

1 MODEL CONSUMER BATTERY STEWARDSHIP ACT

2 Statement of Purpose

3 The Legislature finds and declares all of the following:

- 4 a. That it is in the public interest of the citizens of [STATE] to encourage, to the
5 extent economically and technologically feasible, the recovery and reuse of
6 materials, such as metals, that replace the output of mining and other extractive
7 industries;
- 8 b. That it is desirable to reduce the volume of the solid waste stream and resulting
9 burdens on municipalities;
- 10 c. That ensuring the proper handling and recycling of used small batteries prevents
11 release of toxic materials into the environment and removes from the waste stream
12 materials that may present safety concerns if mishandled, and thus will benefit the
13 environment;
- 14 d. That it is important to ensure that all entities supplying small batteries for
15 replacement use to purchasers in [STATE], and all entities supplying products that
16 contain easily removable batteries to purchasers in [STATE], bear the same battery
17 stewardship obligations;
- 18 e. That it is important to encourage the most economically-efficient means of
19 pursuing these goals by the private sector; and that addressing certain existing and
20 future barriers to implementation of voluntary industry programs to collect and
21 recycle used small rechargeable batteries will facilitate these interests;
- 22 f. The requirements of the Consumer Battery Stewardship Act, as added by Section 3
23 of this act, apply to each individual producer of covered primary and small

1 rechargeable batteries and covered primary or rechargeable battery-containing
2 products, with respect to the batteries or products that are sold, distributed, or
3 offered in the state by that producer. The act also provides an option for a producer
4 to implement this act in conjunction with other producers in this state.

- 5 g. The Legislature intends that the Consumer Battery Stewardship Act shall be
6 implemented with the minimum disruption to existing, industry-sponsored used
7 battery collection programs, such as the Call2Recycle® program.

8 BE IT ENACTED:

9 Section 1.

10 This act shall be known, and may be cited, as the [STATE] Consumer Battery Stewardship Act.

11 Section 2.

12 When used in this act, the following terms have the following meanings, unless the context
13 clearly requires otherwise:

- 14 a. “Actual direct costs” means the costs to collect, transport, and recycle a discarded
15 covered battery.
- 16 b. “Approved product” means a covered battery or a covered battery-containing
17 product that either:
- 18 (i) Meets all of the following requirements:
- 19 (A) The producer of that covered battery or covered battery-containing
20 product has submitted a plan to the department or the producer has
21 designated an organization that has submitted a plan to the
22 department;

1 (B) The plan specified in paragraph (1) is approved in accordance with
2 Section 7; and

3 (C) The program implementing the approved plan collects the products
4 subject to the plan in accordance with the collection rate specified
5 in the plan; or

6 (ii) Has been listed by the department by virtue of the procedures in Section 9
7 for products containing an approved covered battery.

8 c. “Brand” means a name, symbol, word, or traceable mark that does either of the
9 following:

10 (i) Identifies a covered battery and attributes the covered battery to the owner
11 or licensee of the name, symbol, word, or traceable mark as the producer.

12 (ii) Identifies a covered battery-containing product and attributes the covered
13 battery to the owner or licensee of the covered battery-containing product
14 as the producer.

15 d. “Collection rate” means the percentage of covered batteries, including those taken
16 from covered battery-containing products, by weight, that are collected during a
17 calendar year by a producer, or by the producers participating in a covered battery
18 stewardship organization, as compared to the average total annual weight of
19 covered batteries that were estimated to have been sold or distributed at no charge
20 in the state during each of the previous three calendar years by that producer or
21 those producers, whether as covered batteries or in covered battery containing
22 products. Estimates of covered batteries whether sold as a replacement or in or

1 with covered battery containing products sold in the state may be based on a
2 reasonable calculation based on state or national sales.

3 e. “Covered Battery” means a primary battery or a small rechargeable battery.

4 f.

5 (i) “Covered battery-containing product” means a primary battery-containing
6 product or a product that contains, or is packed with, a small rechargeable
7 battery.

8 (ii) “Covered battery-containing product” does not include any of the
9 following:

10 (A) A product from which a covered battery is not easily removed or is
11 not intended or designed to be removed, other than by the
12 manufacturer.

13 (B) A Class III medical device, as specified in Section 360c of Title 21
14 of the United States Code.

15 (C) A Class II medical device, as specified in Section 360c of Title 21
16 of the United Code, that is not exempt from subsection (k) of
17 Section 360 of Title 21 of the United States Code (Section 510(k) of
18 the federal Food, Drug, and Cosmetic Act).

19 g. “Covered battery stewardship organization” or “organization” means an
20 organization which has been appointed by two or more producers to design,
21 submit, implement, and administer a covered battery stewardship plan pursuant to
22 this act, and which has accepted that appointment.

- 1 h. “Covered battery stewardship plan” or “plan” means a plan submitted to the
2 department pursuant to Sections 3 by an individual producer or a covered battery
3 stewardship organization.
- 4 i. “Department” means the [DEPARTMENT].
- 5 j. “Discarded covered battery” means a covered battery that is discarded, as defined
6 in [STATE LAW].
- 7 k. “Participate” means to appoint a covered battery stewardship organization to
8 operate on behalf of oneself and have that appointment accepted by the
9 stewardship organization, or to set up one’s own program.
- 10 l. “Primary battery” means a nonrechargeable battery that weighs 2 kilograms or
11 less, including, but not limited to, alkaline, carbon-zinc, and lithium metal, that is
12 typically generated as waste, as defined in [STATE LAW].
- 13 m.
- 14 (i) “Primary battery-containing product” means a product that contains, or is
15 packed with, a primary battery.
- 16 (ii) “Primary battery-containing product” does not include any of the
17 following:
- 18 (A) A product from which a primary battery is not easily removed or is
19 not intended or designed to be removed, other than by the
20 manufacturer.
- 21 (B) A Class III medical device, as specified in Section 360c of 26 Title
22 21 of the United States Code.

1 (C) A Class II medical device, as specified in Section 360c of 28 Title
2 21 of the United Code, that is not exempt from subsection (k) of
3 Section 360 of Title 21 of the United States Code (Section 510(k))
4 of the federal Food, Drug, and Cosmetic Act)

5 n.

6 (i) “Producer” means, with regard to a covered battery or a covered battery-
7 containing product that is sold, offered for sale, or distributed in the state,
8 one of the following:

9 (A) The person who manufactures the covered battery or the covered
10 battery-containing product, and who sells or offers for sale that
11 covered battery or that covered battery-containing product, in the
12 state, under that person’s own name or brand.

13 (B) If there is no person to whom subparagraph (A) applies, the owner
14 or licensee of a trademark or brand under which the covered battery
15 or covered battery-containing product is sold or distributed in the
16 state, whether or not the trademark is registered.

17 (C) If there is no person to whom subparagraph (A) or (B) applies, the
18 person who imports the covered battery or covered battery-
19 containing product into the state for sale or distribution.

20 (ii) “Producer” does not include either of the following:

21 (A) A person who manufactures, sells, offers for sale, or imports a
22 primary battery-containing product in the state who complies with
23 Section 6.

1 (B) A person who sells, offers for sale, distributes, or imports a covered
2 battery or covered battery-containing product, if the total retail
3 value of the sale, distribution, or importation in this state is less than
4 five thousand dollars (\$5,000) annually.

5 o. “Program” means the system for the collection, transportation, recycling, and
6 disposal of covered batteries that is implemented pursuant to an approved covered
7 battery stewardship plan.

8 p. “Recycling” has the same meaning as defined in [STATE LAW].

9 q. “Retailer” means a person that offers covered batteries or covered battery-
10 containing products in a retail sale, as defined in [STATE LAW], through any
11 means, including remote offerings such as sales outlets, catalogs, or an Internet
12 Web site.

13 r.

14 (i) “Small rechargeable battery” means

15 (A) one or more voltaic or galvanic cells, electrically connected to
16 produce electric energy, designed to be recharged, and weighing
17 less than eleven pounds, or

18 (B) a battery pack that weighs less than eleven pounds (five kilograms)
19 and that is designed to provide less than forty volts direct current.

20 (ii) “Small rechargeable battery” does not include:

21 (A) a battery that is not easily removable or is not intended or designed
22 to be removed from the covered product, other than by the
23 manufacturer;

- 1 (B) a battery that contains electrolyte as a free liquid; or
- 2 (C) a battery or battery pack that employs lead-acid technology, unless
- 3 the battery or battery pack: (i) is sealed; (ii) contains no liquid
- 4 electrolyte; and (iii) is intended by its manufacturer to power a
- 5 hand-held device or to provide uninterrupted backup electrical
- 6 power protection for stationary consumer covered products or
- 7 stationary office equipment.

8 s. “Wholesaler” means a person that offers covered batteries or covered battery-
9 containing products for sale in this state in a sale that is not a retail sale, as defined
10 in [STATE LAW], and for which the covered batteries or covered battery-
11 containing products are intended to be resold in a retail sale.

12 Section 3.

- 13 a. On or before [DATE], each producer shall submit a covered battery stewardship
14 plan that is in compliance with Section 4 to the department. A producer may elect,
15 in cooperation with one or more other producers, to appoint a covered battery
16 stewardship organization to implement this act on the producer’s behalf, and the
17 organization shall submit a covered battery stewardship plan to the department on
18 or before [DATE].
- 19 b. On or before [DATE], producers shall insure that every covered battery they sell,
20 offer for sale, or distribute in this state, either as a replacement battery or packaged
21 with or contained in a covered battery-containing product, is labeled to clearly
22 identify the type of battery and the chemistry employed in storing energy in the
23 battery.

- 1 c. A covered battery stewardship plan previously approved under Section 4 need not
2 be amended or revised unless substantial changes are made to the collection
3 program it describes. In such circumstances, the plan may be amended by
4 submitting to the department a revised version of the plan showing proposed
5 amendments and an administrative fee of two thousand, five hundred (\$2,500.00)
6 dollars.
- 7 (i) The department shall acknowledge receipt of a revised plan within fourteen
8 days of receipt.
- 9 (ii) Within sixty days of receipt, the department shall approve the amended
10 plan if the amended plan continues to address all of the requirements of
11 Section 4, or shall inform the submitter with specificity of any deficiencies
12 and allow a reasonable period of time for submission of revised
13 amendments.
- 14 (iii) If the department fails with specificity to notify the submitter of an
15 amended plan within sixty days of receipt of a continuing failure to meet
16 the applicable requirements of Section 4, then the amended plan shall be
17 deemed to be approved.
- 18 (iv) The unamended, previously approved plan shall remain in effect until a
19 revised plan is approved by the agency, unless the previously approved
20 plan is terminated by its operator.
- 21 d. A previously approved program may be terminated by its operator at any time after
22 the operator gives ninety days' notice to the department and to program
23 participants of the proposed termination date.

1 Section 4.

2 A covered battery stewardship plan shall include, at a minimum, all of the following:

3 a. Contact information for all participating producers.

4 b. The producers participating in the organization and their brands of covered
5 batteries and covered battery-containing products.

6 c. The collection rate for covered batteries subject to the plan in the following
7 manner:

8 (i) The plan shall provide for a program that will achieve a 10-percent
9 collection rate two years after the date the program is implemented and a
10 20-percent collection rate five years after the program is implemented.

11 (ii) The collection rate may be revised as provided in Section 5.

12 d. The number of convenient collection points that shall be provided by the program
13 free of charge for consumers in all counties of the state where covered batteries or
14 covered battery-containing products bearing the brand of a producer operating or
15 participating in that plan is sold,, offered for sale, or distributed and shall include,
16 at the least, both retail and bulk collection sites. The plan shall allow a retail
17 collection point to accept not more than 100 covered batteries per visit by a
18 consumer.

19 e. A description of the methods that will be used to responsibly manage discarded
20 covered batteries to ensure that the components of the discarded covered batteries,
21 to the extent economically and technically feasible, are recycled or otherwise
22 managed responsibly.

- 1 f. The roles and responsibilities of key participants in the covered battery reverse
2 distribution chain.
- 3 g. The outreach procedures that will be used to provide notice of the program to
4 businesses, local agencies, retailers, wholesalers, and haulers.
- 5 h. The manner in which existing covered battery collection points and other programs
6 can be identified and leveraged to achieve the required collection rates.
- 7 i. The financing method selected to fund the implementation of the plan to achieve
8 the required collection rates. That method shall allocate the costs of collecting and
9 sorting covered batteries to producers of primary and small rechargeable batteries
10 on the basis of relative pounds collected or some other nondiscriminatory basis
11 acceptable to both primary and small rechargeable battery producers. The method
12 also shall reflect consideration of all of the following factors:
- 13 (i) Battery chemistry.
- 14 (ii) The estimated total weight of covered batteries, including those taken from
15 covered battery-containing products, that will be sold, distributed, or
16 offered in the state by the producer or the producers participating in the
17 plan, during each calendar year.
- 18 (iii) The estimated cost of collecting, sorting, recycling and responsibly
19 managing the expected total weight of discarded covered batteries collected
20 during each calendar year, which estimate may be modeled for
21 multijurisdictional plans.
- 22 (iv) The administrative costs to the department of reviewing the plan pursuant
23 to this act.

1 (v) The cost of all other covered battery stewardship program elements.

2 j. Planned educational activities that will further the goal of achieving the plan’s
3 required collection rate.

4 Section 5.

5 A producer or a covered battery stewardship organization may petition the department to adjust a
6 collection rate specified in the plan. The department may grant an adjustment to the collection
7 rate if the department determines that technological, ecological, cultural, economic, or other
8 impediments or circumstances that are beyond the control of the producer or covered battery
9 stewardship organization limit the ability of the producer or organization to achieve the specified
10 collection rate.

11 Section 6.

12 a. A person who manufactures, sells, offers for sale, or imports a primary battery-
13 containing product in this state shall not be a producer for purposes of this act if
14 the person affirms to the department that the person only uses primary batteries
15 supplied by a producer participating in an approved battery stewardship program.

16 b. A producer or a covered battery stewardship organization that operates a program
17 that covers the primary battery contained in a primary battery-containing product
18 of a person who, pursuant to subdivision (a), is not a producer may list the person
19 as a participant in its program.

20 Section 7.

21 a. Upon receipt of a plan pursuant to Section 3, the department shall review the plan
22 and determine whether the plan provides for the establishment of a covered battery
23 stewardship program that includes all of the elements required by Section 4. In

1 conducting a review pursuant to this subdivision, the department may consult
2 with producers, covered battery stewardship organizations, retailers, and recyclers.

3 b.

4 (i) A plan shall be deemed approved by the department 30 days after the plan
5 is received, unless the department, in writing, notifies the producer or the
6 organization that submitted the plan, with specificity, that the plan is
7 deficient and identifies specific elements of Section 4 that were not
8 satisfactorily addressed. If the department so notifies the producer or
9 organization that the plan is deficient, the producer or organization may
10 amend and resubmit the plan to the department no later than 45 days after
11 this notification, or no later than a later date that may be agreed to by the
12 department.

13 (ii) The department shall not disapprove an amended and resubmitted plan
14 without providing the producer or organization with notice and an
15 opportunity to request a hearing. A producer or covered battery
16 stewardship organization whose amended and resubmitted plan is
17 disapproved may file an action for judicial appeal of the disapproval. A
18 producer participating in such a plan, and any wholesaler, distributor, or
19 retailer, may continue to sell the producer's covered batteries or products in
20 the state during the pendency of any appeal.

21 c. Promptly upon approval, the producer or organization that submitted an approved
22 plan shall make its plan available to the public on its Internet Web site, and permit

1 the department to link to that site, but need not publish information protected under
2 the Uniform Trade Secrets Act (commencing with [STATE LAW]).

3 Section 8.

4 No later than six months after approval of the plan pursuant to Section 7, the producer or the
5 covered battery stewardship organization shall implement the plan.

6 Section 9.

7 a. No later than 30 days after the approval of a covered battery stewardship plan, the
8 department shall post on its Internet Web site a list of the brands of covered
9 batteries or covered battery-containing products that are approved products by
10 virtue of that plan approval.

11 b. Any retailer who is not listed in the plan as a participating producer, then shall
12 have 120 days to join a plan and notify the department of that fact and the brand of
13 the products or offer only approved products at retail. Upon receiving such
14 notification, the department shall list that product and its brand on its website as an
15 approved product. Any person who provides such a notification to the department
16 and subsequently substitutes another brand of approved covered battery in or
17 packaged with its products shall promptly notify the department of the substitution,
18 the brand of the battery, and the plan under which the battery is covered. The
19 department shall update its list of approved products on or before March 1 of each
20 year.

21 Section 10.

22 a. On and after July 1 of each year after [YEAR], a producer, retailer, or a
23 wholesaler shall not offer a covered battery or covered battery-containing

1 product for sale in this state, or offer a covered battery or covered battery-
2 containing product for promotional purposes in this state, unless the supplier of the
3 covered battery or covered battery-containing product has notified the producer,
4 retailer or wholesaler that the covered battery or product is listed by the department
5 as an approved product.

6 b. On or before October 1, [YEAR], a retailer shall sell or otherwise divest or
7 dispose of the remaining stock of those covered batteries or covered battery-
8 containing products that are not approved products.

9 c. The department shall not take an enforcement action pursuant to this act on or
10 before October 1, [YEAR], against a retailer with regard to covered batteries or
11 covered battery-containing products that are not approved products.

12 d. A producer who seeks to sell or offer for sale or distribute for promotional
13 purposes at no charge a covered battery or covered battery-containing product that
14 was not sold or offered for sale in the state before July 1, [YEAR], shall notify the
15 department prior to selling or offering to sell that covered battery or covered
16 battery-containing product in the state. The department shall list that producer as a
17 new producer on the department's Internet Web site. On or before 90 days after
18 making that notification, the producer shall submit a covered battery stewardship
19 plan to the department or join an existing covered battery stewardship organization
20 that has an approved plan. If the producer does not meet either of those
21 requirements, the producer shall not sell the covered battery or covered battery-
22 containing product after that 90-day period and a retailer may sell the covered

- 1 battery or covered battery-containing product only for 120 days following the
2 termination of that 90-day period.
- 3 e. This section does not require the department to conduct or commission a
4 compliance survey or prohibit a covered battery stewardship organization from
5 conducting or commissioning a compliance survey.
- 6 f. Any retailer, bulk collector, or curbside program operator collecting covered
7 batteries or covered battery-containing products that has a physical presence in
8 [STATE] and is operating or participating in a covered battery stewardship
9 program shall ensure that all used batteries placed in any collection container are
10 protected from short circuiting in accordance with law, and shall take reasonable
11 steps to prevent the placement into any such container of materials other than
12 properly protected used covered batteries.
- 13 g. A retailer may not require a producer or covered battery stewardship organization
14 to pay the retailer for the costs associated with participating in a covered battery
15 stewardship program. Nothing in this section prohibits a governmental entity from
16 recovering payment from a qualified program for used small rechargeable batteries
17 that have been collected by or on behalf of that governmental entity or requires any
18 qualified program operator to pay any governmental entity for such batteries.
- 19 h. Any person who supplies for sale a new covered battery or new covered battery-
20 containing product whose covered battery stewardship plan is discovered to not be
21 in compliance with this section shall, upon request by a retailer, designate a
22 location to which the retailer may ship the covered battery or covered battery-
23 containing product for further handling. Such a supplier shall reimburse the costs

1 incurred by the retailer in shipping the covered battery or covered battery-
2 containing product to the designated location.

3 Section 11.

4 a. On or before two years after the date of the initial approval of a covered battery
5 stewardship plan, and once every year thereafter, except as specified in subdivision
6 (d), the producer or covered battery stewardship organization implementing the
7 plan shall prepare and submit to the department a report describing the activities
8 carried out pursuant to the plan during the previous calendar year. The report shall
9 include, but is not limited to, all of the following elements:

10 (i) The weight of covered batteries collected by the program in the prior year
11 and the collection rate achieved in the prior year,

12 (ii) A report of the estimated total sales data by weight for covered batteries
13 and batteries contained in covered battery-containing products sold in the
14 state, for the previous three calendar years.

15 (iii) A summary financial statement that documents the financing of the plan,
16 consistent with the requirements of subdivision (i) of Section 4, except as
17 follows:

18 (A) If the plan is operated by a producer that is a single retailer,
19 including a retailer with more than one physical location, the report
20 is not required to provide this information.

21 (B) If the producer or organization operates a program in another state,
22 in addition to this state, the producer or organization may submit a
23 financial statement that includes all of those states, including this

1 state, without breaking out financial information pertinent to this
2 state.

3 (iv) Locations and contact information for all collection points set up by the
4 producer or covered battery stewardship organization covered by the plan.

5 (v) Examples and a description of educational materials used to increase
6 collection.

7 (vi) The manner in which the collected covered batteries or covered battery-
8 containing products were sorted, consolidated and processed.

9 (vii) An explanation of why collection targets were not met, if applicable.

10 (viii) Any substantial change to the covered battery stewardship plan.

11 b. The department shall review each report to confirm that all report elements
12 specified in subdivision (a) have been addressed. A report submitted on behalf of a
13 regional or national covered battery stewardship organization may include
14 reasonable pro rata estimates of the elements specified in paragraphs (2) and (3) of
15 subdivision (a). The report shall be deemed approved unless the department, in
16 writing, notifies the producer or organization within 30 days of receipt that the
17 report is deficient, and identifies with specificity the elements of subdivision (a)
18 that were not satisfactorily addressed.

19 c. This section does not require or authorize the department to publicly disclose the
20 confidential business information of a producer or covered battery stewardship
21 organization, if the information is protected under the Uniform Trade Secrets Act
22 (commencing with [STATE LAW]).

1 d. On and after three years after the initial implementation date of a plan, if the
2 collection rate for covered batteries subject to the plan meets or exceeds the
3 collection rate specified in the plan, the producer or covered battery stewardship
4 organization shall thereafter submit the report required by this section every two
5 years.

6 Section 12.

7 a. If the department notifies a producer or covered battery stewardship organization
8 pursuant to subdivision (b) of Section 11 that a report does not meet the
9 requirements of subdivision (a) of Section 11, or the report confirms that the
10 collection rate or the establishment of the collection points specified in the plan
11 were not met, the department shall notify the producer or covered battery
12 stewardship organization in writing within 30 days after receiving the report. The
13 notification shall require the continued implementation of the existing approved
14 plan and shall require the producer or covered battery stewardship organization to
15 amend and resubmit the plan. The producer or covered battery stewardship
16 organization shall amend and resubmit the plan to the department no later than 45
17 days after this notification, or no later than a later date that may be agreed to by the
18 department.

19 b. If the producer or covered battery stewardship organization does not amend and
20 resubmit the plan pursuant to subdivision (a), or if the department does not
21 approve the amended plan, the department shall, in consultation with the producer
22 or covered battery stewardship organization, determine which actions should be
23 taken to obtain approval by the department.

1 c. The department shall not disapprove an amended and resubmitted plan without
2 providing the producer or covered battery stewardship organization with notice
3 and an opportunity to request a hearing. A producer or covered battery stewardship
4 organization whose amended and resubmitted plan is disapproved may file an
5 action for judicial appeal of the disapproval. A producer participating in a plan,
6 and any wholesaler, distributor, or retailer, may continue to sell the producer's
7 covered batteries or products in the state during the pendency of any appeal.

8 Section 13.

9 a. A producer or organization submitting a plan pursuant to this act shall also pay an
10 administrative filing fee in an amount, established by the department, sufficient to
11 cover the reasonable cost of the department's plan review, but not more than five
12 thousand dollars (\$5,000).

13 b. The Consumer Battery Stewardship Account and the Consumer Battery
14 Stewardship Penalty Subaccount are hereby established in the Integrated Waste
15 Management Fund.

16 c. The administrative filing fees collected pursuant to this section shall be deposited
17 in the Consumer Battery Stewardship Account and shall be expended by the
18 department, upon appropriation by the Legislature, to cover the department's plan
19 review costs.

20 d. All penalties collected pursuant to this act shall be deposited in the Consumer
21 Battery Stewardship Penalty Subaccount and may be expended by the department,
22 upon appropriation by the Legislature, to cover the department's costs to
23 implement and enforce this act.

1 Section 14.

2 a.

3 (i) The department may impose administrative civil penalties not to exceed
4 one thousand dollars (\$1,000) per day upon any of the following:

5 (A) A producer that is not in compliance with this act,

6 (B) A wholesaler, retailer, or other supplier that violates Section 10, or

7 (C) A person who violates Section 9 by misrepresenting that a product
8 contains approved covered batteries or by substituting a different
9 brand of battery in a product without notifying the department of
10 such substitution.

11 (ii) An administrative civil penalty may be imposed only by the department
12 and shall not be imposed by any other state or local agency.

13 b. A producer, wholesaler, or retailer that removes from sale any covered battery or
14 covered battery-containing product within 90 days of discovery that it is not in
15 compliance with this act is not in violation of Section 10.

16 c. A producer, wholesaler, or retailer that purchases a covered battery or covered
17 battery-containing product which is verified to be an approved product at the time
18 of purchase is not in violation of Section 10 if, at the time when the producer,
19 wholesaler, or retailer sells that covered battery or covered battery-containing
20 product, it is no longer an approved product.

21 d. Before imposing a penalty pursuant to this section, the department shall issue a
22 compliance order to the producer, wholesaler, or retailer selling the covered battery
23 or covered battery-containing product that allows 30 days from the date of the

1 compliance order to cease sales of the covered battery or covered battery-
2 containing product.

3
4 Section 15.

5 a. No later than February 1 of each calendar year, each producer and covered battery
6 stewardship organization operating an approved battery stewardship plan shall
7 report to the department and operators of all other approved plans the total weight
8 of covered batteries it collected in the previous calendar year.

9 b. A producer or not-for-profit covered battery stewardship organization that has met
10 or exceeded in the prior calendar year the collection rate specified in its approved
11 plan and spent at least [AMOUNT] (\$[AMOUNT]) in doing so shall be entitled to
12 certain reimbursements from each other approved plan operator, calculated as
13 follows:

14 (i) By subtracting from the total weight of covered batteries collected in the
15 prior year, as reported by all producers and covered battery stewardship
16 organizations in response to subsection (a) above, the weight of covered
17 batteries required to achieve the collection target of the producer or not-for-
18 profit covered battery stewardship organization seeking reimbursement;

19 (ii) By multiplying the resulting overage by the estimated average market share
20 by weight of covered batteries, including those taken from covered battery-
21 containing products, sold or distributed at no charge in the state during each
22 of the previous three calendar years by each producer or covered battery
23 stewardship organization from which reimbursement is sought; and

- 1 (iii) By multiplying the resulting weight by the actual cost per pound of
2 collections incurred by the producer or covered battery stewardship
3 organization seeking reimbursement or the producer or covered battery
4 stewardship organization from which reimbursement is sought, whichever
5 is lower.
- 6 c. A producer or covered battery stewardship organization requesting reimbursement
7 under this section shall submit a request to any producer or covered battery
8 stewardship organization which the requesting producer or covered battery
9 stewardship organization reasonably believes is subject to a reimbursement
10 obligation.
- 11 d. A producer or covered battery stewardship organization that receives a request for
12 reimbursement for actual direct costs has the right to examine the reasonableness
13 of and substantiation for those actual direct costs. Such producer or covered
14 battery stewardship organization shall either (A) pay the amount requested within
15 thirty days; (B) prior to payment and within thirty days of receipt of the request for
16 reimbursement, inform the requestor that its claimed costs per pound of collections
17 exceed those of the recipient of the request and tender payment based on the
18 recipient's actual direct costs per pound of collections and, upon request by the
19 entity seeking reimbursement, make available for an independent audit by a
20 certified public accountant or firm of such accountants licensed by the state proof
21 of those costs and their reasonableness; (C) prior to payment and within thirty days
22 of receipt of the request for reimbursement, request an independent audit of
23 submitted reimbursement costs by a certified public accountant or firm of such

1 accountants licensed by the state to evaluate the reasonableness of the request, or
2 (D) inform the requestor that it refuses to make the requested payment. Failure of
3 the producer or covered battery stewardship organization that receives a request to
4 respond within thirty days of receipt shall constitute a refusal to make any portion
5 of the requested payment.

6 e. If an independent audit is requested under section (d), the independent auditor shall
7 be responsible for verifying the reasonableness of the amount of reimbursement
8 requested or the reduced payment proffered by the recipient of the request. The
9 verification process may include gathering information on costs from the
10 requestor, the recipient of the request, and from other available sources.

11 f. If an independent audit is requested under section (d) and confirms the
12 reasonableness of the reimbursement request, the producer or covered battery
13 stewardship organization requesting the audit (A) shall pay the cost of the audit
14 and the amount of the reimbursement calculated by the independent auditor and
15 (B) after making the payments required by subdivision (A) may bring suit under
16 Section 16 for refund of those amounts the payor believes unreasonable.

17 g. If an independent audit is requested under section (d) and confirms that the
18 reimbursement request was not reasonable or that the actual direct costs per pound
19 of collections of the recipient were lower than those of the requesting entity, the
20 producer or covered battery stewardship organization that initiated the
21 reimbursement request shall pay the cost of the audit and the producer or covered
22 battery stewardship organization shall pay the amount of the reimbursement
23 calculated by the independent auditor to be reasonable. The requestor may bring

1 suit under Section 16 to recover any costs that the independent audit found not to
2 be reimbursable.

3 Section 16.

4 a. A producer or covered battery stewardship organization that implements a plan in
5 compliance with this act and incurs in excess of three thousand dollars (\$3,000) in
6 costs for collecting, handling, recycling, or properly disposing of covered batteries
7 sold or offered for sale in the state by a producer that does not operate an approved
8 battery stewardship program or does not participate in an approved covered battery
9 stewardship organization, may bring a civil action to recover costs, damages, and
10 fees, as specified in subdivision (c), from the producer for failure to comply with
11 this act, if that producer can be identified from a brand or marking on a discarded
12 covered battery or from other information.

13 b.

14 (i) An action under subdivision (a) may be brought against one or more
15 producers who are not in compliance with this act.

16 (ii) An action under subdivision (a) shall not commence earlier than 60 days
17 after a written notice of the organization's or producer's intention to
18 file an action has been provided to the department and to the producer who
19 is alleged to be noncompliant.

20 (iii) An action under subdivision (a) shall not commence if the department has
21 commenced an enforcement action against the producer who is alleged to
22 be noncompliant and is diligently pursuing that action.

- 1 c. In an action brought under subdivision (a), the plaintiff may recover all of the
2 following amounts from a producer who has been found to be noncompliant:
- 3 (i) The costs the plaintiff incurred in collecting, handling, recycling, or
4 properly disposing of covered batteries reasonably identified as having
5 originated from the noncompliant producer.
- 6 (ii) An amount of damages equal to no more than three times those costs
7 specified in paragraph (1).
- 8 (iii) The plaintiff's attorney's fees and costs of bringing the action.
- 9 d. A producer, or a not-for-profit covered battery stewardship organization in
10 compliance with the requirements of this act who has spent more than [AMOUNT]
11 (\$[AMOUNT]) and sought reimbursement from another producer or covered
12 battery stewardship organization under Section 15 may bring a civil action for
13 reimbursement against another covered battery producer or covered battery
14 stewardship organization in the State that is in compliance with the requirements
15 of this act after seeking reimbursement under Section 15 if the plaintiff producer or
16 covered battery stewardship organization or rechargeable battery stewardship
17 organization does not receive full reimbursement within:
- 18 (i) 90 days of the reimbursement request, if no independent audit is requested
19 under Section 15; or
- 20 (ii) 60 days after completion of an audit if an independent audit is requested
21 under Section 15, and the audit confirms the validity of the reimbursement
22 request.

- 1 e. A producer or covered battery stewardship organization that has been required to
2 make a payment after completion of an audit under Section 15 but does not believe
3 the payment required by the auditor was reasonable may bring a civil action to
4 recover any alleged overpayment against the producer or covered battery
5 stewardship organization that sought and was paid the reimbursement
- 6 f. If a producer participates in a covered battery stewardship organization, a civil
7 action under subdivision (d) initially must be brought against the battery
8 stewardship organization in which the defendant covered battery producer is
9 participating. If, after obtaining a judgment in that action, the plaintiff cannot
10 obtain full payment of the judgment, the plaintiff may sue the individual covered
11 battery producer for any remaining unreimbursed costs. Such cause of action shall
12 accrue ninety days after entry of judgment against the rechargeable battery
13 stewardship organization implementing the plan.
- 14 g. In any award made in an action brought under subdivision (d), the court shall
15 award the prevailing party its attorneys fees and costs.

16 Section 17.

17 Due to the need to provide a consistent statewide program for the regulation of covered batteries
18 and to protect the public and the environment, this act fully occupies and preempts the entire
19 field of the stewardship of covered batteries and covered battery-containing products. A city,
20 county, or district, including a chartered city or county, shall not adopt or enforce an ordinance
21 that regulates the disposal, collection, and recycling of covered batteries or requires reporting by
22 producers or covered battery stewardship programs.

23 Section 18.

- 1 a. It is the intent of the Legislature that a producer or a covered battery stewardship
2 organization preparing, submitting, and implementing a covered battery
3 stewardship plan pursuant to this act, any agent, officer, director or employee of
4 such a producer or organization, and wholesalers or retailers who engage in
5 conduct authorized by this act, are granted immunity, individually and jointly,
6 from state antitrust laws for the limited purpose of establishing and implementing a
7 program and complying with the requirements of this act. It is further the intent of
8 the Legislature that the activities of a producer, organization, agent, officer,
9 director or employee of such a producer or organization and wholesalers or
10 retailers that implement and comply with this act are not in restraint of trade, a
11 conspiracy, or combination thereof, or any other unlawful activity in violation of
12 any provisions of state antitrust laws.
- 13 b. Except as provided in subdivision (c), an action taken to increase the recycling of
14 covered batteries pursuant to this act by a producer or covered battery stewardship
15 organization that affects the types or quantities being recycled or the cost and
16 structure of any return program is not a violation of [STATE ANTITRUST LAW],
17 or the Unfair Practices Act (commencing with [STATE LAW]).
- 18 c. Subdivision (b) shall not apply to any agreement establishing or affecting the price
19 of primary batteries or the output or production of primary batteries, or any
20 agreement restricting the geographic area in which, or customers to whom, covered
21 batteries will be sold.

22