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## OLR Bill Analysis

### sHB 5226

#### ***AN ACT ESTABLISHING AN EXTENDED PRODUCER RESPONSIBILITY PROGRAM FOR CONSUMER BATTERIES.***

#### **SUMMARY**

This bill establishes a framework for statewide stewardship programs to manage the collection and recycling of certain batteries. It prohibits battery and battery-containing product producers who fail to participate in a program from selling or distributing the batteries or products in Connecticut.

Under the bill, producers must, either on their own or with other producers, be part of a stewardship organization that develops a plan for and implements a battery stewardship program. The Department of Energy and Environmental Protection (DEEP) is responsible for reviewing and deciding to approve a plan. These plans must be submitted by July 1, 2025, for portable batteries, and by July 1, 2027, for medium format batteries.

The bill authorizes DEEP to assess an annual fee of up to \$50,000 on an organization for administration and enforcement of the bill's requirements. It requires the collection of loose batteries; it does not require collecting battery-containing products. The bill also sets requirements on retail battery sales, establishing collection sites, educational and promotional efforts, and annual reporting to DEEP.

The bill (1) generally makes a violation of the bill's requirements subject to a \$7,000 civil fine; (2) authorizes the attorney general to enforce the bill's requirements in court; (3) gives the stewardship organizations a private right of action against certain noncompliant producers; and (4) immunizes producers and organizations from claims of antitrust or unfair trade practice violations under certain circumstances.

EFFECTIVE DATE: October 1, 2024

## **SCOPE OF BATTERY STEWARDSHIP REQUIREMENTS**

### ***Producer Participation***

Beginning January 1, 2026, for portable batteries, and January 1, 2028, for medium format batteries, the bill requires each producer selling, offering for sale, or distributing covered batteries or battery-containing products in or into the state to participate in an approved battery stewardship plan (i.e., by participating in and funding a battery stewardship organization, as described below). The bill prohibits non-participating producers from selling the batteries or products in or into the state.

(Because plans for portable batteries must be submitted for DEEP's approval by July 1, 2025 (and by July 1, 2027, for medium format batteries), and DEEP has up to 120 days to review them for approval or disapproval and additional days apply for resubmitting and rereviewing, it is unclear if there will be approved plans by these dates.)

### ***Batteries and Battery Products Involved***

The bill applies to the management of "covered batteries" and "battery-containing products." Covered batteries include portable batteries and medium format batteries, but not the following:

1. batteries in a medical device that are not designed or marketed for sale or resale to consumers for personal use,
2. batteries with a free liquid electrolyte,
3. lead acid batteries weighing over 11 pounds,
4. motor vehicle batteries,
5. batteries recalled for safety reasons by their producer,
6. batteries in battery-containing products that are not intended or designed by the manufacturer to be removable with common household tools, and

7. batteries covered by the state's electronic waste recycling law.

"Portable batteries" include (1) nonrechargeable batteries (e.g., alkaline, silver oxide, zinc air, carbon-zinc, and lithium metal) of up to four pounds, six ounces and (2) rechargeable batteries (e.g., with at least one voltaic or galvanic cells, electrically connected to produce electric energy) of up to 11 pounds and a maximum rating of 300 watt hours.

"Medium format batteries" are (1) nonrechargeable batteries weighing more than four pounds, six ounces, but no more than 25 pounds and (2) rechargeable batteries weighing more than 11 pounds, but no more than 25 pounds, or with a rating over 300 watt hours, but no more than 2,000 watt hours.

Products that are sold, offered for sale, or distributed that contain or are packaged with the above batteries are "battery-containing products," unless they are already subject to the state's electronic waste recycling law.

### ***Producers***

The bill applies to "producers." For batteries that are sold, offered for sale, or distributed in or into the state under the battery manufacturer's brand, the producer is the battery manufacturer. But if they are under a retail brand or a brand owned by a person that is not the manufacturer, it is the brand owner. And if there is no person meeting the above criteria, then the following, in order, would be the producer:

1. the licensee of a brand or trademark under which the battery is sold, offered for sale, or distributed in or into Connecticut, regardless whether the trademark is registered in this state;
2. the importer of record for the battery into the United States; or
3. the person who first sells, offers for sale, or distributes the battery in or into Connecticut, if no person has a commercial presence in the state.

The bill largely applies the same hierarchy for determining a

producer with respect to battery-containing products, though brand or trademark licensees may be deemed the producers if the product is used in a commercial enterprise, in addition to being sold, offered for sale, or distributed in the state as described above.

The bill allows another party to contractually accept the responsibility as a producer and join a stewardship organization as the producer.

## **RESTRICTIONS ON SALES OR DISTRIBUTION**

### ***Retailers***

Beginning July 1, 2026, for portable batteries, and July 1, 2028, for medium format batteries, the bill generally prohibits retailers from selling, offering for sale, distributing, or otherwise making available for sale (including to other businesses) the covered battery or battery-containing product of a producer that is not participating in an approved battery stewardship plan. This ban does not apply if, at the time the product is made available for sale, DEEP's website lists a producer or brand of covered battery or battery-containing product sold by the retailer as participating in or implementing an approved plan.

The bill also prohibits retailers from selling, offering for sale, distributing, or otherwise making available for sale covered batteries unless the batteries are properly marked (see *Identification Markings*, below). It requires battery-containing product producers to verify to retailers that the battery in the product is properly marked, which retailers may rely on for compliance reasons.

Lastly, the bill prohibits retailers, producers, and battery stewardship organizations from charging consumers a specific fee during a sale to cover the organizations' or their programs' administrative or operational costs.

### ***Identification Markings***

Beginning January 1, 2027, the bill generally prohibits producers and retailers from selling, offering for sale, or distributing in or into Connecticut a covered battery or battery-containing product without an

identification mark of the battery's producer. Exempt from the ban are batteries with diameters of less than ½ inch or surfaces that do not exceed ½ inch. Beginning January 1, 2029, these batteries must be marked with labels to ensure that they are properly collected and recycled by identifying their chemistry and having an indication that the battery should not be disposed of as household waste.

The bill requires producers to verify to their customers and retailers that the above requirements were met.

### ***Consumer Information***

The bill allows retailers selling or offering covered batteries or battery-containing products for sale to give consumers the information that a battery stewardship organization gave to the retailer about available end-of-life management options for batteries the organization collects. The bill specifies that this information must include things like signs and written or other promotional materials.

### **PLAN DEVELOPMENT AND SUBMISSION**

By January 1, 2025, the bill requires each producer of covered portable batteries, or its designee (e.g., a battery stewardship organization), to notify the DEEP commissioner in writing of whether it will individually or jointly submit a plan to establish a statewide battery stewardship program. Producers of covered medium format batteries, or their designees, must similarly do this by January 1, 2027.

Under the bill, each battery stewardship organization must submit its plan for covered portable batteries by July 1, 2025, to DEEP for review and approval. A plan for covered medium format batteries must similarly be submitted to DEEP by July 1, 2027. A battery stewardship organization may then submit a plan to DEEP at any time for its review and approval.

### ***Required Plan Contents***

Under the bill, the plan must include the following information:

1. contact information for each producer, battery brand, and battery-containing product brand covered in the plan;

2. a performance goals proposal, including goals for each of the next three program years (see *Performance Goals*, below);
3. promotional activities and consumer awareness goals and strategies to meet the program's goals;
4. collection site safety training procedures for battery collection, including protocols to reduce spill or fire risk, respond to a spill or fire, and safely manage damaged batteries;
5. collection goals for each of the program's first three years that are based on the estimated total weight of nonrechargeable and rechargeable covered batteries sold in the state during the previous three years;
6. goals for increasing public awareness; and
7. proposed sorters, transporters, processors, and facilities that the program will use for final battery disposition and how environmentally sound management practices will be used when managing collected batteries.

Under the bill, "environmentally sound management practices" comply with applicable federal, state, and local regulatory requirements to protect workers, public health, and the environment. They also (1) provide for recording, tracking, and documenting materials' final disposition in the state and outside of it and (2) include comprehensive liability coverage for the stewardship organization with commercially practicable environmental liability coverage.

The plan must also describe the following:

1. how the organization will inform retailers about their obligation to only sell batteries and battery-containing products covered by an approved battery stewardship plan;
2. the education and communications strategy that will be used to effectively promote program participation, including the information needed for consumers, retailers, and others;

3. how the program’s public education and outreach aspects will be implemented;
4. how the organization will provide collection sites with signs, written materials, and other promotional materials that they may, voluntarily, use to inform consumers about end-of-life management options for covered batteries (but the bill requires collection sites to post these signs, see *Collection Sites*, below);
5. method for establishing and administering a way to fully fund the program so that it equitably distributes program costs among participating producers;
6. financing methods to implement the plan;
7. how the program will collect all covered battery brands on a free, continuous, convenient, visible, and acceptable basis, including providing for convenient collection in towns with populations of at least 100,000;
8. criteria for determining if an entity may serve as a collection site; and
9. how the program will reach recycling efficiency rates of at least 70% for nonrechargeable batteries and at least 60% for rechargeable batteries.

Under the bill, a “recycling efficiency rate” is a ratio of the weight of battery components and materials recycled by a program operator to the weight of batteries the operator collected. In calculating the rate, materials are not considered recycled if they are combusted, incinerated, or used in energy generation, fuel production, or for beneficial use in a solid waste landfill.

**Performance Goals.** The bill requires each plan to have performance goals that annually measure the program’s achievements on battery collection in the state, the recycling efficiency rate, and public awareness. Specifically, the goals must at least include the following:

1. target collection rates for nonrechargeable batteries and rechargeable batteries;
2. target recycling efficiency rates of at least 70% for nonrechargeable batteries and at least 60% for rechargeable batteries; and
3. goals for public awareness, convenience, and accessibility that at least meet the bill's minimum requirements.

The bill prohibits a battery stewardship organization from reducing or stopping collection, education and outreach, or other activities due to meeting program performance goals.

The "collection rate" is a percentage, by weight, that is calculated by dividing the total weight of batteries collected by the organization during the prior year by the average annual weight of batteries estimated to have been sold in the state during the previous three years by all producers participating in an approved plan.

### ***Review and Approval Process***

The bill requires the DEEP commissioner to (1) review submitted plans and (2) base her approval on whether the plan has the above information. The commissioner may approve, disapprove, or conditionally approve a plan, but must do so in writing within 120 days after receiving it. A disapproval must explain how the plan is noncompliant.

If a plan is disapproved, the battery stewardship organization must submit a revised plan within 60 days after DEEP's disapproval notice and DEEP then has 90 days to review it. If the commissioner disapproves it again, she must again explain why in a notice of determination to the producer or stewardship organization. The bill then requires revision and resubmission of the plan within 45 days after receipt of the last notice, but it limits resubmitting a revised plan for approval to two times.

Under the bill, if there is no acceptable plan submitted, the DEEP



commissioner must modify a submitted plan to make it compliant and approve it.

### ***Changes to a Plan***

The bill sets out circumstances that require plan amendments or a new plan to be submitted for DEEP's approval. Under these circumstances, DEEP must make the plan or amendment available for public review and comment for at least 30 days.

The bill requires plan amendments for the following changes: (1) changes to performance goals due to program performance; (2) changes to the program financing method, including to the plan's fees or fee structure; and (3) an addition or removal of a sorter, processor, or transporter. It authorizes DEEP to identify other types of significant changes that would require submitting a new plan for approval and requires the submission of one if DEEP requests it. The bill also requires a stewardship organization to inform DEEP, in writing, within 30 days after a producer starts or ends participation in the organization.

## **PROGRAM FUNDING**

Under the bill, a battery stewardship organization must ensure that there is adequate funding to fully implement its approved plan, including program evaluation. The bill makes it responsible for all the costs of covered battery collection, transportation, processing, education, administration, department reimbursement, recycling, and end-of-life management according to the bill's requirements. For an organization that implements a plan on producers' behalf, the bill requires it to develop a system to collect charges from the producers to cover plans' implementation costs.

The bill separately authorizes a stewardship organization to seek reimbursement from producers of recalled batteries for its expenses to collect, transport, or process them.

## **BATTERY COLLECTION**

### ***General Provisions***

The bill requires each battery stewardship organization to meet the

battery collection goals set out in its plan. It must have all covered batteries collected on a free, continuous, convenient, visible, and acceptable basis for individuals, businesses, government agencies, and nonprofits at each collection site it uses, with certain exceptions (see below).

Under the bill, a stewardship organization must have statewide collection opportunities. It must coordinate with other program operators, like battery collection and recycle programs and electronic waste recyclers, to efficiently deliver services and avoid unnecessary duplication of work and costs. Geographic information modeling must be used to consider permanent collection sites and determine statewide collection opportunities. The bill allows programs to rely on collection events to supplement permanent collection services, but only permanent services qualify to meet the bill's collection location requirements.

Under the bill, a battery stewardship program must use existing waste collection services and facilities, including battery collection sites, transporters, consolidators, processors, and retailers, when doing so is cost effective, mutually agreeable, and otherwise practicable. However, the bill does not require retailers to make their locations available as collection sites; those that do must comply with all collection site requirements (see below).

The bill limits the collection of medium format batteries to household hazardous waste collection sites or other staffed locations that meet applicable federal, state, and local regulatory requirements for managing these batteries. It also specifies that programs are not required to collect (1) battery-containing products or (2) batteries that are not easily removable from a product except by the manufacturer and that stay in a battery-containing product when it is brought to a collection site.

### ***Collection Sites***

The bill requires a battery stewardship program to include the following entities as collection sites if they meet associated plan's

collection site criteria and they ask to be one: municipalities, solid waste management facilities, and household hazardous waste facilities. It similarly requires a program to use any retailer or wholesaler meeting the collection site criteria as a collection site if it asks to be one and having it as a site will help meet the plan's minimum number of required sites.

The bill also requires a program to use retailers, wholesalers, municipalities, solid waste management facilities, household hazardous waste facilities, or other entities meeting a plan's collection event criteria to serve as a collection event location if they ask to serve as one.

In the above circumstances, the bill allows a program to use additional collection sites, beyond the bill's minimum number of sites. (The bill, however, does not set minimum thresholds for collection sites.)

Under the bill, for each collection site it uses, a battery stewardship organization must (1) provide suitable collection containers that are separated from other solid waste or (2) make mutually agreeable alternative arrangements to collect the batteries at a site. The organization must also provide the site with, at no cost, training, signs, safety guidance, and educational materials.

Collection sites must follow (1) applicable federal, state, and local regulatory requirements and (2) the operations manual and other safety information the stewardship organization gives them.

**Collection Container Location.** The bill requires the collection containers to (1) be within the view of someone responsible for them at the collection site and (2) have the signs the stewardship organization gave to the site to educate customers about the site's end-of-life management options for batteries.

**Damaged or Defective Batteries.** The bill requires the stewardship organizations to have damaged or defective batteries at collection sites, other than retailers, with staff trained to handle and ship the batteries. The batteries must also be collected at all permanent household

hazardous waste facilities, household hazardous waste collection events, and participating permitted transfer stations. Under the bill, these batteries are those which (1) are damaged or manufacturer-identified as defective for safety reasons and (2) may produce dangerous heat, fire, or short circuit. The bill allows DEEP to update this definition in regulations to maintain consistency with federal definitions of damaged or defective batteries (49 C.F.R. § 173.185(f)).

***Suspending or Ending a Collection Site.*** The bill allows a stewardship organization to issue a warning to suspend or end a collection site or service that does not follow the plan’s collection site criteria or poses an immediate health and safety concern.

***Local Reimbursement.*** The bill requires a stewardship organization to reimburse local governments for the demonstrable costs they incur from serving as a program collection site (e.g., like at a solid waste handling facility). The costs include things like labor or storage costs.

#### **ADMINISTRATIVE FEE**

The bill allows DEEP to assess a reasonable annual fee, capped at \$50,000, to each battery stewardship organization to administer and enforce the bill’s requirements.

#### **PROMOTIONAL EFFORTS, EDUCATION, AND OUTREACH**

##### ***Stewardship Organization***

The bill requires a battery stewardship organization to develop and take part in promotion, education, and outreach activities to support its approved plan’s implementation. If multiple battery stewardship organizations are implementing DEEP-approved plans, they must coordinate education and outreach efforts.

Under the bill, the promotion, education, and outreach activities must at least include the following:

1. maintaining a website;
2. distributing periodic press releases and articles;

3. advertising on social media or other relevant media platforms;
4. distributing promotional materials about the program and its restrictions on disposing of batteries for use by individuals, retailers, government agencies, waste and recycling collectors, and nonprofits;
5. distributing safety training procedures that comply with state law to collection sites to help properly manage batteries; and
6. implementing educational and outreach resources that are conceptually, linguistically, and culturally accurate for the communities the program serves and reach the state's diverse ethnic populations, such as through meaningful consultation with communities that are disproportionately affected by increased adverse environmental and social justice impacts.

For collection sites, the bill requires a stewardship organization to provide (1) consumer-focused educational promotional materials; (2) safety information for the sites' operators related to battery collection, including appropriate methods to reduce spill or fire risks and response protocols for when a spill or fire happens or there is a damaged or defective battery; and (3) educational materials for the operators to manage recalled batteries, including transportation and processing.

For retailers and other potential collectors that ask for them, the bill requires a stewardship organization to provide educational materials that describe collection opportunities.

Additionally, during a program's first year and then every five years, a stewardship organization must conduct a public awareness survey about the program's requirements. It must share the surveys' results with DEEP.

**DEEP**

The bill requires DEEP to maintain a website that lists participating producers and their brands. The department must also make publicly available each plan, plan amendment, and annual report it receives.

## ANNUAL REPORT

Beginning by June 1, 2027, the bill requires each stewardship organization to report certain information in an annual report to DEEP that covers the previous calendar year. This information generally includes collected battery statistics, how batteries were managed, collection or recycling rates, educational and outreach efforts used, and certain financial information, as listed in the table below.

<b>General Report Topic</b>	<b>Required Information</b>
Collected Materials*	<ul style="list-style-type: none"> <li>• weight, by chemistry, of collected batteries</li> <li>• weight of materials recycled from collected batteries, in total and by recycling method</li> <li>• weight and chemistry of batteries sent to each disposal facility, which may be approximated based on extrapolations of national or regional data</li> <li>• program collection rate, including how it was calculated and compared to the bill's other collection rate goals</li> </ul>
Battery Management	<ul style="list-style-type: none"> <li>• description of battery collection, transport, and recycling methods used</li> <li>• list of and address for all collection sites, including a current map showing their locations with links to the sites' websites, if any</li> <li>• description of how collected batteries were managed and recycling, including best available technologies and the recycling efficiency rate</li> <li>• list of all facilities used to process or dispose of batteries, including their location (and if the location is in (1) the United States, (2) an organization for economic cooperation and development (OECD) country, or (3) a country that meets OECD's operating standards</li> <li>• for domestically-located processing or disposal facilities, a summary of any violations of environmental laws and regulations for the prior three years</li> <li>• for each disposal facility, how it recycled or otherwise disposed of batteries and battery components</li> <li>• calculation of recycling efficiency rates</li> <li>• summary on progress to meet performance goals and if they were not met, an explanation as to why</li> </ul>

<b>General Report Topic</b>	<b>Required Information</b>
	<ul style="list-style-type: none"> <li>• if batteries are disposed of through energy recovery, incineration, or landfilling, steps that will be taken to make recycling cost effective, if possible, or to otherwise increase recycling rates</li> </ul>
Education and Outreach	<ul style="list-style-type: none"> <li>• description of (1) education and outreach efforts to consumers, collection sites, manufacturers, distributors, and retailers by the program operator to promote collection and recycling and (2) how the efforts met the bill's requirements</li> <li>• sample materials</li> <li>• summary of (1) coordinated efforts with other battery stewardship organizations with DEEP-approved plans and (2) changes to education and outreach activities</li> <li>• effectiveness evaluation of education and outreach activities</li> </ul>
Financial	<ul style="list-style-type: none"> <li>• for each of the three prior years, estimated total sales, by weight and chemistry, of batteries and batteries contained in or with battery-containing products sold in Connecticut by participating producers</li> <li>• independent financial audit implemented by the stewardship organization, including a breakdown of program expenses (e.g., collection, recycling, and education costs, and overhead)</li> <li>• summary financial statement showing the program's financing and an analysis of program costs and expenses (e.g., collection, transportation, recycling, education, and overhead costs) (must be detailed enough to be transparent as to if funds from producers with activity in Connecticut were spent on programs in the state, but may be submitted as a document covering programs in all states in which the organization operates if it breaks out Connecticut-specific information)</li> </ul>

\*The bill specifies that battery and recovered resources weights must only be counted once and only by one stewardship organization.

## **COURT ACTION AND PENALTIES**

The bill allows for both criminal and civil actions related to certain violations of its provisions. It specifies that these actions and penalties and any court injunction are in addition to penalties, injunctions, or other relief state law already authorizes.

### ***Criminal Penalty***

The bill makes knowingly making a false, fictitious, or fraudulent

material written statement related to the bill's provisions, either under oath or on a form for the DEEP commissioner, a class A misdemeanor, punishable by up to 364 days in jail, a fine of up to \$2,000, or both.

***Civil Action by the Attorney General***

Under the bill, anyone who violates a provision of the bill is subject to a civil penalty of \$7,000 per violation, except that failing to pay a required fee makes the person subject to a civil penalty that is twice the amount of the applicable fee. The bill allows the attorney general to recover these penalties or enforce any of the bill's requirements by bringing a civil action. However, it specifies that no penalty applies for those who improperly dispose of covered batteries in a noncommercial or residential setting.

***Civil Action by a Stewardship Organization***

The bill gives a battery stewardship organization that is implementing an approved stewardship plan in compliance with the bill's provisions a private right of action for damages against a producer under certain circumstances.

Specifically, the right of action can be brought when the (1) organization incurs more than \$1,000 in actual costs to collect, handle, recycle, and properly dispose of the batteries the defendant producer sold or offered for sale in the state and (2) defendant producer is noncompliant with the bill's requirements. Under the bill, the damages available to the organization are (1) the actual costs to manage (e.g., collect, handle, recycle, or dispose of) batteries reasonably identified as coming from another battery producer or battery stewardship organization (presumably, limited to those of the defendant producer) and (2) reasonable attorney's fees and costs.

The bill specifies that DEEP is not a necessary party to this action, nor does it need to help or otherwise participate, unless it is subject to a subpoena.

**LIABILITY PROTECTION**

Under the bill, to the extent a producer or stewardship 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.

**PROPRIETARY INFORMATION**

Under the bill, any proprietary information submitted to DEEP as part of meeting the bill's requirements is exempt from disclosure under state freedom of information laws.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 34 Nay 0 (03/15/2024)