

By: Anderson of Dallas

H.B. No. 3153

A BILL TO BE ENTITLED

AN ACT

relating to a program for the recycling of certain household batteries; authorizing a fee; providing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. HOUSEHOLD BATTERY RECYCLING PROGRAM

Sec. 361.471. DEFINITIONS. In this subchapter:

(1) "Brand" means a name, symbol, word, or traceable mark that identifies a covered battery and attributes the covered battery to the owner or licensee of the brand as the producer.

(2) "Covered battery" means a battery or battery-containing product described by Section 361.472(a).

(3) "Discarded covered battery" means a covered battery that a user discarded or intends to discard, abandon, or send for recycling.

(4) "Producer" means one of the following with regard to a covered battery that is sold or offered for sale in this state:

(A) a person that manufactures a covered battery and sells or offers for sale that covered battery in this state under the person's own name or brand;

(B) a person other than a person described by Paragraph (A) that owns or licenses a trademark or brand under which

1 a covered battery is sold or offered for sale whether or not the  
2 trademark is registered; or

3 (C) a person other than a person described by  
4 Paragraph (A) or (B), including a wholesaler or retailer, that  
5 imports a covered battery into this state for sale.

6 (5) "Recycling" means any process in which discarded  
7 covered batteries, components, and by-products are transformed  
8 into new usable or marketable materials in a manner in which the  
9 original products may lose their identity. The term does not  
10 include the use of incineration for energy recovery.

11 (6) "Retailer" means a person that offers covered  
12 batteries for sale at retail in this state through any means,  
13 including remote offerings such as sales outlets, catalogs, or an  
14 Internet website.

15 (7) "Stewardship organization" means an organization  
16 appointed by two or more producers to act as an agent on behalf of  
17 the producers to design, submit, implement, and administer a  
18 stewardship program under this subchapter.

19 (8) "Stewardship program" means a program described by  
20 Section 361.474.

21 (9) "Wholesaler" means a person that offers for sale  
22 in this state, other than a retail sale, covered batteries intended  
23 for retail sale.

24 Sec. 361.472. APPLICABILITY. (a) This subchapter applies  
25 to:

26 (1) a non-rechargeable battery that weighs two  
27 kilograms or less, including alkaline, carbon-zinc, and lithium

metal batteries;

(2) a product that contains or is packed with a battery described by Subdivision (1);

(3) a battery that:

(A) is one or more voltaic or galvanic cells electrically connected to produce electric energy and designed to be recharged and that weighs less than five kilograms; or

(B) is a battery pack designed to be recharged, that weighs less than five kilograms, and that is designed to provide less than 40 volts direct current; and

(4) a product that contains or is packed with a battery described by Subdivision (3).

(b) This subchapter does not apply to:

(1) a product described by Subsection (a)(2) or (4) from which the battery is not easily removed or is not intended or designed to be removed, other than by the manufacturer;

(2) a medical device that is a device as defined by 21 U.S.C. Section 321(h), if the device or battery included in the device must be treated as infectious waste when the device or battery is discarded; or

(3) a battery described by Subsection (a)(3) that:

(A) is not easily removed or is not intended or designed to be removed from a product described by Subsection (a)(4), other than by the manufacturer;

(B) contains electrolyte as a free liquid; or

(C) employs lead-acid technology, unless the battery:

1                   (i) is sealed;  
2                   (ii) contains no liquid electrolyte; and  
3                   (iii) is intended by its manufacturer to  
4 power a handheld device or to provide uninterrupted backup  
5 electrical power protection for stationary consumer products or  
6 stationary office equipment.

7           Sec. 361.473. SALES PROHIBITED. (a) A producer of a  
8 covered battery may not sell, offer for sale, or deliver to a  
9 retailer for subsequent sale a covered battery unless the producer  
10 or the stewardship organization in which the producer is  
11 participating implements a stewardship program approved by the  
12 commission under Section 361.474.

13           (b) A retailer or wholesaler may not sell or offer for sale a  
14 covered battery unless the producer of the covered battery is  
15 implementing a stewardship program approved by the commission under  
16 Section 361.474 or is a member of a stewardship organization  
17 implementing a stewardship program approved by the commission under  
18 Section 361.474.

19           Sec. 361.474. STEWARDSHIP PROGRAM; COMMISSION APPROVAL OF  
20 PROGRAM. (a) A producer of a covered battery that sells, offers  
21 for sale, or delivers to a retailer for a subsequent sale a covered  
22 battery in this state shall, individually or as part of a  
23 stewardship organization, implement a stewardship program approved  
24 by the commission that:

25                   (1) in each council of government region of this  
26 state, provides for the collection of covered batteries from  
27 consumers at no cost to consumers; and

1           (2) prohibits a producer from refusing to collect a  
2 covered battery based on the brand or producer of the covered  
3 battery.

4           (b) A stewardship program submitted to the commission for  
5 approval must include:

6                 (1) the fee prescribed by the commission under  
7 Subsection (e);

8                 (2) a list of all producers participating in the  
9 program and the brands of covered batteries subject to the program;

10                (3) a description of the method that will be used to  
11 responsibly manage discarded covered batteries to ensure, to the  
12 extent economically and technically feasible, that the components  
13 of the discarded covered batteries are recycled or otherwise  
14 managed responsibly;

15                (4) a description of the manner in which the program  
16 will use existing covered battery collection points;

17                (5) an education and outreach program and a  
18 description of:

19                         (A) the outreach procedures that will be used to  
20 provide notice of the program to businesses, retailers,  
21 wholesalers, haulers, local governmental entities, and the public;  
22 and

23                         (B) planned public educational activities that,  
24 at a minimum, notify the public:

25                                 (i) that there is a free collection program  
26 for all covered batteries; and

27                                 (ii) of the location of collection points

1 and how to access the collection program;

2 (6) a collection rate performance goal for the brands  
3 of covered batteries subject to the program; and

4 (7) if the program is submitted by a stewardship  
5 organization or a producer that does not operate a physical retail  
6 location in this state, a description of how the program will  
7 provide convenient, free, statewide collection opportunities for  
8 discarded covered batteries.

9 (c) Not later than 30 days after receipt of a stewardship  
10 program by the commission, including a program that is resubmitted  
11 under Subsection (d), the commission shall approve or disapprove  
12 the program. The commission shall approve the program if the  
13 program demonstrates to the commission's satisfaction that the  
14 program will comply with the requirements of Subsection (b).

15 (d) If the commission disapproves a stewardship program,  
16 the commission shall notify the producer or stewardship  
17 organization in writing of the reasons for disapproval of the  
18 program. A producer or organization whose program has been  
19 disapproved by the commission must amend and resubmit the program  
20 to the commission not later than 45 days after receiving the notice  
21 of disapproval.

22 (e) A producer or stewardship organization must pay an  
23 application fee in an amount determined by the commission by rule.

24 (f) The commission shall deposit fees collected under this  
25 section to the credit of the covered battery stewardship account.

26 Sec. 361.475. REPORT. (a) Not later than September 1 of  
27 each year, a producer or a stewardship organization shall submit to

the commission a report that includes:

(1) a description of the activities carried out under the program during the preceding 12 months;

(2) the weight of covered batteries collected by the producer or the stewardship organization during the preceding 12 months;

(3) the locations for all collection points set up by the covered battery producers covered by the program and contact information for each location;

(4) the manner in which the collected covered batteries were sorted, consolidated, and processed; and

(5) examples and a description of educational materials used to increase collection.

(b) When a producer or stewardship organization submits the report, the producer or organization shall pay an administrative fee in an amount determined by the commission by rule.

(c) The commission shall deposit fees collected under this section to the credit of the covered battery stewardship account.

Sec. 361.476. COVERED BATTERY STEWARDSHIP ACCOUNT.

(a) The covered battery stewardship account is an account in the general revenue fund that consists of:

(1) fees collected under Sections 361.474 and 361.475;

(2) administrative penalties collected under Subchapter C, Chapter 7, Water Code, for violations of this subchapter;

(3) civil penalties collected under Subchapter D, Chapter 7, Water Code, for violations of this subchapter; and

1           (4) interest earned on the money in the account,  
2 notwithstanding Section 404.071, Government Code.

3           (b) Money in the account may be appropriated only to the  
4 commission to implement and administer this subchapter.

5           Sec. 361.477. COMMISSION ORDER. The commission may order a  
6 producer or stewardship organization to revise the program and to  
7 take other actions necessary to comply with this subchapter.

8           Sec. 361.478. ENFORCEMENT. (a) The commission may audit  
9 or inspect a producer, stewardship organization, retailer, or  
10 wholesaler to ensure compliance with this subchapter and rules  
11 adopted under this subchapter.

12           (b) The commission and the attorney general, as  
13 appropriate, shall enforce this subchapter and, except as provided  
14 by Subsections (d) and (e), take enforcement action against a  
15 producer, stewardship organization, retailer, or wholesaler.

16           (c) The executive director or the attorney general may  
17 institute a suit under Section 7.032, Water Code, to enjoin an  
18 activity related to the sale of a covered battery in violation of  
19 this subchapter.

20           (d) The commission shall issue a warning notice to a person  
21 on the person's first violation of this subchapter. The person  
22 must comply with this subchapter not later than the 60th day after  
23 the date the warning notice is issued.

24           (e) A retailer or wholesaler who receives a warning notice  
25 from the commission that the retailer's or wholesaler's inventory  
26 violates this subchapter because it includes covered batteries from  
27 a producer that is not in compliance with this subchapter must bring



1 the inventory into compliance with this subchapter not later than  
2 the 60th day after the date the warning notice is issued.

3 (f) An administrative or civil penalty collected under  
4 Subchapter C or D, Chapter 7, Water Code, for a violation of this  
5 subchapter shall be deposited to the credit of the covered battery  
6 stewardship account.

7 SECTION 2. (a) Not later than February 1, 2016, the Texas  
8 Commission on Environmental Quality shall adopt any rules or forms  
9 needed to implement Subchapter P, Chapter 361, Health and Safety  
10 Code, as added by this Act.

11 (b) Not later than March 1, 2016, the Texas Commission on  
12 Environmental Quality shall begin accepting plans seeking approval  
13 for and approving stewardship programs established under  
14 Subchapter P, Chapter 361, Health and Safety Code, as added by this  
15 Act.

16 (c) A producer of covered batteries is not required to  
17 implement a stewardship program under Subchapter P, Chapter 361,  
18 Health and Safety Code, as added by this Act, before September 1,  
19 2016.

20 (d) This Act may not be enforced before September 1, 2016.

21 (e) The first report required by Section 361.475, Health and  
22 Safety Code, as added by this Act, is due September 1, 2018.

23 SECTION 3. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2015.