

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 1208

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S.P. 394

In Senate, March 24, 2021

### **An Act To Amend the State's Electronic Waste Recycling Law**

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Received by the Secretary of the Senate on March 22, 2021. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator STEWART of Aroostook.  
Cosponsored by Senator: BENNETT of Oxford.

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

2 **Sec. 1. 38 MRSA §1610, sub-§2, ¶B**, as amended by PL 2011, c. 250, §2, is further  
3 amended to read:

4 B. "Consolidation facility" means a facility where electronic wastes are consolidated  
5 and temporarily stored while awaiting shipment of at least a 40-foot trailer full of  
6 covered electronic devices to a recycling, treatment or disposal facility. "Consolidation  
7 facility" includes a transport vehicle owned or leased by a consolidator and used to  
8 collect covered electronic devices at collection sites in this State ~~at a cost no greater~~  
9 ~~than the per pound transportation rate for a full 40-foot trailer as approved by the~~  
10 ~~department for each consolidator pursuant to the rules governing reasonable~~  
11 ~~operational costs adopted under subsection 5, paragraph D, subparagraph (1).~~

12 **Sec. 2. 38 MRSA §1610, sub-§2, ¶C-2** is enacted to read:

13 C-2. "Covered electronic device category" means one of the following categories of  
14 covered electronic devices: computer monitors, televisions, printers and video game  
15 consoles.

16 **Sec. 3. 38 MRSA §1610, sub-§2, ¶D-2** is enacted to read:

17 D-2. "Manufacturer clearinghouse" means an entity that, on behalf of 2 or more  
18 manufacturers, prepares and submits a plan to the department for the implementation  
19 and operation of a statewide manufacturer electronic waste program pursuant to  
20 subsection 5, paragraph D, subparagraph (3) and, upon the approval of the department,  
21 implements and operates that program.

22 **Sec. 4. 38 MRSA §1610, sub-§2, ¶G-1** is enacted to read:

23 G-1. "Program collection site" means any location included in a plan submitted by a  
24 manufacturer clearinghouse to the department for approval pursuant to subsection 5,  
25 paragraph D, subparagraph (3) at which covered electronic devices are collected and  
26 prepared for transport. "Program collection site" includes a municipal collection site.

27 **Sec. 5. 38 MRSA §1610, sub-§2, ¶J-1** is enacted to read:

28 J-1. "Statewide manufacturer electronic waste program" or "program" means a  
29 program implemented under subsection 5, paragraph D, subparagraph (5) by a  
30 manufacturer or manufacturer cleaninghouse for the collection, transportation,  
31 consolidation and recycling of covered electronic devices pursuant to a plan approved  
32 by the department under subsection 5, paragraph D, subparagraph (4).

33 **Sec. 6. 38 MRSA §1610, sub-§5**, as amended by PL 2017, c. 391, §2, is further  
34 amended to read:

35 **5. Responsibility for recycling.** Municipalities, consolidators, manufacturers and the  
36 State share responsibility for the disposal of covered electronic devices as provided in this  
37 subsection.

38 A. Each municipality that chooses to participate in the state collection and recycling  
39 system shall ensure that covered electronic devices generated as waste from covered  
40 entities within that municipality's jurisdiction are delivered to a consolidation facility  
41 in this State. A municipality may meet this requirement through collection at and

1 transportation from a local or regional solid waste transfer station or recycling facility,  
2 by contracting with a disposal facility to accept waste directly from the municipality's  
3 residents or through curbside pickup or other convenient collection and transportation  
4 system.

5 This paragraph is repealed January 1, 2023.

6 ~~A-1. A covered entity may deliver no more than 7 covered electronic devices at one  
7 time to a municipal collection site or consolidator collection event, unless the  
8 municipal collection site or consolidator is willing to accept additional covered  
9 electronic devices.~~

10 A-2. Each municipality that chooses to participate in a statewide manufacturer  
11 electronic waste program implemented pursuant to paragraph D, subparagraph (5)  
12 shall, on or before May 1, 2022, and annually thereafter, file with the operator of the  
13 program and with the department a written notice of election to participate in the  
14 program. The written notice must include a list of proposed program collection sites  
15 within the municipality that may be made available for use in the program. A  
16 municipality with a population of less than 10,000 residents based on the most recent  
17 United States Census may elect to participate in a statewide manufacturer electronic  
18 waste program by committing to provide up to 2 one-day collection events within the  
19 municipality in lieu of a permanent collection site. The written notice may include a  
20 list of recyclers the municipality would prefer to service its program collection sites or  
21 one-day collection events.

22 A-3. Each collector that manages a program collection site or a one-day collection  
23 event under a statewide manufacturer electronic waste program implemented pursuant  
24 to paragraph D, subparagraph (5) shall, in accordance with applicable local, state and  
25 federal laws:

26 (1) Accept at the site or event all covered electronic devices and segregate from  
27 accepted covered electronic devices any electronic devices that are not covered  
28 electronic devices. A collector may not transfer to a recycler any electronic devices  
29 that are not covered electronic devices in the same shipment that includes covered  
30 electronic devices unless the costs associated with the transportation and recycling  
31 of the electronic devices that are not covered electronic devices have been arranged  
32 for outside of the statewide manufacturer electronic waste program under this  
33 section;

34 (2) Ensure that all covered electronic devices are sorted by covered electronic  
35 device category;

36 (3) Ensure that all covered electronic devices are packaged in a manner designed  
37 to prevent breakage during transportation, including, but not limited to, ensuring  
38 that such devices are loaded onto pallets and secured with plastic wrapping or are  
39 placed into pallet-sized bulk shipping containers designed for the transportation of  
40 covered electronic devices or similar materials;

41 (4) Ensure that that each shipment of covered electronic devices prepared for  
42 transportation in accordance with subparagraphs (2) and (3) that is transferred to a  
43 recycler weighs no less than 18,000 pounds. In the event that a shipment weighs  
44 less than 18,000 pounds, the recycler to whom the shipment is transferred may

1 require the collector managing the program collection site to pay to the recycler a  
2 fee not to exceed \$600 per shipment that is reasonably related to the number of  
3 pounds by which the shipment fails to meet the 18,000-pound threshold; and

4 (5) Include with each shipment of covered electronic devices prepared for  
5 transportation in accordance with subparagraphs (2) and (3) a bill of lading or  
6 similar manifest describing the origin of the covered electronic devices in the  
7 shipment, the number of pallets or shipping containers included in the shipment  
8 and the covered electronic device categories in each pallet or shipping container.

9 B. A consolidator is subject to the requirements of this paragraph.

10 (1-A) A consolidator shall maintain a written log of the total weight of each ~~type~~  
11 ~~of~~ covered electronic device category delivered each month to the consolidator and  
12 identified as generated by a covered entity in the State. By March 1st each year, a  
13 consolidator shall provide this accounting to the department.

14 (3) A consolidator shall work cooperatively with manufacturers to ensure  
15 implementation of a practical and feasible financing system with costs calculated  
16 on a basis proportional to the manufacturer's national market share of each type of  
17 covered electronic device sold in the State multiplied by the total pounds recycled.  
18 At a minimum, a consolidator shall invoice the manufacturers for the handling,  
19 transportation and recycling costs for which they are responsible under the  
20 provisions of this subsection.

21 This subparagraph is repealed January 1, 2023.

22 (3-A) A manufacturer clearinghouse shall contract with and identify in the plan  
23 submitted to the department pursuant paragraph D, subparagraph (3) each  
24 consolidator that will work cooperatively with manufacturers participating in the  
25 manufacturer clearinghouse to ensure implementation of a practical and feasible  
26 financing system under the statewide manufacturer electronic waste program  
27 implemented by the manufacturer clearinghouse with costs calculated in  
28 accordance with subsection 5-A on a basis proportional to the manufacturer's  
29 national market share of each covered electronic device category sold in the State  
30 multiplied by the total pounds recycled. At a minimum, a consolidator shall  
31 invoice manufacturers or a manufacturer clearinghouse operating a statewide  
32 manufacturer electronic waste program pursuant to paragraph D for the handling,  
33 transportation and recycling costs for which they are responsible under the  
34 provisions of this subsection.

35 (4) A consolidator shall transport covered electronic devices to a recycling and  
36 dismantling facility that provides a sworn certification pursuant to paragraph C. A  
37 consolidator shall maintain for a minimum of 3 years a copy of the sworn  
38 certification from each recycling and dismantling facility that receives covered  
39 electronic devices from the consolidator and shall provide the department with a  
40 copy of these records within 24 hours of request by the department.

41 C. A recycling and dismantling facility shall provide to a consolidator a sworn  
42 certification that its handling, processing, refurbishment and recycling of covered  
43 electronic devices are certified pursuant to 3rd-party certification standards approved

1 by the department and meet other applicable guidelines for environmentally sound  
2 management published by the department.

3 D. Covered electronic device manufacturers are subject to the requirements of this  
4 paragraph.

5 (1) Manufacturers shall pay the reasonable operational costs of the consolidator  
6 attributable to the handling of all covered electronic devices received at  
7 consolidation facilities in this State, the transportation costs from the consolidation  
8 facility to a licensed recycling and dismantling facility and the costs of recycling.  
9 "Reasonable operational costs" includes the costs associated with ensuring that  
10 consolidation facilities are geographically located to conveniently serve all areas  
11 of the State as determined by the department. The recycling of each type of  
12 covered electronic device must be funded by allocating the cost of the ~~program~~  
13 electronics recycling system established under this section among the  
14 manufacturers selling covered electronic devices in the State on a basis  
15 proportional to the manufacturer's national market share of the type of covered  
16 electronic device. The department shall annually determine each manufacturer's  
17 recycling share based on readily available national market share data. If the  
18 department determines that a manufacturer's market share is less than 1/10 of 1%,  
19 the department may determine that market share de minimus. A manufacturer  
20 whose market share is determined de minimus by the department is not responsible  
21 for payment of a pro rata share for the corresponding billing year. The total market  
22 shares determined de minimus by the department must be proportionally allocated  
23 to and paid for by the manufacturers that have 1/10 of 1% or more of the market  
24 of each ~~type of~~ covered electronic device category.

25 This subparagraph is repealed January 1, 2023.

26 (2) Each manufacturer shall work cooperatively with consolidators to ensure  
27 implementation of a practical and feasible financing system. Within 90 days of  
28 receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable  
29 costs incurred by that consolidator.

30 This subparagraph is repealed January 1, 2023.

31 (3) On or before September 1, 2022, and annually thereafter, a manufacturer,  
32 individually or collectively as part of a manufacturer clearinghouse, shall submit  
33 to the department a plan for the implementation of a statewide manufacturer  
34 electronic waste program described in subparagraph (4). The plan must include:

35 (a) Contact information for the individual who will serve as the point of  
36 contact for the program;

37 (b) If submitted by a manufacturer clearinghouse, a list of the manufacturers  
38 that will be participating in the program during the upcoming calendar year  
39 and a certification that those participating manufacturers collectively represent  
40 at least 50% of the total market share responsibility for the recycling of covered  
41 electronic devices for the upcoming calendar year for all manufacturers subject  
42 to this section. The department may not approve a plan submitted under this  
43 subparagraph by a manufacturer clearinghouse if the department determines  
44 that the manufacturers that will be participating in the program during the

1 upcoming calendar year collectively represent less than 50% of the total  
2 market share responsibility for the recycling of covered electronic devices for  
3 the upcoming calendar year for all manufacturers subject to this section;

4 (c) A list of the municipalities that have elected to participate in the program  
5 received in accordance with subsection 5, paragraph A-2 and a description of  
6 the instructions that will be provided under the program to municipalities  
7 seeking to make such an election. The manufacturer or manufacturer  
8 clearinghouse shall make such instructions to municipalities available on its  
9 publicly accessible website no later than December 1, 2022;

10 (d) A list of the program collection sites and one-day collection events that  
11 will be included under the program during the upcoming calendar year and  
12 information regarding the collector that will be managing each site or event;

13 (e) A list of the consolidators and recyclers that the program intends to contract  
14 with during the upcoming calendar year. On or before December 1, 2022, and  
15 annually thereafter, the manufacturer or manufacturer clearinghouse shall  
16 provide an updated list of the consolidators and recyclers described in this  
17 subparagraph;

18 (f) If submitted by a manufacturer clearinghouse, a certification of compliance  
19 with the requirements of subsection 5-A; and

20 (g) Any other information required by the department.

21 (4) The department shall review and approve or reject a plan submitted pursuant  
22 to subparagraph (3) within 60 days of receipt.

23 (a) The department shall approve a plan, provide written notification of that  
24 approval to the individual described in subparagraph (3), division (a) and post  
25 on its publicly accessible website a copy of that approved plan upon a finding  
26 that:

27 (i) The program collection sites and one-day collection events described  
28 in subparagraph (3), division (d) are sufficient to meet the collection needs  
29 of the municipalities that have elected to participate in the program as  
30 described in subparagraph (3), division (c) and that the consolidators and  
31 recyclers described in subparagraph (3), division (e) are sufficient to meet  
32 the demand of those sites and events;

33 (ii) The plan is designed to minimize the generation of greenhouse gas  
34 emissions associated with the vehicle travel associated with the program;  
35 and

36 (iii) The plan meets all other applicable requirements imposed by this  
37 section and the rules adopted pursuant to this section.

38 (b) If the department determines that the plan fails to meet the approval  
39 requirements described in division (a), the department shall reject the plan by  
40 providing written notification of the rejection to the individual described in  
41 subparagraph (3), division (a) that describes the reasons for the rejection.  
42 Within 30 days of receipt of a written notice of rejection under this division,  
43 the manufacturer or manufacturer clearinghouse shall submit to the department

1                   for review a revised plan that addresses the stated reasons for the prior  
2                   rejection. The department shall review a revised plan under this division in  
3                   accordance with the criteria in division (a).

4                   (5) No later than January 1, 2023, and annually thereafter, a manufacturer or  
5                   manufacturer clearinghouse shall implement and operate a statewide manufacturer  
6                   electronic waste program for the collection, transportation, consolidation and  
7                   recycling of covered electronic devices pursuant to a plan approved by the  
8                   department pursuant to subparagraph (4).

9                   (6) On or before March 1, 2024, and annually thereafter, a manufacturer or  
10                  manufacturer clearinghouse operating a program implemented pursuant to  
11                  subparagraph (5) shall submit to the department a report that includes the following  
12                  information:

13                   (a) The total weight of covered electronic devices, delineated by covered  
14                   electronic device category, that were collected at and transported from all  
15                   program collection sites and one-day collection events under the program  
16                   during the prior calendar year;

17                   (b) The total weight of covered electronic devices, delineated by covered  
18                   electronic device category and further delineated by the municipality in which  
19                   the covered electronic devices were collected, that were recycled under the  
20                   program during the prior calendar year; and

21                   (c) Any other information required by the department.

22                  E. Annually by January 1st the department shall provide manufacturers and  
23                  consolidators with a listing of each manufacturer's proportional market share  
24                  responsibility for the recycling of covered electronic devices for the subsequent  
25                  calendar year.

26                  This paragraph is repealed January 1, 2023.

27                  **Sec. 7. 38 MRSA §1610, sub-§5-A** is enacted to read:

28                  **5-A. Allocation of financial responsibility; manufacturer clearinghouse.** In  
29                  accordance with the provisions of this subsection, a manufacturer clearinghouse shall  
30                  allocate financial responsibility for the costs of implementing and operating an approved  
31                  statewide manufacturer electronic waste program as required pursuant to subsection 5,  
32                  paragraph D among the manufacturers participating in the program.

33                  A. On or before March 1, 2022, and annually thereafter, a manufacturer clearinghouse  
34                  shall submit to the department:

35                   (1) Using best available data, an estimate of the return share of each category of  
36                   covered electronic device associated with its participating manufacturers for the  
37                   upcoming calendar year and an estimate of each participating manufacturer's  
38                   market share of each category of covered electronic device;

39                   (2) A proposed methodology for fairly and reasonably allocating financial  
40                   responsibility for program costs during the upcoming calendar year between  
41                   participating manufacturers that is designed to ensure that the share of the costs  
42                   allocated to each manufacturer is reasonably related to the manufacturer's market  
43                   share of covered electronic devices. Manufacturers must assume financial



1 responsibility for the costs associated with the collection and preparation for  
2 transportation of covered electronic devices by collectors under the program; and

3 (3) In addition to the methodology described in subparagraph (2), at the election of  
4 the manufacturer clearinghouse and after adequate notice to all participating  
5 manufacturers, a proposed methodology for reducing the financial responsibility  
6 of participating manufacturers by encouraging the use of readily recyclable or  
7 sustainable materials in covered electronic devices sold in the State. The  
8 methodology under this subparagraph may not be designed to result in the  
9 reduction by more than 50% of any participating manufacturer's financial  
10 responsibility.

11 B. On or before November 1, 2022, and annually thereafter, based on the information  
12 provided pursuant to paragraph A and any other data available to the department, the  
13 department shall submit to a manufacturer clearinghouse a written statement describing  
14 the unadjusted total proportional responsibility for each manufacturer participating in  
15 the manufacturer clearinghouse for the upcoming calendar year, calculated as follows:

16 (1) For each covered electronic device category, the department shall multiply the  
17 participating manufacturer's market share for the covered electronic device  
18 category by the return share for the covered electronic device category; and

19 (2) The department shall add together all of the amounts calculated pursuant to  
20 subparagraph (1), which shall constitute the participating manufacturer's  
21 unadjusted total proportional responsibility.

22 If the department determines that, for any covered electronic device category, the sum  
23 of the amounts calculated pursuant to subparagraph (1) for all participating  
24 manufacturers with respect to that category of covered electronic device does not equal  
25 the total return share for that category of covered electronic devices described in  
26 paragraph A, subparagraph (1), the department shall calculate the discrepancy between  
27 that sum and the total return share and, for each participating manufacturer, multiply  
28 the resulting figure by the manufacturer's market share for that category of covered  
29 electronic device. The department shall include these amounts, which constitute each  
30 participating manufacturer's adjusted total proportional responsibility, in the written  
31 notification to the manufacturer clearinghouse required under this paragraph.

32 C. A manufacturer may through a separate agreement with a collection site that is not  
33 a program collection site satisfy all or a portion of its financial responsibility under the  
34 program associated with the collection, transportation and recycling of covered  
35 electronic devices and allocated in accordance with this subsection.

36 D. Beginning January 1, 2023, and annually thereafter, the department shall provide  
37 each manufacturer with a listing of the manufacturer's proportional market share  
38 responsibility for the recycling of covered electronic devices for the subsequent  
39 calendar year and shall provide a manufacturer clearinghouse with a listing of the  
40 proportional market share responsibility for the recycling of covered electronic devices  
41 for the subsequent calendar year for each manufacturer participating in the  
42 manufacturer clearinghouse.

43 **Sec. 8. 38 MRSA §1610, sub-§7**, as amended by PL 2017, c. 391, §4, is repealed  
44 and the following enacted in its place:

1            **7. Enforcement; cost recovery.** The department must enforce this section in  
2 accordance with the provisions of sections 347-A and 349.

3            A. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5,  
4 paragraph D, subparagraph (1), the department may pay a consolidator its legitimate  
5 costs from the Maine Solid Waste Management Fund established in section 2201 and  
6 seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is  
7 liable to the State for costs incurred by the State in an amount up to 3 times the amount  
8 incurred as a result of such failure to comply.

9            This paragraph is repealed January 1, 2023.

10           B. The Attorney General is authorized to commence a civil action against any  
11 manufacturer to recover the costs described in this subsection, which are in addition to  
12 any fines and penalties established pursuant to section 349. Any money received by  
13 the State pursuant to this subsection must be deposited in the Maine Solid Waste  
14 Management Fund established in section 2201.

15           This paragraph is repealed January 1, 2023.

16           C. Beginning January 1, 2023, a manufacturer clearinghouse may implement policies  
17 and procedures to exclude from participation any manufacturer that fails to comply  
18 with the requirements of this section but has no authority to enforce any provision of  
19 this section. If a manufacturer clearinghouse has reason to believe that a manufacturer  
20 has failed to comply with the requirements of this section, it shall notify the department  
21 of the potential noncompliance.

22           **Sec. 9. 38 MRSA §1610, sub-§10-A** is enacted to read:

23           **10-A. Antitrust.** A manufacturer or manufacturer clearinghouse, including a  
24 manufacturer's or manufacturer clearinghouse's officers, members, employees and agents  
25 that organize a statewide manufacturer electronic waste program under this section, is  
26 immune from damages, liability or scrutiny under state laws relating to antitrust, restraint  
27 of trade, unfair trade practices and other regulation of trade or commerce for the  
28 manufacturer's or manufacturer clearinghouse's conduct, regardless of the effect of such  
29 conduct on competition, only to the extent necessary to plan and implement the  
30 manufacturer's or manufacturer clearinghouse's statewide manufacturer electronic waste  
31 program consistent with the provisions of this section. The activities of a manufacturer or  
32 manufacturer clearinghouse that are authorized under this section are undertaken pursuant  
33 to the express purposes stated in subsection 1 and under the active supervision of the  
34 department in accordance with its authority under this section.

35           **Sec. 10. 38 MRSA §1610, sub-§11**, as enacted by PL 2009, c. 397, §12, is amended  
36 to read:

37           **11. Interstate ~~clearinghouse~~ for electronic waste recycling collaboration.** The  
38 department may participate in the establishment and implementation of a regional  
39 multistate organization or compact to assist in carrying out the requirements of this ~~chapter~~  
40 section.

**SUMMARY**

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This bill amends the State's electronic waste recycling law by requiring that, no later than January 1, 2023, manufacturers of certain electronic devices, individually or collectively through a manufacturer clearinghouse, must design and implement a statewide manufacturer electronic waste program to provide for the collection, transportation, consolidation and recycling of collected electronic devices in the State. The Department of Environmental Protection shall review and approve plans for the implementation of such a program and shall enforce program requirements. The bill also repeals or amends certain provisions of the existing electronic waste recycling law to align those provisions with the new program requirements.