

AMENDED IN ASSEMBLY APRIL 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1189

Introduced by Assembly Member ~~Mendoza~~ Miller

February 18, 2011

An act to amend Sections 15004, 15013, and 15014 of, *and 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 recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1189, as amended, ~~Mendoza~~ Miller. Recycling: batteries.

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires retailers of rechargeable batteries to have in place a system for the acceptance and collection of rechargeable batteries.

This bill would require a producer of household batteries or consumer products incorporating a household battery, acting individually or through a household battery stewardship organization, to submit a plan to the department on January 1, 2012, for a used household battery stewardship transition project, containing specified elements, and to implement the plan by April 1, 2012, for an operation of not less than 12 months. A producer or battery stewardship organization would be required to submit a report to the department regarding the final results of the project by May 1, 2013.

The bill would also require a producer, acting individually or through a household battery stewardship organization, to implement a used household battery stewardship program, containing specified elements, by April 1, 2013. The bill would allow a registered hazardous waste transporter to elect to submit a transition project or stewardship plan

to the department on behalf of one or more producers and would require a hazardous waste transporter making either election to comply with the provisions of the bill applicable to a household battery stewardship organization.

A producer or a household battery stewardship organization operating a used household battery stewardship program would be required to provide an annual report to the department and post this information on an Internet Web site.

The bill would require a governmental entity that operates a location at which residents may drop off materials for recycling to provide for the collection of used household batteries, by April 1, 2013, and would require a governmental entity that operates a curbside collection program that includes used household batteries to sort those batteries from other collected materials by April 1, 2013, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

The bill would authorize a retailer to request a producer or battery stewardship organization implementing a transition project or program to pay the retailer for the cost of cooperating with the plan under certain conditions. The bill would also allow a producer or household battery stewardship organization that implements a transition project or stewardship program and incurs costs in excess of \$5,000 in collecting, handling, recycling, or properly disposing of used household batteries to bring a civil action to recover costs and damages against a producer who is not implementing a transition project or program or participating in a household battery stewardship organization.

The bill would provide that these provisions would become inoperative on the date that the department submits a report to the Secretary of State that contains a determination that federal law establishes a national program for the collection and recycling of used household batteries or that the requirements of a national transportation law make compliance with the bill physically or economically infeasible.

(2) Existing law creates the Department of Resources Recycling and Recovery in the Natural Resources Agency, which succeeds to the duties and authority of the former California Integrated Waste Management Board. Existing law, the Dry Cell Battery Management Act, imposes requirements upon the sale of rechargeable consumer products containing rechargeable batteries and imposes certain labeling requirements upon rechargeable batteries and products containing these batteries.

This bill would make conforming changes with regard to the authority of the department in administering the *act Dry Cell Battery Management Act*, and make technical, nonsubstantive changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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) *The United States battery industry has been a good*
4 *environmental steward of primary and rechargeable household*
5 *batteries. To address concerns about the environmental impacts*
6 *of primary household batteries at their end of life, manufacturers*
7 *voluntarily began removing mercury from primary household*
8 *batteries sold in the United States almost 20 years ago. Almost 17*
9 *years ago, manufacturers of rechargeable batteries containing*
10 *lead or cadmium designed and executed a North American*
11 *voluntary program to collect and recycle these batteries when they*
12 *reach the end of their useful lives.*

13 (b) *Primary batteries, which are commonly referred to as AA,*
14 *AAA, 9 Volt, or D cell, that are sold in the United States by United*
15 *States based and other major manufacturers, now contain no*
16 *mercury or other chemicals that present environmental concerns.*

17 (c) *The not-for-profit Rechargeable Battery Recycling*
18 *Corporation (RBRC) was created by battery manufacturers and*
19 *manufacturers of products that use rechargeable batteries to*
20 *operate a nationwide voluntary rechargeable battery recycling*
21 *program. It operates a free, North American program, now known*
22 *as “Call2Recycle®” that has expanded to cover all chemistries of*
23 *rechargeable household batteries. Since 2000, the RBRC has*
24 *collected for recycling in excess of 5.7 million pounds of*

1 rechargeable household batteries in California. In 2010 alone,
2 RBRC collected 932,882 pounds of rechargeable batteries in
3 California.

4 (d) Effective July 1, 2006, state law prohibited retailers from
5 selling rechargeable household batteries in the state unless they
6 have a system in place for collecting used household rechargeable
7 batteries from consumers, and recognized participation in the
8 program operated by the RBRC as an appropriate mechanism for
9 doing so.

10 (e) At present, local governments throughout the state must
11 operate expensive and inefficient programs for the collection and
12 management of used primary household batteries. This is because
13 the Department of Toxic Substances Control has characterized
14 these batteries as universal waste because some of the batteries
15 having an elevated pH, notwithstanding the absence of any
16 scientific evidence that these batteries are environmentally harmful
17 when randomly disposed of in a solid waste landfill.

18 (f) The major manufacturers of primary household batteries
19 have initiated a transparent and inclusive stakeholder process to
20 develop and implement a nationwide program for the collection
21 and management of used primary household batteries, without
22 imposing charges on taxpayers, retailers, or the government.

23 (g) Experience in California and throughout the nation confirms
24 that the success of product stewardship programs depends on
25 thoughtful program design and implementation, support from all
26 levels of the distribution chain, and a willingness of consumers to
27 return used products for proper handling at the end of the
28 products' useful lives. Furthermore, any new program should
29 reflect net environmental benefits and incorporate an efficient and
30 cost-effective business model.

31 (h) It is in the interests of the people of the State of California
32 to encourage and facilitate the implementation of a private
33 program or programs for the collection, management, and
34 recycling of used household batteries and to ensure that these
35 programs are implemented in a transparent way that ensures
36 consumers access to collection opportunities throughout the State
37 of California, while imposing no undue burdens on consumers,
38 taxpayers, retailers, or government and, in particular, placing the
39 fewest and least expensive supervisory responsibilities on state
40 government.

1 **SECTION 1.**

2 *SEC. 2.* Section 15004 of the Public Resources Code is
3 amended to read:

4 15004. “Department” means the Department of Resources
5 Recycling and Recovery.

6 ~~SEC. 2.~~

7 *SEC. 3.* Section 15013 of the Public Resources Code is
8 amended to read:

9 15013. (a) A person shall not sell or offer for sale in this state
10 a rechargeable consumer product unless the product meets all of
11 the following requirements:

12 (1) The rechargeable battery is easily removable from the
13 rechargeable consumer product or is contained in a battery pack
14 that is easily removable from the product.

15 (2) The rechargeable consumer product and the rechargeable
16 battery are labeled in accordance with subdivision (b).

17 (3) The rechargeable battery, battery pack, or rechargeable
18 consumer product, if the product has a nonremovable rechargeable
19 battery, has a brand name affixed to it.

20 (4) The instruction manual for the rechargeable consumer
21 product includes information regarding the proper recycling or
22 disposal of the used rechargeable battery.

23 (b) A rechargeable battery, consumer product package
24 containing a rechargeable battery or battery pack, and the package
25 for each such item, which is sold or offered for sale in this state,
26 shall meet all of the following requirements:

27 (1) Be labeled in a conspicuous manner that is visible to
28 consumers.

29 (2) Include the chemical name or the standard abbreviation for
30 the chemical composition of the battery or battery pack.

31 (3) Contain the following statement:

32 (A) On each easily removable battery or easily removable
33 battery pack: “NICKEL-CADMIUM BATTERY. MUST BE
34 RECYCLED OR DISPOSED OF PROPERLY.” OR “SEALED
35 LEAD BATTERY. MUST BE RECYCLED OR DISPOSED OF
36 PROPERLY.”

37 (B) On each rechargeable consumer product, granted an
38 exemption pursuant to Section 15014, without an easily removable
39 battery or battery pack: “CONTAINS NICKEL-CADMIUM
40 BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED

1 OF PROPERLY.” OR “CONTAINS SEALED LEAD BATTERY.
2 BATTERY MUST BE RECYCLED OR DISPOSED OF
3 PROPERLY.”

4 (C) On the packaging of each rechargeable consumer product,
5 rechargeable battery, or battery pack, unless the specified label is
6 clearly visible through the packaging: “CONTAINS
7 NICKEL-CADMIUM BATTERY. BATTERY MUST BE
8 RECYCLED OR DISPOSED OF PROPERLY.” OR “CONTAINS
9 SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED
10 OR DISPOSED OF PROPERLY.”

11 (4) The label and messages specified in paragraphs (1), (2), and
12 (3) shall use contrasting colors to differentiate the label message
13 and background to enhance readability.

14 (5) A political subdivision of this state shall not enact or enforce
15 any environmental labeling requirement for a rechargeable battery
16 or battery pack, or a rechargeable consumer product, that is not
17 identical to the labeling requirements contained in this subdivision
18 or the regulations adopted by the department pursuant to this
19 subdivision.

20 (c) The department shall adopt regulations that require
21 substantially similar labeling requirements for rechargeable
22 batteries with chemistries that are different from those covered by
23 subdivision (a) and the battery packs and products containing those
24 batteries. The regulations shall be adopted, amended, or repealed
25 in accordance with Chapter 3.5 (commencing with Section 11340)
26 of Part 1 of Division 3 of Title 2 of the Government Code.

27 (d) Any violation of this section is a misdemeanor.

28 ~~SEC. 3.~~

29 *SEC. 4.* Section 15014 of the Public Resources Code is
30 amended to read:

31 15014. (a) A manufacturer of, or a manufacturer trade
32 organization with respect to, a rechargeable battery or rechargeable
33 consumer product may submit an application to the department
34 for an exemption from the requirements of paragraph (1) of
35 subdivision (a) of Section 15013 in accordance with the procedures
36 prescribed in subdivision (b). Within 60 days of receipt of an
37 application for an exemption, the department shall either approve
38 or deny the request. The exemption shall be issued for a period
39 that is determined to be appropriate by the department, but shall
40 not exceed two years.

1 (b) The application for an exemption shall include both of the
2 following:

3 (1) A statement of the specified basis for the exemption.

4 (2) The name, business address, and telephone number of the
5 applicant.

6 (c) The department shall grant the exemption if the department
7 finds that the manufacturer has been unable to commence
8 manufacture of the rechargeable consumer product in compliance
9 with this chapter and with an equivalent level of product
10 performance without causing either of the following:

11 (1) Danger to human health and safety or to the environment.

12 (2) Violation of requirements for approvals from governmental
13 agencies or the Underwriters Laboratories or a similar widely
14 recognized private standard-setting organization.

15 (d) The department may, by regulation, establish an application
16 fee in an amount sufficient to offset the cost of processing requests
17 for exemptions.

18 (e) A manufacturer or manufacturer trade organization granted
19 an exemption may apply for an extension of the exemption in
20 accordance with the requirements and procedures in subdivisions
21 (b) and (c). However, in considering an extension of any
22 exemption, the department shall evaluate whether other
23 rechargeable consumer product manufacturers have developed
24 technology or methods that permit access to the rechargeable
25 battery in the same or similar type application. The department
26 may grant up to three extensions of not more than two years each
27 after the date of the original exemption.

28 *SEC. 5. Article 3 (commencing with Section 42450.1) is added*
29 *to Chapter 8 of Part 3 of Division 30 of the Public Resources Code,*
30 *to read:*

31
32 *Article 3. California Used Household Battery Management Act*
33

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

37 (a) “Brand” means a name, symbol, word, or mark that
38 identifies to a consumer a household battery or a consumer product
39 incorporating a household battery or batteries.

1 (b) “Call2Recycle® program” means the nationwide voluntary
2 rechargeable battery recycling program operated by the
3 Rechargeable Battery Recycling Corporation.

4 (c) “Class of household batteries” means either rechargeable
5 household batteries or nonrechargeable household batteries, each
6 of which shall be considered a class.

7 (d) (1) “Consumer product incorporating a household battery”
8 means a device offered for sale for personal or business use that
9 incorporates a household battery or is offered for sale in packaging
10 that includes one or more household batteries.

11 (2) “Consumer product incorporating a household battery”
12 does not include a product from which one or more household
13 batteries are not easily removable by the end-user or are not
14 intended or designed to be removed from the product other than
15 by the manufacturer.

16 (e) “Department” means the Department of Resources Recycling
17 and Recovery.

18 (f) “Easily removable,” with respect to a battery or battery
19 pack, means the battery or battery pack is either detachable or
20 readily removable from a consumer product by a consumer with
21 the use of common household tools at the end of the life of the
22 product, the battery, or the battery pack.

23 (g) “Governmental” means a local, county, or state government
24 department, agency, or subdivision.

25 (h) (1) “Household battery” has the same meaning as defined
26 in subdivision (c) of Section 42450 and includes both the class of
27 nonrechargeable household batteries, and the class of rechargeable
28 household batteries and batteries that constitute a single cell or
29 multiple cells connected into a single battery pack.

30 (2) “Household battery” does not include any of the following:

31 (A) A battery contained in a product from which the battery is
32 not easily removable by the end-user or is not intended or designed
33 to be removed from the product other than by the manufacturer.

34 (B) A battery of any size used to start an internal combustion
35 engine, as the principal electrical power source for a vehicle or
36 boat, or as a backup power source for memory or program
37 instruction storage, timekeeping, or any similar purpose that
38 requires uninterrupted electrical power in order to function if the
39 primary energy supply is disconnected, fails, or fluctuates
40 momentarily.

1 (C) A battery of any size used for load leveling or for storage
2 of electricity generated by an alternative energy source, such as
3 a solar cell or wind-driven generator.

4 (i) “Household battery stewardship organization” means an
5 organization appointed by one or more producers to act as an
6 agent on behalf of a producer to design and administer a used
7 household battery stewardship transition project or used household
8 battery stewardship program, or both, pursuant to this article.

9 (j) “Maximum feasible recovery of materials from collected
10 batteries” means the reclamation of metals or other source
11 materials from a used household battery using a proven technology
12 that has been demonstrated commercially to be economically
13 achievable and sustainable.

14 (k) “Meaningful increase in collection rate” means an increase
15 in the collection rate of a used household battery stewardship
16 transition project or used household battery stewardship program
17 in any year compared to the prior year that is consistent with good
18 faith efforts by the sponsoring entity.

19 (l) “Participate” means to appoint a household battery
20 stewardship organization to act as an agent to design and
21 administer a used household battery stewardship transition project
22 or a used household battery stewardship program, or both,
23 pursuant to this article and to have that appointment accepted by
24 the household battery stewardship organization.

25 (m) “Primary household battery” means a household battery
26 that weighs under 11 pounds (5 kilograms) and is not designed to
27 be recharged for repeated use.

28 (n) “Producer” means any of the following:

29 (1) The person who places a brand it owns or licenses on a
30 household battery offered for sale in or into the state independently
31 of any device or other product, whether the battery is offered by
32 physical retail sale or through remote offerings such as sales
33 outlets, catalogs, or Internet Web sites.

34 (2) The person who places a consumer product brand it owns
35 or licenses on any consumer product incorporating a household
36 battery that is offered for sale in or into the state under the person’s
37 brand, regardless of the brand displayed on the battery, and
38 regardless of whether the product is offered by physical retail sale
39 or through remote offerings such as sales outlets, catalogs, or
40 Internet Web sites.

1 (3) *If, as to any household battery or consumer product*
2 *incorporating a household battery, there is no person subject to*
3 *the jurisdiction of the state who meets the criteria set forth in*
4 *paragraph (1) or (2), the person who first imports into the state*
5 *that independently offered battery or consumer product*
6 *incorporating a household battery.*

7 (o) *“Rechargeable household battery” means a household*
8 *battery that consists of one or more voltaic or galvanic cells, which*
9 *are electrically connected to produce electric energy, that is*
10 *designed to be recharged for repeated use and that weighs less*
11 *than 11 pounds (5 kilograms), including a battery pack that*
12 *combines one or more rechargeable household batteries and*
13 *weighs, in total, less than 11 pounds (5 kilograms).*

14 (p) *“Retailer” means a person that offers new household*
15 *batteries or a consumer product incorporating a household battery*
16 *for retail sale, as defined in Section 6007 of the Revenue and*
17 *Taxation Code, including a sale at retail through any means,*
18 *including remote offerings such as sales outlets, catalogs, or an*
19 *Internet Web site, but shall not include either of the following:*

20 (1) *A person that has annual retail sales of less than one million*
21 *dollars (\$1,000,000) in the state.*

22 (2) *A person that solely operates a location that individually*
23 *occupies no more than 49 square feet.*

24 (q) *“Retail collection” means the collection of used household*
25 *batteries at no cost to consumers at a physical sales location*
26 *maintained in the state by a retailer of household batteries or*
27 *consumer products incorporating a household battery or, if the*
28 *retailer does not maintain such a facility, through either of the*
29 *following:*

30 (1) *At a physical location in the state designated by the retailer.*

31 (2) *Through a mail back or substantially similar used product*
32 *return system.*

33 (r) *“Sell” or “sales” means any transfer of title of a household*
34 *battery or consumer product incorporating a household battery*
35 *for consideration, including a remote sale conducted through a*
36 *sale outlet, catalog, or Internet Web site or similar electronic*
37 *means, but does not include a lease.*

38 (s) *“Used household battery collection rate” means a*
39 *quantitative measure, by class, of the weight of household batteries*
40 *collected by a used household battery stewardship transition*

1 *project or used household battery stewardship program, as*
2 *compared to the estimated weight of batteries originating with the*
3 *producers participating in that transition project or stewardship*
4 *program, respectively, that are available to be collected, after*
5 *consideration of battery and product life, consumer hoarding*
6 *behavior, and other relevant factors. The calculation of the*
7 *collection rate shall distinguish between the nonrechargeable*
8 *household battery class and the rechargeable household battery*
9 *class, but not by the individual brand or producer of each battery.*

10 (t) *“Used household battery stewardship transition project” or*
11 *“transition project” means a transition project implemented by*
12 *an individual producer, a household battery stewardship*
13 *organization, or a hazardous waste transporter registered pursuant*
14 *to Section 25163 of the Health and Safety Code, on behalf of one*
15 *or more producers, that meets the requirements of Section 42450.2.*

16 (u) *“Used household battery stewardship program” or*
17 *“stewardship program” means an arrangement implemented by*
18 *an individual producer, a household battery stewardship*
19 *organization, or a hazardous waste transporter registered pursuant*
20 *to Section 25163 of the Health and Safety Code, on behalf of one*
21 *or more producers, that meets the requirements of 42450.3.*

22 42450.2. (a) (1) *On January 1, 2012, a producer, whether*
23 *acting individually or through a household battery stewardship*
24 *organization, shall submit a plan for a used household battery*
25 *stewardship transition project to the department and post a copy*
26 *of the plan on an Internet Web site.*

27 (2) *A transition project shall provide for the collection of data*
28 *on a sufficient volume of used household batteries to evaluate the*
29 *effectiveness and practicability of the mechanisms it employs and*
30 *the likelihood that a used household battery stewardship program*
31 *that incorporated the mechanism will satisfy the criteria set forth*
32 *in subdivision (b) of Section 42450.3.*

33 (3) *A transition project may incorporate all of, or an element*
34 *of, a previously existing product stewardship program, including*
35 *the Call2Recycle® program.*

36 (4) *A producer may implement a used household battery*
37 *stewardship transition project individually or may participate*
38 *through a household battery stewardship organization.*

39 (5) *A hazardous waste transporter registered pursuant to Section*
40 *25163 of the Health and Safety Code may elect to submit a used*

1 household battery stewardship transition project to the department
2 on behalf of one or more producers, and, if so, the hazardous waste
3 transporter shall submit the transition project to the department
4 on or before January 1, 2012, and shall comply with the provisions
5 of this article that apply to a household battery stewardship
6 organization.

7 (b) On or before April 1, 2012, a producer or the household
8 battery stewardship organization shall initiate the implementation
9 of a used household battery stewardship transition project.

10 (1) A transition project shall operate for not less than 12 months
11 from the date the project is instituted and shall be designed to
12 collect sufficient data for the design and implementation of a
13 permanent used household battery stewardship program or
14 programs that may be realistically expected to meet the
15 requirements of Section 42450.3.

16 (2) No less than once every three months during the operation
17 of the transition project, the producer or the household battery
18 stewardship organization shall submit a progress report to the
19 department and post a copy of that report on an Internet Web site.

20 (c) On or before May 1, 2013, a producer or a household battery
21 stewardship organization that operated a transition project
22 pursuant to this section shall submit to the department the final
23 results of the project, and post that submission on the Internet.

24 42450.3. (a) (1) On or before April 1, 2013, each producer,
25 whether acting individually or through a household battery
26 stewardship organization, shall implement a used household
27 battery stewardship program.

28 (2) A hazardous waste transporter registered pursuant to Section
29 25163 of the Health and Safety Code may elect to submit a used
30 household battery stewardship plan to the department on behalf
31 of one or more producers, and, if so, the hazardous waste
32 transporter shall submit the used household battery stewardship
33 plan to the department on or before April 1, 2013, and shall comply
34 with the provisions of this article that apply to a household battery
35 stewardship organization.

36 (b) A used household battery stewardship program may
37 incorporate, or be incorporated with, all or some of the elements
38 of a previously existing product stewardship program, including,
39 but not limited to, the Call2Recycle® program. A used household

1 battery stewardship program shall include all of the following
2 elements:

3 (1) Cover all used household batteries in at least one class of
4 household batteries, regardless of brand or other information
5 displayed on the collected household batteries.

6 (2) Include, at a minimum, retail collection of used household
7 batteries, collection from governmental collection facilities, and
8 the provision of at least one collection location in each county in
9 the state.

10 (3) Incorporate practices that have been shown to be workable
11 and effective through a transition project operated pursuant to
12 Section 42450.2 or other previously existing product stewardship
13 programs.

14 (4) Be designed to achieve initially a used household battery
15 collection rate ___ percent higher than the best estimate of that rate
16 in the calendar year prior to 2012 for each class of batteries and
17 to substantially increase that collection rate until a rate of ___
18 percent for each class of batteries is reached.

19 (5) Ensure the maximum feasible recovery of materials from
20 collected batteries.

21 (c) On or before June 1, 2014, and on or before June 1 annually
22 thereafter, a producer or a household battery stewardship
23 organization operating a used household battery stewardship
24 program implemented pursuant to this section shall provide to the
25 department and post on an Internet Web site a report on the
26 operations of that program. If the used household battery
27 stewardship program is an element of a substantially similar
28 program offered in other jurisdictions, the report may be included
29 in a report covering those other jurisdictions.

30 (d) Each report required by subdivision (c) shall include all of
31 the following information:

32 (1) A description of the used household battery stewardship
33 program.

34 (2) An audited accounting of the stewardship program's
35 operations or, if the stewardship program is an element of a
36 substantially similar program offered in other jurisdictions, of the
37 entire program.

38 (3) A statement of the total weight of used rechargeable and
39 nonrechargeable household batteries collected in the state, by
40 county.

1 (4) A reasonable estimate of the weight of rechargeable and
2 nonrechargeable household batteries sold in the state by county,
3 by the producer, or by the stewardship program's participants in
4 each of the prior two years, as either single units or in consumer
5 products incorporating a household battery or batteries.

6 (5) A calculation of the used household battery collection rates
7 for the state by county, for the classes of household batteries
8 covered by the stewardship program.

9 (6) The quantity of material recovered from used household
10 batteries collected, pursuant to the stewardship program, as
11 compared to the maximum feasible recovery of material from
12 collected batteries, and an explanation of any difference.

13 (7) An evaluation of whether there has been a meaningful
14 increase in the collection rate, taking into account the concept of
15 shared responsibility, the level of cooperation of retailers,
16 consumers, and local governments in making used batteries
17 available for collection by the stewardship program, changes in
18 the size and weight of household batteries sold in the state, the
19 prevalence of not easily removable batteries or battery packs in
20 consumer products incorporating a household battery, the number
21 of used household battery programs operating in the state, and
22 economic conditions.

23 (8) An explanation of any failure of the stewardship program
24 to either substantially increase its used rechargeable or
25 nonrechargeable household battery collection rate in the state, by
26 county, in the prior year or; if a collection rate of ___ percent
27 previously has been achieved, to maintain that rate.

28 42450.4. (a) On and after April 1, 2013, a governmental entity
29 that operates a location at which residents may drop off materials
30 for recycling shall provide at that location for the collection of
31 used household batteries.

32 (b) On and after April 1, 2013, a governmental entity that
33 operates or contracts for the operation of a curbside collection
34 program that includes used household batteries shall sort those
35 batteries from other collected materials.

36 (c) A governmental entity that does not operate or contract for
37 the operation of a curbside recycling program that includes used
38 household batteries may provide a curbside collection opportunity
39 for used household batteries.

1 42450.5. (a) A retailer who offers for sale household batteries
2 or a consumer product incorporating a household battery may
3 cooperate with the requirements of a used household battery
4 stewardship transition project implemented pursuant to Section
5 42450.2 and a used household battery stewardship program
6 implemented pursuant to Section 42450.3, upon request of a
7 producer or a household battery stewardship organization
8 implementing the transition project or stewardship program.

9 (b) Except as provided in subdivision (c), a retailer shall not
10 require a producer or battery stewardship organization
11 implementing a transition project or stewardship program to pay
12 the retailer for the cost of cooperating with the used battery
13 stewardship transition project implemented pursuant to Section
14 42450.2 or the used household battery stewardship program
15 implemented pursuant to Section 42450.3.

16 (c) A retailer may request a producer or household battery
17 stewardship organization implementing a transition project or a
18 program to pay the retailer for the cost of cooperating with the
19 plan under any of the following conditions:

20 (1) The retailer is operating its own transition project or used
21 household battery stewardship program that, if the retailer were
22 a producer, would meet the requirements of Section 42450.3.

23 (2) The retailer already is cooperating with another transition
24 project or used household battery stewardship program that is
25 being provided by, or on behalf of, entities from whom the retailer
26 obtains the largest percentage of household batteries and consumer
27 products incorporating a household battery that the retailer
28 annually sells at either that location or statewide.

29 (3) The producer or household battery stewardship organization
30 implementing the transition project or stewardship program does
31 not provide all materials associated with the transition project or
32 stewardship program to the retailer, at no cost to the retailer.

33 (4) The design and graphics on materials provided to the retailer
34 by the producer or household battery stewardship organization
35 implementing the transition project or stewardship program are
36 not consistent with the design and graphics of other products made
37 available by the retailer to its customers, or require commitment
38 by the retailer of an unreasonable amount of space.

39 (5) The producer or household battery stewardship organization
40 fails to provide a mechanism for the reasonable and timely

1 collection and transportation of collected used household batteries
2 from the locations at which it has requested the retailer to
3 cooperate.

4 (d) A producer or household battery stewardship program may
5 elect to pay a retailer that is eligible to request payments pursuant
6 to subdivision (c), in the amount and manner requested by the
7 retailer.

8 42450.6. All activities undertaken by any producer or
9 household battery stewardship organization to comply with this
10 article, or by any producer supporting a battery stewardship
11 organization to comply with this article, is not a violation of either
12 the Cartwright Act (Chapter 2 (commencing with Section 16700)
13 of Part 2 of Division 7 of the Business and Professions Code), the
14 Unfair Practices Act (Chapter 4 (commencing with Section 17000)
15 of Part 2 of Division 7 of the Business and Professions Code), or
16 the Unfair Competition Act (Chapter 5 (commencing with Section
17 17200) of Part 2 of Division 7 of the Business and Professions
18 Code).

19 42450.7. (a) A producer or household battery stewardship
20 organization that implements a transition project or stewardship
21 program that meets the requirements of Section 42450.2 or
22 42450.3, respectively, and incurs costs in excess of five thousand
23 dollars (\$5,000) in collecting, handling, recycling, or properly
24 disposing of used household batteries introduced into the state by
25 a producer who is not implementing a transition project or
26 stewardship program or participating in a household battery
27 stewardship organization that is implementing a transition project
28 or stewardship program may bring a civil action to recover the
29 costs and damages determined pursuant to subdivision (b) against
30 the nonimplementing or nonparticipating producer.

31 (b) In an action brought pursuant to subdivision (a), the
32 producer or household battery stewardship organization may
33 recover the costs specified in subdivision (a) and an amount of
34 damages equal to no less than three times those costs, plus its
35 attorneys' fees and costs of litigation.

36 (c) An action to recover the costs specified in this section may
37 be brought in any court in the state, without regard to the amount
38 in dispute.

39 42450.8. This article shall become inoperative on the date the
40 department submits a report to the Secretary of State that contains

1 *a determination that a federal law or a combination of federal*
2 *laws has taken effect that establishes a national program for the*
3 *collection and recycling of used household batteries that*
4 *substantially meets the intent of this article, or that the*
5 *requirements of a national transportation law make compliance*
6 *with this article physically or economically infeasible.*

7 *SEC. 6. If the Commission on State Mandates determines that*
8 *this act contains costs mandated by the state, reimbursement to*
9 *local agencies and school districts for those costs shall be made*
10 *pursuant to Part 7 (commencing with Section 17500) of Division*
11 *4 of Title 2 of the Government Code.*

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