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**ENGROSSED SUBSTITUTE HOUSE BILL 1364**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Environment (originally sponsored by Representatives Tharinger, Zeiger, Moscoso, Crouse, Lias, McCoy, Fitzgibbon, Upthegrove, Maxwell, Morrell, Pollet, and Fey)

READ FIRST TIME 02/20/13.

1       AN ACT Relating to adopting the Washington small rechargeable  
2 battery stewardship act; adding a new chapter to Title 70 RCW; creating  
3 a new section; prescribing penalties; and providing an effective date.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION. **Sec. 1.** (1) The legislature finds that it is in the  
6 public interest of the citizens of Washington to encourage the recovery  
7 and reuse of materials, such as metals, that replace the output of  
8 mining and other extractive industries.

9       (2) The legislature further finds that it is desirable to reduce  
10 the volume of the solid waste stream and resulting burdens on  
11 municipalities.

12       (3) The legislature further finds that ensuring the proper handling  
13 and recycling of used small rechargeable batteries prevents the release  
14 of certain toxic materials into the environment and removes from the  
15 waste stream certain materials that may present safety concerns if  
16 mishandled.

17       (4) The legislature further finds that it is important to ensure  
18 that all entities supplying small rechargeable batteries to users in

1 Washington, whether as stand-alone units or as easily removable  
2 components of products, bear the same battery stewardship obligations.

3 (5) The legislature further finds that addressing certain existing  
4 and future barriers to implementation of voluntary industry programs to  
5 collect and recycle used small rechargeable batteries will facilitate  
6 these interests.

7 (6) The legislature further finds that the opportunity exists for  
8 the state of Washington to encourage the continuation of existing  
9 private mechanisms that ensure the proper stewardship of used small  
10 rechargeable batteries, while avoiding any burden on the state for  
11 enforcement responsibilities.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply  
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Battery pack" means an assembly of small rechargeable  
15 batteries, together weighing less than eleven pounds, that are packed  
16 in a container that has a single positive and negative connection.

17 (2) "Bona fide used small rechargeable battery stewardship program"  
18 or "bona fide program" means a program for the collection,  
19 transportation, recycling, and disposal of used small rechargeable  
20 batteries that meets the criteria set forth in section 5 of this act.

21 (3) "Easily removable" means readily detachable by a consumer with  
22 the use of common household tools or without the use of tools.

23 (4) "Manage" means to run or direct the functioning of a bona fide  
24 used small rechargeable battery stewardship program, other than as a  
25 retailer or as a franchisor on behalf of its franchisees, on behalf of  
26 more than one marketer or manufacturer.

27 (5) "Manager" means a person who conducts activities described in  
28 the definition of manage in this section.

29 (6) "Manufacture or market" means to perform one of the following  
30 acts, other than as a retailer:

31 (a) Manufacture, or arrange for the manufacturing of, small  
32 rechargeable batteries or portable rechargeable products sold, offered  
33 for sale, or distributed in Washington under a brand name owned or  
34 licensed by the manufacturer or the person who arranges for  
35 manufacturing;

36 (b) Package, or arrange for the packaging of, small rechargeable

1 batteries or portable rechargeable products sold, offered for sale, or  
2 distributed in Washington under a brand name owned or licensed by the  
3 packager or the person who arranges for packaging;

4 (c) Import into the United States small rechargeable batteries or  
5 portable rechargeable products sold, offered for sale, or distributed  
6 in Washington under a brand name owned or licensed by the importer or  
7 the person who arranges for the importation; or

8 (d) Otherwise make available to wholesalers or retailers in  
9 Washington small rechargeable batteries either as replacement batteries  
10 or as easily removable components in portable rechargeable products.

11 (7) "Manufacturer or marketer" means every person who conducts  
12 activities described in the definition of manufacture or market in this  
13 section.

14 (8) "Nonenrolled battery" means a small rechargeable battery that  
15 is not manufactured or marketed by any person who self-operates,  
16 manages, or participates in a bona fide used small rechargeable battery  
17 stewardship program.

18 (9) "Participate" means to appoint a manager to act as a  
19 representative to administer a bona fide used small rechargeable  
20 battery stewardship program on one's behalf and to have that  
21 appointment accepted by the manager of the bona fide program.

22 (10) "Person" means a sole proprietorship, partnership,  
23 corporation, nonprofit corporation or organization, limited liability  
24 company, firm, association, cooperative, or other legal entity located  
25 within or outside Washington.

26 (11) "Portable rechargeable product" means a product, other than a  
27 medical device as defined in RCW 19.210.010, that is packaged with, or  
28 contains, one or more easily removable small rechargeable batteries at  
29 the time it is sold or offered for sale.

30 (12) "Retailer" means every person who sells or offers to sell  
31 small rechargeable batteries or portable rechargeable products at  
32 retail through any means including, but not limited to, remote  
33 offerings such as sales outlets, catalogs, or the internet. The term  
34 retailer does not include a person who engages solely in wholesale  
35 transactions with a distributor or manufacturer.

36 (13) "Self-operate" means to run or direct the functioning of a  
37 bona fide used small rechargeable battery stewardship program as a  
38 retailer or franchisor on behalf of oneself or one's franchisees.

1 (14) "Self-operator" means a retailer or franchisor who conducts  
2 activities described in the definition of self-operate in this section.

3 (15) "Small rechargeable battery" means:

4 (a)(i) Except as described in (b) of this subsection, one or more  
5 voltaic or galvanic cells, together weighing less than eleven pounds,  
6 that are electrically connected to produce electric energy and are  
7 designed to be recharged; or

8 (ii) Except as described in (b) of this subsection, a battery pack.

9 (b) "Small rechargeable battery" does not include:

10 (i) A battery that is not easily removable or is not intended or  
11 designed to be removed from the product, other than by the  
12 manufacturer;

13 (ii) A battery that contains electrolyte as a free liquid; or

14 (iii) A battery or battery pack that employs lead acid technology,  
15 unless the battery or battery pack:

16 (A) Is sealed;

17 (B) Contains no liquid electrolyte; and

18 (C) Is intended by its manufacturer or marketer to power a handheld  
19 device or to provide uninterrupted backup electrical power protection  
20 for stationary consumer products or stationary office equipment.

21 NEW SECTION. **Sec. 3.** (1) Except as authorized by subsection (2)  
22 of this section, a person may not sell or make available to a  
23 wholesaler or retailer for sale in Washington a nonenrolled battery,  
24 whether as a replacement battery or as a component of a portable  
25 rechargeable product.

26 (2) This section does not apply to the activities of a  
27 telecommunications provider for equipment marketed under a brand it  
28 owns that contains small rechargeable batteries.

29 NEW SECTION. **Sec. 4.** (1) The self-operator or manager of a bona  
30 fide used small rechargeable battery stewardship program that incurs  
31 costs, including incremental administrative and other costs, in excess  
32 of three thousand dollars to collect, transport, and reclaim  
33 nonenrolled batteries collected in Washington may bring a civil action  
34 or actions to recover costs, damages, and fees, as specified in this  
35 section, from any manufacturer or marketer who sold in Washington or

1 made available to a wholesaler or retailer for sale in Washington those  
2 nonenrolled batteries.

3 (2) An action under this section may be brought against one or more  
4 defendants.

5 (3) It is a defense to liability under this section that another  
6 manufacturer or marketer of the allegedly nonenrolled battery self-  
7 operates, manages, or participates in a bona fide program.

8 (4)(a) In any action under this section, the self-operator or  
9 manager may recover from the manufacturer or marketer of nonenrolled  
10 batteries the costs the self-operator or manager incurred in  
11 collecting, handling, recycling, or properly disposing of nonenrolled  
12 batteries that are reasonably identified as having been manufactured or  
13 marketed by the defendant manufacturer or marketer.

14 (b) In addition to the costs identified in (a) of this subsection,  
15 the self-operator or manager may also recover an amount of damages  
16 equal to no more than three times the costs identified in (a) of this  
17 subsection, plus attorneys' fees and costs of litigation.

18 (5) An action under this section to recover the costs specified in  
19 this section may be brought in any superior or district court in the  
20 state.

21 NEW SECTION. **Sec. 5.** (1) A program for the collection,  
22 transportation, recycling, and disposal of used small rechargeable  
23 batteries is a bona fide used small rechargeable battery stewardship  
24 program for purposes of this chapter if it is either:

25 (a) A self-operated program that meets the requirements of  
26 subsection (2) of this section and collects used small rechargeable  
27 batteries regardless of brand at all retail locations in Washington at  
28 which the retailer or franchisees sell small rechargeable batteries or  
29 portable rechargeable products; or

30 (b) A program managed on behalf of more than one participating  
31 manufacturer or marketer that meets the requirements of subsections (2)  
32 and (3) of this section.

33 (2) All bona fide programs must meet the following operational  
34 conditions:

35 (a) All used small rechargeable batteries collected by the bona  
36 fide program are handled by the program self-operator or manager in

1 compliance with all applicable laws and rules and transported only to  
2 lawfully permitted facilities for reclamation of battery constituents;

3 (b) All contracts with service providers entered into by the bona  
4 fide program self-operator or manager require compliance with all  
5 applicable laws and rules;

6 (c) All return acceptance, recycling, and other handling services,  
7 including postcollection transportation, are provided free of charge to  
8 consumers;

9 (d) Education and outreach activities are provided by the bona fide  
10 program to maximize collections and safety, including the offering of  
11 signage to retailers indicating the retailer's support of the bona fide  
12 program and providing instructions and materials to protect collected  
13 used batteries from short circuits;

14 (e) The bona fide program is open to the public:

15 (i) For a self-operated program, during all hours the retailer or  
16 franchisor does business; or

17 (ii) For a program managed on behalf of more than one participating  
18 manufacturer or marketer, during all hours that collection locations  
19 normally do business; and

20 (f) The following information is provided on the internet:

21 (i) The name, address, and contact information for its self-  
22 operator or manager;

23 (ii) A description of the methods used to collect, transport, and  
24 account for all used small rechargeable batteries collected that  
25 includes the identification of all sorting and reclamation facilities  
26 to be used through final disposition for sorting and reclamation of all  
27 used small rechargeable batteries collected;

28 (iii) Identification of locations served by the bona fide program  
29 where Washington residents may take used small rechargeable batteries  
30 and information on what restrictions, if any, will be imposed on the  
31 number of used small rechargeable batteries that may be returned;

32 (iv) A description of the mechanism by which the bona fide program  
33 will handle inquiries from consumers;

34 (v) Information regarding education and outreach activities;

35 (vi) An invitation for consumers to provide comments on the  
36 adequacy and convenience of the bona fide program and instructions on  
37 how to do so;

1 (vii) A description of material changes to the bona fide program  
2 from previous program activities; and  
3 (viii) An annual report, current as to no later than April 1st of  
4 each year, that identifies:  
5 (A) The bona fide program's funding and recycling success,  
6 including any increase in total batteries collected each year, the cost  
7 of the bona fide program per pound of batteries collected, and the cost  
8 of the bona fide program per Washington resident;  
9 (B) The bona fide program's collections by county and battery  
10 chemistry;  
11 (C) The bona fide program's educational and outreach activities;  
12 (D) The mechanisms employed and the entities involved in the final  
13 disposition of collected materials; and  
14 (E) The methods used to collect, transport, and account for all  
15 used small rechargeable batteries collected, including the  
16 identification of all sorting and reclamation facilities used.  
17 (3) If the bona fide program is not a self-operated program, it  
18 must also meet the following additional operational conditions:  
19 (a) Provide at least one used small rechargeable battery collection  
20 site in each county of the state and in each city or town with a  
21 population greater than ten thousand, which may be the same as the  
22 location in a county;  
23 (b) Include retailer collection of used small rechargeable  
24 batteries regardless of brand at multiple locations;  
25 (c) Provide for the collection of used small rechargeable batteries  
26 regardless of brand from governmental collection facilities;  
27 (d) Include on its internet site:  
28 (i) A collection site locator to assist consumers in finding the  
29 nearest collection site;  
30 (ii) Identification of all small rechargeable battery manufacturers  
31 and marketers that currently are participating in the bona fide  
32 program; and  
33 (iii) Information on how small rechargeable battery manufacturers  
34 and marketers and consumers may seek technical assistance from the bona  
35 fide program; and  
36 (e) Include in its annual report required by subsection  
37 (2)(f)(viii) of this section an independently audited financial  
38 statement, including a breakdown of bona fide program expenses such as

1 collection, recycling, education, and overhead, unless the bona fide  
2 program is part of a program that also operates in jurisdictions  
3 outside of Washington, in which case funding information and audited  
4 financial statements need not be reported on a Washington-specific  
5 basis, but average bona fide program-wide costs of collection and  
6 overhead must be clearly stated.

7 NEW SECTION. **Sec. 6.** This chapter is void if a federal law, or a  
8 combination of federal laws, takes effect that establishes a national  
9 program for the collection and recycling of both used nonrechargeable  
10 batteries and used small rechargeable batteries.

11 NEW SECTION. **Sec. 7.** Nothing in this chapter alters or limits the  
12 authority of the utilities and transportation commission to regulate  
13 collection of solid waste, including curbside collection of residential  
14 recyclable materials, nor does this chapter alter or limit the  
15 authority of a city or town to provide such services itself or by  
16 contract under RCW 81.77.020.

17 NEW SECTION. **Sec. 8.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 9.** Sections 2 through 7 of this act constitute  
22 a new chapter in Title 70 RCW.

23 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2014.

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