
Environment Committee

HB 1364

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

Sponsors: Representatives Tharinger, Zeiger, Moscoso, Crouse, Lias, McCoy, Fitzgibbon, Upthegrove, Maxwell, Morrell, Pollet and Fey.

Brief Summary of Bill

- Requires manufacturers of small rechargeable batteries and portable rechargeable products to participate in a battery recycling program approved by the Department of Ecology, beginning January 1, 2014.
- Prohibits retailers from selling small rechargeable batteries or portable rechargeable products that are unmarked or made by a manufacturer not in compliance with program requirements, beginning July 1, 2014.

Hearing Date: 2/7/13

Staff: Jacob Lipson (786-7196).

Background:

Rechargeable batteries are commonly found in cellular and cordless telephones, video cameras, portable power tools, and laptop computers. There are several chemical compositions of rechargeable batteries in common commercial use, including nickel-cadmium, nickel-metal hydride, lithium ion and small sealed lead acid.

In 1996 the Mercury-Containing and Rechargeable Battery Management Act (Battery Act) was passed by Congress. The Battery Act facilitates increased collection and recycling of nickel-cadmium 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), consumers are not required to manage their batteries as universal waste, but are strongly encouraged to take them to a household hazardous

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waste collection facility. Another option is to return the batteries to the place of purchase, if the retailer participates in a battery return program. Some rechargeable product and battery manufacturers and retailers participate voluntarily in programs to promote rechargeable battery recycling.

Summary of Bill:

Rechargeable Battery Recycling Program.

Manufacturers of small rechargeable batteries and products containing easily removable small rechargeable batteries must participate in one of two types of rechargeable battery stewardship programs: a multiparty program or a program operated by a retailer. Both retailer and multiparty collection programs must accept rechargeable batteries regardless of brand, and must comply with any legal and regulatory requirements pertaining to battery collection, storage, and transportation.

Both retailer and multiparty programs must submit plans which will govern their stewardship program operations to the DOE. Retailer and multiparty programs and plans must include:

- a description of the battery recycling program to be implemented and an identification of sorting and reclamation facilities to be used;
- a statement certifying that plan operations will adhere to certain requirements;
- identification of the collection locations of rechargeable batteries and products;
- a process and timeline for responding to public comments on the plan; and
- a response mechanism for public inquiries.

In addition to the above requirements applying to both retailer and multiparty plans, multiparty plans must also:

- identify participating manufacturers or marketers;
- collect rechargeable batteries and products at multiple retail locations;
- collect rechargeable batteries and products from government facilities;
- provide at least one collection location in every city or town with a population of more than 10,000; and
- conduct public outreach and marketing for the recycling program.

Manufacturer Responsibilities.

Manufacturers of small rechargeable batteries or portable rechargeable products containing easily removable small rechargeable batteries must participate in a stewardship program.

Manufacturers whose products are only sold through retailers that participate in a retailer plan are not subject to the stewardship program participation requirement.

Retailer Responsibilities.

Beginning July 1, 2014, all retailers are prohibited from selling:

- batteries that are not marked with a manufacturer's identification;
- rechargeable products with unmarked batteries; or
- batteries or rechargeable products that the retailer knows are manufactured by someone not in compliance with program requirements, per the receipt of a notification from the DOE or the stewardship program operator.

Although a battery stewardship program must have retail collection locations, individual retailers are not required to participate in or cooperate with a program, except for retailers who sell batteries under their own brand name. Retailers may not require program operators to pay them in order to cooperate with the program.

Retailers who choose to cooperate with a stewardship program must:

- inform consumers of the battery recycling program; and
- ensure safe storage and prevent short-circuiting of the batteries.

Retailers who purchase non-compliant batteries, which they are prohibited from selling, may compel the vendor to designate a place for the retailer to ship the battery or product for further handling. The vendor must reimburse the retailer for the shipping costs and the costs of the unsellable product.

Oversight and Compliance Mechanisms.

When a manufacturer submits a plan, the DOE must acknowledge receipt within 14 days. If the plan meets the operational requirements, the DOE must approve it, and if a plan is deemed incomplete, the DOE must notify the applicant within 90 days of submission. A program operator is only obligated to amend an approved plan if there are significant changes to program operations, or the program wishes to expand to cover new products. The DOE must approve plan amendments within 60 days of submission unless it identifies deficiencies in the revised plan. A program operator may terminate its program by giving six months' notice to the DOE and program participants.

The failure on the part of a small rechargeable battery manufacturer, marketer, portable rechargeable product manufacturer, or private label retailer to operate or participate in a qualified program will make that party 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 and subsequent violations.

Retailers who sell rechargeable batteries or portable rechargeable products that are unmarked or produced by non-compliant manufacturers are 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 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, and attorneys' fees and litigation costs.

Reporting Requirements.

Upon plan approval by the DOE, the operator of a stewardship program must post the following information on the internet:

- the program plan;
- a collection site locator to assist consumers; and
- contact information, including an avenue for technical assistance.

Multiparty programs must also post a list of rechargeable battery and product manufacturers participating in the program.

By March 1 of the year following DOE approval of a plan, the program operator must also create a report that it provides to the DOE and posts on the internet. This report must include the following:

- information on program costs;
- the weight of batteries collected;
- the collection, transportation, and processing destinations of recycled batteries; and
- an independently audited financial statement.

Rechargeable Battery Stewardship Program Funding.

Stewardship program operators must pay a fee accompanying the submission of any new or amended plans requiring DOE approval. For multiparty plans, this plan submission or amendment fee is \$5,000; for retailer plans, the plan submission or amendment fee is \$3,000. In addition, both types of programs must pay an annual fee of \$5,000, beginning in March the year after DOE approves the program. These fees, as well as any penalties recovered by DOE, are placed in a newly-created Used Battery Stewardship Account. DOE may use funds from the account to fulfill its battery stewardship administrative responsibilities.

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. Nonrechargeable battery stewardship programs are allowed to charge any participating rechargeable battery manufacturers a fee covering their share of program costs.

Other Provisions.

Program operators and participants in stewardship programs are not considered in violation of the Consumer Protection Act.

The law is deemed void if a federal battery recycling program is established.

Appropriation: None.

Fiscal Note: Available.

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