

# HOUSE . . . . . No. 926

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Michael S. Day*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to save recycling costs in the commonwealth.

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PETITION OF:

| NAME:                 | DISTRICT/ADDRESS:     | DATE ADDED:      |
|-----------------------|-----------------------|------------------|
| <i>Michael S. Day</i> | <i>31st Middlesex</i> | <i>1/17/2025</i> |

# HOUSE . . . . . No. 926

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By Representative Day of Stoneham, a petition (accompanied by bill, House, No. 926) of  
Michael S. Day relative to recycling costs. Environment and Natural Resources.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 779 OF 2023-2024.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Fourth General Court  
(2025-2026)  
\_\_\_\_\_

An Act to save recycling costs in the commonwealth.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority  
of the same, as follows:*

1           Section 1: Definitions

2           (a)     “Beverage container” means a container used to contain all drinks in liquid form  
3     and intended for human consumption.

4           (b)     “Bio-plastic” or “bio-plastics” means plastic produced from biological sources  
5     such as vegetable fats and oils, polysaccharides, sugar, proteins, or other materials that are  
6     designed to be biodegradable.

7           (c)     “Brand” means any mark, word, name, symbol, design, device, or graphical  
8     element or a combination thereof, including a registered or unregistered trademark, that identifies  
9     and distinguishes a product from other products.

(d) “Commissioner” means the Commissioner of Department of Environmental Protection.

(e) “Comptroller” means the chief fiscal officer of the state.

(f) “Department” means the Department of Environmental Protection.

(g) “Discarded/Discards” [synonymous with “Generated/Generation”] means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.

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

(i) “Environmental justice community” means any neighborhood or community which is composed predominantly of persons of color or persons below the poverty line, that is subject to a disproportionate burden of environmental hazards.

(j) “Generated/Generation” [synonymous with “Discarded/Discards”] means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.

(k) “Local Government” means any municipal corporation, governmental subdivision of the State, local government unit, special district, school, local or regional board, commission, or authority authorized by law to plan or provide for waste management services for a specific geographical area

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

Packaging does not include:

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

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

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

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

(m) “Packaging Reduction Organization” means the non-profit entity or entities contracted by the Department and authorized to collect producer fees, assist producers with compliance with the requirements of this Act, provide technical assistance to producers, and implement the Packaging Reduction and Recycling Program.

(n) “Packaging Reduction and Recycling Program” or “Program” means the program implemented by the Packaging Reduction Organization, and overseen by the Department, to reduce packaging, assess and collect information and payments from producers based on the amount of packaging used by the producer to contain, protect, deliver, present, or distribute their products, in order to pay for the development of packaging reduction programs including, but not limited to, reusable and refillable packaging systems and infrastructure, reimbursements to local government to cover the cost of packaging recycling, and investments in education and outreach.

(o) “Post-Consumer Recycled Material” means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. “Post-Consumer Recycled Material” does not include post-industrial material or pre-consumer material, or material generated by means of advanced recycling, chemical recycling, combustion, gasification, incineration, pyrolysis, solvolysis, thermal desorption, waste-to-energy, waste-to-fuel, or any other chemical or molecular conversion process.

(p) “Producer” means:

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

(2) clause (1) does not apply, a person or entity that is not the manufacturer of the product, but is the owner or licensee of a trademark, regardless of whether the trademark is registered, under which a product is sold, offered for sale, contained, protected, delivered, presented, or distributed in or using packaging; or

(3) If clause (1) and (2) do not apply, a person or entity that imports a product that is contained, protected, delivered, or presented in packaging, into the United States or the state for use in commercial enterprise in the state.

“Producer” includes a franchisor of a franchise located in the state but does not include the franchisee operating that franchise.

(q) “Product Line” means a group of related products all marketed under a single brand name that is sold by the same producer to distinguish products from each other for better usability for customers.

(r) “Recyclable” means a product or packaging material a) that can be sorted by entities that process post-consumer materials generated in the state, b) that has a consistent regional market for purchase by end users in the production of new products, and c) which can be recycled with minimal losses of material during processing and manufacturing. Whether a product or packaging type meets these criteria shall be determined by an annual review process as described in Section 5 (c) below.

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

(s) “Recycled” means the use of discarded packaging materials or products in the production of a new product or packaging in place of virgin materials. Material will not be considered “recycled” if it is used as landfill cover. “Recycled” material does not include contaminants, residues, and other process losses.

(t) “Recycling” means the series of activities by which material is: (a) collected, transported, sorted, and processed; (b) used in industrial feedstocks in place of virgin materials to manufacture new products with minimal loss of material quality and quantity, as determined through the process set forth in Section 5 (c) below.

“Recycling” does not include energy recovery, energy generation, or the creation of hazardous chemicals by any means, including but not limited to advanced recycling, chemical recycling, combustion, gasification, incineration, pyrolysis, solvolysis, thermal desorption, waste-to-energy, waste-to-fuel, or any other chemical or molecular conversion process. It also does not include landfill disposal of discarded material or discarded product component materials, including the use of materials as landfill cover.

(u) “Recycling Rate” means the percentage of any given packaging type that is ultimately recycled. The recycling rate for any packaging material shall be calculated as the total weight of packaging that is recycled in a given year divided by the total weight of packaging generated. Material losses (contaminants and residues) accruing during collection, processing and manufacturing new products do not count as recycled and should not be in the numerator of the equation.

(v) “Reuse” means the return of packaging back into the economic stream for use in the same kind of application intended for the original packaging, without effectuating a change in the original composition of the package, the identity of the product, or the components thereof.

(w) “Reuse and refill system” means a program or set of mechanisms designed to facilitate multiple uses of packaging; Mechanisms may include, but are not limited to, deposits, incentives, curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution networks.

(x) “Reusable or refillable packaging and containers” means packaging material and containers that are specifically designed and manufactured to maintain its shape and structure, and be materially durable for repeated sanitizing, washing, and reuse.

(y) “Toxic substance” means a chemical or chemical class identified by a state agency, federal agency, international intergovernmental agency, accredited research university, or other scientific entity deemed authoritative by the Department on the basis of credible scientific evidence as being one or more of the following:

(1) A chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant, immunotoxin, neurotoxicant, or endocrine disruptor.

(2) A chemical or chemical class that is persistent or bioaccumulative.

(3) A chemical or chemical class that may harm the normal development of a fetus or child or cause other developmental toxicity in humans or wildlife.

(4) A chemical or chemical class that may harm organs or cause other systemic toxicity.



(5) A chemical or chemical class that may have adverse air quality impacts, adverse ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

(6) A chemical or chemical class that the Department has determined has equivalent toxicity to the above criteria.

(z) “Unit” means each discrete component of a package or container, including material that is used for the containment, protection, handling, delivery, transport, distribution, and presentation of a product that is sold, offered for sale, imported, or distributed in the state, including through internet transactions.

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

## Section 2: Packaging Reduction and Recycling Program

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

(b) The Department shall contract with a non-profit, 501(c)(3) to act as the Packaging Reduction Organization, which shall collect packaging reduction, generation, and recycling

information and fee payments, as described in Section 8, from participating producers. The payments collected from producers shall be deposited into the Packaging Reduction Fund to reimburse local governments for the costs associated with reducing and managing packaging waste, reimburse the Department for their administration of the program, and to support eligible projects that reduce packaging waste by investing in packaging reduction and elimination, reuse and refill systems and programs, recycling infrastructure, and comprehensive multi-media educational programs.

(c) No later than eighteen months after the effective date of this Act, the Department shall conduct a statewide packaging reduction, reuse, and recycling needs assessment as described in Section 7 of this Act to determine the current state of packaging reuse, recycling, and disposal, and to identify barriers and opportunities to reduce the amount of packaging discarded and disposed of, and to increase the reusability and recyclability of packaging.

(d) The State Comptroller shall conduct an annual audit of the program, including but not limited to: the amount of money received; the amount of money sent to local governments; the amount of money used to invest in reduction, recycling, and reuse programs and services by the Packaging Reduction Organization and any state offices; the amount of discarded packaging generated, reduced, and recycled; any recommendations for improvement of the program. The audit shall be a public document.

### Section 3: Producer Responsibilities and Exemptions for Small Producers.

(a) One year after the selection of the Packaging Reduction Organization as required by section 4 of this act, a producer shall not sell, offer for sale, or distribute into the state a

177 product contained, protected, delivered, presented, or distributed in packaging unless the  
178 producer is:

179 (1) Registered with the Packaging Reduction Organization; and

180 (2) In full compliance with all requirements of this act.

181 (b) A producer shall annually report to the Packaging Reduction Organization:

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

184 (2) All information necessary for producer and the Packaging Reduction  
185 Organization to meet its obligations required pursuant to section 5 of this act.

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

188 (1) The toxic substance reduction requirements of section 10 of this act;

189 (2) The packaging reduction requirements of section 11 of this act; and

190 (3) The packaging recycling requirements of section 13 of this act.

191 (d) A producer is exempt from the requirements and prohibitions of this act in a  
192 calendar year in which:

193 (1) The producer realized less than \$1,000,000 in total gross revenue during the prior  
194 calendar year; or

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

(e) A producer claiming an exemption pursuant to subsection (d) of this section shall provide the department with sufficient information to demonstrate that the claimant is eligible for an exemption.

#### Section 4: Selection of the Packaging Reduction Organization

(a) Consistent with the requirements of this Section, within one year after the promulgation of rules as required by Section 14 of this Act, the Department shall select and enter into a contract with a non-profit organization to act as the Packaging Reduction Organization in order to operate the Packaging Reduction and Recycling Program for a period of ten years.

(b) Consistent with applicable competitive bidding requirements under state purchasing laws and following the initial adoption of rules by Department pursuant to Section 14 of this Act, the Department shall issue a request for a proposal for the operation of the Packaging Reduction and Recycling Program. The proposals must be required to cover the 10-year operation of the program by the successful bidder and must be required to include, at a minimum, the following information:

(1) A description of how the bidder will administer the Packaging Reduction and Recycling Program, including the mechanisms and processes for providing assistance to producers to comply with the reporting requirements of this Act;

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

217           (3)     How the bidder intends to establish and manage the Packaging Reduction Fund,  
218 including, but not limited to, public participation, the staffing the bidder intends to use for  
219 management of the fund, and the plan for providing technical support to interested persons  
220 regarding use of the funds;

221           (4)     A financial assurance plan that ensures all funds held in the Packaging Reduction  
222 Fund are immediately and exclusively forfeited and transferred to or otherwise made  
223 immediately available to the Department if the Packaging Reduction Organization contract with  
224 the Department is terminated by the Department, or expires;

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

229           (6)     A certification that the bidder will not share, except with the Department,  
230 information provided to the bidder by a producer that is proprietary information and that is  
231 identified by the producer as proprietary information. The certification must include a  
232 description of the methods by which the bidder intends to ensure the confidentiality of such  
233 information; and

234           (7)     Any other additional information required by the Department.

(c) If, at the close of the competitive bidding process under this subsection, the Department determines that no bidder has submitted, in accordance with this subsection, a proposal that meets the requirements of this subsection the Department shall run the program by itself or a designated state public body.

#### Section 5: Responsibilities of the Packaging Reduction Organization

(a) The Packaging Reduction Organization shall:

- (1) Register all producers;
- (2) Collect and compile data from producers as required by Section 3 of this Act;
- (3) Collect fees due from producers as required by Section 8 of this Act;
- (4) Reimburse the Department and the State Comptroller for the costs associated with conducting the needs assessment required by Sections 7, 8, and 9 of this Act;
- (5) Distribute funds to reimburse local governments and private companies for the costs associated with the implementation of reduction and refill and reuse programs, collection, transportation, and recycling of packaging materials as required by Section 9 of this Act;
- (6) Make recommendations to the Department regarding investments toward packaging reduction, reuse, and recycling as required by Section 9 of this Act; and
- (7) Offer technical support to participating producers, with an emphasis on support to small businesses, to assist them with compliance with the requirements of this Act, including information about procuring affordable alternatives to non-compliant packaging and reducing packaging.

255           (b)     Annually, the Packaging Reduction Organization shall submit a report to the  
256     Department that, at a minimum, must include the following information:

257           (1)     Contact information for the Packaging Reduction Organization;

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

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

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

268           (5)     A complete accounting of all payments made to and by the Packaging Reduction  
269     Organization during the prior calendar year;

270           (6)     A list of producers believed to be out of compliance with the requirements of this  
271     Act, and the reason the Packaging Reduction Organization believes the producer to be out of  
272     compliance. Information on non-compliant companies shall be provided to the State Attorney  
273     General's Office in a timely fashion and for possible enforcement action by that office.

(7) A description of the educational and outreach efforts made by the Packaging Reduction Organization in the prior calendar year, and how those efforts were designed to reduce packaging waste, and increase reuse and recycling of packaging materials.

(8) An assessment of whether the fee structure adopted by the Department pursuant to Section 8 of this Act has been effective in incentivizing improvements to the design of packaging material, including actual reduction of packaging, increases in reusable and refillable packaging, recycling rates for packaging materials, and decreases in the amount of packaging;

(9) A description of the reimbursements and expenditures made pursuant to Section 9 of this Act; and

(10) Any additional information required by the Department.

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

(d) The Packaging Reduction Organization shall conduct public outreach and provide consumers with educational and informational materials related to reducing the amount of packaging discarded, recycled, and disposed of in the state.

(1) The outreach and education shall, at a minimum, include:



295           i.       A description of the environmental, social, economic, and environmental justice  
296 impacts associated with improper disposal of packaging materials;

297           ii.       At least 3 public hearings in geographically diverse parts of the state each year, to  
298 solicit public input on the implementation and effectiveness of the law and suggested  
299 improvements.

300           iii.       Information regarding the management of discarded packaging including reuse,  
301 recycling, composting, and disposal by landfilling and incineration;

302           iv.       The location and availability of curbside and drop-off collection opportunities for  
303 packaging waste, including deposit and take-back programs;

304           v.       description of the environmental, social, economic, and environmental justice  
305 impacts associated with failure to reuse or recycle packaging materials;

306           vi.       Information regarding municipal reimbursement for the costs associated with  
307 packaging reuse, recycling, and disposal; and

308           vii.       Any other information required by the Department.

309       (e)       The public outreach and education conducted by the Packaging Reduction  
310 Organization shall:

311           i.       Utilize all available forms of media, including, but not limited to, television,  
312 radio, print, electronic, and web-based media to provide information directly to residents in the  
313 state, in multiple languages;

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

iii. Be provided to producers for inclusion on their packaging's label to inform consumers about the methods to responsibly reuse, recycle, or dispose of the packaging; and

iv. be coordinated with other similar public outreach and education programs in the state as necessary to avoid consumer confusion and facilitate the consolidation of available resources.

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

(g) The Packaging Reduction Organization shall not spend funds on lobbying federal, state, or local governments or campaign contributions to any candidates running for office.

Section 6: Responsibilities of the Department

(a) Beginning one year after the selection of the Packaging Reduction Organization pursuant to Section 4 of this Act, and annually thereafter, the Department shall work with the Packaging Reduction Organization to:

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

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

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

(4) develop a list of producers believed to be out of compliance with the requirements of this Act.

(b) In the event that the Department determines that the Packaging Reduction Organization no longer meets the requirements of this Act, or fails to implement and administer the requirements of this Act in a manner that effectuates the purposes of this Act, the Department shall revoke its approval of the Packaging Reduction Organization, and shall select a new Packaging Reduction Organization to replace it, or, in the alternative, may elect to operate the program itself.

(c) The Department or state Attorney General shall take enforcement action against all non-compliant producers in accordance with Section 15 of this Act.

#### Section 7: Statewide Packaging Reduction, Reuse, and Recycling Needs Assessment.

(a) Consistent with applicable competitive bidding requirements, within six months of the passage of this act, and every five years thereafter, the Department shall issue a request for

proposals to conduct a statewide packaging reduction, reuse, and recycling needs assessment, hereinafter “needs assessment” to identify barrier and opportunities for reducing, reusing, and recycling packaging materials. The proposals must include, at a minimum, a description of how the bidder will conduct the needs assessment to evaluate the following:

- (1) The current recycling rate for each type of packaging material;
- (2) The amount, by weight and material type, of packaging recycled at each recycling facility that accepts discarded packaging generated in the state;
- (3) The processing capacity, market conditions, and opportunities in the state and regionally for recyclable materials;
- (4) The net cost of end-of-life management of discarded packaging in the state, including the cost associated with the collection, transportation, sortation, recycling, landfilling, or incineration of discarded packaging;
- (5) The availability of opportunities in the recycling, and reuse system for minority- and-women-owned businesses;
- (6) Current barriers affecting recycling access and availability in the state;
- (7) Current barriers to the marketability of recyclable materials generated in the state;
- (8) Opportunities for the creation of packaging reuse and refill programs in the state;
- (9) Opportunities for the improvement of packaging recycling in the state, including the development of end markets for recycled packaging materials.

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

(11) Consumer education needs in the state with respect to packaging waste reduction, recycling, reducing contamination in recycling, and reuse and refill systems for packaging.

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

(c) The cost incurred by the Department or its state designee associated with conducting the needs assessment shall be paid for by funds from the Packaging Reduction and Recycling Fund.

(d) The Department shall report the results of the study to the public, the media, state legislature, the Governor, the State Comptroller and the Attorney General, who are all directed to coordinate enforcement of this law.

#### Section 8: Assessment of Fees

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

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

393 (c) The list of packaging material types for which there is a specific fee must include,  
394 at a minimum, the following material types:

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

396 (2) High density polyethylene (HDPE);

397 (3) Polyvinyl Chloride (PVC)

398 (4) Low density polyethylene (LDPE)

399 (5) Polypropylene (PP)

400 (6) Polystyrene (PS) including expanded polystyrene

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

402 (8) Bio-plastics;

403 (9) Paper;

404 (10) Cardboard;

405 (11) Wood;

406 (12) Glass;

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

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

409 (15) Mixed materials including laminates and packaging containing more than one of

410 the above materials

411           (16)   Any other material used for consumer packaging.

412           (d)    The fees shall be designed to cover, at a minimum, the total cost associated with:

413           (1)    The collection transportation, and management of each type of packaging material

414   used to contain, protect, deliver, present, or distribute products sold, offered for sale, or

415   distributed into the state by all producers;

416           (2)    The Department's and other state agencies administration of this Act;

417           (3)    The Packaging Reduction Organization's administration of the Packaging

418   Reduction and Recycling Program;

419           (4)    The cost associated with the development of the statewide packaging reduction,

420   reuse, and recycling needs assessment pursuant to Section 7 of this Act; and

421           (5)    Any other factors determined by the Department.

422           (e)    The fees adopted under this Section must delineate criteria to be used to initially

423   establish and subsequently adjust producer payments in a manner that incentivizes:

424           (1)    a reduction in the total packaging as measured by weight used by producers, and

425   discarded by consumers, businesses, institutions, and other users. Weight reductions shall not be

426   achieved by substituting plastic for other materials types.

427           (2)    an increase in the proportion of a producer's total packaging that is managed

428   within a reuse and refill system;

429           (3)    an increase in the proportion of a producer's total packaging that is deemed

430   recyclable as determined by an annual review process as described in Section 5 (c) of this Act.

(4) an increase in the proportion of a producer's total packaging that is ultimately recycled;

(5) a reduction in toxic components in packaging materials; and

(6) a reduction in litter from packaging materials.

(f) There shall be no fee assessed on packaging that is designed for reuse and refill and contained within a reuse or refill system.

(g) The Department shall update and revise the fees every three years.

#### Section 9: Packaging Reduction Fund

(a) There is hereby established, a separate, non-lapsing, interest-bearing fund to be known as the Packaging Reduction Fund, which will be managed by the Packaging Reduction Organization with oversight from the Department.

(b) The Packaging Reduction Organization shall deposit into the fund all payments received from producers in accordance with Section 8 of this Act, and all penalties collected pursuant to Section 14 of this Act.

(c) Beginning one year after the first payment of fees by producers pursuant to Section 8 of this Act, and annually thereafter, the Packaging Reduction Organization shall:

(1) Retain a portion of the fees deposited into the Packaging Reduction Fund to cover the costs associated with its administration of the Packaging Reduction and Recycling Program.

(2) Reimburse, the Department, the Office of the Inspector General, the Office of Attorney General, the State Comptroller and all other state entities for the costs associated with



administering and enforcing the requirements of this Act and its implementation regulations. This reimbursement shall include costs associated with performing, revising, and updating the Statewide Packaging Reduction, Reuse, and Recycling Needs Assessment required by Section 7 of this Act. This reimbursement shall also cover any costs incurred by the Department in adopting rules, revising rules, and administering and enforcing the requirements of this Act.

(d) Beginning one year after the first payments of fees by producers pursuant to Section 8 of this Act, and annually thereafter, the Packaging Reduction Organization shall distribute money from the Packaging Reduction Fund to reimburse local governments for the costs incurred for the management, reduction, and recycling of packaging waste, so long as the local government provides recycling services to all residents, businesses, schools, and institutions in their jurisdiction. Local governments that contract with private haulers and recyclers to handle the management, reduction, and recycling of packaging waste are eligible for reimbursement, so long as the private hauler or recycler provides recycling services to all residents, businesses, schools, and institutions within the local government's jurisdiction. Nothing in this subsection, shall be interpreted as allowing for the reimbursement of costs associated with the disposal of packaging.

(e) Beginning one year after the first payment of fees by producers pursuant to Section 8 of this Act, and annually thereafter, the Packaging Reduction Organization shall make all remaining funds following the reimbursement and distributions required by subsections (c) and (d) of this Section, available for projects and programs that will help achieve the packaging reduction requirements of Section 10 of this Act, and the packaging recycling requirements of Section 11 of this Act. Annually, the money allocated for projects and programs under this

subsection shall be at least 50% of the money provided to local government pursuant to subsection (d) of this section.

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

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

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

(4) Any investments made pursuant to this subsection must be approved by the Department. The Department shall approve or deny proposed investments within 90 days of receipt of a proposal from the Packaging Reduction Organization. The investments may be approved, at the discretion of the Department, so long as the proposed investment will, at a minimum:

i. Increase the transition of packaging from non-reusable to reduced, reusable or refillable packaging.

- 494           ii.       Increase access to reuse and refill infrastructure in the state.
- 495           iii.       Increase the capacity of reuse and refill infrastructure in the state.
- 496           iv.       Provide reuse and refill instructions that are, to the extent practicable, consistent  
497 statewide, easy to understand, translated into various commonly used languages, and easily  
498 accessible.
- 499           v.       Provide for outreach and education that are coordinated across programs or  
500 regions to avoid confusion for residents, and developed in consultation with local government  
501 and the public.

502           Section 10: Packaging Reduction Requirements

- 503           (a)       Each individual producer is required to meet the packaging reduction  
504 requirements contained in this section.

505           (1)       Beginning two years after a producer first registers with the Packaging Reduction  
506 Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,  
507 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by  
508 10% by weight.

509           (2)       Beginning four years after a producer first registers with the Packaging Reduction  
510 Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,  
511 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by  
512 20% by weight

513           (3)       Beginning six years after a producer first registers with the Packaging Reduction  
514 Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,

515 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by  
516 30% by weight.

517 (4) Beginning eight years after a producer first registers with the Packaging  
518 Reduction Organization, a producer shall reduce the amount of packaging used to contain,  
519 protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale  
520 into the state, by 40% by weight.

521 (5) Beginning ten years after a producer first registers with the Packaging Reduction  
522 Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver,  
523 present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by  
524 50% by weight.

525 (b) The reductions required by this subsection shall be measured against the total  
526 amount of packaging the producer used to contain, protect, deliver, present, or distribute the  
527 products they sold, offered for sale, or distributed for sale, during the first year they registered  
528 with the Packaging Reduction Organization.

529 (c) The reductions required by this subsection may be achieved by using the  
530 following strategies:

531 (1) Elimination of packaging components;

532 (2) Reduction of packaging components;

533 (3) Using reuse and refill systems; and

534 (4) Packaging rightsizing, lightweighting, and optimization.

535 (d) The reductions required by this subsection shall not be achieved by substituting  
536 plastic for other materials

537 (e) In the case of a producer that enters the market with 50% or more by weight of its  
538 packaging being reusable and contained within a reuse and refill system, that producer may  
539 apply to the Department for a waiver from the packaging reduction requirements.

#### 540 Section 11: Packaging Recycling Requirements

541 (a) Each individual producer is required to meet the packaging recycling  
542 requirements contained in this Section.

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

546 (1) Not less than 30% within five years after the enactment of this Act;

547 (2) Not less than 50% within eight years after the enactment of this Act; and

548 (3) Not less than 70% within twelve years after the enactment of this Act.

549 (c) The requirements of subsection (b) of this Section shall not apply to reusable or  
550 refillable packaging or containers.

#### 551 Section 12: Toxic Reduction Requirements

552 (a) Beginning two years after the promulgation of rules pursuant to Section 14 of this  
553 Act, no person or entity may sell, offer for sale, or distributed into the state any packaging  
554 containing the following toxic substance:

- 555 (1) Ortho-phthalates;
- 556 (2) Bisphenols;
- 557 (3) Per- and polyfluoroalkyl substances (PFAS);
- 558 (4) Lead and lead compounds;
- 559 (5) Hexavalent chromium and compounds;
- 560 (6) Cadmium and cadmium compounds;
- 561 (7) Mercury and mercury compounds;
- 562 (8) Benzophenone and its derivatives;
- 563 (9) Halogenated flame retardants;
- 564 (10) Perchlorate;
- 565 (11) Formaldehyde;
- 566 (12) Toluene;
- 567 (13) Antimony and compounds; and
- 568 (14) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).
- 569 (b) Beginning two years after the promulgation of rules pursuant to Section 14 of this
- 570 Act, no person or entity shall sell, offer for sale, or distributed for use in this state any packaging
- 571 containing:
- 572 (1) Polyvinyl chloride;

573 (2) Polystyrene; or

574 (3) Polycarbonate.

575 (c) Beginning three years after the promulgation of rules pursuant to Section 14 of  
576 this Act, and every three years thereafter, the Department shall designate at least ten additional  
577 toxic substances or families of toxic substances that may no longer be sold, offered for sale,  
578 distributed for sale, or distributed for use in packaging in this state unless it determines there are  
579 not ten chemicals that meet the definition of toxic substances. If the Department determines there  
580 are not ten toxic substances that meet such a definition, it shall publish a detailed statement of its  
581 findings and conclusions supporting such determination.

582 (d) Within 180 days of designating a toxic substance, the Department shall adopt  
583 regulations to prohibit the newly designated toxic substance in packaging, with an effective date  
584 no later than two years after such designation.

585 (e) Any producer that violates this Section shall be subject to a fine for each violation  
586 not to exceed fifty thousand dollars per violation. For the purposes of this Section, each product  
587 line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the state,  
588 including through an internet transaction violation shall be considered a violation.

### 589 Section 13: Establishment of the Office of Inspector General

590 (a) The Department shall establish a standalone independent Office of Inspector  
591 General within the Department. The Office of Inspector General shall evaluate the programs  
592 created by this Act on an annual basis to ensure it is properly functioning, and the producers are  
593 in compliance with the requirements of this Act.

(b) The Office of Inspector General shall have the authority to investigate the compliance of producers with all provisions of this Act and to bring enforcement violations against non-compliant producers.

#### Section 14: Rulemaking

(a) The Department may promulgate rules as necessary to implement, administer, and enforce this Act. All rules developed under the Act shall be promulgated no later than one year after the completion of the completion of the Statewide Packaging Reduction, Reuse, and Recycling Needs Assessment as required by Section 7 of this Act.

(b) The Department shall solicit input from the public of any draft rules to implement this Section, solicit public comment on draft rules for a period of at least 90 days, and hold a public hearing on the draft rules.

(c) The rules adopted by the Department pursuant to this Section must include, at a minimum:

(1) A process for contracting with the Packaging Reduction Organization pursuant to the requirements of Section 4 of this Act;

(2) A process for annually determining a schedule of producer fees and payment collections pursuant to the requirements of Section 7 of this Act;

(3) A process for collecting all necessary information to ensure producer compliance with the requirements of this Act;

(4) A process for evaluating whether a producer is in compliance with the packaging reduction requirements of Section 10 of this Act;



615           (5)     A process for evaluating whether a producer is in compliance with the packaging  
616 recycling requirements of Section 11 of this Act;

617           (6)     A process for evaluating whether a producer is in compliance with the toxic  
618 packaging reduction requirements of Section 12 of this Act;

619           (7)     A process for determining on an annual basis the types of packaging material that  
620 are recyclable;

621           (8)     A process for the assessment of the Packaging Reduction Organization and the  
622 Packaging Reduction and Recycling Program;

623           (9)     Requirements for the Packaging Reduction Organization to conduct a  
624 representative audit of recyclable material processed and sold by facilities that process recyclable  
625 material generated in the state and of municipal solid waste disposed of in the state;

626           (10)    A process for establishing and enforcing penalties for all violations of the  
627 requirements of this Act;

628           (11)    A process for determining new toxic substances in packaging pursuant to Section  
629 12 of this Act;

630           (12)    A process for how the Department will oversee and monitor the Packaging  
631 Reduction Organization's management of the Packaging Reduction Fund, including a process for  
632 submitting and reviewing proposals from the Packaging Reduction Organization regarding  
633 investments in projects and programs that will help achieve the packaging reduction  
634 requirements of Section 10 of this Act, and the packaging recycling requirements of Section 11  
635 of this Act; and

(13) A process for determining whether information is proprietary information and therefore must be handled as confidential information.

#### Section 15: Penalties and Enforcement

(a) Failure to comply with the requirements of this Act shall subject the Packaging Reduction Organization or an individual producer to penalties for violations. The Department, Office of Inspector General, and the Office of the Attorney General, may conduct investigations, including inspecting operations, facilities, and records of producers and the Packaging Reduction Organization, and by performing audits of producers and the Packaging Reduction Organization, to determine whether entities are complying with the requirements of this Act.

(b) The Department, the Office of Inspector General, and the Office of the Attorney General, shall notify the Packaging Reduction Organization and producers of any conduct or practice that does not comply with the requirements of this Act and of any inconsistencies identified in an audit.

(c) The Department, the Office of Inspector General, and the Office of the Attorney General, may issue a notice of violation to, and impose an administrative civil penalty not to exceed one hundred thousand dollars (\$100,000) per day per violation on any entity not in compliance with this chapter or any of the regulations the Department adopts to implement this Act. For the purposes of this Section, each product line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction violation shall be considered a violation.

(d) Any funds collected under this Section shall be deposited into the Packaging Reduction Fund.

Section 16: Enforcement by Citizen Suit

(a) In accordance with [insert the applicable citizen suit provisions of the State], any ten citizens of the State may commence a civil action on their behalf against any person or entity, including the State, the Department, the Packaging Reduction Organization, an individual or group of Producers, and the office of Inspector general, who are alleged to be in violation of the requirements of this Act or its implementing regulations.

(b) No action may commence under this Section unless the plaintiffs have given [insert notice requirements of the applicable State in terms of days, i.e. 60 days] notice of its intention to file a claim against the alleged noncompliant party.

(c) In any action brought under this Section, the Department, if not a party, may intervene as a matter of right.