

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

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NON-EMERGENCY LAWS IS
SEPTEMBER 12, 2009

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2009

to hand-rake or trap sea urchins within the area designated as Zone 1 under section 6749-N is \$25 per year.

This subsection is repealed December 31, 2011.

See title page for effective date.

CHAPTER 397

H.P. 381 - L.D. 536

An Act To Enhance Maine's Electronic Waste Recycling Law

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

Sec. 1. 38 MRSA §1310-B, sub-§2, as repealed and replaced by PL 2007, c. 466, Pt. A, §72, is amended to read:

2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6, ~~paragraph A, subparagraph (4), division (i) and section 1610, subsection 6, paragraph B 6-A~~ or information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the

competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

Sec. 2. 38 MRSA §1610, sub-§2, ¶A, as reallocated by RR 2003, c. 2, §119, is amended to read:

A. "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet. "Computer monitor" includes a digital picture frame.

Sec. 3. 38 MRSA §1610, sub-§2, ¶C, as reallocated by RR 2003, c. 2, §119, is amended to read:

C. "Covered electronic device" means a computer central processing unit, a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile, a household appliance, a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act.

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

C-1. "Desktop printer" means a device that prints text or illustrations on paper and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile.

Sec. 5. 38 MRSA §1610, sub-§2, ¶G, as amended by PL 2009, c. 231, §2 and affected by §7, is further amended to read:

G. "Orphan waste" means a covered electronic device, excluding a video game console and a television, the manufacturer of which can not be identified or is no longer in business and has no successor in interest.

Sec. 6. 38 MRSA §1610, sub-§2, ¶L is enacted to read:

L. "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game.

Sec. 7. 38 MRSA §1610, sub-§5, as amended by PL 2009, c. 231, §3 and affected by §7, is further amended to read:

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

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that computer monitors ~~and~~ televisions, desktop printers and video game consoles generated as waste from households within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system.

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

(1) A consolidator shall identify the manufacturer of each waste computer monitor and desktop printer delivered to a consolidation facility and identified as generated by a household in this State and shall maintain an accounting of the number of waste household computer monitors and desktop printers by manufacturer. By March 1st each year, a consolidator shall provide this accounting by manufacturer to the department.

(1-A) A consolidator shall maintain a written log of the total weight of televisions and video game consoles delivered each month to the consolidator and identified as generated by a household in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

(2) A consolidator may perform the manufacturer identification required by subparagraph (1) at the consolidation facility or may contract for this identification and accounting service with the recycling and dismantling facility to which the ~~waste is covered electronic devices~~ covered electronic devices are shipped.

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated for televisions on a basis proportional to the manufacturer's national market share of televisions in the State multiplied by the total pounds recycled and with costs calculated for video game consoles on a basis proportional to the manufacturer's national market share of video game consoles in the State multiplied by the total pounds recycled. At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidator shall transport ~~waste computer monitors and waste~~ televisions, desktop printers and video game consoles to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidator and shall provide the department with a copy of these records within 24 hours of request by the department.

C. A recycling and dismantling facility shall provide to a consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department.

D. Computer monitor ~~manufacturers and~~ television, desktop printer and video game console manufacturers are subject to the requirements of this paragraph.

(1) ~~Ninety days after the department adopts rules as provided for in this subparagraph, each~~ Each computer monitor manufacturer and each desktop printer manufacturer is individually responsible for handling and recycling all computer monitors and desktop printers that are produced by that manufacturer or by any business for which the manufacturer has assumed legal responsibility, that are generated as waste by households in this State and that are received at consolidation

facilities in this State. In addition, each computer manufacturer is responsible for a pro rata share of orphan waste computer monitors and each desktop printer manufacturer is responsible for a pro rata share of orphan waste desktop printers generated as waste by households in this State and received at consolidation facilities in this State. The manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all computer monitors and, televisions, desktop printers and video game consoles generated as waste by households in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of televisions must be funded by allocating the cost of the program among the manufacturers selling televisions in the State on a basis proportional to the manufacturer's national market share of televisions. The department shall annually determine each television manufacturer's recycling share based on readily available national market share data. If the department determines that a television manufacturer's market share is less than 1/10 of 1%, the department may ~~deem~~ determine that market share de minimus. A television manufacturer whose market share is ~~deemed determined~~ de minimus by the department is not responsible for payment of a pro rata share of televisions for the corresponding billing year. The total market shares ~~deemed determined~~ de minimus by the department must be proportionally allocated to and paid for by the television manufacturers that have 1/10 of 1% or more of the market. ~~The manufacturers shall ensure that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. By November 1, 2005, the department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2 A that identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of computer monitors and televisions. The recycling of video game consoles must be funded by allocating the cost of the program among the manufacturers selling video game consoles in the State on a basis proportional to the manufacturer's national market share of video game consoles. The department shall annually determine each~~

video game console manufacturer's recycling share based on readily available national market share data. If the department determines that a video game console manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A video game console manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share of video game consoles for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the video game console manufacturers that have 1/10 of 1% or more of the market.

(2) Each computer monitor manufacturer ~~and~~ television manufacturer, desktop printer manufacturer and video game console manufacturer shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator.

E. Annually, by January 1st the department shall provide manufacturers of computer monitors and desktop printers and consolidators with a listing of each manufacturer's pro rata share of orphan waste computer monitors and desktop printers. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data provided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States. Annually, the department shall also provide manufacturers of televisions and consolidators with a listing of each television manufacturer's proportional market share responsibility for the recycling of televisions for the subsequent calendar year. Annually by January 1st, the department shall also provide manufacturers of video game consoles and consolidators with a listing of each video game console manufacturer's proportional market share responsibility for the recycling of video game consoles for the subsequent calendar year.

Sec. 8. 38 MRSA §1610, sub-§6, as amended by PL 2009, c. 231, §4 and affected by §7, is repealed.

Sec. 9. 38 MRSA §1610, sub-§6-A is enacted to read:

6-A. Manufacturer registration. By July 1st annually, a manufacturer that offers or has offered a computer monitor, television, desktop printer or video game console for sale in this State shall submit a registration to the department and pay to the department an

annual registration fee of \$3,000. The annual registration must include:

A. The name, contact and billing information of the manufacturer;

B. The manufacturer's brand name or names and the type of televisions, video game consoles, computer monitors and desktop printers on which each brand is used, including:

(1) All brands sold in the State in the past; and

(2) All brands currently being sold in the State;

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products;

E. The method or methods of sale used in the State;

F. Annual sales data on the number and type of computer monitors, televisions, desktop printers and video game consoles sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; and

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10.

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.

Sec. 10. 38 MRSA §1610, sub-§7, as amended by PL 2009, c. 231, §5 and affected by §7, is further amended to read:

7. Enforcement; cost recovery. The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to ~~section 1610~~, subsection 5, paragraph D, subparagraph

(1), including, for a computer monitor manufacturer and a desktop printer manufacturer, its pro rata share of costs attributable to orphan waste, the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

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

Sec. 11. 38 MRSA §1610, sub-§10 is enacted to read:

10. Rulemaking. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement, administer and enforce this chapter. The rules must identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of computer monitors, video game consoles, televisions and desktop printers.

Sec. 12. 38 MRSA §1610, sub-§11 is enacted to read:

11. Interstate clearinghouse for electronic waste. The department may participate in the establishment and implementation of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

Sec. 13. Transition. Prior to July 1, 2010, a manufacturer may meet the requirements of the Maine Revised Statutes, Title 38, section 1610, subsection 6 by registering in accordance with section 1610, subsection 6-A as enacted in this Act.

Sec. 14. Effective date. That section of this Act that repeals the Maine Revised Statutes, Title 38, section 1610, subsection 6 and that section of this Act that enacts Title 38, section 1610, subsection 6-A take effect July 1, 2010.

See title page for effective date, unless otherwise indicated.