

Introduced by Senator CorbettFebruary 17, 2010

An act to add Article 3 (commencing with Section 42450.1) to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, relating to product stewardship.

LEGISLATIVE COUNSEL'S DIGEST

SB 1100, as introduced, Corbett. Product stewardship: household batteries.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

This bill would require the department by January 1, 2012, to establish a baseline collection rate for the amount of household batteries that are discarded and subsequently collected. The bill would provide a procedure for determining the collection rate applicable commencing January 1, 2013.

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 and product goals. By 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 a producer or retailer, on and after January 1, 2012, from selling a household battery unless the producer or product stewardship organization of the household battery has submitted a plan

to the department that is approved by the department. The act would require a producer of a household battery to collect the household battery 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 and the department would be required to adopt regulations, by January 1, 2012, specifying the information required to be included in the annual product stewardship plan report.

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the department an unspecified fee when submitting the plan for review and approval and to pay an annual administrative fee, determined as an unspecified percentage of the costs of implementing the plan. The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the bill's requirements or a producer or retailer selling household batteries in violation of the bill. The bill would create the Household Battery Stewardship Account in the existing Integrated Waste Management Fund and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Household Battery 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 department's program implementation costs and as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of household batteries.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In early 2006, all household batteries were classified by the
- 4 state as universal waste and prohibited from being disposed of in
- 5 solid waste landfills.
- 6 (b) Effective July 1, 2006, state law prohibited most retailers
- 7 from selling rechargeable batteries in the state unless they have a

1 system in place for collecting used rechargeable batteries from
2 consumers.

3 (c) Approximately 80 percent of batteries sold in this state are
4 alkaline batteries, and are not covered under the retail take-back
5 requirements.

6 (d) Local governments throughout the state are responsible for
7 the collection and management of household batteries, and to
8 manage this hazardous waste, these local governments and
9 taxpayers pay an average of eight hundred dollars (\$800) per ton,
10 or tens of millions of dollars each year.

11 (e) Because other types of recycling programs have proven to
12 have limited success, state and regional governments in Europe
13 and Canada have adopted producer responsibility programs to
14 redirect the responsibility for the end-of-life management of
15 discarded hazardous and hard to manage products from local
16 governments and retailers primarily to producers.

17 (f) The former California Integrated Waste Management Board
18 adopted an overall Framework for an Extended Producer
19 Responsibility (EPR) guidance document as a policy priority in
20 January 2008.

21 (g) The program established by this act is intended to reduce
22 costs to local government, to harmonize the state’s producer
23 responsibility obligations with other national and international
24 programs, and to enhance the protection of public health and
25 environment through safer product design, use and end-of-life
26 management.

27 SEC. 2. Article 3 (commencing with Section 42450.1) is added
28 to Chapter 8 of Part 3 of Division 30 of the Public Resources Code,
29 to read:

30

31 Article 3. Product Stewardship for Household Batteries

32

33 42450.1. For purposes of this article, and unless the context
34 otherwise requires, the definitions in this article govern the
35 construction of this article.

36 (a) “Brand” means a name, symbol, word, or mark that identifies
37 a household battery, rather than its components, and attributes the
38 household battery to the owner or licensee of the brand as the
39 producer.

1 (b) “Collection rate” means a quantitative measure that
2 establishes the amount of household batteries required to be
3 collected by the household battery stewardship system for that
4 household battery by an established date. The collection rate is
5 included as a component of the performance goals for a household
6 battery.

7 (c) “Department” means the Department of Resources Recycling
8 and Recovery.

9 (d) “Household battery” has the same meaning as defined in
10 subdivision (c) of Section 42450.

11 (e) “Performance goal” means the collection rate of household
12 batteries and may include, but is not limited to, the reuse and
13 recycling rates established by the household battery stewardship
14 plan for that household battery.

15 (f) “Producer” shall be determined, with regard to a household
16 battery that is sold, offered for sale, or distributed in the state, as
17 meaning one of the following:

18 (1) The person who manufactures the household battery and
19 who sells, offers for sale, or distributes that household battery in
20 the state under that person’s own name or brand.

21 (2) If there is no person who sells, offers for sale, or distributes
22 the household battery in the state under the person’s own name or
23 brand, the producer of the household battery is the owner or
24 licensee of a trademark or brand under which the household battery
25 is sold or distributed in the state, whether or not the trademark is
26 registered.

27 (3) If there is no person who is a producer of the household
28 battery for purpose of paragraphs (1) and (2), the producer of that
29 household battery is the person who imports the household battery
30 into the state for sale or distribution.

31 (g) “Product stewardship” means requiring the producer of a
32 household battery, and all other entities involved in the distribution
33 chain of a household battery, to share in the responsibility of
34 reducing the life cycle impact of the household battery and its
35 packaging, including requiring the producer who makes design
36 and marketing decisions for the household battery to bear the
37 primary responsibility for this reduction.

38 (k) “Product stewardship organization” means an organization
39 appointed by one or more producers to act as an agent on behalf

1 of the producer to design, submit, and administer a household
2 battery stewardship plan pursuant to this article.

3 (l) “Product stewardship plan” or “plan” means a plan written
4 by an individual producer or a household battery stewardship
5 organization, on behalf of one or more producers, that includes all
6 of the information required by Section 42450.4.

7 (m) “Product goal” means those qualitative or quantitative goals
8 determined by the producer to measure improvements that reduce
9 the life cycle impacts of a household battery.

10 (n) “Recycling rate” means a quantitative measure that
11 establishes the amount of collected household batteries that is
12 recycled as compared to the total amount of household batteries
13 that is collected, including the amount of the household batteries
14 that is discarded for reuse, energy recovery, or safe disposal.

15 (o) “Reuse rate” means a quantitative measure that establishes
16 the amount of collected household batteries that is reused as
17 compared to the total amount of household batteries that is
18 collected, including the amount of household batteries that is
19 discarded by recycling, energy recovery, or safe disposal.

20 (p) “Reporting period” means the period commencing January
21 1 and ending on December 31 of the same calendar year.

22 (q) “Retailer” means a person that offers new household batteries
23 in a retail sale, as defined in Section 6007 of the Revenue and
24 Taxation Code, including a retail sale at retail through any means,
25 including remote offerings such as sales outlets, catalogs, or an
26 Internet Web site.

27 (r) “Sell” or “sales” means any transfer of title of a household
28 battery for consideration, including a remote sale conducted
29 through a sale outlet, catalog, or Internet Web site or similar
30 electronic means, but does not include a lease.

31 42450.2. On or before January 1, 2012, the department shall
32 establish a baseline collection rate for the amount of household
33 batteries that is discarded and subsequently collected, based on
34 existing collection data.

35 42450.3. (a) The collection rate for a household battery shall
36 be determined in the following manner:

37 (1) For the calendar year commencing January 1, 2013, the
38 collection rate shall be 5 percent more than the baseline collection
39 rate determined pursuant to Section 42450.2.

1 (2) On and after January 1, 2014, the collection rate for
2 household batteries shall increase by no less than 5 percent annually
3 until a 95 percent collection rate is reached.

4 (b) A producer may petition the department for an adjustment
5 to the collection rate. The department may grant an adjustment to
6 the collection rate only if the department determines there are
7 documented exigent circumstances that are beyond the control of
8 the producer or household battery stewardship organization.

9 42450.4. (a) On or before September 30, 2011, a producer or
10 the household battery stewardship organization of a household
11 battery shall submit a household battery stewardship plan to the
12 department. A household battery stewardship organization created
13 pursuant to this section shall be open for participation by all
14 producers of a household battery.

15 (b) A producer, group of producers, or household battery
16 stewardship organization shall consult with stakeholders during
17 the development of the household battery stewardship plan,
18 including soliciting stakeholder comments and responding to
19 stakeholder comments prior to submitting the household battery
20 stewardship plan.

21 (c) Each household battery stewardship plan for a covered
22 individual household battery shall address the environmental
23 impacts of a household battery over the entire life cycle of that
24 household battery, including household battery design,
25 manufacture, and distribution, and the collection, transportation,
26 reuse, recycling, and final disposition of discarded household
27 batteries, in accordance with this article. The plan shall include,
28 at a minimum, all of the following elements:

29 (1) Contact information for all participating producers.

30 (2) A description of the brands of the household batteries
31 covered by the plan.

32 (3) Performance goals, including a detailed description of how
33 the performance goals will be achieved and how results will be
34 measured and including both of the following:

35 (A) The collection rate shall be included as a performance goal
36 for a household battery.

37 (B) The reuse rate and recycling rate for that household battery
38 shall be included in the performance goal.

39 (4) An overview of the roles and responsibilities of key players
40 along the distribution chain for that household battery.

1 (5) Financing methods for the household battery stewardship
2 plan.

3 (6) Strategies for managing and reducing the life cycle impacts
4 of the household battery, steps that will be taken to ensure
5 environmentally sound management, and how impacts will be
6 tracked over time to show continual improvement.

7 (7) Education and outreach activities.

8 (8) A description of the consultation process used to consult
9 with affected stakeholders regarding the household battery
10 stewardship plan.

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

21 (10) Procedures for notifying all retailers engaged in the sale
22 of that household battery.

23 42450.5. (a) On or before January 1, 2012, the department
24 shall review any plan submitted to the department and either
25 approve or disapprove the household battery stewardship plan
26 submitted to the department. If the department does not approve
27 the plan, the department shall notify the producer or organization
28 that submitted the plan and the producer or organization shall
29 revise and resubmit the disapproved household battery stewardship
30 plan within 30 days after receiving the notification.

31 (b) All household battery stewardship plans submitted to the
32 department shall be available to the public on the department's
33 Internet Web site.

34 (c) A producer shall notify the department 30 days before
35 instituting a significant or material change to a household battery
36 stewardship plan.

37 (d) The household battery stewardship plan shall be implemented
38 upon the approval of the department by the producer or the
39 household battery stewardship organization that submitted the
40 plan.

1 42450.6. On and after January 1, 2012, a producer or retailer
2 shall not offer a household battery for sale in this state or offer a
3 household battery for promotional purposes in this state unless the
4 producer or household battery stewardship organization of the
5 household battery has submitted a household battery stewardship
6 plan to the department pursuant to Section 42450.4 and the
7 household battery stewardship plan is approved by the department
8 pursuant to Section 42450.5 and is being implemented pursuant
9 to Section 42450.7.

10 42450.7. A producer of a household battery shall do all of the
11 following when implementing this chapter, including when
12 implementing an approved household battery stewardship plan:

13 (a) Collect the individual household battery to be reused or
14 recycled pursuant to the household battery stewardship plan for
15 the household battery submitted by the producer or household
16 battery stewardship organization pursuant to Section 42450.4, and
17 approved by the department pursuant to Section 42450.5.

18 (b) Meet the performance goals included in household battery
19 stewardship plan, including achieving the collection rate established
20 pursuant to Section 42450.3.

21 (c) Provide collection services, in accordance with Section
22 42450.8, for the household battery that does not charge a fee at
23 the time when the household battery is collected for either recycling
24 or disposal.

25 (d) Pay all administrative and operational costs associated with
26 the household battery stewardship plan, including the costs of
27 collection, transportation, and recycling or disposal, or both, of
28 the household battery, including the amount determined pursuant
29 to Section 42450.10.

30 (e) Submit the annual report required by Section 42450.9.

31 42450.8. A household battery shall be handled and recycled,
32 or, if not feasible to be recycled, disposed of, in accordance with
33 all state and federal laws and regulations and local ordinances and
34 regulations, including, but not limited to, any law, regulation, or
35 ordinance that regulates hazardous waste.

36 42450.9. (a) On or before January 1, 2012, the department
37 shall adopt regulations specifying the information required to be
38 included in annual household battery stewardship plan reports.
39 Notwithstanding subdivision (b), the department may include, in

1 those regulations, alternative reporting requirements for purposes
2 of those annual reports.

3 (b) Beginning one year after a household battery stewardship
4 plan is approved or no later than January 1, 2013, whichever date
5 is earlier, and every subsequent year thereafter, each producer or
6 stewardship organization implementing a household battery
7 stewardship plan shall prepare and submit to the department an
8 annual report describing the activities carried out pursuant to the
9 household battery stewardship plan during the previous reporting
10 period. The report shall include all of the following, unless required
11 otherwise by the department pursuant to the regulations adopted
12 pursuant of subdivision (a), including, but not limited to, all of the
13 following:

14 (1) Whether the producer or household battery stewardship
15 organization, in implementing the plan, attained the performance
16 goals for the household battery, and if the performance goals were
17 not met, what actions the producer or household battery
18 stewardship organization will take during the next reporting period
19 to attain those performance goals.

20 (2) Whether the producer or household battery stewardship
21 organization, in implementing the plan, attained the household
22 battery goals for the household battery, and if the household battery
23 goals were not met, what actions the producer or stewardship
24 organization will take during the next reporting period to achieve
25 those household battery goals.

26 (3) A description of the outreach and education activities
27 undertaken during the reporting period to inform consumers and
28 other stakeholders of the collection opportunities and safe
29 household battery handling described in the household battery
30 stewardship plan.

31 (4) A description of those areas in the state that have been served
32 by the household battery stewardship plan and any barriers to, or
33 opportunities for, increased coverage in the future.

34 (5) A description of the actions undertaken to manage and reduce
35 the life cycle impacts of the household battery.

36 (6) The total cost to implement the household battery
37 stewardship plan and a description of any economic or job impacts
38 to stakeholders.

39 (c) The department shall review a report submitted pursuant to
40 this section and shall approve the report if the department

1 determines the report contains the information required by this
2 section.

3 (d) The department shall make all reports submitted to the
4 department pursuant to this section available to the public on the
5 department's Internet Web site.

6 42450.10. (a) The producer or household battery stewardship
7 organization submitting a household battery stewardship plan shall
8 pay the department an administrative fee in the amount of
9 ____dollars (\$____) when the plan is submitted for review and
10 approval and thereafter pay an annual administrative fee of
11 ____percent of the household battery stewardship program costs
12 as reported under paragraph (6) of subdivision (b) of Section
13 42450.9.

14 (b) The total amount of annual fees collected pursuant to this
15 section shall not exceed the amount necessary to recover costs
16 incurred by the department in connection with the administration
17 and enforcement of the requirements of this article.

18 42450.11. (a) The Household Battery Stewardship Account
19 and the Household Battery Stewardship Penalty Subaccount are
20 hereby established in the Integrated Waste Management Fund.

21 (b) All fees collected pursuant to this article shall be deposited
22 in the Household Battery Stewardship Account and may be
23 expended by the department, upon appropriation by the Legislature,
24 to cover the department's costs to implement this article.

25 (c) All penalties collected pursuant to this article shall be
26 deposited in the Household Battery Stewardship Penalty
27 Subaccount and may be expended by the department, upon
28 appropriation by the Legislature, to cover the department's costs
29 to implement this article.

30 (d) All funds collected may be expended as incentives to
31 enhance reuse, recyclability, and redesign efforts and to reduce
32 environmental and safety impacts of household batteries.

33 42450.12. (a) If, after holding a public hearing, the department
34 finds that a producer has failed to make a good faith effort to
35 comply with this article, including, but not limited to, failing to
36 submit a plan pursuant to Section 42450.4, the department shall
37 issue a compliance order with a schedule for achieving compliance.

38 (b) If, after issuing an order and schedule for compliance
39 pursuant to subdivision (c), the department finds that the producer
40 has failed to make a good faith effort to comply with this article,

1 the department may impose an administrative civil penalty of ten
2 thousand dollars (\$10,000) per day until the producer achieves
3 compliance.

4 (c) For purposes of this section, “good faith effort” means all
5 reasonable and feasible efforts to by a producer towards
6 implementing the requirements of this article, including, but not
7 limited to, meeting the performance goals specified in the plan.

8 42450.13. (a) In addition to the penalty specified in Section
9 42450.12, the department may impose an administrative civil
10 penalty of ten thousand dollars (\$10,000) per day against a
11 producer or retailer who violates Section 42450.6.

12 (b) Prior to enforcing any penalty pursuant to this section, the
13 department shall issue a compliance order to the producer or retailer
14 selling the household battery allowing 30 days from the date of
15 the compliance order to cease sales of the household battery.

16 42450.14. (a) The department, or its designee, may inspect,
17 audit, or require and review third-party audits of producers,
18 household battery stewardship organizations, and service providers,
19 including collectors and recyclers, that are utilized to fulfill the
20 requirements of a household battery stewardship plan.

21 (b) For purposes of this section, a “service provider” means any
22 person who is authorized to perform an action to implement the
23 household battery stewardship plan with regard to the collection,
24 recycling, reuse, or disposal of a household battery, but does not
25 include the consumer of the household battery.

26 42450.15. The department shall adopt regulations for the
27 imposition of administrative civil penalties pursuant to this article.

28 42450.16. This article does not limit, supersede, duplicate, or
29 otherwise conflict with the authority of the Department of Toxic
30 Substances Control under Section 25257.1 of the Health and Safety
31 Code to fully implement Article 14 (commencing with Section
32 25251) of Chapter 6.5 of Division 20 of the Health and Safety
33 Code, including the authority of the department to include
34 household batteries in its household battery registry.