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 household battery stewardship organization created by one or more producers of a household battery to submit a 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 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 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 complete by the department. The act would require a producer or the household battery stewardship organization to implement the household battery program pursuant to the household battery stewardship plan, including achieving the collection rate.

Each producer or household battery stewardship organization implementing a 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 household battery stewardship plan.

A producer or household battery stewardship organization submitting a household battery stewardship plan would be required to pay the department a plan review fee, as determined by the department, when submitting the plan to the department and to pay an 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 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 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In early 2006, all household batteries were classified by the state as universal waste and prohibited from being disposed of in solid waste landfills. Under state law, “household batteries” means batteries made of mercury, alkaline, carbon-zinc, nickel-cadmium, and other batteries typically generated as household waste, including, but not limited to, batteries used in hearing aids, cameras, watches, computers, calculators, flashlights, lanterns, standby and emergency lighting, portable radio and television sets, meters, toys, and clocks, but excluding lead-acid batteries and batteries that are sold in a “covered electronic device,” as defined in Section 42463 of the Public Resources Code, and batteries that are not easily removable or are not intended or designed to be removed from the products, other than by the manufacturer.

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

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

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

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

(f) After many public hearings and discussions, the former California Integrated Waste Management Board adopted an overall Framework for an Extended Producer Responsibility (EPR) guidance document as a policy priority in January 2008.
(g) The program established by this act is intended to reduce costs to local government, to harmonize the state’s producer responsibility obligations with other national and international programs, and to enhance the protection of public health and environment through safer product design, use, and end-of-life management.

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

Article 3. Product Stewardship for Household Batteries

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

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

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

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

(d) “Household battery” has the same meaning as defined in subdivision (c) of Section 42450, but shall not include any of the following:

1. A battery that is sold in a “covered electronic device,” as defined in Section 42463.

2. A battery that is not easily removable or is not intended or designed to be removed from the product, other than by the manufacturer.

(e) “Household battery stewardship organization” means an organization appointed by one or more producers to act as an agent on behalf of the producer to design, submit, and administer a household battery stewardship plan pursuant to this article.
Household battery stewardship plan” or “plan” means a plan written by an individual producer, a household battery stewardship organization, or a hazardous waste transporter registered pursuant to Section 25163 of the Health and Safety Code, on behalf of one or more producers, that includes all of the information required by Section 42450.2.

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

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

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

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

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

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

(j) “Program” means the system for the collection, transportation, recycling, and disposal of household batteries pursuant to a completed household battery stewardship plan that is financed and managed or provided by an individual producer, collectively by one or more producers or by a hazardous waste transporter pursuant to paragraph (2) of subdivision (a) of Section 42450.2.
(k) “Recycling rate” means a quantitative measure that establishes the amount of collected household batteries that is recycled as compared to the total amount of household batteries that is collected, including the amount of the household batteries that is discarded for reuse, energy recovery, or safe disposal.

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

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

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

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

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

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

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

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

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

1. Contact information for all participating producers.
2. The collection rate for the household batteries subject to the plan, which shall be calculated in the following manner, except as provided in Section 42450.4:
   (A) For the calendar year commencing January 1, 2014, the collection rate shall be 50 percent of the household batteries sold by the producers subject to the plan during the previous calendar year.
   (B) On and after January 1, 2017, the collection rate shall be 70 percent of the household batteries sold by the producers subject to the plan during the previous calendar year.
3. A description containing all of the following elements:
   (A) Brands of the household batteries covered by the plan.
   (B) How the product goals will be achieved.
   (C) The annual schedule for achievement of the collection rate.
   (D) Convenient collection opportunities for consumers in all counties of the state.
   (E) Reuse rate and recycling rate for household batteries.
   (F) Roles and responsibilities of key players along the distribution chain.
   (G) Procedures to be used for notifying retailers and wholesalers of the program.
   (H) How existing collection points and programs can be identified and maximized to achieve the required collection rates.
(4) Financing method selected to sustainably fund the implementation of the plan.

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

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

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

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

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

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

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

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

(b) The department shall make all household battery stewardship plans submitted to the department available to the public on the department’s Internet Web site.
(c) A producer shall notify the department 30 days before instituting a significant or material change to a household battery stewardship plan.

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

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

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

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

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

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

(b) Pay the administrative fees imposed pursuant to subdivision (b) of Section 42450.10.

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

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

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

(1) The extent to which each element of the plan specified in subdivision (c) of Section 42450.2 is attained, including, but not limited to, achieving the collection rate specified in the plan.
(2) The actions that the producer will take during the next reporting period to meet the product goals specified in the plan that have not been met.

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

(b) The department shall review an annual report submitted pursuant to this section and shall deem it complete if the department determines the report contains the information required by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42450.12. (a) 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 a plan pursuant to Section 42450.2 or failing to submit an
annual report pursuant to Section 42450.9, the department shall
issue a compliance order with a schedule for achieving compliance.
(b) If, after issuing an order and schedule for compliance pursuant to subdivision (a), the department finds that the producer has failed to make a good faith effort to comply with this article, the department may impose an administrative civil penalty of five thousand dollars ($5,000) per day until the producer achieves compliance.

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

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

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

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

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

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