

AMENDED IN ASSEMBLY APRIL 21, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1159

Introduced by Assembly Members Gordon and Williams
(Coauthor: Assembly Member Mark Stone)

February 27, 2015

An act to add and repeal Chapter 19.5 (commencing with Section 42968) of Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1159, as amended, Gordon. Product stewardship: pilot program: household batteries and home-generated sharps waste.

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 and cost-effective manner to conserve water, energy, and other natural resources.

Existing law requires a pharmaceutical manufacturer selling or distributing medication that is intended to be self-injected at home to submit, on an annual basis, to the Department of Resources Recycling and Recovery a plan supporting the safe collection and proper disposal of specified waste devices.

Existing law leaves in operation Department of Toxic Substances Control regulations, adopted until January 1, 2008, to exempt a hazardous waste management activity, including management of hazardous waste batteries, from certain statutory requirements related

to hazardous waste management if specified conditions for exemption are met, including that the regulations identify the waste as a universal waste.

This bill would establish the Product Stewardship Pilot Program and, until January 1, 2024, would require producers and product stewardship organizations of covered products, defined to mean a consumer product that is used or discarded in this state and is either home-generated sharps waste or household batteries, to develop and implement a product stewardship plan, as specified.

This bill would require, by July 1, 2017, a producer of a covered product, individually or through a product stewardship organization, to submit a product stewardship plan to the Department of Resources Recycling and Recovery. The bill would require the product stewardship plan to include specified elements, including strategies to achieve performance standards and a funding mechanism that provides sufficient funding to carry out the plan. The department would be required to review and determine whether the plan is complete and, if complete, determine whether to approve or not approve the plan. The bill would require the department to notify the submitter of its decision to approve or not approve the plan, and, if the department does not approve the plan, would require the department to describe the reasons for its disapproval. The bill would authorize the submitter to revise and resubmit the plan and would specify that a plan not approved by January 1, 2018, is out of compliance.

The bill would require a producer or product stewardship organization implementing a product stewardship plan to prepare and submit to the department an annual report describing the activities carried out pursuant to the product stewardship plan, including whether the producer or product stewardship organization, in implementing the plan, attained the performance standards for the covered product, and if the performance standards were not met, what actions the producer or product stewardship organization will be taking to attain those performance standards.

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the ~~department, on an unspecified schedule,~~ *department* an annual administrative fee, as determined by the department. The bill would require the fee be set at an amount that, when paid by every product stewardship organization that submits a product stewardship plan, is adequate to cover the department's full costs of administering and enforcing the program.

The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill and would provide that a plan submitter whose plan is not approved by the department by July 1, 2018, is subject to those penalties until the plan is approved. The bill would establish the Product Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Product Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would provide that certain actions of a product stewardship organization or its members are not violations of the Cartwright Act or certain provisions regulating unfair business practices or unfair competition.

The bill would require the department, by January 1, 2017, to adopt regulations to implement these provisions, including setting performance standards for each covered product, which would include a minimum collection rate and appropriate geographic coverage, and procedures for product stewardship plan submittal. By March 1, 2017, the department would also be required to appoint a stakeholder advisory committee for each covered product to provide technical feedback to a product stewardship organization. The bill would also require the advisory committee to annually report to the department on the progress of the product stewardship organizations' implementation of the bill's provisions.

The bill would require the department, by July 1, 2023, to report, for each covered product, specified information to the appropriate committees of the Legislature, including, the department's evaluation of each product stewardship organization, product stewardship organization evaluations of the department and stakeholder advisory committee, stakeholder advisory committee reports, and audited financials of each product stewardship organization. The bill would authorize the department to impose additional reporting requirements on product stewardship organizations and the stakeholder advisory

committees to meet the department’s reporting requirements to the Legislature.

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. Chapter 19.5 (commencing with Section 42968)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 19.5. PRODUCT STEWARDSHIP PILOT PROGRAM
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7 Article 1. Definitions
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9 42968. “Collection rate” means the percentage of covered
10 products, by weight, that are collected during a calendar year by
11 a product stewardship organization as compared to the average
12 annual weight of all covered products that were estimated to have
13 been sold in the state during the previous three years by that
14 product stewardship organization’s members or the individual
15 producer. The collection rate of a product stewardship organization
16 of covered products may be based on a reasonable pro rata
17 calculation of national sales.

18 42968.01. “Consumer” means a purchaser, owner, or lessee of
19 a product, including a person, business, corporation, limited
20 partnership, nonprofit organization, or governmental entity.

21 42968.02. “Consumer product” means a product that is sold
22 in this state in a transaction that is a retail sale or in a transaction
23 to which a use tax applies pursuant to Part 1 (commencing with
24 Section 6001) of Division 2 of the Revenue and Taxation Code.

25 42968.04. “Covered product” means a consumer product that
26 is used or discarded in this state and is either of the following:

27 (a) Home-generated sharps waste, as defined in Section 117671
28 of the Health and Safety Code.

29 (b) Household batteries, as defined in subdivision (c) of Section
30 42450.

31 42968.06. “Department” means the Department of Resources
32 Recycling and Recovery.

1 42968.07. “Geographic coverage” means the number of
2 convenient collection sites provided by a product stewardship
3 organization, free of charge, for consumers in each county of the
4 state where the product stewardship organization’s members or
5 the individual producer sell, offer for sale, or distribute a covered
6 product.

7 42968.08. “Performance standards” means the standards set
8 by the department pursuant to Section 42968.22.

9 42968.10. “Producer,” with regard to a covered product that
10 is sold, offered for sale, or distributed in the state, means one of
11 the following:

12 (a) A person who manufactures the covered product and who
13 sells, offers for sale, or distributes that covered product in the state
14 under that person’s own name or brand.

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

21 (c) If there is no person who is a producer of the covered product
22 for purposes of subdivisions (a) and (b), the producer of that
23 covered product is the person who imports the product into the
24 state for sale or distribution.

25 42968.12. “Product stewardship organization” means either of
26 the following:

27 (a) An organization created by one or more producers of a
28 covered product to act as an agent on behalf of the producer to
29 design, submit, and administer a product stewardship plan pursuant
30 to this chapter.

31 (b) A producer of a covered ~~product that complies with this~~
32 ~~chapter as an individual producer.~~ *product.*

33 42968.14. “Product stewardship plan” or “plan” means a plan
34 written by an individual producer or a product stewardship
35 organization that includes all of the information required by Section
36 42968.32.

Article 2. General Provisions

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3 42968.20. Each product stewardship organization of a covered
4 product in this state shall develop and implement a product
5 stewardship plan in accordance with the provisions of this chapter.
6 42968.22. (a) On or before January 1, 2017, the department
7 shall adopt regulations to implement the provisions of this chapter.
8 The regulations shall, at a minimum, include:
9 (1) Performance standards for a covered product that are to be
10 met by a product stewardship plan, which shall include a minimum
11 collection rate for a covered product and appropriate geographic
12 coverage for a covered product.
13 (2) Procedures for product stewardship plan submittal to the
14 department.
15 (3) The appointment of a stakeholder advisory committee, as
16 described in Article 6 (commencing with Section 42968.60).
17 (b) Regulations adopted pursuant to subdivision (a) shall have
18 no effect after the repeal of this chapter.
19 42968.26. (a) Except as provided in subdivision (b), any action
20 by a product stewardship organization or its members that relates
21 to any of the following is not a violation of the Cartwright Act
22 (Chapter 2 (commencing with Section 16700) of Part 2 of Division
23 7 of the Business and Professions Code), the Unfair Practices Act
24 (Chapter 4 (commencing with Section 17000) of Part 2 of Division
25 7 of the Business and Professions Code), or the Unfair Competition
26 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
27 Division 7 of the Business and Professions Code):
28 (1) The creation, implementation, or management of a product
29 stewardship plan approved by the department pursuant to Section
30 42968.34.
31 (2) The cost and structure of an approved product stewardship
32 plan.
33 (b) Subdivision (a) does not apply to an agreement that does
34 any of the following:
35 (1) Fixes a price of or for a covered product, except for any
36 agreement related to a product stewardship plan approved by the
37 department and otherwise in accordance with this chapter.
38 (2) Fixes the output of production of a covered product.
39 (3) Restricts the geographic area in which, or customers to
40 whom, a covered product will be sold.

1 Article 3. Product Stewardship Plan

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3 42968.30. On or before July 1, 2017, a product stewardship
4 organization shall submit a product stewardship plan to the
5 department that will divert the covered product from landfills and
6 manage the covered product in a manner that is consistent with
7 the state’s hierarchy for waste management practices pursuant to
8 Section 40051.

9 42968.32. A product stewardship plan required to be submitted
10 pursuant to Section 42968.30 shall include all of the following:

11 (a) Strategies to achieve the performance standards set by the
12 department pursuant to Section 42968.22.

13 (b) Strategies for managing and reducing the life-cycle impacts
14 of the covered product.

15 (c) A funding mechanism that provides sufficient funding to
16 carry out the plan, including the administrative, operational, and
17 capital costs of the plan, and payment of fees pursuant to Section
18 42968.40.

19 (d) A process by which the financial activities of the product
20 stewardship organization that are related to implementation of the
21 plan will be subject to an independent audit, which may be
22 reviewed by the department.

23 42968.34. (a) Within 30 days after the department receives a
24 plan submitted pursuant to Section 42968.30, the department shall
25 review the plan, and determine whether the plan is complete or
26 incomplete. If the department does not deem the plan complete,
27 the department shall notify the product stewardship organization
28 that submitted the plan of the deficiencies, and the product
29 stewardship organization shall revise and resubmit the plan within
30 30 days of receiving the notice.

31 (b) If the department determines that the plan is complete, the
32 department shall have 60 days after determining the plan is
33 complete to determine whether it complies with ~~Section 42968.32,~~
34 *42968.32 and any regulations adopted by the department pursuant*
35 *to this chapter*, and notify the submitter of its decision to approve
36 or not approve the plan.

37 (c) If the department does not approve the plan, it shall describe
38 the reasons for its disapproval in the notice. The submitter may
39 revise and resubmit the plan within 60 days after receiving notice
40 of disapproval and the department shall review and approve or not

1 approve the revised plan within 60 days after receipt. Any plan
2 not approved by January 1, 2018, shall be out of compliance with
3 this chapter and, commencing July 1, 2018, if the plan is not
4 approved as of that date, the submitter of the plan is subject to the
5 penalties specified in Section 42968.50 until the plan is approved
6 by the department.

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Article 4. Financial Provisions

10 42968.40. (a) A product stewardship organization submitting
11 a product stewardship plan shall pay the department an annual
12 administrative fee. The department shall set the fee at an amount
13 that, when paid by every product stewardship organization that
14 submits a product stewardship plan, is adequate to cover the
15 department’s full costs of administering and enforcing this chapter,
16 including any program development costs or regulatory costs
17 incurred by the department prior to product stewardship plans
18 being submitted. The department may establish a variable fee based
19 on relevant factors, including, but not limited to, the portion of
20 covered products sold in the state by members of the organization
21 compared to the total amount of covered products sold in the state
22 by all organizations submitting a product stewardship plan.

23 (b) The total amount of annual fees collected pursuant to this
24 section shall not exceed the amount necessary to recover costs
25 incurred by the department in connection with the administration
26 and enforcement of the requirements of this chapter.

27 ~~(c) A product stewardship organization subject to this section~~
28 ~~shall pay the department the administrative fee pursuant to~~
29 ~~subdivision (a) on or before _____, and annually thereafter through~~
30 ~~_____.~~

31 ~~(d)~~

32 (c) The department shall deposit the fees collected pursuant to
33 this section into the Product Stewardship Account created pursuant
34 to Section 42968.42.

35 42968.42. (a) The Product Stewardship Account and the
36 Product Stewardship Penalty Subaccount are hereby established
37 in the Integrated Waste Management Fund.

38 (b) All fees collected by the department pursuant to this article
39 shall be deposited in the Product Stewardship Account and may
40 be expended by the department, upon appropriation by the

1 Legislature, to cover the department's costs to implement this
2 chapter.

3 (c) All civil penalties collected pursuant to Article 5
4 (commencing with Section 42968.50) shall be deposited in the
5 Product Stewardship Penalty Subaccount and may be expended
6 by the department, upon appropriation by the Legislature, to cover
7 the department's costs to implement this chapter.

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Article 5. Penalties

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11 42968.50. (a) A civil penalty up to the following amounts may
12 be administratively imposed by the department or imposed by the
13 court on any person who is in violation of any provision of this
14 chapter:

15 (1) One thousand dollars (\$1,000) per day.

16 (2) Ten thousand dollars (\$10,000) per day if the violation is
17 intentional, knowing, or negligent.

18 (b) In assessing or reviewing the amount of a civil penalty
19 imposed pursuant to subdivision (a) for a violation of this chapter,
20 the department or the court shall consider all of the following:

21 (1) The nature and extent of the violation or violations.

22 (2) The number and severity of the violation or violations.

23 (3) The economic effect of the penalty on the violator.

24 (4) Whether the violator took good faith measures to comply
25 with this chapter and the period of time over which these measures
26 were taken.

27 (5) The willfulness of the violator's misconduct.

28 (6) The deterrent effect that the imposition of the penalty would
29 have on both the violator and the regulated community.

30 (7) Any other factor that justice may require.

31 ~~(Added by Stats. 2010, Ch. 681, Sec. 2. (AB 2398) Effective~~
32 ~~January 1, 2011.)~~

33 42968.52. Moneys collected pursuant to this article shall be
34 deposited in the Product Stewardship Penalty Subaccount,
35 established pursuant to Section 42968.42.

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Article 6. Stakeholder Advisory Committee

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39 42968.60. (a) On or before March 1, 2017, the department
40 shall appoint a stakeholder advisory committee for each covered

1 product to provide technical feedback to a product stewardship
 2 organization. The stakeholder advisory committee shall report
 3 annually to the department on the progress of the product
 4 stewardship organizations’ implementation of this chapter.

5 (b) Members of the advisory committee for a covered product
 6 shall include members of the environmental community, solid
 7 waste industry, local governments, retailers, and other key
 8 stakeholders for that covered product.

9 (c) The stakeholder advisory committee for a covered product
 10 shall be independent of the product stewardship organizations for
 11 that covered product. The advisory committee’s expenses shall be
 12 covered by its members and not the product stewardship
 13 organizations for that covered product or the state.

14 (d) A product stewardship organization for a covered product
 15 shall have no control over the advisory committee for that covered
 16 product or its activities.

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Article 7. Reporting

20 42968.70. Beginning on or before the first January 1 more than
 21 one year after a product stewardship plan is approved, and on or
 22 before every January 1 thereafter, each product stewardship
 23 organization implementing a product stewardship plan shall prepare
 24 and submit to the department an annual report describing the
 25 activities carried out pursuant to the product stewardship plan
 26 during the previous reporting period, including, but not limited to,
 27 whether the product stewardship organization, in implementing
 28 the plan, attained the performance standards for the covered
 29 product, ~~and~~ *and*, if the performance standards were not met, what
 30 actions the product stewardship organization will take during the
 31 next reporting period to attain those performance standards.

32 42968.72. On or before July 1, 2023, the department shall
 33 report all of the following, for each covered product, to the
 34 appropriate committees of the Legislature:

35 (a) The department’s evaluation of each product stewardship
 36 organization.

37 (b) Each product stewardship organization’s evaluation of the
 38 department and the advisory committee.

39 (c) Stakeholder advisory committee reports submitted to the
 40 department pursuant to Section 42968.60.

1 (d) Audited financials of each product stewardship organization.

2 (e) The amount of money saved by state and local governments
3 as a result of implementing a product stewardship plan.

4 (f) Whether the performance standards set by the department
5 were met.

6 42968.74. The department may impose reporting requirements
7 on product stewardship organizations and the stakeholder advisory
8 committee of a covered product to ensure that the department is
9 able to meet its reporting requirements to the Legislature pursuant
10 to Section 42968.72.

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Article 8. Repeal

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14 42968.80. This chapter shall remain in effect only until January
15 1, 2024, and as of that date is repealed, unless a later enacted
16 statute, that is enacted before January 1, 2024, deletes or extends
17 that date.