

2011 -- S 0459

=====
LC01744
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO HEALTH AND SAFETY - PRODUCER RESPONSIBILITY FOR
DISCARDED PRODUCTS

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

Date Introduced: March 10, 2011

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 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
18 landfill and other forms of disposal; and

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 chapter.

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

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

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 Internet.

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

1 provisions of this chapter.

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 (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 the 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 and

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 rules.

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 (3rd) 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 (2nd) 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.

=====
LC01744
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO HEALTH AND SAFETY - PRODUCER RESPONSIBILITY FOR
DISCARDED PRODUCTS

- 1 This act would provide leadership regarding the responsible recycling, reuse and disposal
- 2 of consumer products.
- 3 This act would take effect upon passage.

=====
LC01744
=====