

2016 -- S 2605

=====
LC005117
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO HEALTH AND SAFETY -- PRODUCER RESPONSIBILITY PROGRAM
FOR PRINTED PAPER AND PACKAGING

Introduced By: Senators Walaska, Felag, and McCaffrey

Date Introduced: February 25, 2016

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 18.18

4 PRODUCER RESPONSIBILITY PROGRAM FOR PRINTED PAPER AND PACKAGING

5 **23-18.18-1. Purpose. --** It is hereby established to be the policy of the state to have a
6 system of resource recovery and waste reduction that aims to:

7 (1) Minimize greenhouse gas emissions resulting from resource recovery activities and
8 waste reduction activities;

9 (2) Minimize the generation of waste, including waste from products and packaging;

10 (3) Increase the durability, reusability and recyclability of products and packaging;

11 (4) Hold persons who are most responsible for the design of products and packaging
12 responsible for the products and packaging at the end of life;

13 (5) Decrease hazardous and toxic substances in products and packaging;

14 (6) Minimize the need for waste disposal;

15 (7) Minimize the environmental impacts that result from resource recovery activities and
16 waste reduction activities, including from waste disposal;

17 (8) Minimize the impact of plastic pollution on marine and aquatic life critical to the
18 Rhode Island economy;

- 1 (9) Provide efficient, effective, convenient and reliable services related to resource
2 recovery and waste reduction, including waste management services;
- 3 (10) Increase the reuse and recycling of waste across all sectors of the economy;
- 4 (11) Increase opportunities and markets for recovered resources;
- 5 (12) Promote public education and awareness with respect to resource recovery and waste
6 reduction;
- 7 (13) Promote cooperation and coordination among various persons and entities involved
8 in resource recovery activities and waste reduction activities;
- 9 (14) Promote competition in the provision of resource recovery services and waste
10 reduction services; and
- 11 (15) Foster fairness for consumers.
- 12 **23-18.18-2. Definitions. --** For the purposes of this chapter, the following terms shall
13 have the following meanings:
- 14 (1) "Brand" means a name, symbol, word or mark that identifies a product and attributes
15 it to a producer as the owner of the brand.
- 16 (2) "Brand holder" means a person who owns or licenses a brand who otherwise has
17 rights to market a product under the brand.
- 18 (3) "Consumer" with respect to a product and its primary packaging and convenience
19 packaging, means a person who obtains the product for the person's own use.
- 20 (4) "Convenience packaging" means material used in addition to primary packaging to
21 facilitate consumers' handling or transportation of one or more products, such as boxes and bags.
- 22 (5) "Corporation" means the Rhode Island resource recovery corporation.
- 23 (6) "Designated class" means a class of products or packaging described in §23-18.18-3.
- 24 (7) "Department" means the department of environmental management.
- 25 (8) "Household" means a single detached dwelling unit or a single unit of a multiple
26 dwelling unit located in this state.
- 27 (9) "Market," with respect to products, includes:
- 28 (i) To offer the product for sale, expose it for sale or possess it for sale,
- 29 (ii) To distribute the product, whether for consideration or not, and
- 30 (iii) To lease the product, offer it for lease, expose it for lease or have it in possession for
31 lease.
- 32 (10) "Packaging material type" means the type of raw material used in the manufacturing
33 of packaging. Material types include, but are not limited to, metal, glass, plastic, and paper.
- 34 (11) "Plastic pollution" means involves the accumulation of plastic products in the

1 environment that adversely affects wildlife, wildlife habitat, or humans.

2 (12) "Primary packaging" means material that is used for the containment, protection,
3 handling, delivery and presentation of a product that is provided to a consumer at the point of
4 sale, and includes packaging designed to group one or more products for the purposes of sale, but
5 does not include convenience packaging or transport packaging.

6 (13) "Producer" means a person who:

7 (i) Has legal ownership of the brand, brand-name or co-brand of a product or material
8 sold, offered for sale, delivered or distributed in the state that results in waste packaging, whether
9 or not the producer is located in the state;

10 (ii) Makes an unbranded product that is sold, offered for sale or distributed in the state
11 that results in waste packaging; or

12 (iii) Sells packaging at retail, does not have legal ownership of the brand, and elects to
13 fulfill the responsibilities of the producer for that product.

14 (14) "Recycling" means the use of materials contained in previously manufactured goods
15 as feedstock for new products. Recycling does not include use of materials for energy recovery or
16 energy generation by combustion.

17 (15) "Recycling rate" means the percentage of packaging sold, offered for sale, delivered,
18 or distributed to households that is collected, processed, and delivered for use in manufacturing
19 processes or for recycling of usable materials.

20 (16) "Retailer" means a person that offers packaging for sale at retail through any means,
21 including remote offerings such as sales outlets, catalogues, or the Internet. For purposes of this
22 subsection, "sale at retail" does not include a sale that is a wholesale transaction with a distributor
23 or a retailer.

24 (17) "Small producer" means, with respect to the producer of a product in a designated
25 class, means one of the following:

26 (i) The producer is a charitable organization recognized by the Internal Revenue Service
27 under §501(c)3 of Internal Revenue Code;

28 (ii) The producer meets one or both of the following criteria:

29 (A) The producer has a gross revenue in the most recent calendar year of less than one
30 hundred thousand dollars (\$1,000,000) in the state; and/or

31 (B) The producer does not have more than one point of retail sale in the state;

32 (iii) For the purposes of "small producer", if the producer is operating under a franchise
33 agreement, the producer, the franchisor and the other parties with whom the franchisor has a
34 franchise agreement in relation to the same product are deemed to be a single producer.

1 (18) "Transport packaging" means material used in addition to primary packaging to
2 facilitate the handling or transportation of one or more products by persons other than consumers,
3 such as pallets, bail wrap and boxes, but does not include shipping containers designed for
4 transporting things by road, ship, rail or air.

5 **23-18.18-3. Direction to the corporation. --** (a) The corporation is hereby directed to
6 develop and promulgate rules and regulations, consistent with this chapter, establishing a product
7 stewardship program for all types of packaging which are sold, offered for sale, distributed, or
8 used in a commercial enterprise in this state. The corporation shall classify packaging material
9 into designated classes within the following types of packaging:

10 (1) Types of primary packaging associated with a product;

11 (2) Types of convenience packaging; and

12 (3) Types of transport packaging.

13 (b) For the purposes of this section, a person who is the holder of a brand associated with
14 a product in a designated class as described in this section may be required to carry out any of the
15 following responsibilities with respect to a product's packaging:

16 (1) Registration;

17 (2) Waste Reduction;

18 (3) Collection;

19 (4) Management;

20 (5) Promotion and education; and

21 (6) Reporting and record keeping.

22 (c) A person who has a commercial connection to a product in a designated class may be
23 required to carry out responsibilities under this section instead of, or in addition to, a brand holder
24 as defined in §23-18.18-2.

25 (d) For the purposes of this section a person has a commercial connection to a product in
26 a designated class includes a person who:

27 (1) Imports, wholesales, leases or retails the product, or is otherwise involved in the
28 product's distribution;

29 (2) Meets other conditions as set by regulation of the corporation or authority; or

30 (3) A regulation shall not require a person to carry out responsibilities under this section
31 with respect to a material in a designated class unless:

32 (i) The person markets a product in the designated class to a consumer in the state,
33 including through the Internet, using a catalogue system, telephone system or by a similar remote
34 sales method; and

1 (ii) The person satisfies the criteria in §23-18.18-3(e).

2 (e) For the purposes of this section, a person may be required to carry out any one or
3 more of the responsibilities listed in §23-18.18-3(b) with respect to convenience packaging or
4 transport packaging in a designated class if:

5 (1) The person is the brand holder of a product that is or was contained in, on or under the
6 packaging;

7 (2) In the case of convenience packaging, the person supplies convenience packaging in a
8 designated class to a consumer in Rhode Island;

9 (3) In the case of transport packaging, the person first uses transport packaging in a
10 designated class in the handling of transportation of a product marketed to a consumer in Rhode
11 Island, if the final destination of the packaging is in Rhode Island; or

12 (4) The person satisfies the criteria described in §23-18.18-3(b).

13 (f) For the purposes of §§23-18.18-3(d) and 23-18.18-3(e):

14 (1) A brand holder includes:

15 (i) A person who has been a brand holder but who no longer is; and
16 (ii) A person who was a brand holder before the day this section comes into force.

17 (7) A person who has a commercial connection to a product includes:

18 (i) A person who had connection to the product but who no longer does; and
19 (ii) A person who had a commercial connection to the product before the day section
20 came into force.

21 (g) The corporation shall enter into a written agreement with the department of
22 environmental management to cover actual department costs associated with the enforcement and
23 adjudication attributable to the oversight and enforcement of such rules and regulations properly
24 adopted by the corporation.

25 (h) For the purpose of recovering its costs, the corporation may:

26 (1) Set and collect fees, costs and other charges due to the corporation related to the
27 performance of its duties and exercise of its powers under this chapter or any other chapter in
28 accordance with enacted statutory requirements or properly adopted regulations of the
29 corporation;

30 (2) Establish requirements governing the payment of the fees, costs and charges
31 described in §23-18.18-3(h)(1); and

32 (3) Provide for the refund or credit of all or part of a fee, cost or charge described in §23-
33 18.18-3(h)(1).

34 (4) Any person or regulated entity who is required to pay a fee, cost or charge described

1 in subsection (a) of this section shall pay the amounts and at the times specified by the authority.

2 (i) In setting fees described in this section, the corporation shall specify their amounts and
3 the method for determining them.

4 (j) The establishment of any fee, cost or charge must be done in accordance with chapter
5 35 of title 42. All enacted fees, costs and charges shall be published by the corporation and the
6 secretary of state.

7 **23-18.18-4. Appointment of a registrar.** -- (a) The corporation shall appoint a registrar
8 who shall perform the duties assigned to them under this chapter, any other chapter, and by the
9 authority.

10 (1) The registrar may appoint one or more deputy registrars who shall perform the duties
11 assigned to them under this chapter, any other chapter, and by the registrar.

12 (2) Registrars and deputy registrars must be officers or employees of the corporation to
13 qualify for appointment to the position. Such appointment shall be made in writing.

14 **23-18.18-5. Registry.** -- (a) The registrar shall, in accordance with any enacted
15 regulations, establish and maintain and operate an electronic registry.

16 (1) The purposes of the registry are to:

17 (i) Receive information submitted to the corporation by or on behalf of a person who is
18 responsible for registering under §23-18.18-6, and by or on behalf of a person who is responsible
19 for reporting under §23-18.18-11;

20 (ii) Provide public access to all documents to be made available to the public consistent
21 under this chapter and any other chapter; and

22 (iii) Provide public notice of information relating to fees set under this chapter.

23 (2) The registrar may determine that information, reports, records or documents
24 submitted to the registry is incomplete or inaccurate. The registrar may require a person filing
25 incomplete or inaccurate information, reports, records or documents to make them complete and
26 accurate, and such person shall comply with the requirement.

27 (3) The registrar shall include in the registry any information deemed incomplete or
28 inaccurate with a notation as such.

29 (4) The registrar shall also publish subsequently submitted information once it has been
30 determined complete and accurate.

31 (5) The registrar may refuse to accept any information submitted to the authority if it
32 does not comply with the requirements of this chapter or any subsequent regulations.

33 **23-18.18-6. Responsibility to register.** -- (a) Producers of packaging material in a
34 designated class seeking to sell in or into the state must register with the corporation through the

1 registry, in accordance with the regulations and procedures established by the registrar. The
2 corporation regulations may require that a person include the following information in a
3 registration:

4 (1) A list or description of products and packaging with respect to which the producer is
5 required to carry out a responsibility under this chapter;

6 (2) A list of the person(s) retained to provide services in relation to the producer's
7 responsibility under this chapter;

8 (3) A description of how the producer is fulfilling or plans to fulfill the producer's
9 responsibilities under this chapter; and

10 (4) Other information with respect to activities the producer engages in that affect
11 resource recovery or waste reduction in the state.

12 **23-18.18-7. Responsibility to reduce waste.** -- (a) The corporation may promulgate rules
13 and regulations requiring a producer to reduce the amount of waste generated in connection with
14 prescribed material in a designated class at the end of the material's life in accordance with
15 prescribed requirements.

16 (b) The following limitations apply to any rule or regulation promulgated under §23-
17 18.18-7(1):

18 (1) A producer shall not be required to reduce waste unless the producer:

19 (i) Is the brand holder of a product in a designated class; or

20 (ii) Supplies convenience packaging or transport packaging that displays a brand the
21 producer holds.

22 (2) A producer's responsibility for reducing waste applies only with respect to the
23 material with which the producer is associated within a designated class.

24 (c) A producer with a waste reduction responsibility with respect to a designated class
25 may take steps to design material in the class so as to:

26 (1) Increase the material's reusability and recyclability;

27 (2) Reduce or eliminate any impact the material may have on the recyclability of other
28 materials in the class;

29 (3) Reduce the amount of waste generated at the end of the product's or packaging's life;

30 (4) Reduce or eliminate the use of any substance in the material; or

31 (5) Increase the use of recovered resources in the making of the material.

32 **23-18.18-8. Responsibility for collection system.** -- (a) The corporation may promulgate
33 rules and regulations requiring a producer to establish and operate a collection system for
34 prescribed material in a designated class in accordance with the prescribed requirements.

1 (b) Without limiting the generality of §22-18.18-8(a), such rules and regulations may
2 require that a producer:

3 (1) Must collect prescribed material in the designated class in accordance with the
4 prescribed requirements;

5 (2) Must collect the producer's packaging associated with the person's own product, or
6 collect any packaging in the designated class;

7 (3) Must ensure that the collection system is operated for the prescribed period of time;

8 (4) Must ensure that the prescribed services, facilities and activities for the collection of
9 the material are provided in accordance with the prescribed requirements;

10 (5) Must ensure that services, facilities and activities for the collection of the materials
11 that are prohibited under the regulations are provided;

12 (6) Must ensure that material is collected in the prescribed quantities;

13 (7) Must collect the material from a person who offers the materials for collection or
14 from another entity; or

15 (8) Must not engage in methods of collection that are prohibited under the regulations.

16 (c) A person responsible for establishing and operating a collection system shall ensure
17 that the system does not impose a charge at the time of the collection.

18 **23-18.18-9. Responsibility to manage collected material. --** (a) The corporation may
19 promulgate rules and regulations requiring a producer that is responsible for collecting material in
20 a designated class to be also responsible for establishing and operating a system, in accordance
21 with prescribed requirements, for managing the material collected with respect to the class.

22 (b) Without limiting the generality of §23-18.18-9(a), such rules and regulations may
23 provide that a producer responsible for managing material shall handle, reuse, recycle, recover
24 resources from, and dispose of the material in accordance with the prescribed requirements, and
25 may provide that a producer:

26 (1) Must allow for the material or part of the material to be:

27 (i) Reused for a purpose that is the same as or similar to its original purpose;

28 (ii) Used in the making of new products, packaging or other things; or

29 (iii) Used as a nutrient for improving the quality of soil, agriculture or landscaping.

30 (2) Must not engage in methods of handling, reusing, recycling, recovering resources
31 from, or disposing of the material that are prohibited.

32 **23-18.18-10. Responsibility for promotion and education. --** (a) For the purpose of
33 increasing collection, reuse, recycling or recovery of material in a designated class, the
34 corporation may promulgate rules and regulations that requires producers to implement a

1 promotion and education program with respect to the collection system or management system
2 for that class in accordance with the prescribed requirement.

3 (b) The corporation's rules and regulations, for the purpose of increasing the collection,
4 reuse, recycling or recovery of material in a designated class, may require that persons
5 performing an activity related to resource recovery or waste reduction in the state, other than a
6 producer are responsible for implementing a promotion and education program with respect to the
7 collection of material in a designated class in accordance with the rule or regulation.

8 (c) A rule or regulation may provide that reduced or alternate responsibilities with respect
9 to collection, management or promotion and education apply where a material's design satisfies
10 prescribed requirements.

11 **23-18.18-11. Responsibility to keep records and report.** -- (a) The corporation may
12 promulgate rules and regulations that requires a producer to create, maintain and store documents
13 and data and shall submit documents or data to the corporation.

14 (b) The corporation may issue a rule or regulation that requires a person other than that
15 described in §23-18.18-11(a) who is performing an activity related to resource recovery and/or
16 waste reduction to create, maintain and store documents and data to submit the documents or data
17 to the corporation and prepare an annual report with respect to these activities in accordance with
18 all applicable rules and regulations and submit such report to the corporation.

19 (c) The corporation's regulation may require a producer or other entity with
20 responsibilities under §§23-18.18-6 through 23-18.18-10, inclusive, to cause an audit to be
21 undertaken to review the practices and procedures that the regulated entity has implemented or
22 will implement in order to comply with the applicable sections.

23 (d) The corporation's rules and regulations may require that data, documents or reports
24 required under this section be accompanied by the opinion of a prescribed person respecting the
25 accuracy of the data, documents or reports.

26 **23-18.18-12. Duty of producers.** -- (a) Except as otherwise specifically provided in the
27 general laws, a producer of designated class of packaging, if it desires to sell, offer for sale,
28 distribute or otherwise engage in commerce in the state, must demonstrate compliance with rules
29 and regulations established by the corporation.

30 (b) If a franchisor and a franchisee operating under a franchise agreement are producers
31 in relation to the same product, the duties set out by rule and regulation must be carried out by the
32 franchisor.

33 (c) If a producer appoints a third party to carry out the duties of a producer under this
34 section on behalf of the producer, before the third party begins to carry out those duties, it must

1 notify the third party in writing of the appointment, specifying the duties under this section that
2 the third party will perform on behalf of the producer.

3 (d) Before a third party begins to carry out duties on behalf of a producer, the third party
4 must:

5 (1) Confirm in writing to the corporation the duties under this section that the third party
6 will perform on behalf of each producer that has joined the third-party organization; and

7 (2) Comply with all laws, rules and regulations with respect to the duties referenced in
8 §23-18.18-12(4)(a).

9 (e) On the request of the corporation, a third-party organization must provide the
10 corporation with either or both of the following:

11 (1) A list of producers the third party currently represents;

12 (2) A copy of any notification the third party received under §23-18.18-12.

13 (f) A third party appointed by a producer under §23-18.18-12 must, as soon as
14 practicable, notify the producer of the following:

15 (1) Any written notices or orders sent by the corporation to the third party alleging non-
16 compliance with one or more requirements of the general laws, rules or regulations of the
17 corporation.

18 (2) The third party is charged with a violation of the general laws, rules or regulations.

19 (3) The third party is convicted of a violation of the general laws, rules or regulations.

20 (g) Producers must, consistent with corporation regulations, submit all required data to
21 the registrar.

22 **23-18.18-13. Goal for producers. --** (a) The corporation shall require that producers
23 achieve a seventy-five percent (75%) recycling rate for all packaging in designated classes within
24 two (2) years from the enactment of this chapter.

25 (b) The corporation shall establish litter reduction goals based upon the collection and
26 analysis of data generated by existing litter cleanup efforts, including, but not limited to, those
27 taking place on roadsides and beaches.

28 (c) The corporation shall require producers to develop, individually or collectively, a
29 program to work with local, regional and national groups engaged in preventing plastic pollution
30 to determine baseline data on what types of materials end up as plastic pollution and the methods
31 by which such material travels into intrastate state waters, interstate waters and the ocean,
32 including bays, estuaries and tidal regions, in order to identify the most effective ways to mitigate
33 the impacts of plastic pollution and provide for future plastic pollution prevention.

34 (d) Producers of materials which are designated by the corporation, the department or any

1 other state or federal agency as a major source of plastic pollution shall be required to develop
2 and implement a plan to monitor and reduce plastic pollution created by its products and report
3 data to the according to rules and regulations of the corporation.

4 **23-18.18-14. Management of discarded packaging. --** A producer must manage all
5 packaging materials in a designated class that is collected in adherence with the following
6 descending order of preference, such that pollution prevention is not undertaken at one level
7 unless or until all feasible opportunities for pollution prevention at a higher level have been taken:

8 (1) Reuse of the material;

9 (2) Recycle the material;

10 (3) Dispose of the material as waste in compliance with all other laws, rules and
11 regulations.

12 **23-18.18-15. Reporting. --** (a) On or before April 1 of every year, a producer is required
13 to submit a report to the corporation with respect to the previous January 1 through December 31
14 calendar year.

15 (b) The report must include the following:

16 (1) Description of education materials and strategies used by the producer;

17 (2) The location of collection facilities and changes to the number or location of
18 collection facilities used by the producer, including those operated by producer or contracted with
19 the producer;

20 (3) Efforts taken by or on behalf of the producer to reduce environmental impacts through
21 the life-cycle of the packaging used and to increase reusability or recyclability at the end of life;

22 (4) Description of how the producer's packaging material is recovered consistent with the
23 pollution prevention hierarchy in §23-18.18-14;

24 (5) Total amount of the producer's packaging sold and collected and the producer's
25 recovery rate, measured in tons; and

26 (6) A comparison of performance for the year with the performance requirements set in
27 law or by rules or regulations of the corporation.

28 (c) If a producer has delegated any of its responsibility to a third party, that third party is
29 subject to this section for those responsibilities which it has been delegated. A producer is
30 ultimately responsible for the data included in any third-party report with respect to the material
31 for which it is responsible.

32 **23-18.18-16. Small producer requirements. --** Small producers, as defined in §23-
33 18.18-2 may meet its responsibility by paying an annual fee of one hundred dollars (\$100) to the
34 corporation to be used to support any and all efforts that the corporation deems appropriate to

1 [develop and maintain infrastructure necessary to manage the small producer's packaging material.](#)
2 **23-18.18-17. Collection requirements.** -- [The corporation may promulgate any and all](#)
3 [rules and regulations, consistent with §23-18.18-8, necessary to provide, at a minimum, collection](#)
4 [infrastructure which is no less convenient for residents of the state at the date of passage of this](#)
5 [act.](#)

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

=====
LC005117
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- PRODUCER RESPONSIBILITY PROGRAM
FOR PRINTED PAPER AND PACKAGING

- 1 This act would establish a producer responsibility program for printed paper and
- 2 packaging.
- 3 This act would take effect upon passage.

=====
LC005117
=====