

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 5, 2012 to July 10, 2013**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 9, 2013**

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

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**Augusta, Maine**  
**2013**

plication to obtain benefits from any state or federal unemployment compensation program administered by the bureau. In addition, for a first or 2nd occurrence, the claimant is ineligible to receive any benefits for a period of not less than 6 months nor more than one year from the mailing date of the determination, and the commissioner shall assess a penalty of 50% of the benefits falsely obtained for the first occurrence and 75% for the 2nd occurrence. If an individual is disqualified for a 3rd occurrence of statement falsification or misrepresentation in an effort to obtain benefits, the commissioner shall assess a penalty of 100% of the benefits falsely obtained and the claimant is disqualified from receiving benefits for a period of time to be determined by the commissioner. An amount equal to 15% of each overpayment on which these penalties were assessed must be transferred directly into the fund account upon recovery;

**Sec. 3. 26 MRSA §1221, sub-§3, ¶E** is enacted to read:

E. An employer's experience rating record may not be relieved of charges relating to an erroneous payment from the fund if the bureau determines that:

(1) The erroneous payment was made because the employer or agent of the employer was at fault for failing to respond timely or adequately to a written or electronic request from the bureau for information relating to the claim for unemployment compensation; and

(2) The employer or agent of the employer has established a pattern of failing to respond timely or adequately to written or electronic requests from the bureau for information relating to claims for unemployment compensation.

A determination of the bureau not to relieve charges pursuant to this paragraph is subject to appeal as other determinations of the bureau with respect to the charging of employers' experience rating records.

**Sec. 4. 26 MRSA §1221, sub-§6, ¶Q** is enacted to read:

Q. "Erroneous payment" means a payment that would not have been made but for the failure by the employer or agent of the employer to respond timely or adequately to a written or electronic request from the bureau for information relating to a claim for unemployment compensation.

**Sec. 5. 26 MRSA §1221, sub-§6, ¶R** is enacted to read:

R. "Pattern of failing" means repeated documented instances of failure on the part of the employer or agent of the employer to respond timely

or adequately to a written or electronic request from the bureau for information relating to a claim for unemployment compensation, taking into consideration the number of instances of failure in relation to the total number of requests. An employer or agent of the employer that fails to respond timely or adequately to a written or electronic request from the bureau for information relating to a claim for unemployment compensation may not be determined to have engaged in a pattern of failing if the number of instances of failure during the year prior to a request is fewer than 2 or less than 2% of requests, whichever is greater.

**Sec. 6. Application.** That section of this Act that enacts the Maine Revised Statutes, Title 26, section 1221, subsection 3, paragraph E applies to determinations of erroneous payments made after October 21, 2013.

See title page for effective date.

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**CHAPTER 315**

**H.P. 952 - L.D. 1335**

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

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

**Sec. 1. 38 MRSA §1665-B, sub-§6**, as enacted by PL 2005, c. 558, §1, is amended to read:

**6. Report.** ~~By March 15, 2007 and annually thereafter, the department shall submit a report on the collection and recycling of mercury-added thermostats in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report due in 2007 must include a description and discussion of the financial incentive plan established under this section and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Subsequent reports must include~~ Annually, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report that includes an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. The report may be included in the report required pursuant to section 1772, subsection 1.

**Sec. 2. 38 MRSA §1672, sub-§4, ¶E**, as enacted by PL 2009, c. 272, §1, is amended to read:

E. Beginning ~~April 15, in~~ 2013, and biennially thereafter, the department shall calculate the percentage of mercury-added lamps recycled from households and report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any modifications to the manufacturer recycling programs it intends to make to improve mercury-added lamp recycling rates and any recommendations for statutory changes needed to facilitate mercury-added lamp collection and recycling. The report may be included in the report required pursuant to section 1772, subsection 1.

**Sec. 3. 38 MRSA §1771, sub-§1-A** is enacted to read:

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

**Sec. 4. 38 MRSA §1772, sub-§1**, as enacted by PL 2009, c. 516, §1, is amended to read:

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

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

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

**Sec. 6. 38 MRSA §1773**, as enacted by PL 2009, c. 516, §1, is repealed.

**Sec. 7. 38 MRSA §1776** is enacted to read:

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

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

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

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

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

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

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

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

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

**5. Requirement to submit a plan.** Within one year of a product's or product category's being desig-

nated for inclusion in a product stewardship program, the relevant producer or stewardship organization shall submit a product stewardship plan to the department for approval. The plan must include:

A. Identification and contact information for:

- (1) The individual or entity submitting the plan;
- (2) All producers participating in the product stewardship program;
- (3) The owners of the brands covered by the program; and
- (4) If using a stewardship organization, the stewardship organization, including a description of the organization and the tasks to be performed by the organization. The description must include information on how the organization is organized, including administration of the organization and management of the organization;

B. A description of the collection system, including:

- (1) The types of sites or other collection services to be used;
- (2) How all products covered under the product stewardship program will be collected in all counties of the State; and
- (3) How the collection system will be convenient and adequate to serve the needs of all entities;

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

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

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

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

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

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

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

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

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

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

**7. Annual reporting.** By February 1st of the calendar year after the calendar year in which an approved product stewardship program is implemented, and annually thereafter, the producer or stewardship organization operating the program shall submit to the department a report on the program for the previous calendar year. The report must include, at a minimum:

A. The amount of product collected per county;

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

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

D. A description of the methods used for education and outreach efforts and an evaluation of the convenience of collection and the effectiveness of outreach and education. Every 2 years, the report must include the results of an assessment of the methods used for and effectiveness of education and outreach efforts. The assessment must be completed by a 3rd party;

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

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

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

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

**10. Proprietary information.** Proprietary information submitted to the department in a product stewardship plan, in an amendment to a product stewardship plan or pursuant to reporting requirements of this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

As used in this subsection, "proprietary information" means information that 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.

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

**Sec. 8. 38 MRSA §2143, sub-§4,** as enacted by PL 2007, c. 343, §1, is amended to read:

**4. Reports.** By January 1, 2009, and every year thereafter until January 1, 2013, a cellular telephone service provider shall report to the department the number of cellular telephones collected pursuant to this section and how the collected cellular telephones were disposed of, reused or recycled. By February 1, 2009 and every year thereafter until February 1, 2013. Annually, the department shall report on the collection system to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report may be included in the report required pursuant to section 1772, subsection 1.

See title page for effective date.

**CHAPTER 316  
S.P. 480 - L.D. 1373**

**An Act To Update the  
Polygraph Examiner Licensing  
Laws**

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

**Sec. 1. 5 MRSA §12004-I, sub-§74-H** is enacted to read:

**74-H.**

<u>Public Safety</u>	<u>Polygraph Examiners Advisory Board</u>	<u>Not Authorized</u>	<u>32 MRSA §7371</u>
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**Sec. 2. 32 MRSA c. 85,** as amended, is repealed.

**Sec. 3. 32 MRSA c. 86** is enacted to read:

**CHAPTER 86  
POLYGRAPH EXAMINERS ACT  
SUBCHAPTER 1  
GENERAL PROVISIONS**

**§7351. Short title**

This chapter may be known and cited as "the Polygraph Examiners Act."

**§7352. Definitions**

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

**1. Board.** "Board" means the Polygraph Examiners Advisory Board under section 7371.

**2. Commissioner.** "Commissioner" means the Commissioner of Public Safety.

**3. Department.** "Department" means the Department of Public Safety.

**4. Instrument.** "Instrument" means a device used to test a subject to directly or indirectly detect deception or verify the truth of a statement by, at a minimum, recording visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns.

**5. Intern.** "Intern" means a person who holds a polygraph examiner intern license under this chapter.

**6. Polygraph examiner.** "Polygraph examiner" means a person licensed under this chapter to use an instrument.