SENATE DOCKET, NO. 1389 FILED ON: 1/21/2011

SENATE . . . . . No. 341

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to create a framework to re-allocate responsibility for discarded products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Harriette L. Chandler	
Sal N. DiDomenico	*Middlesex and Suffolk*
Cory Atkins	*14th Middlesex*
William N. Brownsberger	

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SENATE . . . . . No. 341

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 341) of Harriette L. Chandler, Sal N. DiDomenico, Cory Atkins and William N. Brownsberger for legislation to create a framework to re-allocate responsibility for discarded products. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to create a framework to re-allocate responsibility for discarded products.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 21N the following chapter:-

CHAPTER 21O.

Section 1. As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Brand", a name, symbol, word or mark that identifies a product and attributes the product to the owner of the brand as the producer.

"Covered entity", any person with a discarded product covered by sections 1 to 15 of this act.

"Department", the Department of Environmental Protection.

"Discarded product", a product no longer wanted by its owner that is discarded or is intended to be discarded.

"Disposition rate", quantitative measures that establish on an annual basis the percentage of discarded products that are recycled, reused or properly disposed of, including energy recovery, relative to the total amount collected or total amount collected per capita in a product stewardship program.

"Environmentally sound management practices", policies as defined by rules adopted pursuant to section 7 of this act that are implemented by a producer or a stewardship organization to ensure compliance with applicable laws and that address issues such as adequate record keeping, tracking and documenting the fate of materials within this commonwealth and beyond, on-site operations, security of facilities and materials, worker health and safety requirements, environmental protection, closure plans, adequate insurance and financial assurances.

"Historical product", any product that is not currently marketed or sold by the producer.

"Orphan product", a product that lacks a brand, for which the producer is no longer in business and has no successor in interest or for which the Department of Environmental Protection cannot identify a producer.

"Performance goal", a metric established by a producer or the Department of Environmental Protection to measure on an annual basis the performance of a product stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or health impacts related to a product.

"Person", the United States, this commonwealth, a public or private corporation, a local government unit, a public agency, an individual, a partnership, an association, a firm, a trust, an estate or another legal entity.

"Producer" a person:

(a) Who manufactures a product and who sells, offers for sale or distributes that product in Massachusetts under the manufacturer's own name or brand;

(b) If paragraph (a) of this subsection does not apply, who is not the manufacturer of the product but is the owner or licensee of a trademark or brand under which a product is sold or distributed in Massachusetts, whether or not the trademark is registered; or

(c) If paragraphs (a) and (b) of this subsection do not apply, who imports the product into Massachusetts for sale or distribution.

"Product":

(a) A single item or group of similar items specified in section 3 of this act; and

(b) Historical products and orphan products of the same type as the items described in paragraph (a) of this subsection.

"Product goal", any change in the design and manufacture of a product that reduces or has the potential to reduce environmental or health impacts.

"Product stewardship plan", a statewide plan that describes a program for the collection, transportation, recycling, reuse and disposal of discarded products and any related performance

goals and product goals and that is developed and provided for by a producer or group of producers.

"Product stewardship program", a statewide program financed and managed by a producer or group of producers that is based on an approved product stewardship plan and that addresses the environmental or health impacts of a product over the entire life cycle of that product.

"Recycling", (a) any process by which discarded products, components and byproducts are transformed into new, usable or marketable materials in a manner in which the original products may lose their identity, and (b) does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products.

"Retailer", any person that offers new products for sale at retail through any means, including but not limited to remote offerings such as sales outlets, catalogs or the Internet.

"Reuse", the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product's form or function.

"Sell" or "sale", any transfer of title for consideration, including but not limited to remote sales conducted through sales outlets, catalogs or the Internet or any similar electronic means, but excluding lease arrangements.

"Statewide product stewardship system", the statewide system of product stewardship programs established and managed by producers or stewardship organizations that are overseen by the Department of Environmental Protection.

"Stewardship organization", a corporation, nonprofit or other legal entity appointed by a producer or group of producers to act as an agent on behalf of the producer to administer a product stewardship program.

Section 2. The department may adopt rules as necessary to implement sections 1 to 15 of this act.

Section 3. (1) Every two years, after consultation with the advisory committee established pursuant to subsection (6)(a) of this section, the department may identify a list of potential products that may be appropriate for a product stewardship program. The department must hold at least one public meeting where interested persons can provide comment regarding the listing of potential products.

(2) Upon review of any public comment and any relevant information and after consultation with the advisory committee, the department may select from the list developed pursuant to subsection (4) of this section products for further evaluation. The department may consider whether a product's packaging should be included in this evaluation. These products shall be evaluated based on the factors in subsection (3) of this section.

(3) In evaluating a product, the department shall consider the following factors:

(a) Potential to reduce waste, toxicity, greenhouse gas emissions or other environmental or health impacts;

(b) Potential to encourage product design or manufacture that reduces environmental or health impacts;

(c) Current or potential contribution of the product to the weight, volume or toxicity of the solid waste stream;

(d) Public demand or need for improved recycling, reuse or disposal opportunities;

(e) Producer ability to manage the product through a product stewardship program;

(f) Fiscal impacts to local governments, producers, retailers, consumers and other affected parties of using a product stewardship program to address the management of a product after the product is discarded; and

(g) Any other consideration relevant to the management of a product under a product stewardship program.

(4) Based on the evaluation provided in subsections (2) and (3) of this section and after consultation with the advisory committee, the department may determine products to be covered under the Product Stewardship program. Prior to making this determination, the department must hold at least one public meeting and post recommendations on its website for 30 days to allow for public comments.

(5) The department may not add more than two products in a two-year period unless it determines that:

(a) The threat to the environment or public health warrants the recommendation of additional products; or

(b) The products are of a similar class or type.

(6)(a) Prior to undertaking the process described in this section, the department shall appoint and convene a standing advisory committee to provide technical information and advice regarding the identification, evaluation and recommendation of products. The committee must have at least 11 members and, at a minimum, one member must represent each of the following groups:

(A) Producers;

(B) Local governments;

(C) Environmental groups;

(D) The solid waste industry; and

(E) The retail industry.

(b) To encourage coordination with other states, the department may invite representatives from other states to participate in the committee proceedings as nonmembers.

Section 4. The products approved by the department identified in section 3 are covered by the provisions of sections 1 to 15 of this Act.

Section 5. (1) The department shall adopt product-specific rules to address the implementation of product stewardship programs for the products specified in section 6 of this act.

(2)(a) Prior to adopting product-specific rules, the department shall appoint an advisory committee to advise on the development of product-specific rules.

The committee shall have at least nine members and, at a minimum, one member must represent each of the following groups:

(A) Producers;

(B) Local governments;

(C) Environmental groups;

(D) The solid waste industry;

(E) The retail industry; and

(F) Consumers or covered entities.

(b) To encourage coordination with other states, the department may invite representatives from other states to participate in the committee proceedings as nonmembers.

(3) Any product-specific rules developed and adopted pursuant to this section shall address the following:

(a) Definition of covered entities;

(b) Environmentally sound management practices;

(c) Performance goals and product goals as provided in section 11 of this act;

(d) The disposal ban as provided in 310 CMR 19.017;

(e) Implementation date for the product stewardship program;

(f) Department’s administrative fees; and

(g) Any other requirement relevant to the management of a product under a product stewardship program.

Section 6. (1) Producers of products specified in section 3 of this act for which rules are adopted pursuant to section 5 of this act shall establish product stewardship programs for the products. Every producer shall:

(a) Operate, either individually or collectively with other producers, a product stewardship program; or

(b) Enter into an agreement with one or more stewardship organizations to operate, on the producer's behalf, a product stewardship program.

(2) Product stewardship programs must be provided free of charge to covered entities when a product is sold or when the discarded products are delivered or collected for reuse, recycling or disposal throughout the calendar year. All discarded products collected for a program must be reused or recycled unless the applicable product-specific rule provides that such products must be properly disposed of. A program must meet or exceed the requirements for the collection of products set forth in the product stewardship plan required by section 7 of this act.

(3) Producers must pay all administrative, operational and capital costs associated with the product stewardship programs, including costs of collection, transportation, recycling, reuse and disposal of the products and their components. Producers must provide adequate insurance and financial assurances for operation of the product stewardship programs.

(4) Product stewardship programs must meet or exceed the environmentally sound management practices provided in the applicable product-specific rules as well as any other applicable federal, state or local requirements regarding the management of the collected products.

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

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

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

(b) Sections 1 to 15 of this act and any applicable rules adopted pursuant to sections 1 to 15 of this act.

(7) Product stewardship programs shall include an education and outreach component to promote the use of the program and to inform covered entities of available collection options.

This information must be provided to covered entities, retailers and other interested parties.

Section 7. (1) Producers must submit a product stewardship plan to the department that addresses the following:

(a) Information about participating producers, including but not limited to:

(A) Contact information for producers;

(B) Contact information for the individual or entity submitting the plan;

(C) A description of any stewardship organization that operates the product stewardship program; and

(D) Producers' products and associated brands covered by the product stewardship program and product stewardship plan.

(b) Information on performance goals and product goals, including but not limited to:

(A) A description of annual performance goals and, if applicable, product goals; and

(B) Compliance with annual performance goals and, if applicable, product goals.

(c) Collection system information, including but not limited to:

(A) How the product stewardship program will be available, convenient, accessible and free of charge for all covered entities in urban and rural areas statewide; and

(B) How discarded products will be collected in all counties in the commonwealth and all cities with populations of at least 10,000.

(d) Implementation of environmentally sound management practices for the collection, transportation, recycling, reuse and disposal of discarded products.

(e) Management of collected products, including but not limited to:

(A) How the collected products will be recycled, reused or, where required by the product-specific rules, properly disposed of; and

(B) How all residuals that cannot be recycled or reused will be properly managed.

(f) Financial information, including but not limited to:

(A) How the product stewardship program will be financed;

(B) The mechanism for securing and disbursing funds to cover administrative, operational and capital costs; and

(C) Demonstration of adequate insurance and financial assurances for collection, transportation, recycling, reuse or disposal operations.

(g) Outreach and education to covered entities including, but not limited to:

(A) How to use and access the product stewardship program; and

(B) How this information will be provided to collectors, retailers and other interested parties.

(h) Public and stakeholder consultation, including but not limited to:

(A) Opportunities for the public and other stakeholders to comment on the product stewardship plan prior to submission; and

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

(2) If the department determines that a proposed product stewardship plan complies with sections 1 to 15 of this act and any applicable rules and is in the public interest, the department shall approve the product stewardship plan.

(3) All product stewardship plans submitted and approved by the department must be available to the general public through the website of the producer or the stewardship organization.

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

Section 8. (1) All product stewardship plans must be submitted to the department no later than 120 days following the adoption of the applicable product-specific rules, or no later than 120 days prior to the sale or offer for sale of a product in Massachusetts.

(2) The department shall approve or reject the product stewardship plan within 60 days of receiving the plan unless the department requests additional information regarding the plan.

(3) If a product stewardship plan is rejected and the producer wishes to submit a revised plan, the producer must do so within 60 days of the date of the letter of rejection.

(4) Product stewardship plans must be updated and submitted to the department for review at least once every four years from the date on which the plan is first approved or more frequently as needed to ensure compliance with this act.

(5) If a producer joins an approved product stewardship plan, the producer must notify the department prior to selling or offering for sale any products in Massachusetts.

Section 9. (1) As of the implementation date established by the applicable product specific rule, a producer, retailer or other person may not sell the product or offer the product for

sale to any person in this commonwealth unless the producer is participating in an approved product stewardship program.

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

(3) At the time of sale to a consumer, a producer, retailer or other person selling a product or offering a product for sale must provide the consumer with information on where and how to recycle or dispose of the product through a product stewardship program.

Section 10. (1) A producer must annually prepare and submit to the department a written report that describes how the product stewardship program was implemented in accordance with sections 1 to 15 of this act and any applicable rules.

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

Section 11. (1)(a) A producer shall establish annual performance goals for discarded products collected in a product stewardship program. A producer shall establish reasonable annual performance goals for the first two years of the program's operation, provided that the goals include the following:

(A) Total amount collected or total amount collected per capita;

(B) Collection rate; and

(C) Disposition rate.

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

(2) Annual performance goals established by a producer for the first two years of the operation of the product stewardship program are not enforceable. However, a producer must establish, measure and report on the goal. By the third year of the operation of the product stewardship program for a product, the department shall establish an enforceable annual performance goal. A producer must meet or exceed this goal. Producers must continue to fully implement a product stewardship program even after an enforceable annual performance goal is achieved.

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

Section 12. The department may establish a schedule of fees to be paid by producers. Fees may be established in amounts to recover, but not exceed, costs incurred by the department in providing plan review, approval, program development, oversight and compliance for the products for which a producer is responsible. Fees collected by the department under this section shall be deposited in the State Treasury to the credit of the Product Stewardship Fund established under section 13 of this act.

Section 13. The Product Stewardship Fund is established, separate and distinct from

the General Fund. Interest earned by the Product Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the department and may be used only to pay the costs of implementing sections 1 to 15 of this 2011 Act.

Section 14. No person shall knowingly dispose of any product specified in section 3 of this act except to handle, recycle or compost the material in accordance with a plan submitted and approved by the department.

PENALTIES

Section 15. The department shall be charged with the enforcement of sections 1 to 14, inclusive. If any person refuses to obey a decision of the department the attorney general shall, upon request of the department, file a petition for the enforcement of such decision in equity in the superior court for Suffolk County or for the county in which the defendant resides or has a place of business. After due hearing, the court shall order the enforcement of such decision or any part thereof, if legally and properly made by the department.

Section 16. Whoever violates any provisions of sections 1 to 14, inclusive, shall be punished by a fine of not less than $2,500 and not more than $25,000.00 for each day the violation remains outstanding.

Section 17. The department shall annually, not later than December 31, submit an annual report of its activities pursuant to this chapter. The report shall include: (1) an update on the implementation of this chapter and current state of compliance by collectors, processors, producers and retailers; (2) recommendations to the general court and the governor regarding proposed changes to this chapter, or any other chapter of the General Laws, or any regulations promulgated pursuant thereto; and (3) any other information the department deems appropriate.

The report shall be submitted to the governor, the president of the senate, the speaker of the house, the house and senate chairs of the committee on ways and means, the house and senate chairs of the joint committee on environment, natural resources and agriculture, the clerk of the senate and the clerk of the house.

Section 18. The department shall evaluate any federal law that establishes a national program to manage any products specified in section 3 of this Act through a product stewardship approach. If the department determines that the federal law substantially meets or exceeds the requirements and intent of sections 1 to 15 of this act, the department shall include information on the federal law in the next annual report.

Section 19. The department may adopt rules before the operative date specified or take any action before that date that is necessary to carry out the provisions of this chapter.

Section 20. No later than December 31, 2012 the department shall develop and implement the statewide product stewardship system described in this chapter.

Section 21. The department may participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

Section 22. Notwithstanding any general or special law to the contrary and unless otherwise specified herein, this act shall take effect upon passage.