

1- 1 AN ACT to amend the environmental conservation law, in relation to recy-
1- 2 cing rechargeable batteries

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Became a law December 10, 2010, with the approval of the Governor.

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Passed by a majority vote, three-fifths being present.

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The People of the State of New York, represented in Senate and Assem-
1- 8 bly, do enact as follows:

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Section 1. Declaration of legislative intent and findings. The legis-
1-11 lature finds and declares that the presence of toxic metals in discarded
1-12 rechargeable batteries is a matter of great concern in light of their
1-13 adverse effect on groundwater quality when disposed of in landfills and
1-14 their presence in emissions or residual ash when incinerated at a
1-15 resource recovery facility; that cadmium and lead found in rechargeable
1-16 batteries, on the basis of available scientific and medical evidence,
1-17 are of particular concern; that it is desirable to reduce the toxic
1-18 state of waste materials in the solid waste streams directed to resource
1-19 recovery and sanitary landfill facilities; that the removal of used
1-20 rechargeable batteries containing high levels of cadmium and lead from
1-21 the solid waste stream can have a significant beneficial impact on the
1-22 quality of the emissions and residual ash resulting from the incinera-
1-23 tion of solid waste at resource recovery facilities, and on groundwater
1-24 quality in those regions where solid waste is disposed at sanitary land-
1-25 fill facilities; and that the most effective and appropriate method to
1-26 promote the reduction of toxic metals from rechargeable battery disposal
1-27 is to require the battery industry to accept the financial responsibil-
1-28 ity for the environmentally sound collection, transportation and recycl-
1-29 ing or proper disposal of discarded rechargeable batteries.

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The legislature therefore determines that it is in the public interest
1-31 of the state of New York to maximize the removal of used rechargeable
1-32 batteries from the solid waste stream by banning the disposal of used
1-33 rechargeable batteries from the solid waste stream and requiring
1-34 manufacturers of rechargeable batteries to take back and recycle the
1-35 used rechargeable batteries that are sold or disposed of in the state of
1-36 New York.

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§ 2. Article 27 of the environmental conservation law is amended by
1-38 adding a new title 18 to read as follows:

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TITLE 18

1-40

RECHARGEABLE BATTERY RECYCLING

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Section 27-1801. Short title.

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27-1803. Definitions.

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27-1805. Rechargeable battery disposal ban.

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27-1807. Rechargeable battery recycling program.

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27-1809. Enforcement of this title.

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27-1811. State preemption.

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§ 27-1801. Short title.

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This title shall be known as and may be cited as the "New York State
1-49 Rechargeable Battery Law".

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EXPLANATION--Matter in italics is new; matter in brackets [] is old law
1-51 to be omitted.

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§ 27-1803. Definitions.

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When used in this title:

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1. "battery manufacturer" means every person, firm or corporation
2- 6 that: (i) produces rechargeable batteries sold or distributed in the
2- 7 state, or packages such batteries for sale in the state, except that if

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2- 8 such production or packaging is for a distributor having the right to
2- 9 produce or otherwise package that same brand of battery in the state,
2-10 then such distributor shall be deemed to be the battery manufacturer; or
2-11 (ii) imports rechargeable batteries into the United States that are sold
2-12 or distributed in the state;

2-13 2. "consumer" means any person who purchases one or more rechargeable
2-14 batteries, or products containing such batteries at the time of sale,
2-15 for personal use;

2-16 3. "place of business" means the location at which a retailer sells or
2-17 offers for sale to consumers, rechargeable batteries, or products
2-18 containing such batteries at the time of sale;

2-19 4. "rechargeable battery" means any rechargeable nickel-cadmium,
2-20 sealed lead, lithium ion, nickel metal hydride battery, or any other
2-21 such dry cell battery capable of being recharged weighing less than
2-22 twenty-five pounds, or battery packs containing such batteries; but
2-23 shall not include a battery used as the principal electric power source
2-24 for a vehicle, such as, but not limited to, an automobile, boat, truck,
2-25 tractor, golf cart or wheelchair; for storage of electricity generated
2-26 by an alternative power source, such as solar or wind-driven generators;
2-27 or for memory backup that is an integral component of an electronic
2-28 device;

2-29 5. "retailer" means a person, firm or corporation that engages in the
2-30 sale of rechargeable batteries, or products containing such batteries,
2-31 to a consumer in the state, including, but not limited to, transactions
2-32 conducted through sales outlets, catalogs, by mail, telephone or the
2-33 internet. For the purposes of this section retailer shall not include a
2-34 food store; and

2-35 6. "food store" means a store selling primarily food and food products
2-36 for consumption or use off the premises that occupies less than fourteen
2-37 thousand square feet of display space.

2-38 § 27-1805. Rechargeable battery disposal ban.

2-39 No person shall knowingly dispose of rechargeable batteries as solid
2-40 waste at any time in the state.

2-41 § 27-1807. Rechargeable battery recycling program.

2-42 1. Rechargeable batteries shall be returned to a retailer that sells
2-43 such batteries that are similar in shape, size and function to those to
2-44 be disposed of. Rechargeable batteries contained in electronic products
2-45 must be removed prior to disposal of such product.

2-46 a. Retailers having a place of business in the state shall accept from
2-47 consumers at any time during normal business hours rechargeable
2-48 batteries of a similar size and shape as the retailer offers for sale.
2-49 Retailers shall take up to ten such batteries per day from any person
2-50 regardless of whether such person purchases replacement batteries, and
2-51 retailers shall also accept as many such batteries as a consumer
2-52 purchases from the retailer. Retailers shall conspicuously post and
2-53 maintain, at or near the point of entry to the place of business, a
2-54 legible sign, not less than eight and one-half inches by eleven inches
2-55 in size, stating that used rechargeable batteries of the size and shape
2-56 sold or offered for sale by the retailer may not enter the solid waste
2-57 stream, and that the retail establishment is a collection site for recy-
2-58 cing such batteries. Such sign shall state the following in letters at

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3- 3 least one inch in height: "It is illegal to dispose of rechargeable
3- 4 batteries in the state of New York as solid waste. We accept used
3- 5 rechargeable batteries for return to the manufacturer."

3- 6 b. Retailers that sell rechargeable batteries to consumers in the
3- 7 state through non-retail outlets such as through catalogs, or by mail,
3- 8 telephone or the internet shall provide at the time of purchase or
3- 9 delivery to the consumer notice of an opportunity to return used
3-10 rechargeable batteries at no cost to the consumer for reuse or recycl-
3-11 ing.

3-12 c. Retailers in the state shall conspicuously maintain, at a location

3-13 within the retail establishment that is convenient for use by consumers,
3-14 collection boxes or other suitable receptacles, supplied by the manufac-
3-15 turer, into which consumers may safely deposit used rechargeable
3-16 batteries.

3-17 d. Retailers must be in compliance with the provisions of this subdi-
3-18 vision no later than one hundred eighty days after the effective date of
3-19 this title.

3-20 2. Every battery manufacturer, or any combination of battery manufac-
3-21 turers working together, shall, at the battery manufacturer's own
3-22 expense, arrange for the return of, and recycling of, all used recharge-
3-23 able batteries collected by retailers. Every battery manufacturer or any
3-24 combination of battery manufacturers working together, shall be respon-
3-25 sible for, at a minimum, the following:

3-26 a. Within ninety days of the effective date of this title, submittance
3-27 to the commissioner of a plan that identifies the methods by which
3-28 battery manufacturers will safely collect, transport, and recycle
3-29 rechargeable batteries collected by retailers at the expense of the
3-30 battery manufacturer and provide retailers with information on the safe
3-31 handling and storage of rechargeable batteries.

3-32 b. Submittance to the department of annual reports, on a form
3-33 prescribed by the department, concerning the amount of rechargeable
3-34 batteries received within the state and recycled either by number or by
3-35 weight; the costs of such efforts; and any other relevant information as
3-36 required by the department.

3-37 c. Undertaking of efforts to educate the citizens of the state regard-
3-38 ing the appropriate ways to recycle rechargeable batteries.

3-39 3. The commissioner shall approve or reject any battery manufacturer's
3-40 collection, transportation, and recycling plans described in paragraph a
3-41 of subdivision two of this section within ninety days of submission and,
3-42 if rejected, inform the battery manufacturer in writing as to any defi-
3-43 ciencies in said plan. Battery manufacturers shall amend and resubmit
3-44 any rejected plans for reconsideration within sixty days of notification
3-45 of the rejection of said plan. The commissioner shall approve or reject
3-46 said plan within thirty days of resubmission.

3-47 4. The commissioner shall analyze the information provided by battery
3-48 manufacturers pursuant to paragraph b of subdivision two of this section
3-49 and report such analysis to the governor and the legislature every two
3-50 years.

3-51 5. The commissioner is authorized to promulgate any rules and regu-
3-52 lations needed to implement this title.

3-53 § 27-1809. Enforcement of this title.

3-54 1. Any person who violates the provisions of section 27-1805 of this
3-55 title shall be liable for a civil penalty in the amount of fifty dollars
3-56 for the first violation, one hundred dollars for a second violation
3-57 committed within twelve months of a prior violation and two hundred
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4- 3 dollars for a third or subsequent violation committed within twelve
4- 4 months of any prior violation.

4- 5 2. Any retailer as that term is defined in section 27-1803 of this
4- 6 title, who violates the provisions of section 27-1807 of this title
4- 7 shall be liable for a civil penalty in the amount of two hundred dollars
4- 8 for the first violation, four hundred dollars for a second violation
4- 9 committed within twelve months of a prior violation, and five hundred
4-10 dollars for a third or subsequent violation committed within twelve
4-11 months of any prior violation.

4-12 3. Any battery manufacturer, as that term is defined in section
4-13 27-1803 of this title, who violates the provisions of section 27-1807 of
4-14 this title shall be liable for a civil penalty in the amount of two
4-15 thousand dollars for the first violation, four thousand dollars for a
4-16 second violation committed within twelve months of a prior violation,
4-17 and five thousand dollars for a third or subsequent violation committed
4-18 within twelve months of any prior violation.

4-19 4. Civil penalties under this section shall be assessed by the commis-
4-20 sioner after a hearing or opportunity to be heard pursuant to the
4-21 provisions of section 71-1709 of this chapter, or shall be assessed by
4-22 the court in any action or proceeding pursuant to this section. In addi-
4-23 tion to any civil penalties, any person, retailer or manufacturer, as
4-24 those terms are defined in section 27-1803 of this title, may by similar
4-25 process be enjoined from continuing such violation.

4-26 § 27-1811. State preemption.

4-27 Jurisdiction in all matters pertaining to rechargeable battery recycl-
4-28 ing is, by this title, vested exclusively in the state. Any provision
4-29 of any local law or ordinance, or any rule or regulation promulgated
4-30 thereto, governing rechargeable battery recycling shall, upon the effec-
4-31 tive date of section 27-1805 of this title, be preempted; provided,
4-32 however, that nothing in this section shall preclude a person from coor-
4-33 dinating, for recycling or reuse, the collection of rechargeable
4-34 batteries.

4-35 § 3. This act shall take effect immediately; provided, however that
4-36 section 27-1805 of the environmental conservation law, as added by
4-37 section two of this act, shall take effect on the three hundred sixtieth
4-38 day after it shall have become a law.

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4-40 The Legislature of the STATE OF NEW YORK ss:

4-41 Pursuant to the authority vested in us by section 70-b of the Public
4-42 Officers Law, we hereby jointly certify that this slip copy of this
4-43 session law was printed under our direction and, in accordance with such
4-44 section, is entitled to be read into evidence.

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4-46 MALCOLM A. SMITH
4-47 Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly