

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY -- EXTENDED PRODUCER RESPONSIBILITY  
FOR PACKAGING

Introduced By: Representatives Bennett, Cortvriend, Carson, Fogarty, McEntee,  
Speakman, Phillips, Ruggiero, Casimiro, and Williams

Date Introduced: February 02, 2022

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 97

4 EXTENDED PRODUCER RESPONSIBILITY FOR PACKAGING

5 **23-97-1. Short title.**

6 This chapter shall be known and may be cited as the "Extended Producer Responsibility  
7 for Packaging".

8 **23-97-2. Findings.**

9 (1) Towns and cities in Rhode Island bear much of the burden of recycling and disposing  
10 of post-consumer waste, but they have little control over sources of waste, particularly packaging  
11 waste.

12 (2) Unrecyclable single-use packaging is a common contaminant in recycling loads in  
13 Rhode Island. Recycling loads rejected from the Rhode Island resource recovery materials  
14 recycling facility contribute to waste and recycling costs borne by towns and cities.

15 (3) Rhode Island's central landfill is projected to reach capacity by 2034. Single-use  
16 packaging makes up approximately sixteen percent (16%) of the waste buried in the landfill each  
17 year.

18 (4) Single-use plastic packaging is a significant contributor to litter and ocean debris. As

1 of 2021, more than sixteen million (16,000,000) tons of plastic waste washes into the ocean each  
2 year.

3 (5) Single-use packaging has significant environmental impacts on a local and global scale,  
4 including polluting our waters, contributing to climate-damaging emissions, and creating litter.

5 (6) It is in the best interests of the health, safety, and welfare of residents and visitors to  
6 Rhode Island to protect our environment and natural resources by reducing non-reusable, non-  
7 recyclable, and toxic packaging and to achieve a more equitable relationship between packaging  
8 producers and local governments and communities.

9 **23-97-3. Definitions.**

10 As used in this chapter:

11 (1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its  
12 components, and attributes the product to the owner of the brand.

13 (2) "Break-even point" means the minimum number of times a reusable product must be  
14 reused to achieve the same overall environmental impact as the non-reusable (disposable) product  
15 it replaces, based on a life cycle assessment of the product's impacts from extraction through  
16 production and through disposal or end of life management.

17 (3) "Compost" means a stable humus-like material produced by the controlled biological  
18 decomposition of organic matter through active management, but shall not mean sewage, septage,  
19 or materials derived from sewage or septage.

20 (4) "Compostable" means the controlled aerobic biological decomposition of organic  
21 matter through active management to produce compost. Packaging is only considered compostable  
22 if the material is certified to meet this definition by a third-party certifier and is accepted and  
23 processed into compost by eighty percent (80%) of commercial compost facilities within the state.

24 (5) "Contaminant" means a material set out for recycling collection that is not properly  
25 prepared and on the list of materials accepted for recycling collection by a recycling collection  
26 program; or a material shipped to a recycling end market that is not accepted or desired by that end  
27 market.

28 (6) "Contamination" means the presence of one or more contaminants in a recycling  
29 collection or commodity stream in an amount or concentration that negatively impacts the value of  
30 the material or negatively impacts a processor's ability to sort that material.

31 (7) "Department" means the Rhode Island department of environmental management.

32 (8) "Effective date" means the date which this act is passed into law.

33 (9) "European article number" or "EAN" means a thirteen (13) digit barcode used for  
34 product identification purposes, also referred to as an international article number.

1           (10) "Franchisee" means a person that is granted a license by a franchisor to use the  
2 franchisor's trade name, service mark, or related characteristic and to share in the franchisor's  
3 proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or  
4 indefinite period.

5           (11) "Franchisor" means a person that grants to a franchisee a license to use the person's  
6 trade name, service mark, or related characteristic and to share in the person's proprietary  
7 knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite  
8 period.

9           (12) "Low-volume producer" means a producer that sold, offered for sale, or distributed  
10 for sale in or into the state during the prior calendar year products contained, protected, delivered,  
11 presented, or distributed in or using more than one, but less than fifteen (15) tons of packaging  
12 material in total.

13           (13) "Material recovery facility" or "facility" or "MRF" means a facility that receives,  
14 processes, and sells or otherwise distributes post-consumer materials for recycling.

15           (14) "Municipality" means a city, town, or regional association acting on behalf of a city  
16 or town.

17           (15) "Native American tribe" means a body of Native Americans of the same or similar  
18 race united in a community under one leadership or government and inhabiting a particular  
19 territory.

20           (16) "Non-reusable packaging" means packaging that does not meet the definition of  
21 reusable.

22           (17) "Packaging material" means any part of a package or container, including material  
23 that is used for the containment, protection, handling, delivery, transport, distribution, and  
24 presentation of a product that is sold, offered for sale, imported, or distributed in the state, including  
25 through Internet transactions. Bags and secondary or transport packaging are included within this  
26 definition.

27           The term "packaging material" does not include:

28           (i) A discrete type of material, or category of material that includes multiple discrete types  
29 of material, intended to be used for long-term storage or protection of a durable product that can be  
30 expected to be usable for that purpose for a period of at least five (5) years;

31           (ii) A discrete type of material, or category of material that includes multiple discrete types  
32 of material, that is a beverage container; or

33           (iii) Packaging that is reusable.

34           (18) "Packaging responsibility fund" or "fund" means a privately held account established

1 and managed by the producer responsibility organization pursuant to § 23-97-12.

2 (19) "Person of color" means a person who is of Native American, Alaskan Native, Asian,  
3 Black, Latinx, or Pacific Islander heritage.

4 (20) "Political subdivision" means any municipal corporation, governmental subdivision  
5 of the state, local government unit, special district, or local or regional board, commission, or  
6 authority authorized by law to plan or provide for waste management services for a specific  
7 geographical area.

8 (21) "Post-consumer recycled material" means new material produced using material  
9 resulting from the recovery, separation, collection, and reprocessing of material that would  
10 otherwise be disposed of or processed as waste and that was originally sold for consumption.

11 "Post-consumer recycled material" does not include post-industrial material or pre-  
12 consumer material, or material generated by means of combustion, incineration, pyrolysis,  
13 gasification, solvolysis, chemical recycling, or any high-heat or chemical conversion process.

14 (22) "Producer" means:

15 (i) An entity that manufactures or uses in a commercial enterprise, sells, offers for sale, or  
16 distributes the packaging material in the state under the brand of the manufacturer; or

17 (ii) An entity that is not the manufacturer of the packaging material but is the owner or  
18 licensee of a trademark under which the covered product is used in commercial enterprise, sold,  
19 offered for sale, or distributed in the state, whether or not the trademark is registered; or

20 (iii) An entity that imports the packaging material into the United States or the state for use  
21 in a commercial enterprise, sale, offer for sale, or distribution in the state.

22 (iv) "Producer" includes a franchisor of a franchise located in the state but does not include  
23 the franchisee operating that franchise.

24 (v) "Producer" includes a low-volume producer.

25 (vi) "Producer" does not include any entity exempted from the program under § 23-97-5.

26 (23) "Producer responsibility organization" or "PRO" means the not-for-profit entity  
27 contracted by the department and authorized to collect and distribute producer fees.

28 (24) "Producer responsibility program" or "program" means the program implemented  
29 pursuant to § 23-97-4 by the producer responsibility organization to assess and collect fees from  
30 producers based on the amount, by weight, of non-reusable packaging sold, offered for sale, or  
31 distributed for sale in or into the state by each producer to pay for investments in product redesign,  
32 refillable and reusable systems, fees to municipalities and political subdivisions, for certain  
33 recycling and waste management programs, and investments in reuse and recycling education and  
34 infrastructure.

1 (25) "Readily-recyclable" means, that the department has determined that the packaging  
2 material:

3 (i) Can be sorted by entities that process recyclable material generated in the state; and,

4 (ii) Has a consistent market for purchase, as based on data from the prior two (2) calendar  
5 years. "Consistent market for purchase" means, with respect to a type of packaging material, that  
6 entities processing recyclable material are willing to purchase full bales of that type of fully sorted  
7 packaging material in quantities equal to or in excess of the supply of that fully sorted packaging  
8 material.

9 "Readily-recyclable" does not include packaging material categories or types that facilities  
10 accept in low qualities or sort out of material during additional processing steps; if facilities cannot  
11 aggregate or sell a full bale of a specific packaging material category or type due to a lack of market  
12 or inability to feasibly separate those materials during additional processing steps, that packaging  
13 type is not readily-recyclable. Packaging material categories or types shall not be considered  
14 readily-recyclable, generally recyclable, compostable, or reusable if they contain a toxic substance  
15 as defined in this section.

16 (26) "Recycling" means the series of activities by which a covered product is:

17 (i) Collected, sorted, and processed;

18 (ii) Converted into a raw material with minimal loss of material quality; and

19 (iii) Used in the production of a new product to replace the use of virgin materials,  
20 including the original product.

21 "Recycling" does not include energy recovery or energy generation by means of  
22 combustion, incineration, pyrolysis, gasification, solvolysis, waste to fuel or any high-heat or  
23 chemical conversion process; or landfill disposal of discarded covered products or discarded  
24 product component materials.

25 (27) "Returnable" means that packaging that can be conveniently returned after use to a  
26 reuse or return system. For the purposes of this definition, a reuse or return system must have an  
27 average annual return rate of no less than eighty percent (80%) for each covered product.

28 (28) "Reusable," with respect to a covered product, means that a product is:

29 (i) Designed to be used repeatedly and is returnable for a number of use cycles that exceeds  
30 the environmental break-even point with non-reusable products, as specified in § 23-97-18;

31 (ii) Free of toxic substances, as specified in § 23-97-20;

32 (iii) Safe for washing and sanitizing according to applicable state food safety laws; and

33 (iv) Capable of being recycled at the end of use, with the exception of ceramic products.

34 (29) "State" means the State of Rhode Island.

1 (30) "Toxic substance" means a chemical substance or class of related chemical substances  
2 identified in § 23-97-20, or a chemical substance or class or related chemical substances designated  
3 by the department on the basis of credible scientific evidence that it may have one or more of the  
4 following hazard characteristics:

5 (i) Carcinogenic, mutagenic, or developmental or reproductive toxicant;

6 (ii) Disrupt the endocrine system;

7 (iii) Damage the nervous system, immune system, or organs or cause other systemic  
8 toxicity;

9 (iv) Persistent, bioaccumulative, and toxic;

10 (v) Highly persistent and highly mobile;

11 (vi) Persistent, mobile, and toxic; or,

12 (vii) Persistent and very bioaccumulative.

13 (31) "Unit" in reference to packaging means each discrete component of a package or  
14 container, including material that is used for the containment, protection, handling, delivery,  
15 transport, distribution, and presentation of a product that is sold, offered for sale, imported, or  
16 distributed in the state, including through Internet transactions.

17 (32) "Universal product code" or "UPC" means a standard for encoding a set of lines and  
18 spaces that can be scanned and interpreted into numbers for product identification purposes.  
19 "Universal product code" includes any industry-accepted barcode used for product identification  
20 purposes in a manner similar to a UPC, including, but not limited to, an EAN.

21 **23-97-4. Producer responsibility program.**

22 (a) It is hereby established a producer responsibility program by which producers of  
23 packaging material, participating in a producer responsibility organization, are required to make  
24 changes to their product design to reduce packaging consumption and waste, and are required to  
25 pay fees based on the amount, by weight and type of packaging material sold, offered for sale, or  
26 distributed for sale in or into the state.

27 (b) The producer responsibility organization shall assess and collect fees from producers,  
28 and create and manage the packaging responsibility fund to be used for eligible projects that reduce  
29 packaging waste by investing in reuse and refill systems, recycling infrastructure, and reuse, refill,  
30 and recycling education in the state.

31 (c) The department shall conduct a foundational needs assessment within the state to  
32 determine the barriers and opportunities to reduce packaging waste and increase waste reduction,  
33 reuse, refilling and recycling.

34 **23-97-5. Producer responsibility and exemptions of small producers.**

1           (a) Within two (2) calendar years of the effective date, a producer may not sell, offer for  
2 sale, or distribute for sale in or into the state a product contained, protected, delivered, presented,  
3 or distributed in or using packaging material for which the producer has not complied with all  
4 applicable requirements of this chapter.

5           (b) Notwithstanding a producer's failure to comply with all applicable requirements of this  
6 section for a type or types of packaging material used to contain, protect, deliver, present or  
7 distribute a product, the department may authorize the sale or distribution for sale in or into the  
8 state of another product or products of the producer that are contained, protected, delivered,  
9 presented or distributed in or using a different type or types of packaging material for which that  
10 producer has complied with all applicable requirements of this section.

11           (c) In accordance with the rules and regulations adopted by the department, a producer  
12 shall annually report to the producer responsibility organization:

13           (1) The total amount of packaging material, by weight, sold, offered for sale, or distributed  
14 for sale in or into the state by the producer in the prior calendar year;

15           (2) The total amount of packaging material, by unit, sold, offered for sale, or distributed  
16 for sale in or into the state by the producer in the prior calendar year, pursuant to the requirements  
17 of § 23-97-17;

18           (3) The percentage of all packaging material the producer sold, offered for sale, or  
19 distributed for sale into the state through Internet transactions; and

20           (4) All information necessary for the producer responsibility organization to meet its  
21 obligations pursuant to § 23-97-8.

22           (d) In accordance with the rules and regulations adopted by the department pursuant to §  
23 23-97-26, a producer shall annually report to the department information necessary for the  
24 department to make a determination of the producer's compliance with:

25           (1) The non-reusable packaging reduction requirements of § 23-97-17;

26           (2) The reuse and refill system requirements of § 23-97-18;

27           (3) The recycling or post-consumer recycled material requirements of § 23-97-19;

28           (4) The toxic substances in packaging requirements of § 23-97-20; and

29           (5) The labeling requirements of § 23-97-25.

30           (e) Each producer shall pay fees, as set by the department pursuant to § 23-97-10, to the  
31 producer responsibility organization to meet the obligations of this chapter and the costs set out in  
32 the needs assessment.

33           (f) Notwithstanding any provision of this section to the contrary, a producer is exempt from  
34 the requirements and prohibitions of this chapter in any calendar year in which:

1           (1) The producer realized less than two million dollars (\$2,000,000) in total gross revenue  
2 during the prior calendar year; or

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

6           (g) A producer claiming an exemption under this section shall provide to the department  
7 sufficient information to demonstrate that the claimant meets the requirements for an exemption  
8 under this section within thirty (30) days of receiving a request from the department to provide such  
9 information.

10           **23-97-6. Selection of the producer responsibility organization.**

11           (a) Consistent with the requirements of this section, the department shall select and enter  
12 into a contract with one producer responsibility organization to operate a producer responsibility  
13 program. The effective date of this contract shall be deemed the selection date of the producer  
14 responsibility organization for purposes of this chapter including, but not limited to, §§ 23-97-17  
15 and 23-97-19.

16           (b) Consistent with applicable competitive bidding requirements under state purchasing  
17 laws and following the initial adoption of the rules and regulations by the department pursuant to  
18 § 23-97-26 and chapter 35 of title 42 ("administrative procedures") to implement this section, the  
19 department shall issue a request for proposals for the operation of a producer responsibility  
20 program. The proposals must be required to cover a ten (10) year operation of the program by a  
21 successful bidder and must be required to include, at a minimum:

22           (1) A description of how the bidder will administer the program including the mechanisms  
23 or processes to be developed with input from producers, by which a producer may request and  
24 receive assistance from the producer responsibility organization in the reporting of required  
25 information and regarding methods by which packaging material used by a producer may be  
26 modified so as to reduce the producer's fee obligations and comply with the targets for reduction  
27 and/or reuse and refill required by § 23-97-18, and targets for recycling or post-consumer recycled  
28 material required by § 23-97-19;

29           (2) A description on how the bidder intends to solicit and consider input from interested  
30 persons, including, but not limited to, producers, municipalities, political subdivisions,  
31 environmental organizations, waste management and recycling establishments, and reuse and refill  
32 system operators regarding the bidder's operation of the program, if selected;

33           (3) A description of how the bidder intends to establish and manage the packaging  
34 responsibility fund, including, but not limited to:



1 (i) The staffing the bidder intends to use for management of the fund; and  
2 (ii) A plan for providing technical support to interested persons regarding use of the fund;  
3 (4) A proposed financial assurance plan that ensures all funds held in the packaging  
4 responsibility fund are immediately and exclusively forfeited and transferred to or otherwise made  
5 immediately available to the department when the producer responsibility organization's contract  
6 with the department is terminated by the department, or expires, unless the producer responsibility  
7 organization enters into a new contract with the department prior to the expiration of the  
8 organization's existing contract.

9 (5) A proposed budget outlining the anticipated costs of operating the producer  
10 responsibility program, including identification of any start-up costs that will not be ongoing and a  
11 description of the method by which the bidder intends to determine and collect producer fees during  
12 the initial start-up period of program operation to fund the program's operational costs during that  
13 initial start-up period, and to reimburse or require additional fees by those producers subsequent to  
14 that initial start-up period based on producer reporting of the actual amount of packaging material  
15 sold, offered for sale or distributed for sale in or into the state by each producer during that initial  
16 start-up period. The proposed budget under this subsection may overestimate the cost of operating  
17 the program during its initial start-up period of operation but must describe the method and basis  
18 for any overestimate; and

19 (6) A certification that the bidder will not share, except with the department, information  
20 provided to the bidder by a producer that is proprietary information and that is identified by the  
21 producer as proprietary information. The certification must include a description of the methods by  
22 which the bidder intends to ensure the confidentiality of such information.

23 (c) In accordance with applicable requirements of state purchasing laws, the department  
24 shall enter into a contract with a bidder that has submitted a proposal in accordance with the  
25 requirements of this section, the term of which must cover ten (10) years of operation of the  
26 producer responsibility program by the producer responsibility organization. The department shall  
27 select the producer responsibility organization within one year of the date in which the final rules  
28 are promulgated pursuant to § 23-97-26.

29 **23-97-7. Obligations of the producer responsibility organization.**

30 (a) The producer responsibility organization shall:

31 (1) Collect and compile data from producers as required in § 23-97-5.

32 (2) Collect fees due from producers as defined in § 23-97-5.

33 (3) Use fees collected from producers to fund the needs assessment as conducted by the  
34 department and as defined in § 23-97-11.

1 (4) Distribute funds based on the needs assessment as defined in § 23-97-11 and the  
2 requirements for managing the packaging responsibility fund pursuant to § 23-97-12.

3 (5) Offer technical support to producers.

4 (6) Fund third-party, independent audits of inbound and outbound recyclable material  
5 generated in the state, disposal of inbound and outbound materials, and litter audits. The audits  
6 must be conducted at least annually and must include a description of how the audits meet the  
7 requirements of the department's rules and regulations.

8 (7) Comply with the rules and regulations as promulgated by the department to carry out  
9 the provisions of this chapter.

10 (b) The producer responsibility organization shall not make campaign contributions, lobby,  
11 or bring administrative or court actions against the department or any other party in connection  
12 with the program.

13 **23-97-8. Reporting requirements for the producer responsibility organization.**

14 (a) In accordance with the rules and regulations as adopted by the department, the producer  
15 responsibility organization shall submit annually to the department, and make available on its  
16 publicly accessible website, a report that is presented in a format that can be easily understood by  
17 the public and includes, at a minimum, the following information for the prior calendar year:

18 (1) Contact information for the producer responsibility organization;

19 (2) A list of participating producers and the brands and the UPCs of products associated  
20 with those producers;

21 (3) The total amount, by both weight and number of units, of each type of packaging  
22 material sold or offered for sale within the state;

23 (4) The total amount, by both weight and number of units, of packaging material that is  
24 reusable;

25 (5) A complete accounting of payments made to and by the producer responsibility  
26 organization during the prior calendar year.

27 (6) A list of any producer noncompliance, if known by the producer responsibility  
28 organization, and the steps the producer responsibility organization is taking to bring noncompliant  
29 producers into compliance.

30 (7) A description of the infrastructure and education investments made by the producer  
31 responsibility organization in prior calendar years and an evaluation of how those investments were  
32 designed to increase access to recycling and refill or reuse systems in the state.

33 (8) An assessment of the progress made toward the achievement of any program goals,  
34 including, but not limited to, the requirements under §§ 23-97-16 and 23-97-18, as well as any

1 goals established by rule or regulation pursuant to § 23-97-26.

2 (9) An assessment of whether the fee schedule for producers adopted by the department by  
3 rule or regulation pursuant to § 23-97-26 has been successful in incentivizing improvements to the  
4 design of packaging material, including increases in the percentage of reusable packaging and  
5 decreases in overall quantity of packaging by number of units.

6 (10) An assessment of whether the investments made pursuant to §§ 23-97-14 through 23-  
7 97-16 have been successful in increasing the amount of packaging material that is readily  
8 recyclable, increasing the transition from non-reusable to reusable packaging, and incentivizing  
9 improvements to the design of packaging material.

10 (11) Any proposals for changes to the program or investments in education and  
11 infrastructure designed to reduce the amount of packaging material used, increase access to  
12 recycling, increase the recycling of or recyclability of packaging material, reduce program costs,  
13 or otherwise increase program efficiency, which may include an analysis of best practices for  
14 municipal recycling programs and material recovery facilities.

15 (12) Results of representative inbound and outbound audits of recyclable material  
16 processed and sold by materials recycling facilities in the state, waste characterization of municipal  
17 solid waste being disposed of in the state, and litter audits.

18 (13) The results of a third-party financial audit of the producer responsibility organization.

19 (14) Any additional information required by the department.

20 **23-97-9. Responsibilities of the department.**

21 (a) Within one year of the effective date, the department shall promulgate rules and  
22 regulations setting fees for producers to pay in accordance with §§ 23-97-10 and 23-97-26, after  
23 consulting with multiple stakeholders, including municipalities, businesses, institutions, and other  
24 extended producer responsibility programs. Fees shall be set at a rate that will drive reductions in  
25 overall packaging, incentivize adoption of reuse systems, increase post-consumer recycled  
26 material, and promote the use of recyclable packaging.

27 (b) The department shall revise fees every three (3) years, beginning three (3) years after  
28 the first set of fees are established, to reflect new data received about material use and management,  
29 or whenever the targets set in §§ 23-97-18 and 23-97-19 are not met to drive compliance with such  
30 targets.

31 (c) Within six (6) months of the effective date, the department or its agents shall conduct a  
32 reduction, reuse, and recycling needs assessment to identify barriers and opportunities for reducing,  
33 reusing and recycling packaging in accordance with § 23-97-11.

34 (d) The department shall evaluate the program each year to ensure its proper functioning

1 and prevent fraud, waste, or abuse in the expenditure of funds.

2 **23-97-10. Assessment of fees.**

3 (a) The department shall promulgate rules and regulations under § 23-97-26 setting forth  
4 the manner in which producer fees on packaging materials must be calculated. Producer fees shall  
5 be calculated based on:

6 (1) The packaging material type; and

7 (2) The quantity of each packaging material type, by weight, that the producer sells, offers  
8 for sale, or distributes in the state.

9 (b) This list of packaging material type must include, at a minimum, the following  
10 materials:

11 (1) Paper;

12 (2) Cardboard;

13 (3) Corrugated cardboard;

14 (4) Generic paper/cardboard;

15 (5) Wood;

16 (6) Glass;

17 (7) Polypropylene;

18 (8) Polyethylene terephthalate (PET);

19 (9) High Density Polyethylene (HDPE);

20 (10) Expanded polystyrene (EPS);

21 (11) Low Density Polyethylene (LDPE);

22 (12) Polystyrene;

23 (13) Bio-plastics;

24 (14) Plastic film;

25 (15) Other plastics;

26 (16) Steel or ferrous;

27 (17) Aluminum;

28 (18) Tinplate;

29 (19) Generic metals; or

30 (20) Ceramics.

31 (c) The fees shall reflect the net cost of curbside collection, commercial collection, or  
32 transfer station operation, on-site processing cost for each readily-recyclable packaging material  
33 types, management cost of non-readily-recyclable packaging, transportation cost for each  
34 packaging material, the cost of the department's administration of the requirements of this chapter,

1 the cost of the producer responsibility organization in administration of the program, and any other  
2 cost factors determined by the department.

3 (1) Fees shall be higher for packaging material that is not readily-recyclable.

4 (2) The fees for each type of packaging material will be eco-modulated and structured to  
5 promote the environmental beneficial packaging design.

6 **Fees**                      **Type of Package**

7 Fees are

8 increased                      Packaging is not readily-recyclable

9 Fees are

10 lowered                      Packaging is readily-recyclable

11 Packaging is compostable

12 Packaging incorporates post-consumer recycled material

13 No fee                      Packaging is reusable or refillable

14 **23-97-11. Statewide reduction, reuse and recycling needs assessment.**

15 (a) Within six (6) months of the effective date of this chapter, the department, its agents,  
16 or a third party shall conduct a statewide reduction, reuse, and recycling needs assessment, hereafter  
17 "needs assessment", to identify barriers and opportunities for reducing, reusing, and recycling  
18 packaging.

19 (b) Consistent with applicable competitive bidding requirements under state purchasing  
20 laws, the department shall issue a request for proposals to conduct the needs assessment. The  
21 proposals must include, at a minimum, a description of how the bidder will conduct a statewide  
22 needs assessment that, at a minimum, includes an evaluation of:

23 (1) Current barriers affecting the creation of reduction, reuse and refill programs;

24 (2) Opportunities for the creation of reduction, reuse and refill programs;

25 (3) Current needs affecting recycling access and availability in the state;

26 (4) Opportunities to improve access to recycling in the state;

27 (5) The capacity, cost and needs associated with the collection and transportation of  
28 recyclable material in the state;

29 (6) The processing capacity, market conditions and opportunities in the state and regionally  
30 for recyclable material;

31 (7) Barriers to the marketability of recyclable materials generated in the state, and potential  
32 solutions;

33 (8) The amount by weight of material that is recycled by each material recovery facility  
34 that accepts packaging material from the state;

1 (9) Consumer education needs in the state with respect to reuse and refill systems, recycling  
2 and reducing contamination in collected recyclable material;

3 (10) The net cost of curbside collection, commercial collection, or transfer station  
4 operation, on-site processing cost for each readily-recyclable packaging material types,  
5 management cost of non-readily-recyclable packaging, transportation cost for each packaging  
6 material and any other cost factors determined by the department;

7 (11) The availability of opportunities in the recycling and reuse systems for women and  
8 persons of color; and

9 (12) The sufficiency of local government requirements related to multifamily recycling  
10 services and their implementation.

11 (c) The department is responsible for updating and revising the needs assessment every  
12 three (3) years. The money needed to update the needs assessment shall be funded by the packaging  
13 responsibility fund.

14 (d) The department shall report the results of the study to the general assembly.

15 **23-97-12. Packaging responsibility fund.**

16 (a) In accordance with the provisions of this section, and the rules and regulations as  
17 adopted by the department, the producer responsibility organization shall establish and manage a  
18 packaging responsibility fund. The producer responsibility organization shall deposit into the fund  
19 all fees received from producers in accordance with § 23-97-4, and all penalties collected pursuant  
20 to § 23-97-27, and rules and regulations promulgated by the department pursuant to § 23-97-26.

21 (b) Beginning one year after the first payment of fees by producers, pursuant to §§ 23-97-  
22 8 and 23-97-10, and annually thereafter, the producer responsibility organization shall reimburse  
23 the department, using money from the packaging responsibility fund, for the costs associated with  
24 administering the requirements of this chapter and its implementing rules and regulations, pursuant  
25 to § 23-97-13. This reimbursement includes costs associated with performing, revising and  
26 updating the needs assessment as required by § 23-97-11. This reimbursement shall cover any costs  
27 incurred by the department in adopting rules and regulations, and in administering and enforcing  
28 this section prior to the effective date of the contract entered into by the department and the  
29 producer responsibility organization pursuant to § 23-97-6;

30 (c) Beginning one year after the first payment of fees by producers, pursuant to §§ 23-97-  
31 8 and 23-97-10, and annually thereafter, the producer responsibility organization shall retain a  
32 portion of the money in the packaging responsibility fund to cover the costs associated with its  
33 administration of the producer responsibility organization, as required by § 23-97-13. This  
34 reimbursement may include costs associated with the formation of the producer responsibility

1 organization.

2 (d) Beginning one year after the first payment of fees by producers, pursuant to §§ 23-97-  
3 8 and 23-97-10, and annually thereafter, the producer responsibility organization shall distribute all  
4 money in the packaging responsibility fund remaining after the reimbursements required pursuant  
5 to subsections (b) and (c) of this section, in the following amounts and for the following purposes:

6 (1) Fifty percent (50%) of the funds shall be directed for recycling infrastructure and  
7 education projects in accordance with § 23-97-14;

8 (2) Twenty-five percent (25%) of the funds shall be directed for refill and reuse  
9 infrastructure and education projects in accordance with § 23-97-15; and

10 (3) Twenty-five percent (25%) of the funds shall be distributed to all municipalities, or  
11 where appropriate, political subdivisions, and Native American tribes, in the state, to address  
12 recycling needs of that community as determined by the results of the needs assessment; provided  
13 that the municipality, political subdivision, or Native American tribe provides recycling services to  
14 all residents within its jurisdictional control.

15 (e) Upon completion of the update to the needs assessment every three (3) years, the  
16 department shall adjust the percentage of funding to be distributed to the categories as defined in  
17 subsection (d) of this section.

18 **23-97-13. Administrative expenses.**

19 (a) Beginning one year after the first payment of fees by producers, pursuant to §§ 23-97-  
20 8 and 23-97-10, and annually thereafter, the producer responsibility organization, pursuant to § 23-  
21 97-12, shall reimburse the department for all costs incurred in administering the requirements of  
22 this chapter, including, but not limited to:

23 (1) Administration of its contract with any third party certifier;

24 (2) Costs incurred by the department in managing its contact with the producer  
25 responsibility organization;

26 (3) Costs incurred in the implementation of rules and regulations;

27 (4) Costs incurred reviewing proposals for investments pursuant to §§ 23-97-14 and 23-  
28 97-15; and

29 (5) Costs incurred in reviewing compliance information from the producer responsibility  
30 organization and individual producers.

31 (b) Beginning one year after the first payment of fees by producers, pursuant to §§ 23-97-  
32 8 and 23-97-10, and annually thereafter, pursuant to § 23-97-12, the producer responsibility  
33 organization shall retain a portion of the funds in the packaging responsibility fund to cover the  
34 costs associated with administering the producer responsibility program, which must be annually

1 verified by a third-party financial audit paid for by the stewardship organization as required by §  
2 23-97-8.

3 **23-97-14. Investment in recycling infrastructure and education.**

4 (a) In accordance with the provisions of this chapter, and the rules and regulations  
5 promulgated by the department pursuant to § 23-97-26, any interested person, municipality,  
6 business, organization, or institution may apply to the producer responsibility organization to  
7 receive funding to carry out a project or projects related to improving recycling infrastructure or  
8 provide educational programming or materials regarding recycling pursuant to § 23-97-12.

9 (b) A project is considered eligible only if it fulfills one or more needs identified in the  
10 needs assessment conducted by the department or its agents pursuant to § 23-97-11 and helps  
11 producers meet the requirements of § 23-97-19.

12 (c) The producer responsibility organization must receive approval from the department  
13 for any award of funding.

14 (d) The department shall approve or deny a proposed request for funding within ninety (90)  
15 days of receipt of the recommendation from the producer responsibility organization.

16 **23-97-15. Investment in waste reduction, reuse and refill infrastructure and**  
17 **education.**

18 (a) In accordance with the provisions of this section, and the rules and regulations  
19 promulgated by the department, any interested person, municipality, business, organization, or  
20 institution may apply to the producer responsibility organization to receive funding to carry out a  
21 project or projects related to improve waste reduction or reuse and refill infrastructure or provide  
22 education regarding waste reduction or reuse and refill infrastructure pursuant to § 23-97-12.

23 (b) Funds may be used for investment in collection systems, washing systems,  
24 redistribution systems, technology for tracking and data collection, capital expenditures on new  
25 and emerging technology, equipment, and facilities, or for investment in public outreach and  
26 education in ways that increase access and understanding of reuse and refill systems throughout the  
27 state.

28 (c) Any investment in reuse or refill infrastructure or education must meet at least one of  
29 the following requirements:

30 (1) Increase the transition of the packaging material from non-reusable to reusable or  
31 refillable in accordance with § 23-97-18;

32 (2) Increase access to reuse and refill infrastructure in the state;

33 (3) Provide reuse and refill instructions that are, to the extent practicable, consistent  
34 statewide, easy to understand, and easily accessible; or



1 (4) Provide for outreach and education that are coordinated across programs or regions to  
2 avoid confusion for consumers and developed in consultation with local governments and other  
3 stakeholders.

4 (d) Any investment must demonstrate how it will help meet the targets defined in § 23-97-  
5 18.

6 (e) The producer responsibility organization shall receive approval from the department  
7 for any award of funding.

8 (f) The department shall approve or deny a proposed request for funding within ninety (90)  
9 days of receipt of the recommendations from the producer responsibility organization.

10 **23-97-16. Funding to municipalities or political subdivisions and Native American**  
11 **tribes.**

12 (a) The department shall promulgate rules and regulations pursuant to chapter 35 of title  
13 42 specifying the manner in which the producer responsibility organization shall provide funding  
14 to all municipalities, or where appropriate, political subdivisions, and Native American tribes in  
15 the state to address recycling needs of the municipality or political subdivision, and Native  
16 American tribe, as determined by the needs assessment.

17 (b) Municipalities, political subdivisions, and Native American tribes are only eligible to  
18 receive such funding if they provide recycling services to all residents or members within their  
19 jurisdictional control.

20 (c) Two (2) or more municipalities, political subdivisions, or Native American tribes that  
21 provide recycling services may elect to jointly receive funding provided that they can demonstrate  
22 that their recycling services are interconnected.

23 **23-97-17. Non-reusable packaging reduction requirements.**

24 (a) A producer shall reduce the total amount by unit, on average and in the aggregate, of  
25 non-reusable packaging across its brand in accordance with the following schedule:

26 (1) Ten percent (10%), two (2) years after the selection of the producer responsibility  
27 organization by the department pursuant to § 23-97-6;

28 (2) Twenty percent (20%), four (4) years after the selection of the producer responsibility  
29 organization by the department pursuant to § 23-97-6;

30 (3) Thirty percent (30%), six (6) years after the selection of the producer responsibility  
31 organization by the department pursuant to § 23-97-6;

32 (4) Forty percent (40%), eight (8) years after the selection of the producer responsibility  
33 organization by the department pursuant to § 23-97-6; and,

34 (5) Fifty percent (50%), ten (10) years after the selection of the producer responsibility

1 organization by the department pursuant to § 23-97-6.

2 (b) The reductions required by subsection (a) of this section shall be measured against the  
3 total amount of packaging the producer sold, offered for sale, or distributed for sale in the state  
4 during the calendar year of the effective date. For producers who did not sell, offer for sale, or  
5 distribute for sale any packaging during the calendar year of the effective date, the reductions  
6 required by subsection (a) of this section shall be measured against the first calendar year for which  
7 there is data regarding the amount of packaging the producer sold, offered for sale, or distributed  
8 for sale in the state.

9 (c) These reductions can be achieved by eliminating non-reusable packaging, including  
10 secondary packaging, or by transitioning away from non-reusable packaging to a reuse and refill  
11 model.

12 (d) The department is required to promulgate rules and regulations that address the manner  
13 in which each producer will report its compliance with the requirements of this section.

14 **23-97-18. Criteria for number of uses in reuse and refill systems.**

15 In accordance with the provisions of this section, the department is required to promulgate  
16 rules and regulations that specify the minimum number of reuse or refill cycles required for each  
17 type of packaging material to be considered reusable or refillable, including, but not limited to:

18 (1) Cups: a minimum of one hundred twenty-five (125) uses.

19 (2) Clamshells: a minimum of fifty (50) uses.

20 (3) Plates: a minimum of sixty-three (63) uses.

21 (4) Glass bottles: a minimum of twenty (20) uses.

22 **23-97-19. Recycling or post-consumer recycled material requirements.**

23 (a) Each producer must ensure that all non-reusable packaging, across its entire brand,  
24 either:

25 (1) Is recycled, as defined in this chapter, at a rate consistent with the following schedule:

26 (i) Fifty percent (50%), five (5) years after the selection of the producer responsibility  
27 organization by the department pursuant to § 23-97-6;

28 (ii) Eighty percent (80%), eight (8) years after the selection of the producer responsibility  
29 organization pursuant to § 23-97-6; and

30 (iii) Ninety percent (90%), twelve (12) years after the selection of the producer  
31 responsibility organization by the department pursuant to § 23-97-6; or

32 (2) Incorporates, on average and in the aggregate, the following amount by weight of post-  
33 consumer recycled material:

34 (i) Fifty percent (50%), five (5) years after the selection of the producer responsibility

1 organization by the department pursuant to § 23-97-6;  
2 (ii) Eighty percent (80%), eight (8) years after the selection of the producer responsibility  
3 organization by the department pursuant to § 23-97-6; and  
4 (iii) Ninety percent (90%), twelve (12) years after the selection of the producer  
5 responsibility organization by the department pursuant to § 23-97-6.  
6 (b) Determination of compliance with post-consumer recycled material requirements.  
7 (1) For the purpose of determining a producer's compliance with the post-consumer  
8 recycled material requirements of this section, a producer must rely on Rhode Island data regarding  
9 packaging sales and material use, if available, or may alternatively rely on the same type of data  
10 applicable to a region or territory of the United States that includes Rhode Island.  
11 (2) If a producer elects to rely on data regarding packaging sales and materials used derived  
12 from data applicable to a region or territory of the United States that includes Rhode Island, the  
13 producer shall:  
14 (i) Prorate the regional or territorial data to determine Rhode Island specific figures based  
15 on market share or population in a manner that ensures that the percentage of post-consumer  
16 recycled material calculated for packaging materials sold in Rhode Island is the same percentage  
17 as calculated for that larger region or territory; and  
18 (ii) Document the methodology used to determine those Rhode Island specific figures  
19 calculated under subsection (b)(1) of this section.  
20 (c) If a producer elects to comply with the provisions of this section by meeting the post-  
21 consumer recycled material requirements, the department may assess against a producer that fails  
22 to comply with those requirements an administrative penalty calculated as followed:  
23 (1) The department shall add the total amount by weight in pounds of post-consumer  
24 recycled material and the total amount by weight in pounds of material that is not post-consumer  
25 recycled material used by the producer in all the packaging it sold, offered for sale, or distributed  
26 for sale in the state during the prior calendar year. Unless otherwise determined by the department,  
27 the figure calculated under this subsection must be calculated using the information reported by the  
28 manufacturer pursuant to subsection (b) of this section.  
29 (2) The department shall multiply the figure calculated under subsection (c)(1) of this  
30 section by the minimum post-consumer recycled material percentage required under subsection  
31 (a)(2) of this section during the prior calendar year.  
32 (3) The department shall subtract from that figure calculated under subsection (c)(2) of this  
33 section the total amount by weight in pounds of post-consumer recycled material used by the  
34 producer in all products it sold, offered for sale, or distributed for sale in packaging in the state

1 during the prior calendar years.

2 (4) The department shall multiply that figure calculated under subsection (c)(3) of this  
3 section by twenty cents (\$0.20). If the figure calculated under this subsection is less than or equal  
4 to zero, the department may not assess an administrative penalty.

5 **23-97-20. Toxic substances in packaging.**

6 (a) Pursuant to the rules and regulations as adopted by the department in accordance with  
7 § 23-97-26 and chapter 35 of title 42, and beginning three (3) years after the effective date of these  
8 regulations, and every three (3) years subsequent, the department shall designate at least ten (10),  
9 but no more than twenty (20), toxic substances in packaging, unless it determines there are not ten  
10 (10) chemicals that meet the definition of toxic substances as defined pursuant to § 23-97-2. If the  
11 department determines there are not ten (10) toxic substances that meet the definition of § 23-97-  
12 2, it must publish a detailed statement of findings and conclusions supporting that determination.

13 (b) Within one hundred eighty (180) days of designating a toxic substance, the department  
14 shall adopt rules and regulations to prohibit the newly designated toxic substance in packaging,  
15 with an effective date no later than two (2) years after the rules and regulations are adopted.

16 (c) Beginning three (3) years after the effective date, any person may petition the  
17 department to add a chemical or chemical class to the list of toxic substances in packaging. Any  
18 such petition shall include a showing by the petitioner of the information that supports designating  
19 the chemical or chemical class as a toxic substance in packaging. Within ninety (90) days of  
20 receiving a petition, the department shall either grant or deny the petition by publishing a written  
21 explanation of the reasons for the decision. If the department grants the petition in whole or part, it  
22 shall designate the chemical or chemical class as a toxic substance in packaging and adopt rules  
23 and regulations within one hundred eighty (180) days to prohibit the newly designated chemicals  
24 in packaging with an effective date no later than two (2) years after the rules and regulations are  
25 adopted.

26 (d) A producer that violates any provision of this section is subject to penalties in  
27 accordance with the department's rules and regulations. Any producer, distributor, retailer, or other  
28 responsible party that violates this section shall be subject to a fine for each violation and for each  
29 day that the violation continues in an amount of not more than two hundred thousand dollars  
30 (\$200,000).

31 **23-97-21. Annual producer responsibility program report.**

32 (a) Beginning one year after the producer responsibility organization begins to collect fees  
33 from producers, and on an annual basis thereafter, the department, with the assistance of the  
34 producer responsibility organization, shall generate a producer responsibility program report.

1 (b) The report shall include, at a minimum, the following information:

2 (1) A list of all participating producers and the brands of products associated with those  
3 producers;

4 (2) A baseline report of the number of units of packaging and type of packaging products,  
5 both non-reusable and reusable, that were sold, offered for sale, or distributed into the state;

6 (3) A list of all materials that are readily-recyclable in the state, as defined in § 23-97-2;

7 (4) Results of an audit of inbound and outbound recyclable material processed and sold  
8 within the state;

9 (5) A waste characterization study that specifies the quantity in tons of packaging material  
10 in the waste stream according to types of uses;

11 (6) A statewide litter survey that identifies the quantity of packaging material in litter  
12 according to types of packaging material and the brands which produce the material;

13 (7) A list of the amount of packaging material and packaging material type sold or offered  
14 for sale within the state that year;

15 (8) A description of all funding issued in accordance with § 23-97-14;

16 (9) A description of all funding issued pursuant to § 23-97-15; and

17 (10) The compliance of producers with the toxic substances ban pursuant to § 23-97-20.

18 **23-97-22. Producer compliance information.**

19 (a) Based on information provided to the department under § 23-97-5 and any other  
20 information considered by the department, the department shall make available on its publicly  
21 accessible website a regularly updated list of UPCs of products for which the department has  
22 determined the producer has complied with all applicable requirements of this chapter and a list of  
23 producers and, where applicable, specific products and the UPCs of those products for which the  
24 department has determined the producer has not complied with all applicable requirements of this  
25 chapter.

26 (b) The producer responsibility organization shall provide to the department a list of  
27 producers that are participating in the program and a list of the UPCs of products for which the  
28 producer has complied with the program's requirements and, if known to the producer responsibility  
29 organization, a list of producers that are not participating in the program and are not compliant with  
30 the program's requirements. The producer responsibility organization shall provide to the  
31 department regularly updated producer compliance information as described in subsection (a) of  
32 this section.

33 **23-97-23. Enforcement by the department.**

34 (a) The department shall administer and enforce this chapter. The department may request

1 a certificate of compliance from a producer. A certificate of compliance attests that a producer's  
2 product(s) meets the requirements of this chapter and must be signed by an authorized official of  
3 the producer. The department shall post any certificate of compliance on its publicly available  
4 website for public access.

5 (b) The department shall have the authority to investigate the producer responsibility  
6 organization for compliance with all provisions of this chapter and may bring an enforcement action  
7 against the producer responsibility organization for failure to comply with this chapter.

8 (c) The department may bring a civil action in superior court for Providence County to  
9 enjoin the sale, distribution, or importation into the state of a packaging material in violation of this  
10 chapter.

11 (d) The penalties provided for in this chapter may be recovered in a civil action brought in  
12 the name of the people of the state by the attorney general. Any funds collected under this section  
13 in an action in which the attorney general has prevailed shall be deposited into the packaging  
14 responsibility fund.

15 **23-97-24. Enforcement by action in superior court.**

16 (a) The provisions of this chapter may be enforced by means of an action in the superior  
17 court for Providence County seeking injunctive relief, a declaratory judgment, a writ of mandamus,  
18 or any combination thereof. No such action may be commenced without the plaintiff providing  
19 written notice of the violations of this chapter to defendants at least sixty (60) days prior to filing a  
20 legal action in superior court.

21 (b) All persons shall have standing to commence such enforcement actions.

22 (c) Reasonable attorneys' fees shall be recoverable by all substantially prevailing plaintiffs  
23 who seek relief under this section.

24 **23-97-25. Labeling.**

25 (a) Producers must indicate on all packaging material sold, offered for sale, or distributed  
26 for sale in or into the state either:

27 (1) The percentage of post-consumer recycled material as defined in § 23-97-2;

28 (2) Whether the packaging material is readily-recyclable as defined in § 23-97-2 and how  
29 to recycle such unit; or

30 (3) Whether the unit is compostable as defined in § 23-97-2.

31 (b) These labels shall be in a form deemed appropriate by the department pursuant to the  
32 rules and regulations adopted under § 23-97-26.

33 (c) All packaging material sold in the state must conform with the uniform labeling system  
34 within two (2) years of the effective date. Packaging that does not meet the requirements of this

1 section may not be sold, offered for sale, or distributed for sale into the state.

2 **23-97-26. Rulemaking.**

3 (a) The department shall promulgate rules and regulations pursuant to chapter 35 of title  
4 42 ("administrative procedures") as necessary to implement, administer, and enforce this chapter.  
5 All rules and regulations promulgated pursuant to this section shall be enacted no later than one  
6 year after the effective date of this chapter.

7 (b) As part of the promulgation of rules and regulations the department shall solicit input  
8 from interested parties in the development of any draft rules and regulations to implement this  
9 chapter, solicit public comment on the draft rules and regulations for a period of at least thirty (30)  
10 days, pursuant to § 42-35-2.8, and hold a public hearing on the draft rules and regulations.

11 (c) The rules and regulations adopted by the department pursuant to this section must  
12 include, at a minimum:

13 (1) A process for contracting with the producer responsibility organization pursuant to the  
14 requirements of § 23-97-6;

15 (2) A process for annually determining a schedule of producer fees in accordance with the  
16 requirements of § 23-97-10, which must include, but is not limited to, provisions regarding the  
17 timing of producer fees and the timing of and information required to be provided in the annual  
18 producer report;

19 (i) The fee schedule adopted under this section must provide for a flat fee option to be  
20 assessed on a tiered basis such that a low-volume producer is required to pay no more than five  
21 hundred dollars (\$500) per ton of packaging, and no more than seven thousand five hundred dollars  
22 (\$7,500) in total annual fees to the producer stewardship organization under this chapter;

23 (ii) For producers other than low-volume producers, the fee schedule adopted under this  
24 section must be based on the most recent needs assessment, and shall include, at a minimum, the  
25 net cost of curbside collection, commercial collection, or transfer station operation, on-site  
26 processing cost for each readily-recyclable packaging types, management cost of non-readily-  
27 recyclable packaging, transportation cost for each type of packaging material, and any other cost  
28 factors determined by the department;

29 (iii) For producers other than low-volume producers, the fee schedule adopted under this  
30 section must delineate criteria to be used to adjust producer fees in a manner that complies with §  
31 23-97-6;

32 (3) A provision requiring that a producer provide as part of the annual producer reporting  
33 under § 23-97-8, all information necessary for the determination of the producer's fee obligation  
34 and the determination of the producer's compliance with respect to this chapter;

1 (i) For producers other than low-volume producers, the rule or regulation must require the  
2 producer to provide a description of the methods it used to determine the amount reported for each  
3 type of packaging material associated with its products, a description of the characteristics of each  
4 type of packaging material that are relevant to the eco-modulating factors in § 23-97-10, and a list  
5 of the producer's brands and the UPCs of the products associated with each type of packaging  
6 material;

7 (ii) For low-volume producers, the rule or regulation must require the reporting of only the  
8 information necessary for a calculation of the flat fee described in subsection (a) of this section and  
9 a determination of the producer's compliance with the requirements of this section;

10 (iii) The rule or regulation must authorize a producer that is unable to fully satisfy the  
11 reporting requirements due to a failure to obtain sufficient information regarding the characteristics  
12 of the packaging of the producer's products that are sold, offered for sale, or distributed for sale in  
13 or into the state to alternatively report to the producer responsibility organization an estimate of the  
14 total amount of that packaging based on unit quantities as long as such alternative reporting includes  
15 a description of methods used by the producer to calculate the estimate;

16 (4) A process for determining on an annual basis those types of packaging materials that  
17 are readily-recyclable, as defined in § 23-97-2, which must involve consultation with the producer  
18 responsibility organization and recycling establishments and must include a transitional period  
19 between the time that the type of packaging material is determined to be recyclable or to not be  
20 recyclable and the time that such determination will be in effect for the purposes of calculating  
21 producer fees;

22 (5) Requirements for the assessment of program performance, including:

23 (i) The non-reusable packaging reduction requirements of § 23-97-17;

24 (ii) The reuse and refill system requirements of § 23-97-18;

25 (iii) The recycling or post-consumer recycled material requirements of § 23-97-19;

26 (iv) The toxic substances in packaging requirements of § 23-97-20;

27 (v) The labeling requirements of § 23-97-25;

28 (vi) Setting program goals used to inform the producer fee schedule determined pursuant  
29 to § 23-97-10; and

30 (vii) Material-specific recycling rates for each type of packaging material for which a fee  
31 has been set pursuant to § 23-97-10. The material specific recycling rate goals shall reflect the  
32 following recycling standards:

33 (A) Sorted glass is considered recycled if it does not require further processing before  
34 entering a glass furnace or before use in the production of filtration media, abrasive materials, glass



1 fiber insulation or construction;

2 (B) Sorted metal is considered recycled if it does not require further processing before  
3 entering a melter or furnace;

4 (C) Sorted paper is considered recycled if it does not require further processing before  
5 entering a pulping operation;

6 (D) Plastic separated by polymer is considered recycled if it does not require further  
7 processing before entering a pelletization, extrusion, or molding operation, or in the case of plastic  
8 flakes, does not require further processing before use in a final product;

9 (6) Requirements for the producer responsibility organization to conduct representative  
10 audits of recyclable material process and sold by facilities that process recyclable material  
11 generated in the state, of municipal solid waste disposed of in the state, and waste littered in the  
12 state, which must include, at minimum:

13 (i) Provisions regarding the sampling techniques to be used in those audits, which must  
14 include random sampling; and

15 (ii) For audits of recyclable materials, provisions regarding:

16 (A) How those audits must be designed to collect information regarding the extent to which  
17 recycled material processed and sold by those facilities reflects the ton of each type of packaging  
18 material collected in the state for recycling and the tonnage of each type of packaging material  
19 recycled in the state, as well as the ultimate designation of and intended use for that recycled  
20 material;

21 (B) How those audits must be designed so that information collected through the audit of  
22 one facility will not be used to infer information about a different facility that uses different  
23 processing equipment, different sorting processes, or different staffing levels to conduct  
24 processing;

25 (C) For audits of municipal solid waste, provisions regarding how the audits will be  
26 designed to collect information regarding the types and amount, by weight, of packaging in the  
27 waste stream and the percentage by weight of the waste stream that is composed of packaging; and

28 (D) For audits of waste littered in the state, provisions regarding how the audits will be  
29 designed to collect information regarding the packaging material type by amount, weight, in  
30 sampled litter, identification of the producer(s) of the packaging in sampled litter, if identifiable,  
31 and an evaluation based on those audits regarding the areas of the state in which litter accumulation  
32 is greatest;

33 (7) A schedule by which the producer responsibility organization must annually report to  
34 the department pursuant to § 23-97-8;

1           (8) A process by which the producer responsibility organization shall develop and submit  
2 to the department for review and a process by which the department shall review and approve or  
3 deny:

4           (i) A proposed investment in recycling infrastructure and education pursuant to § 23-97-  
5 14; and

6           (ii) A proposed investment in reusable or refillable infrastructure and education pursuant  
7 to § 23-97-15. The process must set forth the manner in which the producer responsibility  
8 organization is required to solicit and incorporate input in the development of proposed investments  
9 from producers, recycling establishments and municipalities;

10          (9) A process for soliciting information necessary for, and a process for rendering a  
11 determination regarding:

12          (i) A producer's compliance with the non-reusable packaging reduction requirements of §  
13 23-97-17;

14          (ii) A producer's compliance with the reuse and refill system requirements of § 23-97-18;

15          (iii) A producer's compliance with the recycling or post-consumer recycled material  
16 requirements of § 23-97-19;

17          (iv) A producer's compliance with the toxic substances in packaging requirements of § 23-  
18 97-20; and

19          (v) A producer's compliance with the labeling requirements of § 23-97-25;

20          (10) A process for determining how the producer responsibility organization will distribute  
21 funds to municipalities, or where appropriate, political subdivisions, and Native American tribes,  
22 pursuant to § 23-97-16;

23          (11) A process for determining changes to the percentages of authorized expenditures  
24 under the packaging responsibility fund, pursuant to § 23-97-12;

25          (12) A process for establishing penalties for all violations of the requirements of this  
26 chapter. This includes, but is not limited to, penalties for violating:

27          (i) A producer's compliance with the requirements of § 23-97-5;

28          (ii) The producer responsibility organization's compliance with §§ 23-97-7, 23-97-8 and  
29 23-97-12;

30          (iii) A producer's compliance with the non-reusable packaging reduction requirements of  
31 § 23-97-17;

32          (iv) A producer's compliance with the reuse and refill system requirements of § 23-97-18;

33          (v) A producer's compliance with the recycling or post-consumer recycled material  
34 requirements of § 23-97-19;

1           (vi) A producer’s compliance with the toxic substances in packaging requirements of § 23-  
2 97-20; and

3           (vii) A producer’s compliance with the labeling requirements of § 23-97-25;

4           (13) A process for determining new toxic substances in packaging pursuant to § 23-97-20;  
5           (14) A process for determining the appropriate format packaging labels as required by §  
6 23-97-25;

7           (15) A process for how the producer responsibility organization shall manage the  
8 packaging responsibility fund pursuant to § 23-97-12;

9           (16) A process for determining whether information is proprietary information and  
10 therefore must be handled as confidential information pursuant to § 23-97-28;

11           (17) A process for determining the minimum number of reuse or refill cycles required for  
12 each type of packaging material to be considered reusable or refillable, as defined by § 23-97-2,  
13 pursuant to § 23-97-18; and

14           (18) A process by which a producer can assert a claim of confidential business information,  
15 pursuant to § 23-97-28, which must include, at a minimum, the following criteria for determining  
16 whether information rises to the level of confidential business information:

17           (i) The extent to which the information is known by employees or others involved within  
18 the facility or business of the person, and whether or not those individuals are bound by non-  
19 disclosure agreements;

20           (ii) The extent to which the information is known outside of the facility or business of the  
21 person, and whether or not individuals with such knowledge are bound by non-disclosure  
22 agreements;

23           (iii) The measures taken to restrict access to and safeguard the information, and whether or  
24 not the person plans to continue utilizing such measures;

25           (iv) The estimated value of the information to the individual and that individual’s  
26 competitors;

27           (v) The estimated amount of effort and/or money expended by the individual in developing  
28 the information;

29           (vi) The estimated ease or difficulty with which the information can be properly acquired  
30 or duplicated by others, an explanation of why the information is not readily discoverable through  
31 other means, such as, market research, other regulatory reporting and publicly accessible reports to  
32 shareholders; and

33           (vii) A description of the nature and extent of harm that could be caused if the information  
34 were made public, including an explanation of the causal relationship between disclosure and the

1 harmful effects claimed.

2 **23-97-27. Penalties.**

3 (a) The penalties adopted by the department to implement, administer, and enforce this  
4 chapter may be recovered by the department in a civil action brought in the name of the people of  
5 the state by the attorney general, or through the enforcement provisions of § 23-97-24.

6 (b) Any funds collected under this chapter shall be deposited into the packaging  
7 responsibility fund, except that a portion of the funds collected by either the office of the attorney  
8 general or through the civil enforcement provisions can be used to offset the cost of the enforcement  
9 action. The department shall include a process for determining the apportionment of any funds so  
10 collected, within the departments' rules and regulations

11 **23-97-28. Confidential business information.**

12 Confidential business information submitted to the department pursuant to the  
13 requirements of this chapter, or the rules and regulations adopted pursuant to § 23-97-26 and  
14 chapter 35 of title 42, that is identified by the submitter as proprietary information that is  
15 confidential and substantiated by the submitter in accordance with the rules and regulations adopted  
16 pursuant to § 23-97-26 and chapter 35 of title 42, must be handled by the department and the  
17 producer responsibility organization in the same manner as confidential information is handled.

18 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- EXTENDED PRODUCER RESPONSIBILITY  
FOR PACKAGING

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1           This act would enact the extended producer responsibility for packaging act requiring  
2 producers of packaging material to make changes to their product design in an effort to reduce the  
3 use of non-reusable, non-recyclable and toxic packaging. This act would further create the producer  
4 responsibility program requiring producers to make necessary changes to their product design(s) to  
5 reduce packaging consumption and waste, and assess fees based on the packaging. This act would  
6 further establish the producer responsibility organization to administer the producer responsibility  
7 program. The department of environmental management would promulgate rules and regulations  
8 to implement the provisions of this chapter.

9           This act would take effect upon passage.

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