

CONCURRENCE IN SENATE AMENDMENTS

AB 2440 (Irwin)

As Amended August 25, 2022

Majority vote

SUMMARY

Creates the Responsible Battery Recycling Act (Act) of 2022 which requires producers of covered batteries, as defined, to establish a stewardship program for the collection and recycling of covered batteries.

Senate Amendments

- 1) Remove the inclusion of battery-embedded products within the stewardship program.
- 2) Change the definition of producer to also include a person who owns or is the licensee of the brand or trademark under which the covered battery is sold, offered for sale, or distributed for sale in or into the state.
- 3) Define "program operator" as a producer or stewardship organization on behalf of a group of producers that is responsible for implementing a stewardship program under the Act. Impose various requirements on the program operator covering the implementation of the stewardship plan for covered batteries.
- 4) Require the Department of Resources, Recycling and Recovery (CalRecycle), in consultation with the Department of Toxic Substances Control (DTSC), to adopt regulations implementing the Act with an effective date no earlier than April 1, 2025.
- 5) Authorize, beginning January 1, 2032, and every five years thereafter, CalRecycle, through regulations, to adjust the minimum recycling efficiency rates established in the Act, based on the most economically and technically feasible processes and methodology available.
- 6) Move the date that producers are required to submit a list of covered batteries and brands of covered batteries that they sell or offer for sale in the state to CalRecycle from 90 days after the effective date of the Act to 180 days after the effective date of the Act.
- 7) Move the date that a program operator shall develop and submit a complete stewardship plan to CalRecycle from six months after the effective date of the regulations adopted by CalRecycle to 12 months after the effective date of the regulations adopted by CalRecycle.
- 8) Require a retailer with five or more location in the state to make all locations permanent collective sites for covered batteries.
- 9) Move the date that a program operator shall fully implement its stewardship program from 270 days of receiving approval of the stewardship plan from CalRecycle to 12 months of the approval of the stewardship plan from CalRecycle.
- 10) Exempt certain actions taken by a stewardship organization or producer from the Cartwright Act, Business and Professions Code Section 16700 et seq., the Unfair Practices Act, Business and Professions Code Section 17000 et seq., and the Unfair Competition Law, Business and Professions Code Section 17200 et seq.

- 11) Preempt, on or after January 1, 2023, all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding stewardship programs for covered batteries.

COMMENTS

Universal waste: Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses. Universal wastes include televisions, computers, other electronic devices, batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others.

California's Universal Waste Rule allows individuals and businesses to transport, handle, and recycle certain universal wastes, in a manner that differs from the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and are not disposed of in the trash. The universal waste requirements are also less complex and easier to comply with than those for hazardous waste, thereby increasing compliance.

Regulation of batteries: The state's hazardous waste control law prohibits the disposal of batteries in the trash or household recycling collection bins intended to receive other non-hazardous waste and/or recyclable materials. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These include single use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes (AAA, AA, C, D, button cell, 9-Volt, and small sealed lead-acid batteries). These batteries, sold individually or in a product where the battery is designed to be removed by the consumer, would be "covered batteries" under AB 2440.

Product stewardship (stewardship): Product stewardship, also known as Extended Producer Responsibility (EPR), is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public. Product stewardship encourages product design changes that minimize the negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond. CalRecycle has developed a product stewardship framework and checklists to guide statutory proposals that would allow CalRecycle and other stakeholders to implement product stewardship programs.

Successful collection of batteries remains out of reach: Even though there are laws on the books to require the collection of some rechargeable batteries, recent information suggests that collection efforts are not succeeding. As a result, these hazardous waste batteries are ending up in the solid waste stream where they can be damaged or crushed, which can result in fires in solid waste trucks and solid waste facilities. The fact that current collection efforts are falling short does not seem to be disputed.

Improving the collection of batteries: Some state programs for collecting waste, such as those for electronic waste management, enact a fee on the product and have the state set up a program

for the collection of that waste. Other programs, such as EPR programs, place the requirements on those that produce the environmentally harmful waste. AB 2440 establishes an EPR program for batteries in order to improve the collection and recycling of these batteries. While the bill does create a new program, some collection and recycling infrastructure for batteries already exists (such as plastic tubes for batteries at retail or other locations). When this bill was heard in the Assembly it also included battery-embedded products within the EPR program, however those would now be captured under the state's electronic waste program under SB 1215 (Newman) from this legislative session, if enacted.

According to the Author

"Many Californians don't realize that all batteries are hazardous waste; and that throwing batteries, and products embedded with batteries, in curbside waste bins poses a threat to recycling facilities and human life. With more of our everyday items running off of batteries, it is imperative that we take swift action to stamp out the risk of devastating fires at our waste facilities and safely allow recovery of the valuable minerals inside batteries. AB 2440 will establish a comprehensive program to address this crisis and protect our communities from battery fires."

Arguments in Support

According to a coalition writing in support, including Rethink Waste, the California Product Stewardship Council, and Californians Against Waste, "[We] are pleased to co-sponsor AB 2440 (Irwin), which would create a convenient, statewide, producer-run collection and recycling program for loose and product-embedded batteries. Due to the hazardous metals and corrosive materials that batteries contain, California classifies batteries as hazardous waste and bans them from solid waste landfills. When consumers are done with their loose batteries and portable electronics, they must collect, sort, and ultimately find an appropriate disposal option. Unfortunately, California currently lacks a streamlined and convenient collection and recycling system for batteries and batteries embedded in products. The influx of improperly disposed of Li-ion batteries into the waste stream has resulted in an alarming number of materials recovery facilities (MRFs), waste collection trucks, and landfills experiencing fires. Manufacturers must be more responsible for the products they create – both loose batteries and ones embedded in other products – if we are going to protect our workers, communities, and waste management infrastructure from battery-related fires."

Arguments in Opposition

According to the California Retailers Association, "The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, on-line marketplaces, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry the largest retail market in the United States. CRA supports the creation of a circular economy for single-use and rechargeable batteries. Many of our retailers already participate in Call2Recycle's recycling drop-off program for rechargeable batteries. We appreciate your bill's inclusion of single-use batteries within the rechargeable batteries program, as customers often fail to distinguish between battery types. Importantly, this bill also places the responsibility for all program costs on the producers of batteries. Again, retailers share the author's goal to create a successful, sustainable program for battery recycling but view the above concerns as significant obstacles. We look forward to continued conversation on this issue."

FISCAL COMMENTS

According to the Senate Appropriations Committee, enactment of this bill could result in ongoing costs to CalRecycle up to approximately \$2 million annually to establish a new extended producer responsibility program. However, these costs are reimbursable to CalRecycle from the stewardship organization. There are additional unknown ongoing costs for DTSC to consult with CalRecycle on reviewing stewardship plans and for enforcement.

VOTES:**ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 7-1-1**

YES: Quirk, Arambula, Bauer-Kahan, Cristina Garcia, Holden, Muratsuchi, Waldron

NO: Smith

ABS, ABST OR NV: Mathis

ASM NATURAL RESOURCES: 9-0-2

YES: Flora, Friedman, Cristina Garcia, Mathis, Reyes, Muratsuchi, Stone, Wood, Boerner Horvath

ABS, ABST OR NV: Luz Rivas, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 58-7-13

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Cunningham, Daly, Flora, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO: Bigelow, Megan Dahle, Davies, Fong, Lackey, Seyarto, Smith

ABS, ABST OR NV: Berman, Mia Bonta, Chen, Choi, Gallagher, Gray, Kiley, Nguyen, O'Donnell, Patterson, Blanca Rubio, Valladares, Voepel

UPDATED

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