

Assembly Bill No. 1125

CHAPTER 572

An act to add Chapter 8.4 (commencing with Section 42451) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

[Approved by Governor October 6, 2005. Filed with Secretary of State October 6, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1125, Pavley. Rechargeable Battery Recycling Act.

Existing law requires rechargeable batteries to be appropriately labeled and requires the instruction manual for a rechargeable consumer product to include information regarding the proper recycling and disposal of the rechargeable battery. Existing law also regulates the management of federally regulated batteries, as defined.

This bill would enact the Rechargeable Battery Recycling Act of 2006 and would define terms for purposes of the act, including "rechargeable battery."

The act would require, on and after July 1, 2006, a retailer, defined as a person who makes a retail sale of a rechargeable battery to a consumer in this state, to have in place a system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal with specified elements, including the take-back at no cost to the consumer of a used rechargeable battery, the type or brand of which the retailer sold or previously sold.

The bill would allow a retailer who is participating in an existing battery recycling system that includes rechargeable batteries, in addition to any other type of batteries, to continue to participate in that existing system, if the system otherwise complies with the act.

The bill would prohibit the sale by a retailer of a rechargeable battery to a consumer after July 1, 2006, unless the retailer complies with the act.

The bill would require the Department of Toxic Substances Control, by July 1, 2007, and each July 1 thereafter, to survey, as specified, battery handling or battery recycling facilities, and to post on its Internet Web site the estimated amount, by weight, of each type of rechargeable batteries returned for recycling.

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

SECTION 1. Chapter 8.4 (commencing with Section 42451) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.4. RECHARGEABLE BATTERY RECYCLING ACT OF 2006

Article 1. General Provisions

42451. (a) This chapter shall be known, and may be cited, as the Rechargeable Battery Recycling Act of 2006.

(b) The Legislature finds and declares all of the following:

(1) The Department of Toxic Substances Control has determined that, due to their hazardous material content, the solid waste disposal of all household and rechargeable batteries should be prohibited. A regulation authorizing a temporary householder exemption to this prohibition will expire, by its own terms, in February 2006.

(2) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of previously used rechargeable batteries.

(3) It is the further purpose of this chapter to enact a law that establishes a program that is convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of used rechargeable batteries, and that provides for a system that does not charge the consumer when a rechargeable battery is returned.

(4) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of used rechargeable batteries be the responsibility of the producers and consumers of rechargeable batteries, and not local government or their service providers, state government, or taxpayers.

(5) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the intent of this chapter to ensure that all costs associated with the proper management of used rechargeable batteries is internalized by the producers and consumers of rechargeable batteries at or before the point of purchase, and not at the point of discard.

(6) Manufacturers and retailers of rechargeable batteries, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used rechargeable battery recycling system for California.

(7) The producers of household and rechargeable batteries should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in household and rechargeable batteries.

(8) Household and rechargeable batteries, to the greatest extent feasible, should be designed for extended life and reuse.

(9) The purpose of this chapter is to provide for the safe, cost free, and convenient collection, reuse, and recycling of 100 percent of the rechargeable batteries discarded or offered for recycling in the state.

(10) In establishing a cost-effective system for the recovery, reuse, recycling, and proper disposal of used rechargeable batteries, it is the

intent of the Legislature to encourage manufacturers and retailers to build on the retailer take-back systems initiated by the Rechargeable Battery Recycling Corporation and others.

Article 2. Definitions

42452. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Consumer” means a purchaser or owner of a rechargeable battery. “Consumer” also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(b) “Department” means the Department of Toxic Substances Control.

(c) “Rechargeable battery” means a small, nonvehicular, rechargeable nickel-cadmium, nickel metal hydride, lithium ion, or sealed lead-acid battery, or a battery pack containing these types of batteries.

(d) “Retailer” means a person who makes a retail sale of a rechargeable battery to a consumer in this state, including a manufacturer of a rechargeable battery who sells that rechargeable battery directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer. “Retailer” does not include a person who sells primarily food and is listed in the Progressive Marketing Grocers Guidebook. “Retailer” does not include a person who has less than one million dollars (\$1,000,000) annually in gross sales.

(e) (1) “Sell” or “sale” means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), “distributor” means a person who sells a rechargeable battery to a retailer.

(f) “Used rechargeable battery” means a rechargeable battery that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

Article 3. Rechargeable Battery Recycling

42453. (a) (1) On and after July 1, 2006, every retailer shall have in place a system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal.

(2) A retailer is not subject to the requirements of this chapter for the sale of rechargeable batteries that are contained in or packaged with a battery-operated device.

(b) A system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) (A) The take-back at no cost to the consumer of a used rechargeable battery, the type or brand of which the retailer sold or previously sold.

(B) A retailer's no-cost take-back obligation may be limited to a quantity equal to the number sold at the time of the take-back or previously sold to the consumer.

(2) If the retailer sells a rechargeable battery through a catalog order, telephone order, or other method that does not involve in-store sales, the retailer shall be deemed in compliance with this article if the retailer provides a reasonable notice either at the time of purchase or delivery to the consumer of an opportunity to return used rechargeable batteries at no cost for reuse, recycling, or proper disposal.

(A) The opportunity to return the rechargeable batteries shall be either through the retailer's take-back program established pursuant to paragraph (1) or through participation with the Rechargeable Battery Recycling Corporation or similar take-back and recycling program.

(B) The notice shall include informational materials, including, but not limited to, Internet Web site links or a telephone number, placed on the invoice or purchase order, or packaged with the battery, that provide consumers access to obtain more information about the opportunities and locations for no-cost battery recycling.

(3) Making information available to consumers about rechargeable battery recycling opportunities provided by the retailer and encouraging consumers to utilize those opportunities. This information may include, but is not limited to, one or more of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials provided to the consumer at the time of purchase or delivery, or both.

(C) Reference to the rechargeable batteries recycling opportunity in retailer advertising or other promotional materials, or both.

(D) Direct communications with the consumer at the time of purchase.

(c) An individual retailer location that is actively participating in the Rechargeable Battery Recycling Corporation's or similar battery take-back and recycling program, and has implemented one or more of the public education components described in paragraph (3) of subdivision (b) shall be deemed in compliance with this article.

(d) If a retailer is participating in an existing battery recycling system that includes rechargeable batteries, in addition to any other type of batteries, and the system otherwise complies with the requirements of this article, the retailer may continue to participate in that existing system and is not required to implement or participate in a system that only includes rechargeable batteries.

42454. On and after July 1, 2006, it is unlawful for a retailer to sell a rechargeable battery to a consumer unless the retailer complies with this chapter.

Article 4. Annual Return Data

42456. (a) On or before July 1, 2007, and each July 1 thereafter, the department shall survey battery handling or battery recycling facilities, or both, for the data required for subdivision (b). The survey shall be a representative sample of facilities, as determined by the department.

(b) From the data obtained pursuant to subdivision (a), the department shall post on its Internet Web site the estimated amount, by weight, of each type of rechargeable batteries returned for recycling in California during the previous calendar year.