
A BILL FOR AN ACT

RELATING TO WASTE MANAGEMENT.

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

1 PART I

2 SECTION 1. The legislature finds that as the State strives
3 to fulfill its commitments to reduce waste and effectively
4 mitigate the impacts of climate change, extended producer
5 responsibility policies offer an opportunity to create mutually
6 beneficial partnerships with the businesses that produce
7 packaging waste.

8 Extended producer responsibility policies are designed to
9 transfer some portion of the costs of managing the waste
10 generated by the sale of consumer goods to the entities that
11 produce those goods. These policies stand in contrast to
12 existing policies that place this responsibility solely on
13 taxpayers. The failure of recycling programs and the multiple
14 crises created by plastic pollution, which fouls air, water and
15 biological systems worldwide, are the primary drivers leading to
16 the call for such innovative solutions.



1 The legislature further finds that Hawaii has a unique role
2 to play in creating extended producer responsibility solutions
3 due to the State's relatively small resident population, remote
4 location bounded by the Pacific Ocean, and global image as a
5 relatively pristine environment. The fact that the islands
6 attract millions of visitors each year adds to Hawaii's value as
7 a proving ground for forward-thinking waste reduction
8 initiatives.

9 The legislature also finds that the corporations that
10 produce the greatest volume of consumer goods have a
11 correspondingly unique role to play in solving the problems
12 caused by the proliferation of packaging waste. Among these
13 corporations, sixteen of the top twenty are signatories to the
14 Global Commitment for a New Plastics Economy, an initiative
15 developed by the Ellen MacArthur Foundation and the United
16 Nations Environmental Programme as a primary means for
17 implementing waste-related sustainable development goals. These
18 existing commitments have signatories who are on track to reduce
19 the volume of plastic packaging waste that their business models
20 generate, and ensure that whatever remains is either reusable,
21 recyclable or compostable.



1 The legislature also finds that the inclusion of a
2 \$350,000,000 "recycling is infrastructure too" package in the
3 federal bipartisan Infrastructure Investment and Jobs Act of
4 2021 offers unprecedented opportunities for the State and its
5 counties to leverage taxpayer funding and producer contributions
6 to attract significant funding to the State for the purpose of
7 revamping and revitalizing Hawaii's waste diversion programs.

8 Finally, the legislature finds that although reuse
9 strategies offer far greater benefits than recycling programs,
10 these strategies have historically failed to gain the resources
11 needed to develop and ensure success.

12 The purpose of this Act is to establish an extended
13 producer responsibility program that:

- 14 (1) Is particularly suited to Hawaii;
- 15 (2) Engages the producers best suited to eliminate
16 packaging waste in a fair and balanced way;
- 17 (3) Positions the State to take full advantage of federal
18 funding aimed at reducing waste; and
- 19 (4) Prioritizes reuse strategies as the most effective way
20 to accomplish this goal.



1 PART II

2 SECTION 2. **Definitions.** As used in this Act:

3 "Baseline volume" means the volume of packaging waste a
4 county sends to a landfill or a power plant that burns municipal
5 solid waste as a fuel, or both, during the calendar year
6 beginning January 1, 2021, and ending on December 31, 2021.

7 "Brand" means a symbol, word, or mark that identifies a
8 fast-moving consumer good.

9 "Covered materials and products" means, regardless of
10 recyclability:

11 (1) Any part of a package or container, including material
12 that is used for the containment, protection,
13 handling, delivery, and presentation of a product that
14 is sold, offered for sale, imported, or distributed in
15 the State; and

16 (2) Primary, secondary, and tertiary packaging intended
17 for the consumer market; service packaging designed
18 and intended to be filled at the point of sale,
19 including carry-out bags, bulk goods bags; and
20 beverage containers.

21 "Covered producer" means a producer that either:



1 (1) Produces a packaging volume of more than ten thousand
2 metric tons internationally; or

3 (2) Has international gross sales of fast-moving consumer
4 goods of more than \$500,000,000.

5 "Department" means the department of health.

6 "Fast-moving consumer good" means a:

7 (1) Non-durable consumer good that is packaged using a
8 covered material or product; or

9 (2) Covered material or product if the covered material or
10 product is being sold as a product instead of being
11 used as packaging.

12 "Person" means any individual, business, partnership,
13 limited liability company, corporation, not-for-profit
14 organization, association, government entity, public benefit
15 corporation, or public authority.

16 "Packaging volume" means the packaging volume that a
17 producer places on the market.

18 "Producer" means any person, except for the State or any of
19 its political subdivisions, that:

20 (1) Manufactures a fast-moving consumer good under the
21 person's own name or brand; and



1 (2) Either:

2 (A) Sells, offers for sale, distributes, or imports a
3 fast-moving consumer good as owner or licensee of
4 a trademark or brand under which a fast-moving
5 consumer good is sold or distributed in the
6 State; or

7 (B) Sells, offers for sale, or distributes a
8 fast-moving consumer good in the State.

9 "Program year" means a full calendar year beginning on
10 January 1, 2023, and each calendar year thereafter beginning on
11 January 1; provided that the final program year shall end on
12 December 31, 2027.

13 SECTION 3. **Sales prohibition.** Beginning January 1, 2023,
14 and until December 31, 2027, no covered producer shall sell or
15 offer for sale any fast-moving consumer good for delivery in
16 this State unless the covered producer has registered pursuant
17 to section 4 of this Act and complied with any other applicable
18 provisions of this Act.

19 SECTION 4. **Fast-moving consumer good covered producer**
20 **responsibility.** (a) By January 1, 2023, each covered producer



1 shall register with the department and pay to the department a
2 fee as provided in subsection (e).

3 (b) Each covered producer who is registered shall submit
4 an annual renewal of its registration by January 1 of each
5 subsequent program year, with the payment of a fee as provided
6 in subsection (e).

7 (c) The registration and each renewal shall include a list
8 of all of the covered producer's brands of fast-moving consumer
9 goods and shall be effective on the second day of the succeeding
10 month after receipt by the department of the registration or
11 renewal.

12 (d) The registration and each renewal shall include the
13 covered producer's sales volume for the preceding year and the
14 packaging volume placed in the market in the State by the
15 covered producer's sales volume during that year. The packaging
16 volume generated in the State shall be used to calculate the fee
17 in subsection (e).

18 (e) The fee to be paid at the time of registration or
19 renewal shall be \$150 for each metric ton of packaging placed in
20 the market in the State by the covered producer.



1 SECTION 5. **Extended producer responsibility special fund.**

2 (a) There is established in the state treasury the extended
3 producer responsibility special fund into which shall be
4 deposited:

5 (1) All fees, payments, and penalties collected by the
6 department pursuant to this Act;

7 (2) Any appropriation by the legislature into the special
8 fund;

9 (3) Any grant or donation made to the special fund; and

10 (4) Any interest earned on the balance of the special
11 fund.

12 (b) The extended producer responsibility special fund
13 shall be administered by the department.

14 (c) Moneys in the special fund shall be expended as
15 follows:

16 (1) In fiscal year 2022-2023, the department shall
17 allocate moneys to each county for the costs of
18 creating the countywide needs assessment required
19 pursuant to section 6;

20 (2) In subsequent fiscal years, the department shall:



- 1 (A) Make available moneys to each county to be
- 2 expended for packaging reuse programs; and
- 3 (B) Expend moneys for other purposes consistent with
- 4 the guidelines adopted pursuant to section 6(b);
- 5 provided that packaging reuse programs shall be given
- 6 priority for available moneys; and
- 7 (3) The department may expend an amount not to exceed
- 8 \$ in each fiscal year to administer the
- 9 extended producer responsibility program established
- 10 by this Act.

11 SECTION 6. **Needs assessment.** (a) Each county shall
12 develop a countywide needs assessment, which shall:

- 13 (1) Detail the resources needed to reduce the volume of
- 14 packaging waste the county sends to landfills by fifty
- 15 per cent from the respective county's baseline volume
- 16 by December 2026; provided that for a county with a
- 17 population greater than five hundred thousand, the
- 18 needs assessment shall detail the resources needed to
- 19 reduce by fifty per cent of its baseline volume, the
- 20 volume of packaging waste the county sends to a
- 21 landfill or to a power plant that burns municipal



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1 solid waste as a fuel; provided further that a county
2 with a population greater than five hundred thousand
3 shall categorize its resource needs by method of
4 packaging waste disposal; and

5 (2) Detail the resources needed to reduce the amount of
6 packaging waste the county sends to a landfill by
7 eighty per cent from the respective county's baseline
8 volume by December 2030; provided that for a county
9 with a population greater than five hundred thousand,
10 the needs assessment shall detail the resources needed
11 to reduce by eighty per cent of its baseline volume,
12 the amount of packaging waste the county sends to a
13 landfill or to a power plant that burns municipal
14 solid waste as a fuel; provided further that a county
15 with a population greater than five hundred thousand
16 shall categorize its resource needs by method of
17 packaging waste disposal.

18 (b) Each county shall submit its countywide needs
19 assessment to the department no later than August 1, 2023. The
20 department shall compile the assessments and consolidate them
21 along with any recommendations made by the counties and shall



1 work with the counties and registered covered producers to
2 establish guidelines on the use of moneys in the extended
3 producer responsibility special fund; provided that priority
4 shall be given to packaging reuse programs.

5 (c) The department shall submit an annual report to the
6 legislature no later than twenty days prior to the convening of
7 each regular session that contains a summary of:

8 (1) County needs assessments;

9 (2) Moneys deposited into the extended producer
10 responsibility special fund;

11 (3) The use of any moneys from the extended producer
12 responsibility special fund; and

13 (4) Any other findings and recommendations, including any
14 proposed legislation.

15 **SECTION 7. Financial and proprietary information; report.**

16 Notwithstanding any law to the contrary, financial or
17 proprietary information, including trade secrets, commercial
18 information, and business plans, submitted to the department
19 under this Act shall be confidential and exempt from public
20 disclosure to the extent permitted by chapter 92F, Hawaii
21 Revised Statutes.



1 SECTION 8. **Rules.** The department may adopt rules pursuant
2 to chapter 91, Hawaii Revised Statutes, necessary to implement
3 this Act.

4 SECTION 9. **Enforcement.** (a) The department may conduct
5 audits and inspections to determine compliance under this Act.
6 Except as provided in subsection (c), the department and the
7 attorney general shall be empowered to enforce this Act and take
8 necessary action against any covered producer for failure to
9 comply with this Act or rules adopted thereunder.

10 (b) The attorney general may file suit in the name of the
11 State to enjoin an activity related to the sale of fast-moving
12 consumer goods in violation of this Act.

13 (c) The department shall issue a warning notice to a
14 person for the person's first violation of this Act. The person
15 shall comply with this Act within sixty days of the date the
16 warning notice was issued or be subject to the penalties
17 provided by law or rule, including, but not limited to,
18 penalties set forth in subsections (d) and (e).

19 (d) Any person who violates any requirement of this Act
20 may be assessed a penalty of up to \$1,000 for the first
21 violation and up to \$2,000 for the second and each subsequent



1 violation, in addition to any additional penalties required or
 2 imposed pursuant to this Act; provided that each day of
 3 continued violation shall constitute a separate violation.

4 (e) The department shall determine additional penalties
 5 based on adverse impact to the environment, unfair competitive
 6 advantage, and other considerations that the department deems
 7 appropriate.

8 SECTION 10. **Administrative penalties; fees.** In addition
 9 to any other administrative or judicial remedy provided by this
 10 Act or rules adopted under this Act, for a violation thereof,
 11 the department may impose by order administrative penalties and
 12 is further authorized to set, charge, and collect administrative
 13 fines and to recover administrative fees and costs, including
 14 attorney's fees and costs, or to bring legal action to recover
 15 administrative fines and fees and costs, including attorney's
 16 fees and costs.

17 PART III

18 SECTION 11. There is appropriated out of the general
 19 revenues of the State of Hawaii the sum of \$ or so
 20 much thereof as may be necessary for fiscal year 2022-2023 for



1 deposit into the extended producer responsibility special fund
2 established in section 5 of this Act.

3 SECTION 12. There is appropriated out of the extended
4 producer responsibility special fund the sum of \$ or
5 so much thereof as may be necessary for fiscal year 2022-2023
6 for the counties to prepare countywide need assessments;
7 provided that the moneys shall be expended as follows:

- 8 County of Hawaii \$
- 9 County of Kauai \$
- 10 County of Maui \$
- 11 City and county of Honolulu \$

12 The sum appropriated shall be expended by the respective
13 county for the purposes of this Act.

14 The sum appropriated shall constitute the State's share of
15 the cost of the mandated program under article VIII, section 5,
16 of the state constitution.

17 SECTION 13. There is appropriated out of the extended
18 producer responsibility special fund the sum of \$ or
19 so much thereof as may be necessary for fiscal year 2022-2023
20 for the administration of the extended producer responsibility
21 program.



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Report Title:

DOH; Counties; Extended Producer Responsibility; Waste Reduction; Packaging; Fast-Moving Consumer Goods; Special Fund; Appropriations

Description:

Establishes an extended producer responsibility program. Requires certain producers of fast-moving consumer goods to register with the Department of Health and pay an annual fee based on the amount of packaging volume the covered producer places on the market each calendar year from 2023 to 2027. Provides for the deposit of fees into an extended producer responsibility special fund. Provides for the expenditure of moneys from the extended producer responsibility special fund for the creation of a report that assess the resources needed to reduce the volume of packaging waste sent to landfills or power plants that burn municipal solid waste as a fuel by 50% by 2026 and 80% by 2030. Appropriates moneys.

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