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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 discard 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. Orphan product. "Orphan product" means a product covered by this chapter:

- A. That lacks a brand;
- B. For which the producer is no longer in business and has no successor in interest; or
- C. That bears a brand for which the department cannot identify an owner.

5. 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.

6. Product. "Product" means an item intended for sale within the State that is identified pursuant to section 1772 as appropriate for a product stewardship program.

7. Product category. "Product category" means a group of similar products designated pursuant to section 1772 for the purpose of assigning product stewardship responsibilities and establishing product stewardship programs.

8. Product stewardship. "Product stewardship" means a requirement that a producer take responsibility for managing and reducing the entire life-cycle impacts of the producer's product, from product design to end-of-life management. Life-cycle impacts include, but are not limited to, energy and materials consumption, air and water emissions, the amount of hazardous substances in the product, worker and consumer exposure and reuse, recycling and waste disposal.

9. Product stewardship program. "Product stewardship program" means a program financed and either managed or provided by producers that addresses the life-cycle impacts of a product and includes, but is not limited to, the collection, transportation, reuse and recycling or disposal, or both, of unwanted products, including but not limited to a pro rata share of orphan products.

10. 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.

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

12. 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.

13. 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.

14. 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.

§ 1772. Establishment of designation procedures; product designation; rulemaking

1. Procedures. The department shall, through rulemaking, develop procedures for identifying products and product categories that are appropriate for a product stewardship program. The procedures must include, but are not limited to, provisions for:

A. Designating products and product categories over time;

B. Establishing a review process for determining if reduced reporting requirements under section 1779, subsection 2 apply;

C. Monitoring recovery rates to measure the effectiveness of the requirements of this chapter and the need for changes to improve the recovery rates; and

D. Enforcement and penalty assessments.

2. Product designation. The department, through rulemaking:

A. Shall designate products and product categories as subject to the product stewardship program requirements of this chapter. In determining whether to designate a product or product category, the department shall consider the following:

(1) The degree to which the product or product category poses an adverse impact to the environment and public health and safety;

(2) The potential for resource recovery and material conservation;

(3) The potential for energy conservation;

(4) The climate change impacts and benefits of the product or product category;

(5) Opportunities to reduce waste and toxicity;

(6) Opportunities to increase recycled content and recycling;

(7) The costs of waste management to local governments, ratepayers and taxpayers in the absence of product stewardship programs;

(8) Opportunities for existing and new businesses and infrastructure to manage the products;

(9) Opportunities to develop new industries to utilize the recovered materials;

(10) Public demand for product stewardship; and

(11) Success in collecting and processing similar products in programs in other states and countries;

B. Shall identify covered entities for each designated product and product category;

C. Shall determine whether to designate a product's packaging as a product;

D. Shall determine whether recycling performance goals or a disposal ban for a product or product category is appropriate to encourage recycling;

E. Shall establish an implementation date for the product stewardship program for each designated product or product category. The implementation date may not be less than 12 months after the date the department designates the product or product category;

F. Shall establish if necessary management requirements and labeling requirements for particular products or product categories. Management requirements include, but are not limited to, special handling requirements for products containing hazardous substances, including processing, recycling and disposal requirements. Labeling requirements may include, but are not limited to, requirements for a producer to label a product regarding its brand, toxicity or carbon footprint; and

G. May establish a disposal ban for a designated product or product category.

§ 1773. Product stewardship program

1. Program requirement. A producer of a product or product category designated by the department pursuant to section 1772 that is or has been sold in or into the State shall participate in a product stewardship program for that product or product category. The producer shall:

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

B. Enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the department.

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. Costs. The producers in a product stewardship program shall pay the administrative and operational costs associated with the program, including the costs of collection, transportation and recycling or disposal, or both, of the products covered by the program.

4. 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.

5. Education and outreach. A product stewardship program must provide education and outreach to promote the use of the program to ensure that collection options are understood by covered entities. Education and outreach must be provided to covered entities, collectors, retailers and other interested parties. At a minimum, outreach must include a toll-free telephone number and a publicly accessible website where collection options are listed.

6. Annual 3rd-party audit. A product stewardship program must obtain an annual 3rd-party audit of each handling, processing and disposal facility used by the product stewardship program for any product containing hazardous substances or any of a product's components, parts, by-products or materials containing hazardous substances. The annual audits must be conducted in accordance with the requirements of section 1776, subsection 1, paragraph C, subparagraph (2).

§ 1774. Reuse or recycling requirement

1. Required reuse or recycling. Except as provided in subsection 2, all products that are collected by a product stewardship program must be reused or recycled.

2. Exceptions. Products or product categories determined by the department not to be reusable or recyclable are exempt from the reuse or recycling requirement in subsection 1.

A. A product that cannot be reused or recycled must be disposed of or managed in permitted facilities appropriate for the product, including the disposal or management of all hazardous products, components and materials in permitted hazardous waste facilities appropriate for the product, component or material.

B. Residuals that cannot be reused or recycled must be disposed of or managed in permitted facilities appropriate for the residuals, including the disposal or management of all hazardous residuals in permitted hazardous waste facilities appropriate for the residuals.

If the department determines that options for reusing or recycling a product have changed, the department may require producers to amend their product stewardship programs to include reuse and recycling for that product or product category.

§ 1775. Sale of products

As of the implementation date established by the department under section 1772, subsection 2, paragraph E for the 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 participating in the product stewardship program. A person who sells or offers for sale in the State a product shall, prior to selling that product in the State, consult the lists of compliant and noncompliant producers established pursuant to section 1780. A person is considered to have complied with this section if, on the date the product was ordered from the producer or its agent, the producer was listed as having an approved product stewardship program for that product.

§ 1776. 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 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;

B. A description of the collection system, including information relating to:

(1) The location of collection sites or other collection services used by the product stewardship program;

(2) How unwanted products from all types of covered entities will be collected in all counties in the State and in all cities with populations of more than 10,000; and

(3) How the collection system is convenient and adequate to serve the needs of covered entities in both urban and rural areas;

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

(1) The location and permit status of and record of any penalties, violations or regulatory orders received in the previous 5 years by the handling, processing or disposal facilities used by the product stewardship program;

(2) A 3rd-party audit of each handling, processing or disposal facility used by the product stewardship program for any product containing hazardous substances or any of a product's components, parts, by-products or materials containing hazardous substances. The audit must include documentation of compliance with all relevant local, state, national and international laws and with the management requirements adopted for the product by the department under section 1772, subsection 2, paragraph F;

(3) The policies and procedures to be followed by persons transporting, handling, processing or disposing of unwanted products collected pursuant to the product stewardship program and how compliance with relevant local, state, national and international laws and with the management requirements adopted for the product or product category by the department will be ensured;

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

(5) If the department determines through rulemaking that a product is not reusable or recyclable, a waste reduction strategy for how the product will be disposed of or managed in permitted facilities appropriate to the product, including disposal or management of hazardous products, components, parts, by-products and materials in permitted hazardous waste facilities appropriate for the products, components, parts, by-products and materials;

(6) How all residuals that cannot be reused or recycled will be disposed of or managed in permitted facilities appropriate for the residuals, including disposal of or management of all hazardous residuals in permitted hazardous waste facilities appropriate for the residuals;

(7) How hazardous wastes and hazardous substances will be tracked and handled through final disposition and how safety and security will be maintained; and

(8) 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;

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

E. Information relating to consultation with stakeholders, including but not limited to covered entities, environmental groups and retailers. The information must include, but is not limited to:

(1) A description of the process used to consult with stakeholders regarding the contents of the product stewardship plan; and

(2) A summary of stakeholders' comments and concerns and how those concerns were addressed.

2. Plan submission; plan approval. A product stewardship plan must be submitted to the department in accordance with rules adopted by the department. The department shall determine whether the plan complies with this chapter and rules adopted to implement this chapter. The department shall

approve the plan when all requirements have been met. If the plan is approved, the department shall send a letter of approval to the submitter. If the plan is rejected, the department shall provide the submitter with a letter describing the reasons for rejecting the plan.

§ 1777. 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.

§ 1778. Amendment, suspension or cancellation of product stewardship plan approval

1. Department's authority to amend, suspend or cancel. If the department determines that a product stewardship program is not being operated in accordance with the requirements of this chapter and rules adopted to implement this chapter, the department may:

A. Amend the approval of the product stewardship plan by clarifying its terms or conditions to ensure full implementation of the plan; or

B. Suspend or cancel the approval of the product stewardship plan.

2. Opportunity to respond. At least 30 days prior to amending, suspending or canceling an approval of a product stewardship plan, the department shall inform the person operating the product stewardship program of the action and provide an opportunity to respond. The department may extend the time permitted for a response.

3. Department action without opportunity to respond. Notwithstanding subsection 2, if the department determines it is necessary in order to protect the public from imminent danger, the department may immediately amend, suspend or cancel an approval of a product stewardship plan without giving the person operating the product stewardship program an opportunity to respond, but, within 15 days after the date on which the department amends, suspends or cancels an approval, the department must give that person an opportunity to respond through proceedings consistent with Title 5, chapter 375.

§ 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 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 goals 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 attained the performance goals and recovery rates established in the product stewardship plan or set by the department and, if the program did not attain those performance goals and recovery rates, what actions it will take during the current reporting period to do so;

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;

D. The handling, transportation, processing and disposal system used, including:

(1) A list of handling, processing and disposal facilities used and the location of each facility, the weight of unwanted products processed by each processor or disposed of at each disposal facility and a description of the processes used to recycle the unwanted products by each processor;

(2) A list of subcontractors through final disposition who processed or recycled unwanted products, components, materials or by-products that contained hazardous substances and the location of each subcontractor facility;

(3) Documentation and summary results of annual 3rd-party audits conducted pursuant to section 1773, subsection 6 on each handling, processing and disposal facility used;

(4) If a product is exempt from the reuse or recycling requirement pursuant to section 1774, subsection 2, how the product has been disposed of or managed in permitted facilities appropriate to the product, including disposal or management of all hazardous products, components and materials in permitted hazardous waste facilities appropriate for the product, component or material;

(5) The fate of residuals not recycled or reused;

(6) Penalties, violations or regulatory orders received during the reporting period, if any, by each handling, processing or disposal facility that is used; and

(7) Whether policies and procedures for transporting, processing, handling and disposing of unwanted products as established in the product stewardship plan under section 1776 were followed during the reporting period and a description of noncompliance with those policies and procedures, if any;

E. The education and outreach provided pursuant to section 1773, subsection 5 during the reporting period;

F. Steps taken to manage and reduce the life-cycle impacts of the products, from product design to end-of-life management, including how the formulation, packaging and distribution of products have been improved to reduce waste, reduce toxicity, reduce carbon footprint, reduce other environmental impacts, increase recycled content, increase product longevity and make products more easily recyclable; and

G. Any other information that the department may reasonably require.

2. Reduced reporting requirements. A person operating a product stewardship program that meets the following conditions is required to report to the department only the information listed in subsection 1, paragraphs A, B, C and G:

A. All products collected by the product stewardship program use no hazardous substances in the production process and contain no hazardous substances;

B. The product stewardship program over the reporting period attained a 90% recovery rate of all unwanted products for which the producers are responsible under the program and a recycling rate of 80% of the materials contained in those recovered products; and

C. All products collected by the product stewardship program are carbon-neutral in production and use.

§ 1780. Website listing of producers

The department shall list on the department's publicly accessible website all producers who are participating in an approved product stewardship program and all producers who have been identified as noncompliant.

§ 1781. Enforcement; penalties

1. Failure to participate in a product stewardship program; failure to comply with written warnings and notifications. The following provisions apply if a producer fails to participate in a product stewardship program.

A. The department shall send a written warning and a copy of the requirements of this chapter to a producer who is not participating in an approved product stewardship program and whose product is being sold in or into the State after the implementation date established by the department under section 1772, subsection 2, paragraph E for the product stewardship program for the product.

B. The department shall send written notification of a producer's failure to participate in an approved product stewardship program to a wholesaler, retailer or other person known to be selling that producer's product in or into the State.

C. Beginning 60 days after receipt of a written warning under paragraph A, a producer who is not participating in an approved product stewardship program and whose product is sold in or into the State commits a civil violation for which a fine of not more than \$10,000 per day may be adjudged.

D. Beginning 60 days after receipt of written notification under paragraph B, a wholesaler, retailer or other person who sells a product from a producer who is not participating in an approved product stewardship program commits a civil violation for which a fine of not more than \$10,000 per day may be adjudged.

2. Failure to submit product stewardship plan, revisions or annual report. The department shall send a written warning to a producer who operates a product stewardship program or a person who operates a product stewardship program on a producer's behalf who fails to submit a product stewardship plan under section 1776, plan revision under section 1777 or annual report under section 1779. The written warning must include compliance requirements and notification that the compliance requirements must be met within 60 days. If the compliance requirements are not met within 60 days, the producer or other person who operates a product stewardship program on the producer's behalf commits a civil violation for which a fine of not more than \$10,000 per day may be adjudged.

§ 1782. Administrative costs and fees

The department may establish fees to fully recover expenses incurred by the department to administer this chapter. Fees may be charged to producers and, if fees are charged, the fees must be paid annually no later than July 1st of each calendar year. Fees collected by the department pursuant to this section must be deposited in the Maine Environmental Protection Fund established in section 351.

§ 1783. Rules

Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2A.

§ 1784. 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.

§ 1785. Anticompetitive conduct

A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize product stewardship programs required under this chapter, is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement a product stewardship program and is immune from liability under state laws relating to antitrust enforcement, restraint of trade, unfair trade practices and other regulation of trade or commerce for this purpose.

§ 1786. Liberal construction

This chapter, being necessary to protect public health, safety and welfare and the environment, must be liberally construed.

SUMMARY

This bill establishes a product stewardship law under the Department of Environmental Protection.

The bill requires the department to establish procedures for identifying products that are appropriate for a product stewardship program and to designate specific products and product categories that are subject to the product stewardship program requirements. The bill also sets forth factors that must be considered by the department in making this determination, including, but not limited to, the degree to which the product poses an adverse impact to the environment and public health, opportunities for the development of business and opportunities for energy conservation and reduction of waste and toxicity.

Under the bill, producers of the designated products must participate in product stewardship programs established and paid for by the producers of the products. If a producer of a designated product does not participate in an approved product stewardship program, that producer's product may not be sold in or into the State as of an implementation date to be established by the department.

The bill requires producers of designated products to submit to the department for approval product stewardship plans and proposed changes to established plans. The bill also authorizes the department to amend, suspend or cancel its approval of a product stewardship plan and requires product stewardship programs to submit annual reports.