



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 ASSEMBLY BILL 1205

April 11, 2024 - Introduced by Representatives CONSIDINE, ANDRACA, JOERS, MOORE OMOKUNDE, PALMERI, RATCLIFF and SINICKI. Referred to Committee on Environment.

AN ACT *to create* 20.370 (4) (ht), 25.46 (1) (eL), 227.01 (13) (pv), 287.07 (6) and 287.175 of the statutes; **relating to:** requiring battery producers to administer battery collection and recycling programs, granting rule-making authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires battery manufacturers (producers) to operate a program to collect and recycle covered batteries. The bill defines “covered battery” as either 1) a portable battery (a rechargeable battery weighing no more than 11 pounds and having a rating of no more than 300 watt-hours, or a nonrechargeable battery weighing no more than 4.4 pounds); or 2) beginning January 1, 2029, a medium format battery (a rechargeable battery weighing more than 11 pounds or having a rating of more than 300 watt-hours, or both, but not exceeding 25 pounds or 2,000 watt-hours; or a nonrechargeable battery weighing more than 4.4 pounds but not more than 25 pounds). Under the bill, a “covered battery” does not include a battery that is contained in a medical device and that is not designed or marketed for retail sale; a battery that contains a liquid electrolyte; a lead acid battery; a vehicle battery; or a battery that is not easily removed from its product.

Under the bill, beginning January 1, 2026, no battery producer or retailer may sell a battery in this state unless the producer: 1) is operating under a battery

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stewardship plan that has been approved by the Department of Natural Resources; 2) pays an annual fee of \$20,000 to DNR; 3) submits annual reports to DNR; 4) completes an independent audit of its battery collection program after five years; and 5) provides retailers of its batteries with educational materials about its battery collection program. Under the bill, all of these requirements may be undertaken on behalf of a producer by a battery stewardship organization made up of at least five producers. The bill also allows DNR to change the amount of the annual \$20,000 producer fee, as necessary to maintain the program created under the bill, without going through the statutory rule-making process.

To be approved by DNR, a proposed battery stewardship plan must include specific information, such as a list of all the brands of batteries the producer sells in this state; provisions for collecting batteries at no cost, regardless of battery brand or producer; the names of at least two collection facilities in each county in this state that will provide battery collection throughout the calendar year; a method for responsibly managing collected batteries to ensure that all of the components of collected batteries are recycled or properly disposed of; a description of an education and outreach program that the producer will undertake to provide notice of the producer's battery collection program; a description of how the producer will develop a strategy for collecting covered batteries in areas facing environmental justice challenges associated with waste management; a collection rate performance goal; and a description of how the producer and the collection facilities identified in the plan will implement the program described in the plan.

Under the bill, DNR must provide notice of a proposed battery stewardship plan and receive public comments on the proposed plan for 30 days. DNR must also provide a public hearing on a proposed plan upon request. DNR has 90 days after receiving a complete proposed plan, not including the period for public comment and hearing, to either approve or deny a proposed plan. A plan that is not approved or denied within this time period is deemed approved. Under the bill, a producer may not amend an approved battery stewardship plan unless the proposed amendments are approved by DNR. The bill also allows DNR to revoke an approved battery stewardship plan if the producer is not complying with the plan.

The bill also requires DNR to maintain a website that lists the names of producers with approved plans and the brands of batteries covered by an approved battery stewardship plan and includes copies of all approved battery stewardship plans. Under the bill, DNR must also promote public participation in the collection and recycling of covered batteries through education and outreach activities. In addition, DNR must report to the legislature and the governor every two years on the implementation of any approved battery stewardship plans.

Under the bill, during the first year of implementing an approved battery stewardship plan, and two years after that, a producer must conduct a statistically significant survey of public awareness of the producer's battery collection program, for the purpose of identifying areas that need additional education and outreach. A producer must also conduct an audit after five years of implementing an approved

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battery stewardship plan, to examine the effectiveness of the producer's battery collection program.

Under the bill, a producer operating under an approved battery stewardship plan, or a battery stewardship organization on behalf of the producer, may request reimbursement from another producer for costs incurred in collecting, handling, recycling, or properly disposing of batteries produced by the other producer. A producer may request such reimbursement only after the producer has met the collection rate performance goal included in the producer's approved battery stewardship plan. A producer that receives a request for reimbursement may request an independent audit of the requested reimbursement costs. A producer that incurs more than \$1,000 in such reimbursable costs may bring a civil action against the other producer if the costs are not reimbursed.

Under the bill, any producer or retailer that violates the provisions of the bill relating to battery stewardship plans is subject to a civil forfeiture of up to \$10,000 per violation.

Finally, the bill prohibits the disposal of any covered battery in a solid waste disposal facility beginning January 1, 2026.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.370 (4) (ht) of the statutes is created to read:

20.370 (4) (ht) *Battery collection and recycling programs.* From the environmental fund, a sum sufficient to implement the battery collection and recycling program under s. 287.175.

SECTION 2. 25.46 (1) (eL) of the statutes is created to read:

25.46 (1) (eL) The fees imposed under s. 287.175 (3) (b) for environmental management.

SECTION 3. 227.01 (13) (pv) of the statutes is created to read:

227.01 (13) (pv) Adjusts the amount of the fee under s. 287.175 (3) (b).

SECTION 4. 287.07 (6) of the statutes is created to read:

287.07 (6) BATTERIES. Beginning January 1, 2026, no person may dispose of

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or burn a covered battery, as defined in s. 287.175 (1) (b), in a solid waste disposal facility.

SECTION 5. 287.175 of the statutes is created to read:

287.175 Battery collection and recycling. (1) DEFINITIONS. In this section:

(a) “Collection rate” means the total weight of covered batteries collected in this state by a producer in a calendar year divided by the average annual weight of covered batteries estimated to have been sold in this state by that producer during the same calendar year and the previous 2 calendar years.

(b) “Covered battery” means a portable battery or, beginning January 1, 2029, a medium format battery. “Covered battery” does not include any of the following:

1. A battery, contained in a medical device that is regulated under the federal food, drug and cosmetic act, 21 USC 301 to 394, that is not designed or marketed for sale or resale at retail locations for personal use.

2. A battery that contains an electrolyte as a free liquid.

3. A lead acid battery.

4. A vehicle battery.

5. A battery in a battery-containing product that is not intended or designed to be easily removable from the battery-containing product.

(c) “Medium format battery” means any of the following:

1. For batteries that are not capable of being recharged, a battery that weighs more than 4.4 pounds but not more than 25 pounds.

2. For rechargeable batteries, a battery that weighs more than 11 pounds, or

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that has a rating of more than 300 watt-hours, or both, but that does not weigh more than 25 pounds or have a rating of more than 2,000 watt-hours.

(d) “Portable battery” means any of the following:

1. For batteries that are not capable of being recharged, a battery that weighs no more than 4.4 pounds.

2. For rechargeable batteries, a battery that weighs no more than 11 pounds and that has a rating of no more than 300 watt-hours.

(e) “Producer” means a person that sells, offers for sale, or distributes for sale a covered battery in or into this state and that is any of the following:

1. If the covered battery is sold under a brand of the battery’s manufacturer, the person that manufactures the battery.

2. If the covered battery is sold under a retail brand or under a brand owned by a person other than the battery’s manufacturer, the person that owns the brand.

3. If subds. 1. and 2. do not apply, the person that is the licensee of a brand or trademark under which the covered battery is sold, offered for sale, or distributed for sale in or into this state, regardless of whether the trademark is registered in this state.

4. If subds. 1. to 3. do not apply to any person within the United States, the person that is the importer of record for the covered battery into the United States for the purpose of selling, offering for sale, or distributing for sale the battery in or into this state.

5. If subds. 1. to 4. do not apply to any person with a commercial presence in

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this state, the person who first sells, offers for sale, or distributes for sale the covered battery in or into this state.

(f) “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.

(g) “Recycling” means preparing batteries for use in manufacturing processes or for recovery of usable materials and delivering the materials for use. “Recycling” does not include destruction by incineration or other processes or land disposal of recyclable materials and does not include reuse, repair, or any other process through which batteries are returned in their original form.

(h) “Retailer” means a person that offers a battery for sale in this state by any means, including through online sales.

(2) PROHIBITIONS. (a) *Producers*. Beginning on January 1, 2026, no producer may sell, offer for sale, or distribute for sale in or into this state any covered battery unless the producer is in compliance with the requirements under sub. (3).

(b) *Retailers*. Beginning on January 1, 2026, no retailer may sell or offer for sale in this state any covered battery unless the producer of the battery is in compliance with the requirements under sub. (3). This paragraph does not apply to covered batteries for which any of the following apply:

1. The retailer purchases the covered battery before January 1, 2026, and sells the battery on or before January 1, 2027.
2. If the producer’s battery stewardship plan under this section expired or was

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revoked, the retailer purchased the covered battery before the producer's battery stewardship plan expired or was revoked.

(3) PRODUCER REQUIREMENTS. (a) *Stewardship plan.* No later than June 1, 2025, each producer shall submit a battery stewardship plan to the department for review. No later than January 1, 2026, each producer shall operate under an approved battery stewardship plan. A battery stewardship plan submitted to the department shall have a term of no more than 5 years and shall include all of the following:

1. If the producer is a member of a battery stewardship organization under sub. (4), the names and contact information for each of the producers in the battery stewardship organization.

2. The brands of all of the covered batteries that the producer sells, offers for sale, or distributes for sale in or into this state. All such brands shall be covered by the battery stewardship plan.

3. Provisions for collecting covered batteries at no cost, regardless of the brand or producer of the covered battery.

4. A process for providing packaging, consistent with any state or federal requirements related to transporting hazardous materials, for the safe collection and transportation of covered batteries. Such packaging shall be provided at no cost if the purpose of the packaging will be to collect and transport damaged, defective, or recalled covered batteries.

5. A process for allowing retailers, municipalities, and solid waste facilities to opt in to being a collection facility under the plan.

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6. The name, address, and contact information of at least two collection facilities in each county in this state that will provide covered battery collection throughout the calendar year.

7. The name, address, and contact information of any transporter or contractor that will collect covered batteries from collection facilities and a statement as to whether such transporters or contractors have obtained any required state and federal licenses for transporting batteries; and the name, address, and contact information of any recycling facility that will process the collected batteries.

8. A provision that ensures that each collection facility will accept up to 100 covered batteries per person per visit. A collection facility may agree to accept more covered batteries per person per visit.

9. A list of collection facilities that will collect damaged, defective, or recalled covered batteries. Other collection facilities under the plan shall not be required to collect damaged, defective, or recalled covered batteries.

10. A method for responsibly managing collected covered batteries to ensure that all of the components of collected batteries are recycled, to the extent economically and technically feasible, and that any components or batteries that cannot be recycled are properly disposed of.

11. A description of an education and outreach program that the producer will undertake to provide notice of the producer's covered battery collection program to businesses, municipalities, solid waste facilities, retailers, and transporters; to provide information about available safety training for collection facilities; and to

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notify the public that there is a free covered battery collection program and the location of collection facilities. If more than one producer has an approved battery stewardship plan, all producers with an approved battery stewardship plan shall coordinate in carrying out their education and outreach programs.

12. A description of how the producer will develop strategies, in consultation with the department and other relevant parties, for collecting covered batteries in areas and communities that face environmental justice challenges associated with waste management.

13. A procedure for collecting and providing reimbursement under sub. (6).

14. A collection rate performance goal.

15. A description of how the producer and the collection facilities identified in the plan will implement the program described in the plan, including by providing products and equipment to collection facilities to set up a collection site and by providing for the management and transportation of collected covered batteries.

(b) *Fee.* A producer operating under an approved battery stewardship plan shall pay an annual fee of \$20,000 to the department. Fees paid under this paragraph shall be deposited into the environmental fund. The department may adjust the amount of this fee as necessary to maintain the program under this section.

(c) *Reporting.* No later than March 1, 2027, and annually thereafter, a producer shall submit to the department a report that contains all of the following:

1. The total weight of covered batteries collected by the producer in the previous calendar year.

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2. The estimated percentage of the total weight under subd. 1. that is attributable to rechargeable batteries.

3. The estimated percentage of the total weight under subd. 1. that is attributable to producers that are not operating under an approved battery stewardship plan under this section.

4. The collection rate achieved by the producer in the previous calendar year.

5. The estimated total weight of covered batteries sold, offered for sale, or distributed for sale in or into this state by the producer in the previous 3 calendar years.

6. The location and contact information for each collection facility and collection site that collected covered batteries under the producer's approved battery stewardship plan in the previous calendar year.

7. Examples and descriptions of educational materials provided and outreach activities conducted by the producer in the previous calendar year to increase covered battery collection, and a description of how the producer coordinated with other producers with approved battery stewardship plans in carrying out its education and outreach program.

8. A description of how collected covered batteries were managed in the previous calendar year.

9. Any material amendment to the producer's battery stewardship plan approved by the department under sub. (5) (b) in the previous calendar year.

10. The producer's cost of implementing its battery stewardship plan in the

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previous calendar year, including the costs of collection, recycling, education, and outreach.

(d) *Public survey.* During the first year of implementing an approved battery stewardship plan, and two years thereafter, a producer shall conduct a statistically significant survey of public awareness of the battery stewardship plan and its implementation. The results of the survey shall identify communities that have disparities in awareness and that need additional education and outreach.

(e) *Audit.* After 5 years of implementing an approved battery stewardship plan, a producer shall contract with an independent 3rd party to conduct a one-time audit of the battery stewardship plan and its implementation. The audit shall examine the effectiveness of the battery stewardship plan in collecting and recycling covered batteries; examine the cost-effectiveness of the battery stewardship plan; and compare the battery stewardship plan to other covered battery collection plans in other jurisdictions. The auditor shall submit the results of the audit directly to the department and provide a copy to the producer.

(f) *Educational materials for retailers.* A producer that supplies covered batteries to a retailer shall provide the retailer with educational materials describing collection opportunities for those batteries.

(4) BATTERY STEWARDSHIP ORGANIZATIONS. A producer may meet the requirements under sub. (3) by participating in a battery stewardship organization, made up of at least 5 producers, that complies with the requirements of sub. (3) on behalf of the producer. A battery stewardship organization may exercise the rights

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under subs. (6) and (7) on behalf of any of the producers participating in the organization.

(5) DEPARTMENT DUTIES. (a) *Plan approvals.* Within 90 days after receiving a complete proposed battery stewardship plan under sub. (3) (a), not including any time required for public comment and hearing under par. (d), the department shall determine whether the proposed plan complies with the requirements under sub. (3) (a). If the proposed plan complies with the requirements under sub. (3) (a), the department may approve the plan and shall notify the producer of the approval in writing. If the proposed plan does not comply with the requirements under sub. (3) (a), the department shall deny the plan and notify the producer of the denial in writing; the producer shall have 45 days after receiving a denial to submit a revised plan to the department for approval. A proposed plan that is not approved or denied by the department within 90 days shall be deemed approved.

(b) *Plan amendments.* A producer may not amend an approved battery stewardship plan unless the proposed amendments are approved by the department in writing. The department may require a producer to amend an approved plan.

(c) *Plan revocations.* The department may revoke an approved battery stewardship plan if the department determines that the producer is not complying with the approved plan and the producer fails to comply with or amend the plan within a reasonable time after receiving a request to do so from the department.

(d) *Public notice and comment.* The department shall publish a class 1 notice under ch. 985, shall publish notice on its website, and shall provide notice, upon

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request, to interested persons, announcing the opportunity for written public comment and the opportunity to request a public hearing on a battery stewardship plan submitted under sub. (3) (a). The department's notice to interested persons may be given through an electronic notification system established by the department. For the purpose of determining the date on which notice is provided under this paragraph, the date on which the department first publishes the notice on its website shall be considered the date of notice. The department shall receive public comments on the proposed battery stewardship plan for a 30-day period beginning on the date the department gives notice.

(e) *Website.* Subject to par. (g), the department shall maintain on its website all of the following:

1. A copy of all approved battery stewardship plans.
2. The names of producers with approved battery stewardship plans.
3. A list of brands of covered batteries listed in approved battery stewardship plans under sub. (3) (a) 2.

(f) *Outreach and communication.* The department shall promote public participation in the collection and recycling of covered batteries through education and outreach activities.

(g) *Confidentiality.* Information submitted to the department under this section that is a protected trade secret shall not be open to public inspection and copying under s. 19.35 (1). The department may publish such information in a summary or aggregated form that does not identify individual producers or retailers. The department may require a producer, as part of a report submitted

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under sub. (3) (c), to omit or redact trade secret information. The total weight of covered batteries collected under an approved battery stewardship plan is not a protected trade secret.

(h) *Reporting.* No later than July 1, 2027, and every two years thereafter, the department shall provide a report on the program under this section to the legislature under s. 13.172 (2) and to the governor. The department shall include in the report a summary of annual reports received under sub. (3) (c) and any recommendations for changes to the program under this section.

(i) *Rules.* The department may promulgate rules to implement and administer this section.

(6) REIMBURSEMENT. (a) *Request.* A producer operating under an approved battery stewardship plan that collects covered batteries that are not included under the producer's approved plan is entitled to reimbursement from the producer of the collected batteries for costs incurred in collecting, handling, recycling, or properly disposing of such batteries. A producer may request reimbursement only after the producer has met the collection rate performance goal included in the producer's approved battery stewardship plan. Reimbursement may be requested only for costs actually incurred in collecting the covered batteries, including costs of collection, transport, recycling, and other methods of disposal identified in the producer's approved battery stewardship plan, and reasonable administrative costs.

(b) *Payment.* A producer that receives a request for reimbursement under this subsection may, prior to payment and within 30 days of receiving the request for reimbursement, request an independent audit of the requested reimbursement

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costs. If the independent audit confirms that the requested reimbursement costs are reasonable, the producer requesting the audit shall pay the cost of the audit and the amount of the reimbursement requested. If the independent audit finds that the reimbursement request was not reasonable, the producer that submitted the reimbursement request shall pay the cost of the audit.

(7) PRIVATE RIGHT OF ACTION. A producer operating under an approved battery stewardship plan that is in compliance with the requirements under sub. (3) may bring a civil action against another producer for costs incurred in collecting, handling, recycling, or properly disposing of covered batteries produced by the other producer, if all of the following apply:

(a) The producer bringing the action has incurred more than \$1,000 in actual costs that are reimbursable under sub. (6).

(b) The producer against whom the action is brought can be identified as the producer of the collected covered batteries, from a brand or marking on the collected batteries or from other information available.

(c) The producer bringing the action submitted a request for reimbursement under sub. (6) and did not receive reimbursement within 90 days if no independent audit was requested or within 60 days after completion of an independent audit if an audit was requested.

(8) PENALTIES. Any producer or retailer that violates this section may be required to forfeit not more than \$10,000 for each violation.

(END)