

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2039

Introduced by Assembly Member Ting

February 16, 2016

~~An act to relating to solid waste.~~ *An act to amend Section 118286 of the Health and Safety Code, and to repeal and add Article 3.3 (commencing with Section 47115) of Chapter 1 of Part 7 of Division 30 of the Public Resources Code, relating to solid waste.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2039, as amended, Ting. ~~Solid waste: reduction.~~ *Solid waste: home-generated sharps.*

(1) The stated purpose of the California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is 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. That act 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 a plan supporting the safe collection and proper disposal of specified waste devices, known as home-generated sharps.

This bill would require a producer of home-generated sharps or a stewardship organization designated by the producer to submit a home-generated sharps stewardship plan by July 1, 2018, to the Department of Resources Recycling and Recovery. The bill would require the plan to provide for the development and implementation of a recovery program to reduce the generation of, and manage the end

of life of, home-generated sharps, and to include specified elements, including provisions to meet specified minimum collection rates for the home-generated sharps subject to the plan.

This bill would provide for the review and approval of the plan by the department. The bill would require the department upon the date a plan is approved, to post on its Internet Web site a list of producers covered by the approved plan.

This bill would require a producer or stewardship organization, by April 1, 2020, and every year thereafter, to prepare and submit to the department an annual report describing the activities carried out pursuant to its plan during the previous calendar year. The department would be required to review the report and, if the annual report does not demonstrate the achievement of the required collection rate increase, would authorize the department to impose a civil penalty on the producer or stewardship organization or to require the program to take additional actions with regard to improving and increasing the number of home-generated sharps collection points, ensuring accessibility to those points, and providing additional education and outreach activities.

This bill would require a producer or stewardship organization submitting a plan to the department to pay the department an annual administrative fee in an amount that is sufficient to cover the department's full costs of administering and enforcing these provisions. The bill would require the department to deposit the fees in the Safe Sharps Disposal Account, which the bill would establish in the Integrated Waste Management Fund, for the department's expenditure upon appropriation by the Legislature, to administer and enforce the bill's requirements.

This bill would authorize the department to impose an administrative civil penalty on a person who violates the bill's requirements. The department would be required to deposit all penalties collected into the Safe Sharps Disposal Penalty Account, which the bill would create in the Integrated Waste Management Fund, available upon appropriation by the Legislature, to enforce the bill's requirements.

The bill would require the department, by February 1, 2018, to appoint a stakeholder advisory committee to provide specific recommendations and strategic guidance to producers and stewardship organizations. The bill would also require the stakeholder advisory committee to annually report to the department on the progress of the producers' and stewardship organizations' implementation of the bill's provisions.

(2) *The Medical Waste Management Act, administered by the State Department of Public Health, prohibits a person from knowingly placing home-generated sharps waste in certain types of containers, requires that home-generated sharps waste be transported only in a sharps container, as defined in that act, or another container approved by the department or local enforcement agency, and requires that this waste be managed only at specified locations.*

This bill would additionally allow home-generated sharps waste to be managed at a facility or collection point operated pursuant to an approved home-generated sharps stewardship plan.

~~The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, requires each city and county, and each regional agency formed pursuant to the act, to develop a source reduction and recycling element of an integrated waste management plan to divert 50% of all solid waste, through source reduction, recycling, and composting activities. Existing law makes a legislative declaration that it is the policy goal of the state that not less than 75% of solid waste generated be source reduced, recycled, or composted by 2020, but prohibits the department from establishing or enforcing a diversion rate on a city or county that is greater than the 50% diversion rate.~~

~~This bill would provide that it is the intent of the Legislature to reduce waste in the state.~~

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

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

- 1 SECTION 1. (a) *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (1) *The United States Environmental Protection Agency*
- 4 *estimates that about 9 million people in the United States currently*
- 5 *use disposable needles (sharps) at home to deliver medications to*
- 6 *treat a variety of diseases and conditions, including diabetes,*
- 7 *cancer, multiple sclerosis, migraines, and allergies. United States*
- 8 *households use more than 3 billion disposable needles and syringes*
- 9 *each year.*
- 10 (2) *Since 2008, it has been illegal in California for individuals*
- 11 *to throw away home-generated sharps. While the state banned*
- 12 *needles from trash disposal in 2008, there is still no consistent,*

1 statewide program that is sustainably funded or has high levels
2 of effectiveness in California. As a result, thousands of pounds of
3 illegally disposed sharps enter the municipal waste stream each
4 year, putting many people at risk of injury or infection.

5 (3) Sharps in the trash pose serious health risks to law
6 enforcement, firefighters, parks and recreation workers, hotel
7 housekeepers, sanitation workers, water treatment facility
8 operators, and the general public. In addition to the immediate
9 risk of a needle stick injury, sharps put individuals at risk of
10 acquiring blood-borne infectious diseases, such as hepatitis or
11 HIV. Individuals who suffer a needle stick injury must receive
12 immediate treatment and followup care, including multiple lab
13 tests and medications.

14 (4) When sanitation workers encounter sharps, productivity
15 suffers and costs increase. When workers sustain a needle stick
16 injury, the costs of care are borne by the waste management
17 company, the workers' compensation insurer, and ultimately,
18 taxpayers and ratepayers.

19 (5) The California Legislature has adopted a 50 percent
20 diversion requirement for each local jurisdiction, and a policy
21 goal of the state that 75 percent of solid waste be source reduced,
22 recycled, or composted. Sanitation workers are increasingly
23 hand-sorting solid waste in an effort to meet the diversion
24 requirements. Despite repeated efforts to engineer protective gloves
25 to prevent needle sticks, the absence of a consistent sharps disposal
26 policy in this state is increasing the workplace danger for
27 sanitation workers.

28 (6) In 2011, Assembly Bill 341 was enacted, declaring the 75
29 percent statewide policy goal and requiring the Department of
30 Resources Recycling and Recovery to submit a report to the
31 Legislature with regulatory and legislative recommendations for
32 achieving the goal. The report, which was issued in August 2015,
33 contains five priority strategies. One of the priority strategies
34 identified by the report is "extended producer responsibility," also
35 known as "product stewardship." Additionally, the report identifies
36 hazardous materials, which include sharps, as a problem waste
37 stream and recommends managing this problem product through
38 extended producer responsibility.

39 (b) It is the intent of the Legislature, in enacting the Safe
40 Home-Generated Sharps Recovery Program, as established by

1 *Article 3.3 (commencing with Section 47115) of Chapter 1 of Part*
2 *7 of Division 30 of the Public Resources Code, to ensure affordable*
3 *and convenient sharps collection opportunities, which, in turn,*
4 *will help prevent the improper management of those sharps.*

5 *SEC. 2. Section 118286 of the Health and Safety Code is*
6 *amended to read:*

7 118286. (a) A person shall not knowingly place
8 home-generated sharps waste in any of the following containers:

9 (1) Any container used for the collection of solid waste,
10 recyclable materials, or greenwaste.

11 (2) Any container used for the commercial collection of solid
12 waste or recyclable materials from business establishments.

13 (3) Any roll-off container used for the collection of solid waste,
14 construction, and demolition debris, greenwaste, or other recyclable
15 materials.

16 (b) Home-generated sharps waste shall be transported only in
17 a sharps container, or other containers approved by the enforcement
18 agency, and shall only be managed at any of the following:

19 (1) A household hazardous waste *collection* facility pursuant
20 to Section 25218.13.

21 (2) A “home-generated sharps consolidation point” as defined
22 in subdivision (b) of Section 117904.

23 (3) A medical waste generator’s facility pursuant to Section
24 118147.

25 (4) A facility through the use of a medical waste mail-back
26 container approved by the United States Postal Service.

27 (5) *A facility or other home-generated sharps collection point*
28 *operated pursuant to a home-generated sharps stewardship plan*
29 *approved pursuant to Article 3.3 (commencing with Section 47115)*
30 *of Chapter 1 of Part 7 of Division 30 of the Public Resources Code.*

31 *SEC. 3. Article 3.3 (commencing with Section 47115) of*
32 *Chapter 1 of Part 7 of Division 30 of the Public Resources Code*
33 *is repealed.*

34 *SEC. 4. Article 3.3 (commencing with Section 47115) is added*
35 *to Chapter 1 of Part 7 of Division 30 of the Public Resources Code,*
36 *to read:*

1
2 *Article 3.3. Safe Home-Generated Sharps Recovery Program*

3
4 *47115. For purposes of this article, the following terms have*
5 *the following meanings:*

6 (a) *“Consumer” means a person who purchases or owns*
7 *home-generated sharps.*

8 (b) *“Distributor” means a person that sells sharps or provides*
9 *sharps for free to the general public for home use, which may*
10 *include, but is not limited to, a retailer, a veterinarian, or a health*
11 *clinic, health dispensary, or health facility licensed under Division*
12 *2 (commencing with Section 1200) of the Health and Safety Code.*

13 (c) *“Home-generated sharps” means hypodermic needles,*
14 *syringes with needles attached, pen needles, intravenous needles,*
15 *lancets, or any other similar device intended to self-inject*
16 *medication at home.*

17 (d) *“Home-generated sharps stewardship plan” or “plan”*
18 *means a plan submitted by an individual producer or by a*
19 *stewardship organization on behalf of one or more producers.*

20 (e) *“Producer” means, with regard to home-generated sharps*
21 *that are sold, offered for sale, or distributed in the state, one of*
22 *the following:*

23 (1) *The person who manufactures home-generated sharps and*
24 *who sells, offers for sale, or distributes those home-generated*
25 *sharps in the state under that person’s own name or brand.*

26 (2) *If there is no person who is a producer of the*
27 *home-generated sharps for purposes of paragraph (1), the*
28 *producer of the home-generated sharps is the owner or licensee*
29 *of a trademark or brand under which the home-generated sharps*
30 *are sold or distributed in the state, whether or not the trademark*
31 *is registered.*

32 (3) *If there is no person who is a producer of the sharps for*
33 *purposes of paragraphs (1) and (2), the producer of those sharps*
34 *is the person who imports the home-generated sharps into the state*
35 *for sale or distribution.*

36 (f) *“Program” means the program implementing an approved*
37 *home-generated sharps stewardship plan.*

38 (g) *“Retailer” means a person that sells home-generated sharps*
39 *in the state to a consumer. A sale includes, but is not limited to, a*

1 *transaction conducted through sales outlets, catalogs, or the*
2 *Internet or any other similar electronic means.*

3 *(h) “Stewardship organization” means a nonprofit organization*
4 *created by one or more producers the governing board of which*
5 *includes three additional members, appointed by the director, one*
6 *representing from each of the following entities:*

7 *(1) A local government.*

8 *(2) A retailer.*

9 *(3) A solid waste hauler.*

10 *(i) “Stakeholder” means a person who will be subject to, or*
11 *participate in, the program that will be implemented by a proposed*
12 *home-generated sharps stewardship plan, including, but not limited*
13 *to, consumers, retailers, distributors, and health care providers*
14 *and facilities.*

15 *47115.2. On or before January 1, 2018, the department shall*
16 *adopt regulations implementing this article.*

17 *47115.4. (a) On or before February 1, 2018, the department*
18 *shall appoint a stakeholder advisory committee to provide specific*
19 *recommendations and strategic guidance to producers and*
20 *stewardship organizations. The stakeholder advisory committee*
21 *shall report annually to the department on the progress of the*
22 *producers’ and stewardship organizations’ implementation of this*
23 *article.*

24 *(b) Members of the advisory committee shall include members*
25 *from the environmental community, solid waste haulers, local*
26 *governments, retailers, and other key stakeholders.*

27 *(c) The stakeholder advisory committee shall be independent*
28 *of the producers and stewardship organizations. The advisory*
29 *committee’s expenses shall be paid by its members and not the*
30 *producers or stewardship organizations.*

31 *(d) A producer or stewardship organization shall have no*
32 *control over the stakeholder advisory committee or its activities.*

33 *47116. A pharmaceutical manufacturer that sells or distributes*
34 *a medication in the state that is usually intended to be self-injected*
35 *at home through the use of a home-generated sharp shall submit,*
36 *on or before July 1 of each year, to the department, or its successor*
37 *agency, a plan that describes how the manufacturer supports the*
38 *safe collection and proper disposal of the home-generated sharps.*

39 *47117. (a) On or before July 1, 2018, a producer or a*
40 *stewardship organization designated by a producer shall submit*

1 a home-generated sharps stewardship plan to the department. The
2 home-generated sharps stewardship plan shall also be posted on
3 the Internet Web site of the producer or stewardship organization.
4 The plan shall provide for the implementation of the plan for each
5 calendar year, commencing January 1, 2019.

6 (b) The producer or stewardship organization shall consult with
7 the stakeholder advisory committee during the development of the
8 home-generated sharps stewardship plan, including soliciting and
9 responding to stakeholder advisory committee comments, and shall
10 document those comments in the plan.

11 (c) The home-generated sharps stewardship plan shall provide
12 for the development and implementation of a recovery program
13 to reduce the generation of, and manage the end of life of,
14 home-generated sharps in an environmentally sound and medically
15 safe manner, including collecting, transporting, processing, and
16 recycling or disposing. The plan shall include, at a minimum, all
17 of the following elements:

18 (1) Contact information for all participating producers.

19 (2) Procedures for calculating the amount, by weight, of the
20 home-generated sharps subject to the plan.

21 (3) Provisions to meet the minimum collection rate for the
22 home-generated sharps subject to the plan, which shall be
23 determined in the following manner:

24 (A) On and after January 1, 2020, the minimum collection rate
25 shall be 20 percent of the number of home-generated sharps that
26 are sold in the state during the 2017 calendar year by producers.

27 (B) On and after January 1, 2021, the minimum collection rate
28 shall be 40 percent of the number of home-generated sharps that
29 are sold in the state during the 2017 calendar year by the
30 producers.

31 (C) On and after January 1, 2022, the minimum collection rate
32 shall be 60 percent of the number of home-generated sharps that
33 are sold in the state during the 2017 calendar year by the
34 producers.

35 (D) On and after January 1, 2023, and annually thereafter, the
36 minimum collection rate shall be determined pursuant to Section
37 47120.

38 (4) A demonstration of sufficient funding for the home-generated
39 sharps stewardship program proposed by the plan, including a

1 *funding mechanism for securing and disbursing funds to cover*
2 *administrative, operational, and capital costs.*

3 (5) *Coordination of the home-generated sharps stewardship*
4 *program with existing local medical waste collection programs,*
5 *to the extent this requirement is reasonably feasible and mutually*
6 *agreeable.*

7 (6) *Programs to reduce the number of postconsumer sharps*
8 *that are illegally disposed of, and to maximize the proper*
9 *end-of-life management of home-generated sharps, including the*
10 *collection of home-generated sharps, as practical, based on current*
11 *medical waste program information.*

12 (7) *Education and outreach efforts for consumers, the medical*
13 *community, and retailers to promote the collection of*
14 *home-generated sharps. These efforts may include, but are not*
15 *limited to, developing, and updating as necessary, educational*
16 *and other outreach materials aimed at all retailers and distributors*
17 *of home-generated sharps. These materials shall be made available*
18 *to those parties and may include, but are not limited to, one or*
19 *more of the following:*

20 (A) *Signage that is prominently displayed and easily visible to*
21 *the consumer at the point of sale.*

22 (B) *Written materials and templates of materials for*
23 *reproduction by retailers to be provided to the consumer at the*
24 *point of sale or delivery, or both. These written materials shall*
25 *include information on the prohibition on the improper disposal*
26 *of home-generated sharps.*

27 (C) *Advertising or other promotional materials, or both, that*
28 *include references to home-generated sharps collection*
29 *opportunities and the prohibition on the improper disposal of*
30 *home-generated sharps.*

31 (8) *Methods for demonstrating to the department that the*
32 *program implemented pursuant to the plan achieves the maximum*
33 *improvement possible in achieving the minimum collection rate.*

34 (9) *The establishment of at least one home-generated sharps*
35 *collection point in every county in the state, but no less than one*
36 *home-generated sharps collection point for every 25,000 people*
37 *in each county.*

38 47118. (a) *The department shall review a home-generated*
39 *sharps stewardship plan submitted pursuant to Section 47117*
40 *within 60 days of receipt. The department shall approve the plan*

1 if the department determines the plan provides for the
2 establishment of a home-generated sharps stewardship program
3 that meets the requirements of Section 47117. If the department
4 does not approve the plan, the producer or stewardship
5 organization shall resubmit the plan within 60 days after receiving
6 notice of disapproval from the department.

7 (b) (1) The approved plan shall be a public record, except that
8 financial, production, or sales data reported to the department by
9 the producer or by the stewardship organization is not a public
10 record under the California Public Records Act (Chapter 3.5
11 (commencing with Section 6250) of Division 7 of Title 1 of the
12 Government Code) and shall not be open to public inspection.

13 (2) Notwithstanding paragraph (1), the department may release
14 financial, production, or sales data in summary form, if the
15 department does not disclose financial, production, or sales data
16 of individual producers.

17 (c) On or before January 1, 2019, or three months after a plan
18 is approved pursuant to subdivision (a), whichever is later, but no
19 later than April 1, 2019, the producer or stewardship organization
20 shall implement the home-generated sharps stewardship program
21 described in the approved plan.

22 47119. A retailer may voluntarily participate as a
23 home-generated sharps collection point pursuant to the
24 home-generated sharps stewardship program.

25 47120. On or before January 1, 2023, the department shall
26 consult with producers, stewardship organizations, the stakeholder
27 advisory committee, and all other stakeholders regarding the
28 program's performance. The department shall set a fair and
29 reasonable minimum collection rate for the 2023 calendar year
30 and for each subsequent calendar year to achieve the goal of safely
31 managing home-generated sharps in this state.

32 47121. Upon the date a plan is approved, the department shall
33 post on its Internet Web site a list of producers covered by the
34 approved plan. The department shall update this posting within
35 30 days of a change in compliance status of any producer.

36 47122. On or before April 1, 2020, and on or before April 1
37 of every year thereafter, each producer or stewardship
38 organization implementing a plan shall prepare and submit to the
39 department an annual report, as prescribed by the department,
40 describing the activities carried out pursuant to the plan during

1 *the previous calendar year; commencing with the 2019 calendar*
2 *year. The report shall include a list of the specific*
3 *recommendations from the stakeholder advisory committee and*
4 *an explanation for either accepting or rejecting those*
5 *recommendations.*

6 *47123. (a) The department shall review the annual report or*
7 *reports submitted pursuant to Section 47122, including, but not*
8 *limited to, reviewing the accuracy of the list of home-generated*
9 *sharps collection points that are certified to be established*
10 *pursuant to the applicable plan.*

11 *(b) If an annual report does not demonstrate that the applicable*
12 *program has achieved the collection rate increase required*
13 *pursuant to paragraph (3) of subdivision (c) of Section 47117, the*
14 *department may require the program to take additional actions*
15 *with regard to improving and increasing the number of*
16 *home-generated sharps collection points, ensuring accessibility*
17 *to those points, and providing additional education and outreach*
18 *activities.*

19 *(c) If the department does not disapprove a report within 45*
20 *days of receipt, the report shall be deemed approved by the*
21 *department.*

22 *(d) The department shall make a report submitted to the*
23 *department pursuant to this section available to the public on the*
24 *department's Internet Web site for one year.*

25 *47125. (a) A producer or stewardship organization submitting*
26 *a plan to the department shall pay the department an annual*
27 *administrative fee pursuant to subdivision (b).*

28 *(b) The department shall impose the annual fee in an amount*
29 *that is sufficient to cover the department's full costs of*
30 *administering and enforcing this article, including any program*
31 *development costs or regulatory costs incurred by the department*
32 *prior to the submittal of a plan. The department shall deposit the*
33 *fees in the Safe Sharps Disposal Account, which is hereby*
34 *established in the Integrated Waste Management Fund. The*
35 *department may expend the moneys in the Safe Sharps Disposal*
36 *Account, upon appropriation by the Legislature, to administer and*
37 *enforce this article.*

38 *47126. (a) The department shall enforce this article and may*
39 *impose an administrative civil penalty on a person who violates*

1 *this article in an amount of up to one thousand dollars (\$1,000)*
2 *per violation per day.*

3 *(b) The department may impose an administrative civil penalty*
4 *on a person who intentionally, knowingly, or negligently violates*
5 *this article in an amount of up to ten thousand dollars (\$10,000)*
6 *per violation per day.*

7 *(c) (1) The department may either impose the civil penalty*
8 *specified in subdivision (a) or (b) on a producer or stewardship*
9 *organization for which the annual report submitted does not*
10 *demonstrate that the minimum collection rate has been achieved*
11 *pursuant to paragraph (3) of subdivision (c) of Section 47117, or*
12 *require the producer or stewardship organization to take additional*
13 *actions to comply with this article pursuant to subdivision (b) of*
14 *Section 47123.*

15 *(2) In assessing a penalty pursuant to this subdivision on a*
16 *producer or stewardship organization, the department shall*
17 *consider any exigent circumstance that contributed to the producer*
18 *or stewardship organization not meeting the required minimum*
19 *collection rate.*

20 *(d) The department shall deposit all penalties collected pursuant*
21 *to this section into the Safe Sharps Disposal Penalty Account,*
22 *which is hereby created in the Integrated Waste Management*
23 *Fund. Upon appropriation by the Legislature, moneys deposited*
24 *into the Safe Sharps Disposal Penalty Account may be expended*
25 *by the department to enforce this article.*

26 *47127. (a) Except as provided in subdivision (c), an action*
27 *solely to increase the collection of home-generated sharps by a*
28 *producer, stewardship organization, or retailer that affects the*
29 *types or quantities being collected, or the cost and structure of*
30 *any program implementing a stewardship plan, is not a violation*
31 *of the statutes specified in subdivision (b).*

32 *(b) The following statutes are not violated by an action specified*
33 *in subdivision (a):*

34 *(1) The Cartwright Act (Chapter 2 (commencing with Section*
35 *16700) of Part 2 of Division 7 of the Business and Professions*
36 *Code).*

37 *(2) The Unfair Practices Act (Chapter 4 (commencing with*
38 *Section 17000) of Part 2 of Division 7 of the Business and*
39 *Professions Code).*

1 (c) *Subdivision (a) does not apply to an agreement establishing*
2 *or affecting the price of home-generated sharps or the output or*
3 *production of home-generated sharps or an agreement restricting*
4 *the geographic area or customers to which home-generated sharps*
5 *will be sold.*

6 ~~SECTION 1. It is the intent of the Legislature to reduce waste~~
7 ~~in the state.~~

O