

SHB 1364 - H AMD 121

By Representative Tharinger

ADOPTED 03/06/2013

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

15 (4) The legislature further finds that it is important to ensure
16 that all entities supplying small rechargeable batteries to users in
17 Washington, whether as stand-alone units or as easily removable
18 components of products, bear the same battery stewardship obligations.

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

23 (6) The legislature further finds that the opportunity exists for
24 the state of Washington to encourage the continuation of existing
25 private mechanisms that ensure the proper stewardship of used small
26 rechargeable batteries, while avoiding any burden on the state for
27 enforcement responsibilities.

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

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

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

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

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

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

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

18 (a) Manufacture, or arrange for the manufacturing of, small
19 rechargeable batteries or portable rechargeable products sold, offered
20 for sale, or distributed in Washington under a brand name owned or
21 licensed by the manufacturer or the person who arranges for
22 manufacturing;

23 (b) Package, or arrange for the packaging of, small rechargeable
24 batteries or portable rechargeable products sold, offered for sale, or
25 distributed in Washington under a brand name owned or licensed by the
26 packager or the person who arranges for packaging;

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

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

34 (7) "Manufacturer or marketer" means every person who conducts
35 activities described in the definition of manufacture or market in this
36 section.

37 (8) "Nonenrolled battery" means a small rechargeable battery that

1 is not manufactured or marketed by any person who self-operates,
2 manages, or participates in a bona fide used small rechargeable battery
3 stewardship program.

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

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

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

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

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

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

27 (15) "Small rechargeable battery" means:

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

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

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

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

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

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

3 (A) Is sealed;

4 (B) Contains no liquid electrolyte; and

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

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

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

16 NEW SECTION. **Sec. 4.** (1) The self-operator or manager of a bona
17 fide used small rechargeable battery stewardship program that incurs
18 costs, including incremental administrative and other costs, in excess
19 of three thousand dollars to collect, transport, and reclaim
20 nonenrolled batteries collected in Washington may bring a civil action
21 or actions to recover costs, damages, and fees, as specified in this
22 section, from any manufacturer or marketer who sold in Washington or
23 made available to a wholesaler or retailer for sale in Washington those
24 nonenrolled batteries.

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

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

30 (4)(a) In any action under this section, the self-operator or
31 manager may recover from the manufacturer or marketer of nonenrolled
32 batteries the costs the self-operator or manager incurred in
33 collecting, handling, recycling, or properly disposing of nonenrolled
34 batteries that are reasonably identified as having been manufactured or
35 marketed by the defendant manufacturer or marketer.

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

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

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

12 (a) A self-operated program that meets the requirements of
13 subsection (2) of this section and collects used small rechargeable
14 batteries regardless of brand at all retail locations in Washington at
15 which the retailer or franchisees sell small rechargeable batteries or
16 portable rechargeable products; or

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

20 (2) All bona fide programs must meet the following operational
21 conditions:

22 (a) All used small rechargeable batteries collected by the bona
23 fide program are handled by the program self-operator or manager in
24 compliance with all applicable laws and rules and transported only to
25 lawfully permitted facilities for reclamation of battery constituents;

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

29 (c) All return acceptance, recycling, and other handling services,
30 including postcollection transportation, are provided free of charge to
31 consumers;

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

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

1 (i) For a self-operated program, during all hours the retailer or
2 franchisor does business; or
3 (ii) For a program managed on behalf of more than one participating
4 manufacturer or marketer, during all hours that collection locations
5 normally do business; and
6 (f) The following information is provided on the internet:
7 (i) The name, address, and contact information for its self-
8 operator or manager;
9 (ii) A description of the methods used to collect, transport, and
10 account for all used small rechargeable batteries collected that
11 includes the identification of all sorting and reclamation facilities
12 to be used through final disposition for sorting and reclamation of all
13 used small rechargeable batteries collected;
14 (iii) Identification of locations served by the bona fide program
15 where Washington residents may take used small rechargeable batteries
16 and information on what restrictions, if any, will be imposed on the
17 number of used small rechargeable batteries that may be returned;
18 (iv) A description of the mechanism by which the bona fide program
19 will handle inquiries from consumers;
20 (v) Information regarding education and outreach activities;
21 (vi) An invitation for consumers to provide comments on the
22 adequacy and convenience of the bona fide program and instructions on
23 how to do so;
24 (vii) A description of material changes to the bona fide program
25 from previous program activities; and
26 (viii) An annual report, current as to no later than April 1st of
27 each year, that identifies:
28 (A) The bona fide program's funding and recycling success,
29 including any increase in total batteries collected each year, the cost
30 of the bona fide program per pound of batteries collected, and the cost
31 of the bona fide program per Washington resident;
32 (B) The bona fide program's collections by county and battery
33 chemistry;
34 (C) The bona fide program's educational and outreach activities;
35 (D) The mechanisms employed and the entities involved in the final
36 disposition of collected materials; and
37 (E) The methods used to collect, transport, and account for all

1 used small rechargeable batteries collected, including the
2 identification of all sorting and reclamation facilities used.

3 (3) If the bona fide program is not a self-operated program, it
4 must also meet the following additional operational conditions:

5 (a) Provide at least one used small rechargeable battery collection
6 site in each county of the state and in each city or town with a
7 population greater than ten thousand, which may be the same as the
8 location in a county;

9 (b) Include retailer collection of used small rechargeable
10 batteries regardless of brand at multiple locations;

11 (c) Provide for the collection of used small rechargeable batteries
12 regardless of brand from governmental collection facilities;

13 (d) Include on its internet site:

14 (i) A collection site locator to assist consumers in finding the
15 nearest collection site;

16 (ii) Identification of all small rechargeable battery manufacturers
17 and marketers that currently are participating in the bona fide
18 program; and

19 (iii) Information on how small rechargeable battery manufacturers
20 and marketers and consumers may seek technical assistance from the bona
21 fide program; and

22 (e) Include in its annual report required by subsection
23 (2)(f)(viii) of this section an independently audited financial
24 statement, including a breakdown of bona fide program expenses such as
25 collection, recycling, education, and overhead, unless the bona fide
26 program is part of a program that also operates in jurisdictions
27 outside of Washington, in which case funding information and audited
28 financial statements need not be reported on a Washington-specific
29 basis, but average bona fide program-wide costs of collection and
30 overhead must be clearly stated.

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

35 NEW SECTION. **Sec. 7.** Nothing in this chapter alters or limits the
36 authority of the utilities and transportation commission to regulate

1 collection of solid waste, including curbside collection of residential
2 recyclable materials, nor does this chapter alter or limit the
3 authority of a city or town to provide such services itself or by
4 contract under RCW 81.77.020.

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

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

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

12 Correct the title.

EFFECT: Requires manufacturers or marketers of small rechargeable
batteries and portable rechargeable products to participate in a
battery recycling program that meets certain operational criteria.
Allows operators of battery recycling programs to bring civil actions
to recover costs, damages, and attorneys' fees against manufacturers or
marketers who sell rechargeable batteries or products in Washington,
but who do not operate or participate in a battery recycling program.

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