
Environment Committee

HB 2450

Brief Description: Adopting the Washington small rechargeable battery stewardship act.

Sponsors: Representatives Tharinger, Wylie, Zeiger, Lytton, Fitzgibbon, Upthegrove, Pollet, Ormsby, Kenney and Moscoso.

Brief Summary of Bill

- Requires small rechargeable battery manufacturers, portable rechargeable product manufacturers, and marketers of either small rechargeable batteries or portable rechargeable products to participate in a program for recycling small rechargeable batteries, beginning 180 days after the effective date of this act.
- Requires retailers that sell small rechargeable batteries or portable rechargeable products to consumers to use signs or other mechanisms to inform consumers of available recycling programs.
- Prohibits retailers from selling small rechargeable batteries or portable rechargeable products that are not marked with an identification of the manufacturer or marketer, beginning a year after the effective date of this act.

Hearing Date: 1/20/12

Staff: Kara Durbin (786-7133).

Background:

Battery recycling programs prevent lead and mercury contamination from entering landfills by taking batteries out of the waste stream. In recycling, the metals are recovered from the used batteries, and the remainder of the product is recycled or discarded.

Rechargeable batteries are commonly found in cellular and cordless telephones, video cameras, portable power tools, and laptop computers. The majority of rechargeable batteries are nickel-cadmium (known as "Ni-Cd"), but some are small rechargeable sealed lead acid batteries. When

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discarded, these batteries can contribute to the toxicity level of landfills and incinerator ash, as many of them contain heavy metals.

In 1996 the Mercury-Containing and Rechargeable Battery Management Act (the Battery Act) was passed by Congress. The Battery Act facilitates increased collection and recycling of Ni-Cd and certain small sealed lead-acid rechargeable batteries. The Battery Act addresses battery and product manufacturers and battery waste handlers, not consumers.

According to the Department of Ecology (DOE), homeowners are not required to manage their batteries as universal waste but are strongly encouraged to take them to a household hazardous waste collection facility. Another option is to return the batteries to the place of purchase, if the retailer participates in a battery return program. Many rechargeable product and battery manufacturers participate voluntarily in programs to promote rechargeable battery recycling.

Summary of Bill:

Recycling Programs for Rechargeable Batteries.

Required Participation. Within 180 days of the effective date of this act, small rechargeable battery manufacturers in Washington must either have their own program or participate in a qualified program for collecting, transporting, recycling and disposing of used rechargeable batteries.

Retailers are not required to participate in a program unless the retailer is a private label battery retailer. Private label retailers must cooperate with an operator of a qualified program upon request by displaying a collection container and otherwise complying with the program, if the private label retailer does not operate its own program or participate in another qualified program.

This service must be free to the consumer; however, if a consumer brings a battery for recycling to a retail store and the manufacturer of the battery is not participating in a qualified program, the consumer must designate a location to which the retailer must ship the battery and the consumer must pay for this service.

Retailers that sell small rechargeable batteries or portable rechargeable products to consumers in Washington must put up signs or use equivalent mechanisms to inform consumers of qualified programs that are available.

Optional Participation. If a retailer in Washington is cooperating with a qualified program, the retailer must ensure that all used batteries placed in any collection container in the retailer's facility are properly protected from short circuiting and make reasonable efforts to prevent other items from being collected in collection container. Such retailers may require the qualified program to pay the retailer for the reasonable cost of cooperating with the program if the operator does not provide unique materials or mechanisms needed to implement the program. However, the retailer may not require the qualified program operator to pay the retailer for the cost of cooperating with that program.

Application Process. Any entity seeking to have a used small rechargeable battery stewardship program certified as a qualified program must submit a plan to the Department of Ecology (DOE) at least 90 days before the date it intends to commence operation. The DOE must acknowledge receipt of the plan and conduct a facial review within 14 days of submission. The DOE will certify any small rechargeable battery stewardship program as a qualified program within 60 days if the applicant pays a \$5,000 application fee and meets certain program requirements. If the DOE does not meet these deadlines, the program is considered to be certified as a qualified program.

The operator of the program must pay an annual fee of \$5,000 into the Used Battery Stewardship Fund. Any amendments made to the program must be accompanied by a \$500 administrative fee.

Coordination with Governmental Entities. A qualified program must provide appropriate containers and make agreed-upon payments to any governmental entity that operates, contracts for, or supervises a drop-off location for recycling or a curbside collection program, if the governmental entity reaches agreement with the qualified program on the terms for such services.

Identification of Small Rechargeable Batteries.

Within one year of the effective date of the act, retailers may not sell in Washington a small rechargeable battery or a portable rechargeable product, unless the battery or product is marked with an identification of the manufacturer or marketer.

Penalties for Noncompliance.

Failure to operate or participate in a qualified program by a small rechargeable battery manufacturer, marketer, portable rechargeable product manufacturer, or private label retailer will be liable for a civil penalty recoverable in a proceeding before the DOE. The fine will be \$5,000 for the first violation, \$10,000 for the second violation, and \$50,000 for the third or subsequent violation.

Failure to properly identify the manufacturer or marketer on a small rechargeable battery will result in the battery manufacturer or marketer being liable for a civil penalty in the amount of \$1,000 recoverable in a proceeding before the DOE.

Before seeking to assess any penalty, the DOE will notify the violator. A penalty will not be recovered if the recipient of the notice comes into compliance within 90 days.

In addition, if a qualified small rechargeable battery stewardship program incurs costs in excess of \$5,000 in recycling free rider used small rechargeable batteries from a manufacturer or marketer that did not participate in a qualified program, the small rechargeable battery stewardship program may bring a civil action to recover costs, damages of at least three times those costs, plus attorneys' fees and litigation costs.

Used Battery Stewardship Account.

The Used Battery Stewardship Account is created in the state treasury. All penalties assessed for noncompliance with this act and all fees submitted by operators of qualified programs will be deposited into the account and used by the DOE to fulfill its responsibilities under this act.

Other Stewardship Programs.

Any entity that operates a program for the stewardship of multiple brands of used nonrechargeable batteries on behalf of more than one manufacturer must allow small rechargeable battery manufacturers the opportunity to participate in its program. A fee may be imposed on the small rechargeable battery manufacturer, marketer, or portable rechargeable product manufacturer to cover its share of the program cost.

Other.

Any activities undertaken by a qualified program or a participant to: (1) operate a small rechargeable battery stewardship program; (2) coordinate its stewardship program with a program to collect used electronic waste under the Electronic Product Recycling Act; or (3) coordinate with or participate in a program for the stewardship of multiple brands of used nonrechargeable batteries, is not considered to be in violation of the unfair business practices provisions in the Consumer Protection Act.

Definitions.

Multiple definitions are provided, including definitions for terms used throughout the bill such as "small rechargeable battery," "qualified used small rechargeable battery stewardship program," "portable rechargeable product manufacturer or marketer," "private label retailer," and "retailer."

Appropriation: None.

Fiscal Note: Requested on January 13, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.