

Date: (Filing No. S- )

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STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT " " to COMMITTEE AMENDMENT "A" to S.P. 626, L.D. 1578, Bill, "An Act To Update Maine's Solid Waste Management Laws"

Amend the amendment by striking out all of section 1 and inserting the following:

'Sec. 1. 38 MRSA §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. "Approved product" means a covered battery for which its producer, individually or through a covered battery stewardship organization, has submitted a covered battery stewardship plan approved by the commissioner and the plan has been implemented to collect and recycle covered batteries in accordance with the plan.

B. "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 and identifies as the producer of the battery the owner or licensee of the brand.

C. "Covered battery" means a new or unused primary battery or rechargeable battery. "Covered battery" 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 by a consumer;

(2) A medical device, as described in the Federal Food, Drug and Cosmetic Act, 21 United States Code, Section 321(h) (2009); or

(3) A device related to the physical or ancillary operation or use of a motor vehicle that is distributed through a new vehicle dealer franchised by the original manufacturer of the motor vehicle. As used in this subparagraph, "motor vehicle" has the same meaning as in Title 29-A, section 101, subsection 42 and "new vehicle dealer" has the same meaning as in Title 29-A, section 851, subsection 9.

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

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

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

12 G. "Discarded covered battery" means a covered battery that a user discarded,  
13 abandoned or sent for recycling.

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

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

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

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

25 (1) The person subject to the jurisdiction of the State, or who has voluntarily  
26 agreed to recognize the jurisdiction of the State for the purposes of this section,  
27 that manufactures the covered battery and sells or offers for sale in the State that  
28 battery under the person's own brand;

29 (2) If there is no person to which subparagraph (1) applies, the owner or licensee  
30 of a brand under which the covered battery is sold or distributed in the State that  
31 is subject to the jurisdiction of the State; or

32 (3) If there is no person to which subparagraph (1) or (2) applies, a person  
33 subject to the jurisdiction of the State that imports the covered battery into the  
34 United States for sale or distribution in the State.

35 L. "Rechargeable battery" means a battery that contains one or more voltaic or  
36 galvanic cells, electrically connected to produce electric energy, that weighs less than  
37 5 kilograms and that is designed to be recharged and to provide less than 40 volts  
38 direct current. "Rechargeable battery" does not include:

39 (1) A battery that is not easily removed or is not intended or designed to be  
40 removed from a product by a consumer;

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

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

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

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

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

16          **2. Product labeling.** By January 1st of the 2nd calendar year after the effective date  
17          of this section, a producer that sells, offers for sale or distributes for sale in the State a  
18          covered battery as a replacement battery shall, to the extent feasible, ensure that the  
19          covered battery is labeled in a manner identifying the chemistry employed in storing  
20          energy in the battery to facilitate sorting of discarded covered batteries by recyclers.

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

27                A. If the plan is submitted by a producer, identification and contact information for  
28                the producer and a list of the owners of the brands of covered batteries to be included  
29                in the program;

30                B. If the plan is submitted by an organization, identification and contact information  
31                for the organization and for each producer participating in the organization, a list of  
32                the owners of the brands of covered batteries to be included in the program and a  
33                description of the organization and the tasks to be performed by the organization,  
34                including information on how the organization is organized, including administration  
35                and management of the organization;

36                C. A description of how the program will provide convenient, free, statewide  
37                collection opportunities for discarded covered batteries and how the convenience and  
38                adequacy of the collection system will be monitored and maintained;

39                D. The criteria to be used by the program in determining whether an entity may serve  
40                as a collection location for discarded covered batteries under the program. The plan  
41                must allow any retailer, wholesaler, municipality, solid waste management facility  
42                and other entity that meets such criteria to voluntarily serve as a collection location;

1 E. The names and locations of recyclers, processors and disposal facilities and other  
2 entities that may be used by the program for the collection or recycling of discarded  
3 covered batteries, including a description of the manner by which the program will  
4 use covered battery collection locations that are established through other battery  
5 collection programs;

6 F. Information on how discarded covered batteries collected through the program  
7 will be safely and securely transported, tracked and handled from collection through  
8 final disposition;

9 G. A description of the method to be used to ensure that, to the extent economically  
10 and technically feasible, collected discarded covered batteries are recycled or  
11 otherwise responsibly managed;

12 H. A description of how the amounts of discarded covered batteries collected,  
13 recycled, processed, reused and disposed of will be measured;

14 I. A description of the education and outreach methods and activities that will be  
15 used to provide notice of and encourage participation in the program by consumers,  
16 businesses, local agencies, retailers, wholesalers and waste transportation services;

17 J. Any performance goals established by the producer or organization to measure the  
18 success of the program; and

19 K. A description of how the program will be financed. If the plan is submitted by an  
20 organization, the financing method through which the program will be funded must:

21 (1) Allocate to producers of primary batteries costs that are directly attributable  
22 to the recycling of primary batteries, such as reclamation costs;

23 (2) Allocate to producers of rechargeable batteries costs that are directly  
24 attributable to the recycling of rechargeable batteries, such as reclamation costs;  
25 and

26 (3) Allocate all other costs on the basis of the weights of types of batteries  
27 collected or some other nondiscriminatory basis acceptable to participating  
28 producers of primary batteries and rechargeable batteries.

29 **4. Approval of plan.** The commissioner shall review a plan submitted under  
30 subsection 3 and make a determination of whether to approve the plan within 90 days of  
31 receipt of the plan. In conducting a review of a submitted plan, the commissioner may  
32 consult with producers, associations representing producers, covered battery stewardship  
33 organizations, retailers and recyclers.

34 A. If the commissioner determines that a submitted plan fails to meet all applicable  
35 requirements of subsection 3, the commissioner shall provide to the producer or  
36 organization that submitted the plan a written notice of determination describing the  
37 reasons for rejecting the plan. No later than 45 days after receiving a written notice of  
38 determination from the commissioner rejecting a submitted plan, the producer or  
39 organization may amend the plan and resubmit the plan to the commissioner for  
40 reconsideration. The commissioner shall review an amended plan, make a  
41 determination of whether to approve the amended plan and provide a written notice  
42 of determination notifying the producer or organization of the commissioner's

1 decision within 45 days of receipt of the amended plan. A producer or organization  
2 whose amended plan is rejected by the commissioner may appeal the commissioner's  
3 decision in accordance with sections 341-D and 346.

4 B. If the commissioner approves a submitted plan, the commissioner shall provide to  
5 the producer or organization that submitted the plan a written notice of determination  
6 of the plan's approval. No later than 30 days after receiving a written notice of  
7 determination from the commissioner approving a submitted plan, the producer or  
8 organization shall make the approved plan available on its publicly accessible  
9 website, but is not required to make available any information contained in the  
10 approved plan that has been designated as proprietary information in accordance with  
11 subsection 13.

12 C. No later than 45 days after the commissioner's approval of a submitted plan, the  
13 department shall make available on its publicly accessible website a list of  
14 participants in and brands of covered batteries included under the approved plan or  
15 provide instructions on how to obtain such information as provided by the producer  
16 or organization that submitted the plan.

17 **5. Implementation of plan.** A producer or organization that submitted a plan  
18 approved by the commissioner under subsection 4 shall implement the plan no later than  
19 the first day of the next calendar quarter after the date the plan is approved by the  
20 commissioner, except that if the period of time between the date the plan is approved and  
21 the first day of the next calendar quarter is less than 60 days, the producer or organization  
22 shall implement the plan within 60 days after the date the plan is approved.

23 **6. Amendment of plan and termination of program.** This subsection governs  
24 amendment of a plan approved under subsection 4 and termination of a program  
25 established under an approved plan.

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

35 B. If proposed amendments to an approved plan are substantive and would  
36 significantly alter the likelihood that the plan will result in the successful collection  
37 and recycling of discarded covered batteries, including, but not limited to,  
38 amendments eliminating a substantial number of retail collection locations, adding or  
39 deleting batteries to be collected based on the chemistry employed in storing energy  
40 in those batteries, addressing threats to the financial viability of the organization or  
41 addressing disruption in transportation or service affecting the ability of the producer  
42 or organization or any service providers to collect or process discarded covered  
43 batteries, the producer or organization shall submit to the commissioner a revised  
44 plan describing the proposed amendments. The commissioner shall review the  
45 revised plan and make a determination of whether to approve the proposed

1 amendments, in whole or in part, within 90 days of receipt of the revised plan. If the  
2 commissioner determines that the revised plan fails to meet all applicable  
3 requirements of subsection 3, the commissioner shall provide to the producer or  
4 organization a written notice of determination describing the reasons for rejecting the  
5 revised plan. No later than 45 days after receiving a written notice of determination  
6 from the commissioner rejecting a revised plan, the producer or organization may  
7 amend and resubmit the revised plan to the commissioner for reconsideration. The  
8 commissioner shall review an amended revised plan, make a determination of  
9 whether to approve the amended revised plan and provide a written notice of  
10 determination notifying the producer or organization of the commissioner's decision  
11 within 45 days of receipt of the amended revised plan. A producer or organization  
12 whose amended revised plan is rejected by the commissioner may appeal the  
13 commissioner's decision in accordance with sections 341-D and 346.

14 C. A producer or organization that submitted a plan approved under subsection 4  
15 may terminate the program implementing that plan no earlier than 90 days after  
16 providing notice to the commissioner and to program participants of the program's  
17 termination. Prior to the termination of a program, each producer included in the  
18 program shall, individually or through a covered battery stewardship organization  
19 that has agreed to act on the producer's behalf, submit a plan for the establishment of  
20 a covered battery stewardship program that is approved by the commissioner or join  
21 an existing organization.

22 D. A plan approved under subsection 4 remains in effect until a revised plan is  
23 adopted in accordance with paragraph B or the program implementing that plan is  
24 terminated in accordance with paragraph C by the producer or organization that  
25 submitted the plan.

26 **7. Collection locations.** This subsection applies to collection locations.

27 A. A retailer, a wholesaler, a municipality, a solid waste management facility and  
28 any other private or public entity may voluntarily serve as a collection location for  
29 discarded covered batteries under an approved and implemented program, so long as  
30 the operator of the program determines that the collection location meets the criteria  
31 for collection locations established under the program's approved plan.

32 B. The participants in a program must fully underwrite the costs of battery collection  
33 containers provided to each collection location established under the program,  
34 including the costs of all materials necessary to comply with the safe collection  
35 requirements of subsection 11, as well as the costs of pickup and transportation of  
36 discarded covered batteries from each collection location, and may not charge a  
37 collection location for such items or services.

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

40 D. An entity serving as a collection location may not refuse collection of batteries  
41 based on the brand or brands of the batteries. The operator of a program may not  
42 refuse the pickup or transfer of collected batteries from a collection location based on  
43 the brand or brands of the batteries collected.

1 E. An entity serving as a collection location may not charge consumers any fee  
2 relating to the collection of discarded covered batteries. An entity serving as a  
3 collection location may not impose any fee on the operator of a program as a  
4 condition of voluntarily agreeing to serve as a collection location under the program.

5 **8. Prohibition.** This subsection governs the offering for sale of covered batteries in  
6 the State.

7 A. Beginning July 1st of the 2nd calendar year after the effective date of this section,  
8 a covered battery manufacturer may not offer for sale, distribute for sale or offer for  
9 promotional purposes in the State a covered battery unless the producer of the battery  
10 has joined an existing covered battery stewardship organization or submitted a plan  
11 for the establishment of a covered battery stewardship program that has been  
12 approved by the commissioner.

13 B. Notwithstanding paragraph A, a covered battery manufacturer may continue to  
14 distribute for sale, offer for sale or offer for promotional purposes in the State a  
15 covered battery manufactured prior to July 1st of the 2nd calendar year after the  
16 effective date of this section, but shall, by October 1st of the 2nd calendar year after  
17 the effective date of this section, sell or otherwise divest or dispose of its remaining  
18 stock of covered batteries manufactured prior to July 1st of that year by a producer  
19 that has not joined an existing covered battery stewardship organization or submitted  
20 a plan for the establishment of a covered battery stewardship program that has been  
21 approved by the commissioner.

22 **9. New producers.** A producer that seeks to sell, offer for sale, distribute for sale or  
23 offer for promotional purposes in the State a covered battery bearing a brand under which  
24 the battery was not sold or offered for sale in the State prior to July 1st of the 2nd  
25 calendar year after the effective date of this section must notify the commissioner prior to  
26 the sale, offer for sale, distribution for sale or offer for promotional purposes of the  
27 covered battery in the State.

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

31 B. No later than 90 days following a new producer's notification to the  
32 commissioner, the producer shall submit a plan to the commissioner in accordance  
33 with subsection 3 or join an existing organization operating under a plan approved  
34 under subsection 4.

35 C. If a new producer fails to submit a plan or join an existing organization within the  
36 90-day period under paragraph B, the producer may not sell or distribute a covered  
37 battery in the State after the expiration of the 90-day period and a retailer may not sell  
38 that producer's battery in the State after 120 days following the expiration of the 90-  
39 day period.

40 D. Notwithstanding paragraph C, if a new producer submits a plan within the 90-day  
41 period under paragraph B and that plan is ultimately rejected by the commissioner  
42 under subsection 4 after the expiration of the 90-day period, the producer may not sell  
43 or distribute the covered battery in the State after 45 days following the  
44 commissioner's final determination rejecting the submitted plan and a retailer may not

1 sell the producer's battery in the State after 120 days following the commissioner's  
2 final determination rejecting the submitted plan.

3 A new producer that fails to submit a plan that is approved by the commissioner under  
4 subsection 4 or to join an existing organization within the time limits described in this  
5 subsection may not sell, offer for sale, distribute for sale or offer for promotional  
6 purposes a covered battery not sold or offered for sale in the State prior to July 1st of the  
7 calendar year after the effective date of this section until the producer submits a plan for  
8 the establishment of a covered battery stewardship program that is subsequently approved  
9 by the commissioner or joins an existing organization.

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

17 **11. Safe collection.** Any entity that collects discarded covered batteries in the State,  
18 has a physical presence in the State and is operating under or in cooperation with a  
19 covered battery stewardship program shall ensure that all discarded covered batteries  
20 placed in its collection containers are protected from short-circuiting in accordance with  
21 applicable regulations of the federal Department of Transportation, 49 Code of Federal  
22 Regulations, Subtitle B (2015) and other applicable laws or regulations and take  
23 reasonable steps to prevent the placement of materials other than properly protected  
24 discarded covered batteries into its collection containers.

25 **12. Reporting.** By April 1st of the calendar year after the calendar year in which a  
26 covered battery stewardship plan is approved by the commissioner, the producer or  
27 organization administering the program implementing the approved plan shall submit to  
28 the commissioner a report describing activities carried out by the program pursuant to the  
29 plan during the previous calendar year. The report must include, at a minimum, the  
30 following information:

31 A. The weight of discarded covered batteries collected by the program in the  
32 previous calendar year, including, if available, a breakdown of the weight of  
33 discarded covered batteries collected per county;

34 B. The location of each collection location established under the program and an  
35 evaluation of the convenience of the collection system implemented by the program;

36 C. A description of the manner in which discarded covered batteries were collected,  
37 transported, sorted, consolidated and processed by the program;

38 D. A description of the methods used by the program for education and outreach,  
39 including examples of any educational materials developed and used by the program,  
40 and an evaluation of the effectiveness of the education and outreach efforts  
41 implemented by the program;

42 E. If the report is filed by a covered battery stewardship organization, a summary  
43 financial statement documenting the financing of the program consistent with the

1 requirements of subsection 3, paragraph K and an independent financial audit  
2 statement of the organization's financing and expenses. If the organization operates a  
3 similar program in another state, the organization may meet the requirements of this  
4 paragraph by submitting a summary financial statement that consolidates information  
5 for all states in which the organization operates covered battery stewardship programs  
6 but must provide estimated financial information and cost information specific to the  
7 organization's program in this State, as an addendum or additional documentation,  
8 beyond national aggregate information; and

9 F. Any recommendations for changes to the program to improve the convenience of  
10 the collection system, consumer education or outreach efforts or program evaluation  
11 methods.

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

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

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

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

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

35 C. The commissioner may not initiate an enforcement action under this section  
36 against a manufacturer:

37 (1) Concerning the offering for sale of covered batteries that are not approved  
38 products if the offering for sale occurred prior to October 1st of the 2nd calendar  
39 year after the effective date of this section; or

40 (2) Concerning the offering for sale of covered batteries manufactured prior to  
41 the effective date of this section if the offering for sale occurred prior to October  
42 1st of the 2nd calendar year after the effective date of this section.

1           D. The commissioner may not initiate an enforcement action under this section  
2           against a manufacturer for offering for sale a covered battery if that entity, within 90  
3           days of discovering that the battery is not in compliance with this section, removes  
4           the battery from sale.

5           **15. Limited private right of action.** Except as provided in paragraph F, a producer  
6           or organization that has submitted a plan for the establishment of a covered battery  
7           stewardship program that has been approved by the commissioner and that has been  
8           implemented to collect, transport and recycle discarded covered batteries in the State may  
9           maintain a civil action in Superior Court against a producer or organization not  
10           participating in its program to recover a portion of its costs and additional sums, as set  
11           forth in this subsection.

12           A. Damages recoverable under this subsection include a fair share of the actual costs  
13           incurred by a plaintiff producer or organization in collecting covered batteries of a  
14           defendant producer or organization discarded in the State for which the defendant  
15           was required under this section to submit and implement a covered battery  
16           stewardship plan or join an existing covered battery stewardship program, as well as  
17           the plaintiff's costs incurred in handling, transporting and recycling or properly  
18           disposing of the defendant's batteries. Additional amounts recoverable under this  
19           subsection include an award of reasonable attorney's fees and court costs, including  
20           expert witness fees.

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

27           (1) Providing the court with market share data that the court finds reasonably  
28           represent the percentage of sales of covered batteries by the defendant in the  
29           State;

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

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

37           C. In an action by a plaintiff producer or organization against a defendant producer  
38           or organization that operated or participated in a covered battery stewardship program  
39           established under this section during the time period in which discarded covered  
40           batteries of the defendant were collected, transported and recycled by the plaintiff,  
41           the plaintiff may establish the defendant's fair share of the plaintiff's actual costs by  
42           providing the court with data establishing the relative weight of discarded covered  
43           batteries collected by the plaintiff that the defendant was required under this section

1 to collect, transport and recycle compared to the weight of other discarded covered  
2 batteries collected by the plaintiff. This data may be generated by the plaintiff:

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

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

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

13 D. If the court finds that an action maintained by a plaintiff producer or organization  
14 against a defendant producer or organization initiated pursuant to this subsection is  
15 without merit and dismisses that action, the court shall award to the defendant  
16 producer or organization reasonable attorney's fees and court costs, including expert  
17 witness fees.

18 E. An action may not be commenced under this subsection against any potential  
19 defendant until 60 days after a plaintiff provides to all potential defendants a written  
20 notice of the claim setting forth the amount of the claim and the basis for the  
21 calculation of that amount. A plaintiff producer or organization may initiate a single  
22 civil action in Superior Court against one or more defendant producers or  
23 organizations.

24 F. An action may not be brought under this subsection against a retailer or franchisor  
25 of retail outlets that was operating or participating in a covered battery stewardship  
26 program established under this section, individually or on behalf of its franchisees, to  
27 recover costs or additional sums incurred during a time period in which discarded  
28 covered batteries were collected, transported or recycled by the retailer or franchisor.

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

32 **16. Preemption.** The State intends to occupy and preempt the entire field of  
33 legislation concerning the regulation of the stewardship of covered batteries. Any  
34 existing or future order, ordinance, rule or regulation in this field of any political  
35 subdivision of the State is void.

36 **17. Antitrust exclusions.** A producer, a group of producers and a covered battery  
37 stewardship organization, and an agent, officer, director and employee of such entities,  
38 preparing, submitting a plan for, implementing or administering a covered battery  
39 stewardship program in accordance with this section, and a wholesaler and retailer that  
40 engages in conduct authorized by this section, are granted immunity, individually and  
41 jointly, from all applicable antitrust laws of the State for the limited purpose of  
42 establishing, implementing and administering a covered battery stewardship program and  
43 otherwise complying with the requirements of this section, and any activity undertaken

1 by these entities in accordance with and authorized under this section is not an unlawful  
2 restraint of trade, a conspiracy or other violation of any provision of any applicable  
3 antitrust law of the State.

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

12 **18. Contingent effective date; contingent repeal.** The commissioner shall monitor  
13 legislative activities in other states and certify to the Secretary of State and the Revisor of  
14 Statutes when legislation substantially consistent with this section has been adopted by at  
15 least 5 contiguous states, including Maine. This section takes effect 30 days after the date  
16 of the commissioner's certification. If no certification has been made by the commissioner  
17 pursuant to this section by January 1, 2024, this section is repealed on that date.

18 **19. Report and program modifications.** Two years after the effective date of this  
19 section, the commissioner shall submit a report to the joint standing committee of the  
20 Legislature having jurisdiction over environmental and natural resources matters  
21 regarding the status of the State's stewardship program for covered batteries, including a  
22 recommendation on whether consumer products that are sold containing a covered battery  
23 should be included in the program and any recommended changes to the program to  
24 ensure its continued viability. The report under this section may be included in the report  
25 required pursuant to section 1772, subsection 1. After reviewing the report, the  
26 committee may report out a bill relating to the stewardship program for covered batteries  
27 established under this section to the session of the Legislature in which the report is  
28 submitted.'

## 29 SUMMARY

30 This amendment strikes and replaces section 1 of the committee amendment, which  
31 establishes a product stewardship program for batteries. The amendment establishes a  
32 similar product stewardship program for batteries. The changes to the program include  
33 the following.

34 1. The amendment removes covered battery-containing products from the product  
35 stewardship program for batteries.

36 2. The amendment excludes the following from the product stewardship program for  
37 batteries:

38 A. Products from which the battery is not easily removed or is not intended or  
39 designed to be removed from the product;

40 B. Medical devices; and

41 C. Devices related to the operation or use of a motor vehicle.

1           3. The amendment removes the sales prohibition in the bill and instead provides that  
2 a covered battery manufacturer may not offer for sale, distribute for sale or offer for  
3 promotional purposes in the State a covered battery unless the producer of the battery has  
4 joined an existing covered battery stewardship organization or submitted a plan and  
5 received approval for the establishment of a covered battery stewardship program. It also  
6 changes the enforcement provisions to be consistent with the prohibition on offering for  
7 sale, distributing for sale or offering for promotional purposes a covered battery by a  
8 manufacturer.

9           4. The amendment changes the reporting requirements for producers and  
10 organizations administering covered battery stewardship programs.

11           5. The amendment adds a contingent effective date and a contingent repeal date.

12           6. The amendment modifies reporting requirements of the Commissioner of  
13 Environmental Protection to the joint standing committee of the Legislature having  
14 jurisdiction over environmental and natural resources matters.

15           **SPONSORED BY:** \_\_\_\_\_

16                   **(Senator VOLK)**

17                           **COUNTY: Cumberland**