
A BILL FOR AN ACT

RELATING TO PACKAGING WASTE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State has a duty
2 to protect the environment, economy, and public health.
3 Globally, only nine per cent of all the plastic ever produced
4 has been recycled. The other ninety-one per cent is in
5 landfills, has been incinerated, or is dispersed throughout the
6 environment. Our oceans are now awash in at least one hundred
7 fifty million tons of plastic waste, an amount that researchers
8 say will soon surpass the weight of all the fish in the sea.
9 Plastic micro-particles, which can introduce toxins into our
10 bodies, are present in the air we breathe, the water we drink,
11 and the food we eat. The World Wildlife Fund recently
12 commissioned a study that found we ingest an average of five
13 grams of plastic every week, the equivalent of a credit card.
14 There is not enough research to determine the impacts of plastic
15 ingestion on human health.

16 The legislature further finds that the plastic industry has
17 misled the public to believe that recycling is a viable solution



1 to the plastic waste problem. Since the 1990's, the plastic
2 industry has been funding an increasing number of public service
3 announcements and commercials to encourage consumers to recycle.
4 The goal of this messaging was to convince consumers that their
5 plastic waste could be recycled and encourage them to take
6 personal responsibility for plastic pollution, while plastic
7 manufacturers could continue to produce more without any
8 responsibility for the environmental impacts of their actions.
9 Recycling became the means by which the plastic industry has
10 placed the burden of plastic waste onto local governments and
11 taxpayers. For Hawaii and many other states, most of the
12 plastic collected for recycling is shipped to other countries
13 for recycling or disposal. China was previously the biggest
14 buyer of recyclables worldwide, but recently implemented new
15 restrictions for imported waste. As a result, Hawaii's counties
16 are left with fewer and more expensive options for recyclables,
17 leading to even more of these materials ending up in landfills.

18 The legislature additionally finds that, following a
19 lawsuit filed by several environmental organizations in the
20 State, the Environmental Protection Agency ruled that Kamilo
21 beach on Hawaii Island be listed as "impaired" under the Clean



1 Water Act due to plastic pollution. The federal decision
2 requires the department of health to develop methods to assess
3 how much debris is polluting the waters at Kamilo and come up
4 with solutions. The State is now legally liable for shouldering
5 the cost of a problem that was created by the plastic industry.

6 The legislature further finds that addressing issues with
7 only plastic waste, or only one type of waste at a time, leads
8 producers to switch to using other materials. Instead,
9 producers should internalize the environmental and public health
10 costs of their products, and design better products and systems
11 that reduce waste at the source and encourage the reuse of more
12 waste materials.

13 Therefore, in order to incentivize innovation in packaging
14 design that minimizes environmental impacts, promotes the use of
15 recycled content in plastic packaging, promotes reuse, and
16 ensures funding for collection, sorting, reprocessing, and
17 end-of-life management services, the purpose of this Act is to
18 require that producers of packaging waste be responsible for the
19 end-of-life management of their products in a way that ensures
20 minimal social and environmental impacts, and makes producers
21 responsible for more of the true cost of the goods they create.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 WASTE AND LITTER MANAGEMENT

6 § -1 Definitions. As used in this chapter:

7 "Aluminum" means a covered product made of the chemical
8 element aluminum that forms a silvery white to dull gray,
9 nonmagnetic metal.

10 "Brand" means a name, symbol, word, or mark that identifies
11 a product and attributes the product and its components,
12 including packaging, to the brand holder of the product as the
13 producer.

14 "Brand holder" means a person who owns or licenses a brand
15 or who otherwise has rights to market a product under the brand,
16 whether or not the brand trademark is registered.

17 "Compostable" means a covered product that is capable of
18 undergoing aerobic biological decomposition that results in the
19 material being broken down primarily into carbon dioxide, water,
20 inorganic compounds, and biomass.



1 "Consumer" means a person to whom a covered product is
2 supplied that is the intended end user of the covered product.

3 "Covered product" means packaging and paper products sold
4 or supplied to consumers.

5 "Department" means the department of health.

6 "Designated for collection" means the covered products sold
7 or supplied by a producer that are included in the material
8 categories listed in the producer's plan to be collected for
9 reuse or recycling.

10 "Environmentally sound" means practices that:

11 (1) Comply with all applicable laws and rules to protect
12 workers, public health, and the environment;

13 (2) Provide for adequate recordkeeping, tracking, and
14 documenting of the fate of materials within the State
15 and beyond; and

16 (3) Include environmental liability coverage for the
17 producers or producer responsibility organizations
18 implementing a plan.

19 "Flexible plastic" means any covered product made of
20 polymers that is flexible in form, including films and
21 multilayer laminates.



1 "Glass" means a covered product made of soda lime glass or
2 borosilicate glass substance.

3 "Material category" means a group of covered products that
4 have similar properties such as chemical composition, shape, or
5 other characteristics including, but not limited to plastic
6 beverage containers, other rigid plastic, flexible plastic,
7 paper, aluminum, steel, glass.

8 "Packaging" means a material, substance, or object that is:

- 9 (1) Used to protect, contain, transport, or serve a
10 product;
- 11 (2) Sold or supplied to consumers expressly for the
12 purpose of protecting, containing, transporting, or
13 serving products;
- 14 (3) Attached to a product or its container for the purpose
15 of marketing or communicating information about the
16 product;
- 17 (4) Supplied at the point of sale to facilitate the
18 delivery of goods; or
- 19 (5) Supplied to or purchased by consumers expressly for
20 the purpose of facilitating food or beverage
21 consumption that is ordinarily disposed of after a



1 single use or short-term use, whether or not it could
2 be reused.

3 "Paper" means a covered product made of paper fiber,
4 regardless of its cellulosic fiber source, which may include,
5 but is not limited to wood, wheat, rice, cotton, bananas,
6 eucalyptus, bamboo, hemp, and sugar cane or bagasse.

7 "Paper product" means paper sold and supplied, including
8 but not limited to flyers, brochures, booklets, catalogs,
9 newspapers, magazines, copy paper, printing paper, and all other
10 paper materials except for bound books and paper products that,
11 by their use, could become unsafe or unsanitary to handle.

12 "Plan" means a description of the approach and activities
13 developed by a producer or producer responsibility organization
14 to fulfill the requirements and to carry out the
15 responsibilities of producers under this chapter.

16 "Plastic beverage container" means a covered product made
17 of rigid plastic for water and flavored water, beer or other
18 malt beverages, wine, distilled spirits, mineral water, soda
19 water, and similar carbonated soft drinks, and any beverage
20 other than those specified in this definition, except infant
21 formula, intended for human or animal consumption, and in a



1 quantity more than or equal to two fluid ounces and less than or
2 equal to one gallon. "Plastic beverage container" does not
3 include rigid plastic containers or rigid plastic bottles that
4 are medical devices, medical products that are required to be
5 sterile, prescription medicine, and packaging used for those
6 products.

7 "Postconsumer recycled content" means the content of a
8 product made of recycled materials derived specifically from
9 postconsumer recycled material sources.

10 "Producer" means a person who meets one of the following
11 criteria, in descending order of priority, for assigning
12 responsibility to meet the requirements of this chapter:

13 (1) Is the brand holder of a brand under which the covered
14 product is sold, offered for sale, or distributed in
15 or into the State;

16 (2) Imports the covered product into the State for sale,
17 offer for sale, or distribution in the State,
18 including remote sale or distribution, such as through
19 sales outlets, catalogs, and the Internet, but is not
20 the brand holder as specified under paragraph (1);



1 (3) Elects to assume the responsibility and register in
2 lieu of a producer; or

3 (4) Is determined by the department to be the responsible
4 party for a covered product.

5 "Producer" does not include government agencies, counties, or
6 other political subdivisions of the State, registered 501(c)(3)
7 charitable organizations and 501(c)(4) social welfare
8 organizations, or de minimis producers that annually sell, offer
9 for sale, distribute, or import into the country for sale in the
10 State less than one ton of covered products each year or covered
11 products that in aggregate generate less than \$1,000,000 each
12 year in revenue.

13 "Producer responsibility organization" means:

14 (1) A nonprofit organization that qualifies for a tax
15 exemption 25 under 26 U.S.C. Sec. 501(c)(3) of the
16 federal internal revenue code 26 and is designated by
17 a producer or group of producers to develop and carry
18 out the activities required of producers by this
19 chapter; or



1 (2) A single producer that develops and implements a plan to
2 carry out the activities for its own covered products,
3 as required by this chapter.

4 "Program" means the activities conducted to implement a
5 plan.

6 "Public place" includes streets, sidewalks, plazas, town
7 squares, public parks, beaches, forests, or other public land
8 open for recreation or other uses, and transportation facilities
9 such as bus and train stations, airports, and ferry terminals.

10 "Public place" does not include industrial, commercial, or
11 privately owned property.

12 "Recyclable" means a covered product that is regularly
13 collected, separated, and reprocessed into a recycled material,
14 and that does not contain harmful chemical, physical,
15 biological, or radiological substances that will pose a threat
16 to human health or the environment for its intended or likely
17 manner of use.

18 "Recycled material" means material derived from covered
19 products that is reprocessed into products or commodities used
20 in the production of new products whether for the original or
21 another purpose. "Recycled material" does not include energy



1 recovery and the reprocessing of materials that are to be used
2 as fuels or landfill cover.

3 "Reusable" means a covered product that is sufficiently
4 durable for multiple rotations of its original or similar
5 purpose or function in a system of reuse.

6 "Reused material" means material that is collected after
7 use and reused for its original or similar purpose or function.

8 "Rigid plastic" means any covered product made of plastic
9 polymers that is rigid or semirigid in form, including foams.

10 "Socially just management" means practices that:

11 (1) Allow every individual to benefit from the same
12 economic, political, and social rights, privileges,
13 and opportunities, free from socioeconomic status,
14 regardless of race; health disparities; age; sex,
15 including on the basis of gender identity or
16 orientation; disability; religion; or other
17 characteristics; and

18 (2) Do not disproportionately impact any community and in
19 particular communities in the State or elsewhere that
20 bear disproportionately higher levels of adverse
21 environmental, social justice, and economic impacts.



1 "Steel" means any covered product made of a ferrous metal
2 substance.

3 § -2 Waste and litter management; producer;

4 registration. (a) Beginning , , every producer
5 shall annually register with the department as an individual
6 producer responsibility organization or join a third-party
7 producer responsibility organization that is registered with the
8 department. Producers that are not registered as or have not
9 joined a producer responsibility organization shall not sell or
10 supply covered products in or into the State.

11 (b) Third-party producer responsibility organizations
12 shall establish a governance structure for their organization
13 that is managed by a board of directors comprised of producers
14 subject to this chapter.

15 (c) By , , and annually thereafter, every
16 registered producer responsibility organization shall submit
17 with their registration the following:

- 18 (1) A list of all their member producers and brands;
- 19 (2) An annual payment, as determined by the department;
- 20 and



1 (3) Until a producer responsibility organization begins to
2 submit annual reports, as specified under section -
3 21, the following data for the prior calendar year:
4 (A) The weight, by material category, of covered
5 products supplied into the State to consumers for
6 residential use, accompanied by a description of
7 how the producer or producer responsibility
8 organization has distinguished and apportioned
9 the quantities of packaging and paper covered
10 products supplied to consumers for residential
11 use from quantities supplied for nonresidential
12 use that are not considered covered products
13 under this chapter;
14 (B) The quantity of covered products supplied that
15 were designed to be reused or refilled, by
16 material category and by weight and number of
17 units; and
18 (C) The postconsumer recycled content, by material
19 category, of covered products supplied,
20 including:



- 1 (i) The total postconsumer content by weight;
- 2 and
- 3 (ii) The total postconsumer content as a
- 4 percentage of total weight.

5 A producer may submit national data allocated on a
 6 per-capita basis for the State to approximate the information
 7 required in this subsection if the producer demonstrates to the
 8 department that state level data is not available or feasible to
 9 generate.

10 (d) Beginning , , every registered producer
 11 responsibility organization shall submit a plan to the
 12 department that meets the requirements of sections -10 and
 13 -11.

14 (e) A producer responsibility organization registered with
 15 the department as of , , shall:

- 16 (1) Implement its approved plan by , ; and
- 17 (2) Submit an annual report to the department consistent
- 18 with section -21 by , , and each
- 19 September 1st thereafter.

20 (f) A producer responsibility organization registering
 21 with the department after , , shall:



- 1 (1) Submit the list of producers, brands, data, and
- 2 payment to the department as required in subsection
- 3 (c);
- 4 (2) Submit a plan, informed by a stakeholder consultation
- 5 process, within one year of registration;
- 6 (3) Implement its approved plan within six months of
- 7 approval; and
- 8 (4) Submit an annual report to the department consistent
- 9 with section -21 by September 1st, beginning with
- 10 the first year after plan approval.

11 (g) A producer or producer responsibility organization
 12 that submits information or records to the department under this
 13 chapter may request that the information or records be made
 14 available only for the confidential use of the department, the
 15 director of health, or the appropriate division of the
 16 department. The director of health shall give consideration to
 17 the request if keeping the information or records confidential
 18 is not detrimental to the public interest.

19 § -3 Department duties; program costs. (a) By
 20 , , and annually thereafter, the department shall
 21 identify the annual costs it will incur under this chapter. The



1 department shall determine an annual payment by producer
2 responsibility organizations that is adequate to cover, but not
3 exceed, the department's full costs to implement, administer,
4 and enforce this chapter in the next fiscal year, including rule
5 making.

6 (b) Once the department has established an equitable
7 payment schedule pursuant to subsection (a), the department
8 shall equally divide the annual payment among the number of
9 producer responsibility organizations; provided that the
10 department may not assign a share of annual payment more than
11 \$1,000 to producer responsibility organizations that represent a
12 single producer and report less than one hundred tons of covered
13 products supplied during the most recent calendar year for which
14 such data has been reported.

15 (c) By , , and annually thereafter, the
16 department shall collect each registered producer responsibility
17 organization's payment of the department's cost for the next
18 fiscal year. The department shall:

19 (1) Apply any remaining annual payment funds from the
20 current fiscal year to the annual payment for the next



1 fiscal year, if the collected annual payment exceeds
2 the department's costs for a given fiscal year; and
3 (2) Increase annual payments for the next fiscal year to
4 cover the department's costs, if the collected annual
5 payment was less than the department's costs for the
6 prior fiscal year.

7 § -4 **Department duties; producer responsibility; plans.**

8 (a) Beginning , , the department may determine
9 the responsible party for a covered product when the responsible
10 party is not a brand holder, does not import covered products
11 into the State, or has not elected to assume the responsibility
12 for covered products.

13 (b) The department shall review new, updated, and revised
14 plans submitted by producer responsibility organizations as
15 required in section -2. The department shall:

16 (1) Make new, updated, and revised plans available for
17 public review and comment for at least thirty days;

18 (2) Review new, updated, and revised producer
19 responsibility organization plans within one hundred
20 twenty days of receipt of a completed plan;

1 (3) Make a determination in writing as to whether or not
 2 to approve a plan, plan update, or plan revision and
 3 notify the producer responsibility organization of
 4 the:

5 (A) Determination of approval if a plan provides for
 6 a program that meets the requirements of this
 7 chapter, taking into consideration comments
 8 received under paragraph (1); or

9 (B) Reasons for not approving a plan.

10 The producer responsibility organization shall submit a new or
 11 revised plan within sixty days after receipt of the letter of
 12 disapproval.

13 (c) The approval of a plan by the department shall not
 14 relieve producers participating in the plan from responsibility
 15 for fulfilling the requirements of this chapter.

16 § -5 **Department duties; covered products; reuse.** (a)

17 Beginning , , the department may develop criteria
 18 to determine whether the covered products are reusable,
 19 recyclable, or compostable. When developing the criteria, the
 20 department shall, at minimum, consider whether covered product
 21 materials:



1 (1) Are or may be collected, separated, and processed in
2 sufficient quantity and quality into a marketable
3 feedstock that can be used in the production of new
4 products;

5 (2) Contain toxic substances; or

6 (3) Are designed in a way that is problematic for reuse,
7 recycling, or composting.

8 (b) The department may adopt rules pursuant to chapter 91
9 to implement, administer, and enforce this chapter, including
10 but not limited to:

11 (1) Establishing an equitable formula for determining each
12 producer responsibility organization's share of the
13 annual payment necessary to cover the department's
14 costs, as identified under section -3(a);

15 (2) Establishing additional plan content in addition to
16 the requirements established under section -11, as
17 necessary to fulfill the intent of this chapter;

18 (3) Requiring producers to collect and manage covered
19 products from additional locations or entities
20 determined to be significant sources of covered



1 product waste, including but not limited to public
2 places and events;

3 (4) Establishing additional elements to be included as
4 annual reporting requirements under section -21,
5 necessary to determine the program's compliance with
6 the requirements of this chapter;

7 (5) Establishing third-party audit and verification
8 requirements; and

9 (6) Establishing processes for new, updated, and revised
10 plan approvals as required in section -22.

11 § -6 **Department duties; postconsumer recycled content**

12 **requirements.** (a) Beginning in , , and every
13 other year thereafter, or upon the petition from a
14 representative of the producer responsibility organization, but
15 not more than annually, the department shall consider whether
16 the minimum postconsumer recycled content requirements
17 established in section -14 shall be waived or reduced.

18 (b) The department shall consider a petition from
19 producers or producer responsibility organizations within sixty
20 days of receipt.



1 (c) The department may adopt rules pursuant to chapter 91
2 to implement, administer, and enforce minimum postconsumer
3 recycled content of covered products, and to adjust minimum
4 postconsumer recycled content. In making a determination to
5 adjust the minimum postconsumer recycled content requirements,
6 the department may consider the following:

7 (1) Changes in market conditions, including supply and
8 demand for postconsumer recycled plastics, collection
9 rates, and bale availability;

10 (2) Recycling rates;

11 (3) The availability of suitable materials and feedstocks
12 to meet the minimum postconsumer recycled content
13 requirements;

14 (4) The capacity of recycling or processing
15 infrastructure; and

16 (5) The carbon footprint, and other environmental and
17 social impacts, of the transportation and processing
18 of the recycled material.

19 (d) If the department determines that a minimum
20 postconsumer recycled content requirement should be adjusted,
21 the adjusted rate shall be in effect until a new determination



1 is made or upon the expiration of the minimum postconsumer
 2 recycled content requirement's effective period, whichever
 3 occurs first. The department shall not adjust the minimum
 4 postconsumer recycled content requirements above the minimum
 5 postconsumer recycled content percentages, as established under
 6 section -13.

7 **§ -7 Department duties; performance requirements;**

8 **establishment.** (a) Beginning , , and no more
 9 frequently than every five years, the department may by rule:

10 (1) Establish additional reuse and recycling performance
 11 requirements for years not specified in section -
 12 13;

13 (2) Add reuse and recycling performance requirements for
 14 additional material categories not specified in
 15 section -13; and

16 (3) Adjust the reuse and recycling performance
 17 requirements established in section -13.

18 (b) In making a determination to adjust the reuse and
 19 recycling performance requirements, the department may consider
 20 the following:



1 (1) Changes in market conditions, including supply and
2 demand for recycled materials, collection rates, and
3 availability;

4 (2) The capacity of sorting or processing infrastructure;
5 and

6 (3) The carbon footprint and other social justice and
7 environmental impacts of the production and
8 transportation of the recycled material.

9 (c) If the department determines that a minimum reuse and
10 recycling performance requirement should be adjusted, the
11 adjusted requirement shall be in effect until a new
12 determination is made or upon the expiration of the minimum
13 reuse and recycling performance requirement's effective period,
14 whichever occurs first. The department shall not adjust the
15 overall minimum reuse and recycling performance requirements for
16 all covered products below the requirements established under
17 section -13 for the years specified.

18 (d) The department may adopt rules pursuant to chapter 91
19 to add or amend material categories to be included in the reuse
20 and recycling rate calculations as required in section -13.



1 (e) A producer or producer responsibility organization may
 2 appeal adjustments to the minimum reuse and recycling
 3 performance requirements as determined under section -13 to
 4 the department within thirty days of the department's
 5 determination.

6 (f) Beginning , , the department may
 7 determine that a producer responsibility organization that
 8 achieves the reuse and rate requirements established for each
 9 material category of covered products supplied into the State
 10 and achieves the minimum reuse rates as established in section
 11 -13 is considered to achieve the overall reuse and recycling
 12 performance requirements for all covered products.

13 § -8 Department duties; website; establishment. By
 14 , , the department shall establish and begin
 15 maintenance of a public website that:

- 16 (1) Lists producers and their covered products that are
- 17 participating in an approved plan; and
- 18 (2) Makes available each plan and annual report received
- 19 by the department under this chapter.

1 § -9 **Civil penalties; fines.** (a) The department may
2 administratively impose a civil penalty of up to \$10,000 per
3 violation per day on any person who violates this chapter.

4 (b) Any person who incurs a penalty under this section may
5 appeal the penalty to the department.

6 (c) Penalties levied under this section shall be deposited
7 in the waste and litter management special fund created in
8 section -25.

9 § -10 **Producer plan; participation; stakeholder input.**

10 (a) Each producer of covered products shall participate in,
11 implement, and fund an approved plan. A producer that fulfills
12 its responsibilities under this chapter through a producer
13 responsibility organization is responsible jointly and
14 severally, and does not assign its responsibilities under this
15 chapter to the producer responsibility organization.

16 (b) A producer responsibility organization shall not
17 include on its board of directors, or otherwise be governed by,
18 representatives or affiliates of any public or private entities
19 that submit bids to perform work for the producer responsibility
20 organization or that contract with the producer responsibility
21 organization.



1 (c) A producer responsibility organization shall develop
2 and maintain a public website with enhanced language access
3 informing the public of plan implementation details, including
4 collection services and locations for each type of covered
5 product, and a current list of all producers participating in
6 the plan.

7 (d) Prior to submitting a new, updated, or revised plan to
8 the department, a producer or producer responsibility
9 organization shall conduct a consultation process to solicit and
10 respond to input from stakeholders and from the advisory
11 committee established under section -24. The consultation
12 process required in advance of the submission of a plan to the
13 department is in addition to the department-led public comment
14 process specified in section -4. The consultation process
15 shall:

- 16 (1) Address all elements of the system including
17 collection, sorting, processing, reuse, use of
18 recycled materials, and education;
- 19 (2) Allow opportunities for all stakeholders and members
20 of the public to provide comment on the plan prior to
21 its submission to the department;



1 (3) Offer various formats and languages as necessary for
2 presenting the plan and receiving comments including
3 workshops, surveys, webinars, and one-on-one meetings;
4 and

5 (4) Document all comments received and responsive answers
6 provided by the producer or producer responsibility
7 organization for purposes of a stakeholder
8 consultation report to be included with the submission
9 of a plan to the department.

10 The stakeholder consultation report shall also describe each
11 forum in which comment or input was received by the plan
12 proponent.

13 **§ -11 Producer plan; contents.** (a) A producer
14 responsibility organization shall submit a plan to the
15 department describing the approach and activities to fulfill the
16 requirements of this chapter.

17 (b) All plans and plan updates shall contain the following
18 components:

19 (1) A list and brief explanation of the covered products
20 supplied or sold in or into the State by each producer
21 and by brand participating in the plan;



- 1 (2) A description of how:
 - 2 (A) The producer responsibility organization shall
 - 3 fulfill the requirements of this chapter;
 - 4 (B) Plan will use and interact with recycling
 - 5 programs and infrastructure that predate the
 - 6 implementation of the plan, including a
 - 7 description of procurement practices; and
 - 8 (C) Producers will increase the reuse, refill, and
 - 9 recyclability of covered products;
- 10 (3) A description of actions to be taken to:
 - 11 (A) Work with and achieve the goals of underserved
 - 12 and underrepresented communities that bear a
 - 13 disproportionate share of adverse environmental,
 - 14 social justice, and economic impacts through
 - 15 socially just management practices, including but
 - 16 not limited to community outreach and engagement
 - 17 in the appropriate language of the impacted
 - 18 communities and meaningful consultation; and
 - 19 (B) Increase the efficiency of the system of
 - 20 collecting and managing covered products through
 - 21 reuse and recycling;



- 1 (4) Protocols for producers retaining the right of first
2 refusal of recycled materials produced from covered
3 products collected;
- 4 (5) The identification of market engagement strategies for
5 collection and recycling services to be used in direct
6 procurement of services in order to ensure open
7 competition among waste management service providers
8 and improve effectiveness and efficiency including,
9 but not limited to, strategies that involve the use of
10 competitive tenders or open-market financial
11 incentives;
- 12 (6) A list of covered products designated for collection
13 as required under section -16;
- 14 (7) A description of the activities to be undertaken to
15 meet the convenience standards for collection of
16 covered products as established under section -16,
17 including the jurisdictions where curbside collection
18 services are available, location of each permanent
19 collection facility, types and locations of alternate
20 collection methods used, and locations of public place
21 collection services;



- 1 (8) A plan to minimize the amount, cost, and toxicity of
2 residuals from the collection and processing of
3 covered materials designated for collection, including
4 residuals from materials recovery facilities or
5 similar facilities producing specification grade
6 commodities for sale, but do not include residuals
7 from further processing of end market-ready material;
- 8 (9) A plan for collecting, transporting, and processing
9 covered products to ensure responsible management and
10 recycling, including:
- 11 (A) Achieving the reuse and recycling performance
12 requirements in section -13;
- 13 (B) Providing material that will assist producers in
14 meeting recycled content requirements specified
15 in section -14; and
- 16 (C) Ensuring covered products designated for
17 collection do not contain toxic substances;
- 18 (10) A description of how plan implementation will:
- 19 (A) Achieve equity in the provision of recycling
20 collection services in the State; and



- 1 (B) Rely upon environmentally sound and socially just
2 management practices for worker health and
3 safety;
- 4 (11) A description of how producer fees and fee modulation
5 will incorporate design for recycling and litter
6 prevention as objectives;
- 7 (12) A plan for addressing contamination from covered
8 products at compost or other organics processing
9 facilities and similar facilities, including through
10 decontamination equipment improvements and conducting
11 packaging contamination composition studies;
- 12 (13) A plan for education and outreach as required under
13 section -20, including how counties will be
14 involved in and reimbursed for education and outreach
15 activities that support the achievement of the reuse
16 and recycling performance requirements under section
17 -13;
- 18 (14) A summary of the plan development stakeholder
19 consultation process undertaken consistent with
20 section -10;



1 (15) The dispute resolution process to be used, as needed,
2 with residents, collectors, processors, producers, and
3 end-market users of materials; and

4 (16) Any other information to be included in the plan as
5 required by the department by rule.

6 (c) In addition to the components specified in subsection
7 (b), producer responsibility organizations implementing plans on
8 behalf of more than one producer shall include the following
9 plan elements:

10 (1) A description of the structure and governance of the
11 producer responsibility organization, including the
12 membership of the advisory committee required under
13 section -24; and

14 (2) A description of the collection and structure of the
15 fees owed by producers to be used to implement the
16 plan, consistent with section -15.

17 **§ -12 Collection and management.** (a) Covered products
18 collected by the program shall be managed in an environmentally
19 sound and socially just manner at facilities operating with
20 human health and environmental protection standards that are
21 broadly equivalent to or better than those required in the



1 United States and other countries that are members of the
2 organization for economic cooperation and development.

3 (b) Producer responsibility organizations implementing a
4 plan shall:

5 (1) Include measures to track, verify, and publicly report
6 that covered products collected by the program are
7 managed responsibly;

8 (2) Take measures to:

9 (A) Promote and facilitate reuse of covered products
10 designed to be reused;

11 (B) Promote responsible recycling;

12 (C) Meet the necessary quality standards for recycled
13 materials so that covered products collected by
14 the program may be used to manufacture new
15 products;

16 (D) Ensure that covered products collected for
17 recycling do not contain toxic substances; and

18 (3) Document how they have used domestic and local
19 collection and processing infrastructure and the
20 extent to which the use of domestic and local
21 collection and processing infrastructure to meet the



1 requirements under this chapter is technologically
2 feasible and economically practical.

3 (c) Prior to program use of any advanced technology for
4 conversion of postuse plastic polymers for the purpose of
5 producing recycled material to be counted toward reuse and
6 recycling performance targets, the producer responsibility
7 organization shall provide the department with a third-party
8 assessment prepared to examine the impact of the advanced
9 technology on the following:

- 10 (1) Air and water pollution and release or creation of any
11 hazardous pollutants; and
12 (2) The greenhouse gas emissions resulting from products
13 and processes of the advanced technology facility,
14 taking into account the full life cycle including
15 final use of products.

16 (d) The results of the assessment under subsection (c)
17 shall, whenever reported and communicated, provide full
18 disclosure of geographical, temporal, and technological
19 boundaries that have been selected for the assessment.



1 (e) The person preparing the assessment under
2 subsection(c) may not be interested, directly or indirectly, in
3 the ownership or operation of the advanced recycling facility.

4 **§ -13 Reuse and recycling performance requirements.** (a)

5 To meet the reuse and recycling performance requirements
6 established in this section, a producer shall:

7 (1) Demonstrate that all covered products are reusable,
8 recyclable, or compostable by January 1, 2030;

9 (2) Demonstrate that the covered products collected by the
10 program were managed consistent section -12; and

11 (3) Authenticate, verified by an independent third party,
12 the reuse and recycling rates of covered products, as
13 specified under subsections (b) through (d), and
14 provide the verification to the department as part of
15 the annual reporting requirements established under
16 section -21.

17 (b) At minimum, each plan shall achieve the following
18 performance requirements:

19 (1) By 2026, a minimum of fifty-five percent of all
20 covered products supplied into the State are reused or
21 recycled, with a minimum of five percent reused;



1 (2) By 2030, a minimum of seventy-five percent of all
2 covered products supplied into the state are reused or
3 recycled, with a minimum of ten percent reused; and

4 (3) For each material category of covered products
5 supplied into the State, producer responsibility
6 organizations shall achieve a combined reuse and
7 recycling rates for rigid plastic, including plastic
8 beverage containers; flexible plastic; paper;
9 aluminum; steel; and glass, to be determined by the
10 department.

11 (c) For the purposes of this chapter, the amount of
12 recycled material shall be measured at the following calculation
13 point for each material category of covered products included in
14 the plan:

15 (1) Rigid plastic material that:

16 (A) Does not undergo further processing before
17 entering pelletization, extrusion, molding, or
18 advanced recycling for plastic polymers;

19 (B) Is flaked and does not undergo further processing
20 before use in a final product; or



1 (C) Is compostable and is delivered to an industrial
2 composting facility under an agreement with that
3 facility.

4 (2) Flexible plastic material that:

5 (A) Does not undergo further processing before
6 entering pelletization, extrusion, molding, or
7 advanced recycling for plastic polymers;

8 (B) Is flaked and does not undergo further processing
9 before use in a final product; or

10 (C) Is compostable and is delivered to an industrial
11 composting facility under an agreement with that
12 facility;

13 (3) Paper material that:

14 (A) Does not undergo further processing before
15 entering a pulping operation; or

16 (B) Is compostable and is delivered to an industrial
17 composting facility under an agreement with that
18 facility;

19 (4) Aluminum material that does not undergo further
20 processing before entering a metal smelter or furnace;



1 (5) Steel material that does not undergo further
2 processing before entering a metal smelter or furnace;

3 (6) Glass material that does not undergo further
4 processing before entering a glass furnace or the
5 production of filtration media, abrasive materials,
6 glass fiber insulation, and construction materials;
7 and

8 (7) For materials that are not included in the material
9 categories listed in paragraphs (1) through (6) of
10 this subsection, the calculation point shall be
11 proposed and described by the producer responsibility
12 organization in its plan and annual report and is
13 subject to approval by the department in order to be
14 included in the reuse and recycling rate calculation.

15 (d) For each material category of covered product included
16 in the plan, the combined reuse and recycling rate shall be
17 calculated as the sum of the amount of reused material and
18 recycled material managed by the program in a given year,
19 divided by the amount of covered products supplied into the
20 state in the same year, expressed as a percentage, where:



- 1 (1) Covered products supplied into the state in a given
2 year is the amount calculated in accordance with
3 section -21(b);
- 4 (2) Reused material is the amount of covered product
5 managed by the program in the same year that was sold
6 or supplied for reuse for their original or similar
7 purpose or function; and
- 8 (3) Recycled material is the amount produced from covered
9 products managed by the program in the same year
10 measured in accordance with subsection (c).
- 11 (e) A producer that does not achieve the reuse and
12 recycling performance requirements established in this section,
13 either individually or through a producer responsibility
14 organization, shall submit a revised plan to the department no
15 later than ninety days after submitting an annual report as
16 required under section -21, in which the failure to achieve
17 the reuse and recycling performance requirements are identified.
18 The revised plan shall include changes to the plan specifying
19 how the program will be modified to meet the requirements of
20 this section.



1 § -14 Postconsumer recycled content; requirements. (a)

2 To meet the postconsumer recycled content requirements
3 established in this section, a producer shall authenticate the
4 postconsumer recycled content of covered products through third-
5 party verification and provide the verification to the
6 department as part of the annual reporting requirements
7 established under section -21.

8 (b) A producer that sells, offers for sale, or distributes
9 plastic beverage containers in or into the State shall meet the
10 following annual minimum postconsumer recycled plastic content
11 for the total quantity of plastic beverage containers that are
12 sold, offered for sale, or distributed in the State effective:

13 (1) January 1, 2025, through December 31, 2029: No less
14 than twenty-five per cent postconsumer recycled
15 plastic by weight; or

16 (2) On and after January 1, 2030: No less than fifty per
17 cent postconsumer recycled plastic by weight.

18 (c) For all other covered products, a producer
19 responsibility organization shall meet the annual minimum
20 postconsumer recycled content for the total quantity of all
21 covered products for the following materials, except plastic



1 beverage containers that are supplied in the State: other rigid
2 plastic, flexible plastic, paper packaging, other paper
3 products, aluminum, steel, and glass. The annual minimum
4 postconsumer recycled content shall be determined by the
5 department.

6 (d) A producer responsibility organization may establish
7 and implement a mechanism for the generation and trading of
8 postconsumer recycled content credits for the purpose of
9 achieving the minimum recycled content as established under
10 subsection (c), to be accompanied by authentication through
11 third-party verification in accordance with subsection (a).

12 (e) A producer that does not achieve the postconsumer
13 recycled content requirements established under subsections (b)
14 and (c), either individually or through a producer
15 responsibility organization, shall submit a revised plan to the
16 department no later than ninety days after submitting an annual
17 report as required under section -21, in which the failure
18 achieve the postconsumer recycled content requirements are
19 identified. The revised plan shall include changes to the plan
20 specifying how the program will be modified to meet the
21 requirements of this section.



1 (f) Beginning in 2025, and every other year thereafter, or
2 at the petition from a representative of the producer
3 responsibility organization but not more than annually, the
4 department shall consider whether the minimum postconsumer
5 recycled content requirements established under subsections (b)
6 and (c) shall be waived or reduced.

7 (g) The department shall consider a petition from
8 producers or producer responsibility organizations within sixty
9 days of receipt.

10 (h) A producer or producer responsibility organization may
11 appeal adjustments to the requirement for minimum postconsumer
12 recycled content to the department within thirty days of the
13 department's determination.

14 § -15 **Funding requirements.** (a) A nonreimbursable
15 point-of-sale fee shall not be charged to consumers to recoup
16 the costs of meeting producer obligations under this chapter.

17 (b) A producer responsibility organization implementing a
18 plan shall fully fund all activities required under this
19 chapter.

20 (c) A producer responsibility organization implementing a
21 plan on behalf of other producers shall develop a system to



1 collect charges from participating producers to cover the costs
2 of plan implementation in an environmentally sound and socially
3 just manner that encourages the use of design attributes that
4 reduce the environmental impacts of covered products, such as
5 through the use of eco-modulated fees to:

6 (1) Encourage designs intended to facilitate reuse and
7 recycling;

8 (2) Encourage the use of recycled content;

9 (3) Discourage the use of problematic materials that
10 increase system costs of managing covered products;
11 and

12 (4) Encourage other design attributes that reduce the
13 environmental impacts of covered products including,
14 but not limited to, the potential to create litter.

15 (d) Any system of program charges owed by producers that
16 includes discounted charges or favorable treatment of covered
17 products deemed to be reusable shall establish a basis for
18 determining that products, in practice, are typically reused a
19 minimum number of times.



1 (e) Fees collected for department duties under section
2 -3 may only reimburse costs directly associated with the
3 implementation, administration, and enforcement of this chapter.

4 § -16 **Convenience standards.** (a) A producer
5 responsibility organization shall ensure convenient collection
6 services are available for the full list of covered products
7 designated for collection in the plan.

8 (b) In areas without curbside garbage collection, and in
9 all areas for covered products designated for alternate
10 collection, free and equitable access to permanent collection
11 facilities shall be provided that are located at each solid
12 waste transfer, processing, or disposal site, and at additional
13 locations as needed to provide convenient access for residents.
14 For the purposes of this subsection, "convenient access" means a
15 reasonable opportunity to drop off covered materials at
16 collection events for underserved areas where the population
17 does not have a permanent collection location within a fifteen
18 mile radius.

19 (c) The producer responsibility organization, in
20 consultation with the department and the local community, shall
21 determine a reasonable frequency and location of collection



1 events to be held in underserved areas. The producer
2 responsibility organization shall give special consideration for
3 providing opportunities to geographically isolated populations.

4 (d) Under initial plan implementation, collection shall be
5 provided in public places where recycling collection receptacles
6 were in place and managed by government agencies prior to the
7 effective date of this section.

8 (e) Every producer responsibility organization shall
9 identify in its plan and on its website, in appropriate
10 languages, each area where curbside and alternative collection
11 services are available, the location of each permanent
12 collection opportunity for covered products, the types and
13 locations of alternate collection methods used, and the
14 locations of public place collection services.

15 **§ -17 County authority to collect covered products. (a)**

16 The provisions of this chapter shall not:

17 (1) Obligate a county to participate in a plan implemented
18 by a producer or a producer responsibility
19 organization;

20 (2) Restrict the authority of a county under section 46-
21 85; or



1 (3) Restrict the authority provided to a county under
2 chapter 342G.

3 (b) A county may enter into contractual agreements with
4 producers or producer responsibility organizations under which
5 the county:

6 (1) Collects covered products from residents in single-
7 family and multifamily residences within its
8 jurisdiction; or

9 (2) Arranges for reimbursement from producers to cover the
10 costs incurred by the county for collection of covered
11 products.

12 (c) Counties may carry out resident education and outreach
13 consistent with producer plan provisions under section -20
14 and be reimbursed for the costs of these initiatives, subject to
15 mutual agreement between the jurisdiction and the producer
16 responsibility organization, using an approach specified in the
17 plan.

18 § -18 **Service provider agreements.** (a) Except as
19 provided for in section -17, to carry out producer
20 responsibilities under this chapter, producers that enter into



1 contractual agreements with service providers, including
2 counties and private entities, shall:

- 3 (1) Use open, competitive, and fair procurement practices;
- 4 (2) Compensate counties that provide collection or
5 outreach services under section -16 and section
6 -17 for all reasonable costs associated with the
7 services provided;
- 8 (3) Ensure that all contracted service providers:
 - 9 (A) Meet minimum operating standards, including the
10 requirements of this chapter and chapter 342G;
 - 11 (B) Operate in an environmentally sound and socially
12 just manner;
 - 13 (C) Meet high labor standards, including family-level
14 wages, providing benefits including health care
15 and pensions, and demonstrate procurement from
16 and contracts with women, minority, or veteran-
17 owned businesses; and
 - 18 (D) Provide fair opportunities regardless of
19 ethnicity, race, gender, age, disability,
20 religion, sexual orientation, or national origin;
21 and



1 (4) Ensure that contracted service providers maintain
2 records and provide the producer responsibility
3 organization with verifiable chain of custody
4 documentation and other documentation necessary to
5 evaluate the performance relative to the requirements
6 of this chapter.

7 (b) Producers, individually or through a producer
8 responsibility organization, shall submit the records and
9 documentation required under this section to the department,
10 upon request by the department.

11 § -19 **Infrastructure investments.** (a) Each producer
12 responsibility organization shall invest in reuse and recycling
13 infrastructure and market development in the State. This may
14 include but is not limited to:

15 (1) Installing or upgrading equipment to improve sorting
16 of covered products or mitigating the impacts of
17 covered products to other commodities at existing
18 sorting and processing facilities; and

19 (2) Capital expenditures for new technology, equipment,
20 and facilities.



1 (b) Infrastructure investments shall be detailed in the
2 annual report submitted to the department.

3 § -20 **Education and outreach.** (a) Each plan
4 implemented by producer responsibility organizations under this
5 chapter shall include an education and outreach component that
6 is designed to provide clear, equitable, socially just, and
7 consistent information to residents and support the achievement
8 of the reuse and recycling performance requirements under
9 section -13 that, at minimum:

10 (1) Uses consistent and easy to understand messaging and
11 education statewide adapted to the diverse communities
12 of the State, with the aim of reducing resident
13 confusion regarding the recyclability and end-of-life
14 management options available for different covered
15 products;

16 (2) Establishes a process for answering customer questions
17 and resolving customer concerns;

18 (3) Provides outreach and educational resources that are
19 conceptually, linguistically, and culturally accurate
20 for the communities served and reach the State's
21 diverse ethnic populations, including through



- 1 meaningful consultation with communities that bear
2 disproportionately higher levels of adverse
3 environmental and social justice impacts;
- 4 (4) Develops and provides outreach and educational
5 materials about the program to be used by retailers,
6 collectors, government agencies, and nonprofit
7 organizations;
- 8 (5) Informs producers and retailers about their obligation
9 to sell only covered products of producers
10 participating in an approved plan; and
- 11 (6) Evaluates the effectiveness of education and outreach
12 efforts for the purposes of making progress toward
13 performance requirements established in this chapter.
- 14 **§ -21 Annual reporting on activities.** (a) Beginning
15 September 1, , and each September 1st thereafter, each
16 producer responsibility organization shall submit an annual
17 report to the department for the preceding calendar year of plan
18 implementation. The annual report shall include plan
19 implementation activities as required by this chapter.
- 20 (b) Each annual report shall include the following
21 information:



- 1 (1) The quantity of covered products supplied, including:
- 2 (A) A list and brief explanation of the covered
- 3 products supplied or sold in or into the State to
- 4 consumers by each producer and by brand
- 5 participating in the program and a list of
- 6 covered products supplied that are designated for
- 7 collection through curbside collection or by an
- 8 alternate means under the approved plan;
- 9 (B) The weight and, where applicable and determined
- 10 by the department to be necessary, number of
- 11 units, by material category, of covered products
- 12 supplied into the State to consumers for
- 13 residential use, to be used for the purposes of
- 14 calculating the reuse and recycling rate
- 15 requirements under section -13; and
- 16 (C) A description of how the producer responsibility
- 17 organization has distinguished and apportioned
- 18 the quantities of packaging and paper supplied to
- 19 consumers for residential use, which are
- 20 considered covered products under this chapter,
- 21 from quantities supplied for nonresidential use



1 that are not considered covered products under
2 this chapter;

3 (2) The quantity of covered products supplied that were
4 designed to be reused or refilled, by material
5 category, by weight and, where applicable and
6 determined by the department to be necessary, number
7 of units;

8 (3) The quantity of postconsumer recycled content, by
9 material category, of covered products supplied,
10 measured in accordance with the requirements in
11 section -14 and including the total postconsumer
12 content by weight and as a percentage of total weight;

13 (4) The quantity of material managed and methods of
14 management by the program, including the weight:

15 (A) Of all material managed by the program, by
16 material category, including covered products and
17 other materials;

18 (B) And number of units, where applicable and
19 determined by the department to be necessary, by
20 material category, of reused material managed by



- 1 the program, measured as defined in section -
- 2 13;
- 3 (C) And number of units, where applicable and
- 4 determined by the department to be necessary, by
- 5 material category, of recycled material managed
- 6 by the program, measured as defined in section
- 7 -13;
- 8 (D) By material category, of material managed by the
- 9 program sent for energy recovery;
- 10 (E) By material category, of material managed by the
- 11 program sent for landfill disposal; and
- 12 (F) By material category, of material managed by the
- 13 program for other methods of management not
- 14 listed in paragraphs (4) (B) through (E),
- 15 accompanied by a description of each other method
- 16 used;
- 17 (5) The final destinations of recycled material managed by
- 18 the program, including a list of:
- 19 (A) Names and locations of end users or reproprocessors
- 20 that received recycled material managed by the
- 21 program, by material category; and



- 1 (B) Descriptions of the forms of recycled material
2 managed by the program that were sold or supplied
3 to the end users or reprocessors;
- 4 (6) The reuse and recycling rates achieved by the program,
5 for each material category of covered product supplied
6 and for all covered products supplied into the State,
7 calculated in accordance with the requirements in
8 section -13;
- 9 (7) A description of the levels and types of physical
10 contamination in the materials collected and managed
11 by the program;
- 12 (8) Activities undertaken to meet the convenience
13 standards for collection of covered products as
14 established section -16, including:
- 15 (A) A list of jurisdictions and service providers
16 where curbside collection services are provided
17 by the program, accompanied by a brief
18 description of services provided, locations and
19 operating hours of permanent collection
20 facilities, types and locations of alternate



1 collection methods used, and locations of public
2 place collection services; and

3 (B) Collection service accessibility and convenience
4 metrics, including population coverage, the
5 geographic distribution of collection, and the
6 distance of collection locations to state
7 residents;

8 (9) A description of the investments made in reuse and
9 recycling infrastructure and market development in the
10 State, including the amount spent expressed as a
11 percentage of the program's total annual expenditures;

12 (10) A description of education and outreach activities
13 undertaken and a summary of the evaluation of
14 education and outreach effectiveness;

15 (11) A description of actions taken to:

16 (A) Reduce the life-cycle environmental impacts of
17 covered products supplied or sold in or into the
18 State and to increase reuse, refill, and
19 recyclability of covered products;

20 (B) Increase collection and recycling system
21 efficiency, including:



- 1 (i) The establishment of any financial
- 2 incentives for collection;
- 3 (ii) Reductions in contamination through public
- 4 education and outreach or labeling of
- 5 products, infrastructure upgrades, and
- 6 market development; and
- 7 (iii) The establishment of new collection services
- 8 or locations;
- 9 (C) Provide and expand public place recycling,
- 10 coordinate with the department on litter
- 11 prevention measures, and reduce contamination
- 12 from packaging at compost and other organics
- 13 processing facilities;
- 14 (D) Address toxic substances in covered products;
- 15 (E) Achieve equity in the provision of covered
- 16 product collection services in the State,
- 17 including in communities bearing disproportionate
- 18 burdens from environmental, social justice, and
- 19 economic impacts; and
- 20 (F) Manage covered products in an environmentally
- 21 sound and socially just manner that exceeds human



- 1 health, safety, and environmental protection
2 standards;
- 3 (12) An assessment of the greenhouse gas emissions
4 associated with program operations, including both
5 direct emissions and indirect emissions with all
6 activities, and including the avoided emissions from
7 source reduction, reuse, and recycling of covered
8 products into new products and materials;
- 9 (13) Identification of the governing board members of a
10 producer responsibility organization and the
11 identification of the members of the advisory
12 committee formed under section -24;
- 13 (14) A summary of advisory committee engagement and input
14 as well as comments received from additional
15 stakeholders and community members; and
- 16 (15) Any other information required by the department, as
17 adopted by rule.
- 18 (c) Prior to the submission of the annual report, all data
19 and information that is material to the department's review of
20 the program's compliance with the requirements of this chapter



1 shall be annually audited and verified by an independent third
2 party.

3 (d) Annual independent auditing and verification shall:

4 (1) Include documentation of the reuse and recycling rate
5 and recycled product content;

6 (2) Encompass the management of materials from the point
7 of collection through processing and sale of recycled
8 materials; and

9 (3) Determine whether all facilities involved in the
10 collection, processing, and final disposition of
11 collected covered products are managed in an
12 environmentally sound and socially just manner.

13 (e) The department may adopt rules pursuant to chapter 91
14 to establish annual reporting requirements, information to be
15 included, and third-party verification requirements necessary
16 for the department to determine the program's compliance with
17 requirements of this chapter.

18 § -22 **Plan approval; updates; revisions.** (a) A
19 producer responsibility organization shall submit a plan to the
20 department that addresses five calendar years of operation. A
21 plan shall not be valid for no more than five years.



1 (b) Within three years of implementation of its initial
2 plan, a producer responsibility organization shall submit an
3 updated plan for the following five calendar years to address
4 changes in the operations and activities of the program.

5 (c) For all subsequent plans submitted after the initial
6 plan, a producer responsibility organization shall submit, one
7 year prior to the expiration of the plan, an updated plan for
8 the following five calendar years of operation to address
9 changes in the operations and activities of the program.

10 (d) If the reuse and recycling performance requirements
11 established section -13 have not been met as of the time of
12 plan update, an independent evaluation shall be conducted of the
13 producer responsibility organization's efforts to implement the
14 approved plan. The evaluation shall provide information for the
15 producer responsibility organization to use to target and
16 improve reuse and recycling rate performance.

17 (e) A producer responsibility organization shall carry out
18 the stakeholder consultation process established in section -
19 10 prior to the submission of each plan and plan update.

20 (f) Producers may revise their plan if significant changes
21 have occurred.



1 (g) The department may require a producer responsibility
2 organization to revise its plan more frequently than every five
3 years if:

4 (1) The program and activities to implement the plan fail
5 to achieve the reuse and recycling performance
6 requirements established in section -13 or
7 otherwise fail to achieve significant requirements
8 under this chapter; or

9 (2) There are significant changes to the regulatory or
10 economic environment in which plan activities are
11 being carried out.

12 (h) The department shall review new, updated, and revised
13 plans submitted by producer responsibility organizations as
14 required section -4.

15 § -23 **Private right of action.** (a) A producer or
16 producer responsibility organization implementing an approved
17 plan may bring a civil action or actions to recover costs,
18 damages, and fees, as specified in this section, from any
19 producer who sells or otherwise makes available in the State
20 covered products not included in an approved plan. An action
21 under this section may be brought against one or more



1 defendants. An action may only be brought against a defendant
2 producer when the producer responsibility organization or a
3 producer incurs costs in the State, including reasonable
4 incremental administrative and program promotional costs, in
5 excess of \$1,000 to collect, transport, and recycle or otherwise
6 dispose of the covered products of a nonparticipating producer.

7 (b) A producer or producer responsibility organization may
8 bring a civil action against another producer or producer
9 responsibility organization that underperforms on its collection
10 or recycling rate obligations under this chapter by failing to
11 collect and provide for the end-of-life management of covered
12 products in an amount roughly equivalent to the national market
13 share of the covered products of the producer or of the national
14 market share of covered products of all producers participating
15 in a plan implemented by a producer responsibility organization.
16 Producers participating in a producer responsibility
17 organization that underperforms its obligations under this
18 chapter are liable jointly and severally.

19 (c) The remedies provided in this section are in addition
20 to the enforcement authority of the department and do not limit
21 and are not limited by a decision by the department to impose a



1 civil penalty. The department is not required to audit,
2 participate in, or provide assistance to a producer or producer
3 responsibility organization pursuing a civil action authorized
4 under this section.

5 (d) A producer responsibility organization or producer may
6 only bring a civil action if the producer or the producer
7 responsibility organization has, at least thirty days prior,
8 provided the underperforming producer or producer responsibility
9 organization with a written warning regarding the requirements
10 of this chapter. The written warning shall inform a producer or
11 producer responsibility organization that it shall participate
12 in an approved plan or otherwise come into compliance with the
13 requirements of this chapter within thirty days of the notice.
14 A civil action may only be brought against an underperforming
15 producer or producer responsibility organization who remains in
16 violation of the requirements of this chapter for at least
17 thirty days after receiving the written warning.

18 § -24 **Advisory committee; established.** (a) Each
19 producer and producer responsibility organization shall
20 establish an advisory committee. The department may require
21 individual producers operating an individual program to



1 establish an advisory committee that meets the requirements
2 established under subsection (b).

3 (b) At a minimum, the advisory committee shall include at
4 least one person representing each of the following:

5 (1) The county in which the producer or producer
6 responsibility organization is located;

7 (2) Public sector recycling and solid waste industries;

8 (3) Private sector recycling and solid waste industries;

9 (4) Public or private reuse and waste prevention
10 organizations;

11 (5) Recycled plastic and paper feedstock users;

12 (6) Public place recycling programs;

13 (7) Freshwater and marine litter programs;

14 (8) Environmental organizations;

15 (9) Consumer organizations; and

16 (10) Communities that bear disproportionately higher levels
17 of adverse environmental impacts.

18 (c) If requested, each producer and producer
19 responsibility organization shall reimburse representatives of
20 community groups and nonprofit members for their expenses,
21 including but not limited to childcare, travel expenses,



1 information technology supplies and services, and wage
2 replacement that are related to participating on the advisory
3 committee. Other members may be reimbursed for travel expenses
4 on an as needed basis to ensure their ability to participate.

- 5 (d) Each producer responsibility organization shall:
- 6 (1) Hold an advisory committee meeting at least once per
7 year;
- 8 (2) Request and consider comments from its advisory
9 committee prior to submission of annual reports, plan
10 updates, and plan revisions to the department;
- 11 (3) Document all comments received and responsive answers
12 to the department as an appendix submitted in annual
13 reports, plan updates, and plan revisions; and
- 14 (4) Include a summary of advisory committee engagement and
15 input in an annual report submitted to the department.

16 **§ -25 Waste and litter management special fund;**
17 **established.** There is established within the state treasury the
18 waste and litter management special fund. All funds received by
19 the department from producer responsibility organizations
20 pursuant to this chapter shall be deposited in the special fund.
21 Subject to legislative appropriation, moneys from the special



1 fund shall only be used by the department for implementing,
2 administering, and enforcing waste and litter management
3 programs pursuant to this chapter."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 4. If any provision of this Act, or the
8 application thereof to any person or circumstance, is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 5. This Act shall take effect upon its approval.

14

INTRODUCED BY:



JAN 27 2021



H.B. NO. 1316

Report Title:

Department of Health; Waste and Litter; Management; Plan;
Special Fund

Description:

Requires producers of packaging waste be responsible for the end-of-life management of their products in a way that ensures minimal social and environmental impacts. Allows the department of health to administratively impose civil penalties. Establishes the waste and litter management special fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

