

Assembly Bill No. 2153

CHAPTER 666

An act to add Section 25215.5.5 to, and to repeal and add Article 10.5 (commencing with Section 25215) of Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2016. Filed with
Secretary of State September 26, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2153, Cristina Garcia. The Lead-Acid Battery Recycling Act of 2016.

Existing law prohibits a person from disposing, or attempting to dispose, of a lead-acid battery at a solid waste facility or on or in any land, surface waters, watercourses, or marine waters, but authorizes a person to dispose of a lead-acid battery at certain locations. Existing law requires a dealer to accept, when offered at the point of transfer, a lead-acid battery from a consumer in exchange for the new lead-acid battery purchased by that consumer from the dealer. A violation of these provisions is a misdemeanor.

This bill, the Lead-Acid Battery Recycling Act of 2016, would, as of January 1, 2017, revise these provisions to require a dealer to accept, at the point of transfer, specified types of used lead-acid batteries and would prohibit the dealer from charging any fee to accept these used lead-acid batteries. The bill, on and after April 1, 2017, would require a dealer to collect a refundable deposit for each new lead-acid battery of these types from a person who purchases the battery and who does not simultaneously provide a used lead-acid battery of the same size and type, and would require the dealer to refund the deposit to the person if, within 45 days of the sale of that lead-acid battery, the person presents a used lead-acid battery of the same type and size. The bill would require a dealer to post a specified notice or include specified information on the purchaser's receipt for one of these lead-acid batteries with regard to these provisions. The bill would allow the dealer to keep any lead-acid battery refundable deposit that is not properly claimed within 45 days after the date of sale of the new lead-acid battery.

This bill, on and after April 1, 2017, until March 31, 2022, would require a California battery fee in the amount of \$1 to be imposed on a person, except as specified, for each replacement lead-acid battery purchased that is of one of the specified types. The bill would authorize the dealer to retain 1 ½% of the fee as reimbursement for any costs associated with the collection of the fee and would require the dealer to remit the remainder to the State Board of Equalization (state board) for deposit into the Lead-Acid Battery Cleanup Fund, except as specified. On and after April 1, 2022, the bill would increase the California battery fee to \$2.

This bill, on and after April 1, 2017, until March 31, 2022, would require a manufacturer battery fee of \$1 to be imposed on a manufacturer of lead-acid batteries for each lead-acid battery it sells at retail to a person in California, or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California, for deposit into the Lead-Acid Battery Cleanup Fund. The bill would require manufacturer battery fees remitted pursuant to these provisions to be credited against amounts owed by the manufacturer to the state under a judgment or determination of liability under specific hazardous materials provisions or any other law for removal, remediation, or other response costs relating to a release of a hazardous substance from a lead-acid battery recycling facility. The bill would require that the amount paid by a manufacturer for a manufacturer battery fee be considered to reduce the manufacturer's share of liability in the allocation of costs among potentially responsible parties in a contribution action brought by a private party related to a release of hazardous substances from a lead-acid battery recycling facility.

Of moneys collected pursuant to this act, the bill would require the board to retain moneys necessary for the payment of refunds and to reimburse the board for expenses in the collection of the California battery fee and the manufacturer battery fee. The bill would require that the remaining moneys be deposited into the Lead-Acid Battery Cleanup Fund, which would be created by the bill, and would make the moneys available upon appropriation by the Legislature for purposes of response actions at any area of the state that is reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility, administration of the fund, the department's administration and implementation of the act's provisions, and reimbursement of certain loans for lead cleanup. The bill would make the reimbursement money available for further loans, as specified. The bill would require \$1,200,000 be loaned from the California Tire Recycling Management Fund to the board for implementing the collection of the California battery fee and the manufacturer battery fee and would require that the loan be repaid before October 1, 2017.

This bill would require, on and after July 1, 2017, a manufacturer to place a recycling symbol, as specified, and other information on all replacement lead-acid batteries sold in California.

This bill would require, by February 1, 2018, and annually thereafter, the department to report to the Legislature on the status of the Lead-Acid Battery Cleanup Fund and on the department's progress in implementing these provisions.

This bill would authorize the board to adopt regulations to implement these lead-acid battery management provisions. Because a violation of these regulations would be a crime, this bill would impose a state-mandated local program.

This bill would require, on or before January 1, 2017, manufacturers to notify distributors, wholesalers, and dealers of the lead-acid batteries it manufactures of the bill's requirements, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Article 10.5 (commencing with Section 25215) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.5. The Lead-Acid Battery Recycling Act of 2016

25215. This article shall be known, and may be cited, as the Lead-Acid Battery Recycling Act of 2016.

25215.1. For purposes of this article, the following definitions shall apply:

(a) "Board" means State Board of Equalization.

(b) "Business" means any person, as defined in subdivision (j), except a natural person or a city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of any of those, or an interstate body or, to the extent permitted by law, the United States and its agencies and instrumentalities.

(c) "California battery fee" means the fee imposed pursuant to Section 25215.25.

(d) "Dealer" means every person who engages in the retail sale of replacement lead-acid batteries directly to persons in California. "Dealer" includes a manufacturer of a new lead-acid battery that sells at retail that lead-acid battery directly to a person through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or Internet Web site or any other similar electronic means.

(e) "Lead-acid battery" means any battery weighing over five kilograms that is primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid, solid, or gel state, with a capacity of six volts or more that is used for any of the following purposes:

(1) As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.

(2) As a motive power battery that is designed to provide the source of power for propulsion or operation of a vehicle, including a watercraft.

(3) As a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.

(4) As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Section 670 of the Vehicle Code, including a vehicle as defined in Section 36000 of the Vehicle Code, or an aircraft.

(f) “Lead-acid battery recycling facility” means any site at which lead-acid batteries are or have been disassembled for the purpose of making components available for reclamation to produce elemental lead or lead alloys or at which lead-acid batteries or their components, or both, are or have been reclaimed to produce elemental lead or lead alloys.

(g) “Manufacturer” means either of the following:

(1) The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state.

(2) If there is no person described in paragraph (1) that is subject to the jurisdiction of the state, the manufacturer is the person who imports the lead-acid battery into the state for sale or distribution.

(h) “Manufacturer battery fee” means the fee imposed pursuant to Section 25215.35.

(i) “Owner or operator” has the same meaning given in Section 9601(20) of Title 42 of the United States Code and any person that previously met that definition or is the legal successor to a person that meets the definition or previously met the definition.

(j) “Person” means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. “Person” also includes any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of any of those, interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(k) “Remedial action” has the same meaning as in Section 25322.

(l) “Removal” has the same meaning as in Section 25323.

(m) “Replacement lead-acid battery” means a new lead-acid battery that is sold at retail subsequent to the original sale or lease of the equipment or vehicle in which the lead-acid battery is intended to be used. “Replacement lead-acid battery” does not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid battery.

(n) “Response action” has the same meaning as in Section 25323.3.

(o) (1) A “retail sale” or a “sale at retail” has the same meaning as defined in Section 6007 of the Revenue and Taxation Code.

(2) “Retail sale” does not include any of the following:

(A) The sale of a battery for which a California battery fee has previously been paid.

(B) The sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state and that is subsequently transported outside the state and thereafter used solely outside of the state.

(C) The sale of a battery for incorporation into new equipment for subsequent resale.

(D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle service contract described under Section 12800 of the Insurance Code.

(E) The sale of any battery intended for use with or contained within a medical device, as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) as that definition may be amended.

(p) “Used lead-acid battery” means a lead-acid battery no longer fully capable of providing the power for which it was designed or that a person no longer wants for any other reason.

(q) “Wholesaler” means any person who purchases a lead-acid battery from a manufacturer for the purpose of selling the lead-acid battery to a dealer, high-volume customer, or to a person for incorporation into new equipment for resale.

25215.15. (a) Except as provided in subdivision (b), no person shall dispose, or attempt to dispose, of a lead-acid battery at a solid waste facility or on or in any land, surface waters, watercourses, or marine waters.

(b) A person may dispose of a lead-acid battery at either of the following locations:

(1) A facility, including a facility located at a solid waste facility, established and operated for the purpose of recycling, or providing for the eventual recycling of, lead-acid batteries.

(2) A dealer pursuant to Section 25215.2.

25215.2. (a) A dealer shall accept from persons at the point of transfer a used lead-acid battery of a type listed in paragraph (1), (2), or (4) of subdivision (e) of Section 25215.1, but shall not be required to accept from any person more than six used lead-acid batteries per day. A dealer shall not charge any fee to receive a used lead-acid battery.

(b) On and after April 1, 2017, a dealer shall charge to each person who purchases a replacement lead-acid battery of a type listed in paragraph (1), (2), or (4) of subdivision (e) of Section 25215.1 and who does not simultaneously provide the dealer with a used lead-acid battery of the same type and size a refundable deposit for each such battery purchased. The dealer shall display the amount of the deposit separately on the receipt provided to the purchaser. The dealer shall refund the deposit to that person if, within 45 days of the sale of the replacement lead-acid battery, the person presents to the dealer a used lead-acid battery of the same type and size. A dealer may require the person to provide a receipt documenting the payment of the deposit before refunding any deposit. A dealer may keep any lead-acid battery deposit moneys that are not properly claimed within 45 days after the date of sale of the replacement lead-acid battery, not including any sales tax reimbursement charged to the consumer. Sales tax reimbursement charged to the consumer on the amount of the deposit shall be remitted to the board.

(c) A dealer shall post a written notice that is clearly visible in the public sales area of the establishment, or include on the purchaser’s receipt, the following language:

This dealer is required by law to charge a nonrefundable \$1 California battery fee and a refundable deposit for each lead-acid battery purchased.

A credit of the same amount as the refundable deposit will be issued if a used lead-acid battery is returned at the time of purchase or up to 45 days later along with this dealer's receipt.

(d) The department shall provide notice of an alleged violation of subdivision (c) to any person alleged to be in violation of that subdivision no less than 60 days before the issuance of an order or filing an action imposing a civil penalty pursuant to subdivision (b) of Section 25189.2. If the person corrects the alleged violation before the order is issued or the action is filed the department shall not impose the civil penalty.

(e) Subdivision (c) does not apply to any of the following:

(1) A person whose ordinary course of business does not include the sale of lead-acid batteries.

(2) A person that does not sell lead-acid batteries directly to consumers, such as over-the-counter, but instead removes nonfunctional or damaged batteries and installs new lead-acid batteries as a part of an automotive repair dealer service.

(3) A business that removes lead-acid batteries and installs new lead-acid batteries as a part of roadside services. "Roadside services," for purposes of this paragraph, means the services performed upon a motor vehicle for the purpose of transporting the vehicle or to permit it to be operated under its own power, by or on behalf of a motor club holding a certificate of authority pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code.

(f) Except as authorized by this article, a dealer shall not collect a refundable deposit for a lead-acid battery from a person.

25215.25. (a) (1) On and after April 1, 2017, until March 31, 2022, a California battery fee of one dollar (\$1) shall be imposed on a person for each replacement lead-acid battery of a type listed in paragraph (1), (2), or (4) of subdivision (e) of Section 25215.1 purchased from a dealer. On and after April 1, 2022, the amount of the fee shall be two dollars (\$2).

(2) Except for sales to businesses, the dealer shall charge a person the amount of the California battery fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the person.

(3) The dealer shall collect the California battery fee at the time of sale and may retain 1 ½ percent of the fee as reimbursement for any costs associated with the collection of the fee. The remainder of the California battery fee collected by the dealer shall be paid to the board in a manner and form prescribed by the board and at the time the return is required to be filed, as specified in Section 25215.47.

(4) All moneys collected by a dealer pursuant to this section that are not properly remitted to the board pursuant to paragraph (3) shall be deemed to be a debt owed to the state by the dealer.

(5) A person who purchases a replacement lead-acid battery in this state is liable for the California battery fee until that fee has been paid to the board, except that payment to a dealer registered under this article is sufficient to relieve the person from further liability of the fee.

(6) All moneys remitted to the board pursuant to this subdivision shall be expended in accordance with Section 25215.5.

(b) (1) Except for sales to businesses, the California battery fee imposed pursuant to subdivision (a) shall be separately stated by the dealer on the invoice given to a person at the time of sale. Any other fee charged by the dealer related to the lead-acid battery purchase, including any deposit charged, credited, or both, pursuant to Section 25215.2, shall be identified separately from the California battery fee.

(2) If a person purchases more than one lead-acid battery in a single transaction, and is therefore imposed more than one California lead-acid battery fee in that transaction, the dealer shall not be required to individually list on the invoice each California lead-acid battery fee imposed, but may instead condense the fees to a single-line item.

25215.35. (a) On and after April 1, 2017, a manufacturer battery fee of one dollar (\$1) shall be imposed on a manufacturer of lead-acid batteries for each lead-acid battery it sells at retail to a person in California or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California.

(b) Manufacturer battery fees shall be paid to the board in a manner and form as prescribed by the board and at the time the return is required to be filed, as specified in Section 25215.47.

(c) This section shall become inoperative on April 1, 2022, and, as of January 1, 2023, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2023, deletes or extends the dates on which it becomes inoperative and is repealed.

25215.45. (a) (1) Except as provided in paragraph (2), the lead-acid battery fees imposed pursuant to Sections 25215.25 and 25215.35 shall be collected by the board in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, the reference to “feepayer” shall include a dealer and manufacturer.

(2) Notwithstanding the petition for redetermination and claim for refund provisions of the Fee Collection Procedures Law (Article 3 (commencing with Section 55081) of Chapter 3 of, and Article 1 (commencing with Section 55221) of Chapter 5 of, Part 30 of Division 2 of the Revenue and Taxation Code), the board shall not do either of the following:

(A) Accept or consider any petition for redetermination of fees determined under this article if the petition is founded upon the grounds that a battery is or is not a lead-acid battery, as defined in Section 25215.1. The board shall forward to the department any petition for redetermination that is based on those grounds.

(B) Accept or consider a claim for refund of fees paid pursuant to this article, if the claim for refund is founded upon the grounds that a battery is

or is not a lead-acid battery, as defined in Section 25215.1. The board shall forward to the department any claim for refund that is based on these grounds.

(b) The following persons shall register with the board:

- (1) A dealer of lead-acid batteries.
- (2) A manufacturer of lead-acid batteries.

25215.47. (a) The return required to be filed pursuant to Section 55040 of the Revenue and Taxation Code shall be prepared and filed by the person required to register with the board, in the form prescribed by the board, and shall contain the information the board deems necessary or appropriate for the proper administration of this article and the Fee Collection Procedures Law. Except as provided in subdivision (b), the return shall be filed on or before the last day of the calendar month following the calendar quarter to which the return relates, together with a remittance payable to the board for the fee amount due for that period. Returns shall be filed with the board using electronic media and authenticated in a form, or pursuant to methods, as may be prescribed by the board.

(b) The board may require the payment of the fee and the filing of the returns for other than quarterly periods.

25215.5. (a) Lead-acid battery fees collected pursuant to this article shall be managed as follows:

(1) The board shall retain moneys necessary for the payment of refunds and reimbursement of the board for expenses in the collection of the fees.

(2) The remaining moneys shall be deposited into the Lead-Acid Battery Cleanup Fund, which is hereby created in the State Treasury, and is available upon appropriation by the Legislature to the department for the purposes specified in this section.

(b) (1) Moneys in the Lead-Acid Battery Cleanup Fund shall be expended for the following activities:

(A) Investigation, site evaluation, cleanup, remedial action, removal, monitoring, or other response actions at any area of the state that is reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility.

(B) Administration of the Lead-Acid Battery Cleanup Fund and the department's administration and implementation of this article.

(C) Repayment of a loan described in Section 25215.59 that was made before the effective date of the act which added this section, or any other loan made for purposes set forth in subparagraph (A).

(2) Moneys in the Lead-Acid Battery Cleanup Fund shall not be used to implement Article 14 (commencing with Section 25251) with respect to lead-acid batteries or to loan moneys to any other program.

(c) The department shall report to the Legislature by February 1, 2018, and annually thereafter, on the status of the Lead-Acid Battery Cleanup Fund and on the department's progress implementing this article, including, but not limited to, the sites at which actions were performed using moneys from the fund, the status of cleanup at those sites, including total anticipated costs of cleanup at those sites, the balance of the fund, the amount of fees

remitted to the fund, the amount spent by the fund and the purposes for which those amounts were spent, the amounts reimbursed to the board pursuant to paragraph (1) of subdivision (a), and any other information requested by the Legislature.

25215.56. (a) Any manufacturer battery fees paid remitted pursuant to this article shall be credited against amounts owed by the manufacturer to the state pursuant to a judgment or determination of liability under Chapter 6.8 (commencing with Section 25300) or any other law for removal, remediation, or other response costs relating to a release of a hazardous substance from a lead-acid battery recycling facility. A manufacturer shall not seek more than one credit for the same fee amount. This subdivision does not apply to any manufacturer who is also an owner or operator of a lead-acid battery recycling facility in California.

(b) The amount paid by a manufacturer for a manufacturer battery fee shall be considered to reduce the manufacturer's share of liability in the allocation or apportionment of costs among potentially responsible parties in a contribution action brought by a private party related to a release of hazardous substances from a lead-acid battery recycling facility. This subdivision does not apply to any manufacturer who is also an owner or operator or a former owner or operator of a lead-acid battery recycling facility in California where a release occurred.

(c) This article does not create a private cause of action. Nothing in this article shall be construed to affect, expand, alter, or limit any requirements, duties, rights, or remedies under other law, or limit the state or any other party from bringing any cause of action that may exist under any law.

25215.59. If the state loans money from the General Fund to the Toxic Substances Control Account for the cleanup of lead contamination in the state, the following shall apply:

(a) Money from the Lead-Acid Battery Cleanup Fund may be used towards repaying the loan that was made before the effective date of the act that added this section, or any other loan of public funds made for the purposes set forth in subparagraph (A) of paragraph (1) of subdivision (b) of Section 25215.5.

(b) Any moneys designated as repayment of the loan shall be deposited to that loan, but shall be available to be loaned to the Toxic Substances Control Account for the purposes of cleaning up areas of the state that are reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility.

25215.65. On and after July 1, 2017, a manufacturer shall place a recycling symbol consistent with the requirements of Section 103(b)(1) of the Federal Mercury Containing and Rechargeable Battery Management Act, Pub. L. No. 104-142 (1996) (42 U.S.C. 14301(b)(1)) and either "Pb" or the words "lead," "return," and "recycle" on all replacement lead-acid batteries sold in California. For purposes of this section, an entity that engages another party to manufacture batteries on its behalf shall be deemed the manufacturer.

25215.72. One million two hundred thousand dollars (\$1,200,000) shall be loaned from the California Tire Recycling Management Fund to the board for implementing the collection of the California battery fee and the manufacturer battery fee and shall be repaid from the proceeds of those fees pursuant to this article no later than October 1, 2017. The Director of Finance shall order the repayment of all or a portion of this loan if he or she determines that either of the following circumstances exist:

(a) The fund or account from which the loan was made has a need for the moneys.

(b) There is no longer a need for the moneys by the board.

25215.74. (a) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article, including, but not limited to, registration, collections, reporting, notices for manufacturers, refunds, and appeals.

(b) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this article. Any emergency regulation prescribed, adopted, or enforced pursuant to this article shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect until regulations have been adopted pursuant to subdivision (a).

25215.75. This article shall become operative on January 1, 2017.

SEC. 2. Section 25215.5.5 is added to Article 10.5 (commencing with Section 25215) of Chapter 6.5 of Division 20 of the Health and Safety Code, as added by Chapter 209 of the Statutes of 1988, to read:

25215.5.5. This article shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 3. (a) On or before January 1, 2017, each manufacturer of lead-acid batteries sold in this state shall notify the distributors, wholesalers, and dealers of the lead-acid batteries it manufactures of the requirements set forth in Article 10.5 (commencing with Section 25215) of Chapter 6.5 of Division 20 of the Health and Safety Code, as it will read on and after January 1, 2017.

(b) This section shall be repealed as of January 1, 2017.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to increase the cleanup of toxic materials and to prevent additional toxic pollution at the earliest possible time, it is necessary that this act take effect immediately.