

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1004 - L.D. 1519

**An Act to Create a Stewardship Program for Electronic Smoking Devices
and Related Products**

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

Sec. 1. 38 MRSA §1306, sub-§8 is enacted to read:

8. Electronic smoking devices. Beginning on the date that an approved electronic smoking device stewardship plan is first implemented by a producer or electronic smoking device stewardship organization pursuant to section 1618, subsection 8, a person may not dispose of an electronic smoking device except in accordance with an electronic smoking device stewardship program implemented under section 1618 or by delivery to a licensed hazardous waste transporter.

This subsection may not be construed to affect existing laws, rules or regulations governing the disposal of electronic smoking devices prior to the date that an approved electronic smoking device stewardship plan is first implemented by a producer or electronic smoking device stewardship organization pursuant to section 1618, subsection 8.

As used in this subsection, "electronic smoking device," "electronic smoking device stewardship organization," "electronic smoking device stewardship plan," "electronic smoking device stewardship program" and "producer" have the same meanings as in section 1618, subsection 1.

Sec. 2. 38 MRSA §1618 is enacted to read:

§1618. Stewardship program for electronic smoking devices

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Brand" means a name, symbol, word or mark that identifies an electronic smoking device, rather than its components, and attributes the device to the owner of the brand.

B. "Collection location" means a location that is approved by a stewardship organization to participate in the collection of unwanted electronic smoking devices.

C. "Electronic smoking device" or "device" means any device that may be used to deliver any aerosolized or vaporized substance to a person inhaling from the device.

including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, so-called vape pen or electronic hookah. "Electronic smoking device" includes any component, part or accessory of the device and any substance that may be aerosolized or vaporized by that device, whether or not the substance contains nicotine.

D. "Electronic smoking device stewardship organization" or "stewardship organization" means a corporation, nonprofit organization or other legal entity created by a producer or group of producers pursuant to this section to implement an electronic smoking device stewardship program.

E. "Electronic smoking device stewardship plan" or "stewardship plan" means a plan to establish an electronic smoking device stewardship program to be submitted to the department for review pursuant to subsection 6.

F. "Electronic smoking device stewardship program" or "program" means the program established under this section to provide for the collection, transportation, reuse and recycling or disposal, or both, of unwanted electronic smoking devices.

G. "Municipality" means a city, town, township, village, plantation or county; a refuse disposal district under chapter 17; or a regional association.

H. "Producer" means a person that:

(1) Has legal ownership of the brand of an electronic smoking device sold in or into the State;

(2) Imports an electronic smoking device branded by a person that meets the requirements of paragraph A and has no physical presence in the United States; or

(3) Sells an electronic smoking device in the State at wholesale or retail, does not have legal ownership of the brand of the device and elects to fulfill the responsibilities of the producer for that device.

I. "Proprietary information" has the same meaning as in Title 38, section 1771, subsection 6-A.

J. "Recycling" has the same meaning as in Title 38, section 1771, subsection 7.

K. "Retailer" means any of the following persons that sell or offer for sale electronic smoking devices:

(1) A tobacco retailer, as defined in Title 22, section 1551, subsection 3-A;

(2) A caregiver retail store, as defined in Title 22, section 2421-A, subsection 12;

(3) A registered dispensary, as defined in Title 22, section 2421-A, subsection 41; and

(4) A cannabis store, as defined in Title 28-B, section 102-A, subsection 16.

L. "Reuse" has the same meaning as in Title 38, section 1771, subsection 8.

M. "Unwanted electronic smoking device" means an electronic smoking device that is no longer wanted by its owner or that has been abandoned or discarded or is intended to be discarded by its owner.

2. Program. Pursuant to this section, a producer that sells an electronic smoking device in the State shall, individually, collectively or through a stewardship organization,

implement and finance an electronic smoking device stewardship program to manage, in accordance with the priorities in section 2101, unwanted electronic smoking devices sold by the producer at the end of the device's life.

A. The program must include a collection system for unwanted electronic smoking devices that is convenient and adequate to serve the needs of persons in both rural and urban areas. No later than one year following commencement of the collection of electronic smoking devices by the program's collection system, the collection system must, at a minimum, include permanent collection locations located within 15 miles of 90% of the residents of the State unless the department determines that the requirements of this paragraph are not practicable due to geographical constraints or that an alternative collection system that does not meet the requirements of this paragraph will result in equivalent and more efficient collection. The program must also be designed to:

(1) Within 90 days of receiving a request from a municipality or a federally recognized Indian tribe, nation or band in the State to participate in the program as a collection location, allow for such participation and provide to the municipality or Indian tribe, nation or band all appropriate collection receptacles for unwanted electronic smoking devices and all staff training necessary to manage the collection location. A collection location under this subparagraph may be located at a transfer station, fire station or police station;

(2) Within 90 days of receiving a request from a public or private school to participate in the program as a collection location, allow for such participation and provide to the school all appropriate collection receptacles for unwanted electronic smoking devices and all staff training necessary to manage the collection location. A collection location under this subparagraph must be designed to collect unwanted electronic smoking devices from school faculty and devices confiscated from students;

(3) Within 90 days of receiving a request from a retailer to participate in the program as a collection location, allow for such participation and provide to the retailer all appropriate collection receptacles for unwanted electronic smoking devices and all staff training necessary to manage the collection location;

(4) Within 3 years following the date on which the stewardship plan is approved by the department pursuant to subsection 7, ensure that all retailers in the State are participating in the program as collection locations; and

(5) Ensure that each collection receptacle provided by the stewardship organization to a collection location is emptied and serviced as often as necessary to avoid the receptacle's reaching storage capacity and to ensure proper operation of the receptacle.

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 the public.

C. A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize an electronic device stewardship program under this section, 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.

D. The program must include at a minimum a half-time employee or contracted agent whose job duties are dedicated to implementing the program in the State unless the department determines that a lesser staffing requirement is adequate to provide the administrative oversight, training and ongoing technical support to collection locations, education and outreach efforts, program performance assessment and reporting necessary for program implementation.

E. The program must provide a financial incentive with a minimum value of \$2 to a person for each unwanted electronic smoking device returned by the person to a collection location, except that a person may not receive a financial incentive for more than 2 devices returned to a collection location in a single day.

3. Requirement for sale; retailer participation. One hundred eighty days after a stewardship plan submitted to the department pursuant to subsection 6 is approved by the department in accordance with subsection 7, a producer may not sell or offer for sale in the State an electronic smoking device unless the producer participates in an electronic smoking device stewardship program under this section in accordance with an approved stewardship plan.

Within 3 years following the date on which the stewardship plan is approved by the department pursuant to subsection 7, all retailers in the State shall participate in the program as collection locations, and the stewardship organization shall notify the department of any retailer that refuses to participate as a collection location within 90 days of that refusal.

4. Collection location participation fees prohibited. An electronic smoking device stewardship program may not charge a person a fee to participate in the program as a collection location.

5. Costs. Producers participating in an electronic smoking device stewardship program shall finance the collection, transportation and reuse, recycling or disposition of unwanted electronic smoking devices; financial incentives for the return of unwanted electronic smoking devices to collection locations as described in subsection 2, paragraph E; effective education and outreach related to the program; program assessment; program reporting; any other incentives necessary to achieve program goals; payment of reasonable fees to the department for review of the producers' stewardship plan and any proposed amendments; and payment of annual fees to the department to cover the department's actual costs for the program for annual report review, oversight, administration and enforcement, which may not exceed \$100,000 per year per program and which must be properly documented and provided by the department to the program prior to or at the time that such payment is required.

6. Requirement to submit stewardship plan. On or before November 1, 2027, a producer of electronic smoking devices, individually, collectively or through a stewardship organization, shall submit a stewardship plan to the department for approval. The stewardship plan must include:

A. Identification and contact information for:

(1) The individual or entity submitting the stewardship plan;

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

B. A description of the collection system to be implemented under the program, including:

- (1) The types of locations or other collection services to be used;
- (2) How all electronic smoking devices covered under the program will be collected in all counties of the State;
- (3) How the collection system will be convenient and adequate to serve the needs of all persons seeking to use the program for the management of unwanted electronic smoking devices; and
- (4) How the collection system will ensure that each collection receptacle provided by the stewardship organization to a collection location will be emptied and serviced as often as necessary to avoid the receptacle's reaching storage capacity and to ensure proper operation of the receptacle;

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

D. Information on how the unwanted electronic smoking devices will be safely and securely transported, tracked and handled from collection through final disposition;

E. A description of the methods to be used to reuse, deconstruct and recycle the unwanted electronic smoking devices to ensure that the device 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 unwanted electronic smoking devices collected, recycled, processed, reused and disposed of will be measured;

H. A description of the education and outreach methods that will be used to recruit, train and monitor collection locations and to encourage participation in the program on an ongoing basis by collection locations and by persons throughout the State;

I. A description of how education and outreach methods will be evaluated, including, at a minimum, completion of an annual consumer awareness survey to assess consumer knowledge regarding management options and collection locations for unwanted electronic smoking devices. The survey questions and methodology must be approved by the department, and the survey must be administered by a qualified 3rd party;

J. A description of how program performance will be assessed, including performance goals to show success of the program. When a performance goal is expressed as a recycling rate or a diversion from disposal rate, the stewardship plan must include a description of the methodology and the relevant historic sales data used to develop the

rate. Sales information submitted to the department pursuant to this paragraph that is identified by the producer or stewardship organization as proprietary information is confidential and must be handled by the department in accordance with subsection 11. The performance goals under this paragraph must include, at a minimum, one of the following:

(1) That at least 50% of the residents of the State will be aware of the program by no later than the end of the 3rd year of program implementation and at least 70% of the residents of the State will be aware of the program by no later than the end of the 6th year of program implementation;

(2) That a diversion from disposal rate of at least 50% will be achieved by the program by no later than the end of the 4th year of program implementation; or

(3) An alternative performance goal that does not meet the criteria in subparagraph (1) or (2) as long as sufficient evidence is provided to the department to justify that alternative performance goal;

K. A description of how the program will be financed. If the program is financed by a per unit assessment paid by the consumer at the point of sale, a plan for an annual 3rd-party audit to ensure revenue from the assessment does not exceed the costs of implementing the program must be included;

L. An anticipated annual budget for the program that includes identification of specific anticipated administrative, collection, transportation, disposition and communication costs for the program. The anticipated annual budget must be sufficient to fund the program staffing required under subsection 2, paragraph D and the reimbursement by the producer or stewardship organization of the department's actual costs incurred in annual report review and in overseeing, administering and enforcing the program. The anticipated annual budget may not include costs for legal fees or costs related to legislative efforts that have been or will be incurred by the producer or stewardship organization; and

M. Any other information required by the department.

7. Department review and approval. Within 120 days after receipt of a proposed stewardship plan, or a proposed amendment to a previously approved stewardship plan, the department shall determine whether the stewardship plan complies with this section. If the stewardship plan is approved, the department shall notify the person that submitted the plan in writing. If the department rejects the stewardship plan, the department shall notify the person that submitted the plan in writing stating the reason for rejecting the stewardship plan. Within 30 days of approval by the department of a submitted stewardship plan, or approval of an amendment to a previously approved stewardship plan submitted pursuant to subsection 9, the department shall publish the approved stewardship plan, or an approved amendment to a previously approved stewardship plan, on the department's publicly accessible website.

8. Implementation of plan. A producer or stewardship organization that submitted a stewardship plan under subsection 6 that was approved by the department under subsection 7 shall implement the plan no later than 180 days after the date the plan was approved.

9. Stewardship plan amendments. In accordance with the provisions of this subsection, a producer or stewardship organization or the department may initiate changes to an approved electronic smoking device stewardship plan.

A. A change to an approved stewardship plan by a producer or stewardship organization operating the program implemented under the stewardship plan must be submitted to the department for review and approval prior to the implementation of that change, except that if the producer or stewardship organization determines that the change is not substantive, such as the addition of or a change to collection locations, or if an additional producer joins the program, the producer or stewardship organization must inform the department of the change within 14 days of implementing the change but need not receive department approval unless the department determines that the change is substantive. The department shall review and approve stewardship plan amendments in accordance with subsection 7.

B. If the department determines that a program has failed to make adequate progress toward achieving the program's performance goals described in the approved stewardship plan pursuant to subsection 6, paragraph J, the department shall notify the producer or stewardship organization operating the program in writing regarding its determination and may direct the producer or stewardship organization to implement specific changes to the stewardship plan within 6 months of the written notification, which may include, but are not limited to, improvements to the convenience of the collection system or to the education and outreach efforts under the program to improve program performance. The department may also recommend in its annual report under section 1772, subsection 1 that the program be amended to require additional financial or other incentives or, if appropriate, implementation of a deposit and refund system.

10. Annual report. By March 1st of the calendar year after the calendar year in which an approved stewardship plan 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:

A. The amount of unwanted electronic smoking devices collected at each collection location;

B. A description of the methods used to collect, transport and process the electronic smoking devices;

C. An evaluation of program performance, including, if possible, diversion and recycling rates together with certificates of recycling or similar confirmations and an evaluation of the convenience of the collection system implemented under the program;

D. A description of the methods used for education and outreach efforts and an evaluation of the effectiveness of those efforts. 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 qualified 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 6, paragraph K;

F. Any recommendations for changes to the program and to the approved goals for the program to improve convenience of collection, consumer education and program evaluation;

G. A financial report on the program, including the total cost of implementing the program as determined by a 3rd-party audit that includes identification of specific administrative, collection, transportation, disposition and communication costs for the program, and an anticipated budget for the program for the next program year; and

H. Any other information required by the department.

The department shall include the information reported by a producer or stewardship organization pursuant to this subsection in the department's annual report under section 1772, subsection 1.

11. Proprietary information. Proprietary information submitted to the department in a stewardship plan, in an amendment to a 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.

12. Administration and enforcement; rules. The department shall enforce this section and may adopt rules as necessary for the purposes of implementing, administering and enforcing this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Remediation and Waste Management 0247**

Initiative: Provides one-time funding for one limited-period Environmental Specialist III position and associated position costs.

GENERAL FUND	2025-26	2026-27
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$104,480
All Other	\$0	\$5,000
GENERAL FUND TOTAL	\$0	\$109,480