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## AB-2440 Responsible Battery Recycling Act of 2022. (2021-2022)

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### Assembly Bill No. 2440

#### CHAPTER 351

An act to add Article 5 (commencing with Section 42457) to Chapter 8.4 of, Article 7 (commencing with Section 42499.5) to Chapter 8.6 of, and Chapter 7.5 (commencing with Section 42420) to, and to repeal Chapter 8.4 (commencing with Section 42451) and Chapter 8.6 (commencing with Section 42490) of, Part 3 of Division 30 of the Public Resources Code, relating to recycling.

[ Approved by Governor September 16, 2022. Filed with Secretary of State September 16, 2022. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2440, Irwin. Responsible Battery Recycling Act of 2022.

The Rechargeable Battery Recycling Act of 2006 requires every retailer, as defined, to have in place a system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal. The Cell Phone Recycling Act of 2004 prohibits the sale of a cell phone in this state to a consumer unless the retailer of that cell phone has in place a take-back system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal.

This bill would make the Rechargeable Battery Recycling Act of 2006 inoperative as of September 30, 2026, and would repeal that act as of January 1, 2027, and would make the Cell Phone Recycling Act of 2004 inoperative as of September 30, 2027, and would repeal that act as of January 1, 2028.

This bill would enact the Responsible Battery Recycling Act of 2022, which would require producers, as defined, either individually or through the creation of one or more stewardship organizations, to establish a stewardship program for the collection and recycling of covered batteries, as defined. The bill would require a program operator, as defined, to develop, and to submit to the Department of Resources Recycling and Recovery (department) and the Department of Toxic Substances Control for review and for approval by the department, as specified, a stewardship plan and would prescribe the standards and elements required to be contained in a stewardship plan for covered batteries. The bill would require the department, in consultation with the Department of Toxic Substances Control, to adopt regulations to implement the act with an effective date of no earlier than April 1, 2025. The bill would require a program operator to have a complete stewardship plan approved by the department no later than 24 months after the effective date of the regulations adopted by the department in order for the program operator to be in compliance with the act.

This bill would require a program operator to be audited annually, and submit a report and budget to the department, as prescribed, and would require a program operator, stewardship organization, producer, manufacturer, distributor, retailer, importer, recycler, or collection site to, among other things, provide the department and the Department of Toxic Substances Control with relevant records necessary to determine compliance with the act. The bill would require reports and records provided to the department to be provided under penalty of perjury, thereby creating a state-mandated local program by expanding the crime of perjury. The bill would restrict public access to certain information collected for the purpose of administering a stewardship

program. The bill would preempt all rules, regulations, codes, ordinances, or other laws adopted by a city, county, city and county, municipality, or a local agency on or after January 1, 2023, regarding stewardship programs for covered batteries.

This bill would require the department, within 24 months of the effective date of the regulations to implement these provisions, and each year thereafter, to post on its internet website a list of producers that are in compliance with the act, including the reported brands of covered batteries of each producer. The bill would require the department to remove from the list any producer, including its brands and covered batteries, that is not in compliance with the act. The bill would prohibit, on and after the date that a stewardship plan is approved by the department, a retailer or distributor from selling, distributing, offering for sale, or importing a covered battery in or into the state unless the producer of the covered battery is listed on that list as in compliance on the act, except as specified. The bill would require the department to relist on its internet website a producer, along with its brands and covered batteries, if the department subsequently determines that the producer is in compliance with the act.

This bill would require a program operator to reimburse the department and the Department of Toxic Substances Control for their respective actual and reasonable regulatory costs that are directly related to implementing and enforcing the act in relation to the program operator's activities. The bill would require the department and the Department of Toxic Substances Control to deposit those moneys into the Covered Battery Recycling Fund, which the bill would establish, and would authorize the department and the Department of Toxic Substances Control to expend those moneys, upon appropriation by the Legislature, to implement and enforce the act.

This bill would provide for enforcement of the act, including authorizing the department to impose an administrative civil penalty on a program operator, stewardship organization, producer, manufacturer, distributor, retailer, importer, recycler, or collection site in violation of the act not to exceed \$10,000 per day, unless the violation is intentional, knowing, or reckless, then in that case not to exceed \$50,000 per day. The bill would require the department to deposit those moneys into the Covered Battery Recycling Penalty Account, which the bill would establish in the fund, and would make those moneys available for expenditure upon appropriation by the Legislature.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Chapter 7.5 (commencing with Section 42420) is added to Part 3 of Division 30 of the Public Resources Code, to read:

### **CHAPTER 7.5. Responsible Battery Recycling Act of 2022**

#### **Article 1. General Provisions**

**42420.** This chapter shall be known, and may be cited, as the Responsible Battery Recycling Act of 2022.

**42420.1.** For purposes of this chapter, the following terms have the following meanings:

(a) "Brand" means a trademark, including both a registered trademark and an unregistered trademark, a logo, a name, a symbol, a word, an identifier, or a traceable mark that identifies a covered battery and identifies the owner or licensee of the brand.

(b) "Collection site" means a permanent or temporary location at which covered batteries are collected and prepared for transport in accordance with the requirements of this chapter.

(c) "Consumer" means an owner of a covered battery, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity, and includes the ultimate purchaser, owner, or lessee of a covered battery, who is not, as to that covered battery, the distributor, importer, producer, recycler, retailer, or stewardship organization.

(d) (1) "Covered battery" means a device consisting of one or more electrically connected electrochemical cells designed to receive, store, and deliver electric energy. A covered battery includes a battery that is any of the following:

(A) A loose battery that is either sold separately from a product or that is designed to be easily removed from a product by the user of the product, with no more than common household tools.

(B) A battery that is packed with, but not installed in, the product that the battery is intended to power, when the product is offered for sale by the producer.

(2) "Covered battery" does not include any of the following:

(A) A primary battery weighing over two kilograms. For purposes of this subparagraph, "primary battery" means a nonrechargeable battery, including, but not limited to, alkaline, carbon-zinc, and lithium metal batteries.

(B) A rechargeable battery weighing over five kilograms and having a Watt-hour rating of more than 300 Watt-hours.

(C) A lead-acid battery, as defined in subdivisions (a) and (b) of Section 42440.

(D) (i) A battery contained in a motor vehicle. For purposes of this subparagraph, "motor vehicle" has the same meaning as set forth in Section 415 of the Vehicle Code.

(ii) Notwithstanding any other law, the exclusion in clause (i) does not apply to a battery contained in any of the following:

(I) A motorized scooter.

(II) A motorized skateboard.

(III) A motorized hoverboard.

(IV) A device intended to propel or move upon a highway only one individual person or property.

(E) A fuel cell electrical generating facility. For purposes of this subparagraph, "fuel cell electrical generating facility" has the same meaning as "eligible fuel cell electrical generating facility," as defined in Section 2827.10 of the Public Utilities Code.

(F) (i) A Class I device as defined in Section 360c of Title 21 of the United States Code, and either of the following applies:

(I) It is a device described in Section 414.202 of Title 42 of the Code of Federal Regulations.

(II) Either of the following applies:

(ia) The device is predominantly used in a health care setting by a provider.

(ib) The device is predominantly prescribed by a health care provider.

(ii) A Class II or Class III device as defined in 360c of Title 21 of the United States Code.

(G) A battery that has been recalled.

(e) "Department" means the Department of Resources Recycling and Recovery or a successor agency.

(f) "Distributor" means a company that has a contractual relationship with one or more producers to market and sell covered batteries to retailers.

(g) "Electrochemical cell" means a system consisting of an anode, a cathode, and an electrolyte, plus electrical or mechanical connections needed to allow the cell to deliver or receive electric energy.

(h) "Importer" means either of the following:

(1) A person qualifying as an importer of record for purposes of Section 1484(a)(2)(B) of Title 19 of the United States Code with regard to the import of a covered battery that is sold, distributed for sale, or offered for sale in or into the state that was manufactured or assembled by a company outside of the United States.

(2) A person importing into the state for sale, distributing for sale, or offering for sale in the state a covered battery that was manufactured or assembled by a company physically located outside of the state.

(i) "Person" has the same meaning as set forth in Section 40170.

(j) (1) "Producer" means a person who manufactures a covered battery and who owns or is the licensee of the brand or trademark under which that covered battery is sold, offered for sale, or distributed for sale in or into the state.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered battery is the owner of a brand or trademark or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the covered battery is sold, imported for sale, offered for sale, or distributed for sale in or into the state. For purposes of this subdivision, an exclusive licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution for sale in or into the state of the covered battery.

(3) If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered battery is the person who sells, offers for sale, or is the importer or distributor of the covered battery in or into the state for sale in or into the state.

(4) For purposes of this chapter, the sale of a covered battery shall be deemed to occur in the state if the covered battery is delivered to the purchaser in the state.

(5) "Producer" does not include an admitted insurer possessing a certificate of authority from the Insurance Commissioner pursuant to Section 700 of the Insurance Code, nor does it apply to a placement of insurance that was made in full compliance with Section 1765.1 or 1765.2 of the Insurance Code.

(k) "Program operator" means a producer, or a stewardship organization on behalf of a group of producers, that is responsible for implementing a stewardship program in accordance with the requirements of this chapter.

(l) (1) "Rechargeable battery" means a battery that contains one or more voltaic or galvanic cells, electrically connected to produce electric energy, and that is designed to be recharged.

(2) "Rechargeable battery" does not include either of the following:

(A) A battery that contains electrolytes as a free liquid.

(B) A battery that employs lead-acid technology, unless that battery is sealed and contains no free liquid electrolytes.

(m) "Recycler" means a person who changes the physical or chemical composition of covered batteries.

(n) "Recycling" has the same meaning as set forth in subdivision (a) of Section 25121.1 of the Health and Safety Code. "Recycling" does not include any of the following:

(1) Combustion.

(2) Incineration.

(3) Energy generation.

(4) Fuel production.

(5) Beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover.

(6) Other forms of disposal, as defined in subdivision (b) of Section 40192.

(o) "Recycling efficiency rate" means the ratio of the weight of covered battery components recycled by a program operator from covered batteries to the weight of those covered batteries collected by the program operator.

(p) "Retailer" means a person who sells or offers for sale covered batteries in or into the state to a person through any means, including, but not limited to, sales outlets, catalogs, the telephone, the internet, or any electronic means.

(q) "Stewardship organization" means an organization exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)) that is established by a group of producers in accordance with this chapter to develop and implement a stewardship program.

(r) "Stewardship plan" or "plan" means a plan developed by program operator pursuant to this chapter for the collection, transportation, and recycling, and the safe and proper management, of covered batteries.

(s) "Stewardship program" means a program established by a program operator pursuant to this chapter for the free at drop off, convenient, and safe collection, transportation, recycling, and otherwise proper management of covered batteries.

**42420.2.** The department, acting in accordance with Article 1 (commencing with Section 11340) to Article 8 (commencing with Section 11350), inclusive, of the Administrative Procedure Act, as set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and in consultation with the Department of Toxic Substances Control, shall adopt regulations to implement this chapter with an effective date of no earlier than April 1, 2025.

**42420.3.** (a) The department may adjust, through regulations adopted by the department, the minimum required collection sites, pursuant to subdivision (c) of Section 42422.1, to ensure that consumers have sufficient convenient access to collection sites, applicable to stewardship plans addressing collection of covered batteries if the department has substantial evidence that allowing for this adjustment will increase the collection of covered batteries.

(b) The department shall establish, through regulations adopted by the department pursuant to Section 42420.2, a limit on the number of covered batteries to be deposited at a single collection site, pursuant to subdivision (d) of Section 42422.1, as applicable, by a single consumer in a single day.

(c) Beginning January 1, 2032, and every five years thereafter, the department may after consultation with the program operators and through regulations adopted by the department adjust the minimum recycling efficiency rates established in Section 42422.1 based on the most economically and technically feasible processes and methodology available.

**42420.4.** (a) (1) A program operator shall include as a collection site under its stewardship program any entity that offers in writing to participate in the stewardship program, complies with all applicable state, federal, and municipal laws and regulations, complies with any program operator requirements that are consistent with that program operator's approved stewardship plan, and is judged by the program operator to have sufficient staff and resources to reliably comply, even if the minimum thresholds described in subdivision (d) of Section 42422.1, as applicable, have been achieved.

(2) A program operator shall include as a collection site under its stewardship program any household hazardous waste collection facility, as defined in Section 25218.1 of the Health and Safety Code, that offers in writing to participate in the stewardship program, complies with all applicable state, federal, and municipal laws and regulations, and complies with any program operator requirements that are consistent with that program operator's approved stewardship plan, even if the minimum thresholds described in subdivision (d) of Section 42422.1, as applicable, have been achieved.

(b) A program operator shall include the offering entity as a collection site in the stewardship program within 90 days of receiving the written offer to participate, confirming that the offering entity will comply with all applicable state and federal laws and regulations, and confirming that the offering entity has sufficient staff and resources to comply with any program operator requirements that are consistent with that program operator's approved stewardship plan, even if the minimum thresholds described in subdivision (d) of Section 42422.1, as applicable, have been achieved. The program operator shall not be required to respond to offers pursuant to this paragraph until the program operator's stewardship plan has been approved by the department.

(c) A program operator may suspend or terminate a collection site or service that does not comply with all applicable state, federal, or municipal laws and regulations or adhere to the rules and conditions imposed by the program operator pursuant to paragraph (3) of subdivision (d) of Section 42422.1.

(d) A collection site shall be operated to ensure that covered batteries, as applicable, are collected safely and handled in accordance with all applicable state, federal, and municipal laws and regulations and the rules and conditions of the stewardship plan.

(e) This section does not exempt the program operator from meeting the minimum thresholds described in subdivision (d) of Section 42422.1.

## **Article 2. Program Operators for Covered Batteries**

**42421.** (a) No later than 180 days after the effective date of this chapter, individual producers shall provide to the department, in a form and manner established by the department, a list of covered batteries and brands of covered batteries that the producer sells, distributes for sale, imports for sale, or offers for sale in or into the state.

(b) A program operator shall update the list described in subdivision (a) and provide the updated list to the department on or before January 15 of each year or upon request of the department, with at least 60 days to respond after a request from the department.

**42421.2.** (a) Producers may establish one or more stewardship organizations composed of producers to develop and implement a covered battery recycling program.

(b) (1) A producer shall comply with this chapter, and any effective regulations adopted pursuant to Section 42420.2, either individually or through a stewardship organization established pursuant to subdivision (a).

(2) A producer shall not sell, distribute for sale, offer for sale, or import for sale a covered battery in or into this state unless the producer is in compliance with this chapter and any regulations in effect and adopted pursuant to Section 42420.2.

(3) Every producer shall, no later than 180 days after the effective date of this chapter, notify all persons through which it is selling, distributing, importing, or offering for sale a covered battery in or into the state for sale in or into the state whether it will comply with this chapter individually or through a stewardship organization.

(c) Each producer covered under a stewardship organization shall register with that stewardship organization in accordance with the procedures and requirements established by that stewardship organization and shall comply with those procedures and requirements.

### **Article 3. Stewardship Plans for Covered Batteries**

**42422.** Within 12 months of the effective date of the regulations adopted by the department pursuant to Section 42420.2, a program operator shall develop and submit to the department a complete stewardship plan, in accordance with the requirements of this chapter, for the collection, transportation, and recycling, and the safe and proper management, of covered batteries in the state in an economically efficient and practical manner. No stewardship program serving more than one producer may limit its collection, transportation, and recycling of covered batteries to covered batteries of the producers participating in that stewardship program.

**42422.1.** A stewardship plan for covered batteries shall include all of the following:

(a) The names of producers, as defined in subdivision (j) of Section 42420.1, and brands of covered batteries covered under the stewardship plan.

(b) A description of the process by which the program operator consulted with the advisory body created pursuant to Section 42422.4 to receive advice on the development and implementation of the stewardship plan.

(c) A description of methodologies for measuring, and meeting or exceeding, the established minimum recycling efficiency rate for primary and rechargeable batteries to meet the annual report requirement in subdivision (i) of Section 42424.1.

(d) A description of how the program operator will provide for a free at drop off and convenient collection system for covered batteries in each county of the state that meets all of the following requirements:

(1) A minimum of 10 collection sites per county or one collection site per 15,000 people, whichever is greater, except as identified below:

(A) A county with a population of 18,000 and under, as reported annually by the Department of Finance, shall have a minimum of three collection locations.

(B) A county with a population of between 18,001 and 50,000, as reported annually by the Department of Finance, shall have a minimum of four collection locations.

(C) A county with a population between 50,001 and 100,000, as reported annually by the Department of Finance, shall have a minimum of eight collection locations.

(2) The collection sites required by subdivision (d) shall not be required to collect covered batteries that are damaged, defective, or recalled.

(3) The collection sites in each county shall be spread throughout the county to facilitate widespread access and convenience. This paragraph does not authorize the department to require more than the minimum number of collection sites required pursuant to paragraph (1) or the regulations adopted by the department pursuant to Section 42420.2.

(e) A description of how collection sites will be authorized and managed, including both of the following:

(1) An explanation of the process by which the program operator will, upon request, provide to a household hazardous waste collection facility as defined in Section 25218.1 of the Health and Safety Code, at no cost, and to all other collection sites, at cost, packaging consistent with the requirements found in the United States Department of Transportation's hazardous materials regulations and the necessary forms and instructions for the safe collection and transportation of damaged or defective covered batteries.

(2) An explanation of the process by which the program operator will provide for the collection and transport of covered batteries from the collection sites to a recycler and how shipments will be documented. A program operator shall maintain these

records and make them available to the department upon request.

(f) A program operator shall allow a consumer to drop off at a collection site, at no charge at drop off, covered batteries.

(g) A description of how the program operator will provide collection sites at no cost to the collection sites with appropriate containers for covered batteries subject to its program, training, signage, safety guidance, and educational materials.

(h) All handling, collection, transport, and recycling of covered batteries undertaken as part of a stewardship program under this chapter shall comply with all applicable state and federal laws and regulations, but the department may not take enforcement action under this chapter against a program operator for failure to comply with those state and federal laws and regulations unless the program operator is first determined to have violated the applicable state or federal law or regulation by the governing body with jurisdiction to enforce the state or federal law or regulation.

(i) A retailer with five or more locations in the state shall make all locations serve as permanent collection sites for covered batteries, and shall comply with the rules and conditions of the program in which it participates, as part of a stewardship program.

(j) No program operator shall be required, as a condition of approval of its plan or program or otherwise, to accept damaged, defective, or recalled batteries at sites served by the program operator. Program operators shall provide to sites participating in their programs, information for persons seeking to recycle damaged or defective batteries informing those persons of the requirements for doing so and of the closest location at which damaged or defective batteries may be accepted. Program operators shall provide to sites participating in their programs information for persons seeking to recycle recalled batteries informing those persons of instructions to contact any entity recalling batteries to determine the appropriate handling of those batteries.

(k) (1) A description of the method to establish and administer a means for fully funding the stewardship program in a manner that equitably distributes the stewardship program's costs among the producers that are part of the stewardship organization. For producers that elect to meet the requirements of this chapter individually, without joining a stewardship organization, a description of the proposed method to establish and administer a means for fully funding the stewardship program.

(2) The stewardship plan shall include a stewardship program budget, for the next three calendar years, that includes a funding level and anticipated revenues and costs sufficient to cover the budgeted costs, including, but not limited to, administrative costs, operational costs, and capital costs, to operate the stewardship program in a prudent and responsible manner. Administrative costs shall include the department's and the Department of Toxic Substances Control's anticipated actual, reasonable, and direct regulatory costs to implement and enforce this chapter as the criteria for all the costs are defined in the regulations adopted pursuant to Section 42420.2. For purposes of this paragraph, stewardship program implementation begins once the department approves a program operator's stewardship plan, except the department's and the Department of Toxic Substances Control's costs shall include actual, reasonable, and direct regulatory development costs and other startup regulatory costs incurred prior to stewardship plan submittal and approval.

(l) A description of the process by which covered batteries will be processed and recycled following collection at collection sites, including all of the following:

(1) A description of how covered batteries will be handled and recycled, including how covered batteries will not be disposed of by the program operator and a description of how the recycling of all covered batteries will be maximized.

(2) A description of how discarded covered battery residual materials will, to the extent economically and technically feasible, be recycled and a description of how contracts with service providers will require that this be done and how the contractor will accomplish this.

(3) A description of how the program operator will prioritize the use of recycling facilities located closer to the point of generation to minimize transportation emissions and increase accountability.

(m) Coordination with, and a description of the efforts and methods used to coordinate activities with, all of the following entities who are responsive to a request from the program operator:

(1) Other program operators.

(2) Existing battery collection and recycling programs, including electronic waste recyclers and dismantlers.

(3) Community-based organizations that contact the program operator and that are qualified to run or support collection events.

(n) Consultation with the California Environmental Protection Agency's Environmental Justice Task Force regarding methods to supplement those of the program operator to collect covered batteries for recycling in areas and communities that face unique challenges associated with proper waste management, such as poverty, language barriers, and illegal disposal.

(o) A comprehensive statewide education and outreach program designed to educate consumers and promote participation in the collection and recycling program offered by the program operator. At a minimum, the comprehensive statewide education and outreach program shall include all of the following:

(1) A description of the education and communications strategy being implemented to effectively promote participation in the approved covered battery stewardship program and provide the information necessary for effective participation of consumers, retailers, and others.

(2) An internet website that publicizes the location of collection sites and provides information to consumers on the free at drop off and convenient network of collection sites offered by the stewardship program and any other information reasonably necessary to safely and conveniently access the collection and recycling services offered in the state.

(3) All signage and materials required for collection sites by the program operator, and the method by which collection sites can access replacement materials at no cost to the collection site.

(4) A description of efforts to support participation by all California communities, including a description of efforts to communicate with consumers in languages other than English, as described in subdivision (n).

(5) A description of goals and metrics used to determine the success of the statewide education and outreach program.

(6) The statewide education and outreach program shall promote the safe and proper management of covered batteries.

(7) The statewide education and outreach program shall not promote the disposal of covered batteries in a manner inconsistent with the services offered by the stewardship plan.

(8) The statewide education and outreach plan shall include information for consumers about how to avoid improper disposal of covered batteries.

(9) A description of how the program operators will annually assess and evaluate the efficacy of the comprehensive statewide education and outreach program and periodically adjust strategies to maximize participation in the stewardship program.

(10) (A) Any program operator serving more than one producer shall coordinate with other program operators on the education and outreach programs that they implement pursuant to this subdivision.

(B) The department may approve multiple program operators sharing, on an equitable basis, the costs of implementing elements of the program that benefit all approved plans serving more than one producer and the program operators sponsoring them, except those costs specified in paragraphs (2) and (9).

(p) Developing strategies in coordination with other program operators to develop and implement proper labeling of covered batteries to ensure proper collection and recycling, by identifying the chemistry of the covered battery and including an indication that the covered battery should not be disposed of as household waste

(q) A contingency plan in the event the stewardship plan expires, is disapproved, or is revoked. The contingency plan shall describe how the stewardship plan objectives can be carried out in the absence of a plan, either by the program operator or through an entity such as an escrow company.

**42422.3.** (a) A program operator shall review its stewardship plan at least every five years after the stewardship plan approval, and determine whether revisions to the plan are necessary.

(b) If a program operator determines that revisions to the plan are necessary, the program operator shall submit to the department a revised plan for review and approval employing the procedures set forth in Section 42422.5. The stewardship organization shall submit the revised plan pursuant to this subdivision within 90 days of the review deadline outlined pursuant to subdivision (a).

(c) If a program operator determines that no revisions to the plan are necessary, the program operator shall send a letter to the department no later than 30 days after the review deadline outlined in subdivision (a), explaining that the program operator has reviewed the plan and determined that no revisions are needed. The department may disapprove the program operator's determination within 30 days of receipt of that determination if the department concludes that the program operator cannot implement the objectives of this chapter without revising the stewardship plan. In the event the department disapproves the program operator's determination, the program operator shall submit to the department a revised stewardship plan for review and approval in accordance with Section 42422.5. The program operator shall submit the revised plan pursuant to this subdivision within 90 days of receipt of the department's disapproval.



(d) Notwithstanding the requirement in subdivision (a) of Section 42422.5, a program operator may, but is not required to, submit its plan to the Department of Toxic Substances Control prior to submission to the department pursuant to this section.

**42422.4.** (a) In preparing a stewardship plan pursuant to Section 42422.1, and any updates to the plan pursuant to Section 42422.3, a program operator shall engage in a consultative process with the advisory body created by the department pursuant to subdivision (b). The program operator shall consider any written recommendations from the advisory body during the plan development process.

(b) (1) No later than 120 days after the effective date of regulations, pursuant to Section 42420.2, the department shall create an advisory body for covered battery stewardship that may include, but is not limited to, representatives from local governments, recyclers, retailers, the household hazardous waste industry, nongovernmental organizations, environmental organizations, community-based justice and public health organizations, and the solid waste industry.

(2) Participation on the advisory body shall be voluntary.

(3) The advisory body is not a state body for purposes of Section 11121 of the Government Code, but shall provide advanced public notice about meetings, allow public participation in all meetings, and vote on written recommendations at public meetings.

(c) A program operator shall consider the advisory body's recommendations. If the producer or stewardship organization decides not to incorporate the advisory body's recommendations, the program operator shall provide a brief written explanation to the department and the advisory body that explains the basis for the decision and also indicates whether the program operator plans to incorporate the recommendations into a subsequent stewardship plan, subsequent amendments to the plan, or a subsequent annual report.

**42422.5.** (a) (1) At least 150 days before submitting a stewardship plan to the department, a program operator shall submit its entire proposed stewardship plan to the Department of Toxic Substances Control for review.

(2) The Department of Toxic Substances Control shall review the plan only for compliance with state and federal laws and regulations within its jurisdiction. The Department of Toxic Substances Control shall identify any elements of the proposed stewardship plan that would, if implemented, violate state or federal laws or regulations within its jurisdiction, and provide to the program operator, and the department, that determination and an explanation for any determination of noncompliance within 90 days of receipt of the plan. The program operator shall resolve all determinations by the Department of Toxic Substances Control prior to submitting the stewardship plan to the department.

(3) If, 90 days after submitting a plan to the Department of Toxic Substances Control, a program operator has not received a response, the program operator may submit a certification to the department that the stewardship plan was submitted to the Department of Toxic Substances Control, as required, and a timely response was not received. Additionally, if a response is not received pursuant to the first sentence of this paragraph, the program operator shall submit a certification to the department that the stewardship plan is consistent with the laws and regulations within the jurisdiction of the Department of Toxic Substances Control.

(4) A program operator shall submit to the department all determinations received from the Department of Toxic Substances Control when the program operator submits its stewardship plan to the department. Any determination of noncompliance by the Department of Toxic Substances Control shall be accompanied by a superseding determination of compliance before a program operator submits its stewardship plan to the department.

(b) The department shall review the stewardship plan for compliance with this chapter and shall approve, disapprove, or conditionally approve the plan within 120 days of receipt of the plan. The department may consult with or submit a stewardship plan for review to the Department of Toxic Substances Control if the department determines it is necessary for making a determination of approval of a stewardship plan. The duration of time the department takes for the consultation pursuant to the second sentence of this subdivision shall not count toward the 120-day time limit to determine approval, as specified in the first sentence of this subdivision.

(c) If the department disapproves a stewardship plan submitted by a program operator, the department shall explain how the stewardship plan does not comply with this chapter and provide written notice to the program operator within 30 days of disapproval. The program operator may resubmit to the department a revised stewardship plan within 60 days of the date the written notice was issued, and the department shall review the revised stewardship plan within 90 days of resubmittal. If a revised stewardship plan is disapproved by the department, a producer operating under the stewardship plan shall not be in compliance with this chapter until the department approves a stewardship plan submitted by a program operator that covers the producer's products.

(d) Within 24 months of the effective date of the regulations adopted by the department pursuant to Section 42420.2, a program operator shall have a complete stewardship plan approved by the department and each producer shall be subject to an approved stewardship plan in order to be in compliance with this chapter.

(e) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by the program operator is not a public record for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall not be open to public inspection. The department may release financial, production, or sales data in summary form only so the information cannot be attributable to a specific producer or distributor or to any other entity.

**42422.6.** (a) Within 12 months of the approval of the stewardship plan, the department pursuant to Section 42422.5, a program operator shall fully implement its stewardship program.

(b) A program operator may petition the department to investigate a noncompliant producer, and the department shall respond to the petition in a timely manner.

#### **Article 4. Financial Provisions**

**42423.** (a) No later than 90 days before a budget is submitted to the Department of Toxic Substances Control, the department and the Department of Toxic Substances Control shall notify each program operator of each agency's respective anticipated actual and reasonable regulatory costs directly related to implementing and enforcing this chapter in relation to the program operator's activities as the criteria for those costs are defined in the regulations adopted pursuant to Section 42420.2. This may include the actual and reasonable costs associated with regulatory regulation development pursuant to Section 42420.2 and other startup activities prior to stewardship plan submittal and approval, relative to the role of the program operator's program compared to other programs.

(b) Program operators shall, on a schedule determined by the department and the Department of Toxic Substances Control, as applicable to each agency's fees, pay the department and the Department of Toxic Substances Control, respectively, fees incurred to reimburse the department and the Department of Toxic Substances Control for incurred costs as described in subdivision (a). The fees shall not exceed the department's or the Department of Toxic Substances Control's actual and reasonable regulatory costs to implement and enforce this chapter as the criteria for those costs are defined in the regulations adopted pursuant to Section 42420.2. The fees shall be paid by each producer, either individually, if the producer is complying with the requirements of this chapter individually, or through a stewardship organization.

(c) (1) The department and the Department of Toxic Substances Control shall deposit all moneys received from a program operator pursuant to this section into the Covered Battery Recycling Fund, which is hereby established in the State Treasury.

(2) Upon appropriation by the Legislature, moneys in the Covered Battery Recycling Fund shall be expended by the department and the Department of Toxic Substances Control to implement and enforce this chapter, as well as to reimburse any outstanding loans made from other funds used to finance regulation development and startup costs of the department's and the Department of Toxic Substances Control's activities pursuant to this chapter.

(3) The moneys in the Covered Battery Recycling Fund shall not be expended for any other purpose.

**42423.1.** Each producer shall, either individually or through a stewardship organization, pay all administrative and operational costs associated with establishing and implementing the stewardship program in which it participates, including the cost of collection, transportation, recycling, and the safe and proper management of covered batteries.

#### **Article 5. Records, Audits, and Reports for Covered Batteries**

**42424.** (a) A program operator shall keep board minutes, books, and records that clearly reflect the activities and transactions of the program operator.

(b) A program operator shall retain, at the program operator's expense, an independent public accountant, certified in the United States, to annually audit the accounting books of the program operator.

(c) The program operator shall include the audit in its annual report submitted pursuant to Section 42424.1, commencing within 18 months of plan approval by the department. The department shall review the audit for compliance with this chapter and consistency with the program operator's stewardship plan. The department shall notify the program operator of any compliance issues or inconsistencies.

(d) The department may conduct its own audit if it determines that an audit is necessary to enforce the requirements of this chapter and that the audit conducted pursuant to subdivision (b) is not adequate for this purpose. The program operator may obtain copies of the department's audit upon request.

(e) The department shall not publicly disclose any confidential proprietary or trade secret information in an audit conducted pursuant to this section.

**42424.1.** A program operator shall annually submit to the department, in the form and manner, and by the date, determined by the department, an annual report, which the department shall make publicly available that includes all of the following information for the preceding calendar year:

(a) The program operator's costs and revenues.

(b) An estimate of the quantity of covered batteries sold in or into the state by the producers covered by the program operator's stewardship plan, as determined by the best available commercial information, potentially including the application of California population data to the national sales information and the discarded covered batteries collected for recycling through the stewardship program.

(c) A list of the stewardship program's collection sites, by name, location, and type.

(d) The total weight of primary and rechargeable batteries, respectively, that were collected.

(e) A list of each battery recycling facility used by the stewardship program, by name and location.

(f) An updated list of the names and corporate mailing addresses of producers, as defined in subdivision (j) of Section 42420.1 and brands of covered batteries covered under the stewardship plan.

(g) The total weight and number of covered batteries sold in or into the state attributed to a producer, who is a registered participant of the program operator's plan, that are collected in the state and recycled by the program operator during the preceding calendar year, including a description of the methodology and information used to determine and calculate these values.

(h) The recycling efficiency rate of rechargeable and primary batteries that were recycled.

(i) Beginning January 1, 2027, a minimum recycling efficiency rate of 60 percent for rechargeable batteries and 70 percent for primary batteries shall be achieved. The weight of recovered materials from covered batteries counted towards the satisfaction of the recycling efficiency rate requirement shall be used.

(j) A description of methods used to collect, transport, and recycle covered batteries by the program operator.

(k) A description of outreach efforts and education, including, but not limited to, education and outreach provided to consumers, collection sites, manufacturers, distributors, and retailers by the program operator for the purpose of promoting the collection and recycling of covered batteries.

(l) (1) A report on coordination activities with other program operators, including covered battery collection and recycling programs and electronic waste recyclers, with regard to the proper management or recycling of collected covered batteries, for purposes of providing the efficient delivery of services and avoiding unnecessary duplication of effort and expense.

(2) A description of efforts undertaken by a program operator to implement the required labeling of covered batteries pursuant to Section 42422.1.

(m) Findings from the evaluation of the comprehensive statewide education and outreach program required by paragraph (9) of subdivision (o) of Section 42422.1.

(n) A description of any consultation with the California Environmental Protection Agency's Environmental Justice Task Force and other relevant stakeholders for collecting covered batteries for recycling in areas and communities that face unique challenges.

(o) A demonstration of actions taken by the program operator to comply with the requirements established pursuant to Section 42422.1.

(p) (1) A report on activities the program operator has undertaken in relation to all of the following:

(A) Meeting the requirements established pursuant to Section 42422.1.

(B) Making progress on meeting the requirements established pursuant to Section 42422.1.

(C) Making progress on planned efforts to meet the requirements established pursuant to Section 42422.1.

(2) Factors to be considered for purposes of paragraph (1) may include, but are not limited to, availability of takeback options and no-cost local curbside collections services, proximity to recyclers and no-cost collection points and events, and the state of

current recycling technology.

(q) A report on activities the program operator has undertaken to prioritize the use of recycling facilities located closer to the point of generation to minimize transportation emissions and increase accountability.

(r) If the program operator determines during a particular year that any of the activities undertaken to implement subdivision (q) were unsuccessful, the program operator shall identify the problems with the current activities, make modifications pursuant to the requirement in Section 42422.3, and report on other activities undertaken and progress made, in the following year's annual report.

(s) An electronic copy in the form and manner determined by the department, and specified in the regulations adopted by the department pursuant to Section 42420.2 of any annual report, which shall include a brief explanation of how the program operator anticipates the activities may benefit the stewardship program. The program operator shall make these reports publicly available free of charge. If the report contains trade secret, proprietary, or confidential information protected under existing law, the program operator shall provide the department the report marked as trade secret, proprietary, confidential, and aversion of the report with that information redacted, and post the redacted report on its internet website.

(t) The progress toward attaining the goals included in the program operator's stewardship plan.

(u) Any modifications or revisions to the stewardship plan, including those required pursuant to Section 42422.3, which are subject to review under Section 42422.5, intended to achieve the requirements established pursuant to Section 42422.1.

(v) Any other information deemed relevant by the program operator for the department to determine compliance with the approved stewardship plan.

**42424.4.** (a) No later than 120 days after the date the department receives the annual report submitted by a program operator pursuant to Section 42424.1, the department shall notify the program operator if the annual report is compliant or noncompliant. If the department fails to act within 120 days of receipt of the annual report, the report shall be deemed approved.

(b) (1) If the department determines that the annual report is noncompliant due to failure to meet the requirements of Section 42424.1, the program operator shall resubmit a revised annual report addressing the department's written reasons for its decision within 30 days of the department's response.

(2) The department, within 60 days from the date a program operator resubmits a revised annual report, shall determine whether the annual report is compliant or noncompliant.

(3) If the department determines a revised annual report submitted pursuant to paragraph (1) is noncompliant, the program operator may submit only one additional revised annual report, subject to review in accordance with paragraph (2).

(c) The department may consult with or submit an annual report for review to the Department of Toxic Substances Control if the department determines it is necessary for making a determination of compliance of an annual report. The duration of time the department takes for this consultation is not included in the time allotted to the department for review pursuant to this section.

#### **Article 6. Enforcement**

**42425.** (a) Within 24 months of the effective date of regulations pursuant to Section 42420.2, and on or before July 1 of each year thereafter, the department shall post on its internet website a list of producers that are in compliance with this chapter. The department shall list, as appropriate, the reported brands of covered batteries for each producer.

(b) A producer that is not listed on the department's internet website pursuant to subdivision (a) that demonstrates compliance with this chapter before the next list is posted by the department may either be added to the internet website or be provided a certification letter from the department stating that the producer of a covered battery is in compliance with this chapter.

(c) (1) A retailer, importer, or distributor shall monitor the department's internet website to determine if a producer, brand, or covered battery is in compliance with this chapter for that brand of covered battery.

(2) Except as provided in subdivision (d), on and after the date a stewardship plan is approved by the department pursuant to Section 42422.5, a retailer, importer, or distributor shall not sell, distribute, offer for sale, or import a covered battery in or into the state for sale in the state unless the producer of the covered battery is listed as in compliance pursuant to this section for that brand and covered battery.

(d) (1) Notwithstanding paragraph (2) of subdivision (c), a retailer, importer, or distributor may sell, offer for sale, import, or distribute a covered battery if, on the date the retailer or distributor sells or offers for sale the covered battery in or into the state, the producer, brand, or covered battery was listed as compliant on the department's internet website.

(2) Notwithstanding paragraph (2) of subdivision (c), a retailer or distributor may, for any existing inventory in stock before the initial list was posted by the department pursuant to subdivision (a), sell or distribute that inventory for sale in or into the state.

(e) (1) If the department determines a producer is not in compliance with this chapter, the department shall remove the producer, along with its brands and covered batteries, from the list of compliant producers posted on the department's internet website pursuant to subdivision (a).

(2) The department shall relist on its internet website a producer, along with its brands and covered batteries, if the department subsequently determines that the producer is in compliance with this chapter.

**42425.1.** (a) The department may impose an administrative civil penalty on a producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site that is in violation of this chapter. The amount of the administrative civil penalty shall not exceed ten thousand dollars (\$10,000) per day, but, if the violation is intentional, knowing, or reckless, the department may impose an administrative civil penalty of not more than fifty thousand dollars (\$50,000) per day. The department shall establish, through regulations adopted by the department pursuant to Section 42420.2, a process that shall include an informal hearing process by which the penalties will be assessed.

(b) The department shall deposit all penalties collected pursuant to this section into the Covered Battery Recycling Penalty Account, which is hereby created in the Covered Battery Recycling Fund. These moneys shall be available for expenditure upon appropriation by the Legislature.

(c) This chapter does not limit or restrict the Department of Toxic Substances Control's enforcement authority pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and its implementing regulations.

(d) The Administrative Adjudication Bill of Rights, as set forth in Chapter 4.5 (commencing with Section 11425.10) of Part 1 of Division 3 of Title 2 of the Government Code, applies to hearings conducted under this chapter and mandates minimum due process.

**42425.2.** (a) Upon a written finding that a producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site has not met a material requirement of this chapter, in addition to any other penalties authorized under this chapter, the department may, after affording the entity a reasonable opportunity to respond to, or rebut, the finding, take any of the following actions to ensure compliance with the requirements of this chapter:

(1) Revoke the program operator's stewardship plan approval or require the program operator to resubmit the plan.

(2) Remove the producer, along with its brands and covered batteries from the department's list of compliant producers, as specified in Section 42425.

(3) Impose additional compliance reporting requirements.

(4) Post the noncompliant entity onto a list of noncompliant entities.

(b) If a stewardship plan is revoked pursuant to paragraph (1) of subdivision (a) or terminated by the program operator that submitted the plan, a producer no longer subject to that plan may, without being subject to administrative civil penalties pursuant to Section 42425.1, sell or offer for sale covered batteries in or into the state for a period of up to one year after the stewardship plan was terminated or revoked if the producer continues to operate under the most recent approved stewardship plan to which the producer was subject.

**42425.3.** (a) A producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site shall do both of the following:

(1) Upon request, provide the department with reasonable and timely access, as determined by the department, to its facilities and operations, as necessary to determine compliance with this chapter.

(2) Upon request, provide the department and the Department of Toxic Substances Control with relevant records necessary to determine compliance with this chapter.

(b) The records required by this chapter shall be maintained and accessible for three years. All reports and records provided to the department pursuant to this chapter shall be provided under penalty of perjury.

(c) (1) The department may impose administrative civil penalties pursuant to Section 42425.1 on a producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site that fails to provide the department with the access required pursuant to this section.

(2) The department may post a notice on the department's internet website that is maintained pursuant to Section 42425 that a producer that fails to provide the department with access pursuant to this section, along with the producer's brands and covered batteries, is no longer in compliance with this chapter.

**42425.4.** After the time for judicial review under Section 11523 of the Government Code has expired, the department may apply to the small claims court or superior court, depending on the jurisdictional amount and any other remedy sought, in the county where the penalties, restitution, or other remedy was imposed by the department, for a judgment to collect any unpaid civil penalties or restitution or to enforce any other remedy provided by this chapter. The application, which shall include a certified copy of the final agency order or decision, shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court. The court shall make enforcement of the judgment a priority.

#### **Article 7. Antitrust Immunity**

**42426.** (a) Except as provided in subdivision (c), an action specified in subdivision (b) that is taken by a program operator 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).

(b) Subdivision (a) applies to all of the following actions taken by a program operator:

(1) The creation, implementation, or management of a stewardship plan approved or conditionally approved by the department pursuant to Article 3 (commencing with Section 42422) and the determination of the types or quantities of covered batteries recycled or otherwise managed pursuant to a stewardship plan.

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

(3) The establishment, administration, collection, or disbursement of a charge associated with funding the implementation of this chapter.

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

(1) Fixes a price of or for covered batteries, except for an agreement related to costs or charges associated with participation in a stewardship plan approved or conditionally approved by the department and otherwise in accordance with this chapter.

(2) Fixes the output or production of covered batteries.

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

#### **Article 8. Preemption and Interstate Collaboration**

**42427.** (a) This chapter preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency on or after January 1, 2023, regarding stewardship programs for covered batteries.

(b) The Legislature finds and declares that the recycling of covered batteries is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter applies to all cities, including charter cities.

**42428.** If another state implements a covered battery recycling program, a program operator may, consistent with the requirements of this chapter, collaborate with that state to conserve resources necessary to efficiently manage and implement the program operator's stewardship program in this state.

**SEC. 2.** Article 5 (commencing with Section 42457) is added to Chapter 8.4 of Part 3 of Division 30 of the Public Resources Code, to read:

#### **Article 5. Repeal**

**42457.** This chapter shall become inoperative on September 30, 2026, and, as of January 1, 2027, is repealed.

**SEC. 3.** Article 7 (commencing with Section 42499.5) is added to Chapter 8.6 of Part 3 of Division 30 of the Public Resources Code, to read:

#### **Article 7. Repeal**

**42499.5.** This chapter shall become inoperative on September 30, 2027, and, as of January 1, 2028, is repealed.

**SEC. 4.** The Legislature finds and declares that Section 1 of this act, which adds Chapter 7.5 (commencing with Section 42420) to Part 3 of Division 30 of the Public Resources Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure that the competitive market in the state for the manufacture and sale of covered batteries is not compromised, it is necessary that financial, production, and sales data and confidential proprietary information collected for the purpose of administering a stewardship program be confidential.

**SEC. 5.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.