

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 385

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S.P. 126

In Senate, February 2, 2017

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### **An Act To Establish a Stewardship Program for Certain Rechargeable Batteries**

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.  
Cosponsored by Senator: CARSON of Cumberland.

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

2 **Sec. 1. 38 MRSA §1604, sub-§2**, as repealed and replaced by PL 1989, c. 878,  
3 Pt. A, §116, is amended to read:

4 **2. Lead-acid battery retailers.** ~~A~~ Except as provided in subsection 2-A, a person  
5 selling or offering for retail sale lead-acid batteries shall:

6 A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and  
7 unbroken condition from customers in a quantity at least equal to the number of new  
8 batteries purchased;

9 B. If a used lead-acid battery is not exchanged at the time of sale, collect a \$10  
10 deposit on the new battery.

11 (1) The deposit shall be returned to the customer when the customer delivers a  
12 used lead-acid battery within 30 days of the date of sale.

13 (2) All funds received by a dealer as a deposit on a lead-acid battery shall be  
14 held in trust and separately accounted for by the retailer. Any interest on those  
15 funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits  
16 not returned to customers in exchange for lead-acid batteries during the previous  
17 year ending June 30th shall inure to the benefit of the retailer; and

18 C. Post an 8 1/2" x 11" written notice that includes the display of the universal  
19 recycling symbol and the following language.

20 (1) "State law requires us to accept motor vehicle batteries or other lead-acid  
21 batteries for recycling in exchange for new batteries purchased."

22 (2) "A deposit of \$10 will be charged for each new lead-acid battery that is not  
23 exchanged with an old lead-acid battery."

24 (3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or  
25 other lead-acid battery."

26 (4) "Recycle your used batteries."

27 **Sec. 2. 38 MRSA §1604, sub-§2-A** is enacted to read:

28 **2-A. Relationship to other programs.** A person is exempt from complying with  
29 subsection 2 with respect to any lead-acid battery sold or offered for sale by that person if  
30 the battery is included in a covered battery stewardship program established in  
31 accordance with section 1611 and the retailer serves as a collection location for covered  
32 batteries, as defined in section 1611, subsection 1, paragraph C, under that program.

33 **Sec. 3. 38 MRSA §1611** is enacted to read:

34 **§1611. Stewardship program for nickel-cadmium and small sealed lead-acid**  
35 **rechargeable batteries**

36 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
37 following terms have the following meanings.

- 1           A. "Brand" has the same meaning as in section 1771, subsection 1. "Brand" includes  
2           both a registered and an unregistered trademark.
- 3           B. "Consumer" means a purchaser or owner of a covered battery.
- 4           C. "Covered battery" means a nickel-cadmium or small sealed lead-acid rechargeable  
5           battery weighing less than 5 kilograms that is designed to be and is capable of being  
6           recharged after repeated use. "Covered battery" includes a product that contains or is  
7           packaged with a covered battery. "Covered battery" does not include:
- 8                   (1) A battery that is not easily removed or is not intended or designed to be  
9                   removed from a product by a consumer;
- 10                   (2) A battery that contains electrolyte as a free liquid; or
- 11                   (3) A battery or battery pack that employs lead-acid technology, is not sealed,  
12                   contains no liquid electrolyte and is intended by its manufacturer to power a  
13                   handheld device or provide uninterrupted backup electrical power protection for a  
14                   stationary consumer product or office equipment containing the battery or pack.
- 15           D. "Covered battery stewardship organization" or "organization" means a nonprofit  
16           organization created by one or more producers to design, submit a plan for,  
17           implement and operate a covered battery stewardship program.
- 18           E. "Covered battery stewardship plan" or "plan" means a plan designed by a  
19           producer or covered battery stewardship organization for the establishment of a  
20           covered battery stewardship program.
- 21           F. "Covered battery stewardship program" or "program" means a system  
22           implemented for the management of discarded covered batteries in accordance with  
23           an approved covered battery stewardship plan.
- 24           G. "Discarded covered battery" means a covered battery that a person discards,  
25           abandons or sends for recycling.
- 26           H. "Operator" means a producer or covered battery stewardship organization that  
27           implements and operates a covered battery stewardship program.
- 28           I. "Participate" means, with respect to a producer, to, individually or through a  
29           covered battery stewardship organization, establish and operate a covered battery  
30           stewardship program in accordance with this section.
- 31           J. "Producer" means, with regard to a covered battery that is sold, offered for sale or  
32           distributed for sale in the State, the following:
- 33                   (1) The person that manufactures the covered battery and sells, offers for sale or  
34                   distributes for sale in the State that battery under the person's own brand;
- 35                   (2) If there is no person to which subparagraph (1) applies, the owner or licensee  
36                   of the brand under which the covered battery is sold or distributed in the State; or
- 37                   (3) If there is no person to which subparagraph (1) or (2) applies, the person that  
38                   imports the covered battery into the United States for sale or distribution in the  
39                   State.
- 40           K. "Recycling" has the same meaning as in section 1771, subsection 7.

1           L. "Retailer" means a person that offers a covered battery for sale in the State in a  
2           retail sale, as defined in Title 36, section 1752, subsection 11, including remote sales  
3           conducted through sales outlets, catalogs or the Internet or any other similar  
4           electronic means.

5           M. "Sell" or "sale" means any transfer of title for consideration, including remote  
6           sales conducted through sales outlets, catalogs or the Internet or any other similar  
7           electronic means.

8           N. "Wholesaler" means a person that offers a covered battery for sale in the State in a  
9           sale that is not a retail sale, as defined in Title 36, section 1752, subsection 11, with  
10           the intention that the covered battery be resold in a subsequent retail sale.

11           **2. Submission of plan.** Except as provided in subsection 9, no later than one year  
12           after the effective date of this section, each producer, individually or through a covered  
13           battery stewardship organization, shall submit a plan for the establishment of a covered  
14           battery stewardship program to the commissioner for approval. The plan must include:

15           A. Identification and contact information for all persons that will be responsible for  
16           the operation of the program and a list of the brands of covered batteries to be  
17           covered under the program. If the plan is submitted by an organization, it must  
18           include a description of the organization, tasks to be performed by the organization  
19           and information on how the organization is organized, including administration and  
20           management of the organization;

21           B. A description of how the program will provide convenient, free, statewide  
22           collection opportunities for discarded covered batteries and how the convenience and  
23           adequacy of the collection system will be monitored and maintained;

24           C. The criteria to be used by the program in determining whether an entity may serve  
25           as a collection location for discarded covered batteries under the program. The plan  
26           must allow any retailer, wholesaler, municipality, solid waste management facility  
27           and other private or public entity that meets those criteria to voluntarily serve as a  
28           collection location;

29           D. The names and locations of recyclers, processors, disposal facilities and other  
30           entities that may be used by the program for the collection, processing, recycling or  
31           disposal of discarded covered batteries, including a description of the manner by  
32           which the program will use the covered battery collection locations established under  
33           other battery collection programs;

34           E. Information on how discarded covered batteries collected through the program  
35           will be safely and securely transported, tracked and handled from collection through  
36           final disposition;

37           F. A description of the method to be used to ensure that, to the extent economically  
38           and technically feasible, collected discarded covered batteries are recycled or  
39           otherwise responsibly managed;

40           G. A description of how the amounts of discarded covered batteries collected,  
41           recycled, processed and disposed of will be measured;

1           H. A description of the education and outreach methods and activities that will be  
2           used to provide notice of and encourage use of or involvement in the program by  
3           consumers, businesses, local agencies, retailers, wholesalers and solid waste  
4           transportation services;

5           I. The establishment of performance goals to measure the success of the program and  
6           a description of how the program will be designed to meet or exceed those goals; and

7           J. An anticipated budget for operation of the program and a description of how the  
8           program will be financed. If the plan is submitted by an organization, the financing  
9           method must allocate costs to participating producers on the basis of the weights of  
10          types of covered batteries collected or some other nondiscriminatory basis acceptable  
11          to participating producers.

12          **3. Approval of plan.** The commissioner shall review a plan submitted under  
13          subsection 2 and approve or reject the plan within 90 days of receipt.

14          A. The commissioner shall make a plan submitted under subsection 2 available for  
15          public review at least 30 days prior to approving or rejecting the plan.

16          B. The commissioner shall approve a plan if the commissioner determines that the  
17          plan demonstrates the ability of the covered battery stewardship program to meet the  
18          goals specified in subsection 2, paragraph I and meets the other requirements for  
19          submission of a plan under subsection 2. The commissioner's approval of a plan must  
20          include approval of the method by which the program will be financed.

21          C. If a plan is rejected, the commissioner shall provide the reasons for rejecting the  
22          plan to the producer or organization submitting the plan. The producer or  
23          organization submitting the plan may submit an amended plan within 60 days of a  
24          rejection.

25          D. A producer or organization whose plan is rejected by the commissioner may  
26          appeal the commissioner's decision in accordance with sections 341-D and 346.

27          **4. Implementation of plan.** A producer or covered battery stewardship organization  
28          that submitted a plan approved by the commissioner under subsection 3 shall implement  
29          the plan no later than 120 days after the date the plan is approved.

30          **5. Amendment of plan.** A change to an approved and implemented covered battery  
31          stewardship plan must be submitted to the commissioner for review prior to  
32          implementation of that change. If the change is not substantive, such as the addition of or  
33          a change to collection locations, the addition of a new producer to the program or a  
34          change in the contact information or officers of the organization, approval is not needed,  
35          but the operator must inform the commissioner within 14 days of implementing the  
36          change. The commissioner shall review substantive plan amendments in accordance with  
37          subsection 3.

38          **6. Sales prohibition.** Upon implementation of a covered battery stewardship plan  
39          under subsection 4, a producer may not sell or offer for sale a covered battery in the State  
40          unless the producer, or a covered battery stewardship organization that the producer has  
41          created or joined, participates in a covered battery stewardship program established in  
42          accordance with this section.

1           **7. Relationship to other programs.** A manufacturer of a rechargeable battery  
2 subject to the requirements of section 2165 and to the requirements of this section may  
3 submit a request to the commissioner for a waiver from the requirements of this section  
4 with respect to that battery.

5           A. The commissioner shall grant the waiver if the commissioner determines that the  
6 manufacturer has established and is maintaining a system for the proper collection,  
7 transportation and processing of that rechargeable battery in accordance with all  
8 applicable requirements of section 2165.

9           B. If the commissioner grants a waiver to a manufacturer under this subsection, the  
10 manufacturer is relieved from complying with the requirements of this section with  
11 respect to that rechargeable battery.

12 A manufacturer of a rechargeable battery subject to the requirements of section 2165 and  
13 to the requirements of this section that complies with all applicable requirements of this  
14 section is exempt from complying with the requirements of section 2165 with respect to  
15 that battery.

16           **8. Collection locations.** This subsection applies to collection locations for discarded  
17 covered batteries under a program.

18           A. A retailer, a wholesaler, a municipality, a solid waste management facility and  
19 any other private or public entity may voluntarily serve as a collection location for  
20 discarded covered batteries under an approved and implemented plan, as long as the  
21 operator determines that the collection location meets the criteria for collection  
22 locations established under the plan.

23           B. The operator must fully underwrite the costs of all battery collection containers  
24 provided to a collection location under the program, including the costs of all  
25 materials necessary to comply with the safe collection requirements of paragraph E,  
26 as well as the costs of pickup and transportation of discarded covered batteries from  
27 each collection location established under the program and may not charge an entity  
28 serving as a collection location for the cost of such items and services.

29           C. An entity serving as a collection location may not refuse collection of a discarded  
30 covered battery based on the brand of the covered battery. An operator may not  
31 refuse the pickup or transportation of a collected discarded covered battery from a  
32 collection location based on the brand of the covered battery.

33           D. An entity serving as a collection location may not impose on consumers any fee  
34 relating to the collection of discarded covered batteries. An entity serving as a  
35 collection location may not impose any fee on an operator as a condition of agreeing  
36 to serve as a collection location under the program.

37           E. An entity serving as a collection location must ensure that all discarded covered  
38 batteries placed in its collection containers are protected from short-circuiting in  
39 accordance with applicable regulations of the federal Department of Transportation,  
40 49 Code of Federal Regulations, Subtitle B (2015) and other applicable laws or  
41 regulations and take reasonable steps to prevent the placement of materials other than  
42 properly protected discarded covered batteries into its collection containers.

1           **9. New producers.** A new producer must notify the commissioner and take other  
2 action in accordance with this subsection prior to selling or offering to sell a covered  
3 battery in the State. For the purposes of this subsection, "new producer" means a  
4 producer that is not participating in an existing program established under this section  
5 that seeks to sell or offer for sale a covered battery in the State on or after the date that an  
6 approved covered battery stewardship plan is first implemented under subsection 4.

7           A. Upon receiving notification under this subsection from a new producer, the  
8 commissioner shall list the producer as a new producer on the department's publicly  
9 accessible website.

10          B. No later than 90 days following a new producer's notification under this  
11 subsection to the commissioner, the producer shall submit a plan to the commissioner  
12 in accordance with subsection 2 or join an existing organization operating a program  
13 in the State.

14          C. If a new producer fails to submit a plan or join an existing organization within the  
15 90-day period under paragraph B, the producer may not sell or offer to sell a covered  
16 battery in the State after the expiration of the 90-day period.

17 A new producer that fails to submit a plan or join an existing organization within the time  
18 limits described in this subsection may not sell or offer for sale a covered battery in the  
19 State until the producer submits a plan that is approved by the commissioner or joins an  
20 existing organization.

21           **10. List of producers and brands.** The department shall post on its publicly  
22 accessible website a list of the producers participating and brands included in a covered  
23 battery stewardship program.

24           **11. Annual report.** By October 15th of the calendar year after the calendar year in  
25 which an approved covered battery stewardship plan is implemented under subsection 4,  
26 and annually thereafter, an operator of a covered battery stewardship program shall  
27 submit a report to the commissioner regarding the activities carried out by the program  
28 during the previous calendar year. The report must include, but is not limited to:

29          A. The weight of discarded covered batteries collected by the program in the  
30 previous calendar year including, if available, a breakdown of the weight of discarded  
31 covered batteries collected per county;

32          B. The location of each collection location established under the program and an  
33 evaluation of the convenience and adequacy of the collection system implemented by  
34 the program;

35          C. A description of the manner in which discarded covered batteries were collected,  
36 transported, sorted, consolidated and processed by the program;

37          D. A description of the methods and activities used by the program for education and  
38 outreach, including examples of any educational materials developed and used by the  
39 program, and an evaluation of the effectiveness of the education and outreach efforts  
40 implemented by the program;

41          E. A summary financial statement, consistent with the requirements of subsection 2,  
42 paragraph J, documenting the financing of the covered battery stewardship program



1 as well as the total cost of implementing the covered battery stewardship plan and  
2 operating the program during the reporting period. The summary financial statement  
3 must include a breakdown of operation, collection, transportation, disposition and  
4 communication costs;

5 F. An evaluation of the effectiveness of the methods used to achieve the performance  
6 goals of the program included in the plan pursuant to subsection 2, paragraph I, as  
7 well as an update to the performance goals, if necessary, based on the experience of  
8 the program during the previous calendar year; and

9 G. Any other recommendations for change to the program to improve the  
10 convenience of the collection system, education or outreach efforts or program  
11 evaluation methods or to otherwise better facilitate the collection, recycling and  
12 management of discarded covered batteries in the State.

13 **12. Administration and enforcement; fees.** The department shall enforce this  
14 section and may adopt rules as necessary for the purposes of implementing, administering  
15 and enforcing this section. Rules adopted pursuant to this subsection are routine technical  
16 rules as defined in Title 5, chapter 375, subchapter 2-A.

17 The department shall charge a reasonable application fee, not to exceed \$10,000, to be  
18 paid by an applicant under subsection 2 for review and approval of a covered battery  
19 stewardship plan. The department may establish a reasonable annual fee, not to exceed  
20 \$25,000, to be paid by an operator, to cover the department's actual costs for annual  
21 report review, administration and enforcement.

22 **13. Antitrust exclusions.** A producer or covered battery stewardship organization,  
23 including a producer's or organization's officers, members, employees and agents that  
24 develop a plan for, implement and operate a covered battery stewardship program in  
25 accordance with this section, is immune from liability for the producer's or organization's  
26 conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and  
27 other regulation of trade or commerce only to the extent necessary to develop a plan for,  
28 implement and operate the program.

29 **Sec. 4. 38 MRSA §2165, sub-§2,** as enacted by PL 1991, c. 808, §2, is amended  
30 to read:

31 **2. Disposal ban.** A person employed directly or indirectly by a government agency,  
32 or an industrial, communications or medical facility may not knowingly dispose of a dry  
33 cell mercuric oxide battery or a rechargeable battery in a manner that is not part of a  
34 collection system established under subsection 4 or under section 1611.

35 **Sec. 5. 38 MRSA §2165, sub-§4,** as enacted by PL 1991, c. 808, §2, is amended  
36 to read:

37 **4. Manufacturer responsibility.** A Except as provided under section 1611,  
38 subsection 7, a manufacturer of dry cell mercuric oxide or rechargeable batteries that are  
39 subject to subsection 1 shall:

- 1           A. Establish and maintain a system for the proper collection, transportation and  
2           processing of waste dry cell mercuric oxide and rechargeable batteries for purchasers  
3           in this State;
- 4           B. Clearly inform each purchaser that intends to use these batteries of the prohibition  
5           on disposal of dry cell mercuric oxide and rechargeable batteries and of the available  
6           systems for proper collection, transportation and processing of these batteries;
- 7           C. Identify a collection system through which mercuric oxide and rechargeable  
8           batteries must be returned to the manufacturer or to a manufacturer-designated  
9           collection site; and
- 10          D. Include the cost of proper collection, transportation and processing of the waste  
11          batteries in the sales transaction or agreement between the manufacturer and any  
12          purchaser.

13

### **SUMMARY**

14           This bill provides for the establishment of a new stewardship program in the State for  
15           discarded nickel-cadmium and small sealed lead-acid rechargeable batteries. Under the  
16           bill, a producer of such rechargeable batteries, or an organization comprising one or more  
17           producers of such rechargeable batteries, submits a plan for the establishment of a battery  
18           stewardship program to the Commissioner of Environmental Protection for approval.  
19           Once approved, a program operates to provide convenient, free statewide collection  
20           opportunities for discarded rechargeable batteries covered under the program, and  
21           discarded rechargeable batteries collected through the program are recycled or otherwise  
22           responsibly managed. This bill also amends existing laws relating to certain rechargeable  
23           battery types to avoid statutory conflicts with the new stewardship program for  
24           rechargeable batteries.