

2023 -- S 0200

LC000974

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO HEALTH AND SAFETY -- EXTENDED PRODUCER RESPONSIBILITY
FOR PACKAGING

Introduced By: Senators Valverde, Gu, Sosnowski, Lawson, Raptakis, DiMario, Miller,
Ujifusa, and Mack

Date Introduced: February 16, 2023

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 99

4 EXTENDED PRODUCER RESPONSIBILITY FOR PACKAGING

5 **23-99-1. Findings -- Purpose.**

6 (a) Towns and cities in Rhode Island bear much of the burden of recycling and disposing
7 of post-consumer waste; however, they have little control over sources of waste, particularly
8 packaging waste.

9 (b) Unrecyclable single-use packaging is a common contaminant in recycling loads in
10 Rhode Island. Recycling loads rejected from the Rhode Island resource recovery materials
11 recycling facility contribute to waste and recycling costs borne by towns and cities.

12 (c) Rhode Island's central landfill is projected to reach capacity by 2034. Single-use
13 packaging makes up approximately sixteen percent (16%) of the waste buried in the landfill each
14 year.

15 (d) Single-use plastic packaging is a significant contributor to litter and ocean debris. As
16 of 2022, more than sixteen million tons (16,000,000 tt) of plastic waste washes into the ocean each
17 year.

18 (e) Single-use packaging has significant environmental impacts on a local and global scale,

1 including polluting our waters, contributing to climate-damaging emissions, and creating litter.

2 (f) It is in the best interests of the health, safety, and welfare of residents and visitors to
3 Rhode Island to protect our environment and natural resources by reducing non-reusable, non-
4 recyclable, and toxic packaging and to achieve a more equitable relationship between packaging
5 producers and local governments and communities.

6 **23-99-2. Definitions.**

7 As used in this chapter:

8 (1) "Auditor general" means the person appointed pursuant to § 22-13-1 to carry out the
9 duties specified in § 22-13-4.

10 (2) "Beverage container" means a container used to contain all drinks in liquid form and
11 intended for human consumption.

12 (3) "Bio-plastic" or "bio-plastics" means plastic produced from biological sources such as
13 vegetable fats and oils, polysaccharides, sugar, proteins, or other materials that are designed to be
14 biodegradable.

15 (4) "Brand" means any mark, word, name, symbol, design, device, or graphical element or
16 a combination thereof, including a registered or unregistered trademark, that identifies and
17 distinguishes a product from other products.

18 (5) "Commissioner" means the commissioner of the department of environmental
19 management.

20 (6) "Department" means the Rhode Island department of environmental management.

21 (7) "Discarded/discards" means packaging material that has been used for its intended
22 purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be
23 managed through reuse, recycling, or disposal.

24 (8) "Disposal" means the landfilling or incineration of packaging material. "Disposal" shall
25 also include energy recovery or energy generation by any means, including, but not limited to,
26 combustion, pyrolysis, gasification, solvolysis, thermal desorption, waste to fuel, or any other
27 chemical conversion process, or molecular conversion process. "Disposal" shall also include the
28 use of materials as landfill cover.

29 (9) "Environmental justice community" means any neighborhood or community which is
30 composed predominantly of persons of color or persons below the poverty line, that is subject to a
31 disproportionate burden of environmental hazards.

32 (10) "Inspector general" means the individual appointed pursuant to § 23-99-14.

33 (11) "Local government" means any municipal corporation, governmental subdivision of
34 the state, local government unit, special district, school, local or regional board, commission, or

1 authority authorized by law to plan or provide for waste management services for a specific
2 geographical area.

3 (12) "Packaging" or "packaging material" means a discrete material or category of material,
4 regardless of recyclability, including, but not limited to, such material types as paper, plastic, glass,
5 metal, or multi-material, that is used for the containment, protection, handling, delivery, transport,
6 distribution, or presentation of another product that is sold, offered for sale, imported, or distributed
7 in the state.

8 "Packaging" and "packaging material" do not include:

9 (i) "Medical devices and packaging" which are included with products regulated as a drug,
10 medical device, or dietary supplement by the United States Food and Drug Administration under
11 the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 321 et seq., Sec. 3.2(E) of 21 U.S. Code
12 of Federal Regulations, or the Dietary Supplement Health and Education Act;

13 (ii) "Animal biologics", including vaccines, bacterins, antisera, diagnostic kits, and other
14 products or biological origin, and other covered materials regulated by the United States
15 Department of Agriculture under the Virus, Serum, Toxin Act, 21 U.S.C. Sec. 151-159;

16 (iii) Packaging regulated by the federal Insecticide, Fungicide, and Rodenticide Act, 7
17 U.S.C. Sec. 136 et seq. or other applicable federal law, rule, or regulation; and

18 (iv) Beverage containers subject to a returnable container deposit, if applicable.

19 (13) "Packaging reduction organization" means the nonprofit entity or entities contracted
20 by the department and authorized to collect producer fees, assist producers with compliance with
21 the requirements of this chapter, provide technical assistance to producers, and implement the
22 packaging reduction and recycling program.

23 (14) "Packaging reduction and recycling program" or "program" means the program
24 implemented by the packaging reduction organization, and overseen by the department, to reduce
25 packaging, assess and collect information and payments from producers based on the amount of
26 packaging used by the producer to contain, protect, deliver, present, or distribute their products, in
27 order to pay for the development of packaging reduction programs including, but not limited to,
28 reusable and refillable packaging systems and infrastructure, reimbursements to local government
29 to cover the cost of packaging recycling, and investments in education and outreach.

30 (15) "Post-consumer recycled material" means new material produced using material
31 resulting from the recovery, separation, collection and reprocessing of material that would
32 otherwise be disposed of or processed as waste and that was originally sold for consumption. "Post-
33 consumer recycled material" does not include post-industrial material or pre-consumer material, or
34 material generated by means of advanced recycling, chemical recycling, combustion, gasification,

1 incineration, pyrolysis, solvolysis, thermal desorption, waste-to-energy, waste-to-fuel, or any other
2 chemical or molecular conversion process.

3 (16) "Producer" means:

4 (i) A person or entity that manufactures or uses in commercial enterprise a product sold,
5 offered for sale, contained, protected, delivered, presented, or distributed in or using packaging into
6 the state under the brand of the manufacture; or

7 (ii) If subsection (16)(i) of this section does not apply, a person or entity that is not the
8 manufacturer of the product, but is the owner or licensee of a trademark, regardless of whether the
9 trademark is registered, under which a product is sold, offered for sale, contained, protected,
10 delivered, presented, or distributed in or using packaging; or

11 (iii) If subsections (16)(i) and (16)(ii) of this section do not apply, a person or entity that
12 imports a product that is contained, protected, delivered, or presented in packaging, into the United
13 States or the state for use in commercial enterprise in the state; or

14 (iv) An entity that manufactures or uses in a commercial enterprise, sells, offers for sale,
15 or distributes the packaging material in the state under the brand of the manufacturer; and

16 (v) "Producer" includes a franchisor of a franchise located in the state but does not include
17 the franchisee operating that franchise.

18 (17) "Product line" means a group of related products all marketed under a single brand
19 name that is sold by the same producer to distinguish products from each other for better usability
20 for customers.

21 (18) "Recyclable" means a product or packaging material:

22 (i) That can be sorted by entities that process post-consumer materials generated in the
23 state;

24 (ii) That has a consistent regional market for purchase by end users in the production of
25 new products; and

26 (iii) Which can be recycled with minimal losses of material during processing and
27 manufacturing. Whether a product or packaging type meets these criteria shall be determined by an
28 annual review process as described in § 23-99-6.

29 "Recyclable" does not include material processed through advanced recycling, chemical
30 recycling, combustion, gasification, incineration, pyrolysis, solvolysis, thermal desorption, waste-
31 to-energy, waste-to-fuel, or any other chemical or molecular conversion process.

32 (19) "Recycled" means the use of discarded packaging materials or products in the
33 production of a new product or packaging in place of virgin materials. Material will not be
34 considered "recycled" if it is used as landfill cover. "Recycled" material does not include

1 contaminants, residues, and other process losses.

2 (20) "Recycling" means the series of activities by which material is:

3 (i) Collected, transported, sorted, and processed;

4 (ii) Used in industrial feedstocks in place of virgin materials to manufacture new products

5 with minimal loss of material quality and quantity, as determined through the process set forth in §

6 23-99-6. "Recycling" does not include energy recovery or energy generation by any means,

7 including, but not limited to, advanced recycling, chemical recycling, combustion, gasification,

8 incineration, pyrolysis, solvolysis, thermal desorption, waste-to-energy, waste-to-fuel, or any other

9 chemical or molecular conversion process. It also does not include landfill disposal of discarded

10 material or discarded product component materials, including the use of materials as landfill cover.

11 (21) "Recycling rate" means the percentage of any given packaging type that is ultimately

12 recycled. The recycling rate for any packaging material shall be calculated as the total weight of

13 packaging that is recycled in a given year divided by the total weight of packaging generated.

14 Material losses (contaminants and residues) accruing during collection, processing and

15 manufacturing new products do not count as recycled and should not be in the numerator of the

16 equation.

17 (22) "Reuse" means the return of packaging back into the economic stream for use in the

18 same kind of application intended for the original packaging, without effectuating a change in the

19 original composition of the package, the identity of the product, or the components thereof.

20 (23) "Reuse and refill system" means a program or set of mechanisms designed to facilitate

21 multiple uses of packaging. Mechanisms may include, but are not limited to, deposits, incentives,

22 curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution

23 networks.

24 (24) "Reusable or refillable packaging and containers" means packaging material and

25 containers that are specifically designed and manufactured to maintain its shape and structure, and

26 be materially durable for repeated sanitizing, washing, and reuse.

27 (25) "Toxic substance" means a chemical or chemical class identified by a state agency,

28 federal agency, international intergovernmental agency, accredited research university, or other

29 scientific entity deemed authoritative by the department on the basis of credible scientific evidence

30 as being one or more of the following:

31 (i) A chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant,

32 immunotoxin, neurotoxicant, or endocrine disruptor;

33 (ii) A chemical or chemical class that is persistent or bioaccumulative;

34 (iii) A chemical or chemical class that may harm the normal development of a fetus or child

1 or cause other developmental toxicity in humans or wildlife;

2 (iv) A chemical or chemical class that may harm organs or cause other systemic toxicity;

3 (v) A chemical or chemical class that may have adverse air quality impacts, adverse
4 ecological impacts, adverse soil quality impacts, or adverse water quality impacts; or

5 (vi) A chemical or chemical class that the department has determined has equivalent
6 toxicity to the criteria listed in this definition.

7 (26) "Unit" means each discrete component of a package or container, including material
8 that is used for the containment, protection, handling, delivery, transport, distribution, and
9 presentation of a product that is sold, offered for sale, imported, or distributed in the state, including
10 through Internet transactions.

11 (27) "Universal Product Code" or "UPC" means a standard for encoding a set of lines and
12 spaces that can be scanned and interpreted into numbers for product identification purposes.
13 "Universal product code" includes any industry-accepted barcode used for product identification
14 purposes in a manner similar to a UPC, including, but not limited to, a European Article Number.

15 **23-99-3. Packaging reduction and recycling program.**

16 (a) This chapter establishes a packaging reduction and recycling program by which
17 producers who sell, offer for sale, or distribute products contained, protected, delivered, presented,
18 or distributed in packaging shall pay fees based on the quantity and type of packaging used in the
19 state. The fees shall be used to fund the administration of this program. Producers shall also be
20 required to make changes to the design of their products in order to meet packaging reduction and
21 recycling requirements.

22 (b) The department shall contract with a 501(c)(3) nonprofit, to act as the packaging
23 reduction organization, which shall collect packaging reduction, generation, and recycling
24 information and fee payments, as described in § 23-99-9, from participating producers. The
25 payments collected from producers shall be deposited into the packaging reduction fund to
26 reimburse local governments for the costs associated with reducing and managing packaging waste,
27 reimburse the department for their administration of the program, and to support eligible projects
28 that reduce packaging waste by investing in packaging reduction and elimination, reuse and refill
29 systems and programs, recycling infrastructure, and comprehensive multi-media educational
30 programs.

31 (c) No later than eighteen (18) months after the effective date of this chapter, the
32 department shall conduct a statewide packaging reduction, reuse, and recycling needs assessment
33 as described in § 23-99-8 to determine the current state of packaging reuse, recycling, and disposal,
34 and to identify barriers and opportunities to reduce the amount of packaging discarded and disposed

1 of, and to increase the reusability and recyclability of packaging.

2 (d) The auditor general shall conduct an annual audit of the program, including, but not
3 limited to, the amount of money received; the amount of money sent to local governments; the
4 amount of money used to invest in reduction, recycling, and reuse programs and services by the
5 packaging reduction organization and any state offices; the amount of discarded packaging
6 generated, reduced, and recycled; any recommendations for improvement of the program. The audit
7 shall be a public document.

8 **23-99-4. Producer responsibilities and exemptions of small producers.**

9 (a) One year after the selection of the packaging reduction organization as required by §
10 23-99-5, a producer shall not sell, offer for sale, or distribute into the state a product contained,
11 protected, delivered, presented, or distributed in packaging unless the producer is:

12 (1) Registered with the packaging reduction organization; and

13 (2) In full compliance with all requirements of this chapter.

14 (b) A producer shall annually report to the packaging reduction organization:

15 (1) The total amount, by unit, of each type of packaging material sold, offered for sale, or
16 distributed for sale into the state by the producer in the prior calendar year;

17 (2) All information necessary for producer and the packaging reduction organization to
18 meet its obligations required pursuant to § 23-99-6.

19 (c) A producer shall annually submit a written statement, signed by the chief executive
20 officer, verifying the producer's compliance with:

21 (1) The toxic substance reduction requirements of § 23-99-13;

22 (2) The packaging reduction requirements of § 23-99-11; and

23 (3) The packaging recycling requirements of § 23-99-12.

24 (d) A producer is exempt from the requirements and prohibitions of this chapter in a
25 calendar year in which:

26 (1) The producer realized less than one million dollars (\$1,000,000) in total gross revenue
27 during the prior calendar year; or

28 (2) The producer sold, offered for sale, or distributed for sale products contained, protected,
29 delivered, presented, or distributed in or using less than one ton of packaging material in total during
30 the prior calendar year.

31 (e) A producer claiming an exemption under this section shall provide the department with
32 sufficient information to demonstrate that the claimant is eligible for an exemption.

33 **23-99-5. Selection of the packaging reduction organization.**

34 (a) Consistent with the requirements of this section, within one year after the promulgation

1 of rules as required by § 23-99-15, the department shall select and enter into a contract with a
2 501(c)(3) nonprofit organization to act as the packaging reduction organization in order to operate
3 the packaging reduction and recycling program for a period of ten (10) years.

4 (b) Consistent with applicable competitive bidding requirements under state purchasing
5 laws and following the initial adoption of rules by the department pursuant to § 23-99-15, the
6 department shall issue a request for a proposal for the operation of the packaging reduction and
7 recycling program. The proposals shall be required to cover the ten (10) year operation of the
8 program by the successful bidder and shall be required to include, at a minimum, the following
9 information:

10 (1) A description of how the bidder will administer the packaging reduction and recycling
11 program, including the mechanisms and processes for providing assistance to producers to comply
12 with the reporting requirements of this chapter;

13 (2) The mechanisms and processes the bidder will use to compile information from
14 participating producers;

15 (3) How the bidder intends to establish and manage the packaging reduction fund,
16 including, but not limited to, public participation, the staffing the bidder intends to use for
17 management of the fund, and the plan for providing technical support to interested persons
18 regarding use of the funds;

19 (4) A financial assurance plan that ensures all funds held in the packaging reduction fund
20 are immediately and exclusively forfeited and transferred to or otherwise made immediately
21 available to the department if the packaging reduction organization contract with the department is
22 terminated by the department, or expires;

23 (5) A proposed budget outlining the anticipated costs of operating the producer
24 responsibility program, including identification of any start-up costs that will not be ongoing and a
25 description of the method by which the bidder intends to determine and collect producer payments
26 during the initial startup period;

27 (6) A certification that the bidder will not share, except with the department, information
28 provided to the bidder by a producer that is proprietary information and that is identified by the
29 producer as proprietary information. The certification shall include a description of the methods by
30 which the bidder intends to ensure the confidentiality of such information; and

31 (7) Any other additional information required by the department.

32 (c) If, at the close of the competitive bidding process set forth in this section, the department
33 determines that no bidder has submitted, in accordance with this section, a proposal that meets the
34 requirements of this section, the department shall run the program by itself or a designated state

1 public body.

2 **23-99-6. Responsibilities of the packaging reduction organization.**

3 (a) The packaging reduction organization shall:

4 (1) Register all producers;

5 (2) Collect and compile data from producers as required by § 23-99-4;

6 (3) Collect fees due from producers as required by § 23-99-9;

7 (4) Reimburse the department and the auditor general for the costs associated with
8 conducting the needs assessment required by § 23-99-8;

9 (5) Distribute funds to reimburse local governments and private companies for the costs
10 associated with the implementation of reduction and refill and reuse programs, collection,
11 transportation, and recycling of packaging materials as required by § 23-99-10;

12 (6) Make recommendations to the department regarding investments toward packaging
13 reduction, reuse, and recycling as required by § 23-99-10; and

14 (7) Offer technical support to participating producers, with an emphasis on support to small
15 businesses, to assist them with compliance with the requirements of this chapter, including
16 information about procuring affordable alternatives to non-compliant packaging and reducing
17 packaging.

18 (b) Annually, the packaging reduction organization shall submit a report to the department
19 that, at a minimum, shall include the following information:

20 (1) Contract information for the packaging reduction organization;

21 (2) A list of all participating producers, brand(s), and products identified by the Universal
22 Product Code (UPC) that the producer sells, offers for sale, or distributes into the state that are
23 contained, protected, delivered, presented, or distributed in or using packaging;

24 (3) The total amount, by both weight and number of units of each type of packaging
25 material used to contain, protect, handle, deliver, transport, distribute, or present products sold,
26 offered for sale, or distributed into the state by each individual producer during the prior calendar
27 year;

28 (4) The total amount, by both weight and number of units, of each type of packaging
29 material used to contain, protect, handle, deliver, transport, distribute, or present products sold,
30 offered for sale, or distributed into the state by all producers during the prior calendar year.

31 (5) A complete accounting of all payments made to and by the packaging reduction
32 organization during the prior calendar year;

33 (6) A list of producers believed to be out of compliance with the requirements of this
34 chapter, and the reason the packaging reduction organization believes the producer to be out of

1 compliance. Information on non-compliant companies shall be provided to the attorney general's
2 office in a timely fashion and for possible enforcement action by that office;

3 (7) A description of the educational and outreach efforts made by the packaging reduction
4 organization in the prior calendar year, and how those efforts were designed to reduce packaging
5 waste, and increase reuse and recycling of packaging materials;

6 (8) An assessment of whether the fee structure adopted by the department pursuant to § 23-
7 99-9 has been effective in incentivizing improvements to the design of packaging material,
8 including actual reduction of packaging, increases in reusable and refillable packaging, recycling
9 rates for packaging materials, and decreases in the amount of packaging;

10 (9) A description of the reimbursements and expenditures made pursuant to § 23-99-10;
11 and

12 (10) Any additional information required by the department.

13 (c) The packaging reduction organization shall conduct an annual review process to
14 determine whether products and packaging materials are recyclable. This review shall be conducted
15 in consultation with representatives of end markets, including recycled commodities brokers and
16 manufacturers who purchase post-consumer material for use in manufacturing new products. For
17 the purposes of calculating producer payments and municipal reimbursements in accordance with
18 this chapter, this annual process shall include a transitional period between the date the
19 determination is finalized and the date it goes into effect.

20 (d) The packaging reduction organization shall conduct public outreach and provide
21 consumers with educational and informational materials related to reducing the amount of
22 packaging discarded, recycled, and disposed of in the state. The outreach and education shall, at a
23 minimum, include:

24 (1) A description of the environmental, social, economic, and environmental justice impact
25 associated with improper disposal of packaging materials;

26 (2) At least three (3) public hearings in geographically diverse parts of the state each year,
27 to solicit public input on the implementation and effectiveness of this chapter and suggested
28 improvements;

29 (3) Information regarding the management of discarded packaging including reuse,
30 recycling, composting, and disposal by landfilling and incineration;

31 (4) The location and availability of curbside and drop-off collection opportunities for
32 packaging waste, including deposit and take-back programs;

33 (5) Description of the environmental, social, economic, and environmental justice impact
34 associated with failure to reuse or recycle packaging materials;

1 (6) Information regarding municipal reimbursement for the costs associated with
2 packaging reuse, recycling, and disposal; and

3 (7) Any other information required by the department.

4 (e) The public outreach and education conducted by the packaging reduction organization
5 shall:

6 (1) Utilize all available forms of media, including, but not limited to, television, radio,
7 print, electronic, and web-based media to provide information directly to residents in the state, in
8 multiple languages;

9 (2) Be coordinated with the various local governments in the state to incorporate electronic,
10 print, web-based and social media elements that individual local governments may elect to use, at
11 their discretion, to provide education directly to their residents;

12 (3) Be provided to producers for inclusion on their packaging's label to inform consumers
13 about the methods to responsibly reuse, recycle, or dispose of the packaging; and

14 (4) Be coordinated with other similar public outreach and education programs in the state
15 as necessary to avoid consumer confusion and facilitate the consolidation of available resources.

16 (f) In addition to engaging in the public education and outreach required by this section,
17 the packaging reduction organization shall be authorized to provide producers and retailers with
18 educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded
19 packaging. The educational and informational materials provided to the retailer under this
20 subsection may include, but need not be limited to, printed materials, signage, templates of
21 materials that can be reproduced by retailers and provided thereby to consumers at the time of a
22 product's purchase, and advertising materials that promote and encourage consumers to properly
23 reuse, recycle, or dispose of packaging materials.

24 (g) The packaging reduction organization shall not spend funds on lobbying federal, state,
25 or local governments or the making of campaign contributions to any candidates running for office.

26 **23-99-7. Responsibilities of the department.**

27 (a) Beginning one year after the selection of the packaging reduction organization pursuant
28 to § 23-99-5, and annually thereafter, the department shall work with the packaging reduction
29 organization to:

30 (1) Calculate the amount of packaging that was generated during the prior calendar year;

31 (2) Calculate the recycling rate for all packaging during the prior calendar year;

32 (3) Calculate the recycling rate for each packaging material type during the prior calendar
33 year; and

34 (4) Develop a list of producers believed to be out of compliance with the requirements of

1 this chapter.

2 (b) In the event that the department determines that the packaging reduction organization
3 no longer meets the requirements of this chapter or fails to implement and administer the
4 requirements of this chapter in a manner that effectuates the purposes of this chapter, the department
5 shall revoke its approval of the packaging reduction organization and shall select a new packaging
6 reduction organization to replace it, or, in the alternative, may elect to operate the program itself.

7 (c) The department or attorney general shall take enforcement action against all non-
8 compliant producers in accordance with § 23-99-16.

9 **23-99-8. Statewide reduction, reuse, and recycling needs assessment.**

10 (a) Consistent with applicable competitive bidding requirements, within one year after
11 promulgating the rules and regulations required to implement this chapter, and every five (5) years
12 thereafter, the department shall issue a request for proposals to conduct a statewide packaging
13 reduction, reuse, and recycling needs assessment, hereinafter "needs assessment", to identify
14 barriers and opportunities for reducing, reusing, and recycling packaging materials. The proposals
15 shall include, at a minimum, a description of how the bidder will conduct the needs assessment to
16 evaluate the following:

17 (1) The current recycling rate for each type of packaging material;

18 (2) The amount, by weight and material type, of packaging recycled at each recycling
19 facility that accepts discarded packaging generated in the state;

20 (3) The processing capacity, market conditions, and opportunities in the state and
21 regionally for recyclable materials;

22 (4) The net cost of end-of-life management of discarded packaging in the state, including
23 the cost associated with the collection, transportation, sorting, recycling, landfilling, or
24 incineration of discarded packaging;

25 (5) The availability of opportunities in the recycling, and reuse system for businesses
26 owned by women and people of color;

27 (6) Current barriers affecting recycling access and availability in the state;

28 (7) Current barriers to the marketability of recyclable materials generated in the state;

29 (8) Opportunities for the creation of packaging reuse and refill programs in the state;

30 (9) Opportunities for the improvement of packaging recycling in the state, including the
31 development of end markets for recycled packaging materials;

32 (10) Current barriers affecting the creation and implementation of packaging reuse and
33 refill programs; and

34 (11) Consumer education needs in the state with respect to packaging waste reduction,

1 recycling, reducing contamination in recycling, and reuse and refill systems for packaging.

2 (b) After reviewing proposals, the department shall select an applicant to perform the needs
3 assessment. If, at the close of the competitive bidding process, the department determines that no
4 applicant can successfully perform the needs assessment, the department shall perform the needs
5 assessment itself, or designate another state office to do it.

6 (c) The cost incurred by the department or designee associated with conducting the needs
7 assessment shall be paid for by funds from the packaging reduction and recycling fund.

8 (d) The department shall report the results of the study to the public, the media, state
9 legislature, the governor, the auditor general and the attorney general, who are all directed to
10 coordinate enforcement of this law.

11 **23-99-9. Assessment of fees.**

12 (a) The department shall promulgate regulations setting forth the manner in which producer
13 payments on packaging materials shall be calculated and assessed.

14 (b) The payments shall be calculated based on the total amount, by weight, of each type of
15 packaging material used to contain, protect, deliver, present, or distribute a product sold, offered
16 for sale, or distributed into the state by the producer in the prior calendar year.

17 (c) The list of packaging material types for which there is a specific fee shall include, at a
18 minimum, the following material types:

19 (1) Polyethylene terephthalate (PET or PETE);

20 (2) High density polyethylene (HDPE);

21 (3) Polyvinyl Chloride (PVC);

22 (4) Low density polyethylene (LDPE);

23 (5) Polypropylene (PP);

24 (6) Polystyrene (PS) including expanded polystyrene;

25 (7) Other plastic resin types not specifically identified here;

26 (8) Bio-plastics;

27 (9) Paper;

28 (10) Cardboard;

29 (11) Wood;

30 (12) Glass;

31 (13) Bi-metal, steel and other ferrous metals;

32 (14) Aluminum and other non-ferrous metals;

33 (15) Mixed materials including laminates and packaging containing more than one of the
34 above materials; and

- 1 (16) Any other material used for consumer packaging.
- 2 (d) The fees shall be designed to cover, at a minimum, the total cost associated with:
- 3 (1) The collection transportation, and management of each type of packaging material used
4 to contain, protect, deliver, present, or distribute products sold, offered for sale, or distributed into
5 the state by all producers;
- 6 (2) The department's and other state agencies' administration of this chapter;
- 7 (3) The packaging reduction organization's administration of the packaging reduction and
8 recycling program;
- 9 (4) The cost associated with the development of the statewide packaging reduction, reuse,
10 and recycling needs assessment pursuant to § 23-99-8; and
- 11 (5) Any other factors determined by the department.
- 12 (e) The fees adopted under this section shall delineate criteria to be used to initially
13 establish and subsequently adjust producer payments in a manner that incentivizes:
- 14 (1) A reduction in the total packaging as measured by weight used by producers, and
15 discarded by consumers, businesses, institutions, and other users. Weight reductions shall not be
16 achieved by substituting plastic for other materials types;
- 17 (2) An increase in the proportion of a producer's total packaging that is managed within a
18 reuse and refill system;
- 19 (3) An increase in the proportion of a producer's total packaging that is deemed recyclable
20 as determined by an annual review process as described in § 23-99-6;
- 21 (4) An increase in the proportion of a producer's total packaging that is ultimately recycled;
- 22 (5) A reduction in toxic components in packaging materials; and
- 23 (6) A reduction in litter from packaging materials.
- 24 (f) There shall be no fee assessed on packaging that is designed for reuse and refill and
25 contained within a reuse or refill system.
- 26 (g) The department shall update and revise the fees every three (3) years.
- 27 **23-99-10. Packaging reduction fund.**
- 28 (a) There is hereby established, a separate, non-lapsing, interest-bearing fund to be known
29 as the packaging reduction fund, which will be managed by the packaging reduction organization
30 with oversight from the department.
- 31 (b) The packaging reduction organization shall deposit into the fund all payments received
32 from producers in accordance with § 23-99-9, and all penalties collected pursuant to § 23-99-16.
- 33 (c) Beginning one year after the first payment of fees by producers pursuant to § 23-99-9,
34 and annually thereafter, the packaging reduction organization shall:

1 (1) Retain a portion of the fees deposited into the packaging reduction fund to cover the
2 costs associated with its administration of the packaging reduction and recycling program; and

3 (2) Reimburse the department, the office of the inspector general, the office of attorney
4 general, the auditor general and all other state entities for the costs associated with administering
5 and enforcing the requirements of this chapter and its implementation regulations. This
6 reimbursement shall include costs associated with performing, revising, and updating the statewide
7 packaging reduction, reuse, and recycling needs assessment required by § 23-99-8. This
8 reimbursement shall also cover any costs incurred by the department in adopting and revising rules
9 and regulations as well as administering and enforcing the requirements of this chapter.

10 (d) Beginning one year after the first payments of fees by producers pursuant to § 23-99-
11 9, and annually thereafter, the packaging reduction organization shall distribute money from the
12 packaging reduction fund to reimburse local governments for the costs incurred for the
13 management, reduction, and recycling of packaging waste, as long as the local government
14 provides recycling services to all residents, businesses, schools, and institutions in their jurisdiction.
15 Local governments that contract with private haulers and recyclers to handle the management,
16 reduction, and recycling of packaging waste are eligible for reimbursement, as long as the private
17 hauler or recycler provides recycling services to all residents, businesses, schools, and institutions
18 within the local government's jurisdiction. Nothing in this subsection shall be interpreted as
19 allowing for the reimbursement of costs associated with the disposal of packaging.

20 (e) Beginning one year after the first payment of fees by producers pursuant to § 23-99-9,
21 and annually thereafter, the packaging reduction organization shall make all remaining funds
22 following the reimbursement and distributions required by subsections (c) and (d) of this section,
23 available for projects and programs that will help achieve the packaging reduction requirements of
24 § 23-99-11, and the packaging recycling requirements of § 23-99-12. Annually, the money
25 allocated for projects and programs under this subsection shall be at least fifty percent (50%) of the
26 money provided to local governments pursuant to subsection (d) of this section.

27 (1) Funds may be used for investment in collection systems, transportation systems, reuse
28 systems, washing systems, redistribution systems, technology for tracking and data collection,
29 capital expenditures on new and emerging technology focused on reusable and refillable packaging,
30 as well as equipment, and facilities, and other projects determined by the department to facilitate
31 the goals and objectives of this chapter.

32 (2) Funds may also be used for investment in public outreach and education in ways that
33 increase access and participation in packaging reduction, reuse, refill, and recycling systems
34 throughout the state.

1 (3) The packaging reduction organization shall prioritize investments for projects and
2 programs that will directly benefit environmental justice communities, including, but not limited
3 to, communities that are home to a landfill, incinerator, transfer station, or waste-to-energy facility.

4 (4) Any investments made pursuant to this subsection shall be approved by the department.
5 The department shall approve or deny proposed investments within ninety (90) days of receipt of
6 a proposal from the packaging reduction organization. The investments may be approved, at the
7 discretion of the department, as long as the proposed investment shall, at a minimum:

8 (i) Increase the transition of packaging from non-reusable to reduced, reusable or refillable
9 packaging;

10 (ii) Increase access to reuse and refill infrastructure in the state;

11 (iii) Increase the capacity of reuse and refill infrastructure in the state;

12 (iv) Provide reuse and refill instructions that are, to the extent practicable, consistent
13 statewide, easy to understand, translated into various commonly used languages, and easily
14 accessible; or

15 (v) Provide for outreach and education that are coordinated across programs or regions to
16 avoid confusion for residents and developed in consultation with local government and the public.

17 **23-99-11. Packaging reduction requirements.**

18 (a) Each individual producer is required to meet the packaging reduction requirements
19 contained in this section as follows:

20 (1) Beginning two (2) years after a producer first registers with the packaging reduction
21 organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,
22 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by ten
23 percent (10%) by weight.

24 (2) Beginning four (4) years after a producer first registers with the packaging reduction
25 organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,
26 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by
27 twenty percent (20%) by weight.

28 (3) Beginning six (6) years after a producer first registers with the packaging reduction
29 organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,
30 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by
31 thirty percent (30%) by weight.

32 (4) Beginning eight (8) years after a producer first registers with the packaging reduction
33 organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,
34 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by

1 forty percent (40%) by weight.

2 (5) Beginning ten (10) years after a producer first registers with the packaging reduction
3 organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,
4 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by
5 fifty percent (50%) by weight.

6 (b) The reductions required by this section shall be measured against the total amount of
7 packaging the producer used to contain, protect, deliver, present, or distribute the products they
8 sold, offered for sale, or distributed for sale, during the first year they registered with the packaging
9 reduction organization.

10 (c) These reductions required by this section may be achieved by using the following
11 strategies:

12 (1) Elimination of packaging components;

13 (2) Reduction of packaging components;

14 (3) Using reuse and refill systems; and

15 (4) Packaging rightsizing, light weighting, and optimization.

16 (d) The reductions required by this subsection shall not be achieved by substituting plastic
17 for other materials.

18 (e) In the case of a producer that enters the market with fifty percent (50%) or more by
19 weight of its packaging being reusable and contained within a reuse and refill system, that producer
20 may apply to the department for a waiver from the packaging reduction requirements.

21 **23-99-12. Packaging recycling requirements.**

22 (a) Each individual producer is required to meet the packaging recycling requirements
23 contained herein.

24 (b) A producer is required to ensure that the packaging used to contain, protect, deliver,
25 present, or distribute the products they sell, offer for sale, or distribute into the state, is made of a
26 material that meets the following recycling rates:

27 (1) Not less than thirty percent (30%) within five (5) years after the effective date of this
28 chapter;

29 (2) Not less than fifty percent (50%) within eight (8) years after the effective date of this
30 chapter; and

31 (3) Not less than seventy percent (70%) within twelve (12) years after the effective date of
32 this chapter.

33 (c) The requirements of subsection (b) of this section shall not apply to reusable or refillable
34 packaging or containers.

1 **23-99-13. Toxic reduction requirements.**

2 (a) Beginning three (3) years after the promulgation of rules and regulations pursuant to §
3 23-99-15, and every three (3) years thereafter, the department shall designate at least ten (10) toxic
4 substances or families of toxic substances that may no longer be sold, offered for sale, distributed
5 for sale, or distributed for use in packaging in this state unless it determines there are not ten (10)
6 chemicals that meet the definition of toxic substances. If the department determines there are not
7 ten (10) toxic substances that meet such a definition, it shall publish a detailed statement of its
8 findings and conclusions supporting such determination.

9 (b) Within one hundred eighty (180) days of designating a toxic substance, the department
10 shall adopt regulations to prohibit the newly designated toxic substance in packaging, with an
11 effective date no later than two (2) years after such designation.

12 (c) Any producer that violates this section shall be subject to a fine for each violation not
13 to exceed fifty thousand dollars (\$50,000) per violation. For the purposes of this section, each
14 product line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the
15 state, including through an Internet transaction shall be considered a violation.

16 **23-99-14. Establishment of the office of inspector general.**

17 (a) The director of the department shall establish and appoint a standalone independent
18 inspector general within the department. The inspector general shall administratively report to the
19 director of the department. The inspector general shall evaluate the programs created by this chapter
20 on an annual basis to ensure it is properly functioning, and the producers are following the
21 requirements of this chapter.

22 (b) The director, the inspector general or designees, shall have the authority to investigate
23 the compliance of producers with all provisions of this chapter and to bring enforcement violations
24 against non-compliant producers.

25 **23-99-15. Rulemaking.**

26 (a) The department may promulgate rules and regulations as necessary to implement,
27 administer, and enforce this chapter. All initial rules and regulations developed to implement the
28 provisions of this chapter shall be promulgated no later than one year after the effective date of this
29 chapter.

30 (b) The department shall solicit input from the public of any draft rules or regulations to
31 implement this chapter, solicit public comment on draft rules or regulations for a period of at least
32 ninety (90) days, and hold a public hearing on the draft rules or regulations.

33 (c) The rules and regulations adopted by the department pursuant to this chapter shall
34 include, at a minimum:

- 1 (1) A process for contracting with the packaging reduction organization pursuant to the
2 requirements of § 23-99-5;
- 3 (2) A process for annually determining a schedule of producer fees and payment collections
4 pursuant to the requirements of § 23-99-9;
- 5 (3) A process for collecting all necessary information to ensure producer compliance with
6 the requirements of this chapter;
- 7 (4) A process for evaluating whether a producer is in compliance with the packaging
8 reduction requirements of § 23-99-11;
- 9 (5) A process for evaluating whether a producer is in compliance with the packaging
10 recycling requirements of § 23-99-12;
- 11 (6) A process for evaluating whether a producer is in compliance with the toxic packaging
12 reduction requirements of § 23-99-13;
- 13 (7) A process for determining on an annual basis the types of packaging material that are
14 recyclable;
- 15 (8) A process for the assessment of the packaging reduction organization and the packaging
16 reduction and recycling program;
- 17 (9) Requirements for the packaging reduction organization to conduct a representative
18 audit of recyclable material processed and sold by facilities that process recyclable material
19 generated in the state and of municipal solid waste disposed of in the state;
- 20 (10) A process for establishing and enforcing penalties for all violations of the requirements
21 of this chapter;
- 22 (11) A process for determining new toxic substances in packaging pursuant to § 23-99-13;
- 23 (12) A process for how the department will oversee and monitor the packaging reduction
24 organization's management of the packaging reduction fund, including a process for submitting
25 and reviewing proposals from the packaging reduction organization regarding investments in
26 projects and programs that will help achieve the packaging reduction requirements of § 23-99-11,
27 and the packaging recycling requirements of § 23-99-12; and
- 28 (13) A process for determining whether information is proprietary information and
29 therefore, shall be handled as confidential information.

30 **23-99-16. Penalties and enforcement.**

- 31 (a) Failure to comply with the requirements of this chapter by either the packaging
32 reduction organization or an individual producer shall subject the violators to penalties. The
33 department, inspector general, and the office of the attorney general, may conduct investigations,
34 including inspecting operations, facilities, and records of producers and the packaging reduction

1 organization, and by performing audits of producers and the packaging reduction organization, to
2 determine whether entities are complying with the requirements of this chapter.

3 (b) The department, the inspector general, or the office of the attorney general, shall notify
4 the packaging reduction organization and producers of any conduct or practice that does not comply
5 with the requirements of this chapter and of any inconsistencies identified in an audit.

6 (c) The department, the inspector general, or the office of the attorney general, may issue
7 a notice of violation to, and impose an administrative civil penalty not to exceed one hundred
8 thousand dollars (\$100,000) per day per violation on, any entity not in compliance with this chapter
9 or any of the regulations the department adopts to implement this chapter. For the purposes of this
10 section, each product line that is sold, offered for sale, or distributed to consumers, via retail
11 commerce, in the state, including through an Internet transaction, shall be considered a violation.

12 (d) Any funds collected under this section shall be deposited into the packaging reduction
13 fund.

14 **23-99-17. Enforcement by action in superior court.**

15 (a) The provisions of this chapter may be enforced by means of an action in the superior
16 court seeking either enforcement of civil penalties, injunctive relief, a declaratory judgment, a writ
17 of mandamus, or any combination thereof. No such action may be commenced without the plaintiff
18 providing written notice of the violations of this chapter to defendants at least sixty (60) days prior
19 to filing a legal action in superior court.

20 (b) All persons shall have standing to commence an enforcement actions for equitable
21 relief.

22 (c) Reasonable attorneys' fees shall be recoverable by all substantially prevailing plaintiffs
23 who seek equitable relief under this section.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- EXTENDED PRODUCER RESPONSIBILITY
FOR PACKAGING

1 This act would establish the packaging reduction and recycling program. The department
2 of environmental management (DEM) would be responsible for selection of an organization to
3 administer the program. The program over a multi-year basis would require reduction in the amount
4 of packaging material used for products. Additionally, this act would create a new position of
5 inspector general within DEM. Administrative penalties not to exceed one hundred thousand
6 dollars (\$100,000) per day could be imposed for violations. A civil action for equitable relief for
7 any violation could be pursued by any person. Reasonable attorney fees would be recoverable for
8 a substantially prevailing party seeking equitable relief for a violation of the provisions of this act.

9 This act would take effect upon passage.

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