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An Act To Establish a Carpet Stewardship Program

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

Sec. 1. 38 MRSA §2145 is enacted to read:

§ 2145. Stewardship program for carpet

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

A. "Brand" has the same meaning as in section 1771, subsection 1. "Brand" includes both a registered and an unregistered trademark.

B. "Carpet" means a manufactured product used in commercial or residential buildings that is affixed or placed on the floor or building walking surface as a decorative or functional building feature and is primarily constructed of a top visible surface of synthetic face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials. "Carpet" includes, but is not limited to, a commercial or a residential broadloom carpet or modular carpet tiles. "Carpet" does not include a rug, pad, cushion or underlayment used in conjunction with, or separately from, a carpet.

C. "Carpet stewardship assessment" or "assessment" means the amount added to the purchase price of carpet sold in the State necessary to cover the cost of collecting, transporting and processing discarded carpet statewide under a carpet stewardship program established in accordance with this section.

D. "Carpet stewardship organization" or "organization" means a nonprofit organization created by one or more producers to design, submit a plan for, implement and operate a carpet stewardship program.

E. "Carpet stewardship plan" or "plan" means a plan designed by a producer or carpet stewardship organization for the establishment of a carpet stewardship program.

F. "Carpet stewardship program" or "program" means a system implemented for the management of discarded carpet in accordance with an approved carpet stewardship plan.

G. "Consumer" means a purchaser, owner or lessee of carpet.

H. "Discarded carpet" means carpet that a person discards, abandons or sends for recycling.

I. "Operator" means a producer or carpet stewardship organization that implements and operates a carpet stewardship program.

J. "Participate" means, with respect to a producer, to, individually or through a carpet stewardship organization, establish and operate a carpet stewardship program in accordance with this section.

K. "Producer" means, with regard to carpet that is sold, offered for sale or distributed for sale in the State, the following:

(1) The person that manufactures the carpet and sells, offers for sale or distributes for sale that carpet in the State under the person's own brand;

(2) If there is no person to which subparagraph (1) applies, the owner or licensee of the brand under which the carpet is sold or distributed in the State; or

(3) If there is no person to which subparagraph (1) or (2) applies, the person that imports the carpet into the United States for sale or distribution in the State.

L. "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" includes incineration or energy recovery or energy generation by means of combusting unwanted products, components and by-products with or without other waste. "Recycling" does not include landfill disposal.

M. "Retailer" means a person that offers carpet for sale in the State in a retail sale, as defined in Title 36, section 1752, subsection 11, including remote sales conducted through sales outlets, catalogs or the Internet or any other similar electronic means.

N. "Sell" or "sale" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogs or the Internet or any other similar electronic means.

O. "Wholesaler" means a person that offers carpet for sale in the State in a sale that is not a retail sale, as defined in Title 36, section 1752, subsection 11, with the intention that the carpet be resold in a subsequent retail sale.

2. Submission of plan. Except as provided in subsection 9, no later than one year after the effective date of this section, each producer, individually or through a carpet stewardship organization, shall submit a plan for the establishment of a carpet stewardship program to the commissioner for approval. The plan must include:

A. Identification and contact information for all persons that will be responsible for the operation of the program and a list of the brands of carpet to be covered under the program. If the plan is submitted by an organization, it must include a description of the organization, tasks to be performed by the organization and information on how the organization is organized, including administration and management of the organization;

B. A description of how the program will provide convenient, free, statewide collection opportunities for discarded carpet and how the convenience and adequacy of the collection system will be monitored and maintained;

C. The criteria to be used by the program in determining whether an entity may serve as a collection location for discarded carpet under the program. The plan must allow any retailer, wholesaler, municipality, solid waste management facility and other private or public entity that meets those criteria to voluntarily serve as a collection location;

D. The names and locations of recyclers, processors, disposal facilities and other entities that may be used by the program for the collection, processing, recycling or disposal of discarded carpet;

E. Information on how discarded carpet collected through the program will be safely and securely transported, tracked and handled from collection through final disposition;

F. A description of the method to be used to ensure that, to the extent economically and technically feasible, collected discarded carpet is recycled or otherwise responsibly managed. The program must be designed to give preference to the recycling of discarded carpet over any other disposal method;

G. A description of how the amounts of discarded carpet collected, recycled, processed and disposed of will be measured;

H. A description of the education and outreach methods and activities that will be used to provide notice of and encourage use of or involvement in the program by consumers, businesses, local agencies, retailers, wholesalers and solid waste transportation services;

I. The establishment of performance goals to measure the success of the program and a description of how the program will be designed to meet or exceed those goals; and

J. An anticipated budget for operation of the program and a description of how the program will be financed, including the method of calculating a carpet stewardship assessment that meets the requirements of subsection 6.

3. Approval of plan. The commissioner shall review a plan submitted under subsection 2 and approve or reject the plan within 90 days of receipt.

A. The commissioner shall make a plan submitted under subsection 2 available for public review at least 30 days prior to approving or rejecting the plan.

B. The commissioner shall approve a plan if the commissioner determines that the plan demonstrates the ability of the carpet stewardship program to meet the goals specified in subsection 2, paragraph I and meets the other requirements for submission of a plan under subsection 2. The commissioner's approval of a plan must include approval of the method by which the program will be financed. The commissioner shall require the producer or organization submitting the plan to provide an independent audit indicating the appropriateness of the proposed carpet stewardship assessment.

C. If a plan is rejected, the commissioner shall provide the reasons for rejecting the plan to the producer or organization submitting the plan. The producer or organization submitting the plan may submit an amended plan within 60 days of a rejection.

D. A producer or organization whose plan is rejected by the commissioner may appeal the commissioner's decision in accordance with sections 341-D and 346.

4. Implementation of plan. A producer or carpet stewardship organization that submitted a plan approved by the commissioner under subsection 3 shall implement the plan no later than 120 days after the date the plan is approved.

5. Amendment of plan. A change to an approved and implemented carpet stewardship plan must be submitted to the commissioner for review prior to implementation of that change. If the change is not substantive, such as the addition of or a change to collection locations, the addition of a new producer to the program or a change in the contact information or officers of the organization, approval is not needed, but the operator must inform the commissioner within 14 days of implementing the change. The commissioner shall review substantive plan amendments in accordance with subsection 3.

6. Stewardship assessment. An operator shall administer a carpet stewardship assessment to be applied to all carpet covered by the program sold in the State. The amount of the assessment must be approved by the commissioner in accordance with subsection 3 and must be sufficient to recover, but may not be designed to exceed, the cost of the program. If the funds generated by the assessment exceed the amount necessary to operate the program, excess funds must be used to reduce future assessments or improve services under the program.

A. A carpet stewardship assessment must be added to the cost of all carpet covered by the program sold to retailers and wholesalers in the State. A retailer or wholesaler shall add the assessment to the purchase price of carpet sold by that retailer or wholesaler. The assessment must be clearly visible on invoices or functionally equivalent billing documents as a separate line item. An assessment may not be imposed at the time a discarded carpet is collected. The collection of the assessment must commence no later than the implementation date established in subsection 4.

B. A producer participating in a carpet stewardship organization shall remit to the organization on a quarterly basis payment of the carpet stewardship assessment for all carpet the producer sells in the State.

7. Sales prohibition. Upon implementation of a carpet stewardship plan under subsection 4, a producer may not sell or offer for sale carpet in the State unless the producer, or a carpet stewardship organization that the producer has created or joined, participates in a carpet stewardship program established in accordance with this section.

8. Collection locations. This subsection applies to collection locations for discarded carpet under a program.

A. A retailer, a wholesaler, a municipality, a solid waste management facility and any other private or public entity may voluntarily serve as a collection location for discarded carpet under an approved and implemented plan, as long as the operator determines that the collection location meets the criteria for collection locations established under the plan.

B. The operator must fully underwrite the costs of pickup and transportation of discarded carpet from each collection location established under the program and may not charge an entity serving as a collection location for the cost of such services.

C. An entity serving as a collection location may not refuse collection of a discarded carpet based on the brand of the carpet. An operator may not refuse the pickup or transportation of collected discarded carpet from a collection location based on the brand of the carpet.

D. An entity serving as a collection location may not impose on consumers any fee relating to the collection of discarded carpet. An entity serving as a collection location may not impose any fee on an operator as a condition of agreeing to serve as a collection location under the program.

9. New producers. A new producer must notify the commissioner and take other action in accordance with this subsection prior to selling or offering to sell carpet in the State. For the purposes of this subsection, "new producer" means a producer that is not participating in an existing program established under this section that seeks to sell or offer for sale carpet in the State on or after the date that an approved carpet stewardship plan is first implemented under subsection 4.

A. Upon receiving notification under this subsection from a new producer, the commissioner shall list the producer as a new producer on the department's publicly accessible website.

B. No later than 90 days following a new producer's notification under this subsection to the commissioner, the producer shall submit a plan to the commissioner in accordance with subsection 2 or join an existing organization operating a program in the State.

C. If a new producer fails to submit a plan or join an existing organization within the 90-day period under paragraph B, the producer may not sell or offer to sell carpet in the State after the expiration of the 90-day period.

A new producer that fails to submit a plan or join an existing organization within the time limits described in this subsection may not sell or offer for sale carpet in the State until the producer submits a plan that is approved by the commissioner or joins an existing organization.

10. List of producers and brands. The department shall post on its publicly accessible website a list of the producers participating and brands included in a carpet stewardship program.

11. Annual report. By October 15th of the calendar year after the calendar year in which an approved carpet stewardship plan is implemented under subsection 4, and annually thereafter, the operator of a carpet stewardship program shall submit a report to the commissioner regarding the activities carried out by the program during the previous calendar year. The report must include, but is not limited to:

A. The total tonnage of discarded carpet collected by the program, as well as the specific tonnages collected from municipalities, retailers and all other entities serving as collection locations; the total tonnage of discarded carpet diverted for recycling; the weight of carpet materials recycled, as indicated by the weight of each of the commodities sold to secondary markets; and the weight of carpet materials sent for disposal or processing at disposal facilities and other entities;

- B. Based on the carpet stewardship assessment collected pursuant to the carpet stewardship program, the total amount of carpet sold in the State by all producers participating in the program;
- C. The location of each collection location established under the program and an evaluation of the convenience and adequacy of the collection system implemented by the program;
- D. A description of the manner in which discarded carpet was collected, transported, sorted, consolidated and processed by the program;
- E. A description of the methods and activities used by the program for education and outreach, including examples of any educational materials developed and used by the program, and an evaluation of the effectiveness of the education and outreach efforts implemented by the program;
- F. The total cost of implementing the carpet stewardship plan and operating the carpet stewardship program during the reporting period, as determined by an independent financial audit funded from the carpet stewardship assessment. The report of the total cost must include a breakdown of operation, collection, transportation, disposition and communication costs;
- G. An evaluation of the effectiveness of the methods used to achieve the performance goals of the program included in the plan pursuant to subsection 2, paragraph I, as well as an update to the performance goals, if necessary, based on the experience of the program during the previous calendar year; and
- H. Any other recommendations for change to the program to improve the convenience of the collection system, education or outreach efforts or program evaluation methods or to otherwise better facilitate the collection, recycling and management of discarded carpet in the State.

12. Administration and enforcement; fees. 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.

The department shall charge a reasonable application fee, not to exceed \$10,000, to be paid by an applicant under subsection 2 for review and approval of a carpet stewardship plan. The department may establish a reasonable annual fee, not to exceed the greater of \$25,000 and 1% of the total program costs as set forth in the independent financial auditing report required under subsection 11, paragraph F, to be paid by an operator, to cover the department's actual costs for annual report review, administration and enforcement.

13. Antitrust exclusions. A producer or carpet stewardship organization, including a producer's or organization's officers, members, employees and agents that develop a plan for, implement and operate a carpet stewardship program in accordance with this section, is immune from liability for the producer's or 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 develop a plan for, implement and operate the program.

SUMMARY

This bill provides for the establishment of a new stewardship program in the State for discarded carpet. Under the bill, a producer of carpet, or an organization comprising one or more producers of carpet, submits a plan for the establishment of a carpet stewardship program to the Commissioner of Environmental Protection for approval. Once approved, a program operates to provide convenient, free statewide collection opportunities for discarded carpet, and discarded carpet collected through the program is recycled or otherwise responsibly managed. A program is funded through the imposition of a carpet stewardship assessment, subject to review and approval by the commissioner, which is added to the purchase price of all carpet sold in the State.