An act to add Article 10.03 (commencing with Section 25210.13) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing law, the California Lighting Efficiency and Toxics Reduction Act, administered by the Department of Toxic Substances Control, prohibits a person from manufacturing for sale or selling in the state specified general purpose lights that contain levels of hazardous substances prohibited by the European Union pursuant to the RoHS Directive. A violation of the hazardous waste control law is a crime.

This bill would enact the California Lighting Toxics Reduction and Jobs Act and would define terms, including defining a “class 1 lamp” as a lamp containing mercury and a “class 2 lamp” as a lamp that produces less than a specified amount of light per watt.

The bill would require the producer of a class 1 lamp, by September 30, 2011, to submit a product stewardship plan with regard to the collection of class 1 lamps to the department, either individually or jointly with other producers, or by entering into an agreement with a
stewardship organization. The bill would require the plan to reasonably
demonstrate how the program would contribute to the recycling of all
class 1 lamps, including the program’s fair share of orphan lamps, on
or before January 1, 2020. The department would be required to approve
the plan pursuant to a specified procedure and the producer would be
required to implement the approved plan by January 1, 2012. The bill
would provide for the updating of the plan and would require the plan
operator, by April 1, 2013, and on or before each April 1 annually
thereafter, to prepare and submit to the department a report for the
immediately preceding reporting period.

The bill would require an entity submitting a plan to enter into an
agreement with the department to pay the costs incurred by the
department associated with the review and enforcement of the plan.
The bill would require the funds to be deposited in the Lighting Product
Stewardship Subaccount, which the bill would establish in the Hazardous
Waste Control Account, and would authorize the department to expend
the funds in the Lighting Product Stewardship Subaccount, upon
appropriation by the Legislature, for those costs.

The bill would require the producer of a class 2 lamp, by January 30,
2012, and on or before January 1 annually thereafter, to pay to the
commission a fee in an amount established by the commission pursuant
to a specified procedure. The commission would be required to deposit
the fee revenues in the Energy Efficiency Research Fund, which the
bill would create in the State Treasury, and the commission would be
authorized to expend the funds in the Energy Efficiency Research Fund,
upon appropriation by the Legislature, for specified research and projects
relating to improving class 2 lamps’ lighting efficiency and reducing
environmental impacts from class 2 lamps.

The bill would prohibit a producer, wholesaler, or retailer from selling
or offering for sale a class 1 lamp or class 2 lamp to a person in this
state on and after January 1, 2012, unless, with regard to the class 1
lamp, the producer is participating in a product stewardship program,
or, on or after February 1, 2012, with regard to a class 2 lamp, unless
the producer has paid the required fee. The bill would also specify
procedures for the enforcement of the act. Since a violation of the
hazardous waste control laws is a crime, the bill would impose a
state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local
agencies and school districts for certain costs mandated by the state.
Statutory provisions establish procedures for making that reimbursement.
This bill would provide that no reimbursement is required by this act for a specified reason.


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

SECTION 1. The Legislature finds and declares all of the following:
(a) The state’s policy, including the California Lighting Efficiency and Toxics Reduction Act, which added Article 10.02 (commencing with Section 25210.9) to Chapter 6.5 of Division 20 of the Health and Safety Code, has put the state on a path of transition to more energy-efficient lighting, including substantially increased utilization of fluorescent lighting.
(b) Lighting products introduce hazardous waste into the environment by containing hazardous substances, such as mercury, in the lighting product itself, and by the release of hazardous substances from the production of energy, which the lighting product utilizes.
(c) Electricity generation, particularly from coal, releases mercury into the atmosphere, which contaminates waterways and fish, causing a public health risk.
(d) The less efficient a lamp is, the more hazardous waste, including mercury, is released into the atmosphere from the electricity generation associated with its use.
(e) High-efficiency bulbs, such as compact fluorescent lamps, contain mercury within the product but because these bulbs use less energy, they are responsible for smaller hazardous emissions from energy production.
(f) Low-efficiency bulbs, such as incandescent bulbs, contain no mercury but are responsible for greater hazardous substance emissions from energy production.
(g) Low-efficiency bulbs also cause greater emissions of greenhouse gases and other harmful air pollutants. The efficiency of a lamp is a reasonable indicator of its total environmental impact.
(h) The state prohibits the disposal of lighting products containing hazardous levels of metal in the solid waste stream.
(i) The hazardous waste generated by waste lighting products can be reduced and managed through recycling, but recycling
opportunities are currently inconvenient or nonexistent for most consumers.

(j) Even though some types of fluorescent lighting products deliver the same level of light at the same level of efficiency as other types of these products, they may have varying levels of mercury. The Department of General Services has adopted a procurement preference favoring low-mercury fluorescent lamps.

(k) In 2007, the Legislature enacted the California Lighting Efficiency and Toxics Reduction Act which directed the Department of Toxic Substances Control to convene a lighting task force to consider and make policy recommendations to the Legislature for designing a statewide collection program for end-of-life fluorescent lamps.

(l) On September 1, 2008, the task force submitted recommendations to the Legislature on the need and options for a convenient statewide system for the collection and recycling of fluorescent lamps for residential generators.

(m) The purpose of this act is to establish a system for the recycling of fluorescent lamps generated by households and small businesses that is free and convenient for end users and to promote the rapid development and uptake of more efficient and low-toxicity lighting products to minimize the public health impacts from lighting.

(n) The responsibility for the end-of-life management of products and materials rests primarily with the producers who designed and profited from the product, thereby incorporating life cycle costs into the total product costs to reduce the impact on the taxpayers and ratepayers of the state and reduce the impact on human health and the environment.

(o) (1) The imposition of the fee pursuant to Section 25210.20 of the Health and Safety Code would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution because the amount and nature of the fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of inefficient lamps and there is a sufficient nexus between the fees imposed and the use of those fees to support programs.

(2) There is a clear nexus between the type and the amount of the fees imposed pursuant to this act and the environmental, public health, and societal costs resulting from inefficient lamps.
(3) It is the intent of the Legislature that the fees imposed pursuant to Section 25210.20 of the Health and Safety Code be consistent with the California Supreme Court’s decision in Sinclair Paint. Co. v. State Bd. of Equalization (1997) 15 Cal.4th 866.

SEC. 2. Article 10.03 (commencing with Section 25210.13) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.03. California Lighting Toxics Reduction and Jobs in Recycling Act

25210.13. For the purposes of this article, the following terms have the following meanings:

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

(b) “Commission” means the State Energy Resources Conservation and Development Commission.

(c) “Covered entity” means the residential end user of a class 1 lamp who delivers not more than 15 class 1 lamps to a collection site or service operating pursuant to an approved product stewardship program for class 1 lamps.

(d) “Covered lamp” means all lamps defined under “class 1 lamps” and “class 2 lamps,” either individually or as an item within a covered lamp category, including all materials that make up the covered product.

(1) “Class 1 lamp” means a lamp containing mercury.

(2) “Class 2 lamp” means a lamp that produces fewer than 45 lumens per watt.

(3) A lamp that is both a class 1 lamp and a class 2 lamp shall be subject to all of the requirements that apply to those lamps.

(e) “Lamp” has the same meaning as “general purpose lights,” as defined in Section 25210.10.

(f) “Orphan lamp” means a covered lamp that meets any of the following conditions:

(1) The covered lamp lacks a producer’s brand.

(2) The producer of that covered lamp is no longer in business and has no successor in interest.

(3) The covered lamp bears a brand for which the department cannot identify an owner.
(g) “Plan operator” means a producer who either individually or jointly with other producers, implement the product stewardship program plan approved by the department pursuant to Section 25210.16, or, if the producer enters into an agreement with a product stewardship organization to submit the plan, on the producer’s behalf, the product stewardship program that implements the plan approved by the department pursuant to Section 25210.16.

(h) “Producer” shall be determined, with regard to a covered lamp, as one of the following:

1. The person who manufactures the covered lamp and who sells, offers for sale, or distributes the product in the state under the manufacturer’s own brand.
2. If there is no person who sells, offers for sale, or distributes the covered lamp in the state under the person’s own name or brand, the producer of the covered lamp is the owner or licensee of a trademark under which a product is sold or distributed in state, whether or not the trademark is registered.
3. If there is no person who is a producer of the covered lamp for purposes of paragraph (1) or (2), the producer of the covered lamp is the person who imports the covered lamp into the state for sale or distribution.

(i) “Product stewardship” means the requirement imposed pursuant to this article upon a producer of a class 1 lamp to manage and reduce adverse safety, health, and environmental impacts of the class 1 lamp throughout the life cycle of the covered lamp, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of the class 1 lamp.

(j) “Product stewardship plan” or “plan” means the detailed plan prepared pursuant to Section 25210.15 describing the manner in which a product stewardship program will be implemented.

(k) “Product stewardship program” or “program” means a program established pursuant to this article pursuant to a product stewardship plan that is financed and managed or provided by the producer of a class 1 lamp and that includes provisions for the collection, transportation, recycling, processing and final disposition of class 1 lamps, including the collection and recycling of the program’s fair share of orphan lamps, as specified in subdivision (c) of Section 25210.15.
(l) “Reporting period” means the period commencing January 1 and ending December 31 in the same calendar year.

(m) “Residuals” means nonrecyclable materials left over from processing an unwanted covered product.

(n) “Retailer” means a person who offers covered lamps for retail sale, as defined in Section 6007 of the Revenue and Taxation Code, through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the Internet, but does not include a sale that is a wholesale transaction between a distributor and a retailer.

(o) “Stakeholder” means a person who may have an interest in or be affected by a product stewardship program.

(p) “Stewardship organization” is an entity appointed by a producer to act as an agent on behalf of the producer to administer a product stewardship program.

(q) “Unwanted product” means a covered lamp that is no longer wanted, has been abandoned or discarded, or is intended to be discarded by its owner.

(r) “Wholesale sale” means a sale that is not a retail sale, as defined in Section 6007 of the Revenue and Taxation Code.

(s) (1) “Wholesaler” means a person who engages in the sale of covered lamps for resale, in a sale that is a wholesale sale.

(2) If a person is a producer of a covered lamp and also a wholesaler, the person shall comply with the provisions of this article that apply to producers.

25210.14. (a) This article shall be known, and may be cited, as the California Lighting Toxics Reduction and Jobs in Recycling Act.

(b) The Legislature hereby finds and declares that it is the intent of this article to require the recycling of all unwanted class 1 lamps, including orphan lamps, by January 1, 2020, through expanded public education and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

25210.15. (a) On or before September 30, 2011, a producer of a class 1 lamp shall submit a product stewardship program plan to the department in accordance with this section.
(b) A producer shall either individually or jointly with other producers, submit a product stewardship program plan pursuant to this section or may enter into an agreement with a stewardship organization to submit, on the producer’s behalf, a product stewardship program pursuant to this section.

(c) The product stewardship program plan submitted to the department shall meet all of the following requirements:

1. Include information, including full contact information, regarding all of the following:
   (A) The organization submitting the plan.
   (B) A list of all participating producers and their brands including a trademark, if applicable.
   (C) If the program is to be operated by a stewardship organization, a description of management, administration, and tasks to be performed by the stewardship organization.

2. Include a collection system, including all of the following:
   (A) Location of collection sites and other collection services to be used by the program.
   (B) How unwanted products from all covered entities will be collected in all cities in the state with populations greater than 10,000 and in all counties of the state.
   (C) How collected unwanted products will be transported to processing facilities.

3. Include educational and outreach efforts, including, but not limited to, all of the following:
   (A) A public service announcement promoting the proper management for class 1 lamps, which shall include providing a copy of the public service announcement to the department and posting the public service announcement on the stewardship organization or producer’s Internet Web site.
   (B) The establishment of a public Internet Web site, which shall include the posting of templates of all educational materials on the Internet Web site that is in a form and format that can be easily downloaded, and providing a link to the Internet Web site to the department.
   (C) Methods to engage other stakeholders, such as waste, demolition, and lighting retailers and contractors, and appropriate state agencies and local governments to secure support and participation to encourage the proper management of class 1 lamps throughout the state.
(D) Strategies to work with utilities participating in energy conservation programs involving the replacement of old lighting technologies for new class 1 lamps and to encourage their participation in the collection and proper management of class 1 lamps.

(É) Strategies to encourage support and participation by retailers and other outlets to educate consumers on the proper management of class 1 lamps.

(4) Include a processing and disposal system, which shall meet all of the following requirements:

(A) All class 1 lamps collected by the system shall be recycled.

(B) The mercury and mercury-bearing residuals from recycling of class 1 lamps collected by the system shall be disposed of at a mercury repository, issued a permit pursuant to this chapter, or managed at a hazardous waste facility operating in accordance with a permitted hazardous waste treatment, storage, or disposal facility that is operating in accordance with this chapter.

(C) The plan shall include the locations, permit status, and record of any penalties, violations, or regulatory orders received in the previous five years by processing and disposal facilities proposed to be used by the program, including all downstream processing and disposal facilities handling hazardous waste generated under the program and those involved in the final disposition of the hazardous waste.

(D) The processing and disposal system shall collect, free of charge, unwanted class 1 lamps from covered entities for reuse, recycling, processing, and final disposition.

(É) The processor of the class 1 lamps subject to the plan shall submit an annual report to the department in a format provided by the department that includes the number and type of class 1 lamps received.

(F) The processor of the class 1 lamps subject to the plan shall agree to allow the department, or its designee, to inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(G) Federal or state prison labor shall not be used for processing class 1 lamps subject to the plan.

(5) Include a description of the financing system to cover the entire product stewardship program, including how costs will be
apportioned among, and assessed upon, producers participating in the program. The plan shall require the producer, group of producers, or stewardship organization to pay all administrative and operational costs associated with the program.

(6) Include plans for minimizing the environmental impacts of the covered lamp throughout the product’s life cycle.

(7) Include a list of collection sites and other collection services to be used by the program, sorted by city and county.

(8) Reasonably demonstrate how the product stewardship program will contribute toward achieving the goal of recycling all unwanted class 1 lamps, including the collection and recycling of the program’s fair share of orphan lamps, on or before January 1, 2020.

(9) Comply with the regulations for managing universal waste contained in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, as applicable.

25210.16. (a) Within 60 days after receiving a proposed product stewardship plan pursuant to Section 25210.15, the department shall determine whether the plan complies with this article.

(b) If the department approves the plan, the department shall notify the applicant of its approval.

(c) If the department rejects a plan, the department shall notify the applicant of its decision and its reasons for rejecting the plan. An applicant whose plan has been rejected by the department shall submit a revised plan to the department within 60 days after receiving notice of the rejection to maintain compliance with this article.

(d) On or before January 1, 2012, a producer shall either individually or jointly with other producers, implement the product stewardship program plan approved by the department, or, if the producer enters into an agreement with a stewardship organization to submit the plan, on the producer’s behalf, the product stewardship program shall, on or before January 1, 2012, implement the plan approved by the department pursuant to this section.

25210.17. (a) At least once every four years, the plan operator shall update the product stewardship plan approved by the
department pursuant to Section 25205.16 and shall submit the
updated plan to the department for review.

(b) The department shall determine the status of an updated plan
within 60 days of its submittal. If the department rejects an updated
plan, the department shall notify the plan operator, who shall
resubmit the plan within 60 days of that notification. If the plan is
not resubmitted within that time period, the plan operator and the
producer subject to the plan shall be deemed in violation of this
article.

(c) A proposed change to a product stewardship plan shall be
submitted to the department for approval, except for the following:

(1) Additions or changes to collection locations for unwanted
products.

(2) Additions of producers to a product stewardship program.

(d) The plan operator shall inform the department of changes
specified in subdivision (c) no less than 15 days before the changes
occur.

25210.18. (a) On or before April 1, 2013, and on or before
each April 1 annually thereafter, the plan operator shall prepare
and submit to the department a report for the immediately
preceding reporting period describing all of the following:

(1) Information, including full contact information, regarding
all of the following:

(A) The organization submitting the report.

(B) A list of all participating producers and their brands and
trademarks, if applicable.

(2) The recovery rates of the class 1 lamps subject to the plan,
including all of the following:

(A) The amount, by weight, of unwanted class 1 lamps collected
from covered entities in each county in the state, including
documented collection and recycling or disposal of that material.

(B) A list of collection locations for unwanted products, sorted
by city and county.

(C) Progress toward achieving the goal of recycling all unwanted
class 1 lamps sold by the producer or group of producers, and the
program’s fair share of orphan lamps pursuant to paragraph (8) of
subdivision (c) of Section 25210.15, and what actions the plan
operator will take during the next reporting period, including how
it will improve effective and measurable outreach and education
efforts.
(3) The processing and disposal system, including both of the following:
(A) A list of processing and disposal facilities used and locations, the weight of unwanted products processed at each processing facility and disposed at each disposal facility, and a description of the methods used at each processing facility.
(B) Any penalties, violations, or regulatory orders received during the reporting period by each processing facility or disposal facility that was used to implement the plan.
(4) Costs associated with the recovery of unwanted product and total and per pound costs.
(b) All reports submitted to the department shall be made available to the public on the department’s Internet Web site and at the department’s headquarters.
25210.19. (a) A producer, a group of producers, or a stewardship organization that submits a plan to the department shall enter into an agreement with the department to pay the department for the costs incurred by the department associated with the review of the product stewardship plan, including the implementation and enforcement of the plan.
(b) The department shall deposit the amounts paid pursuant to this section into the Lighting Product Stewardship Subaccount, which is hereby established in the Hazardous Waste Control Account and which may be expended by the department, upon appropriation by the Legislature, for the costs specified in subdivision (a).
25210.20. (a) On or before January 30, 2012, and on or before January 1 annually thereafter, a producer of a class 2 lamp shall pay to the commission the fee established by the commission pursuant to this section.
(1) On or before June 30, 2011, and on or before June 1 annually thereafter, a producer of a class 2 lamp shall provide to the commission a written report with the number and efficiency, in lumens per watt, of each model of class 2 lamps sold in the state during the previous calendar year.
(2) On or before December 1, 2011, the commission shall adopt regulations for determining the total environmental impact of a class 2 lamp according to the relative efficiency of each type of class 2 lamp and for setting the amount of the fee based on the total environmental impact of that type of class 2 lamp according
to the relative efficiency of that class 2 lamp. The regulations shall
require the commission to set the amount of the payment at a level
necessary to provide sufficient funds to implement this section,
including administrative costs.
(3) Based on the information submitted pursuant to paragraph
(1) and pursuant to the regulations adopted pursuant to paragraph
(2), the commission shall assess the total environmental impact of
each class 2 lamp, based on its relative efficiency.
(4) The commission shall assess the fee upon each producer of
a class 2 based on the total sales of class 2 lamps by that producer
in the state.
(b) The commission shall deposit all fee revenues collected
pursuant to this section in the Energy Efficiency Research Fund,
which is hereby created in the State Treasury.
(c) The funds in the Energy Efficiency Research Fund may be
expended by the commission, upon appropriation by the
Legislature, to provide grants, based on an annual competitive
solicitation, for all the following purposes:
(1) Research to improve the lighting efficiency of class 2 lamps.
(2) Research to reduce environmental impacts from lighting
technologies used by class 2 lamps.
(3) Projects to reduce, remediate, and mitigate the impact of
class 2 lamps on public health and the environment.
(d) The commission shall provide information on compliance
with this section as necessary to the department for the purpose of
enforcement of this article.
25210.21. (a) On or before January 1, 2012, the department
shall issue a report concerning the status of the collective product
stewardship programs established pursuant to this article and post
the report on the department’s Internet Web site.
(b) On or before October 1, 2013, and on or before October 1
annually thereafter, the department shall invite comments from
local governments, communities, and citizens to report their
satisfaction with services provided by product stewardship
programs established pursuant to this article. The department shall
use this information to determine if the plan operator is meeting
the plan’s requirements and in reviewing the proposed updates or
changes to product stewardship plans.
25210.22. (a) Except as provided in subdivision (f), on and
after January 1, 2012, a producer, wholesaler, or retailer shall not
sell or offer for sale a class 1 lamp to a person in this state unless
the producer of that class 1 lamp is participating in a product
stewardship program under a plan approved by the department.
(b) Except as provided in subdivision (f), on and after February
1, 2012, a producer, wholesaler, or retailer shall not sell or offer
for sale a class 2 lamp to a person in this state unless the producer
of that class 2 lamp has paid the fee required by Section 25250.20
25210.20.
(c) The department shall provide, on its Internet Web site, lists
of all of the following:
1. All producers of class 1 lamps participating in an approved
product stewardship program.
2. All producers of class 2 lamps that have paid the fee imposed
pursuant to Section 25201.20 25210.20.
3. All producers identified by the department as noncompliant
with this article and the regulations adopted to implement this
article.
(d) On May 1, 2012, and on the following January 1 and May
1 annually thereafter, the department shall post on its Internet Web
site producers of covered lamps that are not in compliance with
this article.
(e) A wholesaler or a retailer that distributes covered lamps
shall monitor the department’s Internet Web site to determine if a
producer’s lamps are in compliance with this article.
(f) (1) A person primarily engaged in the business of reuse and
resale of a used product is not subject to this article with regard to
the sale of a used working covered product, for use in the same
manner and purpose for which it was originally purchased.
(2) A covered product that is owned by a retailer on January 1,
2012, is not subject to this section and the retailer may exhaust
that existing stock through sales to the public.
25210.23. (a) The department shall send a written notification
to a retailer known to be selling a product in the state from a
producer or wholesaler who is not in compliance with this article.
(b) A retailer that removes from sale any covered lamp within
90 days of discovery that it is not in compliance with this article
shall not be in violation of this section.
25210.24. If, after holding a public hearing, the department
finds that a producer has failed to make a good faith effort to
comply with this article, including, but not limited to, failing to
submit or implement a plan pursuant to Section 25210.15, the
department shall issue a compliance order with a schedule for
achieving compliance.

25210.25. This article does not limit, supersede, duplicate, or
otherwise conflict with the authority of the department to fully
implement Article 14 (commencing with Section 25251), including
the authority of the department to include products in a product
registry that the department adopts pursuant to that article.
Notwithstanding subdivision (c) of Section 25257.1, a covered
lamp shall not be considered as a product category already
regulated or subject to pending regulation for purposes of Article
14 (commencing with Section 25251).

SEC. 3. No reimbursement is required by this act pursuant to
Section 6 of Article XIIIB of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.