

JAN 26 2022

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# 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



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.



1           The sum appropriated shall be expended by the department of  
2 health for the purposes of this Act.

3           SECTION 14. This Act does not affect rights and duties  
4 that matured, penalties that were incurred, and proceedings that  
5 were begun before its effective date.

6           SECTION 15. This Act shall take effect on July 1, 2022,  
7 and shall be repealed on June 30, 2028; provided that if there  
8 are moneys remaining in the extended producer responsibility  
9 special fund on June 30, 2028, the department of health and the  
10 counties may continue to expend the remaining moneys in a manner  
11 consistent with this Act after June 30, 2028, until all moneys  
12 have been expended.

13

INTRODUCED BY:           *Jan Acasio*          



**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.

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

