

**PROPOSED AMENDMENTS TO
HOUSE BILL 2938**

1 On page 1 of the printed bill, line 2, after “batteries” insert “; and ap-
2 propriating money”.

3 Delete lines 3 through 24.

4 Delete lines 26 through 29 and delete pages 2 through 4 and insert:

5

6

“DECLARATION OF POLICY

7

8 **“SECTION 1. The Legislative Assembly declares that it is the policy
9 of this state:**

10 **“(1) To encourage the recovery and reuse of materials and to elim-
11 inate wastes from mining and other extractive industries;**

12 **“(2) To reduce the volume of materials that enter the solid waste
13 stream in order to reduce the burdens of solid waste on municipalities;**

14 **“(3) To ensure the proper handling and recycling of used small re-
15 chargeable batteries to prevent the release of lead, cadmium and other
16 materials into the environment and to remove from the solid waste
17 stream solvents and other materials that may present safety concerns
18 if mishandled;**

19 **“(4) To ensure that all entities supplying small rechargeable bat-
20 teries to users in this state, whether as replacement batteries or as
21 easily removable components of products, bear the same battery
22 stewardship obligations;**

1 **“(6) ‘Participate in a managed program’ means to appoint a person**
2 **to operate a managed program on one’s behalf and to have the ap-**
3 **pointed person accept the appointment.**

4 **“(7) ‘Person’ means a sole proprietorship, partnership, corporation,**
5 **not-for-profit corporation or organization, limited liability company,**
6 **firm, association, cooperative or other legal entity.**

7 **“(8) ‘Producer’ means a person other than a retailer that:**

8 **“(a) Manufactures, or arranges for the manufacturing of, small re-**
9 **chargeable batteries sold, offered for sale or distributed in this state**
10 **under a brand name owned or licensed by the manufacturer or person**
11 **that arranges for manufacturing;**

12 **“(b) Packages, or arranges for the packaging of, small rechargeable**
13 **batteries sold, offered for sale or distributed in this state under a**
14 **brand name owned or licensed by the packager or person that arranges**
15 **for packaging;**

16 **“(c) Imports into the United States small rechargeable batteries**
17 **sold, offered for sale or distributed in this state under a brand name**
18 **owned or licensed by the importer or person that arranges for the**
19 **importation; or**

20 **“(d) Otherwise makes available to wholesalers and retailers in this**
21 **state small rechargeable batteries.**

22 **“(9) ‘Retail’ means to sell or offer for sale a small rechargeable**
23 **battery directly to consumers in this state through transactions, in-**
24 **cluding but not limited to remote offerings such as sales outlets, cat-**
25 **alogs or the Internet.**

26 **“(10) ‘Retailer’ means a person that retails small rechargeable bat-**
27 **teries.**

28 **“(11) ‘Retail program’ means a used small rechargeable battery**
29 **stewardship program operated by a retailer or by a franchisor on be-**
30 **half of its franchisees.**

1 **“(12)(a) ‘Small rechargeable battery’ means:**
2 **“(A) One or more voltaic or galvanic cells that are electrically**
3 **connected to produce electric energy, designed to be recharged and**
4 **together weigh less than 11 pounds; and**
5 **“(B) Are a stand-alone unit or packaged with or contained in a**
6 **portable rechargeable product that is not a medical device as defined**
7 **in ORS 167.500 (2).**

8 **“(b) ‘Small rechargeable battery’ does not mean:**
9 **“(A) A battery that is not easily removable;**
10 **“(B) A battery that contains electrolyte as free liquid; or**
11 **“(C) A battery or battery pack that employs lead-acid technology,**
12 **unless the battery or battery pack:**
13 **“(i) Is sealed;**
14 **“(ii) Contains no liquid electrolyte; and**
15 **“(iii) Is intended by its producer to power a handheld device or to**
16 **provide uninterrupted backup electrical power for stationary consumer**
17 **products or stationary office equipment.**

18 **“(13) ‘Store brand retailer’ means a person that retails a small re-**
19 **chargeable battery under a brand name owned or licensed by that**
20 **person or a franchisor of that person.**

21 **“(14) ‘Used small rechargeable battery stewardship program’ means**
22 **a program for the collection, transportation, recycling and disposal of**
23 **used small rechargeable batteries that meets the conditions in section**
24 **4 of this 2013 Act.**

25

26 **“USED SMALL RECHARGEABLE BATTERY**
27 **STEWARDSHIP PROGRAM**

28

29 **“SECTION 3. (1) A person may not sell or make available to a**
30 **wholesaler or retailer for sale in this state a small rechargeable bat-**

1 tery unless:

2 “(a) The person participates in or operates a used small rechargeable
3 battery stewardship program; and

4 “(b) The small rechargeable battery is labeled with a brand that
5 identifies the retailer or producer.

6 “(2) The provisions of this section do not apply to a telecommuni-
7 cations provider that markets equipment containing small rechargeable
8 batteries under a brand that the telecommunications provider
9 owns.

10 **“SECTION 4. (1) To qualify as a used small rechargeable battery
11 stewardship program:**

12 “(a) A retail program must meet the conditions of subsection (2)
13 of this section and must collect used small rechargeable batteries, re-
14 gardless of brand, at the retail locations in this state where the
15 retailer or franchisees sell small rechargeable batteries.

16 “(b) A managed program must meet the requirements of sub-
17 sections (2) and (3) of this section.

18 “(2) All used small rechargeable battery stewardship programs must
19 meet the following conditions:

20 “(a) Used small rechargeable batteries are recycled only by facilities
21 that have obtained any necessary licenses, permits or approvals;

22 “(b) All contracts with service providers entered into by the person
23 operating the program on behalf of the program must require compli-
24 ance with the provisions of sections 1 to 6 of this 2013 Act and con-
25 tracts may be entered into only with facilities and service providers
26 that have obtained any necessary licenses, permits or approvals;

27 “(c) All return acceptance, recycling and post-collection transpor-
28 tation of used small rechargeable batteries must be provided free of
29 charge to consumers;

30 “(d) The program must provide educational and outreach activities

1 to maximize collections of used small rechargeable batteries and to
2 promote safe practices in recycling and disposing collected used small
3 rechargeable batteries;

4 “(e) The program must provide the following information on a
5 website operated by the program:

6 “(A) The name, address and other contact information of the person
7 operating the program;

8 “(B) The names, addresses, telephone numbers and hours of opera-
9 tion of used small rechargeable battery collection locations that
10 Oregon residents may use, and restrictions on the total number of
11 used small rechargeable batteries that a consumer may return to each
12 collection location; and

13 “(C) An annual report, to be completed no later than April 1 of each
14 calendar year, that identifies:

15 “(i) The funding and recycling activities of the program, including
16 the number of total batteries collected and recycled during the previ-
17 ous calendar year, the cost of the program per pound of batteries col-
18 lected and the cost of the program per Oregon resident;

19 “(ii) The number of used small rechargeable batteries collected in
20 each county of this state and the chemistry types of collected used
21 small rechargeable batteries;

22 “(iii) The educational and outreach activities the used small re-
23 chargeable battery stewardship program conducts;

24 “(iv) The mechanisms employed and the sorting and reclamation
25 facilities involved in the final disposition of collected materials; and

26 “(v) The methods used to collect, transport and account used small
27 rechargeable batteries collected.

28 “(3) Managed programs must also meet the following conditions:

29 “(a) Provide at least one used small rechargeable battery collection
30 site in each county and in each city or town with a population greater

1 **than 20,000;**

2 **“(b) Require participating retailers to collect all brands of used**
3 **small rechargeable batteries at multiple locations;**

4 **“(c) Provide for the collection of all brands of used small re-**
5 **chargeable batteries from collection sites operated by local govern-**
6 **ment units;**

7 **“(d) Include on the website operated by the managed program:**

8 **“(A) A collection site locator to assist consumers in finding the**
9 **nearest collection site;**

10 **“(B) The names, addresses, telephone numbers and hours of opera-**
11 **tion of used small rechargeable battery collection locations of all small**
12 **rechargeable battery retailers and producers that participate in the**
13 **program; and**

14 **“(C) Information on how retailers, producers and consumers may**
15 **seek technical advice from the program; and**

16 **“(e) Include in the annual report required by subsection (2) of this**
17 **section an independently audited financial statement that details pro-**
18 **gram expenses including collection, recycling, education and overhead.**

19 **“(4) No later than February 1 of each calendar year, the operator**
20 **of a used small rechargeable battery stewardship program must pay**
21 **an annual fee of \$8,000 to the Department of Environmental Quality.**
22 **The department shall deposit the fees received under this subsection**
23 **into the Rechargeable Battery Recycling Fund established in section 7**
24 **of this 2013 Act.**

25

26 **“DEPARTMENT OF ENVIRONMENTAL**
27 **QUALITY REPORT**

28

29 **“SECTION 5. (1) On or before January 1 of each odd-numbered year,**
30 **the Department of Environmental Quality shall report to the appro-**

1 puate interim committee of the Legislative Assembly regarding how
2 sections 1 to 6 of this 2013 Act have fostered used small rechargeable
3 battery stewardship programs in Oregon. The department may include
4 recommendations for legislation in the report.

5 “(2) The report must be based on the annual reports provided by
6 retail operators and managers pursuant to section 4 of this 2013 Act.
7 The department may also use and include in the report other infor-
8 mation the department deems relevant and appropriate.

9 “(3) Nothing in sections 1 to 6 of this 2013 Act alters or limits the
10 authority of the department to regulate collection of solid waste, in-
11 cluding the curbside collection of residential recyclable materials.

12
13 **“NONENROLLED BATTERIES**

14
15 **“SECTION 6. (1) The operator of a used small rechargeable battery**
16 **stewardship program that incurs costs in excess of \$3,000 to collect,**
17 **transport and reclaim nonenrolled batteries collected in this state may**
18 **bring an action against the producer or store brand retailer that sells**
19 **or makes available for sale the nonenrolled batteries to recover the**
20 **costs incurred in collecting, handling, recycling or properly disposing**
21 **of the nonenrolled battery.**

22 “(2) A defendant to an action under subsection (1) of this section
23 may claim as a defense to liability that the defendant operates a retail
24 program or operates or participates in a managed program.

25 “(3) In an action under this section, the operator of a stewardship
26 program may recover:

27 “(a) The costs incurred in collecting, handling, recycling or properly
28 disposing of nonenrolled batteries produced by the defendant; and

29 “(b) Damages in an amount no greater than three times the costs
30 identified in paragraph (a) of this subsection, plus attorney fees and

1 costs of litigation.

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“RECHARGEABLE BATTERY RECYCLING FUND

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5 **“SECTION 7. (1) The Rechargeable Battery Recycling Fund is es-**
6 **tablished in the State Treasury, separate and distinct from the General**
7 **Fund. Interest earned by the Rechargeable Battery Recycling Fund**
8 **shall be credited to the fund. Moneys in the fund are continuously**
9 **appropriated to the Department of Environmental Quality to:**

10 **“(a) Pay the administrative costs of the report under section 5 of**
11 **this 2013 Act;**

12 **“(b) Pay any other costs the department incurs related to the im-**
13 **plementation of sections 1 to 6 of this 2013 Act; or**

14 **“(c) Review the implementation of sections 1 to 6 of this 2013 Act**
15 **and prepare recommendations for legislation to further the objectives**
16 **sections 1 to 6 of this 2013 Act.**

17 **“(2) The Rechargeable Battery Recycling Fund shall consist of**
18 **moneys received by the department pursuant to section 4 of this 2013**
19 **Act.**

20

21

“UNIT CAPTIONS

22

23 **“SECTION 8. The unit captions used in this 2013 Act are provided**
24 **only for the convenience of the reader and do not become part of the**
25 **statutory law of this state or express any legislative intent in the**
26 **enactment of this 2013 Act.”.**

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