

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Establish a Stewardship Program for Consumer Batteries

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

Sec. 1. 38 MRSA §1604, sub-§2, as repealed and replaced by PL 1989, c. 878, Pt. A, §116, is amended to read:

2. Lead-acid battery retailers. ~~A~~Except as provided in subsection 2-A, a person selling or offering for retail sale lead-acid batteries shall:

A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and unbroken condition from customers in a quantity at least equal to the number of new batteries purchased;

B. If a used lead-acid battery is not exchanged at the time of sale, collect a \$10 deposit on the new battery.

(1) The deposit shall be returned to the customer when the customer delivers a used lead-acid battery within 30 days of the date of sale.

(2) All funds received by a dealer as a deposit on a lead-acid battery shall be held in trust and separately accounted for by the retailer. Any interest on those funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits not returned to customers in exchange for lead-acid batteries during the previous year ending June 30th shall inure to the benefit of the retailer; and

C. Post an 8 1/2" x 11" written notice that includes the display of the universal recycling symbol and the following language.

(1) "State law requires us to accept motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

(2) "A deposit of \$10 will be charged for each new lead-acid battery that is not exchanged with an old lead-acid battery."

(3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or other lead-acid battery."

(4) "Recycle your used batteries."

Sec. 2. 38 MRS §1604, sub-§2-A is enacted to read:

2-A. Exemption for certain retailers. A retailer is exempt from complying with subsection 2 with respect to any lead-acid battery sold or offered for retail sale by that retailer if the battery is included in a covered battery stewardship program established in accordance with section 1611 and the retailer serves as a collection location for covered batteries, as defined in section 1611, subsection 1, paragraph B, under that program.

Sec. 3. 38 MRS §1611 is enacted to read:

§ 1611. Stewardship program for batteries

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

A. "Brand" means a trademark, including both a registered and an unregistered trademark, a logo, a name, a symbol, a word, an identifier or a traceable mark that identifies a covered battery or covered battery-containing product and identifies as the producer of the battery or product the owner or licensee of the brand.

B. "Covered battery" means a new or unused primary battery or a rechargeable battery.

C. "Covered battery-containing product" means a new or unused product that contains or is packaged with a primary battery or a rechargeable battery. "Covered battery-containing product" does not include:

(1) A product from which the primary battery or rechargeable battery is not easily removed or is not intended or designed to be removed from the product other than by the manufacturer;

(2) A covered electronic device subject to section 1610; or

(3) A medical device, as described in the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section 321(h) (2012), if, when the device or battery within the device is discarded, it must be treated as biomedical waste or if changing the supplier of the battery contained in the medical device would trigger the need for a premarket review of the device with the United States Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section 360 (2012), unless such device is listed as an exempt device under 21 United States Code, Section 360(m) (2012) or other applicable provision of law.

D. "Covered battery stewardship organization" or "organization" means an organization appointed by more than one producer to design, submit a plan for, implement and administer a covered battery stewardship program in accordance with this section and that has accepted that appointment.

E. "Covered battery stewardship plan" or "plan" means a plan submitted to the commissioner in accordance with subsection 3 by a producer or a covered battery stewardship organization.

F. "Covered battery stewardship program" or "program" means a system implemented for the collection, transportation, recycling and disposal of discarded batteries in accordance with a covered battery stewardship plan approved under subsection 4.

G. "Discarded battery" means a covered battery or a covered battery-containing product that a user discarded, abandoned or sent for recycling.

H. "Operator" means a producer or covered battery stewardship organization that implements and administers a covered battery stewardship program.

I. "Participant" means a producer that establishes individually or participates in a covered battery stewardship program by appointing and having that appointment accepted by a covered battery stewardship organization to operate the program on the producer's behalf.

J. "Primary battery" means a nonrechargeable battery that weighs 2 kilograms or less, including, but not limited to, nonrechargeable alkaline, carbon-zinc and lithium metal batteries.

K. "Producer" means, with respect to a covered battery or covered battery-containing product that is sold, offered for sale or distributed for sale in the State, the following:

(1) The person that manufactures the covered battery or covered battery-containing product and sells or offers for sale in the State that battery or product under the person's own brand;

(2) If there is no person to which subparagraph (1) applies, the owner or licensee of a brand under which the covered battery or covered battery-containing product is sold or distributed in the State; or

(3) If there is no person to which subparagraph (1) or (2) applies, a person, including, but not limited to, a wholesaler or retailer, that imports the covered battery or covered battery-containing product into the United States for sale or distribution in the State.

L. "Rechargeable battery" means a battery that contains one or more voltaic or galvanic cells electrically connected to produce electric energy, that weighs less than 5 kilograms and that is designed to be recharged and to provide less than 40 volts direct current. "Rechargeable battery" does not include:

(1) A battery that is not easily removed or is not intended or designed to be removed from a covered battery-containing product other than by the manufacturer;

(2) A battery that contains electrolyte as a free liquid; or

(3) A battery or battery pack that employs lead-acid technology, unless the battery or battery pack is sealed, contains no liquid electrolyte and is intended by its manufacturer to power a handheld device or to provide uninterrupted backup electric power protection for stationary consumer covered battery-containing products or stationary office equipment.

M. "Recycling" means any process through which a discarded battery, or its components or by-products, is transformed from its original identity or form into new usable or marketable materials. "Recycling" does not include the incineration of a discarded battery, or its components or by-products, for energy recovery.

N. "Retailer" means a person that sells or offers for retail sale, as defined in Title 36, section 1752, subsection 11, a covered battery or covered battery-containing product in the State, including through a remote offering for sale, such as a sales outlet or sales catalog or via the Internet.

O. "Wholesaler" means a person that offers for sale or sells in the State a covered battery or covered battery-containing product in a sale that is not a retail sale, as defined in Title 36, section 1752, subsection 11, with the intention that the battery or product be resold in a subsequent retail sale.

2. Product labeling. By January 1, 2020, a producer that sells, offers for sale, distributes for sale or offers for promotional purposes in the State a covered battery, either as a replacement battery or packaged with or contained in a covered battery-containing product, shall, to the extent feasible, ensure that the covered battery is labeled in a manner identifying the chemistry employed in storing energy in the battery to facilitate sorting of discarded batteries by recyclers.

3. Submission of plan. No later than 6 months after the effective date of this section, except as specified in subsection 6 or 10, each producer, individually or through a covered battery stewardship organization that has agreed to act on the producer's behalf, shall submit a covered battery stewardship plan for the establishment of a covered battery stewardship program to the commissioner for approval. The plan must include, at a minimum and where applicable:

A. Identification and contact information for:

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

(2) All producers participating in the covered battery stewardship program;

(3) A listing of the brands and the owners or licensees of the brands covered by the covered battery stewardship program; and

(4) If a covered battery stewardship organization has agreed to act on the producer's behalf, a description of the organization and the tasks to be performed by the organization. The description must include information on how the organization is organized, including administration and management of the organization;

B. A description of the collection system to be used under the covered battery stewardship plan, including:

(1) The types of locations or other collection services to be used, including, as applicable, a description of how the covered battery stewardship program may use discarded battery collection locations that are established through other battery collection services;

(2) A description of how the program will provide convenient, free statewide collection opportunities for discarded batteries adequate to serve the needs of all entities;

(3) The criteria to be used by the program in determining whether an entity may serve as a collection location for discarded batteries under the program. The plan must allow retailers, wholesalers, municipalities, solid waste management facilities and other entities that meet such criteria to voluntarily serve as a collection location for the program; and

(4) A description of how the convenience and adequacy of the collection system will be monitored and maintained;

C. The names and locations of recyclers, processors and disposal facilities and other entities that may be used by the covered battery stewardship program, including the methods that will be used to ensure that the components of discarded batteries are recycled to the maximum extent practicable or otherwise responsibly managed;

D. Information on how the discarded batteries will be safely and securely transported, tracked and handled from collection through final disposition;

E. A description of how the amount of discarded batteries collected, recycled, processed, reused and disposed of will be measured;

F. A description of the education and outreach methods and activities that will be used to establish, train and monitor collection locations and to encourage participation by collection locations and consumers throughout the State on an ongoing basis;

G. A description of how covered battery stewardship program performance will be assessed, including the use of performance goals that include, at a minimum, at least 50% of residents of the State knowing how to recycle their discarded batteries in the 3rd year of program implementation and at least 80% in the 6th year of program implementation;

H. An anticipated annual budget for the covered battery stewardship program, broken down into administrative, collection, transportation, disposition and communication costs. The budget must fund, at a minimum, one half-time person dedicated to implementing the program in the State and must include funds to reimburse the department for its costs incurred in monitoring the program. The budget may not include legal fees or costs related to legislative efforts;

I. A description of how the covered battery stewardship program will be financed. If the covered battery stewardship plan is submitted by an organization, the financing method through which the covered battery stewardship program will be funded must:

(1) Allocate to producers of primary batteries and covered battery-containing products packaged with a primary battery costs that are directly attributable to the recycling of primary batteries, such as reclamation costs;

(2) Allocate to producers of rechargeable batteries and covered battery-containing products packaged with a rechargeable battery costs that are directly attributable to the recycling of rechargeable batteries, such as reclamation costs; and

(3) Allocate all other costs on the basis of the weights of types of discarded batteries collected or some other nondiscriminatory basis acceptable to producers of primary batteries, rechargeable batteries and covered battery-containing products that are participants in the program; and

J. A description of the battery chemistries that will be collected under the covered battery stewardship program.

4. Approval of plan. Within 90 days of receipt of a covered battery stewardship plan submitted under subsection 3, the commissioner shall review the plan and provide a written notice of determination in accordance with this subsection. In conducting a review of a submitted plan, the commissioner may consult with producers, associations representing producers, covered battery stewardship organizations, retailers and recyclers.

A. If the commissioner determines that a submitted covered battery stewardship plan fails to meet all applicable requirements of subsection 3, the commissioner shall provide to the producer or covered battery stewardship organization that submitted the plan a written notice of determination describing the reasons for rejecting the plan. No later than 45 days after receiving a written notice of determination from the commissioner rejecting a submitted plan, the producer or organization may amend the plan and resubmit the plan to the commissioner for reconsideration. The commissioner shall review an amended plan, make a determination of whether to approve the amended plan and provide a written notice of determination notifying the producer or organization of the commissioner's decision within 45 days of receipt of the amended plan. A producer or organization whose amended plan is rejected by the commissioner may appeal the commissioner's decision in accordance with section 346.

B. If the commissioner determines that a submitted covered battery stewardship plan meets all applicable requirements of subsection 3, the commissioner shall provide to the producer or covered battery stewardship organization that submitted the plan a written notice of determination of the plan's approval. No later than 30 days after receiving a written notice of determination from the commissioner approving a submitted plan, the producer or organization shall make the approved plan available on its publicly accessible website but is not required to make available any information contained in the approved plan that is protected under the Uniform Trade Secrets Act.

C. No later than 45 days after the commissioner's approval of a submitted covered battery stewardship plan under paragraph B, the department shall make available on the department's publicly accessible website a list of participants in and brands of covered batteries and covered battery-containing products included under the approved plan or provide instructions on how to obtain such information as provided by the producer or covered battery stewardship organization that submitted the plan.

5. Implementation of program. A producer or covered battery stewardship organization that submitted a covered battery stewardship plan approved by the commissioner under subsection 4 shall implement the covered battery stewardship program no later than the first day of the next calendar quarter after the date the plan is approved by the commissioner, except that if the period of time between the date the plan is approved and the first day of the next calendar quarter is less than 60 days, the producer or organization shall implement the program within 60 days after the date the program is approved.

6. Amendment of plan; termination of program. This subsection governs amendment of a covered battery stewardship plan approved under subsection 4 and termination of a covered battery stewardship program implemented under an approved plan.

A. A covered battery stewardship plan approved under subsection 4 may be amended at the discretion of the producer or covered battery stewardship organization that submitted the plan without approval from the commissioner if the proposed amendments are nonsubstantive and do not significantly alter the likelihood that the plan will result in the successful collection and recycling of discarded batteries. The producer or organization shall at the beginning of each calendar quarter notify the department of any amendments made to the approved plan in the previous calendar quarter that are nonsubstantive and do not significantly alter the likelihood that the plan will result in the successful collection and recycling of discarded batteries.

B. If a proposed amendment to a covered battery stewardship plan approved under subsection 4 is substantive and would significantly alter the likelihood that the plan will result in the successful collection and recycling of discarded batteries, including, but not limited to, an amendment eliminating a substantial number of collection locations, adding or deleting battery chemistries to be collected, addressing threats to the financial viability of the producer or covered battery stewardship organization or addressing disruption in transportation or service affecting the ability of the producer or organization or any provider of a service to the program to collect or recycle discarded batteries, the producer or organization shall submit to the commissioner a revised plan describing the proposed amendment. Within 90 days of receipt of the revised plan, the commissioner shall review the revised plan, and, if the commissioner determines that the revised plan, in whole or in part, fails to meet

all applicable requirements of subsection 3, the commissioner shall provide to the producer or organization a written notice of determination describing the reasons for rejecting the revised plan. No later than 45 days after receiving a written notice of determination from the commissioner rejecting a revised plan, the producer or organization may amend and resubmit the revised plan to the commissioner for reconsideration. The commissioner shall review an amended revised plan, make a determination of whether to approve the amended revised plan and provide a written notice of determination notifying the producer or organization of the commissioner's decision within 45 days of receipt of the amended revised plan. Review and consideration by the commissioner of a revised plan under this paragraph, including whether the commissioner holds a hearing on the revised plan, must be conducted in accordance with the department's rules concerning the processing of applications and other administrative matters. A producer or organization whose revised plan is rejected by the commissioner may appeal the commissioner's decision in accordance with section 346.

C. A producer or covered battery stewardship organization that submitted a covered battery stewardship plan approved under subsection 4 may terminate the covered battery stewardship program implemented in accordance with that plan no earlier than 90 days after providing notice to the commissioner and to participants of the program's termination. Prior to the termination of a program, each producer included in the program shall, individually or through a covered battery stewardship organization that has agreed to act on the producer's behalf, submit a plan for the establishment of a covered battery stewardship program to the commissioner for approval consistent with subsection 3 or join a program.

D. A covered battery stewardship plan approved under subsection 4 remains in effect until a revised plan is adopted in accordance with paragraph B or the covered battery stewardship program implemented in accordance with the plan approved under subsection 4 is terminated in accordance with paragraph C by the producer or organization that submitted the plan.

7. Collection locations. This subsection applies to collection locations under a covered battery stewardship program.

A. A retailer, a wholesaler, a municipality, a solid waste management facility and any other entity may voluntarily serve as a collection location for discarded batteries under an approved covered battery stewardship plan and implemented covered battery stewardship program as long as the operator of the program determines that the collection location meets the criteria for collection locations established under the program's approved plan.

B. The participants in a covered battery stewardship program are fully responsible for the costs of discarded battery collection containers provided to each collection location established under the program, including the costs of all materials necessary to comply with the safe collection requirements of subsection 12 and the costs of collection and transportation of discarded batteries from each collection location and may not charge a collection location a fee for such items or services.

C. An entity serving as a collection location may not be required to make available more than one discarded battery collection container at a single location.

D. An entity serving as a collection location may not refuse collection of discarded batteries based on the brand of the batteries. The operator of the covered battery stewardship program may not refuse the collection and transportation of collected discarded batteries from a collection location based on the brand of the discarded batteries collected.

E. An entity serving as a collection location may not charge consumers a fee relating to the collection of discarded batteries at the collection location. An entity serving as a collection location may not impose a fee on the operator of the covered battery stewardship program as a condition of voluntarily agreeing to serve as a collection location.

8. Sales prohibition. This subsection governs the sale of covered batteries and covered battery-containing products in the State.

A. Beginning July 1, 2020, a manufacturer, distributor, wholesaler or retailer may not sell, offer for sale, distribute for sale or offer for promotional purposes a covered battery or covered battery-containing product unless the producer of the battery or product has joined a covered battery stewardship organization or submitted a covered battery stewardship plan for the establishment of a covered battery stewardship program that has been approved by the commissioner.

B. Notwithstanding paragraph A, a manufacturer, distributor, wholesaler or retailer may continue to sell, offer for sale, distribute for sale or offer for promotional purposes a covered battery or covered battery-containing product manufactured prior to July 1, 2020 but shall:

(1) By October 1, 2020, sell or otherwise divest or dispose of its remaining stock of covered batteries manufactured prior to July 1, 2020 by a producer that has not joined a covered battery stewardship organization or submitted a covered battery stewardship plan for the establishment of a covered battery stewardship program that has been approved by the commissioner; and

(2) By October 1, 2021, sell or otherwise divest or dispose of its remaining stock of covered battery-containing products manufactured prior to July 1, 2020 by a producer that has not joined a covered battery stewardship organization or submitted a plan for the establishment of a covered battery stewardship program that has been approved by the commissioner.

C. Notwithstanding paragraphs A and B, beginning July 1, 2021, a manufacturer, distributor, wholesaler or retailer of medical devices, as described in the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section 321(h) (2012), may not sell, offer for sale, distribute for sale or offer for promotional purposes a medical device containing covered batteries not included in a covered battery stewardship plan approved under subsection 4, except that a manufacturer, distributor, wholesaler or retailer may continue to sell, distribute for sale, offer for sale or offer for promotional purposes a medical device manufactured prior to July 1, 2021 but shall, by October 1, 2022, sell or otherwise divest or dispose of its remaining stock of medical devices containing covered

batteries manufactured prior to July 1, 2021 by a producer that has not joined a covered battery stewardship organization or submitted a plan for the establishment of a covered battery stewardship program that has been approved by the commissioner. Notwithstanding subsection 1, paragraph K, prior to July 1, 2021, a manufacturer, distributor, wholesaler or retailer of medical devices is not considered a producer under this section.

D. Notwithstanding paragraphs A, B and C, until July 1, 2027, a hospital or other health care provider may continue to sell or otherwise divest its existing inventory of medical devices containing covered batteries manufactured prior to July 1, 2021 and not included in a covered battery stewardship plan approved under subsection 4.

9. Producer exclusions. Notwithstanding subsection 1, paragraph K, except as otherwise provided in this subsection, a person that manufactures, sells, offers for sale or imports for sale in the State a covered battery-containing product is not considered a producer under this section if, no later than 45 days after receiving a request from the commissioner or an operator, the person:

A. Verifies to the commissioner and the operator that the covered battery-containing product contains only covered batteries with visible, permanent labels clearly identifying the producer or brand of the covered batteries and that the producer is a participant in or the brand is covered under the operator's covered battery stewardship program; and

B. Identifies the chemistry type of the covered batteries contained in the covered battery-containing product and provides data on the estimated weight of covered batteries contained in the products. In January of each year after making a verification under paragraph A, the person shall notify the commissioner and the operator as to any changes to the chemistry type of the covered batteries contained in the product or the estimated weights of covered batteries contained in the products.

An operator of a covered battery stewardship program that includes the covered battery contained in the person's covered battery-containing product shall list the person as a participant in and the product as covered under the operator's program. If the producer of the covered battery contained in the person's covered battery-containing product subsequently terminates its participation in a covered battery stewardship program in the State, or if the person ceases to use covered batteries in its covered battery-containing product that are produced by a participant in or are covered under a covered battery stewardship program in the State, the person is considered a producer as defined in subsection 1, paragraph K and must join a covered battery stewardship organization or submit a covered battery stewardship plan for the establishment of a covered battery stewardship program and have that plan approved by the commissioner.

10. New producers. Except as provided in subsection 9, a producer that seeks to sell, offer for sale, distribute for sale or offer for promotional purposes in the State a covered battery or covered battery-containing product bearing a brand under which the battery or product was not sold or offered for sale in the State prior to the effective date of this section must notify the commissioner prior to the sale, offer for sale, distribution for sale or offer for promotional purposes of the covered battery or covered battery-containing product in the State.

A. Upon receiving notification under this subsection from a 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 to the commissioner, the producer shall submit a covered battery stewardship plan to the commissioner in accordance with subsection 3 or join a covered battery stewardship organization operating under a plan approved under subsection 4.

C. If a new producer fails to submit a covered battery stewardship plan or join a covered battery stewardship organization within the 90-day period under paragraph B, the producer may not sell a covered battery or covered battery-containing product after the expiration of the 90-day period and a retailer may not sell that producer's battery or product after 120 days following the expiration of the 90-day period.

D. Notwithstanding paragraph C, if a new producer submits a covered battery stewardship plan within the 90-day period under paragraph B and that plan is rejected by the commissioner under subsection 4 after the expiration of the 90-day period, the producer may not sell the covered battery or covered battery-containing product after 45 days following the commissioner's determination rejecting the submitted plan and a retailer may not sell the producer's battery or product after 120 days following the commissioner's determination rejecting the submitted plan.

A new producer that fails to submit a covered battery stewardship plan that is approved by the commissioner under subsection 4 or to join a covered battery stewardship organization within the time limits described in this subsection may not sell, offer for sale, distribute for sale or offer for promotional purposes a covered battery or covered battery-containing product not sold or offered for sale prior to the effective date of this section until the producer submits a plan for approval consistent with subsection 3 that is approved by the commissioner or joins an organization.

11. Return of noncompliant products. If a covered battery stewardship plan approved under subsection 4 is subsequently determined by the commissioner not to be in compliance with this section, a producer that sells, offers for sale, distributes for sale or offers for promotional purposes in the State a covered battery or covered battery-containing product included in that plan shall, upon request by a retailer, designate a location to which the retailer may ship the battery or product for further handling and shall reimburse the retailer for costs incurred in purchasing the battery or product and shipping the battery or product to the designated location.

12. Safe collection. An entity that collects discarded batteries in the State, has a physical presence in the State and is operating under or in cooperation with a covered battery stewardship program shall ensure that all discarded batteries placed in its discarded battery collection containers are protected from short-circuiting in accordance with applicable regulations of the federal Department of Transportation, 49 Code of Federal Regulations, Subtitle B (2015) and other applicable federal or state laws, rules or regulations and shall take reasonable steps to prevent the placement of materials other than properly protected discarded batteries into the entity's discarded battery collection containers.

13. Reporting. By April 1st of the calendar year after the calendar year in which a covered battery stewardship plan is approved by the commissioner, the producer or covered battery stewardship organization administering the covered battery stewardship program implemented in accordance with the plan shall submit to the commissioner a report describing activities carried out by the program during the previous calendar year. The report must include, at a minimum, the following information:

A. Any updated contact information for the operator and all participants and a list of the brands of covered batteries and covered battery-containing products for which the operator is responsible;

B. The weight of discarded batteries collected by the covered battery stewardship program, reported to the extent feasible by:

(1) County or collection location;

(2) Chemistry type of primary and rechargeable batteries; and

(3) Batteries recovered from covered battery-containing products;

C. The location of and contact information for each collection location established under the covered battery stewardship program and an assessment of the convenience of collection;

D. A description of the manner in which discarded batteries were collected, transported, sorted, consolidated and processed by the covered battery stewardship program;

E. A description of the methods and materials used for education and outreach efforts, including examples of any educational materials developed and used by the covered battery stewardship program, and the effectiveness of those outreach and education efforts. Every 2 years, the report must include the results of an assessment completed by an independent 3rd party of consumer awareness of the program;

F. A financial report on the covered battery stewardship program, including the total cost of implementing the program, as determined by an independent financial audit; a breakdown of administrative, collection, transportation, disposition and communication costs; and an anticipated budget for the next calendar year; and

G. Any recommendations for changes to the covered battery stewardship program to improve convenience of collection, consumer education or program evaluation.

14. Proprietary information. Proprietary information submitted to the department in a covered battery stewardship plan, in an amendment to a plan or pursuant to the 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.

As used in this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

15. Administration and enforcement. The department shall enforce this section and may adopt rules consistent with this section as necessary for the purpose 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.

A. The department shall charge a reasonable fee to be paid by an applicant for review and approval of a covered battery stewardship plan. Fees established under this paragraph must be based on the actual costs to the department of review and approval of a covered battery stewardship plan and may not exceed \$25,000.

B. The department may establish a reasonable annual fee, to be paid by the operator of each covered battery stewardship program, to cover the department's costs for annual report review, oversight, administration and enforcement of the program. Fees established under this paragraph must be based on the actual costs to the department of annual report review, oversight, administration and enforcement of the program and may not exceed \$25,000 per year.

16. Limited private right of action. Except as provided in paragraph D, a nonprofit covered battery stewardship organization recognized by the United States Internal Revenue Service as exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, that has spent at least \$250,000 transporting, collecting and recycling discarded batteries in the State in the previous calendar year may maintain a civil action in Superior Court against one or more producers that are not participating in the organization's program to recover a portion of the organization's costs and additional sums, as set forth in this subsection.

A. Damages recoverable under this subsection may not exceed a fair share of the actual costs incurred by the plaintiff covered battery stewardship organization, referred to in this subsection as "the plaintiff organization," in collecting discarded batteries of a defendant producer for which the defendant producer was required under this section to submit and implement a covered battery stewardship plan or join a covered battery stewardship organization and the plaintiff organization's costs incurred in collecting, transporting and recycling or properly disposing of discarded batteries. Additional amounts recoverable under this subsection may include an award of reasonable attorney's fees and court costs, including expert witness fees. If a defendant producer did not operate or participate in a covered battery stewardship program established under this section during the time period in which discarded batteries of the defendant producer were collected, transported and recycled or disposed of by the plaintiff organization, a punitive sum of 3 times the damages award must be assessed.

B. In an action by a plaintiff organization against a defendant producer that did not operate or participate in a covered battery stewardship program established under this section during the time period in which discarded batteries of the defendant producer were collected, transported and recycled or disposed of by the plaintiff organization, the plaintiff organization may establish the defendant producer's fair share of the plaintiff organization's actual costs:

(1) By providing the court with market share data that the court finds reasonably represents the percentage of sales by the defendant producer in the State;

(2) By providing the court with data generated from discarded battery sorts involving a minimum of 500 pounds of discarded batteries collected at each of 3 or more collection locations in the State that are found by the court to have been collected in an unbiased manner and to be reasonably representative of collection locations in the State; or

(3) Through any other method that the court finds reliable in establishing the defendant producer's fair share of the plaintiff organization's actual costs.

C. In an action by a plaintiff organization against a defendant producer that operated or participated in a covered battery stewardship program established under this section during the time period in which discarded batteries of the defendant producer were collected, transported and recycled by the plaintiff organization, the plaintiff organization may establish the defendant producer's fair share of the plaintiff organization's actual costs by providing the court with data establishing the relative weight of discarded batteries collected by the plaintiff organization for which the defendant producer was required under this section to collect, transport and recycle under a covered battery stewardship program compared to the weight of other discarded batteries collected by the plaintiff organization. This data may be generated by the plaintiff organization:

(1) Through the collection of data from discarded battery sorts involving a minimum of 500 pounds of discarded batteries collected at each of 3 or more collection locations in the State that are found by the court to have been collected in an unbiased manner and to be reasonably representative of collection locations in the State;

(2) Through an analysis of collections by the plaintiff organization that are found by the court to be reasonably representative of total collections in the State; or

(3) Through any other method that the court finds reliable in establishing the defendant producer's fair share of the plaintiff organization's actual costs.

D. An action may not be commenced under this subsection against a potential defendant producer until 60 days after a plaintiff organization provides to all potential defendant producers a written notice of the claim setting forth the amount of the claim and the basis for the calculation of that amount.

E. No action may be brought under this subsection against a retailer or franchisor of retail outlets collecting, transporting or recycling discarded batteries for a covered battery stewardship program established under this section, individually or on behalf of its franchisees, to recover costs or additional sums incurred during a time period in which discarded batteries were collected, transported and recycled by the retailer or franchisor.

F. The department may not be a party to or be required to provide assistance or otherwise participate in a civil action authorized under this subsection unless subject to a subpoena before a court of jurisdiction.

17. Preemption. The State intends to occupy and preempt the entire field of legislation concerning the regulation of the stewardship of covered batteries and covered battery-containing products. Any existing or future order, ordinance or rule in this field of any political subdivision of the State is void.

18. Antitrust exclusions. A producer, a group of producers and a covered battery stewardship organization, and an agent, officer, director and employee of such entities, preparing, submitting a plan for, implementing or administering a covered battery stewardship program in accordance with this section and a wholesaler and retailer that engage in conduct authorized by this section are granted immunity, individually and jointly, from all applicable antitrust laws of the State for the limited purpose of establishing, implementing and administering a covered battery stewardship program and otherwise complying with the requirements of this section, and any activity undertaken by these entities in accordance with and authorized under this section is not an unlawful restraint of trade, a conspiracy or other violation of any provision of any applicable antitrust law of the State.

An action taken by a producer, a group of producers or an organization to increase the recycling of discarded batteries in accordance with this section that affects the types or quantities of batteries recycled or the cost and structure of any covered battery stewardship program is not a violation of any provision of Title 10, chapter 201, except when such action constitutes an agreement establishing or affecting the price of covered batteries or the output or production of covered batteries or restricting the geographic area in which covered batteries will be sold or the consumers to whom covered batteries will be sold.

Sec. 4. 38 MRSA §1661-C, sub-§11, as enacted by PL 2011, c. 206, §25, is amended to read:

11. Mercuric oxide batteries. A person may not sell, distribute or offer for sale in this State a consumer mercuric oxide button cell battery. The sale and use of all other types of mercuric oxide batteries is subject to the requirements of sections 1611 and 2165.

Sec. 5. 38 MRSA §1776, sub-§11, as enacted by PL 2013, c. 315, §7, is amended to read:

11. Exceptions. This section does not apply to products subject to section 1610, 1611, 1665-A, 1665-B, 1672, 2165 or 2166.

Sec. 6. 38 MRSA §2165, sub-§2, as enacted by PL 1991, c. 808, §2, is amended to read:

2. Disposal ban. A person employed directly or indirectly by a government agency; or an industrial, communications or medical facility may not knowingly dispose of a dry cell mercuric oxide battery or a rechargeable battery in a manner that ~~is not part of a collection system established under subsection 4~~does not meet the requirements of section 1611.

Sec. 7. 38 MRSA §2165, sub-§4, as enacted by PL 1991, c. 808, §2, is repealed.

Sec. 8. 38 MRSA §2165, sub-§8, as amended by PL 2011, c. 206, §36, is further amended to read:

8. Penalty. A violation of subsection 2 is a civil violation for which a forfeiture of not more than \$100 per battery disposed of improperly may be adjudged. ~~A violation of subsection 4 is a civil violation for which a forfeiture of not more than \$100 may be adjudged.~~ Each day that a violation continues or exists constitutes a separate offense.

SUMMARY

This bill provides for the establishment of a stewardship program for consumer batteries, including both single-use and rechargeable batteries and certain products containing these batteries. Under the bill, a producer of consumer batteries or an organization composed of one or more producers of such batteries must submit a plan for the establishment of a battery stewardship program to the Commissioner of Environmental Protection for approval. Once approved, the program must operate to provide convenient, free statewide collection opportunities for discarded batteries, and the batteries collected through the program must be recycled or otherwise responsibly managed. The bill also amends and repeals existing laws relating to certain battery types to avoid statutory conflict with the stewardship program for consumer batteries.