

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1649

H.P. 1185

House of Representatives, April 30, 2019

**An Act To Implement Recommendations of the Department of
Environmental Protection Regarding the State's Product
Stewardship Program Framework Laws**

Reported by Representative TUCKER of Brunswick for the Joint Standing Committee on Environment and Natural Resources pursuant to Joint Order 2019, H.P. 883.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 38 MRSA §1771, sub-§6-A** is enacted to read:

3 **6-A. Proprietary information.** "Proprietary information" means information that is
4 a trade secret or production, commercial or financial information the disclosure of which
5 would impair the competitive position of the submitter and would make available
6 information not otherwise publicly available.

7 **Sec. 2. 38 MRSA §1772, sub-§5**, as enacted by PL 2013, c. 315, §5, is amended
8 to read:

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

15 **Sec. 3. 38 MRSA §1776, sub-§1, ¶A**, as enacted by PL 2013, c. 315, §7, is
16 amended to read:

17 A. The program must include a collection system that is convenient and adequate to
18 serve the needs of covered entities in both rural and urban areas. No later than one
19 year following commencement of product collections by the program's collection
20 system, the collection system must include permanent collection sites located within
21 15 miles of 90% of the residents of the State unless the commissioner determines that
22 the requirements of this paragraph are not practicable due to geographical constraints
23 or that an alternative collection system that does not meet the requirements of this
24 paragraph will result in equivalent and more efficient collection.

25 **Sec. 4. 38 MRSA §1776, sub-§1, ¶D** is enacted to read:

26 D. The program must include at a minimum a half-time employee of each producer
27 or stewardship organization whose job duties are dedicated to implementing the
28 program in the State.

29 **Sec. 5. 38 MRSA §1776, sub-§4**, as enacted by PL 2013, c. 315, §7, is amended
30 to read:

31 **4. Costs.** Producers in a product stewardship program shall finance the collection,
32 transportation and reuse, recycling or disposition of the relevant product; effective
33 education and outreach related to the program; program assessment; program reporting;
34 any incentives necessary to achieve program goals; payment of reasonable fees to the
35 department for review of the program plan and any proposed amendments; and payment
36 of annual fees to the department to cover the department's actual costs for the program for
37 annual report review, oversight, administration and enforcement, which may not exceed
38 \$100,000 per year per program.

1 **Sec. 6. 38 MRSA §1776, sub-§5, ¶¶E, H, I, J and K**, as enacted by PL 2013,
2 c. 315, §7, are amended to read:

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

6 H. A description of the education and outreach methods that will be used to recruit,
7 train and monitor collection sites and to encourage participation in the program on an
8 ongoing basis by collection sites and by consumers throughout the State;

9 I. A description of how education and outreach methods will be evaluated, including,
10 at a minimum, completion of an annual consumer awareness survey to assess
11 consumer knowledge regarding product management options and collection sites.
12 The survey questions and methodology must be approved by the department and the
13 survey must be administered by a 3rd party;

14 J. ~~Any~~ A description of how program performance will be assessed, including
15 performance goals established by producers or a stewardship organization to show
16 success of the program; and. When a performance goal is expressed as a recycling
17 rate or a diversion from disposal rate, the plan must include a description of the
18 methodology and the relevant historic sales data used to develop the rate. Sales
19 information submitted to the department pursuant to this paragraph that is identified
20 by the producer or stewardship organization as proprietary information is confidential
21 and must be handled by the department in accordance with subsection 10. Unless
22 sufficient evidence is provided to the department to justify alternative performance
23 goals, the performance goals under this paragraph must require that:

24 (1) At least 50% of the residents of the State will be aware of the program by no
25 later than the end of the 3rd year of program implementation and at least 80% of
26 the residents of the State will be aware of the program by no later than the end of
27 the 6th year of program implementation; or

28 (2) A recycling rate of at least 50% will be achieved by the program by no later
29 than the end of the 3rd year of program implementation;

30 K. A description of how the program will be financed. If the program is financed by
31 a per unit assessment paid by the ~~producer to a stewardship organization~~ consumer at
32 the point of sale, a plan for an annual 3rd-party audit to ensure revenue from the
33 assessment does not exceed the cost of implementing the product stewardship
34 program must be included; and

35 **Sec. 7. 38 MRSA §1776, sub-§5, ¶L** is enacted to read:

36 L. An anticipated annual budget for the program that includes identification of
37 specific anticipated administrative, collection, transportation, disposition and
38 communication costs for the program. The anticipated annual budget must be
39 sufficient to fund the employee or employees under subsection 1, paragraph D and
40 the reimbursement by the producer or stewardship organization of the department's
41 actual costs incurred in annual report review and in overseeing, administering and
42 enforcing the program. The anticipated annual budget may not include costs for legal

1 fees or costs related to legislative efforts that have been or will be incurred by the
2 producer or stewardship organization.

3 **Sec. 8. 38 MRSA §1776, sub-§6**, as enacted by PL 2013, c. 315, §7, is repealed.

4 **Sec. 9. 38 MRSA §1776, sub-§6-A** is enacted to read:

5 **6-A. Plan amendments.** In accordance with the provisions of this subsection, a
6 producer or stewardship organization or the department may initiate changes to an
7 approved product stewardship plan.

8 A. A change to an approved product stewardship plan by a producer or stewardship
9 organization operating the program implemented under the plan must be submitted to
10 the department for review and approval prior to the implementation of that change,
11 except that if the producer or stewardship organization determines that the change is
12 not substantive, such as the addition of or a change to collection sites, or if an
13 additional producer joins the program, the producer or stewardship organization must
14 inform the department of the change within 14 days of implementing the change but
15 need not receive department approval unless the department determines that the
16 change is substantive. The department shall review and approve plan amendments in
17 accordance with subsection 8.

18 B. If the department determines that a program has failed to make adequate progress
19 toward achieving the program's performance goals described in the approved product
20 stewardship plan pursuant to subsection 5, paragraph J, the department shall notify
21 the producer or stewardship organization operating the program in writing regarding
22 its determination and may direct the producer or stewardship organization to
23 implement specific changes to the plan within 6 months of the written notification,
24 which may include, but are not limited to, implementation of financial incentives or,
25 if appropriate for the product, implementation of a deposit or refund system.

26 **Sec. 10. 38 MRSA §1776, sub-§§7, 8 and 10**, as enacted by PL 2013, c. 315,
27 §7, are amended to read:

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

33 A. The amount of product collected ~~per county~~ at each collection site;

34 B. A description of the methods used to collect, transport and process the product;

35 C. An evaluation of the program performance, including, if possible, diversion and
36 recycling rates together with certificates of recycling or similar confirmations and an
37 evaluation of the convenience of the collection system implemented under the
38 program;

39 D. A description of the methods used for education and outreach efforts ~~and an~~
40 evaluation of the convenience of collection and an evaluation of the effectiveness of

1 ~~outreach and education~~ those efforts. Every 2 years, the report must include the
2 results of an assessment of the methods used for and effectiveness of education and
3 outreach efforts. The assessment must be completed by a 3rd party;

4 E. If applicable, the report of the 3rd-party audit conducted to ensure that revenue
5 collected from the assessment does not exceed implementation costs pursuant to
6 subsection 5, paragraph K; ~~and~~

7 F. Any recommendations for changes to the product stewardship program to improve
8 convenience of collection, consumer education and program evaluation; ~~and~~

9 G. A financial report on the program, including the total cost of implementing the
10 program as determined by an independent financial audit that includes identification
11 of specific administrative, collection, transportation, disposition and communication
12 costs for the program, and an anticipated budget for the program for the next program
13 year.

14 **8. Department review and approval.** ~~Within 20 business 120~~ days after receipt of
15 a proposed product stewardship plan, the department shall determine whether the plan
16 complies with ~~subsection 5~~ this section. If the plan is approved, the department shall
17 notify the submitter in writing. If the department rejects the plan, the department shall
18 notify the submitter in writing stating the reason for rejecting the plan. ~~A submitter~~
19 ~~whose plan is rejected must submit a revised plan to the department within 60 days of~~
20 ~~receiving a notice of rejection.~~

21 **10. Proprietary information.** Proprietary information submitted to the department
22 in a product stewardship plan, in an amendment to a product stewardship plan or pursuant
23 to reporting requirements of this section that is identified by the submitter as proprietary
24 information is confidential and must be handled by the department in the same manner as
25 confidential information is handled under section 1310-B.

26 ~~As used in this subsection, "proprietary information" means information that is a trade~~
27 ~~secret or production, commercial or financial information the disclosure of which would~~
28 ~~impair the competitive position of the submitter and would make available information~~
29 ~~not otherwise publicly available.~~

30 SUMMARY

31 This bill, which is reported out by the Joint Standing Committee on Environment and
32 Natural Resources pursuant to Joint Order 2019, H.P. 883, implements the Department of
33 Environmental Protection's recommendations regarding the State's product stewardship
34 program framework laws, as included in the department's annual report on the State's
35 product stewardship programs.

36 This bill makes a number of changes to the State's product stewardship program
37 framework laws including the following.

38 1. It revises program parameters with respect to the establishment of a product
39 collection system, program staffing requirements for producers or stewardship
40 organizations and program costs.

1 2. It revises the requirements for information to be included in a proposed product
2 stewardship plan, including information on program performance goals and program
3 assessment, collection sites and consumer participation and program financing.

4 3. It authorizes the department to initiate changes to an approved product
5 stewardship plan upon a determination that the program has failed to make adequate
6 progress toward achieving program goals.

7 4. It revises annual program reporting requirements for producers and stewardship
8 organizations and amends the authority for legislation of the joint standing committee of
9 the Legislature having jurisdiction over natural resources matters relating to the
10 department's annual product stewardship report.

11 The committee has not taken a position on the substance of the bill and by reporting
12 this bill out, the committee is not suggesting and does not intend to suggest that it agrees
13 or disagrees with any aspect of this bill. The committee is reporting the bill out for the
14 sole purpose of obtaining a printed bill that can be referred to the committee for a public
15 hearing and subsequent committee action in the normal course.