

2012 -- S 2398

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO HEALTH AND SAFETY - PRODUCT STEWARDSHIP FOR DISCARDED
PRODUCTS

Introduced By: Senators Ruggerio, McCaffrey, Felag, Walaska, and Miller

Date Introduced: February 15, 2012

Referred To: Senate Environment & Agriculture

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 shared system for the collection, recycling, and reuse of certain
8 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 programs and infrastructure for the reuse and
14 recycling of discarded 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 minimize the amount of waste generated in Rhode Island going to the landfill and
18 other forms of waste disposal;

1 (6) To encourage, when appropriate, the design of products that are less toxic, more
2 durable and more recyclable.

3 **23-86-2. Legislative Findings.** -- The general assembly hereby finds and declares:

4 (1) It is in the best interest of this state for producers, retailers, distributors, and end-users
5 of products sold in Rhode Island to share responsibility for reducing the environmental and health
6 impacts of a product over its life cycle, from design to management after the end of a product's
7 useful life;

8 (2) It is in the best interest of this state to determine a process for minimizing costs
9 incurred by Rhode Island's cities and towns for the management of discarded products;

10 (3) It is in the best interest of this state to institute a product stewardship system to
11 encourage the design and manufacture of products that are more resource-efficient, more
12 recyclable and less toxic and that result in less greenhouse gas emissions;

13 (4) It is in the best interest of this state for producers, retailers, distributors, and end-users
14 to share responsibility for financing and managing programs within a statewide product
15 stewardship system that serves urban and rural areas in Rhode Island and provides convenient
16 opportunities for the collection, transportation, recovery and safe management of discarded
17 products at no cost to the user, whenever possible; and

18 (5) It is in the best interest of this state to implement this chapter in accordance with the
19 intent and purpose of the rules and regulations for reduction and recycling of commercial and
20 non-municipal residential solid waste as promulgated by the department.

21 **23-86-3. Definitions.** -- As used in this chapter the following words shall, have the
22 following meanings:

23 (1) "Brand" means a name, symbol, word or mark that identifies a product and attributes
24 the product to the owner of the brand as the producer.

25 (2) "Covered entity" means any person with a discarded product as set forth in this
26 chapter.

27 (3) "Department" means the Rhode Island department of environmental management.

28 (4) "Director" means the director of the Rhode Island department of environmental
29 management or his or her designee.

30 (5) "Discarded product" means a product no longer wanted by its owner that is discarded
31 or is intended to be discarded.

32 (6) "Disposition rate" means a quantitative measure that establishes on an annual basis
33 the percentage of discarded products that are recycled, reused or properly disposed of relative to
34 the total amount collected or total amount collected per capita in a product stewardship program.

1 (7) “Environmentally sound management practices” means policies as defined by rules
2 adopted pursuant to section 23-86-10 that are implemented by a producer or a stewardship
3 organization to ensure compliance with applicable laws and that address issues such as adequate
4 record keeping, tracking and documenting the fate of materials within this state and beyond, on-
5 site operations, security of facilities and materials, worker health and safety requirements,
6 environmental protection, closure plans, adequate insurance and financial assurances.

7 (8) “Fluorescent lamp” means an electric lamp to which mercury is intentionally added
8 during the manufacturing process, including, linear fluorescent and compact fluorescent.

9 (9) “Historical product” means any product that is not currently marketed or sold by the
10 producer.

11 (10) “Orphan product” means a product that lacks a brand, for which the producer is no
12 longer in business and has no successor in interest or for which the department of environmental
13 management cannot identify a producer.

14 (11) “Performance goal” means a metric established by a producer or the department of
15 environmental management to measure, on an annual basis, the performance of a product
16 stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or
17 health impacts related to a product.

18 (12) “Person” means an individual, trust, firm, joint stock company, corporation
19 (including a government corporation), partnership, association, the federal government or any
20 agency or subdivision thereof, a state, municipality, commission, political subdivision of a state,
21 or any interstate body.

22 (13) “Producer” means a person:

23 (i) Who manufactures a product and who sells, offers for sale or distributes that product
24 in Rhode Island under the manufacturer’s own name or brand;

25 (ii) If paragraph (i) of this subdivision does not apply, who is not the manufacturer of the
26 product but is the owner or licensee of a trademark or brand under which a product is sold or
27 distributed in Rhode Island, whether or not the trademark is registered; or

28 (iii) If paragraphs (i) and (ii) of this subdivision do not apply, who imports the product
29 into Rhode Island for sale or distribution.

30 (14) “Product” means:

31 (i) A single item or group of similar items specified in sections 23-86-5 or 23-86-6; and

32 (ii) Historical products and orphan products of the same type as the items described in
33 subsection 23-86-5(a).

34 (15) “Product goal” means any change in the design and manufacture of a product that

1 reduces or has the potential to reduce environmental or health impacts.

2 (16) “Product stewardship plan” means a statewide plan that describes a program for the
3 collection, transportation, recycling, reuse and disposal of discarded products and any related
4 performance goals and product goals and that is developed and provided for by a producer or
5 group of producers.

6 (17) “Product stewardship program” means a statewide program financed and managed
7 by a producer or group of producers that is based on an approved product stewardship plan and
8 that addresses the environmental or health impacts of a product over the entire life cycle of that
9 product.

10 (18) “Recycling” means the reuse of recovered resources in manufacturing, agriculture,
11 power production, or other processes.

12 (19) “Retailer” means any person that offers new products for sale at retail through any
13 means, including, but not limited to, remote offerings such as sales outlets, catalogs or the
14 Internet.

15 (20) “Reuse” means the return of a product into the economic stream for use in the same
16 kind of application as originally intended, without a change in the product’s form or function.

17 (21) “Sell” or “sale” means any transfer of title for consideration, including, but not
18 limited to, remote sales conducted through sales outlets, catalogs or the Internet or any similar
19 electronic means, but excluding lease arrangements.

20 (22) “Statewide product stewardship system” means the statewide system of product
21 stewardship programs established and managed by producers or stewardship organizations that
22 are established pursuant to state law or regulation.

23 (23) “Stewardship organization” means a corporation, nonprofit or other legal entity
24 appointed by a producer or group of producers to act as an agent on behalf of the producer to
25 administer a product stewardship program.

26 **23-86-4. Rulemaking.** -- The department may adopt rules as necessary to implement the
27 provisions of this chapter.

28 **23-86-5. Product stewardship rulemaking for fluorescent lamps.** -- (a) The
29 department shall develop and implement a statewide product stewardship system for fluorescent
30 lamps.

31 (b) In developing and implementing the statewide product stewardship system under this
32 section, the department shall collaborate with the federal government, other states, state agencies,
33 local governments, producers, stewardship organizations, the retail industry, nonprofits, the solid
34 waste industry, Rhode Island resource recovery corporation, environmental groups and covered

1 entities.

2 (c) The department shall consult and coordinate with other states to achieve consistency
3 in the development and implementation of the statewide product stewardship system.

4 (d) The department shall hold at least one public meeting where interested persons can
5 provide comment regarding the products listed in this section. After review of any public
6 comment and any relevant information, the department shall proceed with rulemaking as
7 described in section 23-86-8 for the product listed in this section unless the product has been
8 approved for a voluntary product stewardship program in accordance with section 23-86-6.

9 **23-86-6. Voluntary Program Requirements. --** (a) The department may allow for the
10 implementation of a voluntary product stewardship program for certain products, including
11 fluorescent lamps, in lieu of the adoption and implementation of product specific rules if a
12 producer or group of producers is able to demonstrate the following, in writing, to the
13 department:

14 (1) Its ability to meet aggressive collection and recycling goals;

15 (2) Its ability to provide broad coverage and availability of collection and recycling
16 opportunities;

17 (3) Its ability to provide for aggressive education and marketing of the program;

18 (4) Its ability to undertake comprehensive reporting on the success of the program;

19 (5) Its ability to succeed based upon past performance;

20 (6) Its ability to provide collection and recycling opportunities in a manner that will be as
21 effective as a program operating under product specific rules promulgated by the department; and

22 (7) Its ability to identify a single point-of-contact.

23 (b) The department shall explain, in writing, the reasons for its decision to allow or not
24 allow the implementation of a voluntary product stewardship program within sixty (60) days of
25 receiving the written comments from the producer or group of producers.

26 (c) The department shall execute the implementation of a voluntary product stewardship
27 program for certain products through the adoption of a Memorandum of Understanding (MOU).

28 (d) It shall be the policy of the department to encourage the development and
29 implementation of voluntary product stewardship programs by producers in lieu of the adoption
30 and implementation of product specific rules in accordance with section 23-86- 7.

31 **23-86- 7. Adoption of product specific rules. --** (a) The department shall adopt product-
32 specific rules prior to the implementation of product stewardship programs for products
33 identified and listed pursuant to section 23-86-5.

34 (b)(1) The department shall appoint a product-specific workgroup to advise on the

1 development of product-specific rules. The product-specific workgroup shall have at least nine
2 (9) members and, at a minimum, one member shall represent each of the following groups:

- 3 (i) Producers;
- 4 (ii) Local governments;
- 5 (iii) Environmental groups;
- 6 (iv) Rhode Island resource recovery corporation;
- 7 (v) The solid waste or recycling industry;
- 8 (vi) Retailers; and
- 9 (vii) Consumers or covered entities.

10 (2) To encourage coordination with other states, the department may invite
11 representatives from other states to participate in the product-specific workgroup proceedings as
12 nonmembers.

13 (c) Product-specific rules developed and adopted pursuant to this section shall address
14 the following:

- 15 (1) Definition of covered entities;
- 16 (2) Environmentally sound management practices;
- 17 (3) Performance goals and product goals as provided in section 23-86-13;
- 18 (4) The necessity for a disposal ban as determined by the specific characteristics of the
19 product;
- 20 (5) Implementation date for the product stewardship program;
- 21 (6) Department's administrative fees;
- 22 (7) Rules and responsibilities of any stakeholders that will be required to work with
23 producers to develop a plan and implement a program; and
- 24 (8) Any other requirement directly relevant to the management of a product under a
25 product stewardship program.

26 **23-86-8. Requirements for Product Stewardship Plan. --** (a) Producers of product, and
27 any other stakeholders included by regulation pursuant to section 23-89-7, specified in section 23-
28 86-5 for which rules are adopted pursuant to section 23-86- 7, shall develop and submit a product
29 stewardship plan to the department no later than one hundred and twenty (120) days following the
30 adoption of the applicable product-specific rules, or no later than one hundred twenty (120) days
31 prior to the sale or offer for sale of a product in Rhode Island. The product stewardship plan shall
32 address the following:

- 33 (1) Information about participating producers and other participating stakeholders
34 including, but not limited to:

- 1 (i) Contact information for producers and other participating stakeholders;
2 (ii) Contact information for the individual or entity submitting the plan;
3 (iii) A description of any stewardship organization that operates the product stewardship
4 program; and
5 (iv) Producer's products and associated brands covered by the product stewardship
6 program.
- 7 (2) Information on performance goals and product goals as outlined in section 23-86-9,
8 including, but not limited to:
- 9 (i) A detailed description of annual performance goals and, if applicable, product goals;
10 and
11 (ii) Methods to measure and track compliance with annual performance goals, and if
12 applicable, product goals.
- 13 (3) Collection system information, including, but not limited to, how the product
14 stewardship program will be available, convenient, and accessible for all covered entities in urban
15 and rural areas statewide;
- 16 (4) Implementation of environmentally sound management practices for the collection,
17 transportation, recycling, reuse and disposal of discarded products.
- 18 (5) Management of collected products, including, but not limited to:
- 19 (i) How the collected products will be recycled, reused or, where required by the product-
20 specific rules, properly disposed of; and
21 (ii) How all residuals that cannot be recycled or reused will be properly managed.
- 22 (6) Financial information, including, but not limited to:
- 23 (i) How the product stewardship program will be financed;
24 (ii) The mechanism for securing and distributing funds to cover administrative,
25 operational and capital costs; and
- 26 (iii) Demonstration of adequate insurance and financial assurances for collection,
27 transportation, recycling, reuse or disposal operations.
- 28 (7) Outreach and education to covered entities including, but not limited to:
- 29 (i) How to use and access the product stewardship program; and
30 (ii) How this information will be provided to collectors, retailers, and other interested
31 parties.
- 32 (8) Public and stakeholder consultation, including, but not limited to:
- 33 (i) Opportunities for the public and other stakeholders to comment on the product
34 stewardship plan prior to submission; and

1 (ii) Opportunities for the public and other stakeholders to comment on the
2 implementation and operation of the product stewardship program.

3 (b)The department shall approve, approve with conditions, or reject the product
4 stewardship plan within sixty (60) days of receiving the plan unless the department requests
5 additional information regarding the plan.

6 (c) If a product stewardship plan is rejected and the producer wishes to submit a revised
7 plan, the producer must do so within sixty (60) days of the date of the notice of rejection.

8 (d) Product stewardship plans shall be updated and submitted to the department in
9 accordance with a schedule as established by the department, or at the request of the department.
10 However, the product stewardship plan shall be updated at least once every four (4) years from
11 the date on which the plan was first approved.

12 (e) If a producer joined an approved product stewardship plan, the producer shall notify
13 the department prior to selling or offering for sale any products in Rhode Island.

14 (f) The department shall maintain a website listing of producers and brands covered by
15 approved product stewardship plans and product stewardship programs, updated by the first (1st)
16 day of each month.

17 (g) All product stewardship plans submitted and approved by the department shall be
18 available to the general public through the website of the producer or the stewardship
19 organization.

20 **23-86-9. Annual Performance Goals. -- (a)(1) A producer shall establish annual**
21 **performance goals for discarded products collected in a product stewardship program. A producer**
22 **shall establish reasonable annual performance goals for the first two (2) years of the program's**
23 **operation, provided that the goals include the following:**

24 (i) Total amount collected or total amount collected per capita;

25 (ii) Collection rate; and

26 (iii) Disposition rate.

27 (2) The department shall establish the appropriate metric to use in measuring annual
28 performance goals in the product-specific rule.

29 (b) Failure to meet annual performance goals established by a producer for the first two
30 (2) years of the operation of the product stewardship program shall not be subject to enforcement
31 by the department. However, a producer shall establish, measure and report on the annual
32 performance goal. By the third (3rd) year of the operation of the product stewardship program for
33 a product, the department shall establish an enforceable, annual performance goal. A producer
34 shall meet or exceed this goal. Producers shall continue to fully implement a product stewardship

1 program even after an enforceable annual performance goal is achieved.

2 (c) A producer may establish product goals for products covered by a product
3 stewardship program. These goals shall be specific to the product and intended to achieve
4 changes that result in a reduction in environmental or health impacts. The department shall
5 consider and make appropriate adjustments for any product goal adopted and successfully
6 implemented that affects the ability of a producer to meet an enforceable annual performance
7 goal.

8 **23-86-10. Responsibilities of Producers.** -- (a) Producers of products for which rules are
9 adopted pursuant to section 23-86-7 and for which product stewardship plans meet the criteria
10 established in section 23-86-8 and are approved by the department of environmental management
11 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 unless the manufacturer can successfully
21 demonstrate to the department that a fee is necessary for implementation of a product stewardship
22 plan. Under no circumstances, however, shall a visible fee be allowed when products are
23 collected for reuse, recycling, or disposal at the end of the products useful life. All discarded
24 products collected for a program shall be reused or recycled unless the applicable product-
25 specific rule provides that such products must be properly disposed of. A program shall meet or
26 exceed the requirements for the collection of products set forth in the product stewardship plan
27 required by section 23-86-8.

28 (c) Product stewardship programs shall include provisions for payment of administrative,
29 operational and capital costs, including costs of collection, transportation, recycling, reuse and
30 disposal of the products and their components. Producers shall provide adequate insurance and
31 financial assurances for the safe operation of the product stewardship programs.

32 (d) Product stewardship programs shall meet or exceed the environmentally sound
33 management practices provided in the applicable product-specific rules as well as any other
34 applicable federal, state or local requirements regarding the management of the collected

1 products.

2 (e) A producer may not sell or offer for sale in Rhode Island any product unless the
3 product or, where appropriate, the product package or container, is labeled with a brand that is
4 permanently affixed, readily visible, and the brand is included in an approved product
5 stewardship plan.

6 (f) All product stewardship programs shall operate in accordance with:

7 (1) The product stewardship plan as approved by the department; and

8 (2) Sections 1 to 18 of this chapter and any applicable rules adopted pursuant to them.

9 (g) Product stewardship programs shall include an education and outreach component to
10 promote the use of the program and to inform covered entities of available collection options.
11 This information shall be provided to covered entities, retailers and other interested parties.

12 **23-86-11. Requirement for Submittal of Reports.** -- (a) A producer shall annually
13 prepare and submit to the department a written report that describes how the product stewardship
14 program was implemented in accordance with the provisions of this chapter and all applicable
15 rules.

16 (b) The department may request that additional information be submitted in order to
17 verify any reported accomplishments under the program.

18 **23-86-12. Administrative Costs.** -- The department may establish a schedule of fees to
19 be paid by producers of products for which product specific rules are adopted pursuant to section
20 23-86-7. Fees may be established in amounts to recover, but not exceed, costs incurred by the
21 department in providing plan review, approval, program development, oversight and compliance
22 for the products for which a producer is responsible. Fees collected by the department under this
23 section shall be deposited in the environmental response fund established pursuant to section 23-
24 19.1-24.

25 **23-86-13. Responsibilities of Retailers.** -- (a) As of the implementation date established
26 by the applicable product specific rule, a producer, retailer or other person may not sell the
27 product or offer the product for sale to any person in this state unless the producer is participating
28 in an approved product stewardship program.

29 (b) A retailer or other person complies with the requirements of this section if, on the date
30 the product is ordered from the producer or its agent, the website of the department lists the
31 producer, along with the product brand, as operating or participating in an approved product
32 stewardship program.

33 (c) At the time of sale to a consumer, a producer, retailer or other person selling a product
34 or offering a product for sale shall provide the consumer with information on where and how to

1 [recycle or dispose of the product through a product stewardship program.](#)

2 **23-86-14. Enforcement.** -- [The director is authorized to exercise all powers, direct and](#)
3 [incidental, necessary to carry out the purposes of this chapter. The director may institute](#)
4 [administrative or civil proceedings, or may request the attorney general to do the same, to enforce](#)
5 [any provision of this chapter or any rule, regulation or order issued pursuant to this chapter.](#)

6 **23-86-15. Violations.** -- [A violation of any of the provisions of this law or any rule or](#)
7 [regulation promulgated pursuant thereto shall be punishable, in the case of a first \(1st\) violation,](#)
8 [by a civil penalty not to exceed one thousand dollars \(\\$1,000\). In the case of a second \(2nd\) and](#)
9 [any further violation, the liability shall be for a civil penalty not to exceed five thousand dollars](#)
10 [\(\\$5,000\) for each violation.](#)

11 **23-86-16. Reporting by the department.** -- (a) [The department shall annually, no later](#)
12 [than January 31 of each year, submit an annual report of its activities pursuant to this chapter.](#)
13 [The report shall include: \(1\) An update on the implementation of this chapter and current state of](#)
14 [compliance by collectors, processors, producers and retailers during the previous year; \(2\)](#)
15 [Recommendations to the general assembly and the governor regarding proposed changes to this](#)
16 [chapter, or any other chapter of the general laws, or any regulations promulgated pursuant](#)
17 [thereto; and \(3\) A summary of how the department expects to proceed with implementation of](#)
18 [this chapter in the coming year. The report shall be submitted to the governor, the president of the](#)
19 [senate, the speaker of the house, and the house and senate chairs of the committees on the](#)
20 [environment.](#)

21 [\(b\) The department, at the request of the house and/or senate chairs of the committees on](#)
22 [the environment, shall make a presentation to interested members of the general assembly on the](#)
23 [status of implementation of this chapter.](#)

24 **23-86-17. Evaluation of Federal Requirements.** -- [The department shall evaluate any](#)
25 [federal law that establishes a national program to manage any products specified in sections 5 and](#)
26 [6 of this chapter through a product stewardship approach. If the department determines that the](#)
27 [federal law substantially meets or exceeds the requirements and intent of sections 1 to 18 of this](#)
28 [chapter, the department shall include information on the federal law in the next annual report.](#)

29 **23-86-18. Requirement to Adopt Rules.** -- [The department may adopt rules before the](#)
30 [operative date specified or take any action before that date that is necessary to carry out the](#)
31 [provisions of this chapter.](#)

32 **23-86-19. Implementation.** -- [No later than December 31, 2012, the department shall](#)
33 [begin developing and implementing the statewide product stewardship system as described in this](#)
34 [chapter.](#)

1 **23-86-20. Multistate Implementation.** -- [The department may participate in the](#)
2 [establishment of a regional multistate organization or compact to assist in carrying out the](#)
3 [requirements of this chapter.](#)

4 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - PRODUCT STEWARDSHIP FOR DISCARDED
PRODUCTS

1 This act would establish a predictable regulatory environment in which the department of
2 environmental management, in coordination with producers, key stakeholders and an advisory
3 committee, would implement a set of comprehensive producer responsibility regulations
4 governing the disposal of fluorescent lamps.

5 This act would take effect upon passage.

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