

AMENDED IN ASSEMBLY JUNE 15, 2010

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 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.

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, *and batteries that*
14 *are not easily removable or are not intended or designed to be*
15 *removed from the products, other than by the manufacturer.*

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

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

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

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

35 (f) After many public hearings and discussions, the former
36 California Integrated Waste Management Board adopted an overall
37 Framework for an Extended Producer Responsibility (EPR)
38 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 (a) “Brand” means a name, symbol, word, or mark that identifies
 17 a household battery, rather than its components, and attributes the
 18 household battery to the owner or licensee of the brand as the
 19 producer.

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

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

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

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

34 (2) *A battery that is not easily removable or is not intended or*
 35 *designed to be removed from the product, other than by the*
 36 *manufacturer.*

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

1 (f) “Household battery stewardship plan” or “plan” means a
2 plan written by an individual producer, a household battery
3 stewardship organization, or a hazardous waste transporter
4 registered pursuant to Section 25163 of the Health and Safety
5 Code, on behalf of one or more producers, that includes all of the
6 information required by Section 42450.2.

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

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

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

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

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

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

34 (j) “Program” means the system for the collection,
35 transportation, recycling, and disposal of household batteries
36 pursuant to a completed household battery stewardship plan that
37 is financed and managed or provided by an individual producer,
38 collectively by one or more producers or by a hazardous waste
39 transporter pursuant to paragraph (2) of subdivision (a) of Section
40 42450.2.

1 (k) “Recycling rate” means a quantitative measure that
2 establishes the amount of collected household batteries that is
3 recycled as compared to the total amount of household batteries
4 that is collected, including the amount of the household batteries
5 that is discarded for reuse, energy recovery, or safe disposal.

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

11 (m) “Reporting period” means the period commencing January
12 1 and ending on December 31 of the same calendar year.

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

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

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

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

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

39 (b) A producer, group of producers, or household battery
40 stewardship organization shall consult with stakeholders during

1 the development of the household battery stewardship plan,
2 including soliciting stakeholder comments and responding to
3 stakeholder comments prior to submitting the household battery
4 stewardship plan.

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

7 (1) Contact information for all participating producers.

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

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

15 ~~(B) On and after January 1, 2017, the collection rate shall be~~
16 ~~70 percent of the household batteries sold by the producers subject~~
17 ~~to the plan during the previous calendar year. *collection rate shall*~~
18 ~~*be 25 percent of the average number of household batteries that*~~
19 ~~*are sold in the state during the previous three calendar years by*~~
20 ~~*the producers who are subject to that plan.*~~

21 ~~(B) On and after January 1, 2016, the collection rate shall be~~
22 ~~45 percent of the average number of household batteries that are~~
23 ~~sold in the state during the previous three calendar years by the~~
24 ~~producers who are subject to that plan.~~

25 (C) The plan shall have a target of achieving a 95-percent
26 collection rate.

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

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

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

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

31 (D) Convenient collection opportunities for consumers in all
32 counties of the state.

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

34 (F) Roles and responsibilities of key players along the
35 distribution chain.

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

38 (H) How existing collection points and programs can be
39 identified and maximized to achieve the required collection rates.

1 (4) Financing method selected to sustainably fund the
2 implementation of the plan.

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

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

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

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

15 42450.3. (a) A household battery stewardship program shall
16 be considered in compliance with this article only if it achieves
17 the collection rate specified in a plan that has been deemed
18 complete by the department pursuant to Section 42450.5.

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

23 42450.4. A producer may petition the department for an
24 adjustment to the collection rate. The department may grant an
25 adjustment to the collection rate only if the department determines
26 there are documented exigent circumstances that are beyond the
27 control of the producer or household battery stewardship
28 organization.

29 42450.5. (a) The department shall review a plan within 45
30 days after the date the plan is received and either deem the plan
31 complete or incomplete. If the department does not deem the plan
32 complete, the department shall notify the producer or organization
33 that submitted the plan of the deficiencies and the producer or
34 organization shall revise and resubmit the plan within 45 days after
35 receiving the notification. If the department deems the plan
36 complete, the department shall, within 45 days after receipt, notify
37 the producer or organization that the submitted plan is complete.

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

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

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

8 42450.6. On and after January 1, 2012, a producer, wholesaler,
9 or retailer shall not offer a household battery for sale in this state
10 or offer a household battery for promotional purposes in this state
11 unless one of the following applies:

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

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

19 42450.7. Upon receiving notification from the department
20 pursuant to Section 42450.5 that a plan is complete, the producer
21 or the household battery stewardship organization shall do all of
22 the following:

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

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

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

28 42450.8. A wholesaler or a retailer that distributes or sells
29 household batteries shall monitor the department's Internet Web
30 site to determine if the sale of a producer's household batteries is
31 in compliance with this article.

32 42450.9. (a) On or before April 1, 2013, and every subsequent
33 year thereafter, each producer or household battery stewardship
34 organization implementing a plan shall prepare and submit to the
35 department an annual report describing the activities carried out
36 pursuant to the plan during the previous calendar year. The annual
37 report shall include, but is not limited to, all of the following:

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

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

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

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

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

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

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

19 42450.10. (a) (1) A producer or household battery stewardship
20 organization that submits a battery stewardship plan to the
21 department shall pay a plan review fee to the department pursuant
22 to this subdivision.

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

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

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

38 (2) The department shall set the annual administrative fee in an
39 amount that is sufficient to pay for the department's cost of
40 reviewing annual reports and enforcing this article. The department

1 may establish a variable annual administrative fee based on relevant
2 factors, including, but not limited to, the proportion of household
3 batteries produced by the feepayer, as compared to the total amount
4 of household batteries produced by all producers or household
5 battery stewardship organizations submitting an annual report.

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

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

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

17 42450.11. (a) The Household Battery Stewardship Account
18 and the Household Battery Stewardship Penalty Subaccount are
19 hereby established in the Integrated Waste Management Fund.

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

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

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

34 42450.12. (a) If, after holding a public hearing, the department
35 finds that a producer has failed to make a good faith effort to
36 comply with this article, including, but not limited to, failing to
37 submit a plan pursuant to Section 42450.2 or failing to submit an
38 annual report pursuant to Section 42450.9, the department shall
39 issue a compliance order with a schedule for achieving compliance.

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

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

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

19 42450.13. (a) The department may impose an administrative
20 civil penalty not to exceed one thousand dollars (\$1,000) per day
21 against a wholesaler or retailer that violates Section 42450.6.

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

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

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