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

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

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

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

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

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

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

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

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

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

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

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

**Sec.** **6. 38 MRSA §1610, sub-§5,** as amended by PL 2017, c. 391, §2, 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 covered electronic devices generated as waste from covered entities 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.

This paragraph is repealed January 1, 2023.

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

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

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

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

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

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

(4) Ensure that that each shipment of covered electronic devices prepared for transportation in accordance with subparagraphs (2) and (3) that is transferred to a recycler weighs no less than 18,000 pounds. In the event that a shipment weighs less than 18,000 pounds, the recycler to whom the shipment is transferred may require the collector managing the program collection site to pay to the recycler a fee not to exceed $600 per shipment that is reasonably related to the number of pounds by which the shipment fails to meet the 18,000-pound threshold; and

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

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

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

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated on a basis proportional to the manufacturer's national market share of each type of covered electronic device sold 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.

This subparagraph is repealed January 1, 2023.

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

(4) A consolidator shall transport covered electronic devices 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 are certified pursuant to 3rd-party certification standards approved by the department and meet other applicable guidelines for environmentally sound management published by the department.

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

(1) Manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all covered electronic devices received at consolidation facilities 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 each type of covered electronic device must be funded by allocating the cost of the ~~program~~ electronics recycling system established under this section among the manufacturers selling covered electronic devices in the State on a basis proportional to the manufacturer's national market share of the type of covered electronic device. The department shall annually determine each manufacturer's recycling share based on readily available national market share data. If the department determines that a manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share 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 manufacturers that have 1/10 of 1% or more of the market of each ~~type of~~ covered electronic device category.

This subparagraph is repealed January 1, 2023.

(2) Each 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.

This subparagraph is repealed January 1, 2023.

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

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

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

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

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

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

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

(g) Any other information required by the department.

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

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

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

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

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

(b) If the department determines that the plan fails to meet the approval requirements described in division (a), the department shall reject the plan by providing written notification of the rejection to the individual described in subparagraph (3), division (a) that describes the reasons for the rejection. Within 30 days of receipt of a written notice of rejection under this division, the manufacturer or manufacturer clearinghouse shall submit to the department for review a revised plan that addresses the stated reasons for the prior rejection. The department shall review a revised plan under this division in accordance with the criteria in division (a).

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

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

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

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

(c) Any other information required by the department.

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

This paragraph is repealed January 1, 2023.

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

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

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

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

(2) A proposed methodology for fairly and reasonably allocating financial responsibility for program costs during the upcoming calendar year between participating manufacturers that is designed to ensure that the share of the costs allocated to each manufacturer is reasonably related to the manufacturer's market share of covered electronic devices. Manufacturers must assume financial responsibility for the costs associated with the collection and preparation for transportation of covered electronic devices by collectors under the program; and

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

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

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

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

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

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

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

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

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

A. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), 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.

This paragraph is repealed January 1, 2023.

B. 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.

This paragraph is repealed January 1, 2023.

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

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

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

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

**11.** **Interstate** **~~clearinghouse for~~ electronic waste** **recycling collaboration.**  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~~ section.

**SUMMARY**

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.