

Introduced by Senator AllenFebruary 19, 2025

An act to add Article 10.8.5 (commencing with Section 25218.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 501, as introduced, Allen. Household Hazardous Waste Producer Responsibility Act.

(1) Under existing law, as part of the hazardous waste control laws, the Department of Toxic Substances Control (DTSC) generally regulates the management and handling of hazardous waste and hazardous materials. Existing law authorizes a public agency, as defined, to operate a household hazardous waste collection facility under permit from DTSC.

Existing law, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, establishes a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by that program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable.

This bill would create a producer responsibility program for products containing household hazardous waste and would require a producer responsibility organization (PRO) to ensure the safe and convenient collection and management of covered products at no cost to consumers or local governments. The bill would define "covered product" to mean a consumer product that is ignitable, toxic, corrosive, or reactive, or that meets other specified criteria. The bill would require a producer of a covered product to register with the PRO, which would be required

to develop and implement a producer responsibility plan for the collection, transportation, and the safe and proper management of covered products. The bill would require DTSC to adopt regulations to implement the program with an effective date no earlier than July 1, 2028.

The bill would require the PRO, within 12 months of the effective date of the regulations, to submit a producer responsibility plan to DTSC. The bill would require the plan to include specified elements, including a funding mechanism to fully fund the PRO and the program. The bill would require, within 6 months of receipt of the plan, DTSC to approve, approve in part, or disapprove the plan, as specified. The bill would require DTSC to notify the PRO of its decision. If DTSC does not approve the plan in full, then the bill would require DTSC to specify the reasons for disapproval or identify the portions of the partially approved plan that do not comply with the program, as applicable. The bill would require the PRO to submit a revised plan if its plan is not fully approved. The bill would conditionally approve a plan if DTSC does not approve, approve in part, or disapprove a plan within one year of receipt of the plan.

The bill would require the PRO to implement its plan within 90 days of approval. The bill would require the plan to be fully funded in a manner that equitably distributes the plan's costs among participant producers, as specified. The bill would require the PRO to reimburse local jurisdictions for costs associated with collecting illegally dumped covered products and for providing a convenient collection system for covered products if the PRO's plan relies on local jurisdictions to collect or manage covered products.

The bill would require the PRO to prepare and submit to DTSC an annual report describing the activities carried out pursuant to the plan. The bill would require the PRO to retain specified documents, annually audit its accounting books, and make documents available to DTSC for review, as specified. The bill would require all reports and records provided to DTSC pursuant to the program to be provided under penalty of perjury. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The bill would require a participant producer, through the PRO, to pay DTSC, on an unspecified schedule, an annual administrative charge, as determined by DTSC. The bill would require the charge be set at an amount that is adequate to cover DTSC's full costs of administering and enforcing the program. The bill would provide for the imposition

of administrative civil penalties on producers and other specified persons who violate the program. The bill would establish the Household Hazardous Waste Producer Responsibility Fund in the State Treasury and would require the administrative charges collected by DTSC to be deposited into that fund for expenditure by DTSC, upon appropriation by the Legislature, to cover DTSC's cost to implement the program. The bill would also establish the Household Hazardous Waste Products Penalty Account in the Household Hazardous Waste Producer Responsibility Fund and would require that the civil penalties collected by DTSC pursuant to the program be deposited into that account, for expenditure by DTSC, upon appropriation by the Legislature, for activities related to the collection, reuse, and recycling of covered products, grants for related purposes, and the administration and enforcement of the program.

The bill would provide that certain actions of the PRO or a producer are not violations of the Cartwright Act or certain provisions regulating unfair business practices or unfair competition.

(2) Existing law established the Department of Resources Recycling and Recovery (CalRecycle) to, among other things, promote waste management in the order of source reduction, then recycling and composting, and then environmentally safe transformation and environmentally safe land disposal, as provided. Pursuant to that authority, CalRecycle publishes various waste characterization studies.

This bill would require CalRecycle, in support of the program, to include in updates to the applicable waste characterization study the amount of covered products that were properly and improperly disposed of, as specified.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Thousands of household products that are sold in the state
4 contain substances designated as hazardous under state or federal
5 law.

6 (b) Leftover household products, known as household hazardous
7 waste, are regulated through a requirement that municipal solid
8 waste management entities include provisions in solid waste
9 implementation plans for the management and diversion of
10 unregulated hazardous waste.

11 (c) California's hazardous waste laws and regulations establish
12 specific requirements for the management of hazardous waste,
13 including a prohibition on disposal in landfills.

14 (d) The Department of Resources Recycling and Recovery has
15 supported the construction of household hazardous waste facilities
16 and management by offering household hazardous waste grants
17 to local governments, and those grants are currently limited to
18 \$5,000,000 per year when a single facility, such as the one in
19 progress in the County of Sonoma, will cost between \$13,000,000
20 and \$16,000,000.

21 (e) California already has extended producer responsibility
22 programs for some household hazardous waste products, including
23 mercury thermostats, pharmaceuticals, sharps and needles, and
24 paint products.

25 (f) The Statewide Commission on Recycling Markets and
26 Curbside Recycling convened from July 2020 to June 2022, and
27 its first recommendation was to create a household hazardous waste
28 extended producer responsibility program.

29 (g) According to the Department of Toxic Substances Control's
30 Hazardous Waste Management Report, released November 2023,
31 "The previous waste reduction efforts were discontinued because
32 they did not produce reductions large enough to be seen as
33 effective."

34 (h) The cost of managing household hazardous waste for local
35 government ratepayers is extremely high and yet proper disposal
36 is still inconvenient for the public. Extended producer responsibility
37 is used for a wide variety of household hazardous waste products
38 in Canada and other countries for products like antifreeze,

1 pesticides, flammables, radioactive smoke alarms, lighting, and
2 others.

3 (i) To reduce improper disposal of household hazardous waste,
4 reduce the financial burden on local jurisdictions and taxpayers,
5 reduce the cost of the overall system of managing household
6 hazardous waste, improve the convenience of proper disposal to
7 the public, and lessen the environmental and public health risks
8 posed by improperly disposed household hazardous waste, the
9 state shall implement a program to require the manufacturers of
10 household hazardous waste products to create a producer
11 responsibility organization to improve collection and to cover the
12 costs of managing household hazardous waste.

13 SEC. 2. Article 10.8.5 (commencing with Section 25218.50)
14 is added to Chapter 6.5 of Division 20 of the Health and Safety
15 Code, to read:

16
17 Article 10.8.5. Household Hazardous Waste Producer
18 Responsibility Act
19

20 25218.50. (a) This article shall be known, and may be cited,
21 as the Household Hazardous Waste Producer Responsibility Act.

22 (b) The purpose of this article is to provide for the safe and
23 proper management of household hazardous waste, which poses
24 a threat to public health and safety, is costly for California's local
25 governments, and may cause significant damage to the environment
26 when managed improperly.

27 25218.51. For purposes of this article, the following definitions
28 apply:

29 (a) (1) "Approved plan" means a producer responsibility plan
30 that has been approved by the department pursuant to Section
31 25218.55 and that has not been revoked by the department pursuant
32 to Section 25218.68.

33 (2) A conditionally approved plan is an approved plan, except
34 as used in Section 25218.55.

35 (3) A partially approved plan is not an approved plan.

36 (b) "Brand" means a name, symbol, word, or mark that identifies
37 a covered product rather than its components, and attributes the
38 covered product to the owner or licensee of the brand as the
39 producer.

- 1 (c) “Consumer” means a purchaser, owner, or lessee of a covered
2 product, including a person, business, corporation, limited
3 partnership, nonprofit organization, or governmental entity.
- 4 (d) “Consumer product” means a commodity that is intended
5 for use for personal, family, or household purposes, or that is
6 present in the same form, concentration, and quantity as a product
7 prepackaged for distribution to a consumer for personal, family,
8 or household purposes, and is handled at, and found in, a retail
9 establishment and intended for direct sale to the end user.
- 10 (e) “Contact information” means a name, physical address,
11 mailing address, email address, and telephone number.
- 12 (f) (1) “Covered product” means a consumer product that is
13 one or more of the following:
- 14 (A) A pesticide, as defined in Section 12753 of the Food and
15 Agricultural Code.
- 16 (B) An aerosol.
- 17 (C) An oxidizer.
- 18 (D) An adhesive, glue, cleaner, degreaser, or solvent, which is
19 ignitable, toxic, corrosive, or reactive.
- 20 (E) A lubricant, oil, antifreeze, cleaner, wax, or degreaser, which
21 is an automotive product used for purposes of maintaining the
22 function of a motor vehicle, as defined in Section 670 of the
23 Vehicle Code.
- 24 (F) A compressed gas, including, but not limited to, propane,
25 helium, and oxygen.
- 26 (G) A lithium battery.
- 27 (H) A product containing asbestos, mercury, or polychlorinated
28 biphenyls.
- 29 (I) An electronic delivery system of a nicotine or non-nicotine
30 aerosolized or vaporized solution to a person, including electronic
31 cigarettes and vape pens.
- 32 (J) A product that is ignitable, toxic, corrosive, or reactive and
33 is added by the department via the needs assessment, and is not
34 exempted.
- 35 (2) “Covered product” does not include any of the following:
- 36 (A) A product subject to another statewide stewardship or
37 advanced disposal fee-based program for collection or management
38 pursuant to state law.
- 39 (B) A health and beauty product.

1 (C) A product otherwise listed in paragraph (1) for which the
2 producer demonstrates to the department that the product meets
3 both of the following criteria:

4 (i) The product is not ignitable, toxic, corrosive, or reactive.

5 (ii) The product may safely be collected through a residential
6 recycling collection service, residential organic waste collection,
7 or residential solid waste collection.

8 (g) “Department” means the Department of Toxic Substances
9 Control.

10 (h) “Importer” means either of the following:

11 (1) A person qualifying as an importer of record for purposes
12 of Section 1484(a)(2)(B) of Title 19 of the United States Code
13 with regard to the import of a covered product that is sold,
14 distributed for sale, or offered for sale in or into the state that was
15 manufactured or assembled by a company outside of the United
16 States.

17 (2) A person importing into the state for sale, distributing for
18 sale, or offering for sale in the state a covered product that was
19 manufactured or assembled by a company physically located
20 outside of the state.

21 (i) “Participant producer” means a producer that is registered
22 with the producer responsibility organization.

23 (j) (1) “Producer” means a person who manufactures a covered
24 product and who sells, offers for sale, or distributes a covered
25 product into the state under the person’s own name or brand.

26 (2) If there is no person in the state who is the producer for
27 purposes of paragraph (1), the producer of the covered product is
28 the owner or exclusive licensee of a brand under which the covered
29 product is sold or distributed into the state. For purposes of this
30 subdivision, an exclusive licensee is a person holding the exclusive
31 right to use a brand in the state in connection with the manufacture,
32 sale, or distribution for sale in or into the state of the covered
33 product.

34 (3) If there is no person in the state who is the producer for
35 purposes of paragraph (1) or (2), the producer of the covered
36 product is the person that imports the covered product into the
37 state for sale, distribution, or installation.

38 (4) If there is no person in the state who is the producer for
39 purposes of paragraph (1), (2), or (3), the producer of the covered

1 product is the distributor, retailer, dealer, or wholesaler who sells
2 the product in or into the state.

3 (5) For purposes of this article, the sale of a covered product
4 shall be deemed to occur in the state if the covered product is
5 delivered to the consumer in the state.

6 (k) “Producer responsibility organization” means an organization
7 that is exempt from taxation under Section 501(c)(3) of the federal
8 Internal Revenue Code of 1986, is formed for the purpose of
9 implementing a plan to meet the requirements of this article, and
10 is approved by the department .

11 (l) “Producer responsibility plan” means the plan developed by
12 a producer responsibility organization for the collection,
13 transportation, and the safe and proper management of covered
14 products pursuant to this article and submitted to the department
15 for approval pursuant to Section 25218.55.

16 (m) “Sell” or “sales” has the same meaning as set forth in
17 Section 6006 of the Revenue and Taxation Code.

18 25218.52. (a) (1) Except as provided in Section 25218.55,
19 the department shall adopt, amend, or repeal regulations to
20 implement this article, in accordance with the Administrative
21 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
22 Part 1 of Division 3 of Title 2 of the Government Code). The
23 department shall not adopt regulations pursuant to this section with
24 an effective date earlier than July 1, 2028.

25 (2) As part of the regulations described in this section, the
26 department shall establish a baseline amount of covered products
27 improperly disposed of and shall measure progress towards meeting
28 the performance-based standards in Section 25218.56.

29 (b) On or before January 1, 2027, the department shall establish
30 and post on its internet website a list of covered product categories.

31 (c) On or before January 1, 2028, the department shall approve
32 one, and only one, producer responsibility organization that meets
33 the requirements of this article.

34 (d) On or before January 1, 2032, and every five years after, the
35 department may conduct an assessment to identify household
36 hazardous waste that is not included in the producer responsibility
37 plan and adjust the covered product categories, if needed, to
38 achieve the purpose of this article. The department may select an
39 independent third-party contractor to complete the assessment.

1 The department shall make its determination and rationale available
2 for public review.

3 25218.53. (a) No later than 90 days after the department's
4 approval of the producer responsibility organization, pursuant to
5 Section 25218.52, a producer shall register with the producer
6 responsibility organization in accordance with the procedures and
7 requirements established by the producer responsibility
8 organization.

9 (b) No later than 30 days after the effective date of the
10 regulations described in Section 25218.52, a producer, or the
11 producer responsibility organization on behalf of the producer,
12 shall notify the department electronically that the producer has
13 registered with the producer responsibility organization.

14 (c) Upon approval of a producer responsibility plan pursuant to
15 Section 25218.55, a producer shall not sell, offer for sale, import,
16 or distribute a covered product in the state unless all of the
17 following conditions are met:

18 (1) The producer is registered with the producer responsibility
19 organization.

20 (2) The covered product is accounted for in the producer
21 responsibility plan.

22 (3) The department has approved the producer responsibility
23 plan.

24 (d) If an entity does not meet the definition of a producer and
25 is not subject to this article but, at any point, meets the definition
26 of a producer, that entity shall be deemed a producer at that point
27 in time, and shall register with the producer responsibility
28 organization and otherwise comply with the requirements of this
29 article before beginning to sell, offer for sale, import, or distribute
30 a covered product in the state.

31 (e) (1) No later than 180 days after the effective date of the
32 regulations described in Section 25218.52, a producer shall provide
33 to the department, in a form and manner established by the
34 department, both of the following:

35 (A) The producer's contact information.

36 (B) A list of covered products and brands of covered products
37 that the producer sells, distributes for sale, imports for sale, or
38 offers for sale in or into the state.

39 (2) A producer shall provide to the department updates to the
40 information described in paragraph (1) on or before January 15 of

1 each year, within 30 days of changes to the contact information
2 or list, and upon the department's request.

3 25218.54. (a) The producer responsibility organization shall
4 have a governing board consisting of participant producers that
5 represent the diversity of covered products.

6 (b) The producer responsibility organization shall notify the
7 department within 30 calendar days of any of the following:

8 (1) The end of a three-month period during which the producer
9 responsibility organization unsuccessfully attempted to obtain a
10 fee, records, or information from a participant producer.

11 (2) The date that a producer no longer participates in the
12 producer responsibility organization's approved plan.

13 (3) Any instance of noncompliance by a participant producer.

14 (c) The producer responsibility organization may conduct a
15 needs assessment to determine appropriate strategies and
16 investments needed to meet the requirements of this article.

17 25218.55. (a) Within 12 months of the effective date of the
18 regulations described in Section 25218.52, the producer
19 responsibility organization shall develop and submit a proposed
20 producer responsibility plan to the department, in a form and
21 manner determined by the department.

22 (b) Within six months of receipt of a proposed producer
23 responsibility plan, the department shall approve, approve in part,
24 or disapprove the producer responsibility plan.

25 (c) If the department approves a proposed producer
26 responsibility plan, a revised plan, or a conditionally approved
27 plan, then the department shall notify the producer responsibility
28 organization of the approval. The producer responsibility
29 organization shall implement the approved or conditionally
30 approved plan within 90 days of receipt of the notice of approval,
31 or as otherwise agreed to by the department.

32 (d) If the department disapproves a proposed producer
33 responsibility plan or a revised plan, then the department shall
34 notify the producer responsibility organization of the disapproval
35 and specify the reasons for disapproval. Within 30 days of receipt
36 of the notice of disapproval, the producer responsibility
37 organization shall submit a revised plan.

38 (e) (1) If the department approves a proposed producer
39 responsibility plan or a revised plan in part, then the department
40 shall notify the producer responsibility organization of the partial

1 approval and identify the portions of the producer responsibility
2 plan that do not comply with this article.

3 (2) Within 30 days of receipt of the notice of partial approval,
4 the producer responsibility organization shall submit a revised
5 plan to the department.

6 (3) The producer responsibility organization shall implement
7 the approved parts of the producer responsibility plan within 90
8 days of receipt of the notice of partial approval, or as otherwise
9 agreed to by the department.

10 (f) Within 30 days of receipt of a revised plan, the department
11 shall approve, approve in part, or disapprove the revised plan.

12 (g) If the department has not approved, approved in part, or
13 disapproved a producer responsibility plan within one year of
14 receipt of the producer responsibility plan, then the producer
15 responsibility plan shall be deemed conditionally approved and
16 the department shall notify the producer responsibility organization
17 of the conditional approval within 30 days.

18 (h) The department may impose additional requirements for
19 any portion of a proposed producer responsibility plan, a revised
20 plan, or a conditionally approved plan that does not comply with
21 this article and that has not been approved.

22 (i) When reviewing a proposed producer responsibility plan, a
23 revised plan, or a conditionally approved plan, the department may
24 solicit information from producers, other agencies or departments,
25 or stakeholders, as the department deems appropriate.

26 (j) The department may review an approved plan or a
27 conditionally approved plan at any time. If the department finds
28 that an approved plan or a conditionally approved plan does not
29 comply with this article, then it may recommend modifications.

30 (k) Any substantial changes to an approved plan shall be
31 submitted to the department for approval.

32 (l) (1) An approved plan and a conditionally approved plan
33 shall be a public record, except that financial, production, or sales
34 data reported by the producer responsibility organization to the
35 department is not a public record for purposes of the California
36 Public Records Act (Division 10 (commencing with Section
37 7920.000) of Title 1 of the Government Code) and shall not be
38 open to public inspection. The department may release financial
39 or sales data in summary form only so the information cannot be
40 attributable to a specific entity.

1 (2) The producer responsibility organization may submit to the
2 department a redacted version of the approved plan or conditionally
3 approved plan that removes any proprietary or confidential
4 information.

5 (3) Within 90 days of approval, conditional approval, or revision
6 of a producer responsibility plan, the department shall post on its
7 internet website the producer responsibility plan and a list of all
8 the participant producers covered by the producer responsibility
9 plan.

10 25218.56. A producer responsibility plan shall meet all of the
11 following criteria:

12 (a) Be designed to ensure the safe and convenient collection
13 and management of covered products at no cost to consumers or
14 local governments.

15 (b) Describe the methods of collection to ensure convenience
16 to customers, including permanent collection sites, temporary
17 collection sites, curbside collection, and collection events.

18 (c) Include as a permanent collection site a local household
19 hazardous waste collection facility, as defined in subdivision (h)
20 of Section 25218.1, that offers in writing to participate in the
21 program.

22 (d) Describe opportunities for collection and management of
23 covered products for residents of the state on weekdays outside of
24 the hours of 8:00 a.m. to 5:00 p.m., and on weekends.

25 (e) Include strategies to ensure that elderly consumers, disabled
26 consumers, and any other consumers with limited mobility, have
27 access to the safe and proper collection and management of covered
28 products, including opportunities to have covered products
29 collected.

30 (f) Describe how the producer responsibility organization will
31 leverage and use existing collection programs and infrastructure.

32 (g) Ensure a decrease in the aggregate percentage of covered
33 products improperly disposed of by 40 percent by 2036, as
34 measured against the baseline determined pursuant to Section
35 25218.52.

36 (h) Ensure at least 70 percent of California consumers are aware
37 of the program implemented by the producer responsibility
38 organization by 2036.

39 (i) Describe how the producer responsibility organization will
40 incentivize minimizing disposal of covered products, when feasible,

1 including through reuse, recycling, and reducing the amount of
2 covered products being disposed of.

3 (j) Include the contact information of each participant producer.

4 (k) Include a financial section that demonstrates how the
5 producer responsibility organization will comply with Section
6 25218.58, including, but not limited to, a five-year budget that
7 demonstrates how the producer responsibility organization will
8 comply with subdivision (b) of Section 25218.58.

9 (l) Include a section describing the producer responsibility
10 organization's contingency plan in the event the producer
11 responsibility plan expires or is revoked. The contingency plan
12 shall guarantee that all the contracts, financial data, and any other
13 necessary authority and assets to operate the program shall vest in
14 a trustee approved by the department. The trustee shall operate the
15 most recently approved plan, subject to the direction of the
16 department, until such time as a new producer responsibility plan
17 is approved. Upon the expiration or revocation of a producer
18 responsibility plan, the balance of the producer responsibility
19 organization's operating reserves collected shall be transferred to
20 the control of the trustee within five calendar days. All documents,
21 digital records, contracts, and files related to the operation of the
22 producer responsibility plan shall be transferred to the control of
23 the trustee within five calendar days.

24 (m) Include a section describing a comprehensive statewide
25 education and outreach program designed to educate consumers
26 and promote participation in the program offered by the producer
27 responsibility organization. This shall include a description of
28 efforts to support participation by all California communities,
29 including a description of efforts to communicate with consumers
30 in languages other than English. The comprehensive statewide
31 education and outreach program shall do all of the following:

32 (1) Promote the safe and proper management of a covered
33 product and shall not promote the disposal of a covered product
34 in a manner inconsistent with the services offered by the producer
35 responsibility plan.

36 (2) Include information for consumers on how to properly
37 manage a covered product at the time of disposal and how to avoid
38 improper disposal of a covered product.

1 (3) Include information for consumers about how to reduce the
2 amount of covered products being disposed of and how to
3 participate in reuse opportunities for covered products.
4 (4) Include information related to environmentally preferable
5 purchasing and how to identify less hazardous alternatives.
6 25218.57. (a) The producer responsibility organization shall
7 review its approved plan at least every five years and determine
8 whether revisions are necessary.
9 (b) If the producer responsibility organization determines that
10 revisions to its approved plan are necessary, the producer
11 responsibility organization shall submit to the department a revised
12 plan for review and approval using the procedures set forth in
13 Section 25218.55. The producer responsibility organization shall
14 submit the revised plan to the department at least 12 months before
15 the review deadline outlined in subdivision (a). The revised plan
16 shall include a cover letter that summarizes the revisions to the
17 producer responsibility plan.
18 (c) If the producer responsibility organization determines that
19 no revisions to the approved plan are necessary, the producer
20 responsibility organization shall send a letter to the department 12
21 months before the review deadline outlined in subdivision (a)
22 explaining that the producer responsibility organization has
23 reviewed the approved plan and determined that no revisions are
24 needed. The department may disapprove the producer responsibility
25 organization’s determination within 30 days of receipt of the letter
26 if the department concludes that the producer responsibility
27 organization cannot implement the objectives of this article without
28 revising the approved plan. If the department disapproves the
29 producer responsibility organization’s determination, the
30 department may indicate to the producer responsibility organization
31 which sections of the approved plan need revision and the producer
32 responsibility organization shall submit to the department a revised
33 plan for review and approval, following the procedures set forth
34 in Section 25218.55. The producer responsibility organization
35 shall submit the revised plan pursuant to this subdivision within
36 60 days of receipt of the department’s disapproval.
37 (d) The department may consult with or submit the revised plan
38 to another state agency or department if the department determines
39 it is necessary for making its determination. The duration of time

1 the department takes for this consultation is not included in the
2 time allotted to the department for review pursuant to this section.
3 25218.58. The producer responsibility organization shall do
4 all of the following:

5 (a) (1) Establish a method for fully funding the producer
6 responsibility organization and implementing an approved producer
7 responsibility plan in a manner that equitably distributes the
8 producer responsibility plan's costs among participant producers
9 in a manner that reflects sales volumes, consideration of the cost
10 of managing their specific covered products according to the
11 approved producer responsibility plan, and malus fees or credits
12 pursuant to paragraph (2).

13 (2) The distribution of the producer responsibility plan's costs
14 shall incorporate malus fees or credits for participant producers,
15 with adjustments based on any of the following, as applicable:

16 (A) Actions taken by the participant producer to invest in
17 sustainable packaging or product reuse and refill systems that
18 ensure the covered product does not become waste, either through
19 the waste stream or illegal dumping.

20 (B) Actions taken by the participant producer, including clear
21 and accurate labeling and instructions, that improve consumer
22 behavior related to sorting and proper disposal of the covered
23 product.

24 (C) Actions taken by the participant producer to reduce the
25 relative toxicity, ignitability, corrosiveness, or reactivity of the
26 covered product.

27 (b) (1) Operate on a budget that establishes a funding level
28 sufficient to operate the producer responsibility organization in a
29 prudent and responsible manner. The budget shall demonstrate
30 how the producer responsibility organization's estimated revenues
31 will cover all of its budgeted costs for each cost category. Budgeted
32 cost categories shall include, but are not limited to, administrative
33 costs, capital costs, and a reserve.

34 (2) Administrative costs shall include the actual and reasonable
35 regulatory costs incurred by the department, which includes full
36 personnel costs, to implement and enforce this article, consistent
37 with the regulations described in Section 25218.52. For purposes
38 of this paragraph, producer responsibility organization
39 implementation begins upon approval of the producer responsibility
40 organization's producer responsibility plan, except that costs shall

1 include actual regulatory development costs and other startup costs
2 incurred before a producer responsibility plan's submittal and
3 approval.

4 (3) The reserve shall include funds to operate the producer
5 responsibility organization if there are unexpected events, losses
6 of income, or large unbudgeted expenses. The reserve shall also
7 protect the infrastructure that the producer responsibility
8 organization relies on in its producer responsibility plan during
9 any lapse in producer participation during the life of the program.
10 The reserve cost category shall include a reserve level amount
11 description justifying the reserve level amount indicated. The
12 producer responsibility organization shall maintain reserve funds
13 sufficient to operate the producer responsibility plan for not less
14 than six months. When a new producer responsibility organization
15 is approved by the department, the producer responsibility
16 organization shall establish its reserve and maintain the required
17 reserve fund balance by the end of the second year of producer
18 responsibility plan operation. If the producer responsibility
19 organization's producer responsibility plan expires or is revoked,
20 the reserve balance shall be transferred to a successor producer
21 responsibility organization or a trustee pursuant to the portion of
22 the producer responsibility plan described in subdivision (f) of
23 Section 25218.56.

24 (c) On a schedule determined by the department, pay the
25 department fees to cover the department's regulatory costs, as
26 described in Section 25218.60.

27 (d) Establish a process by which the financial activities of the
28 producer responsibility organization that are related to
29 implementation of the producer responsibility plan will be subject
30 to an independent audit consistent with generally accepted
31 accounting principles and pursuant to Section 25218.63.

32 (e) Provide written certification by an authorized representative
33 of the producer responsibility organization that, at the time of
34 submission to the department, all aspects of the producer
35 responsibility plan are in compliance with all applicable state and
36 federal laws and regulations.

37 (f) Have adequate financial responsibility and financial controls
38 in place, including fraud prevention measures, to ensure proper
39 management of funds.

1 25218.59. Each participant producer shall, through the producer
2 responsibility organization, pay all administrative and operational
3 costs associated with establishing and implementing the producer
4 responsibility organization’s approved plan, including the cost of
5 the collection, transportation, and safe and proper management of
6 covered products, including covered products that have been
7 illegally dumped.

8 25218.60. (a) Within four months of the effective date of the
9 regulations described in Section 25218.52, the department shall
10 notify the producer responsibility organization of the estimated
11 regulatory costs for the department and the criteria for the costs
12 specified in the regulations. Those costs shall include the costs
13 associated with developing the regulations and other department
14 activities that occur before a producer responsibility plan’s
15 submittal and approval, including, but not limited to, full personnel
16 costs related to implementing and enforcing this article. The costs
17 shall not exceed the department’s reasonable regulatory costs to
18 implement and enforce this article.

19 (b) The department shall deposit all moneys received from the
20 producer responsibility organization pursuant to this section into
21 the Household Hazardous Waste Producer Responsibility Fund,
22 which is hereby established in the State Treasury.

23 (c) Upon appropriation by the Legislature, moneys in the
24 Household Hazardous Waste Producer Responsibility Fund shall
25 be expended by the department to implement and enforce this
26 article and to reimburse any outstanding loans made from other
27 funds used to finance the development of the regulations and the
28 startup costs of the department’s activities pursuant to this article.

29 (d) The moneys in the Household Hazardous Waste Producer
30 Responsibility Fund shall only be expended for those purposes
31 described in subdivision (c).

32 25218.61. (a) If the producer responsibility plan relies on a
33 local jurisdiction to collect or manage a covered product, or to
34 otherwise comply with this article, then the producer responsibility
35 organization shall reimburse the local jurisdiction for costs
36 associated with the collection and management of the covered
37 product, including, but not limited to, the cost of providing supplies
38 for the collection of, transportation, and disposal of covered
39 materials, including the jurisdiction’s labor and administrative

1 costs based on the proportion of covered to noncovered products
2 collected at the facility.

3 (b) Reimbursement costs pursuant to subdivision (a) shall be
4 limited to the actual costs of, supplies, transportation, and
5 management of a covered product, including the costs to reimburse
6 local jurisdictions to collect and manage covered products that
7 have been illegally dumped.

8 25218.62. (a) The producer responsibility organization shall
9 keep board minutes, books, and records that clearly reflect the
10 activities and transactions of the producer responsibility
11 organization for a period of not less than five years.

12 (b) A producer and the producer responsibility organization
13 shall do both of the following:

14 (1) Upon request, provide the department with reasonable and
15 timely access, as determined by the department, to its facilities
16 and operations, as necessary to determine compliance with this
17 article.

18 (2) Within 14 days of a request from the department, provide
19 the department with relevant records, as determined by the
20 department, necessary to determine compliance with this article.

21 (c) The department may audit the producer responsibility
22 organization annually.

23 (d) All reports and records provided to the department pursuant
24 to this article shall be provided under penalty of perjury.

25 (e) The failure of the producer responsibility organization, a
26 participant producer, or their respective agent who holds records
27 to produce documents or data that is requested by the department,
28 required to be collected or generated to carry out operation of the
29 producer responsibility plan in the form and manner determined
30 by the department as part of a department audit, or review of a
31 third-party audit, shall constitute a violation of this article.

32 (f) The department may impose administrative civil penalties
33 pursuant to Section 25218.68 on a producer or producer
34 responsibility organization that fails to provide the department
35 with the access required pursuant to this section.

36 25218.63. (a) The producer responsibility organization shall
37 retain an independent certified public accountant, certified in the
38 United States, to annually audit the accounting books of the
39 producer responsibility organization. The department shall review
40 the independent certified public accountant's audit for compliance

1 with this article and consistency with the producer responsibility
2 organization's approved producer responsibility plan and the annual
3 report required by Section 25218.64. After the department conducts
4 its own review, the department shall notify the producer
5 responsibility organization of any conduct or practice that does
6 not comply with this article or of any inconsistencies identified in
7 the review. The producer responsibility organization may obtain
8 copies of the department's review, including proprietary
9 information contained in the department's review, upon request.
10 The producer or producer responsibility organization may request
11 the department withhold from disclosure confidential proprietary
12 information to the extent allowed under Section 1040 of the
13 Evidence Code and the California Public Records Act (Division
14 10 (commencing with Section 7920.000) of Title 1 of the
15 Government Code).

16 (b) The items submitted to the department for its review of the
17 independent audit shall include all of the following:

18 (1) Financial statements audited in accordance with generally
19 accepted accounting principles.

20 (2) An audit of the producer responsibility organization's
21 compliance with this article.

22 (3) An audit of the producer responsibility organization's
23 adherence to, execution of, and consistency with its approved plan.

24 (c) The producer responsibility organization shall include the
25 independent audit in its annual report submitted to the department
26 pursuant to Section 25218.64 commencing within 18 months of
27 the producer responsibility plan's approval by the department

28 25218.64. On or before January 1 of each year, the producer
29 responsibility organization shall submit to the department, and
30 make publicly available, an annual report, in a format prescribed
31 by the department, that includes, at minimum, all of the following
32 information for the preceding calendar year, unless otherwise
33 specified:

34 (a) The producer responsibility organization's costs, according
35 to the cost categories established in the producer responsibility
36 plan, and revenues.

37 (b) A summary of any anticipated changes to allocations in cost
38 categories for the next calendar year.

39 (c) Any changes to the distribution of costs to the participant
40 producers.

1 (d) Updated contact information for participant producers.

2 (e) An estimate of the quantity of covered products sold in or
3 into the state by participant producers, as determined by the best
4 available commercial data.

5 (f) A summary of efforts made as part of the comprehensive
6 statewide education and outreach program, as required by
7 subdivision (f) of Section 25218.56, including the producer
8 responsibility organization's evaluation of the effectiveness of the
9 program.

10 (g) Recommendations for any future proposed substantial
11 changes to the producer responsibility plan.

12 (h) Any other information required by the regulations described
13 in Section 25218.52.

14 25218.65. (a) No later than 120 days after the date the
15 department receives an annual report pursuant to Section 25218.64,
16 the department shall notify the producer responsibility organization
17 if the annual report is compliant or noncompliant.

18 (b) If the department determines that the annual report is
19 noncompliant due to failure to meet the requirements of this article,
20 the department may require the resubmittal of the annual report
21 and take enforcement action.

22 (c) The department may consult with or submit the annual report
23 to a state agency or department if it determines it is necessary to
24 determine the annual report's compliance or noncompliance.

25 25218.66. A retailer, dealer, importer, or distributor shall not
26 sell, distribute, offer for sale, or import a covered product in or
27 into the state unless the producer of the covered product is listed
28 as a compliant producer pursuant to Section 25218.67 or has
29 received a certification letter described in subdivision (e) of Section
30 25218.67.

31 25218.67. (a) Within 12 months of the effective date of the
32 regulations described in Section 25218.52, and on or before July
33 1 of each year thereafter, the department shall publish on the
34 department's internet website a list of the names of producers that
35 are compliant with this article. The department shall list, as
36 appropriate, the reported brands of covered products for each
37 producer.

38 (b) A retailer, importer, or distributor shall monitor the
39 department's internet website to determine if a producer, brand,
40 or covered product is in compliance with this article.

1 (c) Notwithstanding any other provision of this article, upon
2 identification of a producer that is not registered with the producer
3 responsibility organization with an approved producer
4 responsibility plan, the department shall issue a notice of
5 noncompliance to the producer.

6 (d) If the department determines a producer is not in compliance
7 with this article, the department shall remove the producer and its
8 brands of covered products from the compliance list on its internet
9 website.

10 (e) The department shall provide a certification letter to a
11 producer that is not listed on the department's internet website as
12 a compliant producer, but that has demonstrated compliance with
13 this article to the department. The certification letter shall state
14 that the producer is in compliance with this article. The department
15 may update the compliance list on its website.

16 25218.68. (a) The department may impose a civil penalty on
17 any producer or stewardship organization that is in violation of
18 this article of up to the following amounts:

19 (1) Ten thousand dollars (\$10,000) per day.

20 (2) Fifty thousand dollars (\$50,000) per day if the violation is
21 intentional or knowing.

22 (b) In assessing or reviewing the amount of a civil penalty
23 imposed pursuant to subdivision (a) for a violation of this article,
24 the department or the court shall consider all of the following:

25 (1) The nature and extent of the violation.

26 (2) The number and severity of the violation or violations.

27 (3) The economic effect of the penalty on the violator.

28 (4) Whether the violator took good faith measures to comply
29 with this article and the period of time over which these
30 noncompliant actions were taken.

31 (5) The willfulness of the violator's misconduct.

32 (6) The deterrent effect that the imposition of the penalty would
33 have on both the violator and the regulated community.

34 (7) Any other factor that justice may require.

35 (c) Upon a written finding that a producer responsibility
36 organization, producer, importer, or any other party regulated
37 pursuant to this article has not met a material requirement of this
38 article, in addition to any other penalties authorized pursuant to
39 this article, the department may take one or all of the following
40 actions to ensure compliance with the requirements of this article,

1 after affording the producer responsibility organization, producer,
2 importer, or any other party regulated pursuant to this article, an
3 opportunity to respond to or rebut the finding:

4 (1) Revoke the producer responsibility organization’s approved
5 producer responsibility plan or require the producer responsibility
6 organization to resubmit the producer responsibility plan, in whole
7 or in part.

8 (2) Require additional reporting relating to compliance with the
9 material requirements of this article that were not met.

10 (3) Approve a producer responsibility plan submitted by another
11 producer responsibility organization.

12 (d) The department shall deposit all penalties collected pursuant
13 to this section into the Household Hazardous Waste Products
14 Penalty Account, which is hereby created in the Household
15 Hazardous Waste Producer Responsibility Fund. Upon
16 appropriation by the Legislature, moneys in the Household
17 Hazardous Waste Products Penalty Account shall be available for
18 expenditure by the department for activities related to the
19 collection, reuse, and recycling of covered products, grants for
20 related purposes, and the administration and enforcement of this
21 article.

22 (e) The Administrative Adjudication Bill of Rights (Article 6
23 commencing with Section 11425.10) of Chapter 4.5 of Part 1 of
24 Division 3 of Title 2 of the Government Code) applies to hearings
25 conducted pursuant to this article and mandates minimum due
26 process requirements.

27 25218.69. (a) After the time for judicial review under Section
28 11523 of the Government Code has expired, the department may
29 apply to the small claims court or superior court, depending on the
30 jurisdictional amount and any other remedy sought, in the county
31 where the penalties, restitution, or other remedy was imposed by
32 the department, for a judgment to collect any unpaid civil penalties
33 or restitution or to enforce any other remedy provided by this
34 article. The application, which shall include a certified copy of the
35 final agency order or decision, shall constitute a sufficient showing
36 to warrant the issuance of the judgment. The court clerk shall enter
37 the judgment immediately in conformity with the application. The
38 judgment so entered shall have the same force and effect as, and
39 shall be subject to all laws relating to, a judgment in a civil action
40 and may be enforced in the same manner as any other judgment

1 of the court. The court shall make enforcement of the judgment a
2 priority.

3 (b) If a person has engaged in or is about to engage in an act,
4 practice, or omission that constitutes, or will constitute, a violation
5 of this article, the Attorney General may, at the request of the
6 director of the department or upon the Attorney General's own
7 determination, bring an action in superior court for an order
8 enjoining the act, practice, or omission. The order may require
9 remedial measures and direct compliance with this article. Upon
10 a showing that the person has engaged in or is about to engage in
11 that act, practice, or omission, the superior court may issue a
12 permanent or temporary injunction, restraining order, or other
13 order, as appropriate.

14 25218.70. In support of this article, the Department of
15 Resources Recycling and Recovery shall include both of the
16 following in updates to the applicable waste characterization study:

17 (a) The amount of covered products, by covered product
18 category, that was improperly disposed of and observed in the
19 waste characterization study.

20 (b) In an appendix, the amount of covered products, by covered
21 product category, properly collected and managed by a household
22 hazardous waste collection facility.

23 25218.71. (a) Except as provided in subdivision (b), an action
24 that is taken by a producer or producer responsibility organization
25 is not a violation of the Cartwright Act (Chapter 2 (commencing
26 with Section 16700) of Part 2 of Division 7 of the Business and
27 Professions Code), the Unfair Practices Act (Chapter 4
28 (commencing with Section 17000) of Part 2 of Division 7 of the
29 Business and Professions Code), or the Unfair Competition Law
30 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
31 7 of the Business and Professions Code) to the extent the producer
32 or producer responsibility organization is exercising authority
33 pursuant to this article.

34 (b) Subdivision (a) applies to all of the following actions taken
35 by a producer responsibility organization:

36 (1) The creation, implementation, or management of a producer
37 responsibility plan approved or conditionally approved by the
38 department pursuant to this article and the determination of the
39 types or quantities of covered products recycled or otherwise
40 managed pursuant to the producer responsibility plan.

1 (2) The determination of the cost and structure of an approved
2 producer responsibility plan.

3 (3) The establishment, administration, collection, or
4 disbursement of a charge associated with funding the
5 implementation of this article.

6 (c) Subdivision (a) does not apply to an agreement that does
7 any of the following:

8 (1) Fixes a price of or for covered products.

9 (2) Fixes the output or production of covered products.

10 (3) Restricts the geographic area in which, or customers to
11 whom, covered products will be sold.

12 SEC. 3. The Legislature finds and declares that Section 2 of
13 this act, which adds Sections 25218.55 and 25218.63 to the Health
14 and Safety Code, imposes a limitation on the public’s right of
15 access to the meetings of public bodies or the writings of public
16 officials and agencies within the meaning of Section 3 of Article
17 I of the California Constitution. Pursuant to that constitutional
18 provision, the Legislature makes the following findings to
19 demonstrate the interest protected by this limitation and the need
20 for protecting that interest:

21 In order to ensure the effective solid waste management of, and
22 viable markets for, products that contain household hazardous
23 waste, it is necessary to protect the proprietary information of
24 producers, retailers, wholesalers, and solid waste enterprises by
25 keeping confidential the financial, production, and sales data
26 reported by those entities under Section 2 of this act.

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

O