

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2139

Introduced by Assembly Member Chesbro

February 18, 2010

An act to add Chapter 5 (commencing with Section 48800) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2139, as amended, Chesbro. Solid waste: product stewardship.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires a pharmaceutical manufacturer that sells or distributes medication that is self-injected at home through the use of hypodermic needles and other similar devices to submit a plan to the department that describes how the manufacturer supports the safe collection and proper disposal of the waste devices.

This bill would create the California Product Stewardship Act and would define the term "covered product" as including *home-generated* medical sharps, ~~containers used to contain pesticides intended for residential use, small personal use propane tanks, personal butane lighters, and single-use food packaging that the department determines is a significant source of ocean and beach contamination.~~ The bill would require the department by July 1, 2011, to establish a baseline collection rate for the amount of those products that is discarded and subsequently collected. The bill would provide a procedure for determining the collection rate applicable commencing January 1, 2014 *and nonrefillable propane cylinders, as defined.*

The bill would require, by September 30, 2011, a producer or the product stewardship organization created by one or more producers of a covered product to submit a product stewardship plan to the department, which would be required to include specified elements, including performance goals, *a collection rate*, and product goals. On or before January 1, 2012, the department would be required to review and either approve or disapprove the product stewardship plan submitted to the department.

The bill would prohibit the producer of a covered product, on and after July 1, 2012, from selling a covered product unless the producer or product stewardship organization of the covered product has submitted a plan to the department that is approved by the department. *The bill would require the department, on July 1, 2012, and on January 1 and July 1 annually thereafter, to post on its Internet Web site the covered products that are not in compliance and the bill would require a wholesaler or retailer that distributes or sells covered products to monitor the department's Internet Web site to determine if a covered product is in compliance.* The act would require a producer of a covered product to collect the covered product pursuant to the product stewardship plan and to meet the performance goals included in the product stewardship plan.

Each producer or product stewardship organization implementing a product stewardship plan would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the product stewardship plan.

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the department a fee of ~~\$10,000~~ *an unspecified amount* when submitting the plan for review and approval and to pay an annual administrative fee of ~~\$1,000~~ *an unspecified amount*. The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the act's requirements. The bill would create in the existing Integrated Waste Management Fund the Product Stewardship Account and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Product Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the board's program implementation costs and as incentives to enhance recyclability and

redesign efforts and to reduce environmental and safety impacts of covered products.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5 (commencing with Section 48800) is
2 added to Part 7 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 5. CALIFORNIA PRODUCT STEWARDSHIP PROGRAM

6
7 Article 1. Findings and Declarations

8
9 48800. The Legislature finds and declares all of the following:

10 (a) This chapter requires the Department of Resources Recycling
11 and Recovery to develop, implement, and administer the Product
12 Stewardship Program.

13 (b) Product stewardship is a mechanism to place responsibility
14 for end-of-life management issues for products on those involved
15 in the product chain in an equitable manner.

16 (c) The program established by this chapter will test the efficacy
17 of a consistent framework approach for managing products that
18 have significant end-of-life waste management impacts as well as
19 impacts on the environment and public health. This framework
20 approach provides a consistent process that includes goals and
21 oversight so that a level playing field exists among all producers,
22 while maintaining flexibility for specific products and for producers
23 to design their product stewardship programs.

24 (d) End-of-life management of solid waste has historically been
25 the responsibility of state and local governments with the primary
26 physical management and financial burden placed on local
27 government and ratepayers, who have no ability to influence the
28 design of the products or packaging to reduce waste management
29 costs.

30 (e) Prior to this program, the state addressed products with
31 end-of-life management issues through a patchwork of product
32 and material specific programs.

1 (f) Implementing product stewardship programs that are funded
2 and managed by the producers of products with significant
3 end-of-life impacts reduces the role of, and cost to, state and local
4 government and ratepayers.

5 (g) The Product Stewardship Program established by this chapter
6 will explore the feasibility and potential environmental, economic,
7 and social benefits of instituting a permanent product stewardship
8 program for an extended number of products while still providing
9 producers with the flexibility to customize individual product
10 stewardship plans toward the most effective and efficient approach
11 for a particular product or product category.

12 (h) The Product Stewardship Program established by this chapter
13 will test the applicability of extended producer responsibility and
14 may be used as a template for including additional products in
15 these programs.

16

17

Article 2. General Provisions

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19 48800.1. This chapter shall be known and may be cited as the
20 California Product Stewardship Act.

21

22

Article 3. Definitions

23

24 48800.2. For purposes of this chapter, and unless the context
25 otherwise requires, the definitions in this article govern the
26 construction of this chapter.

27 48800.3. “Brand” means a name, symbol, word, or mark that
28 identifies a product, rather than its components, and attributes the
29 product to the owner or licensee of the brand as the producer.

30 48800.4. “Collection rate” means a quantitative measure
31 ~~established by the department pursuant to Section 48811 or~~
32 ~~determined pursuant to Section 48812, as applicable, that~~ *that*
33 establishes the amount of a covered product required to be collected
34 pursuant to a product stewardship plan.

35 48800.5. “Consumer product” means a product that is sold in
36 this state in a transaction that is a retail sale or in a transaction to
37 which a use tax applies pursuant to Part 1 (commencing with
38 Section 6001) of Division 2 of the Revenue and Taxation Code.

1 48800.6. “Covered product” means all of the following
2 consumer products that are used or discarded in this state, as
3 defined by the department:

4 (a) ~~“Covered product 1” means medical sharps, including~~
5 ~~hypodermic needles, hypodermic needles with syringes, blades,~~
6 ~~and needles, that are not subject to Article 3.3 (commencing with~~
7 ~~Section 47115) or Chapter 1 of Part 7: home-generated sharps~~
8 *waste, including, but not limited to, hypodermic needles, pen*
9 *needles, intravenous needles, lancets, and other devices, that are*
10 *used to penetrate the skin for the delivery of medications derived*
11 *from a household, including from a multifamily residence or*
12 *household.*

13 (b) (1) ~~“Covered product 2” means containers used to contain~~
14 ~~pesticides intended for residential use: pesticides, as defined in~~
15 ~~Section 12753 of the Food and Agricultural Code, that are intended~~
16 ~~for residential use, including any of the following:~~

17 (A) *A spray adjuvant.*

18 (B) *A substance or mixture of substances that is intended to be*
19 *used for defoliating plants, regulating plant growth, or for*
20 *preventing, destroying, repelling, or mitigating a pest, as defined*
21 *in Section 12754.5 of the Food and Agricultural Code, that may*
22 *infest or be detrimental to vegetation, human, animal, or*
23 *household, or be present in a agricultural or nonagricultural*
24 *environment whatsoever.*

25 (2) *For purposes of this chapter, pesticides intended for*
26 *residential use shall be limited to those defined as a consumer*
27 *product, pursuant to Section 48800.5, but shall exclude those*
28 *consumer products that are intended primarily for residential*
29 *cleaning and disinfecting.*

30 (c) ~~“Covered product 3” means small personal use propane~~
31 ~~tanks.~~

32 (d) ~~“Covered product 4” means personal butane lighters.~~

33 (e) ~~“Covered product 5” means single-use food packaging that~~
34 ~~the department determines is a significant source of ocean and~~
35 ~~beach contamination: nonrefillable propane cylinders, as defined~~
36 ~~in Section 178.65 of Title 49 of the Code of Federal Regulations.~~

37 48800.7. “Department” means the Department of Resources
38 Recycling and Recovery.

39 48800.8. “Performance goal” means the collection rate of a
40 covered product, and may include, but is not limited to, the reuse

1 and recycling rate established by the product stewardship plan for
2 that covered product.

3 48800.9. “Producer” shall be determined, with regard to a
4 covered product that is sold, offered for sale, or distributed in the
5 state, as meaning one of the following:

6 (a) A person who manufactures the covered product and who
7 sells, offers for sale, or distributes that covered product in the state
8 under that person’s own name or brand.

9 (b) If there is no person who sells, offers for sale, or distributes
10 the covered product in the state under the person’s own name or
11 brand, the producer of the covered product is the owner or licensee
12 of a trademark or brand under which the covered product is sold
13 or distributed in the state, whether or not the trademark is
14 registered.

15 (c) If there is no person who is a producer of the covered product
16 for purposes of subdivisions (a) and (b), the producer of that
17 covered product is the person who imports the product into the
18 state for sale or distribution.

19 48800.10. “Product goal” means those qualitative or
20 quantitative goals determined by the producer to measure
21 improvements that reduce the life cycle impacts of a covered
22 product.

23 48800.11. “Product stewardship” means requiring the producer
24 of a covered product, and all other entities involved in the product
25 chain, to share in the responsibility of reducing the life cycle impact
26 of the covered product and its packaging, including requiring the
27 producer who makes design and marketing decisions for the
28 covered product to bear the primary responsibility for this
29 reduction.

30 48800.12. “Product stewardship organization” means an
31 organization appointed by one or more producers to act as an agent
32 on behalf of the producer to design, submit, and administer a
33 product stewardship plan pursuant to this chapter.

34 48800.13. “Product stewardship plan” or “plan” means a plan
35 written by an individual producer or a product stewardship
36 organization, on behalf of one or more producers, that includes all
37 of the information required by Section 48813.

38 48800.14. “Recycling rate” means a quantitative measure that
39 establishes the amount of a collected covered product that is
40 recycled as compared to the total amount of the covered product

1 that is collected, including the amount of the covered product that
2 is discarded for reuse, energy recovery, or safe disposal.

3 48800.15. "Reporting period" means the period commencing
4 January 1 and ending on December 31 of the same calendar year.

5 48800.16. "Reuse rate" means a quantitative measure that
6 establishes the amount of a collected covered product that is reused
7 as compared to the total amount of the covered product that is
8 collected, including the amount of the covered product that is
9 discarded by recycling, energy recovery, or safe disposal.

10 48800.17. "Sell" or "sales" means any transfer of title of a
11 covered product for consideration, including a remote sale
12 conducted through a sale outlet, catalog, or Internet Web site or
13 similar electronic means, but does not include a lease.

14

15 Article 4. Product Stewardship Program

16

17 48810. This chapter does not limit, supersede, duplicate, or
18 otherwise conflict with the authority of the Department of Toxic
19 Substances Control under Section 25257.1 of the Health and Safety
20 Code to fully implement Article 14 (commencing with Section
21 25251) of Chapter 6.5 of Division 20 of the Health and Safety
22 Code, including the authority of the Department of Toxic
23 Substances Control to include products in its product registry.

24 ~~48811. (a) On or before July 1, 2011, the department shall~~
25 ~~establish a baseline collection rate for the amount of each covered~~
26 ~~product that is discarded and subsequently collected, based on~~
27 ~~existing collection data.~~

28 ~~(b) On and after July 1, 2011, and for the calendar years~~
29 ~~commencing January 1, 2012, and January 1, 2013, the collection~~
30 ~~rate shall be the collection rate established pursuant to this section.~~

31 ~~48812. (a) On and after January 1, 2014, the collection rate~~
32 ~~for a covered product shall be determined in the following manner:~~

33 ~~(1) For the calendar year commencing January 1, 2014, the~~
34 ~~collection rate shall be 5 percent more than the baseline collection~~
35 ~~rate determined pursuant to Section 48811.~~

36 ~~(2) On and after January 1, 2015, the collection rate for each~~
37 ~~covered product shall increase by no less than 5 percent annually~~
38 ~~until a 95 percent collection rate is reached.~~

39 ~~(b) A producer may petition the department for an adjustment~~
40 ~~to the collection rate. The department may grant an adjustment to~~

1 ~~the collection rate only if the department determines there are~~
2 ~~documented exigent circumstances that are beyond the control of~~
3 ~~the producer or product stewardship organization.~~

4 48813. (a) On or before September 30, 2011, a producer or a
5 product stewardship organization that is created by one or more
6 producers of a covered product shall submit a product stewardship
7 plan to the department. A product stewardship organization created
8 pursuant to this section shall be open for participation by all
9 producers of a covered product.

10 ~~(b) A producer, group of producers, or product stewardship~~
11 ~~organization shall consult with stakeholders during the~~
12 ~~development of the product stewardship plan, including soliciting~~
13 ~~stakeholder comments and responding to stakeholder comments~~
14 ~~prior to submitting the product stewardship plan.~~

15 (e)

16 (b) Each product stewardship plan for a covered product shall
17 address the environmental impacts of the covered product over
18 the entire life cycle of that product, including the product design,
19 manufacture, and distribution of the covered product, and the
20 collection, transportation, reuse, recycling, and final disposition
21 of the discarded covered product, in accordance with this chapter.
22 The plan shall include, at a minimum, all of the following elements:

23 (1) Contact information for all participating producers.

24 (2) A description of the covered product and associated brands
25 covered by the plan.

26 (3) Performance goals, including a detailed description of how
27 the performance goals will be achieved and how results will be
28 measured, and including ~~both~~ *all* of the following:

29 ~~(A) The collection rate~~ *A collection rate, which shall be included*
30 *as a performance goal for the covered product.*

31 (B) A reuse rate and a recycling rate for the covered product
32 shall be included in the performance goals.

33 *(C) If the covered product is prohibited from being disposed of*
34 *at a solid waste disposal facility, the performance goal shall*
35 *include a schedule to accomplish a 100 percent collection rate.*

36 ~~(4) An overview of the~~ *The roles and responsibilities of key*
37 *players along the product chain.*

38 (5) Financing methods for the product stewardship plan.

39 (6) Strategies for managing and reducing the life cycle impacts
40 of the covered product, steps that will be taken to ensure

1 environmentally sound management, and how impacts will be
2 tracked over time to show continual improvement.

3 (7) Education and outreach activities.

4 ~~(8) A description of the consultation process used to consult~~
5 ~~with affected stakeholders regarding the product stewardship plan.~~

6 ~~(9)~~

7 (8) Product goals, including, but not limited to, product
8 designing and materials content, manufacturing, packaging,
9 distribution, and end-of-life management goals. The product goals
10 shall address the use of virgin material in the manufacture of the
11 covered product, the impact upon, or use of, water or energy by
12 the covered product, the use of, or generation of hazardous
13 substances by, the covered product, the carbon footprint of the
14 covered product, the covered product's longevity, the recycled
15 content of the covered product, and the covered product's
16 recyclability, where applicable.

17 48814. (a) On or before January 1, 2012, the department shall
18 review the product stewardship plan submitted to the department
19 and either approve or disapprove the plan. If the department does
20 not approve the plan, the department shall notify the producer or
21 organization that submitted the plan and the producer or
22 organization shall revise and resubmit the disapproved product
23 stewardship plan within 30 days after receiving the notification.

24 (b) All product stewardship plans submitted to the department
25 shall be available to the public on the department's Internet Web
26 site.

27 (c) A producer shall notify the department 30 days before
28 instituting a significant or material change to a product stewardship
29 plan.

30 48815. (a) On and after July 1, 2012, a producer shall not offer
31 a covered product for sale in this state or offer a covered product
32 for promotional purposes in this state unless the producer or a
33 product stewardship organization consisting of producers of the
34 covered product has submitted a product stewardship plan to the
35 department pursuant to Section ~~48816~~ 48813 and the product
36 stewardship plan is approved by the department pursuant to Section
37 ~~48817~~ 48814.

38 (b) *On July 1, 2012, and on January 1 and July 1 annually*
39 *thereafter, the department shall post on its Internet Web site*
40 *covered products that are not in compliance with this section.*

1 (c) A wholesaler or retailer that distributes or sells covered
 2 products shall monitor the department's Internet Web site to
 3 determine if the sale of a covered product is in compliance with
 4 this section.

5 48816. A producer of a covered product shall do all of the
 6 following when implementing this chapter, including an approved
 7 product stewardship plan:

8 (a) Collect the individual covered product to be reused or
 9 recycled pursuant to the product stewardship plan for the covered
 10 product submitted by the producer or product stewardship
 11 organization pursuant to Section 48813 and approved by the
 12 department pursuant to Section 48814.

13 (b) Meet the performance goals included in the product
 14 stewardship plan, including achieving the collection rate established
 15 pursuant to Section 48812.

16 (c) Provide collection services, in accordance with Section
 17 48817, for the covered product, that do not charge a fee at the time
 18 when the covered product is collected for either recycling or
 19 disposal.

20 (d) Pay all administrative and operational costs associated with
 21 the product stewardship plan, including the costs of collection,
 22 transportation, and recycling or disposal, or both, of the covered
 23 product.

24 (e) Submit the annual report required by Section 48818.

25 48817. A covered product shall be handled and recycled, or if
 26 not feasible to be recycled, disposed of, in accordance with all
 27 state and federal laws and regulations and local ordinances and
 28 regulations, including, but not limited to, any law, regulation, or
 29 ordinance that regulates hazardous waste.

30

31

Article 5. Reporting

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33 48818. (a) Beginning one year after a product stewardship
 34 plan is approved or no later than January 1, 2013, whichever date
 35 is earlier, and every subsequent year thereafter, each producer or
 36 stewardship organization implementing a product stewardship plan
 37 shall prepare and submit to the department an annual report
 38 describing the activities carried out pursuant to the product
 39 stewardship plan during the previous reporting period, including,
 40 but not limited to, all of the following:

1 (1) Whether the producer or product stewardship organization,
2 in implementing the plan, attained the performance goals for the
3 covered product, and if the performance goals were not met, what
4 actions the producer or product stewardship organization will take
5 during the next reporting period to attain those performance goals.

6 (2) Whether the producer or product stewardship organization,
7 in implementing the plan, attained the product goals for the covered
8 product, and if the product goals were not met, what actions the
9 producer or stewardship organization will take during the next
10 reporting period to achieve those product goals.

11 (b) The department shall review a report submitted pursuant to
12 this section and shall approve the report if the department
13 determines the report contains the information required by this
14 section.

15 (c) The department shall make all reports submitted to the
16 department pursuant to this section available to the public on the
17 department's Internet Web site.

18
19 Article 6. Financial Provisions

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21 48819. (a) The producer or product stewardship organization
22 submitting a product stewardship plan shall pay the department
23 an administrative fee in the amount of ~~ten thousand dollars~~
24 ~~(\$10,000)~~ _____ when the plan is submitted for review and approval
25 and thereafter pay an annual administrative fee of ~~one thousand~~
26 ~~dollars (\$1,000)~~ _____.

27 (b) The total amount of annual fees collected pursuant to this
28 section shall not exceed the amount necessary to recover costs
29 incurred by the department in connection with the administration
30 and enforcement of the requirements of this chapter.

31 48820. (a) The Product Stewardship Account and the Product
32 Stewardship Penalty Subaccount are hereby established in the
33 Integrated Waste Management Fund.

34 (b) All fees collected pursuant to this chapter shall be deposited
35 in the Product Stewardship Account and may be expended by the
36 department, upon appropriation by the Legislature, to cover the
37 department's costs to implement this chapter.

38 (c) All penalties collected pursuant to this chapter shall be
39 deposited in the Product Stewardship Penalty Subaccount and may
40 be expended by the department, upon appropriation by the

1 Legislature, to cover the department's costs to implement this
2 chapter.

3 (d) All funds collected may be expended as incentives to
4 enhance reuse, recyclability, and redesign efforts and to reduce
5 environmental and safety impacts of covered products.

6

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Article 7. Enforcement

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9 48821. (a) If, after holding a public hearing, the department
10 finds that a producer has failed to make a good faith effort to
11 comply with this chapter, the department shall issue a compliance
12 order with a schedule for achieving compliance.

13 (b) If, after issuing an order and schedule for compliance
14 pursuant to subdivision (a), the department finds that the producer
15 has failed to make a good faith effort to comply with this chapter,
16 the department may impose an administrative civil penalty of ~~ten~~
17 ~~thousand dollars (\$10,000)~~ ____ per day until the producer achieves
18 compliance.

19 (c) For purposes of this section, "good faith effort" means all
20 reasonable and feasible efforts by a producer towards implementing
21 the requirements of this chapter, including, but not limited to,
22 meeting the performance goals specified in the plan.

23 48822. (a) The department, or its designee, may inspect, audit,
24 or require and review third-party audits of producers, product
25 stewardship organizations, and service providers, including
26 collectors and recyclers, that are utilized to fulfill the requirements
27 of a product stewardship plan.

28 (b) For purposes of this section, a "service provider" means any
29 person who is authorized to perform an action to implement the
30 product stewardship plan with regard to the collection, recycling,
31 reuse, or disposal of a covered product, but does not include the
32 consumer of the covered product.