

No State Consumer Battery Stewardship Legislation This Year

June 2015

Four states—Connecticut, California, Texas, and New York—introduced consumer battery stewardship legislation this year. Initially, momentum for these proposals was generated from a battery stewardship forum in Connecticut (organized by the Product Stewardship Institute (PSI) and held in June 2014) and Vermont’s scheduled implementation of the first U.S. mandatory primary battery collection and recycling law (on January 1, 2016). As another legislative year ends, however, three of these proposals are dead and one on life support.

Early Signs of Consensus

This result is surprising to many. At the end of last summer, it appeared that a consensus had been reached between rechargeable and non-rechargeable battery manufacturers, many marketers of battery-powered products, and activists within both state and local government agencies and non-governmental organizations. Based on that consensus, model legislation was drafted by the rechargeable and non-rechargeable segments of the consumer battery manufacturing industry, represented by PRBA-The Rechargeable Battery Association, National Electrical Manufacturers Association, The Corporation for Battery Recycling, and Call2Recycle, Inc. The model legislation mandates that every “producer” participate in a battery stewardship program. In turn, “producers” are broadly defined so that at least one entity in the distribution chain for every battery offered for sale—whether removable consumer batteries in products or stand-alone batteries—would be required to participate in a battery stewardship program. Most importantly, the model legislation establishes a mechanism for recovering from “free riders” — those battery producers selling batteries within the state but not

Authors

George A. Kerchner
Senior Policy Advisor
202.719.4109
gkerchner@wiley.law

Practice Areas

Environment & Product Regulation
Extended Producer Responsibility and
Recycling

complying with stewardship obligations – the costs of collecting and processing batteries, ensuring that collection costs are distributed equitably based on batteries sold within the state.

State Bills Proposed in 2015

Heading into 2015, Connecticut's proposed legislation appeared to be the most likely candidate for success. The state's Department of Energy and Environmental Protection (DEEP) had played a leading role in the PSI forum in June 2014 and initially supported legislation in 2015. But DEEP ultimately refused to support any bill that imposed even minimal regulatory obligations on its staff. While opposition also arose from several other industry segments (such as medical device manufacturers), it was DEEP's position that put the nail in the legislative coffin. In light of these issues, it seems very unlikely that Connecticut will have the stomach to pursue similar battery legislation in 2016.

Consumer battery stewardship bills in Texas and New York met a similar fate as Connecticut, although for different reasons. New York's bill may be revised next year, but the Texas legislature does not meet in 2016.

In California, an unusual sharps/primary battery stewardship bill was reported from the Assembly Committee on Natural Resources along with another bill mandating curbside battery collection programs. But faced with substantial opposition, the sharps/primary bill—sponsored by Assemblyman Richard Gordon—was turned into a “two-year” bill, which is tantamount to putting it on indefinite hold. The bill mandating curbside recycling also died.

Ironically, the only battery-related legislation that has succeeded this year is an exclusion for certain collectors of used lead-acid batteries from Utah's “metals theft prevention” law. That exclusion will exempt lead-acid battery retailers and wholesalers from registration and recordkeeping obligations otherwise applicable to collectors of used batteries. A New York legislative proposal also remains in play, with a bill moving forward in the State Senate. That proposal would remove New York's five-dollar cap on lead-acid battery deposits on new battery sales to encourage used battery returns for recycling. But there is strong opposition in the Assembly from a key committee chair, making passage in 2015 highly unlikely.