AMENDED IN ASSEMBLY APRIL 21, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

california legislature—2015–16 regular session

ASSEMBLY BILL No. 1159

Introduced by Assembly Members Gordon and Williams
(Coauthor: Assembly Member Mark Stone)

February 27, 2015

An act to add and repeal Chapter 19.5 (commencing with Section 42968) of Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

legislative counsel's digest

AB 1159, as amended, Gordon. Product stewardship: pilot program: household batteries and home-generated sharps waste.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy, and other natural resources.

Existing law requires a pharmaceutical manufacturer selling or distributing medication that is intended to be self-injected at home to submit, on an annual basis, to the Department of Resources Recycling and Recovery a plan supporting the safe collection and proper disposal of specified waste devices.

Existing law leaves in operation Department of Toxic Substances Control regulations, adopted until January 1, 2008, to exempt a hazardous waste management activity, including management of hazardous waste batteries, from certain statutory requirements related to hazardous waste management if specified conditions for exemption are met, including that the regulations identify the waste as a universal waste.

This bill would establish the Product Stewardship Pilot Program and, until January 1, 2024, would require producers and product stewardship organizations of covered products, defined to mean a consumer product that is used or discarded in this state and is either home-generated sharps waste or household batteries, to develop and implement a product stewardship plan, as specified.

This bill would require, by July 1, 2017, a producer of a covered product, individually or through a product stewardship organization, to submit a product stewardship plan to the Department of Resources Recycling and Recovery. The bill would require the product stewardship plan to include specified elements, including strategies to achieve performance standards and a funding mechanism that provides sufficient funding to carry out the plan. The department would be required to review and determine whether the plan is complete and, if complete, determine whether to approve or not approve the plan. The bill would require the department to notify the submitter of its decision to approve or not approve the plan, and, if the department does not approve the plan, would require the department to describe the reasons for its disapproval. The bill would authorize the submitter to revise and resubmit the plan and would specify that a plan not approved by January 1, 2018, is out of compliance.

The bill would require a producer or product stewardship organization implementing a product stewardship plan to prepare and submit to the department an annual report describing the activities carried out pursuant to the product stewardship plan, including whether the producer or product stewardship organization, in implementing the plan, attained the performance standards for the covered product, and if the performance standards were not met, what actions the producer or product stewardship organization will be taking to attain those performance standards.

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the ~~department, on an unspecified schedule,~~ *department* an annual administrative fee, as determined by the department. The bill would require the fee be set at an amount that, when paid by every product stewardship organization that submits a product stewardship plan, is adequate to cover the department's full costs of administering and enforcing the program.

The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill and would provide that a plan submitter whose plan is not approved by the department by July 1, 2018, is subject to those penalties until the plan is approved. The bill would establish the Product Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Product Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would provide that certain actions of a product stewardship organization or its members are not violations of the Cartwright Act or certain provisions regulating unfair business practices or unfair competition.

The bill would require the department, by January 1, 2017, to adopt regulations to implement these provisions, including setting performance standards for each covered product, which would include a minimum collection rate and appropriate geographic coverage, and procedures for product stewardship plan submittal. By March 1, 2017, the department would also be required to appoint a stakeholder advisory committee for each covered product to provide technical feedback to a product stewardship organization. The bill would also require the advisory committee to annually report to the department on the progress of the product stewardship organizations' implementation of the bill's provisions.

The bill would require the department, by July 1, 2023, to report, for each covered product, specified information to the appropriate committees of the Legislature, including, the department's evaluation of each product stewardship organization, product stewardship organization evaluations of the department and stakeholder advisory committee, stakeholder advisory committee reports, and audited financials of each product stewardship organization. The bill would authorize the department to impose additional reporting requirements on product stewardship organizations and the stakeholder advisory committees to meet the department's reporting requirements to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 19.5 (commencing with Section 42968) is added to Part 3 of Division 30 of the Public Resources Code, to read:

Chapter 19.5. Product Stewardship Pilot Program

Article 1. Definitions

42968. "Collection rate" means the percentage of covered products, by weight, that are collected during a calendar year by a product stewardship organization as compared to the average annual weight of all covered products that were estimated to have been sold in the state during the previous three years by that product stewardship organization's members or the individual producer. The collection rate of a product stewardship organization of covered products may be based on a reasonable pro rata calculation of national sales.

42968.01. "Consumer" means a purchaser, owner, or lessee of a product, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

42968.02. "Consumer product" means a product that is sold in this state in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

42968.04. "Covered product" means a consumer product that is used or discarded in this state and is either of the following:

(a) Home-generated sharps waste, as defined in Section 117671 of the Health and Safety Code.

(b) Household batteries, as defined in subdivision (c) of Section 42450.

42968.06. "Department" means the Department of Resources Recycling and Recovery.

42968.07. "Geographic coverage" means the number of convenient collection sites provided by a product stewardship organization, free of charge, for consumers in each county of the state where the product stewardship organization's members or the individual producer sell, offer for sale, or distribute a covered product.

42968.08. "Performance standards" means the standards set by the department pursuant to Section 42968.22.

42968.10. "Producer," with regard to a covered product that is sold, offered for sale, or distributed in the state, means one of the following:

(a) A person who manufactures the covered product and who sells, offers for sale, or distributes that covered product in the state under that person's own name or brand.

(b) If there is no person who sells, offers for sale, or distributes the covered product in the state under the person's own name or brand, the producer of the covered product is the owner or licensee of a trademark or brand under which the covered product is sold or distributed in the state, whether or not the trademark is registered.

(c) If there is no person who is a producer of the covered product for purposes of subdivisions (a) and (b), the producer of that covered product is the person who imports the product into the state for sale or distribution.

42968.12. "Product stewardship organization" means either of the following:

(a) An organization created by one or more producers of a covered product to act as an agent on behalf of the producer to design, submit, and administer a product stewardship plan pursuant to this chapter.

(b) A producer of a covered ~~product that complies with this chapter as an individual producer.~~ *product.*

42968.14. "Product stewardship plan" or "plan" means a plan written by an individual producer or a product stewardship organization that includes all of the information required by Section 42968.32.

Article 2. General Provisions

42968.20. Each product stewardship organization of a covered product in this state shall develop and implement a product stewardship plan in accordance with the provisions of this chapter.

42968.22. (a) On or before January 1, 2017, the department shall adopt regulations to implement the provisions of this chapter. The regulations shall, at a minimum, include:

(1) Performance standards for a covered product that are to be met by a product stewardship plan, which shall include a minimum collection rate for a covered product and appropriate geographic coverage for a covered product.

(2) Procedures for product stewardship plan submittal to the department.

(3) The appointment of a stakeholder advisory committee, as described in Article 6 (commencing with Section 42968.60).

(b) Regulations adopted pursuant to subdivision (a) shall have no effect after the repeal of this chapter.

42968.26. (a) Except as provided in subdivision (b), any action by a product stewardship organization or its members that relates to any of the following is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code):

(1) The creation, implementation, or management of a product stewardship plan approved by the department pursuant to Section 42968.34.

(2) The cost and structure of an approved product stewardship plan.

(b) Subdivision (a) does not apply to an agreement that does any of the following:

(1) Fixes a price of or for a covered product, except for any agreement related to a product stewardship plan approved by the department and otherwise in accordance with this chapter.

(2) Fixes the output of production of a covered product.

(3) Restricts the geographic area in which, or customers to whom, a covered product will be sold.

Article 3. Product Stewardship Plan

42968.30. On or before July 1, 2017, a product stewardship organization shall submit a product stewardship plan to the department that will divert the covered product from landfills and manage the covered product in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Section 40051.

42968.32. A product stewardship plan required to be submitted pursuant to Section 42968.30 shall include all of the following:

(a) Strategies to achieve the performance standards set by the department pursuant to Section 42968.22.

(b) Strategies for managing and reducing the life-cycle impacts of the covered product.

(c) A funding mechanism that provides sufficient funding to carry out the plan, including the administrative, operational, and capital costs of the plan, and payment of fees pursuant to Section 42968.40.

(d) A process by which the financial activities of the product stewardship organization that are related to implementation of the plan will be subject to an independent audit, which may be reviewed by the department.

42968.34. (a) Within 30 days after the department receives a plan submitted pursuant to Section 42968.30, the department shall review the plan, and determine whether the plan is complete or incomplete. If the department does not deem the plan complete, the department shall notify the product stewardship organization that submitted the plan of the deficiencies, and the product stewardship organization shall revise and resubmit the plan within 30 days of receiving the notice.

(b) If the department determines that the plan is complete, the department shall have 60 days after determining the plan is complete to determine whether it complies with Section ~~42968.32,~~ *42968.32 and any regulations adopted by the department pursuant to this chapter,* and notify the submitter of its decision to approve or not approve the plan.

(c) If the department does not approve the plan, it shall describe the reasons for its disapproval in the notice. The submitter may revise and resubmit the plan within 60 days after receiving notice of disapproval and the department shall review and approve or not approve the revised plan within 60 days after receipt. Any plan not approved by January 1, 2018, shall be out of compliance with this chapter and, commencing July 1, 2018, if the plan is not approved as of that date, the submitter of the plan is subject to the penalties specified in Section 42968.50 until the plan is approved by the department.

Article 4. Financial Provisions

42968.40. (a) A product stewardship organization submitting a product stewardship plan shall pay the department an annual administrative fee. The department shall set the fee at an amount that, when paid by every product stewardship organization that submits a product stewardship plan, is adequate to cover the department’s full costs of administering and enforcing this chapter, including any program development costs or regulatory costs incurred by the department prior to product stewardship plans being submitted. The department may establish a variable fee based on relevant factors, including, but not limited to, the portion of covered products sold in the state by members of the organization compared to the total amount of covered products sold in the state by all organizations submitting a product stewardship plan.

(b) The total amount of annual fees collected pursuant to this section shall not exceed the amount necessary to recover costs incurred by the department in connection with the administration and enforcement of the requirements of this chapter.

~~(c) A product stewardship organization subject to this section shall pay the department the administrative fee pursuant to subdivision (a) on or before ____, and annually thereafter through ____.~~

~~(d)~~

(c) The department shall deposit the fees collected pursuant to this section into the Product Stewardship Account created pursuant to Section 42968.42.

42968.42. (a) The Product Stewardship Account and the Product Stewardship Penalty Subaccount are hereby established in the Integrated Waste Management Fund.

(b) All fees collected by the department pursuant to this article shall be deposited in the Product Stewardship Account and may be expended by the department, upon appropriation by the

Legislature, to cover the department's costs to implement this chapter.

(c) All civil penalties collected pursuant to Article 5 (commencing with Section 42968.50) shall be deposited in the Product Stewardship Penalty Subaccount and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.

Article 5. Penalties

42968.50. (a) A civil penalty up to the following amounts may be administratively imposed by the department or imposed by the court on any person who is in violation of any provision of this chapter:

(1) One thousand dollars ($1,000) per day.

(2) Ten thousand dollars ($10,000) per day if the violation is intentional, knowing, or negligent.

(b) In assessing or reviewing the amount of a civil penalty imposed pursuant to subdivision (a) for a violation of this chapter, the department or the court shall consider all of the following:

(1) The nature and extent of the violation or violations.

(2) The number and severity of the violation or violations.

(3) The economic effect of the penalty on the violator.

(4) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.

(5) The willfulness of the violator's misconduct.

(6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(7) Any other factor that justice may require.

~~(Added by Stats. 2010, Ch. 681, Sec. 2. (AB 2398) Effective January 1, 2011.)~~

42968.52. Moneys collected pursuant to this article shall be deposited in the Product Stewardship Penalty Subaccount, established pursuant to Section 42968.42.

Article 6. Stakeholder Advisory Committee

42968.60. (a) On or before March 1, 2017, the department shall appoint a stakeholder advisory committee for each covered product to provide technical feedback to a product stewardship organization. The stakeholder advisory committee shall report annually to the department on the progress of the product stewardship organizations' implementation of this chapter.

(b) Members of the advisory committee for a covered product shall include members of the environmental community, solid waste industry, local governments, retailers, and other key stakeholders for that covered product.

(c) The stakeholder advisory committee for a covered product shall be independent of the product stewardship organizations for that covered product. The advisory committee's expenses shall be covered by its members and not the product stewardship organizations for that covered product or the state.

(d) A product stewardship organization for a covered product shall have no control over the advisory committee for that covered product or its activities.

Article 7. Reporting

42968.70. Beginning on or before the first January 1 more than one year after a product stewardship plan is approved, and on or before every January 1 thereafter, each product stewardship organization implementing a product stewardship plan shall prepare and submit to the department an annual report describing the activities carried out pursuant to the product stewardship plan during the previous reporting period, including, but not limited to, whether the product stewardship organization, in implementing the plan, attained the performance standards for the covered product~~, and~~ *and*, if the performance standards were not met, what actions the product stewardship organization will take during the next reporting period to attain those performance standards.

42968.72. On or before July 1, 2023, the department shall report all of the following, for each covered product, to the appropriate committees of the Legislature:

(a) The department's evaluation of each product stewardship organization.

(b) Each product stewardship organization's evaluation of the department and the advisory committee.

(c) Stakeholder advisory committee reports submitted to the department pursuant to Section 42968.60.

(d) Audited financials of each product stewardship organization.

(e) The amount of money saved by state and local governments as a result of implementing a product stewardship plan.

(f) Whether the performance standards set by the department were met.

42968.74. The department may impose reporting requirements on product stewardship organizations and the stakeholder advisory committee of a covered product to ensure that the department is able to meet its reporting requirements to the Legislature pursuant to Section 42968.72.

Article 8. Repeal

42968.80. This chapter shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2024, deletes or extends that date.

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