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Legislative Document

No. 1594

H.P. 1153

House of Representatives, April 18, 2019

An Act To Establish a Stewardship Program for Consumer Batteries

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FAY of Raymond.

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

2 **Sec. 1. 38 MRSA §1604, sub-§2**, as repealed and replaced by PL 1989, c. 878,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

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

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

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

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

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

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

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

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

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

26 (4) "Recycle your used batteries."

27 **Sec. 2. 38 MRSA §1604, sub-§2-A** is enacted to read:

28 **2-A. Exemption for certain retailers.** A retailer is exempt from complying with
29 subsection 2 with respect to any lead-acid battery sold or offered for retail sale by that
30 retailer if the battery is included in a covered battery stewardship program established in
31 accordance with section 1611 and the retailer serves as a collection location for covered
32 batteries, as defined in section 1611, subsection 1, paragraph B, under that program.

33 **Sec. 3. 38 MRSA §1611** is enacted to read:

34 **§1611. Stewardship program for batteries**

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

- 1 A. "Brand" means a trademark, including both a registered and an unregistered
2 trademark, a logo, a name, a symbol, a word, an identifier or a traceable mark that
3 identifies a covered battery or covered battery-containing product and identifies as
4 the producer of the battery or product the owner or licensee of the brand.
- 5 B. "Covered battery" means a new or unused primary battery or a rechargeable
6 battery.
- 7 C. "Covered battery-containing product" means a new or unused product that
8 contains or is packaged with a primary battery or a rechargeable battery. "Covered
9 battery-containing product" does not include:
- 10 (1) A product from which the primary battery or rechargeable battery is not
11 easily removed or is not intended or designed to be removed from the product
12 other than by the manufacturer;
- 13 (2) A covered electronic device subject to section 1610; or
- 14 (3) A medical device, as described in the Federal Food, Drug, and Cosmetic Act,
15 21 United States Code, Section 321(h) (2012), if, when the device or battery
16 within the device is discarded, it must be treated as biomedical waste or if
17 changing the supplier of the battery contained in the medical device would trigger
18 the need for a premarket review of the device with the United States Food and
19 Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21
20 United States Code, Section 360 (2012), unless such device is listed as an exempt
21 device under 21 United States Code, Section 360(m) (2012) or other applicable
22 provision of law.
- 23 D. "Covered battery stewardship organization" or "organization" means an
24 organization appointed by more than one producer to design, submit a plan for,
25 implement and administer a covered battery stewardship program in accordance with
26 this section and that has accepted that appointment.
- 27 E. "Covered battery stewardship plan" or "plan" means a plan submitted to the
28 commissioner in accordance with subsection 3 by a producer or a covered battery
29 stewardship organization.
- 30 F. "Covered battery stewardship program" or "program" means a system
31 implemented for the collection, transportation, recycling and disposal of discarded
32 batteries in accordance with a covered battery stewardship plan approved under
33 subsection 4.
- 34 G. "Discarded battery" means a covered battery or a covered battery-containing
35 product that a user discarded, abandoned or sent for recycling.
- 36 H. "Operator" means a producer or covered battery stewardship organization that
37 implements and administers a covered battery stewardship program.
- 38 I. "Participant" means a producer that establishes individually or participates in a
39 covered battery stewardship program by appointing and having that appointment
40 accepted by a covered battery stewardship organization to operate the program on the
41 producer's behalf.

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

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

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

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

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

16 L. "Rechargeable battery" means a battery that contains one or more voltaic or
17 galvanic cells electrically connected to produce electric energy, that weighs less than
18 5 kilograms and that is designed to be recharged and to provide less than 40 volts
19 direct current. "Rechargeable battery" does not include:

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

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

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

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

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

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

41 **2. Product labeling.** By January 1, 2020, a producer that sells, offers for sale,
42 distributes for sale or offers for promotional purposes in the State a covered battery,

1 either as a replacement battery or packaged with or contained in a covered battery-
2 containing product, shall, to the extent feasible, ensure that the covered battery is labeled
3 in a manner identifying the chemistry employed in storing energy in the battery to
4 facilitate sorting of discarded batteries by recyclers.

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

11 A. Identification and contact information for:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 G. A description of how covered battery stewardship program performance will be
10 assessed, including the use of performance goals that include, at a minimum, at least
11 50% of residents of the State knowing how to recycle their discarded batteries in the
12 3rd year of program implementation and at least 80% in the 6th year of program
13 implementation;

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

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

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

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

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

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

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

41 A. If the commissioner determines that a submitted covered battery stewardship plan
42 fails to meet all applicable requirements of subsection 3, the commissioner shall

1 provide to the producer or covered battery stewardship organization that submitted
2 the plan a written notice of determination describing the reasons for rejecting the
3 plan. No later than 45 days after receiving a written notice of determination from the
4 commissioner rejecting a submitted plan, the producer or organization may amend
5 the plan and resubmit the plan to the commissioner for reconsideration. The
6 commissioner shall review an amended plan, make a determination of whether to
7 approve the amended plan and provide a written notice of determination notifying the
8 producer or organization of the commissioner's decision within 45 days of receipt of
9 the amended plan. A producer or organization whose amended plan is rejected by the
10 commissioner may appeal the commissioner's decision in accordance with section
11 346.

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

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

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

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

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

1 quarter that are nonsubstantive and do not significantly alter the likelihood that the
2 plan will result in the successful collection and recycling of discarded batteries.

3 B. If a proposed amendment to a covered battery stewardship plan approved under
4 subsection 4 is substantive and would significantly alter the likelihood that the plan
5 will result in the successful collection and recycling of discarded batteries, including,
6 but not limited to, an amendment eliminating a substantial number of collection
7 locations, adding or deleting battery chemistries to be collected, addressing threats to
8 the financial viability of the producer or covered battery stewardship organization or
9 addressing disruption in transportation or service affecting the ability of the producer
10 or organization or any provider of a service to the program to collect or recycle
11 discarded batteries, the producer or organization shall submit to the commissioner a
12 revised plan describing the proposed amendment. Within 90 days of receipt of the
13 revised plan, the commissioner shall review the revised plan, and, if the
14 commissioner determines that the revised plan, in whole or in part, fails to meet all
15 applicable requirements of subsection 3, the commissioner shall provide to the
16 producer or organization a written notice of determination describing the reasons for
17 rejecting the revised plan. No later than 45 days after receiving a written notice of
18 determination from the commissioner rejecting a revised plan, the producer or
19 organization may amend and resubmit the revised plan to the commissioner for
20 reconsideration. The commissioner shall review an amended revised plan, make a
21 determination of whether to approve the amended revised plan and provide a written
22 notice of determination notifying the producer or organization of the commissioner's
23 decision within 45 days of receipt of the amended revised plan. Review and
24 consideration by the commissioner of a revised plan under this paragraph, including
25 whether the commissioner holds a hearing on the revised plan, must be conducted in
26 accordance with the department's rules concerning the processing of applications and
27 other administrative matters. A producer or organization whose revised plan is
28 rejected by the commissioner may appeal the commissioner's decision in accordance
29 with section 346.

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

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

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

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

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

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

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

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

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

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

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

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

42 (2) By October 1, 2021, sell or otherwise divest or dispose of its remaining stock
43 of covered battery-containing products manufactured prior to July 1, 2020 by a

1 producer that has not joined a covered battery stewardship organization or
2 submitted a plan for the establishment of a covered battery stewardship program
3 that has been approved by the commissioner.

4 C. Notwithstanding paragraphs A and B, beginning July 1, 2021, a manufacturer,
5 distributor, wholesaler or retailer of medical devices, as described in the Federal
6 Food, Drug, and Cosmetic Act, 21 United States Code, Section 321(h) (2012), may
7 not sell, offer for sale, distribute for sale or offer for promotional purposes a medical
8 device containing covered batteries not included in a covered battery stewardship
9 plan approved under subsection 4, except that a manufacturer, distributor, wholesaler
10 or retailer may continue to sell, distribute for sale, offer for sale or offer for
11 promotional purposes a medical device manufactured prior to July 1, 2021 but shall,
12 by October 1, 2022, sell or otherwise divest or dispose of its remaining stock of
13 medical devices containing covered batteries manufactured prior to July 1, 2021 by a
14 producer that has not joined a covered battery stewardship organization or submitted
15 a plan for the establishment of a covered battery stewardship program that has been
16 approved by the commissioner. Notwithstanding subsection 1, paragraph K, prior to
17 July 1, 2021, a manufacturer, distributor, wholesaler or retailer of medical devices is
18 not considered a producer under this section.

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

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

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

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

39 An operator of a covered battery stewardship program that includes the covered battery
40 contained in the person's covered battery-containing product shall list the person as a
41 participant in and the product as covered under the operator's program. If the producer of
42 the covered battery contained in the person's covered battery-containing product
43 subsequently terminates its participation in a covered battery stewardship program in the
44 State, or if the person ceases to use covered batteries in its covered battery-containing

1 product that are produced by a participant in or are covered under a covered battery
2 stewardship program in the State, the person is considered a producer as defined in
3 subsection 1, paragraph K and must join a covered battery stewardship organization or
4 submit a covered battery stewardship plan for the establishment of a covered battery
5 stewardship program and have that plan approved by the commissioner.

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

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

16 B. No later than 90 days following a new producer's notification to the
17 commissioner, the producer shall submit a covered battery stewardship plan to the
18 commissioner in accordance with subsection 3 or join a covered battery stewardship
19 organization operating under a plan approved under subsection 4.

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

25 D. Notwithstanding paragraph C, if a new producer submits a covered battery
26 stewardship plan within the 90-day period under paragraph B and that plan is rejected
27 by the commissioner under subsection 4 after the expiration of the 90-day period, the
28 producer may not sell the covered battery or covered battery-containing product after
29 45 days following the commissioner's determination rejecting the submitted plan and
30 a retailer may not sell the producer's battery or product after 120 days following the
31 commissioner's determination rejecting the submitted plan.

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

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

1 shall reimburse the retailer for costs incurred in purchasing the battery or product and
2 shipping the battery or product to the designated location.

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

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

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

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

23 (1) County or collection location;

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

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

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

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

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

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

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

3 **14. Proprietary information.** Proprietary information submitted to the department
4 in a covered battery stewardship plan, in an amendment to a plan or pursuant to the
5 reporting requirements of this section that is identified by the submitter as proprietary
6 information is confidential and must be handled by the department in the same manner as
7 confidential information is handled under section 1310-B.

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

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

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

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

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

34 A. Damages recoverable under this subsection may not exceed a fair share of the
35 actual costs incurred by the plaintiff covered battery stewardship organization,
36 referred to in this subsection as "the plaintiff organization," in collecting discarded
37 batteries of a defendant producer for which the defendant producer was required
38 under this section to submit and implement a covered battery stewardship plan or join
39 a covered battery stewardship organization and the plaintiff organization's costs
40 incurred in collecting, transporting and recycling or properly disposing of discarded
41 batteries. Additional amounts recoverable under this subsection may include an
42 award of reasonable attorney's fees and court costs, including expert witness fees. If
43 a defendant producer did not operate or participate in a covered battery stewardship

1 program established under this section during the time period in which discarded
2 batteries of the defendant producer were collected, transported and recycled or
3 disposed of by the plaintiff organization, a punitive sum of 3 times the damages
4 award must be assessed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 **11. Exceptions.** This section does not apply to products subject to section 1610,
42 1611, 1665-A, 1665-B, 1672, 2165 or 2166.

