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An Act To Implement Recommendations of the Department of Environmental Protection Concerning Product Stewardship in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1771, sub-§1-A is enacted to read:

1-A. Covered entity. "Covered entity" means a household in this State, a business or nonprofit organization in this State exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3) that employs 100 or fewer individuals, an elementary school in this State or a secondary school in this State.

Sec. 2. 38 MRSA §1772, sub-§1, as enacted by PL 2009, c. 516, §1, is amended to read:

1. Policy; report. It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to promote product stewardship to support the State's solid waste management hierarchy under chapter 24. In furtherance of this policy, the department may collect information available in the public domain regarding products in the waste stream and assist the Legislature in designating products or product categories for product stewardship programs in accordance with this chapter. By ~~January~~February 15, 20142014, and annually thereafter, the department mayshall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report on products and product categories that when generated as waste may be appropriately managed under a product stewardship program. The report submitted under this subsection must include updates on the performance of existing product stewardship programs.

Sec. 3. 38 MRSA §1772, sub-§5 is enacted to read:

5. Legislation to establish product stewardship programs. Annually, after reviewing the report submitted by the department pursuant to subsection 1, the joint standing committee of the Legislature having jurisdiction over natural resources matters may submit a bill to implement recommendations included in the department's report to establish new product stewardship programs or revise existing product stewardship programs.

Sec. 4. 38 MRSA §1773, as enacted by PL 2009, c. 516, §1, is repealed.

Sec. 5. 38 MRSA §1776 is enacted to read:

§ 1776. Product stewardship program; program requirements

A product stewardship program established for a product or product category designated by the Legislature for inclusion in a product stewardship program must be established and implemented in accordance with the provisions of this section.

1. Program. A producer selling a product in the State that is a designated product or that is in a designated product category is responsible individually, collectively or through a stewardship

organization for the implementation and financing of a product stewardship program to manage the product at the end of the product's life in accordance with the priorities in section 2101.

A. The program must include a collection system that is convenient and adequate to serve the needs of covered entities in both rural and urban areas.

B. The program must provide for effective education and outreach to promote the use of the program and to ensure that collection options are understood by covered entities.

C. A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize a product stewardship program under this chapter, is immune from liability for the producer's or stewardship organization's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and implement the producer's or stewardship organization's chosen organized collection or recycling system.

2. Requirement for sale. One hundred eighty days after a product stewardship plan under subsection 5 is approved in accordance with subsection 8, a producer may not sell or offer for sale in the State the relevant product, unless the producer of the product participates individually, collectively or through a product stewardship program in accordance with an approved product stewardship plan.

3. No fee. A product stewardship program may not charge a fee at the time an unwanted product is delivered or collected for recycling or disposal.

4. Costs. Producers in a product stewardship program shall finance the collection, transportation and reuse, recycling or disposition of the relevant product.

5. Requirement to submit a plan. Within one year of a product's or product category's being designated for inclusion in a product stewardship program, the relevant producer or stewardship organization shall submit a product stewardship plan to the department for approval. The plan must include:

A. Identification and contact information for:

(1) The individual or entity submitting the plan;

(2) All producers participating in the product stewardship program;

(3) The owners of the brands covered by the program; and

(4) If using a stewardship organization, the stewardship organization, including a description of the organization and the tasks to be performed by the organization. The description must include information on how the organization is organized, including administration of the organization and management of the organization;

B. A description of the collection system, including:

(1) The types of sites or other collection services to be used;

(2) How all products covered under the product stewardship program will be collected in all counties of the State; and

(3) How the collection system will be convenient and adequate to serve the needs of all entities;

C. The names and locations of recyclers, processors and disposal facilities that may be used by the product stewardship program;

D. Information on how the product and product components will be safely and securely transported, tracked and handled from collection through final disposition;

E. If possible, a description of the method to be used to reuse, deconstruct or recycle the unwanted product to ensure that the product components are transformed or remanufactured to the extent feasible;

F. A description of how the convenience and adequacy of the collection system will be monitored and maintained;

G. A description of how the amount of product and product components collected, recycled, processed, reused and disposed of will be measured;

H. A description of the education and outreach methods that will be used to encourage participation;

I. A description of how education and outreach methods will be evaluated;

J. Any performance goals established by producers or a stewardship organization to show success of the program; and

K. A description of how the program will be financed. If the program is financed by a per unit assessment paid by the producer to a stewardship organization, a plan for an annual 3rd-party audit to ensure revenue from the assessment does not exceed the cost of implementing the product stewardship program must be included.

6. Plan amendments. A change to an approved product stewardship plan must be submitted to the department for review prior to the implementation of that change. If a change is not substantive, such as the addition of or a change to collection locations, or if an additional producer joins the product stewardship program, approval is not needed, but the producer or stewardship organization operating the program must inform the department of the change within 14 days of implementing the change. The department shall review plan amendments in accordance with subsection 8.

7. Annual reporting. By February 1st of the calendar year after the calendar year in which an approved product stewardship program is implemented, and annually thereafter, the producer or stewardship organization operating the program shall submit to the department a report on the program for the previous calendar year. The report must include, at a minimum:

- A. The amount of product collected per county;
- B. A description of the methods used to collect, transport and process the product;
- C. An evaluation of the program, including, if possible, diversion and recycling rates together with certificates of recycling or similar confirmations;
- D. A description of the methods used for education and outreach efforts and an evaluation of the convenience of collection and the effectiveness of outreach and education. Every 2 years, the report must include the results of an assessment of the methods used for and effectiveness of education and outreach efforts. The assessment must be completed by a 3rd party;
- E. If applicable, the report of the 3rd-party audit conducted to ensure that revenue collected from the assessment does not exceed implementation costs pursuant to subsection 5, paragraph K; and
- F. Any recommendations for changes to the product stewardship program to improve convenience of collection, consumer education and program evaluation.

8. Department review and approval. Within 20 business days after receipt of a proposed product stewardship plan, the department shall determine whether the plan complies with subsection 5. If the plan is approved, the department shall notify the submitter in writing. If the department rejects the plan, the department shall notify the submitter in writing stating the reason for rejecting the plan. A submitter whose plan is rejected must submit a revised plan to the department within 60 days of receiving a notice of rejection.

9. Plan availability. Within 30 days of approval by the department of a product stewardship plan under subsection 8, the department shall place the approved product stewardship plan on the department's publicly accessible website.

10. Proprietary information. Information identified as proprietary information by the submitter and submitted to the department in a product stewardship plan or in an amendment to a product stewardship plan and information in documents submitted pursuant to reporting requirements of this section are confidential and are not a public record as defined in Title 1, section 402, subsection 3.

11. Exceptions. This section does not apply to products subject to section 1610, 1665-A, 1665-B, 1672, 2165 or 2166.

Sec. 6. 38 MRSA §2143, sub-§1, ¶¶B and C, as enacted by PL 2007, c. 343, §1, are repealed.

Sec. 7. 38 MRSA §2143, sub-§2, as enacted by PL 2007, c. 343, §1, is repealed.

Sec. 8. 38 MRSA §2143, sub-§4, as enacted by PL 2007, c. 343, §1, is repealed.

SUMMARY

This bill is reported out by the Joint Standing Committee on Environment and Natural Resources pursuant to the Maine Revised Statutes, Title 38, section 1773. The bill incorporates the recommendations of the Department of Environmental Protection.

The Joint Standing Committee on Environment and Natural Resources has not taken a position on the substance of the recommendations or the bill. The committee is reporting the bill out for the sole purpose of turning the department's proposal into a printed bill that can be referred to the committee for an appropriate public hearing and subsequent processing in the normal course. The committee is taking this action to ensure clarity and transparency in the legislative review of the department's proposal.

The bill establishes a framework for the implementation of product stewardship programs. The bill provides that a product stewardship program established for products designated by the Legislature for inclusion in a product stewardship program must be established and implemented in accordance with the provisions of the bill.

The bill also makes changes to the law concerning the recycling of cellular telephones. It repeals the requirement that retailers that sell cellular telephones accept used cellular telephones from any person. It also removes reporting requirements that ended in February 2013.