
OLR Bill Analysis

sHB 6386

AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY FOR TIRES, SMOKE DETECTORS AND CERTAIN GAS CYLINDERS.

SUMMARY

This bill establishes three separate, statewide stewardship programs to manage the following discarded products: gas cylinders (§ 1), tires (§ 2), and smoke detectors (§ 3). It requires producers of these products, or their designees, to join a respective nonprofit organization that they, or a trade association representing them, establishes.

The bill prohibits producers who fail to participate in the programs from selling their products in Connecticut. A sale can be through a retailer, sales outlet, catalog, website, or similar electronic means.

Under the bill, an organization must develop a plan by July 1, 2022, to, among other things, minimize public sector involvement in managing the applicable discarded products. The organization must submit the plan to the Department of Energy and Environmental Protection (DEEP) for approval. An organization's fee structure or financing system, as applicable, must cover but not exceed program costs, including maintaining a reserve.

The bill (1) allows the DEEP commissioner to civilly enforce the programs' requirements, (2) establishes reporting requirements, and (3) provides immunity to producers and organizations from claims of antitrust or unfair trade practice violations under certain circumstances. It also allows an organization to collaborate with another state with an applicable recycling program.

EFFECTIVE DATE: October 1, 2021

PRODUCTS AND PRODUCERS

The bill generally applies to “producers” of these three products, which vary by product type.

Under the bill, a “producer” of a gas cylinder is someone who (1) manufactures and uses in a commercial enterprise, sells, offers for sale, or distributes a cylinder in Connecticut under its brand; (2) owns or is a licensee of a trademark under which the cylinder is used in those activities, regardless of the trademark’s registration status in the state; or (3) imports a cylinder into Connecticut for use in a commercial enterprise or for commercial sale, offer for sale, or distribution.

In the case of tires, the bill defines a “producer” as someone who manufactures a tire that is sold, offered for sale, or distributed in Connecticut under its name or brand. It includes someone who (1) owns a trademark or brand under which a tire is sold, offered for sale, or distributed in the state or (2) imports a tire manufactured by someone without a presence in the United States that is then sold or offered for sale in Connecticut. The bill excludes from its requirements tire manufacturers with a nationally recognized market share of less than 0.1%.

Similarly, a smoke detector “producer” under the bill is someone who manufactures a smoke detector that is sold, offered for sale, or distributed in Connecticut under its name or brand. It includes someone who (1) owns a trademark or brand under which a detector is sold, offered for sale, or distributed in the state, regardless of the trademark’s or brand’s registration status in the state, or (2) imports a detector manufactured or renovated by someone without a presence in the United States that is then sold or offered for sale in Connecticut.

The bill defines a “brand” as a name, symbol, word, or mark that attributes a product to its producer.

Gas Cylinders

Under the bill, a “gas cylinder” is a nonrefillable or refillable cylinder with flammable pressurized gas, helium, or carbon dioxide, with between 2- and 50-pounds water capacity. It includes seamless

cylinders and tubes, welded cylinders, and insulated cylinders intended to contain helium, carbon dioxide, or any flammable materials such as propane, acetylene, butane, hydrogen, ethylene, and other compressed gases. It does not include a cylinder, tube, or container intended to deliver a noncompressed gas product.

Tires

Tires covered by the bill include products made primarily of rubber that are mounted on wheels of passenger and commercial motorized vehicles, whether on- or off-road, including passenger vehicles; motorcycles; trucks; buses; mobile homes; trailers; noncommercial aircraft; and earthmoving, road building, mining, logging, agricultural, industrial, and other vehicles providing mobility. The bill excludes tires for toys, bicycles, commercial aircrafts, or personal mobility devices.

Smoke Detectors

For the smoke detector program, the bill applies to battery operated or plug-in smoke detectors, carbon monoxide detectors, and combination products intended for use in residential dwellings.

PROGRAMS' PURPOSES AND ESTABLISHMENT

By July 1, 2022, the bill requires producers, or their designees, to join a representative stewardship organization. These stewardship organizations are nonprofits created by producers, or a trade association representing them, that design, submit, and implement the stewardship programs. For tires and smoke detectors, if a trade association creates the program, it must be one that accounts for a majority of tire or detector production in the United States. For tires and smoke detectors, there may only be one representative organization involved in creating a program. In the case of gas cylinders, the bill allows there to be multiple organizations involved. Under the bill, retailers may participate in the respective stewardship organizations.

By the same date, the organizations must submit their respective plans to establish a statewide stewardship program to the DEEP

commissioner for approval.

The bill requires an organization's fee structure, or in the case of the tire stewardship organization either its fee structure or financing system, to cover but not exceed the costs of (1) developing the plan; (2) operating and administering the program; and (3) maintaining a sufficient financial reserve. The financial reserve for a gas cylinder program or the smoke detector program must be enough to operate the program in a fiscally prudent way over a multiyear period. The reserve for the tire program must be enough for six months' operation.

Under the bill, a program must minimize public sector involvement in managing the respective discarded product. It must also provide the following:

1. free, convenient, and accessible statewide opportunities to receive the discarded products from anyone with one that was discarded in Connecticut, including (a) participating covered entities (see below) that accumulate and segregate at least 30 gas cylinders, six cubic yards of tires, or 50 smoke detectors, as applicable, and (b) municipal transfer stations that discard at least 30 smoke detectors at a time;
2. free collection of the discarded products from municipal transfer stations that accumulate and segregate less than 30 cylinders, 100 tires, or 30 smoke detectors, as applicable, and need collection due to space or permit requirements;
3. organization-financed, or producer-financed in the case of tires, end-of-life-management for the collected products; and
4. suitable storage containers, or some other mutually agreed-to storage and transport arrangement, at permitted municipal transfer stations at no cost to the municipality; however, for cylinders or smoke detectors only if the transfer stations make space available and charge no fee for the containers' placement.

A program must do these things to the extent they are

technologically feasible and economically practical. Similarly, to the extent it is technologically feasible and economically practical, the bill requires recycling to be the preferred disposal method for smoke detectors. It also requires recycling gas cylinders and recovering their residual gases for reuse.

Under the bill, a product is “discarded” if a consumer generally discards or abandons it or intends to discard it.

PLAN COMPONENTS

Under the bill, an organization’s plan must do the following:

1. identify each participating producer;
2. describe (a) its program’s fee structure for gas cylinders and smoke detectors, which cannot include a consumer fee charged at the point of sale, or (b) how the program will be financed, in the case of tires;
3. establish performance goals for the program’s first two years;
4. identify proposed program facilities;
5. detail how the program will promote recycling the discarded products and how, for the tire program, it follows the state’s solid waste hierarchy (see BACKGROUND); and
6. describe its public education program.

A “performance goal” is an organization-proposed metric to annually measure a program’s performance. It must consider technical and economic feasibility of achieving continuous and meaningful improvement in (1) the state’s recycling rate for the involved product (i.e., gas cylinders, tires, or smoke detectors) and (2) any other specified goal.

PLAN APPROVAL AND IMPLEMENTATION

The bill requires the DEEP commissioner to approve a plan if it meets the bill’s program and plan requirements. She must determine

whether to approve a plan within 90 days after its submission. The commissioner must post a plan on DEEP's website and solicit public comments before deciding whether to approve it. The bill specifies that the solicitation is not conducted according to the Uniform Administrative Procedure Act.

If a plan is not approved, the commissioner must provide the organization with a notice of determination describing the reasons for disapproval. The organization must revise and resubmit its plan within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove a revised plan within 45 days after receiving it and provide a notice of determination to the organization. The bill restricts resubmitting a revised plan for approval to no more than two occasions. It requires the commissioner to modify and approve a submitted plan to make it conform with the program and plan requirements if the organization fails to provide an acceptable plan.

The bill requires an organization to implement its stewardship program within (1) 120 days after plan approval or (2) 180 days after a DEEP-modified plan is approved.

CHANGES TO A PLAN

The bill requires an organization to submit substantial proposed plan changes to the DEEP commissioner for approval. Under the bill, a "substantial change" is a (1) change in the processing facilities used for the collected products or (2) material change to the system collecting them. A proposed substantial change by a cylinder or the smoke detector organization is deemed approved unless the commissioner disapproves it within 90 days after receiving notice of the change. The bill provides no deadline by which the commissioner must approve a substantial change by the tire organization.

The bill also requires an organization to notify the commissioner of other material program changes on an ongoing basis and without resubmitting the plan for approval. These changes include such things as changing the organization's composition, officers, or contact

information.

By July 1, 2025, an organization must submit updated performance goals to the commissioner, which must be based on the program's experience during its first two years.

COLLECTION FEES

When the programs are implemented, the bill prohibits participating "covered entities" from charging to receive gas cylinders, tires, or smoke detectors, as applicable, that were discarded in Connecticut; however, it allows them to limit their acceptance based on number, source, or condition.

Under the bill, a "covered entity" for the programs' products are as follows:

1. For a gas cylinder program, it is (a) a political subdivision of the state, permitted transfer station, state park, or campground that has a gas cylinder discarded in Connecticut or (b) a temporary event such as one at a school, college, or university that generated at least 30 cylinders.
2. For the tire program, it is a permitted transfer station, tire retailer, car dealership, automotive garage, or fleet maintenance garage.
3. For the smoke detector program, it is a political subdivision of the state, permitted transfer station, or permitted household hazardous waste facility that has a smoke detector discarded in Connecticut.

REPORTING REQUIREMENTS

Annually by October 15, the bill requires a stewardship organization for any of the three programs to submit a report to the commissioner on a form she prescribes. The report must then be posted on DEEP's website. Under the bill, the report must include the following information, as applicable:

1. tonnage of gas cylinders or tires, or weight of smoke detectors, collected from municipal transfer stations, retailers, and other covered entities;
2. weight of gas cylinder or smoke detector materials recycled by the weight of each commodity sold to secondary markets;
3. weight of gas cylinders restored for refilling (i.e., refurbished); and
4. tonnage of tires or weight of smoke detectors diverted for recycling.

The report must also include (1) a summary of the program's public education efforts, (2) an evaluation of the effectiveness of methods and processes used to achieve program performance goals, and (3) recommendations for any program changes.

Within three years after a plan's approval, the commissioner must submit a report to the Environment Committee that evaluates the program. The report must also establish goals for (1) the amount of discarded gas cylinders or smoke detectors managed by the program and (2) recycling the cylinders or detectors, or diverting the tires for recycling, considering technical and economic feasibility.

INTERSTATE COLLABORATION

The bill allows a stewardship organization to collaborate with another state that has a similar product recycling program, or a stewardship program in the case of tires, to conserve efforts and resources; however, the collaboration must be consistent with the bill's requirements.

UNIFORM PROVISIONS

The following provisions apply uniformly to each product stewardship program.

Administrative Fee

The bill authorizes the DEEP commissioner to assess a reasonable

fee, of up to 10% of the total program costs, to a stewardship organization for program administration purposes.

Civil Penalties

The bill authorizes the DEEP commissioner to enforce the program's requirements under her existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if she believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including taking remedial measures and directing compliance. The bill requires that these actions by the attorney general take precedence over other actions in the order of trial.

Program Audit

Two years after program implementation, and then every three years, an organization must pay for a program audit that involves an auditor selected by the DEEP commissioner. The audit must (1) review the accuracy of the organization's program data and (2) provide any other program-related information the commissioner requests, but not any proprietary information or trade or business secrets. The bill also allows the commissioner to request an audit no more than once per year.

The bill requires an organization to maintain all program records for at least three years.

Audited Financial Statements

Existing law requires any product stewardship organization operating in the state to, annually by May 1, submit to DEEP certified audited financial statements and the name of any contractor or organization that has a contract with it valued at \$2,000 or more. DEEP must post and maintain the information on its website (CGS § 22a-905g). This requirement applies to the three new stewardship

organizations.

Liability Protection

Under the bill, to the extent a producer or an organization is exercising authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

BACKGROUND

Solid Waste Hierarchy

Connecticut's Comprehensive Materials Management Strategy (i.e., the revised statewide Solid Waste Management Plan) has a hierarchy as a guide for solid waste management efforts. The hierarchy emphasizes source reduction, recycling, composting, and energy recovery. It lists landfilling and incineration as last resorts for solid waste disposal.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 30 Nay 2 (03/29/2021)