

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1335

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H.P. 952

House of Representatives, April 4, 2013

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

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Reported by Representative WELSH of Rockport for the Joint Standing Committee on Environment and Natural Resources pursuant to the Maine Revised Statutes, Title 38, section 1773.

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

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

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

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

9 **1. Policy; report.** It is the policy of the State, consistent with its duty to protect the  
10 health, safety and welfare of its citizens, to promote product stewardship to support the  
11 State's solid waste management hierarchy under chapter 24. In furtherance of this policy,  
12 the department may collect information available in the public domain regarding products  
13 in the waste stream and assist the Legislature in designating products or product  
14 categories for product stewardship programs in accordance with this chapter. By ~~January~~  
15 ~~February~~ 15, ~~2014~~ 2014, and annually thereafter, the department ~~may~~ shall submit to the  
16 joint standing committee of the Legislature having jurisdiction over natural resources  
17 matters a report on products and product categories that when generated as waste may be  
18 appropriately managed under a product stewardship program. The report submitted under  
19 this subsection must include updates on the performance of existing product stewardship  
20 programs.

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

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

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

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

30 **§1776. Product stewardship program; program requirements**

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

34 **1. Program.** A producer selling a product in the State that is a designated product or  
35 that is in a designated product category is responsible individually, collectively or  
36 through a stewardship organization for the implementation and financing of a product  
37 stewardship program to manage the product at the end of the product's life in accordance  
38 with the priorities in section 2101.

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

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

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

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

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

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

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

26           A. Identification and contact information for:

27               (1) The individual or entity submitting the plan;

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

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

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

34           B. A description of the collection system, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **7. Annual reporting.** By February 1st of the calendar year after the calendar year in  
29 which an approved product stewardship program is implemented, and annually thereafter,  
30 the producer or stewardship organization operating the program shall submit to the  
31 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;

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

35 C. An evaluation of the program, including, if possible, diversion and recycling rates  
36 together with certificates of recycling or similar confirmations;

37 D. A description of the methods used for education and outreach efforts and an  
38 evaluation of the convenience of collection and the effectiveness of outreach and  
39 education. Every 2 years, the report must include the results of an assessment of the

1 methods used for and effectiveness of education and outreach efforts. The  
2 assessment must be completed by a 3rd party;

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

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

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

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

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

23 **11. Exceptions.** This section does not apply to products subject to section 1610,  
24 1665-A, 1665-B, 1672, 2165 or 2166.

25 **Sec. 6. 38 MRSA §2143, sub-§1, ¶¶B and C,** as enacted by PL 2007, c. 343,  
26 §1, are repealed.

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

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

## 29 SUMMARY

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

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

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

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