

HOUSE No. 779

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>1/20/2023</i>

HOUSE No. 779

By Representative Day of Stoneham, a petition (accompanied by bill, House, No. 779) of Michael S. Day relative to recycling costs. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 878 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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.

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

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

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

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

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

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

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

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

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

39 Packaging does not include:

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

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

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

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

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

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

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

68 (p) “Producer” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 Section 2: Packaging Reduction and Recycling Program

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

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

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

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

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

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

175 (a) One year after the selection of the Packaging Reduction Organization as required
176 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

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

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

201 Section 4: Selection of the Packaging Reduction Organization

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

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

212 (1) A description of how the bidder will administer the Packaging Reduction and
213 Recycling Program, including the mechanisms and processes for providing assistance to
214 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.

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

239 Section 5: Responsibilities of the Packaging Reduction Organization

240 (a) The Packaging Reduction Organization shall:

241 (1) Register all producers;

242 (2) Collect and compile data from producers as required by Section 3 of this Act;

243 (3) Collect fees due from producers as required by Section 8 of this Act;

244 (4) Reimburse the Department and the State Comptroller for the costs associated with
245 conducting the needs assessment required by Sections 7, 8, and 9 of this Act;

246 (5) Distribute funds to reimburse local governments and private companies for the
247 costs associated with the implementation of reduction and refill and reuse programs, collection,
248 transportation, and recycling of packaging materials as required by Section 9 of this Act;

249 (6) Make recommendations to the Department regarding investments toward
250 packaging reduction, reuse, and recycling as required by Section 9 of this Act; and

251 (7) Offer technical support to participating producers, with an emphasis on support to
252 small businesses, to assist them with compliance with the requirements of this Act, including
253 information about procuring affordable alternatives to non-compliant packaging and reducing
254 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.

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

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

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

283 (10) Any additional information required by the Department.

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

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

294 (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;

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

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

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

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

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

332 Section 6: Responsibilities of the Department

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

387 Section 8: Assessment of Fees

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

390 (b) The payments shall be calculated based on the total amount, by weight, of each
391 type of packaging material used to contain, protect, deliver, present, or distribute a product sold,
392 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.

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

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

434 (6) a reduction in litter from packaging materials.

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

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

438 Section 9: Packaging Reduction Fund

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

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

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

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

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

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

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

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

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

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

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

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

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

492 i. Increase the transition of packaging from non-reusable to reduced, reusable or
493 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.

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

597 Section 14: Rulemaking

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

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

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

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

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

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

613 (4) A process for evaluating whether a producer is in compliance with the packaging
614 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

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

638 Section 15: Penalties and Enforcement

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

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

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

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

658 Section 16: Enforcement by Citizen Suit

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

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

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