

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

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