S T A T E O F N E W Y O R K

6813--D

Cal. No. 776

2009-2010 Regular Sessions

I N A S S E M B L Y

March 12, 2009

Introduced by M. of A. KAVANAGH, DelMONTE, JAFFEE, MENG, ESPAILLAT, COLTON, COOK, ENGLEBRIGHT, GALEF, LIFTON, ROSENTHAL, TITUS -- Multi-Sponsored by -- M. of A. AMEDORE, GABRYSZAK, GLICK, GORDON, GOTTFRIED, HOOPER, JOHN, LATIMER, MAGEE, J. MILLER, PHEFFER, THIELE, TOWNSEND, WEISENBERG -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

Section 1. Declaration of legislative intent and findings. The legislature finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium and lead found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the toxic state of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium and lead from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incinera-

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

LBD09754-14-0

tion of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation 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.

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. DEFINITIONS.
27-1805. RECHARGEABLE BATTERY DISPOSAL BAN.
27-1807. RECHARGEABLE BATTERY RECYCLING PROGRAM.
27-1809. ENFORCEMENT OF THIS TITLE.
27-1811. 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. 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 THAT IS AN INTEGRAL COMPONENT OF 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 27-1805. RECHARGEABLE BATTERY DISPOSAL BAN.

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

S 27-1807. 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.

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

D. RETAILERS MUST BE IN COMPLIANCE WITH THE PROVISIONS OF THIS SUBDIVISION NO LATER THAN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS TITLE.

2. EVERY BATTERY MANUFACTURER, OR ANY COMBINATION OF BATTERY MANUFACTURERS WORKING TOGETHER, SHALL, AT THE BATTERY MANUFACTURER'S OWN EXPENSE, ARRANGE FOR THE RETURN OF, AND RECYCLING OF, ALL USED RECHARGEABLE BATTERIES COLLECTED BY RETAILERS. EVERY BATTERY MANUFACTURER OR ANY COMBINATION OF BATTERY MANUFACTURERS WORKING TOGETHER, SHALL BE RESPONSIBLE FOR, AT A MINIMUM, THE FOLLOWING:

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

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

C. UNDERTAKING OF EFFORTS TO EDUCATE THE CITIZENS OF THE STATE REGARDING THE APPROPRIATE WAYS TO RECYCLE RECHARGEABLE BATTERIES.

3. THE COMMISSIONER SHALL APPROVE OR REJECT ANY BATTERY MANUFACTURER'S COLLECTION, TRANSPORTATION, AND RECYCLING PLANS DESCRIBED IN PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION WITHIN NINETY DAYS OF SUBMISSION AND, IF REJECTED, INFORM THE BATTERY MANUFACTURER IN WRITING AS TO ANY DEFICIENCIES IN SAID PLAN. BATTERY MANUFACTURERS SHALL AMEND AND RESUBMIT ANY REJECTED PLANS FOR RECONSIDERATION WITHIN SIXTY DAYS OF NOTIFICATION OF THE REJECTION OF SAID PLAN. THE COMMISSIONER SHALL APPROVE OR REJECT SAID PLAN WITHIN THIRTY DAYS OF RESUBMISSION.

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

5. THE COMMISSIONER IS AUTHORIZED TO PROMULGATE ANY RULES AND REGULATIONS NEEDED TO IMPLEMENT THIS TITLE.

S 27-1809. ENFORCEMENT OF THIS TITLE.

1. ANY PERSON WHO VIOLATES THE PROVISIONS OF SECTION 27-1805 OF THIS TITLE SHALL BE LIABLE FOR A CIVIL PENALTY IN THE AMOUNT OF FIFTY DOLLARS FOR THE FIRST VIOLATION, ONE HUNDRED DOLLARS FOR A SECOND VIOLATION COMMITTED WITHIN TWELVE MONTHS OF A PRIOR VIOLATION AND TWO HUNDRED DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED WITHIN TWELVE MONTHS OF ANY PRIOR VIOLATION.

2. ANY RETAILER AS THAT TERM IS DEFINED IN SECTION 27-1803 OF THIS TITLE, WHO VIOLATES THE PROVISIONS OF SECTION 27-1807 OF THIS TITLE SHALL BE LIABLE FOR A CIVIL PENALTY IN THE AMOUNT OF TWO HUNDRED DOLLARS FOR THE FIRST VIOLATION, FOUR HUNDRED DOLLARS FOR A SECOND VIOLATION COMMITTED WITHIN TWELVE MONTHS OF A PRIOR VIOLATION, AND FIVE HUNDRED DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED WITHIN TWELVE MONTHS OF ANY PRIOR VIOLATION.

3. ANY BATTERY MANUFACTURER, AS THAT TERM IS DEFINED IN SECTION 27-1803 OF THIS TITLE, WHO VIOLATES THE PROVISIONS OF SECTION 27-1807 OF THIS TITLE SHALL BE LIABLE FOR A CIVIL PENALTY IN THE AMOUNT OF TWO THOUSAND DOLLARS FOR THE FIRST VIOLATION, FOUR THOUSAND DOLLARS FOR A SECOND VIOLATION COMMITTED WITHIN TWELVE MONTHS OF A PRIOR VIOLATION, AND FIVE THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED WITHIN TWELVE MONTHS OF ANY PRIOR VIOLATION.

4. CIVIL PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS CHAPTER, OR SHALL BE ASSESSED BY THE COURT IN ANY ACTION OR PROCEEDING PURSUANT TO THIS SECTION. IN ADDITION TO ANY CIVIL PENALTIES, ANY PERSON, RETAILER OR MANUFACTURER, AS THOSE TERMS ARE DEFINED IN SECTION 27-1803 OF THIS TITLE, MAY BY SIMILAR PROCESS BE ENJOINED FROM CONTINUING SUCH VIOLATION.

S 27-1811. STATE PREEMPTION.

JURISDICTION IN ALL MATTERS PERTAINING TO RECHARGEABLE BATTERY RECYCLING IS, BY THIS TITLE, VESTED EXCLUSIVELY IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY RULE OR REGULATION PROMULGATED THERETO, GOVERNING RECHARGEABLE BATTERY RECYCLING SHALL, UPON THE EFFECTIVE DATE OF SECTION 27-1805 OF THIS TITLE, BE PREEMPTED; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL PRECLUDE A PERSON FROM COOR-

DINATING, FOR RECYCLING OR REUSE, THE COLLECTION OF RECHARGEABLE BATTERIES.

S 3. This act shall take effect immediately; provided, however that section 27-1805 of the environmental conservation law, as added by section two of this act, shall take effect on the three hundred sixtieth day after it shall have become a law.