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

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2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. KRUEGER, HASSELL-THOMPSON, HUNTLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

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. The title heading of title 17 of article 27 of the environmental conservation law, as added by chapter 152 of the laws of 1990, is amended to read as follows:

[LEAD-ACID] BATTERY RECYCLING

S 2. The environmental conservation law is amended by adding a new section 27-1703 to read as follows:

S 27-1703. RECHARGEABLE BATTERIES.

1. DEFINITIONS. WHEN USED IN THIS SECTION:

A. "AUTHORIZED HAZARDOUS WASTE FACILITY" MEANS ANY HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITY PERMITTED PURSUANT TO SECTION 27-0913 OF THIS ARTICLE WHICH IS AUTHORIZED TO ACCEPT BATTERIES.

B. "COLLECTOR" MEANS ANY PERSON WHO ACCEPTS BATTERIES IN ORDER TO TRANSFER THEM TO A RECYCLING FACILITY, AN AUTHORIZED HAZARDOUS WASTE FACILITY OR ANOTHER COLLECTOR.

C. "CONSUMER" MEANS ANY PERSON WHO PURCHASES RECHARGEABLE BATTERIES FOR USE OTHER THAN RESALE.

D. "DISPOSE" OR "DISPOSAL" MEANS THE ABANDONMENT, DISCHARGE, DEPOSIT, INJECTION, DUMPING, SPILLING, LEAKING OR PLACING OF ANY SUBSTANCE SO THAT SUCH SUBSTANCE OR ANY RELATED CONSTITUENT THEREOF MAY ENTER THE ENVIRONMENT. DISPOSAL ALSO MEANS THE THERMAL DESTRUCTION OF WASTE OR HAZARDOUS WASTE AND THE BURNING OF SUCH WASTES AS FUEL FOR THE PURPOSE OF RECOVERING USEABLE ENERGY.

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

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E. "DISTRIBUTOR" MEANS ANY PERSON WHO SELLS RECHARGEABLE BATTERIES TO A RETAILER IN THIS STATE, INCLUDING ANY MANUFACTURER WHO SELLS TO RETAILERS IN THIS STATE.

F. "MANUFACTURER" MEANS ANY PERSON WHO MANUFACTURES LEAD-ACID BATTERIES.

G. "MIXED MUNICIPAL SOLID WASTE" MEANS ANY MATERIAL MANAGED AT A SOLID WASTE MANAGEMENT FACILITY AS DEFINED IN SECTION 27-0701 OF THIS ARTICLE.

H. "RECHARGEABLE BATTERY" MEANS ANY RECHARGEABLE NICKEL-CADMIUM, SEALED LEAD, LITHIUM ION, OR 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.

I. "RECYCLING FACILITY" MEANS ANY PERSON WHO PROCESSES RECHARGEABLE BATTERIES AND/OR PARTS THEREOF IN ORDER TO RECOVER THE MATERIALS CONTAINED THEREIN FOR LATER USE.

J. "RETAILER" MEANS ANY PERSON IN THIS STATE WHO SELLS NEW RECHARGEABLE BATTERIES TO CONSUMERS.

2. RECHARGEABLE BATTERY DISPOSAL PROHIBITIONS. A. NO PERSON SHALL DISPOSE OF A RECHARGEABLE BATTERY IN MIXED MUNICIPAL SOLID WASTE OR OTHERWISE DISPOSE OF A RECHARGEABLE BATTERY EXCEPT BY DELIVERY TO A RETAILER, DISTRIBUTOR, COLLECTOR, RECYCLING FACILITY OR AS A METHOD OF LAST RESORT TO AN AUTHORIZED HAZARDOUS WASTE FACILITY.

B. NO RETAILER SHALL DISPOSE OF A RECHARGEABLE BATTERY EXCEPT BY DELIVERY TO A DISTRIBUTOR, COLLECTOR, RECYCLING FACILITY OR AS A METHOD OF LAST RESORT TO AN AUTHORIZED HAZARDOUS WASTE FACILITY.

C. NO DISTRIBUTOR SHALL DISPOSE OF A RECHARGEABLE BATTERY EXCEPT BY DELIVERY TO A COLLECTOR, RECYCLING FACILITY OR AS A METHOD OF LAST RESORT TO AN AUTHORIZED HAZARDOUS WASTE FACILITY.

D. NO COLLECTOR SHALL DISPOSE OF A RECHARGEABLE BATTERY EXCEPT BY DELIVERY TO A RECYCLING FACILITY, ANOTHER COLLECTOR, OR AS A METHOD OF LAST RESORT TO AN AUTHORIZED HAZARDOUS WASTE FACILITY.

E. NO RECYCLING FACILITY OR AUTHORIZED HAZARDOUS WASTE FACILITY SHALL STORE, RECYCLE OR DISPOSE OF A RECHARGEABLE BATTERY EXCEPT IN ACCORDANCE WITH REGULATIONS PROMULGATED PURSUANT TO THIS CHAPTER.

3. RECHARGEABLE BATTERY COLLECTION. A. EVERY RETAILER SHALL ACCEPT USED RECHARGEABLE BATTERIES FROM ANY INDIVIDUAL AT NO CHARGE TO SUCH INDIVIDUAL.

B. EVERY DISTRIBUTOR SHALL ACCEPT RECHARGEABLE BATTERIES FROM ANY INDIVIDUAL AT NO CHARGE TO SUCH INDIVIDUAL AND SHALL ACCEPT USED RECHARGEABLE BATTERIES FROM ANY RETAILER TO WHICH THE DISTRIBUTOR SELLS RECHARGEABLE BATTERIES AT NO CHARGE TO SUCH RETAILER.

4. POSTING REQUIREMENTS. EVERY RETAILER AND DISTRIBUTOR SHALL POST A CONSPICUOUS SIGN, OPEN TO PUBLIC VIEW, DISPLAYING THE UNIVERSAL RECYCLING SYMBOL AND STATING: "IT IS ILLEGAL TO DISCARD RECHARGEABLE BATTERIES. STATE LAW REQUIRES US TO ACCEPT RECHARGEABLE BATTERIES AT NO CHARGE FOR RECYCLING."

5. APPLICABILITY OF OTHER LAWS. FOR THE PURPOSES OF THIS SECTION, ANY RETAILER, DISTRIBUTOR, OR COLLECTOR WHO COMPLIES WITH THE REQUIREMENTS SET FORTH IN THIS SECTION SHALL BE EXEMPT FROM THE PROVISIONS OF TITLES SEVEN AND NINE OF THIS ARTICLE AND ARTICLE SEVENTY-TWO OF THIS CHAPTER.

6. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY RULE OR REGULATION PROMULGATED THERETO, GOVERNING THE COLLECTION, RETURN OR RECYCL-

ING OF RECHARGEABLE BATTERIES WHICH IS INCONSISTENT WITH ANY PROVISION OF THIS TITLE SHALL BE PREEMPTED, PROVIDED, HOWEVER, THAT SUCH PREEMPTION SHALL NOT EXTEND TO ANY PROVISION OF A LOCAL LAW OR ORDINANCE PROHIBITING THE ILLEGAL DISPOSAL OF RECHARGEABLE BATTERIES.

7. THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE AND IF ANY PORTION THEREOF OR THE APPLICABILITY THEREOF TO ANY PERSON OR CIRCUMSTANCES SHALL BE HELD INVALID, THE REMAINDER OF THIS TITLE AND THE APPLICATION THEREOF SHALL NOT BE AFFECTED THEREBY.

S 3. The section heading and subdivisions 1, 2 and 3 of section 71-2722 of the environmental conservation law, the section heading and subdivision 3 as added by chapter 152 of the laws of 1990, subdivision 1 as amended by section 33 and subdivision 2 as amended by section 34 of part C of chapter 62 of the laws of 2003, are amended to read as follows:

Enforcement of [section] SECTIONS 27-1701 AND 27-1703 of this chapter.

1. Any person who knowingly or intentionally violates any of the provisions or fails to perform any duty imposed by section 27-1701 OR 27-1703 of this chapter, except the duty to accept a lead-acid battery pursuant to subdivision four of [such] section 27-1701 AND THE DUTY TO ACCEPT A RECHARGEABLE BATTERY PURSUANT TO SUBDIVISION THREE OF SECTION 27-1703, shall be liable for a civil penalty not to exceed seventy-five dollars for each violation, provided that such civil penalty shall be in addition to any other penalties authorized under other state or local laws governing the illegal disposal of lead-acid OR RECHARGEABLE batteries.

2. Any retailer or distributor who refuses to accept a lead-acid OR RECHARGEABLE battery as required pursuant to subdivision four of section 27-1701 OR SUBDIVISION THREE OF SECTION 27-1703 of this chapter, RESPECTIVELY, shall be liable for a civil penalty not to exceed seven hundred fifty dollars.

3. 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 article, and, in addition thereto, any person found to have violated the provisions of section 27-1701 OR 27-1703 of this chapter may by similar process be enjoined from continuing such violation. For the purposes of this section, disposal of each lead-acid battery except as authorized pursuant to subdivision three of section 27-1701 of this chapter shall constitute a separate violation.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.