

3593--B

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I N S E N A T E

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Introduced by Sens. KRUEGER, FOLEY, HASSELL-THOMPSON, HUNTLEY, KLEIN, PARKER, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to recycling rechargeable batteries

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Declaration of legislative intent and findings. The legis-
2 lature finds and declares that the presence of toxic metals in discarded
3 rechargeable batteries is a matter of great concern in light of their
4 adverse effect on groundwater quality when disposed of in landfills and
5 their presence in emissions or residual ash when incinerated at a
6 resource recovery facility; that cadmium, lead and mercury found in
7 rechargeable batteries, on the basis of available scientific and medical
8 evidence, are of particular concern; that it is desirable to reduce the
9 toxic state of waste materials in the solid waste streams directed to
10 resource recovery and sanitary landfill facilities; that the removal of
11 used rechargeable batteries containing high levels of cadmium, lead or
12 mercury from the solid waste stream can have a significant beneficial
13 impact on the quality of the emissions and residual ash resulting from
14 the incineration of solid waste at resource recovery facilities, and on
15 groundwater quality in those regions where solid waste is disposed at
16 sanitary landfill facilities; and that the most effective and appropri-
17 ate method to promote the reduction of toxic metals from rechargeable
18 battery disposal is to require the battery industry to accept the finan-
19 cial responsibility for the environmentally sound collection, transpor-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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tation and recycling or proper disposal of discarded rechargeable batteries.

The legislature therefore determines that it is in the public interest of the state of New York to maximize the removal of used rechargeable batteries from the solid waste stream by banning the disposal of used rechargeable batteries from the solid waste stream and requiring manufacturers of rechargeable batteries to take back and recycle the used rechargeable batteries that are sold or disposed of in the state of New York.

This act is purposefully structured to fit into current rechargeable battery initiatives, especially the Rechargeable Battery Recycling Corporation's call2recycle program. This program currently uses volunteer retailers, and provides them with collection boxes with pre-paid postage that can be mailed directly to existing recycling centers, to collect and recycle rechargeable batteries and cell phones of all varieties. The program also does public outreach and advertising to increase its recycling rates. The program is paid for by over 350 manufacturers and marketers of products that use rechargeable batteries and has over 37,000 participating retail partners, including retailers such as Radio Shack, Home Depot and Verizon Wireless. The legislature finds that making this existing voluntary program mandatory would strengthen its effectiveness in the state of New York.

S 2. Article 27 of the environmental conservation law is amended by adding a new title 18 to read as follows:

TITLE 18

RECHARGEABLE BATTERY RECYCLING

SECTION 27-1801. SHORT TITLE.

27-1803. DECLARATION OF POLICY.

27-1805. DEFINITIONS.

27-1807. RECHARGEABLE BATTERY DISPOSAL BAN.

27-1809. RECHARGEABLE BATTERY RECYCLING PROGRAM.

27-1811. ENFORCEMENT OF THIS TITLE.

27-1813. STATE PREEMPTION.

S 27-1801. SHORT TITLE.

THIS TITLE SHALL BE KNOWN AS AND MAY BE CITED AS THE "NEW YORK STATE RECHARGEABLE BATTERY LAW".

S 27-1803. DECLARATION OF POLICY.

IT IS HEREBY DECLARED TO BE THE PUBLIC POLICY OF THE STATE OF NEW YORK TO REDUCE ENVIRONMENTAL POLLUTION, TO REDUCE THE TOXIC STATE OF WASTE MATERIALS IN THE SOLID WASTE STREAM DIRECTED TO RESOURCE RECOVERY AND SANITARY LANDFILL FACILITIES, AND TO MAXIMIZE THE REMOVAL OF USED RECHARGEABLE BATTERIES AND PRODUCTS THAT CONTAIN RECHARGEABLE BATTERIES AND ENCOURAGE THEIR RECYCLING BY ENTITIES THAT MANUFACTURE RECHARGEABLE BATTERIES BY BANNING THE DISPOSAL OF USED RECHARGEABLE BATTERIES FROM THE SOLID WASTE STREAM AND REQUIRING MANUFACTURERS OF RECHARGEABLE BATTERIES TO TAKE BACK AND RECYCLE THE USED RECHARGEABLE BATTERIES SOLD OR DISPOSED OF IN THE STATE.

S 27-1805. DEFINITIONS.

WHEN USED IN THIS TITLE:

1. "BATTERY MANUFACTURER" MEANS EVERY PERSON, FIRM OR CORPORATION THAT: (I) PRODUCES RECHARGEABLE BATTERIES SOLD OR DISTRIBUTED IN THE STATE, OR PACKAGES SUCH BATTERIES FOR SALE IN THE STATE, EXCEPT THAT IF SUCH PRODUCTION OR PACKAGING IS FOR A DISTRIBUTOR HAVING THE RIGHT TO PRODUCE OR OTHERWISE PACKAGE THAT SAME BRAND OF BATTERY IN THE STATE, THEN SUCH DISTRIBUTOR SHALL BE DEEMED TO BE THE BATTERY MANUFACTURER; OR

(II) IMPORTS RECHARGEABLE BATTERIES INTO THE UNITED STATES THAT ARE SOLD OR DISTRIBUTED IN THE STATE;

2. "CONSUMER" MEANS ANY PERSON WHO PURCHASES ONE OR MORE RECHARGEABLE BATTERIES, OR PRODUCTS CONTAINING SUCH BATTERIES AT THE TIME OF SALE, FOR PERSONAL USE;

3. "PLACE OF BUSINESS" MEANS THE LOCATION AT WHICH A RETAILER SELLS OR OFFERS FOR SALE TO CONSUMERS, RECHARGEABLE BATTERIES, OR PRODUCTS CONTAINING SUCH BATTERIES AT THE TIME OF SALE;

4. "RECHARGEABLE BATTERY" MEANS ANY RECHARGEABLE NICKEL-CADMIUM, SEALED LEAD, LITHIUM ION, NICKEL METAL HYDRIDE BATTERY, OR ANY OTHER SUCH DRY CELL BATTERY CAPABLE OF BEING RECHARGED WEIGHING LESS THAN TWENTY-FIVE POUNDS, OR BATTERY PACKS CONTAINING SUCH BATTERIES; BUT SHALL NOT INCLUDE A BATTERY USED AS THE PRINCIPAL ELECTRIC POWER SOURCE FOR A VEHICLE, SUCH AS, BUT NOT LIMITED TO, AN AUTOMOBILE, BOAT, TRUCK, TRACTOR, GOLF CART OR WHEELCHAIR; FOR STORAGE OF ELECTRICITY GENERATED BY AN ALTERNATIVE POWER SOURCE, SUCH AS SOLAR OR WIND-DRIVEN GENERATORS; OR FOR MEMORY BACKUP IN AN ELECTRONIC DEVICE;

5. "RETAILER" MEANS A PERSON, FIRM OR CORPORATION THAT ENGAGES IN THE SALE OF RECHARGEABLE BATTERIES, OR PRODUCTS CONTAINING SUCH BATTERIES, TO A CONSUMER IN THE STATE, INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH SALES OUTLETS, CATALOGS, BY MAIL, TELEPHONE OR THE INTERNET. FOR THE PURPOSES OF THIS SECTION RETAILER SHALL NOT INCLUDE A FOOD STORE; AND

6. "FOOD STORE" MEANS A STORE SELLING PRIMARILY FOOD AND FOOD PRODUCTS FOR CONSUMPTION OR USE OFF THE PREMISES THAT OCCUPIES LESS THAN FOURTEEN THOUSAND SQUARE FEET OF DISPLAY SPACE.

S 27-1807. RECHARGEABLE BATTERY DISPOSAL BAN.

NO PERSON SHALL KNOWINGLY DISPOSE OF RECHARGEABLE BATTERIES AS SOLID WASTE AT ANY TIME IN THE STATE.

S 27-1809. RECHARGEABLE BATTERY RECYCLING PROGRAM.

1. RECHARGEABLE BATTERIES SHALL BE RETURNED TO A RETAILER THAT SELLS SUCH BATTERIES THAT ARE SIMILAR IN SHAPE, SIZE AND FUNCTION TO THOSE TO BE DISPOSED OF. RECHARGEABLE BATTERIES CONTAINED IN ELECTRONIC PRODUCTS MUST BE REMOVED PRIOR TO DISPOSAL OF SUCH PRODUCT.

A. RETAILERS HAVING A PLACE OF BUSINESS IN THE STATE SHALL ACCEPT FROM CONSUMERS AT ANY TIME DURING NORMAL BUSINESS HOURS RECHARGEABLE BATTERIES OF A SIMILAR SIZE AND SHAPE AS THE RETAILER OFFERS FOR SALE. RETAILERS SHALL TAKE UP TO TEN SUCH BATTERIES PER DAY FROM ANY PERSON REGARDLESS OF WHETHER SUCH PERSON PURCHASES REPLACEMENT BATTERIES, AND RETAILERS SHALL ALSO ACCEPT AS MANY SUCH BATTERIES AS A CONSUMER PURCHASES FROM THE RETAILER. RETAILERS SHALL CONSPICUOUSLY POST AND MAINTAIN, AT OR NEAR THE POINT OF ENTRY TO THE PLACE OF BUSINESS, A LEGIBLE SIGN, NOT LESS THAN EIGHT AND ONE-HALF INCHES BY ELEVEN INCHES IN SIZE, STATING THAT USED RECHARGEABLE BATTERIES OF THE SIZE AND SHAPE SOLD OR OFFERED FOR SALE BY THE RETAILER MAY NOT ENTER THE SOLID WASTE STREAM, AND THAT THE RETAIL ESTABLISHMENT IS A COLLECTION SITE FOR RECYCLING SUCH BATTERIES. SUCH SIGN SHALL STATE THE FOLLOWING IN LETTERS AT LEAST ONE INCH IN HEIGHT: "IT IS ILLEGAL TO DISPOSE OF RECHARGEABLE BATTERIES IN THE STATE OF NEW YORK AS SOLID WASTE. WE ACCEPT USED RECHARGEABLE BATTERIES FOR RETURN TO THE MANUFACTURER."

B. RETAILERS THAT SELL RECHARGEABLE BATTERIES TO CONSUMERS IN THE STATE THROUGH NON-RETAIL OUTLETS SUCH AS THROUGH CATALOGS, OR BY MAIL, TELEPHONE OR THE INTERNET SHALL PROVIDE AT THE TIME OF PURCHASE OR DELIVERY TO THE CONSUMER NOTICE OF AN OPPORTUNITY TO RETURN USED RECHARGEABLE BATTERIES AT NO COST TO THE CONSUMER FOR REUSE OR RECYCLING.

1 C. RETAILERS IN THE STATE SHALL CONSPICUOUSLY MAINTAIN, AT A LOCATION
2 WITHIN THE RETAIL ESTABLISHMENT THAT IS CONVENIENT FOR USE BY CONSUMERS,
3 COLLECTION BOXES OR OTHER SUITABLE RECEPTACLES, SUPPLIED BY THE MANUFAC-
4 Turer, INTO WHICH CONSUMERS MAY SAFELY DEPOSIT USED RECHARGEABLE
5 BATTERIES.

6 2. EVERY BATTERY MANUFACTURER, OR ANY COMBINATION OF BATTERY MANUFAC-
7 TURERS WORKING TOGETHER, SHALL, AT THE BATTERY MANUFACTURER'S OWN
8 EXPENSE, ARRANGE FOR THE RETURN OF, AND RECYCLING OF, ALL USED RECHARGE-
9 ABLE BATTERIES COLLECTED BY RETAILERS. EVERY BATTERY MANUFACTURER OR ANY
10 COMBINATION OF BATTERY MANUFACTURERS WORKING TOGETHER, SHALL BE RESPON-
11 SIBLE FOR, AT A MINIMUM, THE FOLLOWING:

12 A. WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS TITLE, SUBMITTANCE
13 TO THE COMMISSIONER OF A PLAN THAT IDENTIFIES THE METHODS BY WHICH
14 BATTERY MANUFACTURERS WILL SAFELY COLLECT, TRANSPORT, AND RECYCLE
15 RECHARGEABLE BATTERIES COLLECTED BY RETAILERS AT THE EXPENSE OF THE
16 BATTERY MANUFACTURER AND PROVIDE RETAILERS WITH INFORMATION ON THE SAFE
17 HANDLING AND STORAGE OF RECHARGEABLE BATTERIES.

18 B. SUBMITTANCE TO THE DEPARTMENT OF ANNUAL REPORTS, ON A FORM
19 PRESCRIBED BY THE DEPARTMENT, CONCERNING THE AMOUNT OF RECHARGEABLE
20 BATTERIES RECEIVED WITHIN THE STATE AND RECYCLED EITHER BY NUMBER OR BY
21 WEIGHT; THE COSTS OF SUCH EFFORTS; AND ANY OTHER RELEVANT INFORMATION AS
22 REQUIRED BY THE DEPARTMENT.

23 C. UNDERTAKING OF EFFORTS TO EDUCATE THE CITIZENS OF THE STATE REGARD-
24 ING THE APPROPRIATE WAYS TO RECYCLE RECHARGEABLE BATTERIES.

25 3. THE COMMISSIONER SHALL APPROVE OR REJECT ANY BATTERY MANUFACTURER'S
26 COLLECTION, TRANSPORTATION, AND RECYCLING PLANS DESCRIBED IN PARAGRAPH A
27 OF SUBDIVISION TWO OF THIS SECTION WITHIN THIRTY DAYS OF SUBMISSION AND,
28 IF REJECTED, INFORM THE BATTERY MANUFACTURER IN WRITING AS TO ANY DEFI-
29 CIENCIES IN SAID PLAN. BATTERY MANUFACTURERS SHALL AMEND AND RESUBMIT
30 ANY REJECTED PLANS FOR RECONSIDERATION WITHIN SIXTY DAYS OF NOTIFICATION
31 OF THE REJECTION OF SAID PLAN. THE COMMISSIONER SHALL APPROVE OR REJECT
32 SAID PLAN WITHIN THIRTY DAYS OF RESUBMISSION.

33 4. THE COMMISSIONER SHALL ANALYZE THE INFORMATION PROVIDED BY BATTERY
34 MANUFACTURERS PURSUANT TO PARAGRAPH B OF SUBDIVISION TWO OF THIS SECTION
35 AND REPORT SUCH ANALYSIS TO THE GOVERNOR AND THE LEGISLATURE EVERY TWO
36 YEARS.

37 5. THE COMMISSIONER IS AUTHORIZED TO PROMULGATE ANY RULES AND REGU-
38 LATIONS NEEDED TO IMPLEMENT THIS TITLE.

39 S 27-1811. ENFORCEMENT OF THIS TITLE.

40 1. ANY PERSON WHO VIOLATES THE PROVISIONS OF SECTION 27-1807 OF THIS
41 TITLE SHALL BE LIABLE FOR A CIVIL PENALTY IN THE AMOUNT OF FIFTY DOLLARS
42 FOR THE FIRST VIOLATION, ONE HUNDRED DOLLARS FOR A SECOND VIOLATION
43 COMMITTED WITHIN TWELVE MONTHS OF A PRIOR VIOLATION AND TWO HUNDRED
44 DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED WITHIN TWELVE
45 MONTHS OF ANY PRIOR VIOLATION.

46 2. ANY RETAILER AS THAT TERM IS DEFINED IN SECTION 27-1805 OF THIS
47 TITLE, WHO VIOLATES THE PROVISIONS OF SECTION 27-1809 OF THIS TITLE
48 SHALL BE LIABLE FOR A CIVIL PENALTY IN THE AMOUNT OF TWO HUNDRED DOLLARS
49 FOR THE FIRST VIOLATION, FOUR HUNDRED DOLLARS FOR A SECOND VIOLATION
50 COMMITTED WITHIN TWELVE MONTHS OF A PRIOR VIOLATION, AND FIVE HUNDRED
51 DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED WITHIN TWELVE
52 MONTHS OF ANY PRIOR VIOLATION.

53 3. ANY BATTERY MANUFACTURER, AS THAT TERM IS DEFINED IN SECTION
54 27-1805 OF THIS TITLE, WHO VIOLATES THE PROVISIONS OF SECTION 27-1809 OF
55 THIS TITLE SHALL BE LIABLE FOR A CIVIL PENALTY IN THE AMOUNT OF TWO
56 THOUSAND DOLLARS FOR THE FIRST VIOLATION, FOUR THOUSAND DOLLARS FOR A

1 SECOND VIOLATION COMMITTED WITHIN TWELVE MONTHS OF A PRIOR VIOLATION,
2 AND FIVE THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED
3 WITHIN TWELVE MONTHS OF ANY PRIOR VIOLATION.

4 4. CIVIL PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE COMMIS-
5 SIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD PURSUANT TO THE
6 PROVISIONS OF SECTION 71-1709 OF THIS CHAPTER, OR SHALL BE ASSESSED BY
7 THE COURT IN ANY ACTION OR PROCEEDING PURSUANT TO THIS SECTION. IN ADDI-
8 TION TO ANY CIVIL PENALTIES, ANY PERSON, RETAILER OR MANUFACTURER, AS
9 THOSE TERMS ARE DEFINED IN SECTION 27-1805 OF THIS TITLE, MAY BY SIMILAR
10 PROCESS BE ENJOINED FROM CONTINUING SUCH VIOLATION.

11 S 27-1813. STATE PREEMPTION.

12 JURISDICTION IN ALL MATTERS PERTAINING TO RECHARGEABLE BATTERY RECYCL-
13 ING IS, BY THIS TITLE, VESTED EXCLUSIVELY IN THE STATE. ANY PROVISION OF
14 ANY LOCAL LAW OR ORDINANCE, OR ANY RULE OR REGULATION PROMULGATED THERE-
15 TO, GOVERNING RECHARGEABLE BATTERY RECYCLING SHALL, UPON THE EFFECTIVE
16 DATE OF THIS TITLE, BE PREEMPTED; PROVIDED, HOWEVER, THAT NOTHING IN
17 THIS SECTION SHALL PRECLUDE A PERSON FROM COORDINATING, FOR RECYCLING OR
18 REUSE, THE COLLECTION OF RECHARGEABLE BATTERIES.

19 S 3. This act shall take effect on the ninetieth day after it shall
20 have become a law.