



April 1, 2021

To: The Honorable Henry Stern, Chair Senate Environmental Quality Committee

From: Association of Home Appliance Manufacturers
 American Property Casualty Insurance Association
 California Chamber of Commerce
 California Manufacturers and Technology Association
 California Retailers Association
 Consumer Technology Association
 National Association of Mutual Insurance Companies
 National Electrical Manufacturers Association
 Outdoor Power Equipment Institute
 Personal Insurance Federation of California
 The Rechargeable Battery Association
 Power Tool Institute

Re: SB 289 (Newman) – OPPOSE

The above-signed associations oppose California Senate Bill 289 (“SB 289”), the 27-page “Battery and Battery-Embedded Product Recycling and Fire Risk Reduction Act of 2021.”

Notwithstanding its title, SB 289 would fail to provide a workable solution to concerns with the initiation of fires in municipal recycling programs or materials recovery facilities. It also would repeal California's successfully-operating Rechargeable Battery Act of 2006 and the Cell Phone Recycling Act of 2004.

In their place, SB 289 would impose a complex, ill-conceived system that would substantially increase the cost of vital products to California consumers, impose huge burdens on California regulatory agencies, and subject the makers of batteries and an ill-defined category of "battery-embedded products" to exceedingly complex rules, very substantial fees and potentially draconian fines.

All of the signatories to this letter are sensitive to the fire risks associated with lithium ion batteries put into recycling and waste streams. But a targeted, thoughtful legislative solution to those concerns would make far more sense than SB 289's flawed, complex, and fundamentally unworkable approach. That is why some of the signatories to this letter have endorsed SB 244 (Archuleta), which would provide for the development of a consumer education program to supplement the one previously implemented by Call2Recycle, Inc.

Here are only a handful of SB 289's flaws:

- SB 289 fails to distinguish between different battery chemistries, fails to include any size limitations, and fails to indicate whether it requires plans to cover only batteries or battery-embedded products, or both. Industry has considerable experience implementing and managing used rechargeable battery collection programs (typically in California through the free, industry-sponsored not-for-profit Call2Recycle® program). But the collection of "battery-embedded products" – a category that seemingly includes everything from cell phones and wrist watches to toys and childrens' shoes with soles that light up -- will be a largely unprecedented activity. (And, as noted immediately below, it is not even clear what a "battery-embedded product" is – it may even include such things as flashlights sold with batteries in the same package.)
- SB 289's definition of "battery-embedded products" conflates products that contain batteries not intended to be removed by consumers, products sold with consumer-replaceable batteries, and -- it appears, although the bill's language admittedly is ambiguous -- battery-powered products sold without batteries, but which may be disposed of with batteries in place.
- SB 289 does not distinguish between retailer-to-consumer transactions, as to which unique communications issues are presented, and business-to-business transactions, where collection may be much simpler.
- SB 289 would give the Department of Resources Recycling and Recovery unfettered discretion to require an ill-defined set of "producers" to create and operate complex collection and recycling plans and programs. SB 289 would also empower the Department to mandate that producers pay most retailers for the safe collection of batteries and battery-embedded products, even though retailers are now required by law to accept for free and the battery industry has voluntarily been providing retailers with used battery collection for free for more than 15 years, without any payments to retailers whatsoever.
- SB 289 would compel "producers" to reimburse the undefined "reasonable regulatory costs" incurred by both the Department and any other state agency "with jurisdiction

relevant to” those programs. This arguably would require payments to fire departments, consumer protection agencies, and perhaps even tax authorities.

- SB 289 would “prioritize” the use of in-state processing facilities over out-of-state facilities, despite the absence of any such facilities in California, the dim prospects of any being established in the foreseeable future, and questionable constitutionality of such a requirement.

SB 289 also would require many novel calculations of sales and collection volumes (*e.g.*, by unit and not weight), require program operators to account for the ultimate uses of recovered materials, allow (and perhaps even require) the imposition of California-specific product packaging, coloring, and labelling requirements, and is marred by many other inconsistencies and drafting ambiguities.

The simple fact is that this bill is too complex and too conceptually flawed to even try to rehabilitate. It should, therefore, be set aside. The Senate should instead focus on more practical ways to address fire concerns and improve existing battery and recycling programs.