

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 743

H.P. 549

House of Representatives, February 14, 2003

An Act To Protect Public Health and the Environment through the Collection and Recycling of Electronic Waste

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative THOMPSON of China.
Cosponsored by Senator MARTIN of Aroostook and
Representatives: COWGER of Hallowell, DUPLESSIE of Westbrook, HUTTON of
Bowdoinham, KOFFMAN of Bar Harbor, MAKAS of Lewiston, SAVIELLO of Wilton,
TWOMEY of Biddeford, Senator: SAWYER of Penobscot.

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

4 **Sec. 1. 38 MRSA c. 13. sub-c. 6 is enacted to read:**

6 **SUBCHAPTER 6**

8 **ELECTRONIC WASTE**

10 **§1319-AA. Definitions**

12 As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

14 **1. Electronic equipment.** "Electronic equipment" means equipment that is dependent on electric currents or electromagnetic fields in order to work properly or that contains one or more printed circuit boards. "Electronic equipment" includes, but is not limited to, computer equipment, including cathode ray tubes, display monitors, central processing units, keyboards, printers and peripherals; television monitors and displays; telecommunications equipment, including telephones, cellular phones, facsimile machines and answering machines; small electronic devices and appliances containing one or more circuit boards; video and stereo equipment; toys, games and educational devices containing one or more printed circuit boards; and major household appliances containing one or more printed circuit boards.

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28 **2. Electronic waste.** "Electronic waste" means electronic equipment that enters the solid waste collection, recovery, treatment, processing or recycling system.

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32 **3. Historic waste.** "Historic waste" means electronic equipment, the producer of which is still in business, that became electronic waste prior to the effective date of this subchapter.

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38 **4. Orphaned waste.** "Orphaned waste" means electronic waste manufactured by or bearing the brand name of a company that is no longer in business as of the effective date of this subchapter.

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42 **5. Plan.** "Plan" means the plan for producer-financed collection, recovery and recycling of electronic waste as provided for in section 1319-BB.

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46 **6. Producer.** "Producer" means any person that:

48 A. Manufactures and sells electronic equipment under its own brand;

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2 B. Resells, under its own brand, equipment produced by
3 other manufacturers; or

4 C. Imports electronic equipment for first sale in the State.

6 7. Recycling. "Recycling" means the reprocessing of waste
7 materials for the original purpose of the material or for other
8 purposes, but not for the purpose of energy recovery or energy
9 generation by means of combusting electronic waste.

10 8. Reuse. "Reuse" means any operation by which electronic
11 waste or components of electronic waste are used for the same
12 purpose for which they were conceived, including the continued
13 use of the equipment or components of the equipment that are
14 returned to collection points, recyclers or producers.

16 **§1319-BB. Submission and approval of plan**

18 Within 6 months of the effective date of this section, each
19 producer of electronic equipment sold in the State shall submit
20 to the department for approval a plan for producer-financed
21 collection, recovery and recycling of electronic waste. Plans
22 must be submitted to, reviewed by and approved by the
23 department. Plans will be evaluated based on their sufficiency
24 in light of all the required elements in this subchapter, and the
25 department shall develop a means for scoring initial submissions
26 and providing feedback to producers for integration into their
27 final plans. To be approved, a plan must, at a minimum, provide
28 the following:

30 1. Collection strategy. A strategy for financing the
31 collection, treatment, recovery, reuse and disposition of all
32 electronic equipment sold by that producer in the State;

34 2. Orphaned waste and historic waste strategy. A strategy
35 for financing that producer's share of orphaned waste and
36 historic waste in the State;

38 3. Product recovery strategy. A strategy for meeting the
39 product recovery and materials reuse and recycling rates under
40 section 1319-GG, subsections 1 and 2;

42 4. Labeling strategy. A strategy for meeting the labeling,
43 consumer notification and public education requirements pursuant
44 to section 1319-FF that are necessary to ensure the protection of
45 electronic users and electronic waste processors and recyclers
46 and to ensure consumer participation in the producer's product
47 recovery program;

2 5. Documentation. Documentation of the willingness of all
parties involved in the producer's product recovery program to
4 implement the proposed electronic equipment recovery and
assurance that that system will comply with all applicable
6 existing environmental laws and rules in the State;

8 6. Performance measures. A description of the performance
measures to be used and reported by the producer to the
10 department to demonstrate that the recovery system is meeting
reuse and recycling rates under section 1319-GG, subsections 1
12 and 2, as well as other measures of the program's effectiveness
as may be required by the department by rule. Rules adopted
14 pursuant to this subsection are routine technical rules as
defined in Title 5, chapter 375, subchapter 2-A; and

16 7. Alternative actions. A description of the alternative
or additional actions that will be implemented by the producer to
18 improve the recovery system in the event that the program targets
are not met.

20 Within 12 months of the effective date of this section, or
22 upon approval of the plan, whichever is sooner, a producer of
electronic equipment sold in the State shall provide to the
24 department a financial guarantee to ensure that no costs for
program evaluation or enforcement or for the management of
26 orphaned waste and historic waste are borne by taxpayers.

28 Any producer that fails to meet any of the requirements of
this section within the required time frames is prohibited from
30 selling electronic equipment in the State.

32 **§1319-CC. Financial responsibility of producers**

34 1. Product recovery program. Within 24 months of the
effective date of this section, each producer shall implement a
36 program for ensuring the environmentally sound collection,
treatment, recovery and final disposition of electronic waste.

38 2. Financing for producer's products. A producer is
40 responsible for financing the environmentally sound management of
the electronic waste from its own products, but may execute this
42 obligation through collective or individual financing schemes.

44 3. Financing for orphaned waste and historic waste. The
responsibility for financing the management of orphaned waste and
46 historic waste equipment must be shared proportionally to each
producer's respective share of the market, by product type, at
48 the time waste costs are incurred. The department on an annual
basis may adjust this proportional responsibility for orphaned
50 waste and historic waste.

2 4. Consumers and equipment end users. Consumers and
equipment end users may be responsible for delivering electronic
4 waste into the solid waste collection system, as may be provided
for in the plan. Under the plan, consumers must be able to
6 return electronic waste to the producer free of charge.

8 5. Penalty. A producer who fails to implement a program
within the time provided for under subsection 1 is prohibited
10 from selling electronic equipment in the State.

12 1319-DD. Ban on incineration and landfilling of electronic waste

14 Electronic waste may not be disposed of in landfills,
incinerators, cement kilns or other methods of energy recovery or
16 energy generation dependent on combustion of waste. This ban
applies to whole units of electronic waste and to the constituent
18 subunits and materials from which the units are made.

20 1319-EE. Restrictions on hazardous materials

22 By 2006, producers selling electronic equipment in the State
must phase out the use of lead, mercury, cadmium, hexavalent
24 chromium, brominated flame retardants and polyvinyl chloride and
may offer for sale only products that contain less harmful
26 alternatives. If a producer provides sufficient demonstration to
the department that it is technically impossible to find an
28 alternative, the department may issue a limited-term exemption.
An exemption may be rescinded once it becomes possible to
30 eliminate the substance. If the exemption is granted, the
department must assign a limited amount of time before the
32 exemption expires to ensure that producers are investing in
research and development to identify an appropriate alternative.

34 1319-FF. Labeling; consumer notification; public education

36 1. Labeling. Within 12 months of the effective date of
38 this section, electronic equipment sold in the State must be
clearly marked and labeled, or informational materials must be
40 provided with the new product, providing consumers and end users
with information relating to the following:

42 A. The hazardous materials contained in the electronic
44 equipment and the parts or subunits containing the
particular substances;

46 B. The requirement not to dispose of electronic equipment
48 in landfills, incinerators or any other means not approved
as part of the plan; and

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2 C. A toll-free phone number or publicly accessible site on
4 the Internet where consumers can obtain information and
instructions about the safe disposition of the electronic
product through the plan.

6 2. Consumer education. As part of a plan approved by the
8 department pursuant to section 1319-BB, a producer must take
10 appropriate steps to implement a consumer education plan that is
designed to ensure that consumers and users of electronic
equipment understand the following:

12 A. The prohibition on disposal of electronic waste by any
14 means not included as part of the plan;

16 B. The electronic waste return and collection systems
available to them;

18 C. The potential effects on the environment and human
20 health as a result of the presence of hazardous substances
contained in electronic equipment and the dangers of
22 improper disposal; and

24 D. The consumers' and users' roles in contributing to the
reuse, recycling and other forms of electronic waste
26 recovery.

28 3. Public education. Within 24 months following
30 implementation of the producer's product recovery program
pursuant to section 1319-CC, each producer shall demonstrate that
32 it has achieved a level of 85% public awareness of the program
for each of its covered product categories through independent
34 public polling. Producers may collectively undertake such a
demonstration of public awareness so long as the polling
36 instrument is designed to identify public awareness of a majority
of producers' programs or a majority of the electronic equipment
38 types covered by this subchapter. The design, protocols and
implementation plan for the opinion polling required in this
subsection must be approved by the department.

40 4. Information to recyclers and processors. As part of a
42 plan, and in order to facilitate the environmentally sound
treatment of electronic waste, producers shall implement adequate
44 measures to provide information to recyclers and other waste
processors for the producers' electronic equipment. Within one
46 year after new electronic equipment enters the market, producers
shall provide new information to recyclers and other waste
48 processors regarding the end-of-life treatment of the new product
relating to disassembly, material content and safety.

50 1319-GG. Environmental performance requirements

2 1. Orphaned and historic waste. For orphaned and historic
waste, a producer shall demonstrate to the department:

4
6 A. Within 2 years of the implementation of a producer's
program pursuant to section 1319-CC, collection of
8 electronic waste equal to or greater than 2 kilograms per
person per person per year in the State and reuse or
10 recycling of electronic waste equal to 1.5 kilograms per
person per year in the State; and

12 B. Within 5 years of the implementation of a producer's
program pursuant to section 1319-CC, collection of
14 electronic waste equal to 4 kilograms per person per year in
the State and reuse or recycling of electronic waste equal
16 to 3.5 kilograms per person per year in the State.

18 2. Electronic waste generated after program
implementation. For electronic waste generated after the
20 implementation of a program pursuant to section 1319-CC, a
producer shall demonstrate to the department:

22 A. Within 2 years of the implementation of a producer's
24 program pursuant to section 1319-CC, electronic waste
recovery equal to 75% of the producer's products sold in the
26 State and 65% reuse or recycling of the components and
materials contained in the producer's products; and

28 B. Within 5 years of the implementation of a producer's
30 program pursuant to section 1319-CC, electronic waste
recovery equal to 90% of the producer's products sold in the
32 State and 95% reuse or recycling of the components and
materials contained in the producer's products.

34 3. Prison labor. A plan may not include reliance on prison
36 labor unless all incarcerated workers involved in the processing
and recycling of electronic waste are provided with compensation
38 equivalent to prevailing wages for the work performed and are
afforded the protections of state occupational safety and health
40 laws and regulations.

42 4. Ban on hazardous waste export. In order to be approved
by the department, a plan must forbid the export of electronic
44 waste to countries that are not members of the Organisation for
Economic Co-operation and Development or successor organization.
46 As part of the producer's annual program reports to the
department pursuant to section 1319-II, subsection 1, a producer
48 shall document that the program has not resulted in the export of
electronic waste to any country that is not a member of the

2 Organisation for Economic Co-operation and Development or
3 successor organization.

4 **1319-BH. State procurement and purchasing**

6 Within 6 months following the effective date of this
7 section, the State and each of its departments and agencies shall
8 establish purchasing and procurement policies requiring producers
9 of electronic equipment sold to the State to take back electronic
10 waste. State purchasing and procurement policies must also
11 establish a preference for electronic equipment that meets
12 specified environmental performance standards relating to the
13 reduction or elimination of hazardous materials. Rules adopted
14 pursuant to this section are routine technical rules as defined
15 in Title 5, chapter 375, subchapter 2-A.

16 **1319-II. Reporting; monitoring; compliance; penalties**

18
19 **1. Performance report.** A report detailing performance of a
20 producer's program pursuant to subsection 1319-CC, and detailing
21 compliance with all the requirements of this subchapter must be
22 submitted annually to the department. The department shall
23 review a report within 6 months of its submission and provide
24 notice of deficiency or noncompliance to producers by the end of
25 the following quarter.

26
27 **2. Public availability of reports.** Annual reports required
28 under this section must be made available to the public through
29 the Internet.

30
31 **3. Oversight and advisory committee.** The department may
32 establish a multistakeholder oversight and advisory committee to
33 oversee program implementation of a program pursuant to section
34 1319-CC and review annual reports submitted pursuant to
35 subsection 1.

36 **1319-JJ. Private right of enforcement**

38
39 An individual may maintain an action to enforce the
40 provisions and requirements of this subchapter against any
41 governmental or private party for declaratory and equitable
42 relief, civil penalties and restoration damages in order to
43 protect the public health and environment of the State from
44 pollution, impairment or destruction resulting from electronic
45 waste. The court may award the full costs of litigation,
46 including, but not limited to, reasonable expert witness and
47 attorney's fees, to the plaintiff if the plaintiff prevails.
48 This provision is supplementary to existing rights and procedures
49 provided by law.

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2 For purposes of this section, "environment" includes all the
3 state's natural resources, including land, air and water
4 resources and plant and animal species and the habitat upon which
5 they depend.

6 **1319-KK. Presumption of liability**

8 Contamination of landfills with heavy metals, including
9 lead, mercury, beryllium and chromium, and contamination of the
10 soil and groundwater surrounding landfills, is presumed to
11 result, unless proven otherwise, from the electronic waste in the
12 municipal waste stream.

14
15 **SUMMARY**

16
17 This bill requires producers of electronic equipment to
18 implement a program for ensuring the environmentally sound
19 collection, treatment, recovery and final disposition of
20 discarded and obsolete electronic equipment.