



Substitute House Bill No. 5142

Public Act No. 22-27

**AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY
FOR CERTAIN GAS CYLINDERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2022*) (a) For the purposes of this section:

(1) "Brand" means any name, symbol, word or mark that attributes a gas cylinder to the producer of such gas cylinder;

(2) "Commissioner" means the Commissioner of Energy and Environmental Protection;

(3) "Eligible entity" means any political subdivision of the state, transfer station, material recovery facility, drop off or event, disposal facility, state park or private campground, or other approved entity in the state that is part of an approved gas cylinder stewardship plan;

(4) "Department" means the Department of Energy and Environmental Protection;

(5) "Discarded gas cylinder" means any gas cylinder supplied to a consumer in the state for personal, family or household use that is discarded at an eligible entity;

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(6) "Gas cylinder" or "cylinder" means any nonrefillable or refillable cylinder supplied to a consumer for personal, family or household use with flammable pressurized gas, helium or carbon dioxide, of any size greater than a water capacity of one-half pounds but not exceeding any cylinder with a water capacity of fifty pounds, including, but not limited to, seamless cylinders and tubes, welded cylinders and insulated cylinders intended to contain helium, carbon dioxide or flammable materials such as propane, butane or other flammable compressed gases. "Gas cylinder" does not include any cylinder, tube or container intended to deliver a product that is not a compressed gas, any medical or industrial-grade cylinder or any cylinder that is used by any medical facility or commercial enterprise or that contains oxygen, refrigerants, acetylene, hydrogen, ethylene or foam adhesives;

(7) "Gas cylinder stewardship organization" means any organization that is established by and represents producers of gas cylinders and that designs, submits and implements a gas cylinder stewardship plan on behalf of the producers it represents;

(8) "Gas cylinder stewardship program" or "program" means the program implemented pursuant to an approved gas cylinder stewardship plan;

(9) "Performance goal" means a metric proposed by the entity submitting a gas cylinder stewardship plan to measure, on an annual basis, the performance of the gas cylinder stewardship program, taking into consideration technical and economic feasibilities, in achieving continuous, meaningful improvement in the rate of gas cylinder recycling in the state and any other specified goal of the program;

(10) "Producer" means: (A) Any person who supplies a gas cylinder in the state under the brand of the manufacturer; (B) if there is no person described in subparagraph (A) of this subdivision, any person who is not the manufacturer of the cylinder but who is the owner or licensee of

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a trademark under which the cylinder is supplied in the state, whether or not the trademark is registered; (C) if there is no person described in subparagraph (B) of this subdivision, any person who imports any cylinder into the state for supply to a consumer; (D) if there is no person described in subparagraph (C) of this subdivision, the retailer who supplies the cylinder to a consumer; or (E) if there is no person described in subparagraph (D) of this subdivision, any person who facilitates the supply of a cylinder by: (i) Owning or operating an online marketplace or forum in which the cylinder is listed or advertised for sale, (ii) transmitting or otherwise communicating the offer to sell a cylinder, or (iii) providing for the physical distribution of a cylinder to the consumer, such as by the storage, preparation or shipping of products;

(11) "Recycling" means any process in which discarded cylinders, components and by-products may lose their original identity or form as they are transformed into new, usable or marketable materials. "Recycling" does not include the use of incineration for energy recovery;

(12) "Refurbish" means to restore for the purposes of refilling a cylinder;

(13) "Retailer" means any person who supplies, sells or offers for sale gas cylinders in this state to a consumer for personal, family or household use; and

(14) "Supply" means to sell, lease or donate, with the transfer of possession or title, or to otherwise make available or distribute, including, but not limited to, through the use of a sales outlet, catalog, Internet web site or similar electronic means, to a consumer in the state for personal, family or household use.

(b) On or before January 1, 2023, each producer or such producer's designee, including, but not limited to, a gas cylinder stewardship organization, shall notify the Commissioner of Energy and

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Environmental Protection, in writing, that the producer will act individually or jointly with other producers to submit a stewardship plan to the commissioner for the establishment of a state-wide gas cylinder stewardship program. Any person that is not a resident in the state but that is a brand holder of a brand that is used in connection with gas cylinders may volunteer to submit a gas cylinder stewardship plan to the commissioner individually or may join a gas cylinder stewardship organization if such person enters a written agreement with one or more producers described in subparagraph (A), (B) or (C) of subdivision (10) of subsection (a) of this section for the purpose of carrying out a producer's responsibilities relating to gas cylinders under such plan. Any such stewardship plan shall be submitted to the commissioner not later than July 1, 2023.

(c) Any gas cylinder stewardship program shall, to the extent it is technologically feasible and economically practical: (1) Minimize public sector involvement in the management of discarded gas cylinders; (2) provide for free, convenient and accessible state-wide opportunities for the receipt of gas cylinders used by consumers for personal, family or household use at eligible entities; (3) provide for pick-up of discarded gas cylinders from eligible entities; and (4) provide for the transport and management of discarded gas cylinders picked-up from eligible entities in accordance with agreements between producers and eligible entities which shall be consistent with any provision of the law.

(d) Any plan submitted pursuant to subsection (b) of this section shall: (1) Provide for refilling or recycling cylinders and capturing residual gases for reuse; (2) establish performance goals for the first two years of the gas cylinder stewardship program; (3) identify eligible entities to be used pursuant to the program; (4) detail how the program will promote the collection of discarded gas cylinders supplied to consumers for personal, family or household use; (5) include a description of the public education program that will be used to

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promote consumer knowledge of the program; and (6) identify producers participating in the program.

(e) The Commissioner of Energy and Environmental Protection shall approve a plan for the establishment of a gas cylinder stewardship program, provided such plan meets the requirements of this section. Not later than ninety days after submission of the plan, the commissioner shall make a determination on whether to approve the plan. Prior to making such determination, the commissioner shall post the plan on the department's Internet web site and solicit public comments on the plan. Such solicitation shall not be conducted pursuant to chapter 54 of the general statutes. In the event that the commissioner disapproves the plan because it does not meet the requirements of this section, the commissioner shall describe the reasons for the disapproval in a notice of determination that the commissioner shall provide to the producer or producer's designee that submitted the gas cylinder stewardship plan. Such producer or producer's designee shall revise and resubmit the plan to the commissioner not later than forty-five days after receipt of the commissioner's notice of disapproval. Not later than forty-five days after receipt of the revised plan, the commissioner shall review and approve or disapprove the revised plan, and provide a notice of determination to the producer or producer's designee that submitted the revised gas cylinder plan. Such producer or producer's designee may resubmit a revised plan to the commissioner for approval on not more than two occasions. If the producer or producer's designee fails to submit a plan that is acceptable to the commissioner because it does not meet the requirements of this section, the commissioner shall modify a submitted plan to make it conform to the requirements of this section and approve it. Not later than October 1, 2025, each producer shall be part of an approved and implemented gas cylinder stewardship program.

(f) Not later than thirty months after the date on which an approved

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gas cylinder stewardship program is implemented, the producer or producer's designee that submitted the applicable approved gas cylinder stewardship plan shall submit updated performance goals to the commissioner that are based on the experience of the program during the first two years of the program.

(g) Each producer or producer's designee with an approved gas cylinder stewardship plan shall submit any proposed substantial change to the program to the Commissioner of Energy and Environmental Protection for approval. For the purposes of this section, "substantial change" means a material change to the system for collecting gas cylinders. If the commissioner does not disapprove a proposed substantial change not later than ninety days after receipt of notification of such proposed substantial change, such proposed substantial change shall be deemed approved.

(h) Each entity with an approved gas cylinder stewardship plan shall notify the Commissioner of Energy and Environmental Protection of other material changes to the program on an ongoing basis, without resubmission of the plan to the commissioner for approval. Such changes shall include, but not be limited to, a change in contact information of the producer or producer's designee and, if the designee is a gas cylinder stewardship organization, the identity of such organization's board of directors and officers.

(i) Each producer or producer's designee with an approved gas cylinder stewardship plan shall maintain all records relating to the applicable gas cylinder stewardship program for a period of not less than five years.

(j) Not later than October fifteenth of each year, each producer or producer's designee with an approved gas cylinder stewardship plan shall submit an annual report to the Commissioner of Energy and Environmental Protection, in a format prescribed by the commissioner.

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The commissioner shall post such annual report on the department's Internet web site. Such report shall include: (1) The producers participating in the plan for the previous calendar year; (2) the number of eligible entities, by type from which cylinders were picked up in the previous calendar year; (3) the number and tonnage of nonrefillable gas cylinders and the number of refillable gas cylinders picked up from each type of eligible entity during the previous calendar year; (4) the tonnage of nonrefillable gas cylinders recycled and the number of refillable gas cylinders refilled and recycled during the previous calendar year; (5) a summary of the public education program that supports the program; (6) an evaluation of the effectiveness of methods and processes used to achieve performance goals of the program; and (7) recommendations for any changes to the program.

(k) Two years after the implementation of a gas cylinder stewardship program and every three years thereafter, or upon the request of the Commissioner of Energy and Environmental Protection but not more frequently than annually, each producer or producer's designee with an approved gas cylinder stewardship plan shall cause an audit of the information submitted pursuant to subdivisions (2) to (4), inclusive, of subsection (j) of this section by an auditor selected by the commissioner. Such audit shall review the accuracy of the producer or producer's designee's submitted information concerning the program and provide any other information requested by the commissioner that is consistent with the requirements of this section, provided such request shall not require the disclosure of any proprietary information or trade or business secrets. Such audit shall be paid for by the producer or producer's designee with the approved gas cylinder stewardship plan.

(l) Upon implementation of an approved gas cylinder stewardship plan, any eligible entity that participates in such plan shall not charge for the receipt of discarded gas cylinders used by consumers for personal, family or household use.

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(m) Not later than three years after the approval of a gas cylinder stewardship plan, the Commissioner of Energy and Environmental Protection shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to the environment. Such report shall provide an evaluation of the applicable gas cylinder stewardship program and establish a goal for the amount of discarded cylinders to be picked up under each program and a separate goal for the recycling of gas cylinders, taking into consideration technical and economic feasibilities. Such report shall also include an evaluation of the Department of Energy and Environmental Protection's administrative fees for such program.

(n) Each producer or producer's designee, including any gas cylinder stewardship organization, shall be immune from liability for any claim of a violation of antitrust law or unfair trade practice, if such conduct is a violation of antitrust law, to the extent such producer, producer's designee or gas cylinder stewardship organization exercises authority pursuant to the provisions of this section.

(o) The Commissioner of Energy and Environmental Protection may seek civil enforcement of the provisions of this section pursuant to chapter 439 of the general statutes.

(p) Whenever, in the judgment of the Commissioner of Energy and Environmental Protection, any person has engaged in or is about to engage in any act, practice or omission that constitutes, or will constitute, a violation of any provision of this section, the Attorney General may, at the request of the commissioner, bring an action in the superior court for the judicial district of New Britain for an order enjoining such act, practice or omission. Such order may require remedial measures and direct compliance with the provisions of this section. Upon a showing by the commissioner that such person has engaged in or is about to engage in any such act, practice or omission,

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the court may issue a permanent or temporary injunction, restraining order or other order, as appropriate.

(q) Any action brought by the Attorney General pursuant to this section shall have precedence in the order of trial, as provided in section 52-191 of the general statutes.

(r) In the event that another state implements a gas cylinder recycling program, a producer or producer's designee with an approved gas cylinder stewardship plan may collaborate with such state to conserve efforts and resources used in carrying out the applicable gas cylinder stewardship program, provided such collaboration is consistent with the requirements of this section.

(s) The Commissioner of Energy and Environmental Protection may assess a reasonable fee to each producer or producer's designee with an approved gas cylinder stewardship plan for administration of the applicable gas cylinder stewardship program. The Commissioner of Energy and Environmental Protection shall determine the share to be paid by each producer or producer's designee based on the share of the gas cylinder market represented by the producer or producer's designee. The total annual fees assessed on each producer with an approved gas cylinder stewardship plan shall not exceed a rate of two thousand dollars. The Commissioner of Energy and Environmental Protection shall annually publish documentation on the department's use of such fees.

(t) Any producer who fails to participate in an approved gas cylinder stewardship plan shall not supply, sell or offer for sale gas cylinders in this state.

(u) Notwithstanding any provision of this section, upon identification of any producer who is not participating in an approved gas cylinder stewardship program, the Commissioner of Energy and

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Environmental Protection shall issue a notice of noncompliance to such producer. Not later than January first of each year following implementation of such program, the Commissioner of Energy and Environmental Protection shall issue a report to the joint standing committee of the General Assembly having cognizance of matters relating to the environment on steps taken by the commissioner to address noncompliance with the provisions of this section and shall include in such report a list of noncompliant producers that received a notice of noncompliance pursuant to this subsection and that are not in compliance as of the date of such report. The Commissioner of Energy and Environmental Protection shall publish a list of the names of producers that are compliant with the provisions of this section on the Department of Energy and Environmental Protection's Internet web site.