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An Act To Provide Leadership Regarding the Responsible Recycling of Consumer Products

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

Sec. 1. 38 MRSA c. 18 is enacted to read:

CHAPTER 18

PRODUCT STEWARDSHIP

§ 1771. Definitions

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

1. Brand. "Brand" means a name, symbol, word or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand.

2. Covered entity. "Covered entity" means a type of entity, such as an individual or small business, that may utilize a product stewardship program to manage an unwanted product.

3. Final disposition. "Final disposition" means the point beyond which no further processing takes place and the materials from a product are either in a form capable of direct use as an input in manufacturing new products or are treated for final disposal and disposed of.

4. Producer. "Producer" means a person that:

A. Has legal ownership of the brand of a product sold in or into the State;

B. Imports a product branded by a person that meets the requirements of paragraph A and has no physical presence in the United States; or

C. Sells a product in the State at wholesale or retail, does not have legal ownership of the brand of the product and elects to fulfill the responsibilities of the producer for that product.

5. Product. "Product" means an item intended for sale within the State that is identified pursuant to section 1773 as appropriate for a product stewardship program.

6. Product category. "Product category" means a group of similar products designated pursuant to section 1773 for the purpose of assigning product stewardship responsibilities and establishing product stewardship programs.

7. Product stewardship. "Product stewardship" means a producer takes responsibility for managing and reducing the life-cycle impacts of the producer's product, from product design to end-of-life management.

8. Product stewardship program. "Product stewardship program" means a program financed without a visible fee at purchase and either managed or provided by producers including, but not limited to, the collection, transportation, reuse and recycling or disposal, or both, of unwanted products.

9. Recycling. "Recycling" means the transforming or remanufacturing of an unwanted product or the unwanted product's components and by-products into usable or marketable materials. "Recycling" does not include landfill disposal, incineration or energy recovery or energy generation by means of combusting unwanted products, components and by-products with or without other waste.

10. Residuals. "Residuals" means leftover materials from processing or recycling a product or the components, parts or materials contained in a product.

11. Reuse. "Reuse" means a change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally produced.

12. Stewardship organization. "Stewardship organization" means an organization appointed by a producer to act as an agent on behalf of the producer to administer a product stewardship program.

13. Unwanted product. "Unwanted product" means a product that is no longer wanted by its owner or that has been abandoned or discarded or is intended to be discarded by its owner.

14. Product Stewardship Leader. "Product Stewardship Leader" means a producer that is in compliance with the requirements of this chapter.

§ 1772. Declaration of Policy

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 as a policy tool to support Maine's waste management hierarchy. By enactment of this chapter, the Legislature confers upon the department the authority to collect information on products in the waste stream and to assist the Legislature in designating products or product categories for product stewardship programs. The policy represented in this chapter is in furtherance of Maine's waste management hierarchy under chapter 24.

§ 1773. Identification of candidate products report:

By December 1, 2010, and annually thereafter, the department may submit to the Joint Standing Committee on Natural Resources a report on products and product categories that when generated as waste may be appropriately managed under a product stewardship program. The department shall also make the report available on its website, and the public may submit written comment to the Joint Standing Committee on Natural Resources within 30 days of the posting. The report may include recommendations for establishing new product stewardship programs and for changes to existing programs. A product or product category may be identified as a candidate for a product stewardship program if:

- (1) The product or product category is found to contain toxics which pose an adverse impact to the environment or public health and safety;

Comment [M1]: Analyst suggested these additions

- (2) A product stewardship program for the product will increase the recovery of materials for reuse and recycling;
- (3) A product stewardship program will reduce the costs of waste management to local governments and taxpayers;
- (4) There is success in collecting and processing similar products in programs in other states and countries;
- (5) Existing voluntary product stewardship programs for the product in the State are not effective in achieving the intent of this chapter.

Comment [M2]: Bob suggests changing this to: "The department may not consider any product for which there is already a product stewardship program." Otherwise, it infers that **any** product will be looked at that doesn't have a program.

§ 1774. Establishment of product stewardship programs:

Beginning on January 1, 2011, and annually thereafter, the Joint Standing Committee on Natural Resources may submit legislation to the Legislature to implement recommendations included in the department's report to establish new product stewardship programs or revise existing product stewardship programs.

§ 1775. Product stewardship program

1. Program requirement. A producer of a product or product category that is required to participate in a product stewardship program for that product or product category shall:

A. Operate, collectively with other producers, a product stewardship program approved by the department;

B. Enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the department. On a case-by-case basis, the department may approve a product stewardship program operated by an individual manufacturer provided that the program will provide at least an equivalent level of protection for human health and the environment and will function in a manner complementary to an approved collective plan; or

C. Enter into an agreement with the State to finance a State-operated program.

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

3. Program operation. A producer required to establish a product stewardship program or a stewardship organization that has entered into an agreement to operate a product stewardship program on a producer's behalf shall operate the product stewardship program in accordance with a product stewardship plan pursuant to section 1776 approved by the department and all applicable laws and rules.

4. Education and outreach. A product stewardship program must provide sufficient education and outreach to promote the use of the program to ensure that collection options are understood by covered entities.

§ 1776. Sale of products

As of the implementation date established for a product stewardship program for a product or product category, a producer, wholesaler, retailer or other person may not sell or offer for sale that product or a product in that product category to a person in the State unless the producer is in compliance with the product stewardship program requirements.

§ 1777. Product stewardship plan

1. Plan requirements. A producer or group of producers that operates or wishes to operate a product stewardship program, or a stewardship organization that operates or wishes to operate a product stewardship program on behalf of a producer or group of producers, shall submit a plan for review and approval to the department that includes the following:

A. Identification and contact information for:

(1) The person submitting the plan;

(2) The producers participating in the product stewardship program; and

(3) If a stewardship organization intends to operate a product stewardship program on behalf of producers, the stewardship organization, including a description of the stewardship organization, its management and administration and the tasks to be performed by the organization;

A. A description of the collection system, including information on the location of collection sites or other collection services used by the product stewardship program, and how the collection system is convenient and adequate to serve the needs of covered entities in both urban and rural areas.

B. A description of any transportation, handling, processing or disposal system used by the product stewardship program, including:

(1) How the products will be reused or recycled, including a description of the processing methods that will be used;

(2) Best management practices used by processors and their vendors to ensure that hazardous substances and wastes are not released into the environment and do not adversely impact human health;

C. Information relating to education and outreach, including how the product stewardship program will comply with the education and outreach requirement in this chapter.

The department shall determine whether the plan complies with the requirements of the applicable product stewardship law. The department shall approve the plan when all requirements have been met.

§ 1778. Changes to product stewardship plan

1. Prior approval for changes. Except as provided in subsection 2, a change to a product stewardship plan under section 1776 must be approved in writing by the department prior to implementation of the change.

2. Exceptions. The following changes to a product stewardship plan under section 1776 may be implemented without prior approval by the department.

A. An addition or change to collection locations for unwanted products may be made without the department's prior written approval. The person operating the product stewardship program must inform the department of the addition or change within 15 days of the addition or change.

B. An additional producer may participate in an approved product stewardship program without the department's prior written approval. The person operating the product stewardship program must inform the department of such an addition within 15 days of the addition.

§ 1779. Annual reporting.

For the purposes of this section, "reporting period" means the period beginning January 1st and ending December 31st of the same calendar year.

1. Information required. On or before June 30th of each year, a person operating a product stewardship program pursuant to this chapter shall prepare and submit to the department a report describing the activities of the product stewardship program during the previous reporting period, including:

A. Identification and contact information for:

- (1) The person submitting the product stewardship plan; and
- (2) The producers participating in the product stewardship program;

B. Performance metrics and recovery rates, including:

- (1) The amount of unwanted products collected from covered entities through collection services in each county, including documentation verifying collection and verifying reuse, recycling or disposal of that material; and
- (2) How the product stewardship program performed based on performance metrics and recovery rates established in the product stewardship plan;

C. The collection system, including the collection services provided in each county and in all cities with populations of more than 10,000 and the location of each collection service;

Comment [M3]: Analyst suggestion

D. The handling, transportation, processing and disposal system used, including list of handling, processing and disposal facilities used and the location of each facility, and the weight of unwanted products processed by each processor or disposed of at each disposal facility.:

E. The education and outreach provided pursuant to section 1775, subsection 4 during the reporting period;

§ 1780. Website listing of producers.

1. The department shall list on the department's publicly accessible website:
 - a. All producers who are participating in an approved product stewardship program; and
 - b. All producers who have been identified as noncompliant.

§ 1781. Applicability.

1. **Transportation.** The requirements of this chapter do not apply to motor vehicle as defined in Title 29-A, section 101, subsection 42 or watercraft as defined in Title 12, section 13001, subsection 28 or their component parts.
2. **Pulp and Paper Manufacturers.** The requirements of this chapter do not apply to pulp and paper manufacturers except conversion facilities for consumer product packaging.

§ 1782. No limitation of municipal authority.

Nothing in this chapter changes or limits municipal authority to regulate collection of solid waste, including curbside collection of residential recyclable materials.

§ 1783. Anticompetitive conduct.

A producer or an organization of producers that manages end-of-life management options, including collection, transport, recycling, and processing as required by this subchapter may engage in anticompetitive conduct to the extent necessary to implement the plan approved and is immune from liability for the conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.