

AMENDED IN SENATE APRIL 22, 2010

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1100

Introduced by Senator Corbett

February 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 amended, 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.

The bill would require, by September 30, 2011, a producer or the ~~product~~ *household battery* stewardship organization created by one or more producers of a ~~covered product~~ *household battery* to submit a ~~product~~ *household battery* stewardship plan to the department, which would be required to include specified elements, including product goals and a collection rate for the household batteries subject to the plan, calculated in a specified ~~following~~ manner. *The bill would allow a registered hazardous waste transporter to elect to submit a household battery stewardship plan to the department on behalf of one or more producers and would require a hazardous waste transporter making that election to comply with the provisions of the bill applicable to a household battery stewardship organization.* The department would be

required to review a ~~product~~ *household battery* stewardship plan submitted to the department and deem the plan either complete or incomplete within 45 days after receipt.

The bill would prohibit a producer, wholesaler, or retailer, on and after January 1, 2012, from selling a household battery unless the plan for that battery is deemed ~~completed~~ *complete* by the department. The act would require a producer ~~of a~~ *or the* household battery *stewardship organization* to implement the household battery program pursuant to the ~~product~~ *household battery* stewardship plan, including achieving the collection rate.

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

A producer or ~~product~~ *household battery* stewardship organization submitting a ~~product~~ *household battery* stewardship plan would be required to pay the department ~~an unspecified fee~~ *a plan review fee, as determined by the department*, when submitting the plan ~~for review and approval to the department~~ and to pay an ~~annual unspecified~~ administrative fee, *as determined by the department*, when submitting the annual report. The bill would provide for the imposition of administrative civil penalties upon a producer that does not comply with the bill's requirements or a ~~producer~~, wholesaler, 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 *would authorize all funds collected or received by the department under the program, except for the fees, to be expended* 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. Under state law, “household batteries” means
6 batteries made of mercury, alkaline, carbon-zinc, nickel-cadmium,
7 and other batteries typically generated as household waste,
8 including, but not limited to, batteries used in hearing aids,
9 cameras, watches, computers, calculators, flashlights, lanterns,
10 standby and emergency lighting, portable radio and television sets,
11 meters, toys, and clocks, but excluding lead-acid batteries *and*
12 *batteries that are sold in a “covered electronic device,” as defined*
13 *in Section 42463 of the Public Resources Code.*

14 (b) Effective July 1, 2006, state law prohibited most retailers
15 from selling rechargeable batteries in the state unless they have a
16 system in place for collecting used rechargeable batteries from
17 consumers.

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

21 (d) Local governments throughout the state are responsible for
22 the collection and management of household batteries, and to
23 manage this hazardous waste, these local governments and
24 ~~taxpayers pay an average of eight hundred dollars (\$800) per ton,~~
25 *taxpayers pay a range of between eight hundred dollars (\$800)*
26 *per ton to two thousand seven hundred dollars (\$2,700) per ton,*
27 or tens of millions of dollars each year.

28 (e) Because other types of recycling programs have proven to
29 have limited success, state and regional governments in Europe
30 and Canada have adopted producer responsibility programs to
31 redirect the responsibility for the end-of-life management of
32 discarded hazardous and ~~hard to manage~~ *hard-to-manage* products
33 from local governments and retailers primarily to producers.

34 (f) After many public hearings and discussions, the former
35 California Integrated Waste Management Board adopted an overall
36 Framework for an Extended Producer Responsibility (EPR)
37 guidance document as a policy priority in January 2008.

1 (g) The program established by this act is intended to reduce
 2 costs to local government, to harmonize the state’s producer
 3 responsibility obligations with other national and international
 4 programs, and to enhance the protection of public health and
 5 environment through safer product design, use, and end-of-life
 6 management.

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

10

11 Article 3. Product Stewardship for Household Batteries

12

13 42450.1. For purposes of this article, and unless the context
 14 otherwise requires, the definitions in this article govern the
 15 construction of this article.

16

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

21

22 (b) “Collection rate” means a quantitative measure established
 23 in each household battery stewardship plan that establishes the
 24 amount of household batteries required to be collected by the
 25 household battery stewardship system for that household battery
 26 by an established date. The collection rate is included as a
 27 component of the product goals for a household battery. *The*
 28 *collection rate shall be calculated by weight.*

29

30 (c) “Department” means the Department of Resources Recycling
 31 and Recovery.

32

33 (d) “Household battery” has the same meaning as defined in
 34 subdivision (c) of Section 42450, *but shall not include a battery*
 35 *that is sold in a “covered electronic device,” as defined in Section*
 36 *42463.*

37

38 (e) “Household battery stewardship organization” means an
 39 organization appointed by one or more producers to act as an agent
 40 on behalf of the producer to design, submit, and administer a
 household battery stewardship plan pursuant to this article.

37

38 (f) “Household battery stewardship plan” or “plan” means a
 39 plan written by an individual producer ~~or~~, a household battery
 40 stewardship organization, *or a hazardous waste transporter*
registered pursuant to Section 25163 of the Health and Safety

1 *Code*, on behalf of one or more producers, that includes all of the
2 information required by Section 42450.2.

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

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

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

15 (3) If there is no person who is a producer of the household
16 battery for ~~purpose~~ *purposes* of paragraphs (1) and (2), the producer
17 of that household battery is the person who imports the household
18 battery into the state for sale or distribution.

19 (h) “Product stewardship” means requiring the producer of a
20 household battery, and all other entities involved in the distribution
21 chain of a household battery, to share in the responsibility of
22 reducing the life-cycle impact of the household battery and its
23 packaging, including requiring the producer who makes design
24 and marketing decisions for the household battery to bear the
25 primary responsibility for this reduction.

26 (i) “Product goal” means those qualitative or quantitative goals
27 determined by the producer to address and measure source
28 reduction, ~~design~~, material content, packaging, and end-of-life
29 management.

30 (j) “Program” means the system for the collection,
31 transportation, recycling, and disposal of household batteries
32 pursuant to a completed household battery stewardship plan that
33 is financed and managed or provided by an individual producer,
34 ~~or~~ collectively by one or more producers *or by a hazardous waste*
35 *transporter pursuant to paragraph (2) of subdivision (a) of Section*
36 *42450.2.*

37 (k) “Recycling rate” means a quantitative measure that
38 establishes the amount of collected household batteries that is
39 recycled as compared to the total amount of household batteries

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

3 (l) “Reuse rate” means a quantitative measure that establishes
4 the amount of collected household batteries that is reused as
5 compared to the total amount of household batteries that is
6 collected, including the amount of household batteries that is
7 discarded by recycling, energy recovery, or safe disposal.

8 (m) “Reporting period” means the period commencing January
9 1 and ending on December 31 of the same calendar year.

10 (n) “Retailer” means a person that offers new household batteries
11 in a retail sale, as defined in Section 6007 of the Revenue and
12 Taxation Code, including a retail sale at retail through any means,
13 including remote offerings such as sales outlets, catalogs, or an
14 Internet Web site.

15 (o) “Sell” or “sales” means any transfer of title of a household
16 battery for consideration, including a remote sale conducted
17 through a sale outlet, catalog, or Internet Web site or similar
18 electronic means, but does not include a lease.

19 (p) “Wholesaler” means a person that offers new household
20 batteries for sale in this state in a sale that is not a retail sale, as
21 defined in Section 6007 of the Revenue and Taxation Code, and
22 for which the household battery is intended to be resold.

23 42450.2. (a) (1) On or before September 30, 2011, a producer
24 or the household battery stewardship organization of a household
25 battery shall submit a household battery stewardship plan to the
26 department.

27 (2) *A hazardous waste transporter registered pursuant to Section*
28 *25163 of the Health and Safety Code may elect to submit a*
29 *household battery stewardship plan to the department on behalf*
30 *of one or more producers, and, if so, the hazardous waste*
31 *transporter shall submit the household battery stewardship plan*
32 *to the department on or before September 30, 2011, and shall*
33 *comply with the provisions of this article that apply to a household*
34 *battery stewardship organization, including, but not limited to,*
35 *payment of the fees specified in Section 42450.10.*

36 (b) A producer, group of producers, or household battery
37 stewardship organization shall consult with stakeholders during
38 the development of the household battery stewardship plan,
39 including soliciting stakeholder comments and responding to

1 stakeholder comments prior to submitting the household battery
2 stewardship plan.

3 (c) Each household battery stewardship plan shall include, at a
4 minimum, all of the following elements:

5 (1) Contact information for all participating producers.

6 (2) The collection rate for the household batteries subject to the
7 plan, which shall be calculated in the following manner, except as
8 provided in Section 42450.4:

9 (A) For the calendar year commencing January 1, 2014, the
10 collection rate shall be 50 percent of the household batteries sold
11 by the producers subject to the plan during the previous calendar
12 year.

13 (B) On and after January 1, 2017, the collection rate shall be
14 70 percent of the household batteries sold by the producers subject
15 to the plan during the previous calendar year.

16 (C) The plan shall have a target of achieving a ~~95~~-percent
17 *95-percent* collection rate.

18 (3) A description containing all of the following elements:

19 (A) Brands of the household batteries covered by the plan.

20 (B) How the product goals will be achieved.

21 (C) The annual schedule for achievement of the collection rate.

22 (D) Convenient collection opportunities for consumers in all
23 counties of the state.

24 (E) Reuse rate and recycling rate for household batteries.

25 (F) Roles and responsibilities of key players along the
26 distribution chain.

27 (G) Procedures to be used for notifying retailers and wholesalers
28 of the program.

29 *(H) How existing collection points and programs can be*
30 *identified and maximized to achieve the required collection rates.*

31 (4) Financing method selected to sustainably fund the
32 implementation of the plan.

33 (5) Education and outreach activities to maximize collection
34 rates.

35 (6) A producer or ~~product~~ *household battery* stewardship
36 organization shall contact cities, counties, districts, and regional
37 agencies, in whose jurisdictions the program will be implemented,
38 to do either, or both, of the following:

39 ~~(A) Enter into an agreement to reimburse the local public agency~~
40 ~~for the cost of collecting household batteries.~~

1 (A) *Reimburse the local public agency for the mutually agreed*
2 *upon cost of collecting household batteries.*

3 (B) Provide the local public agency with the location, hours,
4 and contact information for the convenient collection points for
5 household batteries that are located within the county where the
6 local agency is located and are consistent with the plan.

7 42450.3. (a) A household battery stewardship program shall
8 be considered in compliance with this article only if it achieves
9 the collection rate specified in a plan that has been deemed
10 complete by the department pursuant to Section 42450.5.

11 (b) If a program achieves a collection rate of 95 percent, the
12 producer or household battery stewardship organization shall not
13 be required to pay the annual fee imposed pursuant to subdivision
14 (a) (b) of Section 42450.10.

15 42450.4. A producer may petition the department for an
16 adjustment to the collection rate. The department may grant an
17 adjustment to the collection rate only if the department determines
18 there are documented exigent circumstances that are beyond the
19 control of the producer or household battery stewardship
20 organization.

21 42450.5. (a) The department shall review a plan within 45
22 days after the date the plan is received and either deem the plan
23 complete or incomplete. If the department does not deem the plan
24 complete, the department shall notify the producer or organization
25 that submitted the plan of the deficiencies and the producer or
26 organization shall revise and resubmit the plan within 45 days after
27 receiving the notification. If the department deems the plan
28 complete, the department shall, within 45 days after receipt, notify
29 the producer or organization that the submitted plan is complete.

30 (b) The department shall make all household battery stewardship
31 plans submitted to the department available to the public on the
32 department's Internet Web site.

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

36 (d) On or before July 1, 2012, and on or before July 1 annually
37 thereafter, the department shall post on its Internet Web site a
38 listing of the brands of household batteries for which the producer
39 is in compliance with this article.

1 42450.6. On and after January 1, 2012, a producer, wholesaler,
2 or retailer shall not offer a household battery for sale in this state
3 or offer a household battery for promotional purposes in this state
4 unless ~~the~~ *one of the following applies:*

5 (a) *The plan submitted by the producer or household battery*
6 *stewardship organization of that household battery has been*
7 *deemed complete by the department pursuant to Section 42450.5.*

8 (b) *A plan submitted by a hazardous waste transporter on behalf*
9 *of the producer of that household battery pursuant to paragraph*
10 *(2) of subdivision (a) of Section 42450.2 is deemed complete by*
11 *the department.*

12 42450.7. Upon receiving notification from the department
13 pursuant to Section 42450.5 that a plan is complete, the producer
14 or the household battery stewardship organization shall do all of
15 the following:

16 (a) Implement the plan, including, but not limited to, achieving
17 the collection rate specified in the plan.

18 (b) Pay the administrative fees imposed pursuant to subdivision
19 ~~(a)~~ (b) of Section 42450.10.

20 (c) Submit the annual report required by Section 42450.9.

21 42450.8. A wholesaler or a retailer that distributes or sells
22 household batteries shall monitor the department's Internet Web
23 site to determine if the sale of a producer's household batteries is
24 in compliance with this article.

25 42450.9. (a) On or before April 1, 2013, and every subsequent
26 year thereafter, each producer or *household battery* stewardship
27 organization implementing a plan shall prepare and submit to the
28 department an annual report describing the activities carried out
29 pursuant to the plan during the previous calendar year. The annual
30 report shall include, but is not limited to, all of the following:

31 (1) The extent to which each element of the plan specified in
32 subdivision (c) of Section 42450.2 is attained, including, but not
33 limited to, achieving the collection rate specified in the plan.

34 (2) The actions that the producer will take during the next
35 reporting period to meet the product goals specified in the plan
36 that have not been met.

37 (3) A report of the total sales data for household batteries sold
38 in the state for the previous calendar year.

39 (b) The department shall review an annual report submitted
40 pursuant to this section and shall deem it complete if the

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

3 (c) If the department does not act on a report within 45 days of
4 receipt, the report shall be deemed to be complete.

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

8 (e) If the collection rate for the household batteries subject to
9 the plan meets the collection rate specified in subdivision (b) of
10 Section 42450.3, the report shall be submitted once every two
11 years.

12 ~~42450.10. (a) The producer or household battery stewardship~~
13 ~~organization submitting a household battery stewardship plan shall~~
14 ~~pay the department an administrative fee in the amount of~~
15 ~~_____dollars (\$_____) when the plan is submitted for review and~~
16 ~~approval and thereafter pay an annual administrative fee of~~
17 ~~_____dollars (\$_____). The department shall adjust the amount of~~
18 ~~these fees every two years to reflect increases or decreases in the~~
19 ~~cost of living during the prior two calendar years, as measured by~~
20 ~~the Consumer Price Index issued by the Department of Industrial~~
21 ~~Relations or by a successor agency. If~~

22 *42450.10. (a) (1) A producer or household battery stewardship*
23 *organization that submits a battery stewardship plan to the*
24 *department shall pay a plan review fee to the department pursuant*
25 *to this subdivision.*

26 *(2) The department shall set the plan review fee at an amount*
27 *so that the total amount of plan review fees received by the*
28 *department is adequate to cover the department's full costs of*
29 *reviewing and acting upon the plan. The department may establish*
30 *a variable plan review fee based on relevant factors, including,*
31 *but not limited to, the proportion of household batteries produced*
32 *by the feepayer as compared to the total amount of batteries*
33 *produced by all producers or household battery stewardship*
34 *organizations submitting a household battery stewardship plan.*

35 *(3) The fee shall be due to the department upon submittal of the*
36 *plan.*

37 *(b) (1) Except as provided in paragraph (4), a producer or*
38 *household battery stewardship organization required to submit*
39 *an annual report pursuant to this article shall pay an annual*
40 *administrative fee to the department pursuant to this subdivision.*

1 (2) *The department shall set the annual administrative fee in*
2 *an amount that is sufficient to pay for the department's cost of*
3 *reviewing annual reports and enforcing this article. The*
4 *department may establish a variable annual administrative fee*
5 *based on relevant factors, including, but not limited to, the*
6 *proportion of household batteries produced by the feepayer, as*
7 *compared to the total amount of household batteries produced by*
8 *all producers or household battery stewardship organizations*
9 *submitting an annual report.*

10 (3) *The fee shall be due to the department upon submittal of the*
11 *annual report.*

12 (4) *If the program implementing the plan submitted by the*
13 *producer meets the collection rate specified in subdivision (b) of*
14 *Section 42450.3, the producer or household battery stewardship*
15 *organization is not required to pay the fees imposed pursuant to*
16 *this subdivision.*

17 ~~(b)~~

18 (c) *The total amount of ~~annual~~ fees collected pursuant to this*
19 *section shall not exceed the amount necessary to recover costs*
20 *incurred by the department in connection with the administration*
21 *and enforcement of the requirements of this article.*

22 42450.11. (a) *The Household Battery Stewardship Account*
23 *and the Household Battery Stewardship Penalty Subaccount are*
24 *hereby established in the Integrated Waste Management Fund.*

25 (b) *All fees collected pursuant to this article shall be deposited*
26 *in the Household Battery Stewardship Account and may be*
27 *expended by the department, upon appropriation by the Legislature,*
28 *to cover the department's costs to implement this article.*

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

34 (d) *All funds ~~collected~~ that are collected or received by the*
35 *department pursuant to this article, other than the fees specified*
36 *in subdivision (b), may be expended as incentives to enhance reuse,*
37 *recyclability, and redesign efforts and to reduce environmental*
38 *and safety impacts of household batteries.*

39 42450.12. (a) *If, after holding a public hearing, the department*
40 *finds that a producer has failed to make a good faith effort to*

1 comply with this article, including, but not limited to, failing to
2 submit a plan pursuant to Section 42450.2 or failing to submit an
3 annual report pursuant to Section 42450.9, the department shall
4 issue a compliance order with a schedule for achieving compliance.

5 (b) If, after issuing an order and schedule for compliance
6 pursuant to subdivision (a), the department finds that the producer
7 has failed to make a good faith effort to comply with this article,
8 the department may impose an administrative civil penalty of five
9 thousand dollars (\$5,000) per day until the producer achieves
10 compliance.

11 (c) For purposes of this section, “good faith effort” means all
12 reasonable and feasible efforts by a producer *or the program*
13 *implementing a plan deemed complete by the department* towards
14 implementing the requirements of this article, including, but not
15 limited to, meeting the ~~performance goals~~ *collection rate* specified
16 in the plan.

17 (d) *If a household battery stewardship organization or*
18 *hazardous waste transporter submits a plan on behalf of a producer*
19 *pursuant to Section 42450.2, which plan is deemed complete by*
20 *the department, and the department finds the program established*
21 *by the plan has made a good faith effort to implement this article,*
22 *the department shall not deem the producer to have failed to make*
23 *a good faith effort to implement this article.*

24 ~~42450.13. (a) In addition to the penalty specified in Section~~
25 ~~42450.12, the~~

26 *42450.13. (a) The department may impose an administrative*
27 *civil penalty not to exceed one thousand dollars (\$1,000) per day*
28 *against a producer, wholesaler, wholesaler or retailer that violates*
29 *Section 42450.6.*

30 (b) ~~A producer, wholesaler, wholesaler or retailer that removes~~
31 ~~from sale any household battery within 90 days of discovery that~~
32 ~~it is not in compliance with this article shall not be deemed to be~~
33 ~~in violation of Section 42450.6.~~

34 (c) Prior to enforcing any penalty pursuant to this section, the
35 department shall issue a compliance order to the ~~producer,~~
36 ~~wholesaler, wholesaler or retailer~~ selling the household battery
37 allowing 30 days from the date of the compliance order to cease
38 sales of the household battery.

39 42450.16. This article does not limit, supersede, duplicate, or
40 otherwise conflict with the authority of the Department of Toxic

- 1 Substances Control under Section 25257.1 of the Health and Safety
- 2 Code to fully implement Article 14 (commencing with Section
- 3 25251) of Chapter 6.5 of Division 20 of the Health and Safety
- 4 Code, including the authority of the department to include
- 5 household batteries in its household battery registry.

O