

2021 -- H 5525

=====
LC001379
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO HEALTH AND SAFETY -- PHOTOVOLTAIC TAKEBACK ACT OF 2021

Introduced By: Representatives Kennedy, Azzinaro, Edwards, Casimiro, Filippi, and
Chippendale

Date Introduced: February 12, 2021

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 19.17

4 PHOTOVOLTAIC TAKEBACK ACT OF 2021

5 **23-19.17-1. Legislative findings.**

6 The legislature finds that a convenient, safe, and environmentally sound system for the
7 recycling of photovoltaic modules, minimization of hazardous waste, and recovery of commercially
8 valuable materials must be established. The legislature further finds that the responsibility for this
9 system must be shared among all stakeholders, with manufacturers financing the takeback and
10 recycling system.

11 **23-19.17-2. Definitions.**

12 Defintions. As used in this section the following terms shall have the following meanings
13 unless the context clearly requires otherwise:

14 (1) "Consumer electronic device" means any device containing an electronic circuit board
15 that is intended for everyday use by individuals, such as a watch or calculator.

16 (2) "Department" means the department of environmental management.

17 (3) "Distributor" means a person who markets and sells photovoltaic modules to retailers
18 or consumers in the state of Rhode Island.

19 (4) "Installer" means a person who assembles, installs, and maintains photovoltaic module

1 systems.

2 (5) "Manufacturer" means any person in business or no longer in business, but having a
3 successor in interest who, irrespective of the selling technique used, including by means of distance
4 or remote sale:

5 (i) Manufactures or has manufactured a photovoltaic module under its own brand names
6 for use or sale in or into this state;

7 (ii) Assembles or has assembled a photovoltaic module that uses parts manufactured by
8 others for use or sale in or into this state under the assembler's brand names;

9 (iii) Resells or has resold in or into this state under its own brand names a photovoltaic
10 module produced by other suppliers, including retail establishments that sell photovoltaic modules
11 under their own brand names;

12 (iv) Manufactures or has manufactured a cobranded photovoltaic module product for use
13 or sale in or into this state that carries the name of both the manufacturer and a retailer;

14 (v) Imports or has imported a photovoltaic module into the United States that is used or
15 sold in or into this state. However, if the imported photovoltaic module is manufactured by any
16 person with a presence in the United States meeting the criteria of manufacturer under subsections
17 (5)(i) through (5)(vi) of this section, that person is the manufacturer;

18 (vi) Sells at retail a photovoltaic module acquired from an importer that is the manufacturer
19 and elects to register as the manufacturer for those products; or

20 (vii) Elects to assume the responsibility and register in lieu of a manufacturer as defined
21 under subsections (5)(i) through (5)(vi) of this section.

22 (6) "Photovoltaic module" means the smallest non-divisible, environmentally protected
23 assembly of photovoltaic cells or other photovoltaic collector technology and ancillary parts
24 intended to generate electrical power under sunlight, except that "photovoltaic module" does not
25 include a photovoltaic cell that is part of a consumer electronic device for which it provides
26 electricity needed to make the consumer electronic device function. "Photovoltaic module"
27 includes, but is not limited to, interconnections, terminals, and protective devices such as diodes
28 that:

29 (i) Are installed on, connected to, or integral with buildings;

30 (ii) Are used as components of freestanding, off-grid, power generation systems, such as
31 for powering water pumping stations, electric vehicle charging stations, fencing, street and signage
32 lights, and other commercial or agricultural purposes; or

33 (iii) Are part of a system connected to the grid or utility service.

34 (7) "Predecessor" means an entity from which a manufacturer purchased a photovoltaic

1 module brand, its warranty obligations, and its liabilities. "Predecessor" does not include entities
2 from which a manufacturer purchased only manufacturing equipment.

3 (8) "Rare earth element" means lanthanum, cerium, praseodymium, neodymium,
4 promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium,
5 ytterbium, lutetium, yttrium, or scandium.

6 (9) "Retailer" means a person who offers photovoltaic modules for retail sale in the state
7 through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or
8 Internet sales.

9 (10) "Reuse" means any operation by which a photovoltaic module or a component of a
10 photovoltaic module changes ownership and is used for the same purpose for which it was
11 originally purchased.

12 (11) "Stewardship plan" means the plan developed by a manufacturer or its designated
13 stewardship organization for a self-directed stewardship program.

14 (12) "Stewardship program" means the activities conducted by a manufacturer or a
15 stewardship organization to fulfill the requirements of this chapter and implement the activities
16 described in its stewardship plan.

17 **23-19.17-3. Establishment of takeback program.**

18 (a) The department must develop guidance for a photovoltaic module stewardship and
19 takeback program to guide manufacturers in preparing and implementing a self-directed program
20 to ensure the convenient, safe, and environmentally sound takeback and recycling of photovoltaic
21 modules and their components and materials. By January 1, 2022, the department must establish a
22 process to develop guidance for photovoltaic module stewardship plans by working with
23 manufacturers, stewardship organizations, and other stakeholders on the content, review, and
24 approval of stewardship plans. The department's process must be fully implemented and
25 stewardship plan guidance completed by July 1, 2022.

26 (b) A stewardship organization may be designated to act as an agent on behalf of a
27 manufacturer or manufacturers in operating and implementing the stewardship program required
28 under this chapter. Any stewardship organization that has obtained such designation must provide
29 to the department a list of the manufacturers and brand names that the stewardship organization
30 represents within sixty (60) days of its designation by a manufacturer as its agent, or within sixty
31 (60) days of removal of such designation.

32 (c) Each manufacturer must prepare and submit a stewardship plan to the department by
33 the later of July 1, 2022, or within thirty (30) days of its first sale of a photovoltaic module in or
34 into the state.

1 (d) A stewardship plan must, at a minimum:

2 (1) Describe how manufacturers will finance the takeback and recycling system, and
3 include an adequate funding mechanism to finance the costs of collection, management, and
4 recycling of photovoltaic modules and residuals sold in or into the state by the manufacturer with
5 a mechanism that ensures that photovoltaic modules can be delivered to takeback locations without
6 cost to the last owner or holder;

7 (2) Accept all of their photovoltaic modules sold in or into the state after July 1, 2021;

8 (3) Describe how the program will minimize the release of hazardous substances into the
9 environment and maximize the recovery of other components, including rare earth elements and
10 commercially valuable materials;

11 (4) Provide for takeback of photovoltaic modules at locations that are within the county of
12 the state in which their photovoltaic modules were used and are as convenient as reasonably
13 practicable, and if no such location within the county of the state exists, include an explanation for
14 the lack of such location;

15 (5) Identify how relevant stakeholders, including consumers, installers, building
16 demolition firms, and recycling and treatment facilities, will receive information required in order
17 for them to properly dismantle, transport, and treat the end-of-life photovoltaic modules in a manner
18 consistent with the objectives of this chapter;

19 (6) Establish performance goals, including a goal for the rate of combined reuse and
20 recycling of collected photovoltaic modules as a percentage of the total weight of photovoltaic
21 modules collected, which rate must be no less than eighty-five percent (85%).

22 (7) A manufacturer must implement the stewardship plan.

23 (8) A manufacturer may periodically amend its stewardship plan. The department must
24 approve the amendment if it meets the requirements for plan approval outlined in the department's
25 guidance. When submitting proposed amendments, the manufacturer must include an explanation
26 of why such amendments are necessary.

27 (e) The department must approve a stewardship plan if it determines the plan addresses
28 each element outlined in the department's guidance.

29 **23-19.17-4. Reporting requirements.**

30 (a) Beginning April 1, 2024, and by April 1 in each subsequent year, a manufacturer, or its
31 designated stewardship organization, must provide to the department a report for the previous
32 calendar year that documents implementation of the plan and assesses achievement of the
33 performance goals established in § 23-19.17-3(d)(6).

34 (b) The report may include any recommendations to the department or the legislature on

1 modifications to the program that would enhance the effectiveness of the program, including
2 management of program costs and mitigation of environmental impacts of photovoltaic modules.

3 (c) The manufacturer or stewardship organization must post this report on a publicly
4 accessible website.

5 **23-19.17-5. Plan required to do business.**

6 (a) Beginning July 1, 2023, no manufacturer, distributor, retailer, or installer may sell or
7 offer for sale a photovoltaic module in or into the state unless the manufacturer of the photovoltaic
8 module has submitted to the department a stewardship plan and received plan approval.

9 (b) The department shall send a written warning to a manufacturer that is not participating
10 in a plan. The written warning must inform the manufacturer that it must submit a plan or participate
11 in a plan within thirty (30) days of the notice.

12 (c) The department may assess a civil penalty of up to ten thousand dollars (\$10,000) upon
13 a manufacturer for each sale that occurs in or into the state of a photovoltaic module for which a
14 stewardship plan has not been submitted by the manufacturer and approved by the department after
15 the initial written warning. A manufacturer may appeal a penalty issued under this section to the
16 superior court the county in which it is located within one hundred eighty days of receipt of the
17 notice pursuant to the provisions of chapter 35 of title 42.

18 (d) The department must send a written warning to a distributor, retailer, or installer that
19 sells or installs a photovoltaic module made by a manufacturer that is not participating in a plan.
20 The written warning must inform the distributor, retailer, or installer that they may no longer sell
21 or install a photovoltaic module if a stewardship plan for that brand has not been submitted by the
22 manufacturer and approved by the department within thirty (30) days of the notice.

23 **23-19.17-6. Fees.**

24 The department may collect a flat fee from participating manufacturers to recover costs
25 associated with the plan guidance, review, and approval process provided by the department. Other
26 administrative costs incurred by the department for program implementation activities, including
27 stewardship plan review and approval, enforcement, and any rule making, may be recovered by
28 charging every manufacturer an annual fee calculated by dividing department administrative costs
29 by the manufacturer's pro rata share of the Rhode Island state photovoltaic module sales in the most
30 recent preceding calendar year, based on best available information. The sole purpose of assessing
31 the fees authorized in this subsection is to predictably and adequately fund the department's costs
32 of administering the photovoltaic module recycling program.

33 **23-19.17-7. Restricted account established.**

34 The photovoltaic module recycling account shall be created and maintained in the custody

1 of the general treasurer. All fees collected from manufacturers under this chapter must be deposited
2 in the account. Expenditures from the account may be used only for administering this chapter.
3 Only the director of the department or the director's designee may authorize expenditures from the
4 account. Funds in the account may not be diverted for any purpose or activity other than those
5 specified in this section.

6 **23-19.17-8. Adoption of rules.**

7 The department may adopt rules as necessary for the purpose of implementing,
8 administering, and enforcing this chapter.

9 **23-19.17-9. National takeback programs as alternative.**

10 In lieu of preparing a stewardship plan, a manufacturer may participate in a national
11 program for the convenient, safe, and environmentally sound takeback and recycling of
12 photovoltaic modules and their components and materials, if substantially equivalent to the intent
13 of the state program. The department may determine substantial equivalence if it determines that
14 the national program adequately addresses and fulfills each of the elements of a stewardship plan
15 outlined in § 23-19.17-3(d) and includes an enforcement mechanism reasonably calculated to
16 ensure a manufacturer's compliance with the national program. Upon issuing a determination of
17 substantial equivalence, the department must notify affected stakeholders including the
18 manufacturer. If the national program is discontinued or the department determines the national
19 program is no longer substantially equivalent to the Rhode Island program, the department must
20 notify the manufacturer and the manufacturer must provide a stewardship plan to the department
21 for approval within thirty (30) days of notification.

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

=====
LC001379
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- PHOTOVOLTAIC TAKEBACK ACT OF 2021

1 This act would require that any manufacturer or installer of solar module systems in Rhode
2 Island establish a program as set up by the department of environmental management, for the safe
3 disposal of those systems.

4 This act would take effect upon passage.

=====
LC001379
=====