
SENATE BILL 5457

State of Washington

63rd Legislature

2013 Regular Session

By Senators Nelson, Delvin, and Ranker

1 AN ACT Relating to adopting the Washington small rechargeable
2 battery stewardship act; adding a new chapter to Title 70 RCW; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

6 (1) It is in the public interest of the citizens of Washington to
7 encourage the recovery and reuse of materials, such as metals, that
8 replace the output of mining and other extractive industries;

9 (2) It is desirable to reduce the volume of the solid waste stream
10 and resulting burdens on municipalities;

11 (3) Ensuring the proper handling and recycling of used small
12 rechargeable batteries prevents release of toxic materials into the
13 environment and removes from the waste stream materials that may
14 present safety concerns if mishandled;

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

1 (5) Addressing certain existing and future barriers to
2 implementation of voluntary industry programs to collect and recycle
3 used small rechargeable batteries will facilitate these interests.

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

6 (1) "Department" means the department of ecology.

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

9 (3) "Free rider used small rechargeable battery" means a used small
10 rechargeable battery that under section 3 of this act must be covered
11 by a qualified program, but as to which no manufacturer or marketer of
12 the battery operated or participated in a qualified program at the time
13 the used battery was collected.

14 (4) "Multiparty program" means a Washington-only or multistate
15 program that collects used small rechargeable batteries regardless of
16 brand and has collected in Washington at least twenty thousand pounds
17 of these batteries in the last twelve months and does so in each year
18 thereafter, or is expected to collect at least twenty thousand pounds
19 of used small rechargeable batteries in Washington in its first year of
20 operation in Washington and each year thereafter.

21 (5) "Nonrechargeable battery" means a battery that is not designed
22 to be recharged for repeated use.

23 (6) "Participate" means to appoint an organization to act as an
24 agent to administer a qualified used small rechargeable battery
25 stewardship program and to have that appointment accepted by the
26 qualified program.

27 (7) "Person" means a sole proprietorship, partnership, corporation,
28 nonprofit corporation or organization, limited liability company, firm,
29 association, cooperative, or other legal entity located within or
30 outside Washington.

31 (8) "Place of business" means a location at which a retailer sells
32 or offers for sale small rechargeable batteries or portable
33 rechargeable products to consumers.

34 (9) "Portable rechargeable product" means a product that is
35 packaged with or contains one or more easily removable small
36 rechargeable batteries at the time it is sold or offered for sale, and
37 is not a medical device as defined in RCW 19.210.010.

1 (10) "Portable rechargeable product manufacturer or marketer" means
2 every person that: (a) Manufactures or arranges for the manufacturing
3 of portable rechargeable products sold, offered for sale, or
4 distributed in Washington under a brand name it owns or licenses; (b)
5 packages or arranges for the packaging of portable rechargeable
6 products sold, offered for sale, or distributed in Washington under a
7 brand name it owns or licenses; (c) imports into the United States
8 portable rechargeable products that are sold, offered for sale, or
9 distributed in Washington under a brand name it owns or licenses; (d)
10 is a private label retailer; or (e) is not a retailer and otherwise
11 makes available to purchasers in Washington portable rechargeable
12 products.

13 (11) "Private label retailer" means a retailer who sells small
14 rechargeable batteries or portable rechargeable products under one or
15 more brand names it owns or licenses.

16 (12) "Qualified used small rechargeable battery stewardship
17 program" or "qualified program" means a program for the collection,
18 transportation, recycling, and disposal of used small rechargeable
19 batteries that has been approved by the department under section 5 of
20 this act. A qualified program may be either a retailer program or a
21 multiparty program, as those terms are defined in this section.

22 (13) "Rechargeable battery steward" means every small rechargeable
23 battery manufacturer or marketer, a portable rechargeable product
24 manufacturer or marketer, and a private label retailer.

25 (14) "Retailer" means every person who sells or offers to sell
26 small rechargeable batteries, or portable rechargeable products, at
27 retail through any means including, but not limited to, remote
28 offerings such as sales outlets, catalogs, or the internet, but does
29 not include any sale that is a wholesale transaction with a distributor
30 or manufacturer.

31 (15) "Retailer program" means a program operated by a single
32 retailer, without other sponsors, that collects used small rechargeable
33 batteries regardless of brand at multiple locations and has collected
34 at least five thousand pounds of these batteries in the United States
35 in the last twelve months and does so in each year thereafter, or is
36 expected to collect at least five thousand pounds of used small
37 rechargeable batteries in the United States in its first year of
38 operation and each year thereafter.

1 (16) "Small rechargeable battery" means one or more voltaic or
2 galvanic cells, electrically connected to produce electric energy and
3 designed to be recharged and weighing less than eleven pounds, or an
4 assembly of small rechargeable batteries in a container that has a
5 single positive and negative connection (commonly known as a battery
6 pack) that weighs less than eleven pounds, but does not include: (a)
7 A battery that is not easily removable or is not intended or designed
8 to be removed from the product, other than by the manufacturer; (b) a
9 battery that contains electrolyte as a free liquid; or (c) a battery or
10 battery pack that employs lead acid technology, unless the battery or
11 battery pack: (i) Is sealed; (ii) contains no liquid electrolyte; and
12 (iii) is intended by its manufacturer or marketer to power a hand-held
13 device or to provide uninterrupted backup electrical power protection
14 for stationary consumer products or stationary office equipment.

15 (17) "Small rechargeable battery manufacturer or marketer" means
16 every person that: (a) Manufactures or arranges for the manufacturing
17 of small rechargeable batteries sold, offered for sale, or distributed
18 in Washington under a brand name it owns or licenses; (b) packages or
19 arranges for the packaging of small rechargeable batteries for sale,
20 offering for sale, or distribution in Washington under a brand name it
21 owns or licenses; (c) imports into the United States small rechargeable
22 batteries that are sold, offered for sale, or distributed in Washington
23 under a brand name it owns or licenses; (d) is a private label
24 retailer; or (e) is not a retailer and otherwise makes available to
25 purchasers in Washington small rechargeable batteries, whether as
26 stand-alone items or otherwise.

27 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of
28 this section, by January 1, 2014, any rechargeable battery steward who
29 has a reasonable basis to know that any of the small rechargeable
30 batteries or portable rechargeable products it manufactures or markets
31 are being sold or offered for sale in Washington by retailers who do
32 not operate a qualified program under section 5 of this act shall
33 either:

34 (a) Participate in a qualified multiparty program or retailer
35 program described in section 5 of this act; or

36 (b) Participate in a qualified multiparty program operated by
37 another person as described in section 12 of this act.

1 (2) This section does not apply to any telecommunications provider
2 who markets equipment under a brand it owns that uses small
3 rechargeable batteries that were manufactured by a participant in a
4 qualified used small rechargeable battery stewardship program.

5 NEW SECTION. **Sec. 4.** (1) Any person offering used small
6 rechargeable battery recycling services in Washington shall comply with
7 this section.

8 (2) Any person offering used small rechargeable battery recycling
9 services in Washington shall: (a) Comply with all legal and regulatory
10 requirements applicable to the collection, storage, and transportation
11 of such batteries; and (b) ship all used small rechargeable batteries
12 it collects to lawfully permitted facilities that reuse the batteries
13 as rechargeable power sources, arrange for the reuse of the batteries
14 as rechargeable power sources, or reclaim constituents of the batteries
15 for reuse.

16 NEW SECTION. **Sec. 5.** (1) Any person who seeks to have either a
17 retailer program or a multiparty program approved as a qualified
18 program must submit to the department a plan for that program that
19 meets the requirements of subsections (3) and (4) of this section. The
20 plan must be submitted to the department at least ninety days prior to
21 the date the person intends to begin operating the program as a
22 qualified program. A plan submitted for a retailer program must be
23 accompanied by a fee of three thousand dollars and that fee must be
24 deposited into the used battery stewardship account created in section
25 10 of this act. A plan submitted for a multiparty program must be
26 accompanied by a fee of five thousand dollars and that fee must be
27 deposited into the used battery stewardship account created in section
28 10 of this act.

29 (2) The department must acknowledge its receipt of any plan to
30 operate a qualified program within fourteen days of receipt.

31 (3) A retailer program plan or multiparty program plan submitted to
32 the department must contain the following:

33 (a) The name, address, and contact information for the operator of
34 the qualified program;

35 (b) A description of the qualified program that includes, along
36 with any other information that the submitting person believes fairly

1 describes the program, the identification of all sorting and
2 reclamation facilities to be used through final disposition for sorting
3 and reclamation of all used small rechargeable batteries collected;

4 (c) A certification that:

5 (i) All used small rechargeable batteries collected by the plan
6 will be handled by the submitting person in compliance with all
7 applicable laws and rules, and that any used small rechargeable
8 batteries shipped for reclamation by the plan submitter will be shipped
9 only to lawfully permitted facilities;

10 (ii) All contracts with service providers entered into by the
11 submitting person do or will upon their effective date require
12 compliance with all applicable laws and rules;

13 (iii) Any used small rechargeable batteries shipped for reclamation
14 by the service provider will be shipped only to lawfully permitted
15 facilities;

16 (iv) All return acceptance, recycling, and other handling services,
17 including postcollection transportation, will be provided free of
18 charge to consumers; and

19 (v) If the plan is approved by the department in accordance with
20 subsection (5) of this section, it will be implemented in accordance
21 with the approved plan until such time as the approved plan is amended
22 pursuant to subsection (8) of this section or terminated pursuant to
23 subsection (10) of this section;

24 (d) Identification of the locations that will be served by the
25 program where Washington residents may take used small rechargeable
26 batteries;

27 (e) The process and timeline under which the operator of the
28 qualified program will:

29 (i) Coordinate the solicitation of public comment on its draft
30 plan, including facilitating workshops and accepting verbal and written
31 testimony; and

32 (ii) Compile and review all public comments submitted on the draft
33 plan and make appropriate revisions to the plan before finalizing the
34 plan; and

35 (f) The mechanisms by which the program will handle inquiries from
36 consumers.

37 (4) In addition to meeting the requirements of subsection (3) of

1 this section, a multiparty program plan submitted to the department
2 must also contain the following:

3 (a) Identification of the small rechargeable battery manufacturers
4 and marketers and the portable rechargeable product manufacturers or
5 marketers that are currently participating, or plan to participate, in
6 the program, and the means by which the program operator will track
7 their participation;

8 (b) Retailer collection of used small rechargeable batteries at
9 multiple locations;

10 (c) Collection of used small rechargeable batteries from
11 governmental collection facilities;

12 (d) The provision of at least one used small rechargeable battery
13 collection site for each city or town with a population greater than
14 ten thousand; and

15 (e) Education and outreach activities to maximize collections,
16 including the offering of signage to retailers indicating the
17 retailer's support of the program.

18 (5) The department must approve any plan that includes all of the
19 applicable requirements specified in subsections (3) and (4) of this
20 section. If the department fails to notify the person submitting the
21 program plan within ninety days of receiving the plan that the program
22 plan is either: (a) Approved; or (b) denied on the basis that it is
23 incomplete, then the program is deemed an approved, qualified program.

24 (6) Upon receiving approval from the department as a qualified
25 program, the submitter of the qualified program plan must post on the
26 internet:

27 (a) Its program plan;

28 (b) A rechargeable battery collection site locator to assist
29 consumers in finding the nearest collection site;

30 (c) For a multiparty program, a current list of the small
31 rechargeable battery manufacturers and marketers and the portable
32 rechargeable product manufacturers or marketers that are currently
33 participating in the program; and

34 (d) Contact information for the program, indicating how small
35 rechargeable battery manufacturers and marketers, portable rechargeable
36 product manufacturers or marketers, and consumers may seek technical
37 assistance from the program.

1 (7) By March 1st of the year following approval of a qualified
2 program, and each year thereafter until the program is terminated, the
3 operator of a qualified multiparty or retailer program must:

4 (a) Pay to the used battery stewardship account established under
5 section 10 of this act an annual fee of five thousand dollars; and

6 (b) Make available on the internet and provide to the department a
7 report identifying:

8 (i) The program's funding and recycling success, including any
9 increase in total batteries collected each year, cost of the program
10 per pound of batteries collected, and the per capita cost of the
11 program;

12 (ii) The program's collections by county and battery chemistry;

13 (iii) The program's educational and outreach activities;

14 (iv) The small rechargeable battery manufacturers and marketers,
15 including private label retailers, and portable rechargeable product
16 manufacturers or marketers, that participate in the program;

17 (v) The mechanisms employed and the entities involved in the final
18 disposition of collected materials;

19 (vi) A description of the methods used to collect, transport, and
20 account for all used small rechargeable batteries collected, including
21 identification of all sorting and reclamation facilities used; and

22 (vii) The program's independently audited financial statement,
23 including a breakdown of program expenses such as collection,
24 recycling, education, and overhead. If a qualified program operating
25 in Washington is part of a program that also operates in jurisdictions
26 outside of Washington, funding information and audited financial
27 statements need not be reported on a Washington-specific basis, but
28 average costs of collection and overhead must be clearly stated.

29 (8) A qualified program plan may be amended by submitting to the
30 department a revised version of the qualified program plan showing
31 proposed amendments and an administrative fee in the amounts set forth
32 in subsection (1) of this section. Within sixty days of receipt, the
33 department shall approve the amended program plan, if the amended
34 program plan continues to address all of the requirements of subsection
35 (3) of this section and, if it is a multiparty program plan, subsection
36 (4) of this section, or shall inform the submitter with specificity of
37 any deficiencies and allow a reasonable period of time for submission
38 of revised amendments. If the department fails to notify the submitter

1 with specificity of a continuing failure to meet the applicable
2 requirements of subsection (3) or (4) of this section after receiving
3 a further revised version of the qualified program, then the revised
4 plan is deemed to be a qualified program plan. If at either the
5 submission or resubmission stage the department informs the submitter
6 of deficiencies, the unamended, previously approved, qualified plan
7 remains in effect until a revised plan is approved by the department,
8 unless the qualified plan is terminated by its operator.

9 (9) A program plan amendment must be submitted to the department if
10 there is an addition to the products covered under the qualified
11 program or there is a significant change in the operation of the
12 program. In the event of such a submission, the department's review
13 obligations as to revised portions of the plan are the same as those
14 set forth in subsections (3) and (4) of this section.

15 (10) A qualified program may be terminated by its operator at any
16 time after the operator gives six months' notice to the department and
17 to program participants of the proposed termination date.

18 NEW SECTION. **Sec. 6.** Nothing in this chapter prohibits a
19 governmental entity from recovering payment from a qualified program
20 for used small rechargeable batteries that have been collected by or on
21 behalf of that governmental entity or requires any qualified program
22 operator to pay any governmental entity for such batteries.

23 NEW SECTION. **Sec. 7.** (1) Beginning July 1, 2014, no retailer may
24 sell or offer for sale in Washington:

25 (a) A small rechargeable battery unless it is marked with an
26 identification of the small rechargeable battery manufacturer or
27 marketer;

28 (b) A portable rechargeable product if the retailer has not
29 received from the portable rechargeable product manufacturer or
30 marketer written notification that the battery packaged with or
31 contained in the portable rechargeable product is marked with an
32 identification of the battery manufacturer or marketer; or

33 (c) A small rechargeable battery or portable rechargeable product
34 if the retailer has received written notice from the department or from
35 the operator of a qualified program that the manufacturer or marketer
36 of the battery or product does not comply with this chapter.

1 (2) No retailer having a place of business in Washington is obliged
2 to participate in a qualified used small rechargeable battery
3 stewardship program unless it is a private label retailer.

4 (3) Retailers that sell or offer to sell small rechargeable
5 batteries or portable rechargeable products to consumers in Washington,
6 whether through places of business or through nonretail outlets such as
7 catalogs, by mail, telephone, or the internet, shall inform consumers
8 of at least one qualified program that provides opportunities to return
9 used small rechargeable batteries for recycling in Washington.

10 (4) Any retailer that has a physical presence in Washington and is
11 operating or participating in a qualified program shall ensure that all
12 used batteries placed in any collection container located at the
13 retailer's facility are protected from short circuiting in accordance
14 with the applicable law, and shall take reasonable steps to prevent the
15 placement into any such container of materials other than properly
16 protected used small rechargeable batteries.

17 (5) A retailer may not require the operator of a qualified program
18 to pay the retailer for the costs associated with cooperating with that
19 program.

20 (6) An operator of a qualified program may not require a retailer
21 to pay a fee to participate in that operator's program.

22 (7) Any person who supplies to a retailer for sale a new small
23 rechargeable battery or new portable rechargeable product whose
24 manufacturer or marketer is not in compliance with section 3 of this
25 act shall, upon request by the retailer, designate a location to which
26 the retailer may ship the battery or product for further handling and
27 reimburse the retailer for all costs incurred by the retailer in
28 shipping the battery or product to the designated location.

29 NEW SECTION. **Sec. 8.** All activities undertaken by any qualified
30 program or a participant in such a program to establish and operate the
31 program, to coordinate that program with a program to collect used
32 electronic waste, or to coordinate with or participate in a program
33 described in section 12 of this act shall not be considered in
34 violation of any provision of chapter 19.86 RCW, the consumer
35 protection act.

1 NEW SECTION. **Sec. 9.** (1) The department has the authority to
2 enforce all requirements of this chapter.

3 (2) If the department learns from a qualified program operator,
4 including retailer programs, that a person subject to a requirement
5 under section 3, 4, 7, or 12 of this act has failed to comply with this
6 act or failed to comply with a certification made pursuant to this act,
7 the department shall notify the person of the potential violation.
8 Unless the person comes into compliance within ninety days of receipt
9 of such a notification, demonstrates to the satisfaction of the
10 department that it is not subject to section 3, 4, 7, or 12 of this
11 act, or requests a hearing on its compliance to be conducted in
12 conformance with the administrative procedure act, chapter 34.05 RCW,
13 the department shall include the person's name and other identifying
14 information (including, but not limited to, all brand names used by the
15 person) on a list that is made available to the public through the
16 internet of entities whose small rechargeable battery or portable
17 rechargeable product may not be sold in Washington.

18 (3) Any person who violates section 3, 4, or 12 of this act, or who
19 holds itself out as operating a qualified program when such a program
20 has not been approved by the department, is liable for a civil penalty
21 recoverable in a proceeding before the department in the amount of five
22 thousand dollars for the first violation, ten thousand dollars for the
23 second violation, and fifty thousand dollars for the third and each
24 subsequent violation. Any person who violates section 7 of this act is
25 liable for a civil penalty recoverable in a proceeding before the
26 department in the amount of one thousand dollars. For purposes of this
27 chapter, multiple consecutive days of the same failure to comply with
28 a requirement of this chapter are considered a single violation.

29 (4) At least ninety days prior to seeking to assess any penalty
30 authorized by subsection (3) of this section, the department shall
31 notify the alleged violator of the department's intention to seek a
32 penalty. No penalty is recoverable under subsection (3) of this
33 section if, within the ninety days of receipt of such a notice, the
34 recipient has come into compliance with this chapter. Any person that
35 incurs a penalty under this chapter may appeal the penalty by written
36 petition to the office of administrative hearings in accordance with
37 chapter 34.05 RCW, the administrative procedure act.

1 NEW SECTION. **Sec. 10.** The used battery stewardship account is
2 created in the custody of the state treasurer. All receipts from
3 payments made under section 5 (1), (7), and (8) of this act and
4 penalties levied under this chapter must be deposited into the account.
5 Expenditures from the account may be used solely by the department for
6 the purposes of fulfilling department responsibilities specified in
7 this chapter. Only the director of the department or the director's
8 designee may authorize expenditures from the account. Funds in the
9 account may not be diverted for any purpose or activity other than
10 those specified in this section. The account is subject to allotment
11 procedures under chapter 43.88 RCW, but an appropriation is not
12 required for expenditures.

13 NEW SECTION. **Sec. 11.** (1) The operator of a qualified used small
14 rechargeable battery stewardship program that incurs costs in excess of
15 five thousand dollars in collecting, handling, recycling, or properly
16 disposing in Washington of free rider used small rechargeable batteries
17 may bring a civil action or actions to recover costs, damages, and fees
18 as specified in subsection (2) of this section if the free rider used
19 small rechargeable batteries originated from a small rechargeable
20 battery manufacturer or marketer or portable rechargeable product
21 manufacturer or marketer who:

22 (a) Was required by section 3 of this act to operate or participate
23 in a qualified program, did not at the time the used battery was
24 collected participate in a qualified program, and was not covered by
25 the participation by another manufacturer in a qualified program; and

26 (b) Can reasonably be identified from a brand or marking on a used
27 small rechargeable battery or from other information.

28 (2) An action under subsection (1) of this section may be brought
29 against one or more small rechargeable battery manufacturers or
30 marketers or portable rechargeable product manufacturers or marketers.
31 In any such action, the plaintiff operator of a qualified program may
32 recover from a defendant small rechargeable battery manufacturer or
33 marketer or portable rechargeable product manufacturer or marketer the
34 costs the plaintiff incurred in collecting, handling, recycling, or
35 properly disposing of free rider used small rechargeable batteries
36 reasonably identified as having originated from the defendant small
37 rechargeable battery manufacturer or marketer or portable rechargeable

1 product manufacturer or marketer, plus an amount of damages equal to no
2 more than three times those costs, plus the plaintiff's attorneys' fees
3 and costs of litigation.

4 (3) An action to recover the costs specified in this section may be
5 brought in any superior or district court in the state, without regard
6 to the amount in dispute.

7 NEW SECTION. **Sec. 12.** Any person that operates a state or
8 multistate program in Washington for the stewardship of multiple brands
9 of used nonrechargeable batteries shall provide to all small
10 rechargeable battery manufacturers and marketers and portable
11 rechargeable product manufacturers or marketers subject to this chapter
12 the opportunity to participate in that person's program and shall
13 comply with the requirements of a multiparty program plan under section
14 5 (1) and (4) of this act. Such a person may impose on the small
15 rechargeable battery manufacturer or marketer or portable rechargeable
16 product manufacturer or marketer fees no greater than the share of the
17 total cost of the program of collecting, handling, and processing small
18 rechargeable batteries that is equal to a reasonable estimate of the
19 percentage that represents the share of sales of small rechargeable
20 batteries sold in Washington for which the small rechargeable battery
21 manufacturer or portable rechargeable product manufacturer would be
22 responsible under section 3 of this act, compared to the total number
23 of small rechargeable batteries sold in Washington as either individual
24 units or in portable rechargeable products. Any small rechargeable
25 battery manufacturer or marketer or portable rechargeable product
26 manufacturer or marketer who participates in such a program is deemed
27 to be in compliance with this chapter.

28 NEW SECTION. **Sec. 13.** This chapter is void if a federal law, or
29 a combination of federal laws, takes effect that establishes a national
30 program for the collection and recycling of both used nonrechargeable
31 batteries and used small rechargeable batteries.

32 NEW SECTION. **Sec. 14.** This chapter may be known and cited as the
33 Washington small rechargeable battery stewardship act.

1 NEW SECTION. **Sec. 15.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 16.** Sections 1 through 14 and 17 of this act
6 constitute a new chapter in Title 70 RCW.

7 NEW SECTION. **Sec. 17.** Nothing in this chapter alters or limits
8 the authority of the utilities and transportation commission to
9 regulate collection of solid waste, including curbside collection of
10 residential recyclable materials, nor does this chapter alter or limit
11 the authority of a city or town to provide such services itself or by
12 contract under RCW 81.77.020.

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