

By: Anderson of Dallas

H.B. No. 1874

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a program for the recycling of certain household
3 batteries; authorizing a fee; providing civil and administrative
4 penalties.

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

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

8 SUBCHAPTER P. HOUSEHOLD BATTERY RECYCLING PROGRAM

9 Sec. 361.471. DEFINITIONS. In this subchapter:

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

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

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

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

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

23 (B) a person other than a person described by
24 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 361.475.

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 with a battery size of
27 4.5-volt, 9-volt, D, C, AA, AAA, AAAA, or A23;

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

3 (3) a battery that:

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

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

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

12 (b) This subchapter does not apply to:

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

16 (2) a medical device that is a device as defined by 21
17 U.S.C. Section 321(h) or a drug as defined by 21 U.S.C. Section
18 321(g), if the device or drug or the battery included in the device
19 or drug:

20 (A) must be treated as infectious waste when the
21 device, drug, or battery is discarded; or

22 (B) is medically contaminated; or

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

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

27 (B) contains electrolyte as a free liquid; or

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

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

9 Sec. 361.473. EXEMPTION FOR CERTAIN BATTERY-CONTAINING
10 PRODUCTS. (a) In this section:

11 (1) "Primary battery" means a battery described by
12 Section 361.472(a)(1) or (3).

13 (2) "Primary battery-containing product" means a
14 battery-containing product described by Section 361.472(a)(2) or
15 (4).

16 (b) A person that manufactures, sells, offers for sale, or
17 imports a primary battery-containing product in this state is not
18 considered a producer of a covered battery for purposes of this
19 subchapter if, not later than the 45th day after the date of receipt
20 of a request from the commission or a producer or stewardship
21 organization that is implementing a stewardship program approved by
22 the commission under Section 361.475, the person verifies to the
23 requestor that the person only uses primary batteries supplied by a
24 producer that is:

25 (1) implementing a stewardship program approved by the
26 commission under Section 361.475; or

27 (2) a member of a stewardship organization

1 implementing a stewardship program approved by the commission under
2 Section 361.475.

3 (c) A producer or stewardship organization that is
4 implementing a stewardship program that covers the primary battery
5 contained in a primary battery-containing product of a person that
6 is not considered a producer under Subsection (b) may list the
7 person as a participant in the stewardship program implemented by
8 the producer or stewardship organization, as applicable.

9 Sec. 361.474. SALES PROHIBITED. (a) A producer of a
10 covered battery may not sell, offer for sale, or deliver to a
11 retailer for subsequent sale a covered battery unless the producer
12 or the stewardship organization in which the producer is
13 participating implements a stewardship program approved by the
14 commission under Section 361.475, provided that a producer of a
15 covered battery may sell, offer for sale, or deliver to a retailer
16 for subsequent sale a covered battery that:

17 (1) was manufactured before September 1, 2017; or
18 (2) is delivered, not later than September 1, 2027,
19 under a contract for the purchase of covered batteries that was
20 executed before September 1, 2017.

21 (b) A retailer or wholesaler may not sell or offer for sale a
22 covered battery unless the producer of the covered battery is
23 implementing a stewardship program approved by the commission under
24 Section 361.475 or is a member of a stewardship organization
25 implementing a stewardship program approved by the commission under
26 Section 361.475, provided that a retailer or wholesaler may sell or
27 offer for sale a covered battery that:

1 (1) was manufactured before September 1, 2017; or

2 (2) is delivered, not later than September 1, 2027, to
3 the retailer or wholesaler under a contract for the purchase of
4 covered batteries that was executed before September 1, 2017.

5 Sec. 361.475. STEWARDSHIP PROGRAM; COMMISSION APPROVAL OF
6 PROGRAM. (a) A producer of a covered battery that sells, offers
7 for sale, or delivers to a retailer for a subsequent sale a covered
8 battery in this state shall, individually or as part of a
9 stewardship organization, implement a stewardship program approved
10 by the commission that:

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

14 (2) prohibits a producer from refusing to collect a
15 covered battery based on the brand or producer of the covered
16 battery.

17 (b) A stewardship program submitted to the commission for
18 approval must include:

19 (1) the fee prescribed by the commission under
20 Subsection (e);

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

23 (3) a description of the method that will be used to
24 responsibly manage discarded covered batteries to ensure, to the
25 extent economically and technically feasible, that the components
26 of the discarded covered batteries are recycled or otherwise
27 managed responsibly;

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

3 (5) an education and outreach program and a
4 description of:

5 (A) the outreach procedures that will be used to
6 provide notice of the program to businesses, retailers,
7 wholesalers, haulers, local governmental entities, and the public;
8 and

9 (B) planned public educational activities that,
10 at a minimum, notify the public:

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

13 (ii) of the location of collection points
14 and how to access the collection program;

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

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

22 (c) Not later than the 30th day after the date of receipt of
23 a stewardship program by the commission, including a program that
24 is resubmitted under Subsection (d), the commission shall approve
25 or disapprove the program. The commission shall approve the program
26 if the program demonstrates to the commission's satisfaction that
27 the program will comply with the requirements of Subsection (b).

1 (d) If the commission disapproves a stewardship program,
2 the commission shall notify the producer or stewardship
3 organization in writing of the reasons for disapproval of the
4 program. A producer or organization whose program has been
5 disapproved by the commission must amend and resubmit the program
6 to the commission not later than the 45th day after the date of
7 receipt of the notice of disapproval.

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

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

12 Sec. 361.476. REPORT. (a) Not later than September 1 of
13 each year, a producer or a stewardship organization shall submit to
14 the commission a report that includes:

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

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

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

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

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

27 (b) When a producer or stewardship organization submits the

1 report, the producer or organization shall pay an administrative
2 fee in an amount determined by the commission by rule.

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

5 Sec. 361.477. COVERED BATTERY STEWARDSHIP ACCOUNT.

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

8 (1) fees collected under Sections 361.475 and 361.476;

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

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

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

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

18 Sec. 361.478. COMMISSION ORDER. The commission may order a
19 producer or stewardship organization to revise the program and to
20 take other actions necessary to comply with this subchapter.

21 Sec. 361.479. ENFORCEMENT; DEFENSE. (a) The commission
22 may audit or inspect a producer, stewardship organization,
23 retailer, or wholesaler to ensure compliance with this subchapter
24 and rules adopted under this subchapter.

25 (b) The commission and the attorney general, as
26 appropriate, shall enforce this subchapter and, except as provided
27 by Subsections (d) and (e), take enforcement action against a

1 producer, stewardship organization, retailer, or wholesaler.

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

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

10 (e) A retailer or wholesaler who receives a warning notice
11 from the commission that the retailer's or wholesaler's inventory
12 violates this subchapter because it includes covered batteries from
13 a producer that is not in compliance with this subchapter must bring
14 the inventory into compliance with this subchapter not later than
15 the 60th day after the date the warning notice is issued.

16 (f) In an enforcement action brought against a producer or
17 stewardship organization for a violation of this subchapter, it is
18 a defense to the action that the violation occurred as a result of a
19 county or municipal regulation that made it substantially
20 burdensome for the producer or stewardship organization to
21 implement the stewardship program.

22 (g) An administrative or civil penalty collected under
23 Subchapter C or D, Chapter 7, Water Code, for a violation of this
24 subchapter shall be deposited to the credit of the covered battery
25 stewardship account.

26 Sec. 361.480. CIVIL ACTION AGAINST PRODUCER WITH NO
27 STEWARDSHIP PROGRAM. (a) Except as provided by Subsection (e), a

1 plaintiff stewardship organization may bring a civil action against
2 a producer described by Subdivision (2) at any time to recover
3 damages described by Subsection (b) if:

4 (1) the plaintiff is a stewardship organization that:

5 (A) is a nonprofit organization or an
6 organization exempt from federal income tax under Section 501(a),
7 Internal Revenue Code of 1986; and

8 (B) during the implementation of a stewardship
9 program approved by the commission under Section 361.475, incurred
10 more than \$250,000 in costs collecting and recycling discarded
11 covered batteries in this state during the preceding calendar year;
12 and

13 (2) the producer from which damages are sought was not
14 implementing a stewardship program approved by the commission under
15 Section 361.475 or a member of a stewardship organization
16 implementing a stewardship program approved by the commission under
17 Section 361.475 during the period the plaintiff incurred damages
18 recoverable under Subsection (b).

19 (b) A court shall award a plaintiff stewardship
20 organization that prevails in a civil action under this section
21 damages in an amount equal to the sum of:

22 (1) the plaintiff's total costs of collecting and
23 recycling discarded covered batteries in this state during the
24 period alleged, multiplied by the percentage of discarded covered
25 batteries, by weight, for which the defendant is identifiable as
26 the producer; and

27 (2) the amount described by Subdivision (1),

1 multiplied by the percentage of discarded covered batteries, by
2 weight, for which the producer cannot be identified.

3 (c) In addition to an award of damages under Subsection (b),
4 the court shall award a plaintiff stewardship organization that
5 prevails in a civil action under this section:

6 (1) the plaintiff's litigation costs, including court
7 costs and reasonable expenses such as attorney's fees and expert
8 witness fees; and

9 (2) exemplary damages in an amount equal to three
10 times the amount awarded under Subsection (b).

11 (d) For purposes of Subsection (b), the percentage of
12 discarded covered batteries for which the defendant is identifiable
13 as the producer and the percentage of discarded covered batteries
14 for which the producer cannot be identified must be determined by
15 using a sample of not less than 500 pounds of randomly selected
16 discarded covered batteries that were collected in this state by
17 the plaintiff.

18 (e) A stewardship organization described by Subsection
19 (a)(1) may not commence a civil action under this section unless the
20 stewardship organization gives written notice stating the amount of
21 the claim and the basis for its calculation to each defendant not
22 later than the 60th day before the date the action commences.

23 (f) A civil action under this section may be brought against
24 one or more defendants.

25 Sec. 361.481. CIVIL ACTION AGAINST PRODUCER PARTICIPATING
26 IN APPROVED STEWARDSHIP PROGRAM. (a) In this section:

27 (1) "Allocated share" means the percentage of

1 discarded covered batteries, by weight, identified as being the
2 responsibility of a producer, as determined by data generated from
3 a set of qualifying discarded battery sorts.

4 (2) "Data generated from a set of qualifying discarded
5 battery sorts" means the data described by Subsection (e).

6 (3) "Stewardship program sort goal" means the sum of
7 discarded covered batteries, by weight, identified as being the
8 responsibility of all producers participating in a stewardship
9 program implemented by a plaintiff stewardship organization, as
10 determined by data generated from a set of qualifying discarded
11 battery sorts, multiplied by:

12 (A) 10 percent, if the discarded covered
13 batteries are collected on or after September 1, 2018, but before
14 September 1, 2021;

15 (B) 15 percent, if the discarded covered
16 batteries are collected on or after September 1, 2021, but before
17 September 1, 2024; or

18 (C) 20 percent, if the discarded covered
19 batteries are collected on or after September 1, 2024.

20 (b) A plaintiff stewardship organization may bring a civil
21 action against a producer described by Subdivision (2) to recover
22 damages described by Subsection (c) if:

23 (1) the plaintiff:

24 (A) is a stewardship organization described by
25 Section 361.480(a)(1); and

26 (B) collected during the preceding calendar year
27 a weight of discarded covered batteries in excess of the

1 plaintiff's stewardship program sort goal; and

2 (2) the producer from which damages are sought was
3 participating in a stewardship program implemented by a stewardship
4 organization other than the plaintiff stewardship organization
5 during the period the plaintiff incurred damages recoverable under
6 Subsection (c).

7 (c) A court shall award a plaintiff stewardship
8 organization that prevails in a civil action under this section
9 damages in an amount equal to the plaintiff's total costs of
10 collecting and recycling discarded covered batteries in this state
11 during the period alleged, multiplied by the defendant's allocated
12 share of the weight of discarded covered batteries collected by the
13 plaintiff in excess of the plaintiff's stewardship program sort
14 goal.

15 (d) In addition to an award of damages under Subsection (c),
16 the court may award a plaintiff stewardship organization that
17 prevails in a civil action under this section the plaintiff's
18 litigation costs, including court costs and reasonable expenses
19 such as attorney's fees and expert witness fees, if the court finds
20 that the award of litigation costs will serve the interests of
21 justice.

22 (e) In a civil action brought under this section, a
23 plaintiff stewardship organization's stewardship program sort goal
24 and a defendant's allocated share must be determined using the
25 total data collected from sorting 500 pounds of discarded covered
26 batteries collected at each of not fewer than three locations in
27 this state reasonably believed to be representative of the

1 population of this state. Generated data must include:

2 (1) the brands of collected discarded covered
3 batteries;

4 (2) the weight of each brand collected; and

5 (3) the percentage shares of the total collected
6 weight attributable to each identifiable brand and to all discarded
7 covered batteries not identifiable by brand.

8 (f) The sorting of discarded covered batteries described by
9 Subsection (e):

10 (1) may be undertaken at any time after the plaintiff
11 stewardship organization's stewardship program is approved by the
12 commission under Section 361.475; and

13 (2) may not take place over a period that exceeds five
14 years.

15 (g) A stewardship organization described by Subsection
16 (b)(1) may not commence a civil action under this section unless the
17 stewardship organization gives written notice stating the amount of
18 the claim and the basis for its calculation to each defendant not
19 later than the 60th day before the date the action commences.

20 (h) A civil action under this section may be brought against
21 one or more defendants.

22 SECTION 2. (a) Not later than February 1, 2018, the Texas
23 Commission on Environmental Quality shall adopt any rules or forms
24 needed to implement Subchapter P, Chapter 361, Health and Safety
25 Code, as added by this Act.

26 (b) Not later than March 1, 2018, the Texas Commission on
27 Environmental Quality shall begin accepting plans seeking approval

1 for and approving stewardship programs established under
2 Subchapter P, Chapter 361, Health and Safety Code, as added by this
3 Act.

4 (c) A producer of covered batteries is not required to
5 implement a stewardship program under Subchapter P, Chapter 361,
6 Health and Safety Code, as added by this Act, before September 1,
7 2018.

8 (d) This Act may not be enforced before September 1, 2018.

9 (e) The first report required by Section 361.476, Health and
10 Safety Code, as added by this Act, is due September 1, 2020.

11 SECTION 3. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2017.