content standards for materials used in electronic equipment.

SB 20: **FAIL** – **no recycled content specified**

16. No prison labor

SB 20: **PASS** – **a victory for the Computer Take Back Campaign!**