LC01807

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landfill and other forms of disposal; and

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

AN ACT

RELATING TO HEALTH AND SAFETY - PRODUCER RESPONSIBILITY FOR DISCARDED PRODUCTS

Introduced By: Representatives Walsh, Handy, Ruggiero, O'Grady, and McNamara

Date Introduced: March 08, 2011

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1	SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2	amended by adding thereto the following chapter:
3	CHAPTER 86
4	AN ACT TO PROVIDE LEADERSHIP REGARDING THE RESPONSIBLE RECYCLING,
5	REUSE AND DISPOSAL OF CONSUMER PRODUCTS
6	23-86-1. Purpose The purposes of this chapter are:
7	(1) To establish a manufacturer financed system for the collection, recycling, and reuse
8	for certain categories of discarded products in Rhode Island;
9	(2) To develop a comprehensive strategy, with the participation of state agencies,
10	producers, retailers, and consumers for waste prevention and reduction of discarded products in
11	the state, which addresses the collection, recycling and reuse of products in a safe and
12	environmentally sound manner;
13	(3) To promote the development of infrastructure for the reuse and recycling of discarded
14	products;
15	(4) To minimize costs incurred by Rhode Island municipalities to collect, dispose of, or
16	recycle products as discarded by residents;
17	(5) To eliminate waste generated in the state from the disposal of discarded products from

1	(6) To encourage the design of products that are less toxic, more durable and more
2	recyclable.
3	23-86-2. Legislative. – The general assembly hereby finds and declares:
4	(1) It is in the best interest of this state for producers of products sold in Rhode Island to
5	take responsibility for reducing the environmental and health impacts of a product over its life
6	cycle, from design to management after the end of a product's useful life;
7	(2) It is in the best interest of this state to determine a process for minimizing costs
8	incurred by Rhode Island's cities and towns for the management of discarded products;
9	(3) It is in the best interest of this state to institute a product stewardship system to
10	encourage the design and manufacture of products that are more resource-efficient, more
11	recyclable and less toxic and that result in less greenhouse gas emissions; and
12	(4) It is in the best interest of this state for producers to finance and manage programs
13	within a statewide product stewardship system that serves urban and rural areas in Rhode Island
14	and provides free, convenient opportunities for the collection, transportation, recovery and safe
15	management of discarded products.
16	23-86-3. Definitions As used in this chapter the following words shall, unless the
17	context clearly requires otherwise, have the following meanings:
18	(1) "Architectural paint" means interior and exterior architectural coatings sold in
19	containers of five (5) gallons or less. "Architectural paint" does not mean industrial, original
20	equipment or specialty coatings.
21	(2) "Brand" means a name, symbol, word or mark that identifies a product and attributes
22	the product to the owner of the brand as the producer.
23	(3) "Covered entity" means any person with a discarded product as set forth in this
24	<u>chapter.</u>
25	(4) "Department" means the Rhode Island Department of environmental management.
26	(5) "Director" means the Director of the Rhode Island department of environmental
27	management or his or her designee.
28	(6) "Discarded product" means a product no longer wanted by its owner that is discarded
29	or is intended to be discarded.
30	(7) "Disposition rate" means a quantitative measure that establish on an annual basis the
31	percentage of discarded products that are recycled, reused or properly disposed of, including
32	energy recovery, relative to the total amount collected or total amount collected per capita in a
33	product stewardship program.
34	(8) "Environmentally sound management practices" means policies as defined by rules

2	organization to ensure compliance with applicable laws and that address issues such as adequate
3	record keeping, tracking and documenting the fate of materials within this state and beyond, on-
4	site operations, security of facilities and materials, worker health and safety requirements,
5	environmental protection, closure plans, adequate insurance and financial assurances.
6	(9) "Historical product" means any product that is not currently marketed or sold by the
7	producer.
8	(10) "Mattress" means a large thick pad filled with resilient material and often
9	incorporating coiled springs, used as a bed or part of a bed and includes standard innerspring
10	mattresses, foam mattresses, box springs and mattresses used in conjunction with futon frames.
11	(11) "Medical sharps" means objects including, but not limited to, hypodermic needles,
12	syringes with or without the attached needle, and other devices that are used to penetrate the skin
13	for the delivery of medications. It shall include sharps that have been used in animal or human
14	patient care or treatment. Unused, discarded medicals sharps as described herein are considered
15	medical sharps with the exception of unused medical sharps in their original sealed packaging.
16	(12) "Orphan product" means a product that lacks a brand, for which the producer is no
17	longer in business and has no successor in interest or for which the department of environmental
18	management cannot identify a producer.
19	(13) "Performance goal" means a metric established by a producer or the Department of
20	environmental management to measure, on an annual basis, the performance of a product
21	stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or
22	health impacts related to a product.
23	(14) "Person" means an individual, trust, firm, joint stock company, corporation
24	(including a government corporation), partnership, association, the federal government or any
25	agency or subdivision thereof, a state, municipality, commission, political subdivision of a state,
26	or any interstate body.
27	(15) "Producer" means a person:
28	(i) Who manufactures a product and who sells, offers for sale or distributes that product
29	in Rhode Island under the manufacturer's own name or brand;
30	(ii) If paragraph (i) of this subsection does not apply, who is not the manufacturer of the
31	product but is the owner or licensee of a trademark or brand under which a product is sold or
32	distributed in Rhode Island, whether or not the trademark is registered; or
33	(iii) If paragraphs (i) and (ii) of this subsection do not apply, who imports the product
34	into Rhode Island for sale or distribution.

adopted pursuant to section 23-86-10 that are implemented by a producer or a stewardship

1	(16) "Product" means:
2	(i) A single item or group of similar items specified in sections 23-86-5 or 23-86-6; and
3	(ii) Historical products and orphan products of the same type as the items described in
4	paragraph (a) of this subsection.
5	(16) "Product goal" means any change in the design and manufacture of a product that
6	reduces or has the potential to reduce environmental or health impacts.
7	(17) "Product stewardship plan" means a statewide plan that describes a program for the
8	collection, transportation, recycling, reuse and disposal of discarded products and any related
9	performance goals and product goals and that is developed and provided for by a producer or
10	group of producers.
11	(19) "Product stewardship program" means a statewide program financed and managed
12	by a producer or group of producers that is based on an approved product stewardship plan and
13	that addresses the environmental or health impacts of a product over the entire life cycle of that
14	product.
15	(20) "Recycling" means: (i) Any process by which discarded products, components and
16	byproducts are transformed into new, usable or marketable materials in a manner in which the
17	original products may lose their identity; and (ii) Does not include energy recovery or energy
18	generation by means of combusting discarded products, components and by products with or
19	without other waste products.
20	(21) "Retailer" means any person that offers new products for sale at retail through any
21	means, including, but not limited to, remote offerings such as sales outlets, catalogs or the
22	<u>Internet.</u>
23	(22) "Reuse" means the return of a product into the economic stream for use in the same
24	kind of application as originally intended, without a change in the product's form or function.
25	(23) "Sell" or "sale" means any transfer of title for consideration, including, but not
26	limited to, remote sales conducted through sales outlets, catalogs or the Internet or any similar
27	electronic means, but excluding lease arrangements.
28	(24) "Statewide product stewardship system" means the statewide system of product
29	stewardship programs established and managed by producers or stewardship organizations that
30	are overseen by the department of environmental management.
31	(25) "Stewardship organization" means a corporation, nonprofit or other legal entity
32	appointed by a producer or group of producers to act as an agent on behalf of the producer to
33	administer a product stewardship program.
34	23-86-4. Rulemaking The department may adopt rules as necessary to implement the

2	23-86-5. Product stewardship rulemaking for architectural paint, mattresses and
3	medical sharps The department shall develop and implement a statewide product stewardship
4	system for the following products:
5	(1) Architectural paint;
6	(2) Mattresses; and
7	(3) Medical sharps.
8	(b) In developing and implementing the statewide product stewardship system under this
9	section, the department shall collaborate to the extent practicable with the federal government,
10	other states, state agencies, local governments, producers, stewardship organizations, the retail
11	industry, nonprofits, the solid waste industry, environmental groups and covered entities.
12	(c) To the extent practicable, the department shall consult and coordinate with other states
13	to achieve consistency in the development and implementation of the statewide product
14	stewardship system.
15	23-86-6 Product stewardship programs for additional products (a) Every two (2)
16	years, after consultation with the advisory committee established pursuant to this section, and
17	after the implementation of statewide product stewardship systems for the products listed in
18	section 23-86-5, the department may identify a list of additional potential products that may be
19	appropriate for a product stewardship program. The department shall hold at least one public
20	meeting where interested persons can provide comment regarding the listing of potential
21	products. The department is allowed to solicit recommendations for potential products from the
22	public.
23	(b) Upon review of any public comment and any relevant information and after
24	consultation with the advisory committee, the department may select from the list developed
25	pursuant to section 23-86-4 of this section products for further evaluation. The department may
26	consider whether a product's packaging should be included in this evaluation. These products
27	shall be evaluated based on the factors in section 23-86-3.
28	(c) In evaluating a product, the department shall consider the following factors:
29	(1) Potential to reduce waste, toxicity, greenhouse gas emissions or other environmental
30	or health impacts;
31	(2) Potential to encourage product design or manufacture that reduces environmental or
32	health impacts;
33	(3) Current or potential contribution of the product to the weight, volume or toxicity of
34	the solid waste stream;

1 provisions of this chapter.

1	(4) Public demand or need for improved recycling, reuse or disposal opportunities;
2	(5) Producer ability to manage the product through a product stewardship program;
3	(6) Fiscal impacts to local governments, producers, retailers, consumers and other
4	affected parties of using a product stewardship program to address the management of a product
5	after the product is discarded; and
6	(7) Any other consideration relevant to the management of a product under a product
7	stewardship program.
8	(d) Based on the evaluation provided in sections 23-86-2 and 23-86-3, after consultation
9	with the advisory committee, the department may determine products to be covered under the
10	product stewardship program. Prior to making this determination, the department shall hold at
11	least one public meeting and post recommendations on its website for thirty (30) days to allow for
12	public comment.
13	(e) The department may not add more than two (2) products in a two (2) year period
14	unless it determines that:
15	(1) The threat to the environment or public health warrants the recommendation of
16	additional products; or
17	(2) The products are of a similar class or type.
18	(f)(1) Prior to undertaking the process described in this section, the department shall
19	appoint and convene a standing advisory committee to provide technical information and advice
20	regarding the identification, evaluation and recommendation of products. The committee shall
21	have at least nine (9) members and, at a minimum, one member shall represent each of the
22	following groups:
23	(i) Producers;
24	(ii) Local governments;
25	(iii) Environmental groups;
26	(iv) The solid waste or recycling industry; and
27	(v) The retail industry.
28	(2) To encourage coordination with other states, the department may invite
29	representatives from other states to participate in the committee proceedings as nonmembers.
30	(g) The department shall complete a systematic evaluation to comprehensively assess the
31	desirability and practicality of further developing a product stewardship program for
32	pharmaceuticals and packaging. Such systematic evaluation shall be made in writing and in
33	conjunction with the standing advisory committee as created in subsection 23-86-6(a).
34	(h) The products approved by the department identified herein are covered by the

1	provisions of sections 1 to 18 of this chapter.
2	23-86-7. Adoption of product specific rules (a) The department shall adopt product-
3	specific rules to address the implementation of product stewardship programs for the products
4	specified in section 23-86-8 of this chapter.
5	(b)(1) Prior to adopting product-specific rules, the department shall appoint an advisory
6	committee to advise on the development of product-specific rules. The committee shall have at
7	least nine (9) members and, at a minimum, one member shall represent each of the following
8	groups:
9	(i) Producers;
10	(ii) Local governments;
11	(iii) Environmental groups;
12	(iv) The solid waste or recycling industry;
13	(v) The retail industry; and
14	(vi) Consumers or covered entities.
15	(2) To encourage coordination with other states, the department may invite
16	representatives from other states to participate in the committee proceedings as nonmembers.
17	(c) Any product-specific rules developed and adopted pursuant to this section shall
18	address the following:
19	(1) Definition of covered entities;
20	(2) Environmentally sound management practices;
21	(3) Performance goals and product goals as provided in section 23-86-14;
22	(4) The necessity for a disposal ban as determined by the specific characteristics of the
23	product;
24	(5) Implementation date for the product stewardship program;
25	(6) Department's administrative fees; and
26	(7) Any other requirement directly relevant to the management of a product under a
27	product stewardship program.
28	(d) The department may, after consultation with the advisory committee established in
29	section 23-86-6, allow for the implementation of a voluntary product stewardship program for
30	certain products in lieu of the adoption and implementation of product specific rules if a producer
31	or group of producers is able to demonstrate the following, in writing, to the department:
32	(1) Its ability to meet aggressive collection and recycling goals;
33	(2) Its ability to provide broad coverage and availability of collection and recycling
34	opportunities;

1	(3) Its ability to provide for aggressive education and marketing of the program;
2	(4) Its ability to undertake comprehensive reporting on the success of the program;
3	(5) Its ability to succeed based upon past performance;
4	(6) Its ability to provide collection and recycling opportunities in a manner that will be as
5	effective as a program operating under product specific rules promulgated by the department; and
6	(7) Its ability to identify a single point-of-contact.
7	The department shall explain, in writing, the reasons for its decision to allow or not allow
8	the implementation of a voluntary product stewardship program.
9	23-86-8. Responsibilities of producers (a) Producers of products specified in sections
10	23-86-5 and 23-86-6 for which rules are adopted pursuant to section 23-86-7 shall establish
11	product stewardship programs for the products. Every producer shall:
12	(1) Operate, either individually or collectively with other producers, a product
13	stewardship program; or
14	(2) Enter into an agreement with one or more stewardship organizations to operate, on the
15	producer's behalf, a product stewardship program; and
16	(3) Work cooperatively with the department, retailers, consumers, municipalities and the
17	RI resource recovery corporation to implement a product stewardship program.
18	(b) Product stewardship programs shall be provided free of charge to covered entities
19	when a product is sold or when the discarded products are delivered or collected for reuse,
20	recycling or disposal throughout the calendar year. All discarded products collected for a program
21	shall be reused or recycled unless the applicable product-specific rule provides that such products
22	must be properly disposed of. A program shall meet or exceed the requirements for the collection
23	of products set forth in the product stewardship plan required by section 23-86-9.
24	(c) Producers shall pay administrative, operational and capital costs associated with the
25	product stewardship programs, including costs of collection, transportation, recycling, reuse and
26	disposal of the products and their components. Producers shall provide adequate insurance and
27	financial assurances for operation of the product stewardship programs.
28	(d) Product stewardship programs shall meet or exceed the environmentally sound
29	management practices provided in the applicable product-specific rules as well as any other
30	applicable federal, state or local requirements regarding the management of the collected
31	products.
32	(e) A producer may not sell or offer for sale in Rhode Island any product unless the
33	product or, where appropriate, the product package or container, is labeled with a brand that is
34	permanently affixed and readily visible and he brand is included in an approved product

1	stewardship plan.
2	(f) All product stewardship programs shall operate in accordance with:
3	(1) The product stewardship plan as approved by the department; and
4	(2) Sections 1 to 18 of this chapter and any applicable rules adopted pursuant to sections
5	1 to 18 of this chapter.
6	(g) Product stewardship programs shall include an education and outreach component to
7	promote the use of the program and to inform covered entities of available collection options.
8	This information shall be provided to covered entities, retailers and other interested parties.
9	23-86-9. Requirement for product stewardship plan (a) Producers shall submit a
10	product stewardship plan to the department that addresses the following:
11	(1) Information about participating producers, including but not limited to:
12	(i) Contact information for producers;
13	(ii) Contact information for the individual or entity submitting the plan;
14	(iii) A description of any stewardship organization that operates the product stewardship
15	program; and
16	(iv) Producers' products and associated brands covered by the product stewardship
17	program and product stewardship plan.
18	(2) Information on performance goals and product goals, including but not limited to:
19	(i) A detailed description of annual performance goals and, if applicable, product goals
20	<u>and</u>
21	(ii) Compliance with annual performance goals and, if applicable, product goals.
22	(3) Collection system information, including but not limited to, how the product
23	stewardship program will be available, convenient, accessible and free of charge for all covered
24	entities in urban and rural areas statewide;
25	(4) Implementation of environmentally sound management practices for the collection,
26	transportation, recycling, reuse and disposal of discarded products.
27	(5) Management of collected products, including but not limited to:
28	(i) How the collected products will be recycled, reused or, where required by the product-
29	specific rules, properly disposed of; and
30	(ii) How all residuals that cannot be recycled or reused will be properly managed.
31	(6) Financial information, including but not limited to:
32	(i) How the product stewardship program will be financed;
33	(ii) The mechanism for securing and disbursing funds to cover administrative, operational
34	and capital costs; and

1	(iii) Demonstration of adequate insurance and financial assurances for collection,
2	transportation, recycling, reuse or disposal operations.
3	(7) Outreach and education to covered entities including, but not limited to:
4	(i) How to use and access the product stewardship program; and
5	(ii) How this information will be provided to collectors, retailers and other interested
6	parties.
7	(8) Public and stakeholder consultation, including but not limited to:
8	(i) Opportunities for the public and other stakeholders to comment on the product
9	stewardship plan prior to submission; and
10	(ii) Opportunities for the public and other stakeholders to comment on the
11	implementation and operation of the product stewardship program.
12	(b) If the department determines that a proposed product stewardship plan complies with
13	the provisions of this chapter and any applicable rules and is in the public interest, the department
14	shall approve the product stewardship plan.
15	(c) All product stewardship plans submitted and approved by the department shall be
16	available to the general public through the website of the producer or the stewardship
17	organization.
18	(d) The department shall maintain a website listing of producers and brands covered by
19	approved product stewardship plans and product stewardship programs, updated by the first day
20	of each month.
21	23-86-10. Submission and Review of Product Stewardship Plan (a) All product
22	stewardship plans shall be submitted to the department no later than one hundred twenty (120)
23	days following the adoption of the applicable product-specific rules, or no later than one hundred
24	twenty (120) days prior to the sale or offer for sale of a product in Rhode Island.
25	(b) The department shall approve, approve with conditions, or reject the product
26	stewardship plan within sixty (60) days of receiving the plan unless the department requests
27	additional information regarding the plan.
28	(c) If a product stewardship plan is rejected and the producer wishes to submit a revised
29	plan, the producer must do so within 60 days of the date of the notice of rejection.
30	(d) Product stewardship plans shall be updated and submitted to the department for
31	review at least once every four (4) years from the date on which the plan is first approved or as
32	otherwise determined by a schedule established by the department.
33	(e) If a producer joins an approved product stewardship plan, the producer shall notify the
34	department prior to selling or offering for sale any products in Rhode Island.

1	23-86-11. Requirement for Selling Products Covered Under Product Stewardship
2	Plans (a) As of the implementation date established by the applicable product specific rule, a
3	producer, retailer or other person may not sell the product or offer the product for sale to any
4	person in this state unless the producer is participating in an approved product stewardship
5	program.
6	(b) A retailer or other person complies with the requirements of this section if, on the date
7	the product is ordered from the producer or its agent, the website of the department lists the
8	producer, along with the product brand, as operating or participating in an approved product
9	stewardship program.
10	(c) At the time of sale to a consumer, a producer, retailer or other person selling a product
11	or offering a product for sale shall provide the consumer with information on where and how to
12	recycle or dispose of the product through a product stewardship program.
13	23-86-12. Requirement for Submittal of Reports (a) A producer shall annually
14	prepare and submit to the department a written report that describes how the product stewardship
15	program was implemented in accordance with the provisions of this chapter and all applicable
16	<u>rules.</u>
17	(b) The department may request that additional information be submitted in order to
18	verify any reported accomplishments under the program.
19	23-86-13. Annual Performance Goals (a)(1) A producer shall establish annual
20	performance goals for discarded products collected in a product stewardship program. A producer
21	shall establish reasonable annual performance goals for the first two (2) years of the program's
22	operation, provided that the goals include the following:
23	(i) Total amount collected or total amount collected per capita;
24	(ii) Collection rate; and
25	(iii) Disposition rate.
26	(2) The department shall establish the appropriate metric to use in measuring annual
27	performance goals in the product-specific rule.
28	(b) Failure to meet annual performance goals established by a producer for the first two
29	(2) years of the operation of the product stewardship program shall not be subject to enforcement
30	by the department. However, a producer shall establish, measure and report on the annual
31	performance goal. By the third (3 rd) year of the operation of the product stewardship program for
32	a product, the department shall establish an enforceable, annual performance goal. A producer
33	shall meet or exceed this goal. Producers shall continue to fully implement a product stewardship
34	program even after an enforceable annual performance goal is achieved.

1	(c) A producer may establish product goals for products covered by a product
2	stewardship program. These goals shall be specific to the product and intended to achieve
3	changes that result in a reduction in environmental or health impacts. The department shall
4	consider and make appropriate adjustments for any product goal adopted and successfully
5	implemented that affects the ability of a producer to meet an enforceable annual performance
6	goal.
7	23-86-14. Establishment of Fees The department may establish a schedule of fees to
8	be paid by producers. Fees may be established in amounts to recover, but not exceed, costs
9	incurred by the department in providing plan review, approval, program development, oversight
10	and compliance for the products for which a producer is responsible. Fees collected by the
11	department under this section shall be deposited in the environmental response fund established
12	pursuant to 23-19.1-23.
13	23-86-15. Proper Disposal of Products No person shall knowingly dispose of any
14	product specified in this chapter except to handle, recycle or compost the material in accordance
15	with a plan submitted and approved by the department.
16	23-86-16. Enforcement The director is authorized to exercise all powers, direct and
17	incidental, necessary to carry out the purposes of this chapter. The director may institute
18	administrative or civil proceedings, or may request the attorney general to do the same, to enforce
19	any provision of this chapter or any rule, regulation or order issued pursuant to this chapter.
20	23-86-17. Violations A violation of any of the provisions of this law or any rule or
21	regulation promulgated pursuant thereto shall be punishable, in the case of a first (1st) violation,
22	by a civil penalty not to exceed one thousand dollars (\$1,000). In the case of a second (2 nd) and
23	any further violation, the liability shall be for a civil penalty not to exceed five thousand dollars
24	(\$5,000) for each violation.
25	23-86-18. Reporting by the department The department shall annually, not later than
26	December 31, submit an annual report of its activities pursuant to this chapter. The report shall
27	include: (1) An update on the implementation of this chapter and current state of compliance by
28	collectors, processors, producers and retailers; (2) Recommendations to the general assembly and
29	the governor regarding proposed changes to this chapter, or any other chapter of the general laws,
30	or any regulations promulgated pursuant thereto; and (3) Any other information the department
31	deems appropriate. The report shall be submitted to the governor, the president of the senate, the
32	speaker of the house, and the house and senate chairs of the committees on the environment.
33	23-86-19. Evaluation of Federal Requirements The department shall evaluate any
34	federal law that establishes a national program to manage any products specified in sections 5 and

1	6 of this chapter through a product stewardship approach. If the department determines that the
2	federal law substantially meets or exceeds the requirements and intent of sections 1 to 18 of this
3	chapter, the department shall include information on the federal law in the next annual report.
4	23-86-20. Requirement to Adopt Rules The department may adopt rules before the
5	operative date specified or take any action before that date that is necessary to carry out the
6	provisions of this chapter.
7	23-86-21. Implementation No later than December 31, 2011, the department shall
8	begin developing and implementing the statewide product stewardship system as described in this
9	chapter.
10	23-86-22. Multistate Implementation The department may participate in the
11	establishment of a regional multistate organization or compact to assist in carrying out the
12	requirements of this chapter.
13	SECTION 2. This act shall take effect upon passage.

LC01807

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO HEALTH AND SAFETY - PRODUCER RESPONSIBILITY FOR DISCARDED PRODUCTS

This act would provide leadership regarding the responsible recycling, reuse and disposal of consumer products.

This act would take effect upon passage.