

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1631

H.P. 1159

House of Representatives, December 23, 2009

An Act To Provide Leadership Regarding the Responsible Recycling of Consumer Products

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WALSH INNES of Yarmouth.
Cosponsored by Senator GOODALL of Sagadahoc and
Representatives: BERRY of Bowdoinham, DUCHESNE of Hudson, EBERLE of South
Portland, HINCK of Portland, KENT of Woolwich, MARTIN of Eagle Lake, WELSH of
Rockport.

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

2 Sec. 1. 38 MRSA c. 18 is enacted to read:

3 CHAPTER 18

4 PRODUCT STEWARDSHIP

5 §1771. Definitions

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 1. Brand. "Brand" means a name, symbol, word or mark that identifies a product,
9 rather than its components, and attributes the product to the owner of the brand.

10 2. Covered entity. "Covered entity" means a type of entity, such as an individual or
11 small business, that may utilize a product stewardship program to discard an unwanted
12 product.

13 3. Final disposition. "Final disposition" means the point beyond which no further
14 processing takes place and the materials from a product are either in a form capable of
15 direct use as an input in manufacturing new products or are treated for final disposal and
16 disposed of.

17 4. Orphan product. "Orphan product" means a product covered by this chapter:

18 A. That lacks a brand;

19 B. For which the producer is no longer in business and has no successor in interest;
20 or

21 C. That bears a brand for which the department cannot identify an owner.

22 5. Producer. "Producer" means a person that:

23 A. Has legal ownership of the brand of a product sold in or into the State;

24 B. Imports a product branded by a person that meets the requirements of paragraph
25 A and has no physical presence in the United States; or

26 C. Sells a product in the State at wholesale or retail, does not have legal ownership of
27 the brand of the product and elects to fulfill the responsibilities of the producer for
28 that product.

29 6. Product. "Product" means an item intended for sale within the State that is
30 identified pursuant to section 1772 as appropriate for a product stewardship program.

31 7. Product category. "Product category" means a group of similar products
32 designated pursuant to section 1772 for the purpose of assigning product stewardship
33 responsibilities and establishing product stewardship programs.

1 **8. Product stewardship.** "Product stewardship" means a requirement that a
2 producer take responsibility for managing and reducing the entire life-cycle impacts of
3 the producer's product, from product design to end-of-life management. Life-cycle
4 impacts include, but are not limited to, energy and materials consumption, air and water
5 emissions, the amount of hazardous substances in the product, worker and consumer
6 exposure and reuse, recycling and waste disposal.

7 **9. Product stewardship program.** "Product stewardship program" means a
8 program financed and either managed or provided by producers that addresses the life-
9 cycle impacts of a product and includes, but is not limited to, the collection,
10 transportation, reuse and recycling or disposal, or both, of unwanted products, including
11 but not limited to a pro rata share of orphan products.

12 **10. Recycling.** "Recycling" means the transforming or remanufacturing of an
13 unwanted product or the unwanted product's components and by-products into usable or
14 marketable materials. "Recycling" does not include landfill disposal, incineration or
15 energy recovery or energy generation by means of combusting unwanted products,
16 components and by-products with or without other waste.

17 **11. Residuals.** "Residuals" means leftover materials from processing or recycling a
18 product or the components, parts or materials contained in a product.

19 **12. Reuse.** "Reuse" means a change in ownership of a product or component in a
20 product for use in the same manner and purpose for which it was originally produced.

21 **13. Stewardship organization.** "Stewardship organization" means an organization
22 appointed by a producer to act as an agent on behalf of the producer to administer a
23 product stewardship program.

24 **14. Unwanted product.** "Unwanted product" means a product that is no longer
25 wanted by its owner or that has been abandoned or discarded or is intended to be
26 discarded by its owner.

27 **§1772. Establishment of designation procedures; product designation; rulemaking**

28 **1. Procedures.** The department shall, through rulemaking, develop procedures for
29 identifying products and product categories that are appropriate for a product stewardship
30 program. The procedures must include, but are not limited to, provisions for:

- 31 A. Designating products and product categories over time;
- 32 B. Establishing a review process for determining if reduced reporting requirements
33 under section 1779, subsection 2 apply;
- 34 C. Monitoring recovery rates to measure the effectiveness of the requirements of this
35 chapter and the need for changes to improve the recovery rates; and
- 36 D. Enforcement and penalty assessments.

37 **2. Product designation.** The department, through rulemaking:

1 A. Shall designate products and product categories as subject to the product
2 stewardship program requirements of this chapter. In determining whether to
3 designate a product or product category, the department shall consider the following:

4 (1) The degree to which the product or product category poses an adverse impact
5 to the environment and public health and safety;

6 (2) The potential for resource recovery and material conservation;

7 (3) The potential for energy conservation;

8 (4) The climate change impacts and benefits of the product or product category;

9 (5) Opportunities to reduce waste and toxicity;

10 (6) Opportunities to increase recycled content and recycling;

11 (7) The costs of waste management to local governments, ratepayers and
12 taxpayers in the absence of product stewardship programs;

13 (8) Opportunities for existing and new businesses and infrastructure to manage
14 the products;

15 (9) Opportunities to develop new industries to utilize the recovered materials;

16 (10) Public demand for product stewardship; and

17 (11) Success in collecting and processing similar products in programs in other
18 states and countries;

19 B. Shall identify covered entities for each designated product and product category;

20 C. Shall determine whether to designate a product's packaging as a product;

21 D. Shall determine whether recycling performance goals or a disposal ban for a
22 product or product category is appropriate to encourage recycling;

23 E. Shall establish an implementation date for the product stewardship program for
24 each designated product or product category. The implementation date may not be
25 less than 12 months after the date the department designates the product or product
26 category;

27 F. Shall establish if necessary management requirements and labeling requirements
28 for particular products or product categories. Management requirements include, but
29 are not limited to, special handling requirements for products containing hazardous
30 substances, including processing, recycling and disposal requirements. Labeling
31 requirements may include, but are not limited to, requirements for a producer to label
32 a product regarding its brand, toxicity or carbon footprint; and

33 G. May establish a disposal ban for a designated product or product category.

34 **§1773. Product stewardship program**

35 **1. Program requirement.** A producer of a product or product category designated
36 by the department pursuant to section 1772 that is or has been sold in or into the State
37 shall participate in a product stewardship program for that product or product category.
38 The producer shall:

1 A. Operate, either individually or collectively with other producers, a product
2 stewardship program approved by the department; or

3 B. Enter into an agreement with a stewardship organization to operate, on the
4 producer's behalf, a product stewardship program approved by the department.

5 2. No fee. A product stewardship program may not charge a covered entity a fee at
6 the time an unwanted product is delivered or collected for recycling or disposal.

7 3. Costs. The producers in a product stewardship program shall pay the
8 administrative and operational costs associated with the program, including the costs of
9 collection, transportation and recycling or disposal, or both, of the products covered by
10 the program.

11 4. Program operation. A producer required to establish a product stewardship
12 program or a stewardship organization that has entered into an agreement to operate a
13 product stewardship program on a producer's behalf shall operate the product stewardship
14 program in accordance with a product stewardship plan pursuant to section 1776
15 approved by the department and all applicable laws and rules.

16 5. Education and outreach. A product stewardship program must provide
17 education and outreach to promote the use of the program to ensure that collection
18 options are understood by covered entities. Education and outreach must be provided to
19 covered entities, collectors, retailers and other interested parties. At a minimum, outreach
20 must include a toll-free telephone number and a publicly accessible website where
21 collection options are listed.

22 6. Annual 3rd-party audit. A product stewardship program must obtain an annual
23 3rd-party audit of each handling, processing and disposal facility used by the product
24 stewardship program for any product containing hazardous substances or any of a
25 product's components, parts, by-products or materials containing hazardous substances.
26 The annual audits must be conducted in accordance with the requirements of section
27 1776, subsection 1, paragraph C, subparagraph (2).

28 **§1774. Reuse or recycling requirement**

29 1. Required reuse or recycling. Except as provided in subsection 2, all products
30 that are collected by a product stewardship program must be reused or recycled.

31 2. Exceptions. Products or product categories determined by the department not to
32 be reusable or recyclable are exempt from the reuse or recycling requirement in
33 subsection 1.

34 A. A product that cannot be reused or recycled must be disposed of or managed in
35 permitted facilities appropriate for the product, including the disposal or management
36 of all hazardous products, components and materials in permitted hazardous waste
37 facilities appropriate for the product, component or material.

38 B. Residuals that cannot be reused or recycled must be disposed of or managed in
39 permitted facilities appropriate for the residuals, including the disposal or

1 management of all hazardous residuals in permitted hazardous waste facilities
2 appropriate for the residuals.

3 If the department determines that options for reusing or recycling a product have
4 changed, the department may require producers to amend their product stewardship
5 programs to include reuse and recycling for that product or product category.

6 **§1775. Sale of products**

7 As of the implementation date established by the department under section 1772,
8 subsection 2, paragraph E for the product stewardship program for a product or product
9 category, a producer, wholesaler, retailer or other person may not sell or offer for sale that
10 product or a product in that product category to a person in the State unless the producer
11 is participating in the product stewardship program. A person who sells or offers for sale
12 in the State a product shall, prior to selling that product in the State, consult the lists of
13 compliant and noncompliant producers established pursuant to section 1780. A person is
14 considered to have complied with this section if, on the date the product was ordered
15 from the producer or its agent, the producer was listed as having an approved product
16 stewardship program for that product.

17 **§1776. Product stewardship plan**

18 1. Plan requirements. A producer or group of producers that operates or wishes to
19 operate a product stewardship program, or a stewardship organization that operates or
20 wishes to operate a product stewardship program on behalf of a producer or group of
21 producers, shall submit a plan to the department that includes the following:

22 A. Identification and contact information for:

23 (1) The person submitting the plan;

24 (2) The producers participating in the product stewardship program; and

25 (3) If a stewardship organization intends to operate a product stewardship
26 program on behalf of producers, the stewardship organization, including a
27 description of the stewardship organization, its management and administration
28 and the tasks to be performed by the organization;

29 B. A description of the collection system, including information relating to:

30 (1) The location of collection sites or other collection services used by the
31 product stewardship program;

32 (2) How unwanted products from all types of covered entities will be collected in
33 all counties in the State and in all cities with populations of more than 10,000;
34 and

35 (3) How the collection system is convenient and adequate to serve the needs of
36 covered entities in both urban and rural areas;

37 C. A description of any transportation, handling, processing or disposal system used
38 by the product stewardship program, including:

1 (1) The location and permit status of and record of any penalties, violations or
2 regulatory orders received in the previous 5 years by the handling, processing or
3 disposal facilities used by the product stewardship program;

4 (2) A 3rd-party audit of each handling, processing or disposal facility used by
5 the product stewardship program for any product containing hazardous
6 substances or any of a product's components, parts, by-products or materials
7 containing hazardous substances. The audit must include documentation of
8 compliance with all relevant local, state, national and international laws and with
9 the management requirements adopted for the product by the department under
10 section 1772, subsection 2, paragraph F;

11 (3) The policies and procedures to be followed by persons transporting,
12 handling, processing or disposing of unwanted products collected pursuant to the
13 product stewardship program and how compliance with relevant local, state,
14 national and international laws and with the management requirements adopted
15 for the product or product category by the department will be ensured;

16 (4) How the products will be reused or recycled, including a description of the
17 processing methods that will be used at each processing facility;

18 (5) If the department determines through rulemaking that a product is not
19 reusable or recyclable, a waste reduction strategy for how the product will be
20 disposed of or managed in permitted facilities appropriate to the product,
21 including disposal or management of hazardous products, components, parts, by-
22 products and materials in permitted hazardous waste facilities appropriate for the
23 products, components, parts, by-products and materials;

24 (6) How all residuals that cannot be reused or recycled will be disposed of or
25 managed in permitted facilities appropriate for the residuals, including disposal
26 of or management of all hazardous residuals in permitted hazardous waste
27 facilities appropriate for the residuals;

28 (7) How hazardous wastes and hazardous substances will be tracked and handled
29 through final disposition and how safety and security will be maintained; and

30 (8) Best management practices used by processors and their vendors to ensure
31 that hazardous substances and wastes are not released into the environment and
32 do not adversely impact human health;

33 D. Information relating to education and outreach, including how the product
34 stewardship program will comply with the education and outreach requirement in this
35 chapter; and

36 E. Information relating to consultation with stakeholders, including but not limited to
37 covered entities, environmental groups and retailers. The information must include,
38 but is not limited to:

39 (1) A description of the process used to consult with stakeholders regarding the
40 contents of the product stewardship plan; and

41 (2) A summary of stakeholders' comments and concerns and how those concerns
42 were addressed.

1 **2. Plan submission; plan approval.** A product stewardship plan must be submitted
2 to the department in accordance with rules adopted by the department. The department
3 shall determine whether the plan complies with this chapter and rules adopted to
4 implement this chapter. The department shall approve the plan when all requirements
5 have been met. If the plan is approved, the department shall send a letter of approval to
6 the submitter. If the plan is rejected, the department shall provide the submitter with a
7 letter describing the reasons for rejecting the plan.

8 **§1777. Changes to product stewardship plan**

9 **1. Prior approval for changes.** Except as provided in subsection 2, a change to a
10 product stewardship plan under section 1776 must be approved in writing by the
11 department prior to implementation of the change.

12 **2. Exceptions.** The following changes to a product stewardship plan under section
13 1776 may be implemented without prior approval by the department.

14 **A.** An addition or change to collection locations for unwanted products may be made
15 without the department's prior written approval. The person operating the product
16 stewardship program must inform the department of the addition or change within 15
17 days of the addition or change.

18 **B.** An additional producer may participate in an approved product stewardship
19 program without the department's prior written approval. The person operating the
20 product stewardship program must inform the department of such an addition within
21 15 days of the addition.

22 **§1778. Amendment, suspension or cancellation of product stewardship plan**
23 **approval**

24 **1. Department's authority to amend, suspend or cancel.** If the department
25 determines that a product stewardship program is not being operated in accordance with
26 the requirements of this chapter and rules adopted to implement this chapter, the
27 department may:

28 **A.** Amend the approval of the product stewardship plan by clarifying its terms or
29 conditions to ensure full implementation of the plan; or

30 **B.** Suspend or cancel the approval of the product stewardship plan.

31 **2. Opportunity to respond.** At least 30 days prior to amending, suspending or
32 canceling an approval of a product stewardship plan, the department shall inform the
33 person operating the product stewardship program of the action and provide an
34 opportunity to respond. The department may extend the time permitted for a response.

35 **3. Department action without opportunity to respond.** Notwithstanding
36 subsection 2, if the department determines it is necessary in order to protect the public
37 from imminent danger, the department may immediately amend, suspend or cancel an
38 approval of a product stewardship plan without giving the person operating the product
39 stewardship program an opportunity to respond, but, within 15 days after the date on
40 which the department amends, suspends or cancels an approval, the department must give

1 that person an opportunity to respond through proceedings consistent with Title 5, chapter
2 375.

3 **§1779. Annual reporting**

4 For the purposes of this section, "reporting period" means the period beginning
5 January 1st and ending December 31st of the same calendar year.

6 **1. Information required.** On or before June 30th of each year, a person operating a
7 product stewardship program shall prepare and submit to the department a report
8 describing the activities of the product stewardship program during the previous reporting
9 period, including:

10 **A. Identification and contact information for:**

11 (1) The person submitting the product stewardship plan; and

12 (2) The producers participating in the product stewardship program;

13 **B. Performance goals and recovery rates, including:**

14 (1) The amount of unwanted products collected from covered entities through
15 collection services in each county, including documentation verifying collection
16 and verifying reuse, recycling or disposal of that material; and

17 (2) How the product stewardship program attained the performance goals and
18 recovery rates established in the product stewardship plan or set by the
19 department and, if the program did not attain those performance goals and
20 recovery rates, what actions it will take during the current reporting period to do
21 so;

22 **C. The collection system, including the collection services provided in each county**
23 **and in all cities with populations of more than 10,000 and the location of each**
24 **collection service;**

25 **D. The handling, transportation, processing and disposal system used, including:**

26 (1) A list of handling, processing and disposal facilities used and the location of
27 each facility, the weight of unwanted products processed by each processor or
28 disposed of at each disposal facility and a description of the processes used to
29 recycle the unwanted products by each processor;

30 (2) A list of subcontractors through final disposition who processed or recycled
31 unwanted products, components, materials or by-products that contained
32 hazardous substances and the location of each subcontractor facility;

33 (3) Documentation and summary results of annual 3rd-party audits conducted
34 pursuant to section 1773, subsection 6 on each handling, processing and disposal
35 facility used;

36 (4) If a product is exempt from the reuse or recycling requirement pursuant to
37 section 1774, subsection 2, how the product has been disposed of or managed in
38 permitted facilities appropriate to the product, including disposal or management

1 of all hazardous products, components and materials in permitted hazardous
2 waste facilities appropriate for the product, component or material;

3 (5) The fate of residuals not recycled or reused;

4 (6) Penalties, violations or regulatory orders received during the reporting
5 period, if any, by each handling, processing or disposal facility that is used; and

6 (7) Whether policies and procedures for transporting, processing, handling and
7 disposing of unwanted products as established in the product stewardship plan
8 under section 1776 were followed during the reporting period and a description
9 of noncompliance with those policies and procedures, if any;

10 E. The education and outreach provided pursuant to section 1773, subsection 5
11 during the reporting period;

12 F. Steps taken to manage and reduce the life-cycle impacts of the products, from
13 product design to end-of-life management, including how the formulation, packaging
14 and distribution of products have been improved to reduce waste, reduce toxicity,
15 reduce carbon footprint, reduce other environmental impacts, increase recycled
16 content, increase product longevity and make products more easily recyclable; and

17 G. Any other information that the department may reasonably require.

18 **2. Reduced reporting requirements.** A person operating a product stewardship
19 program that meets the following conditions is required to report to the department only
20 the information listed in subsection 1, paragraphs A, B, C and G:

21 A. All products collected by the product stewardship program use no hazardous
22 substances in the production process and contain no hazardous substances;

23 B. The product stewardship program over the reporting period attained a 90%
24 recovery rate of all unwanted products for which the producers are responsible under
25 the program and a recycling rate of 80% of the materials contained in those recovered
26 products; and

27 C. All products collected by the product stewardship program are carbon-neutral in
28 production and use.

29 **§1780. Website listing of producers**

30 The department shall list on the department's publicly accessible website all
31 producers who are participating in an approved product stewardship program and all
32 producers who have been identified as noncompliant.

33 **§1781. Enforcement; penalties**

34 **1. Failure to participate in a product stewardship program; failure to comply**
35 **with written warnings and notifications.** The following provisions apply if a producer
36 fails to participate in a product stewardship program.

37 A. The department shall send a written warning and a copy of the requirements of
38 this chapter to a producer who is not participating in an approved product stewardship
39 program and whose product is being sold in or into the State after the implementation

1 date established by the department under section 1772, subsection 2, paragraph E for
2 the product stewardship program for the product.

3 B. The department shall send written notification of a producer's failure to participate
4 in an approved product stewardship program to a wholesaler, retailer or other person
5 known to be selling that producer's product in or into the State.

6 C. Beginning 60 days after receipt of a written warning under paragraph A, a
7 producer who is not participating in an approved product stewardship program and
8 whose product is sold in or into the State commits a civil violation for which a fine of
9 not more than \$10,000 per day may be adjudged.

10 D. Beginning 60 days after receipt of written notification under paragraph B, a
11 wholesaler, retailer or other person who sells a product from a producer who is not
12 participating in an approved product stewardship program commits a civil violation
13 for which a fine of not more than \$10,000 per day may be adjudged.

14 **2. Failure to submit product stewardship plan, revisions or annual report.** The
15 department shall send a written warning to a producer who operates a product
16 stewardship program or a person who operates a product stewardship program on a
17 producer's behalf who fails to submit a product stewardship plan under section 1776, plan
18 revision under section 1777 or annual report under section 1779. The written warning
19 must include compliance requirements and notification that the compliance requirements
20 must be met within 60 days. If the compliance requirements are not met within 60 days,
21 the producer or other person who operates a product stewardship program on the
22 producer's behalf commits a civil violation for which a fine of not more than \$10,000 per
23 day may be adjudged.

24 **§1782. Administrative costs and fees**

25 The department may establish fees to fully recover expenses incurred by the
26 department to administer this chapter. Fees may be charged to producers and, if fees are
27 charged, the fees must be paid annually no later than July 1st of each calendar year. Fees
28 collected by the department pursuant to this section must be deposited in the Maine
29 Environmental Protection Fund established in section 351.

30 **§1783. Rules**

31 Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5,
32 chapter 375, subchapter 2-A.

33 **§1784. No limitation of municipal authority**

34 Nothing in this chapter changes or limits municipal authority to regulate collection of
35 solid waste, including curbside collection of residential recyclable materials.

36 **§1785. Anticompetitive conduct**

37 A producer or stewardship organization, including a producer's or stewardship
38 organization's officers, members, employees and agents that organize product
39 stewardship programs required under this chapter, is authorized to engage in

1 anticompetitive conduct to the extent necessary to plan and implement a product
2 stewardship program and is immune from liability under state laws relating to antitrust
3 enforcement, restraint of trade, unfair trade practices and other regulation of trade or
4 commerce for this purpose.

5 **§1786. Liberal construction**

6 This chapter, being necessary to protect public health, safety and welfare and the
7 environment, must be liberally construed.

8 **SUMMARY**

9 This bill establishes a product stewardship law under the Department of
10 Environmental Protection.

11 The bill requires the department to establish procedures for identifying products that
12 are appropriate for a product stewardship program and to designate specific products and
13 product categories that are subject to the product stewardship program requirements. The
14 bill also sets forth factors that must be considered by the department in making this
15 determination, including, but not limited to, the degree to which the product poses an
16 adverse impact to the environment and public health, opportunities for the development
17 of business and opportunities for energy conservation and reduction of waste and toxicity.

18 Under the bill, producers of the designated products must participate in product
19 stewardship programs established and paid for by the producers of the products. If a
20 producer of a designated product does not participate in an approved product stewardship
21 program, that producer's product may not be sold in or into the State as of an
22 implementation date to be established by the department.

23 The bill requires producers of designated products to submit to the department for
24 approval product stewardship plans and proposed changes to established plans. The bill
25 also authorizes the department to amend, suspend or cancel its approval of a product
26 stewardship plan and requires product stewardship programs to submit annual reports.