

SENATE BILL 292

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2lr1436
CF HB 307

By: **Senator Augustine**

Introduced and read first time: January 19, 2022

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Environment – Packaging Materials – Producer Responsibility

FOR the purpose of requiring certain producers of packaging materials to individually or as part of a producer responsibility organization submit a certain packaging materials producer responsibility plan to the Department of the Environment for review and approval on or before a certain date and in accordance with certain requirements; prohibiting, on or after a certain date, a producer of certain packaging materials from selling, offering for sale, distributing, or importing certain packaging materials unless the producer, individually or as part of a producer responsibility organization, has an approved producer responsibility plan on file with the Department; requiring a producer responsibility organization to implement a producer responsibility plan within a certain amount of time after the Department approves the producer responsibility plan; establishing a producer responsibility plan advisory council; authorizing a local government to request reimbursement from a certain producer that has an approved producer responsibility plan on file with the Department for certain costs in a certain manner; requiring the Office of Recycling in the Department to conduct certain statewide recycling needs assessments in a certain manner and to submit certain reports on the results of the assessments to the Governor and General Assembly on or before certain dates; and generally relating to producer responsibility for packaging materials.

BY repealing and reenacting, with amendments,

Article – Environment

Section 9–1702 and 9–1707(f)

Annotated Code of Maryland

(2014 Replacement Volume and 2021 Supplement)

BY adding to

Article – Environment

Section 9–1702.2; and 9–2401 through 9–2410 to be under the new subtitle “Subtitle 24. Producer Responsibility for Packaging Materials”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment

9–1702.

(a) There is an Office of Recycling created within the Department.

(b) The Secretary shall appoint a Director and sufficient staff to perform the functions of the Office. After July 1, 1989, the number of staff shall be as provided in the budget.

(c) The Secretary may adopt regulations to carry out the provisions of this subtitle.

(d) The Office shall:

(1) Assist the counties in developing an acceptable recycling plan required under § 9–1703 of this subtitle and § 9–505 of this title, including technical assistance to the local governments;

(2) Coordinate the efforts of the State to facilitate the implementation of the recycling goals at the county level;

(3) Review all recycling plans submitted as part of a county plan as required under § 9–505 of this title and advise the Secretary on the adequacy of the recycling plan;

(4) Administer the Statewide Electronics Recycling Program under Part IV of this subtitle; [and]

(5) Promote the development of markets for recycled materials and recycled products in the State in accordance with § 9–1702.1 of this subtitle;

(6) CONDUCT A STATEWIDE RECYCLING NEEDS ASSESSMENT EVERY 10 YEARS IN ACCORDANCE WITH § 9–1702.2 OF THIS SUBTITLE; AND

(7) REVIEW AND APPROVE, IN CONSULTATION WITH THE PRODUCER RESPONSIBILITY PLAN ADVISORY COUNCIL ESTABLISHED UNDER § 9–2405 OF THIS TITLE, PRODUCER RESPONSIBILITY PLANS AND ANNUAL REPORTS SUBMITTED IN ACCORDANCE WITH SUBTITLE 24 OF THIS TITLE.

(e) Beginning on January 1, 1990, and biannually thereafter, the Office shall, in coordination with the Maryland Environmental Service, study and report to the Governor and, subject to § 2-1257 of the State Government Article, the General Assembly on:

(1) The identification and location of recycling centers, including an analysis of existing recycling centers and the need to expand these facilities or construct new recycling centers;

(2) Programs necessary to educate the public on the need to participate in recycling efforts;

(3) The economics and financing of existing and proposed systems of waste disposal and recycling;

(4) State procurement policies for the purchase of recycled materials;

(5) Programs necessary to reduce the amount of solid waste generated for disposal by a State agency or unit;

(6) The liaison role with local governments, the federal government, and the private sector;

(7) The percentage reduction in the amount of solid waste that has been achieved by each county; and

(8) Economically feasible methods for the recycling of scrap automobile tires, batteries, and white goods.

(f) (1) By December 1, 1988, the Office shall, in coordination with the Maryland Environmental Service and the Governor's Task Force on Solid Waste, make recommendations to the General Assembly for the financing of a comprehensive system of recycling at the State and local level, including funding for recycling centers, recycling equipment, recycling education, and marketing strategies.

(2) After the financing recommendations are made under paragraph (1) of this subsection, each county may submit to the Office and the Governor a detailed request for funds necessary to assist in the development and implementation of a recycling plan under guidelines developed by the Office.

(g) In studying feasible methods for the management and recycling of used tires under subsection (e)(9) of this section, the Office of Recycling shall consult with the appropriate industry, including representatives of:

(1) Tire manufacturers;

(2) Tire dealers; and

- (3) Tire recyclers.

9-1702.2.

(A) IN THIS SECTION, “PRODUCER RESPONSIBILITY ORGANIZATION” HAS THE MEANING STATED IN § 9-2401 OF THIS TITLE.

(B) IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION AND TO CARRY OUT THE REQUIREMENTS OF § 9-1702(D)(6) OF THIS SUBTITLE, THE OFFICE SHALL CONDUCT A STATEWIDE RECYCLING NEEDS ASSESSMENT ONCE EVERY 10 YEARS THAT INCLUDES:

(1) AN EVALUATION OF THE CURRENT CAPACITY RELATED TO, NEED FOR, AND ASSOCIATED COSTS OF:

(I) FUNDING RELATED TO RECYCLING ACCESS AND AVAILABILITY;

(II) COLLECTING AND HAULING RECYCLABLE OR COMPOSTABLE MATERIALS IN THE STATE;

(III) PROCESSING RECYCLABLE OR COMPOSTABLE MATERIALS IN THE STATE;

(IV) TAKING ADVANTAGE OF FAVORABLE MARKET CONDITIONS OR OTHER OPPORTUNITIES FOR INCREASING RECYCLING OR COMPOSTING IN THE STATE;

(V) CONSUMER EDUCATION REGARDING RECYCLING, COMPOSTING, AND CONTAMINATION REDUCTION;

(VI) REUSE INFRASTRUCTURE; AND

(VII) COMPOSTING INFRASTRUCTURE;

(2) AN EVALUATION OF COMMINGLED RECYCLING PROCESSING FACILITY WORKER CONDITIONS, WAGES, AND BENEFITS;

(3) THE AVAILABILITY OF OPPORTUNITIES IN THE RECYCLING SYSTEM FOR WOMEN AND MINORITY INDIVIDUALS;

(4) THE SUFFICIENCY OF LOCAL GOVERNMENT REQUIREMENTS RELATED TO MULTIFAMILY RECYCLING SERVICES AND THEIR IMPLEMENTATION;

(5) THE SUFFICIENCY OF RECYCLING EDUCATION PROGRAMS RELATIVE TO DESIRED EQUITY OUTCOMES;

(6) THE AVAILABILITY OF OPPORTUNITIES IN THE RECYCLING SYSTEM FOR BUSINESSES IN THE STATE; AND

(7) RECOMMENDATIONS FOR IMPROVING EQUITY AND EQUITABLE OUTCOMES FOR UNDERSERVED POPULATIONS IN THE STATE'S RECYCLING SYSTEM, INCLUDING RECOMMENDATIONS FOR NEW RESPONSIBILITIES OF PRODUCER RESPONSIBILITY ORGANIZATIONS AND RECOMMENDATIONS FOR FUNDING THE NEW RESPONSIBILITIES.

(C) ON OR BEFORE OCTOBER 1, 2023, AND EACH OCTOBER 1 EVERY 10 YEARS THEREAFTER, THE OFFICE SHALL REPORT ON THE RESULTS OF THE MOST RECENT ASSESSMENT CONDUCTED UNDER THIS SECTION TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

(D) IN CONDUCTING THE ASSESSMENT REQUIRED UNDER THIS SECTION, THE OFFICE SHALL CONSULT WITH PRODUCER RESPONSIBILITY ORGANIZATIONS, THE PRODUCER RESPONSIBILITY PLAN ADVISORY COUNCIL ESTABLISHED UNDER § 9-2405 OF THIS TITLE, APPROPRIATE LOCAL GOVERNMENTAL ENTITIES, AND REGIONAL SOLID WASTE ORGANIZATIONS IN THE STATE.

(E) THE OFFICE SHALL ESTABLISH AND COLLECT A FEE TO BE PAID BY PRODUCER RESPONSIBILITY ORGANIZATIONS TO COVER THE COSTS ASSOCIATED WITH CONDUCTING THE ASSESSMENTS REQUIRED UNDER THIS SECTION.

9-1707.

(f) (1) There is a State Recycling Trust Fund.

(2) The Fund shall consist of:

(i) The newsprint recycling incentive fee;

(ii) The telephone directory recycling incentive fee collected under § 9-1709 of this subtitle;

(iii) The covered electronic device manufacturer registration fee collected under § 9-1728 of this subtitle;

(IV) ANY FEES COLLECTED FROM PRODUCER RESPONSIBILITY ORGANIZATIONS UNDER § 9-1702.2 OF THIS SUBTITLE OR SUBTITLE 24 OF THIS

TITLE;

~~[(iv)] (V)~~ All fines and penalties collected under this subtitle;

~~[(v)] (VI)~~ Money appropriated in the State budget to the Fund; and

~~[(vi)] (VII)~~ Any other money from any other source accepted for the benefit of the Fund.

(3) The Secretary shall administer the Fund.

(4) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(5) At the end of each fiscal year, any unspent or unencumbered balance in the Fund that exceeds \$2,000,000 shall revert to the General Fund of the State in accordance with § 7–302 of the State Finance and Procurement Article.

(6) In accordance with the State budget, the Fund shall be used only:

(i) To provide grants to the counties to be used by the counties to develop and implement local recycling plans;

(ii) To provide grants to counties that have addressed methods for the separate collection and recycling of covered electronic devices in accordance with § 9–1703(c)(1) of this subtitle;

(iii) To provide grants to municipalities to be used by the municipalities to implement local covered electronic device recycling programs; [and]

(IV) TO COVER THE COSTS OF THE STATEWIDE RECYCLING NEEDS ASSESSMENT CONDUCTED UNDER § 9–1702.2 OF THIS SUBTITLE;

(V) TO COVER THE COSTS OF PRODUCER RESPONSIBILITY PLAN REVIEW, OVERSIGHT, AND ENFORCEMENT UNDER SUBTITLE 24 OF THIS TITLE; AND

~~[(iv)] (VI)~~ To carry out the purposes of the land management administration.

(7) (i) The Treasurer shall invest the money in the Fund in the same manner as other State money may be invested.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

SUBTITLE 24. PRODUCER RESPONSIBILITY FOR PACKAGING MATERIALS.

9-2401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ADVISORY COUNCIL” MEANS THE PRODUCER RESPONSIBILITY PLAN ADVISORY COUNCIL ESTABLISHED UNDER § 9-2405 OF THIS SUBTITLE.

(C) “BEVERAGE CONTAINER” MEANS A PREPACKAGED BEVERAGE CONTAINER:

(1) MADE OF ANY MATERIAL, INCLUDING GLASS, PLASTIC, METAL, CARTON, POUCH, OR ASEPTIC PACKAGING, SUCH AS A DRINK BOX, OR OF MULTIMATERIALS; AND

(2) THE VOLUME OF WHICH IS NOT MORE THAN 5 LITERS.

(D) (1) “PACKAGING MATERIALS” MEANS, REGARDLESS OF RECYCLABILITY, ANY PART OF A PACKAGE OR CONTAINER, INCLUDING MATERIAL THAT IS USED FOR THE CONTAINMENT, PROTECTION, HANDLING, DELIVERY, AND PRESENTATION OF A PRODUCT THAT IS SOLD, OFFERED FOR SALE, IMPORTED, OR DISTRIBUTED IN THE STATE.

(2) “PACKAGING MATERIALS” INCLUDES:

(I) PRIMARY, SECONDARY, AND TERTIARY PACKAGING INTENDED FOR THE CONSUMER MARKET;

(II) SERVICE PACKAGING DESIGNED AND INTENDED TO BE FILLED AT THE POINT OF SALE, INCLUDING:

1. CARRY-OUT BAGS;

2. BULK GOODS BAGS;

3. TAKE-OUT AND HOME DELIVERY FOOD SERVICE PACKAGING; AND

4. PRESCRIPTION AND PHARMACEUTICAL PACKAGING;

AND

(III) BEVERAGE CONTAINERS.

(E) (1) “PRODUCER” MEANS A PERSON THAT MEETS ONE OF THE FOLLOWING CLASSIFICATIONS, IN DESCENDING ORDER OF RESPONSIBILITY:

(I) A PERSON THAT USES PACKAGING MATERIALS FOR THE SALE OR DISTRIBUTION OF A PRODUCT UNDER THE PERSON’S OWN NAME OR BRAND;

(II) A PERSON THAT IS A LICENSEE OF A TRADEMARK UNDER WHICH A PACKAGING MATERIAL IS SOLD, OFFERED FOR SALE, DISTRIBUTED, OR OTHERWISE USED IN A COMMERCIAL ENTERPRISE IN THE STATE, REGARDLESS OF WHETHER THE TRADEMARK IS REGISTERED; OR

(III) A PERSON THAT IMPORTS A PRODUCT THAT INCLUDES A PACKAGING MATERIAL AND THAT IS SOLD, OFFERED FOR SALE, DISTRIBUTED, OR OTHERWISE USED IN A COMMERCIAL ENTERPRISE IN THE STATE.

(2) “PRODUCER” DOES NOT INCLUDE:

(I) A LOCAL GOVERNMENT; OR

(II) A NONPROFIT CHARITABLE ORGANIZATION.

(F) (1) “PRODUCER RESPONSIBILITY ORGANIZATION” MEANS:

(I) A PRODUCER THAT INDIVIDUALLY SUBMITS A PRODUCER RESPONSIBILITY PLAN TO THE DEPARTMENT UNDER § 9-2404 OF THIS SUBTITLE; OR

(II) A NONPROFIT ORGANIZATION THAT IS:

1. EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE; AND

2. CREATED BY A GROUP OF PRODUCERS TO IMPLEMENT A PRODUCER RESPONSIBILITY PLAN.

(2) “PRODUCER RESPONSIBILITY ORGANIZATION” INCLUDES A REPRESENTATIVE ORGANIZATION CREATED BY A GROUP OF PRODUCER RESPONSIBILITY ORGANIZATIONS IN ACCORDANCE WITH § 9-2404(A)(1)(II)2 OF THIS SUBTITLE.

(G) “PRODUCER RESPONSIBILITY PLAN” MEANS A PACKAGING MATERIALS PRODUCER RESPONSIBILITY PLAN SUBMITTED TO THE DEPARTMENT BY A

PRODUCER OR PRODUCER RESPONSIBILITY ORGANIZATION IN ACCORDANCE WITH § 9-2404 OF THIS SUBTITLE.

9-2402.

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS SUBTITLE PROVIDE A FRAMEWORK FOR:

(1) MODERNIZING AND IMPROVING WASTE AND RECYCLING SYSTEMS IN THE STATE, INCLUDING BY FACILITATING:

(I) THE IMPROVEMENT OF REUSE, COMPOSTING, AND RECYCLING;

(II) THE IMPROVEMENT OF RECYCLING MARKETS;

(III) THE REDUCTION OF WASTE; AND

(IV) AN INCREASE IN RECYCLING RATES; AND

(2) REIMBURSING LOCAL GOVERNMENTS FOR COSTS ASSOCIATED WITH TRANSPORTING, COLLECTING, AND PROCESSING PACKAGING MATERIALS.

9-2403.

(A) THIS SUBTITLE DOES NOT APPLY TO A PRODUCER THAT:

(1) (I) GENERATED LESS THAN \$1,000,000 IN GROSS REVENUE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(II) SOLD, OFFERED FOR SALE, OR DISTRIBUTED FOR SALE IN THE STATE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR LESS THAN 1 TON OF PACKAGING MATERIALS; OR

(III) CONDUCTED ALL OF THE PACKAGING MATERIALS SALES IN THE STATE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR AT A SINGLE POINT OF RETAIL SALE THAT WAS NOT SUPPLIED OR OPERATED AS PART OF A FRANCHISE; AND

(2) ON REQUEST BY THE DEPARTMENT, PROVIDES TO THE DEPARTMENT SUFFICIENT INFORMATION TO DEMONSTRATE THAT THE PRODUCER MEETS THE CONDITIONS OF THIS SECTION.

(B) THIS SUBTITLE DOES NOT AFFECT THE AUTHORITY OF THE STATE OR A LOCAL JURISDICTION TO REGULATE THE SALE OR USE OF ANY PACKAGING MATERIAL.

(C) THIS SUBTITLE DOES NOT PROHIBIT A PRODUCER RESPONSIBILITY ORGANIZATION FROM ESTABLISHING A DEPOSIT-RETURN SYSTEM AS ONE STRATEGY FOR INCREASING THE CAPTURE AND RECYCLING OF BEVERAGE CONTAINERS OR OTHER PACKAGING MATERIALS.

9-2404.

(A) (1) (I) ON OR BEFORE APRIL 1, 2024, EACH PRODUCER SHALL, INDIVIDUALLY OR AS PART OF A PRODUCER RESPONSIBILITY ORGANIZATION, SUBMIT A PRODUCER RESPONSIBILITY PLAN TO THE DEPARTMENT FOR REVIEW AND APPROVAL.

(II) IF MORE THAN ONE PRODUCER RESPONSIBILITY ORGANIZATION SUBMITS A PRODUCER RESPONSIBILITY PLAN TO THE DEPARTMENT:

1. THE PRODUCER RESPONSIBILITY ORGANIZATIONS SHALL COORDINATE WITH THE DEPARTMENT AND LOCAL GOVERNMENTS TO ENSURE THAT:

A. RECYCLING SERVICES FOR RESIDENTS IN THE STATE ARE PROVIDED IN A SEAMLESS MANNER; AND

B. PUBLIC OUTREACH, EDUCATION, AND COMMUNICATION ARE PROVIDED IN A CONSISTENT MANNER; AND

2. THE PRODUCER RESPONSIBILITY ORGANIZATIONS MAY CREATE A REPRESENTATIVE ORGANIZATION TO REPRESENT ALL PARTICIPATING PRODUCER RESPONSIBILITY ORGANIZATIONS TO IMPLEMENT THE REQUIREMENTS OF THIS SUBTITLE.

(III) BEFORE SUBMITTING THE PLAN REQUIRED UNDER THIS SUBSECTION TO THE DEPARTMENT, A PRODUCER OR PRODUCER RESPONSIBILITY ORGANIZATION SHALL CONSULT WITH THE ADVISORY COUNCIL ESTABLISHED UNDER § 9-2405 OF THIS SUBTITLE.

(2) ON OR AFTER OCTOBER 1, 2024, A PRODUCER MAY NOT SELL, OFFER FOR SALE, DISTRIBUTE, OR IMPORT FOR SALE OR DISTRIBUTION PACKAGING MATERIALS FOR USE IN THE STATE UNLESS THE PRODUCER, INDIVIDUALLY OR AS

PART OF A PRODUCER RESPONSIBILITY ORGANIZATION, HAS AN APPROVED PRODUCER RESPONSIBILITY PLAN ON FILE WITH THE DEPARTMENT.

(B) A PRODUCER RESPONSIBILITY PLAN SHALL:

(1) IDENTIFY THE PRODUCERS COVERED BY THE PLAN, INCLUDING THE CONTACT INFORMATION FOR EACH PARTICIPATING PRODUCER AND THE PRODUCER RESPONSIBILITY ORGANIZATION;

(2) IDENTIFY EACH BRAND OF PACKAGING MATERIALS COVERED BY THE PLAN;

(3) REQUIRE, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, ACHIEVEMENT WITHIN 5 YEARS AFTER THE DATE ON WHICH THE FIRST VERSION OF THE PLAN IS APPROVED AND ESTABLISH THE FOLLOWING PERFORMANCE GOALS, AS RELEVANT, FOR EACH PACKAGING MATERIAL TYPE:

(I) POSTCONSUMER RECYCLED CONTENT GOALS;

(II) RECYCLABILITY AND RECYCLING RATE GOALS;

(III) REUSE GOALS;

(IV) PACKAGING REDUCTION GOALS;

(V) COMPOST ACCESS OR COMPOST RATE GOALS, IF APPLICABLE AND TECHNOLOGICALLY AND ENVIRONMENTALLY FEASIBLE;

(VI) CONTAMINATION REDUCTION RATE GOALS;

(VII) GREENHOUSE GAS REDUCTION GOALS; AND

(VIII) ANY OTHER GOAL THAT DEMONSTRATES POSITIVE ENVIRONMENTAL IMPROVEMENT AND IS JUSTIFIED IN THE PLAN;

(4) REQUIRE EACH PARTICIPATING PRODUCER TO REDUCE ALL PACKAGING MATERIAL WASTE TO THE MAXIMUM EXTENT PRACTICABLE, AND BY NOT LESS THAN 25% FOR EACH PACKAGING MATERIAL TYPE, WITHIN 5 YEARS AFTER THE DATE ON WHICH THE FIRST VERSION OF THE PLAN IS APPROVED;

(5) DESCRIBE, IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, THE FINANCING METHOD THAT WILL BE USED TO IMPLEMENT THE PLAN;

(6) DESCRIBE HOW THE PERFORMANCE GOALS ESTABLISHED UNDER ITEM (3) OF THIS SUBSECTION WILL BE MET OR EXCEEDED;

(7) DESCRIBE HOW STAKEHOLDER COMMENTS WERE CONSIDERED IN THE DEVELOPMENT OF THE PLAN;

(8) DESCRIBE HOW STAFFING AND ADMINISTERING THE IMPLEMENTATION OF THE PLAN WILL BE HANDLED;

(9) DESCRIBE THE STRATEGY FOR REDUCING PACKAGING MATERIALS IN THE STATE, INCLUDING HOW PRODUCERS PARTICIPATING IN A PLAN WILL WORK TOGETHER TO REDUCE PACKAGING THROUGH PRODUCT DESIGN AND PROGRAM INNOVATIONS;

(10) DESCRIBE THE ACTIONS TAKEN OR THAT WILL BE TAKEN FOR PUBLIC OUTREACH, EDUCATION, AND COMMUNICATION, TAKING INTO ACCOUNT THAT PUBLIC OUTREACH, EDUCATION, AND COMMUNICATION SHALL:

(i) PROMOTE THE RESPONSIBLE END-OF-LIFE MANAGEMENT OF PACKAGING MATERIALS;

(ii) PROVIDE INFORMATION ON HOW TO PREVENT LITTER OF PACKAGING MATERIALS;

(iii) PROVIDE RECYCLING AND COMPOSTING INSTRUCTIONS THAT ARE, TO THE EXTENT PRACTICABLE:

1. CONSISTENT STATEWIDE, TAKING INTO ACCOUNT DIFFERENCES AMONG LOCAL LAWS AND PROCESSING CAPABILITIES;

2. EASY TO UNDERSTAND; AND

3. EASILY ACCESSIBLE; AND

(iv) PROVIDE FOR OUTREACH AND EDUCATION THAT ARE:

1. DESIGNED TO ACHIEVE PACKAGING MATERIALS MANAGEMENT GOALS AND REQUIREMENTS, INCLUDING THE PREVENTION OF CONTAMINATION OF PACKAGING MATERIALS;

2. COORDINATED ACROSS PROGRAMS TO AVOID CONFUSION FOR CONSUMERS; AND

3. DEVELOPED IN CONSULTATION WITH LOCAL GOVERNMENTS AND OTHER STAKEHOLDERS;

(11) DESCRIBE, IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, THE AMOUNT OF FUNDING THAT WILL BE USED FOR IMPROVING REUSE, COMPOSTING, AND RECYCLING IN THE STATE;

(12) DESCRIBE THE PROCESS BY WHICH A LOCAL GOVERNMENT MAY REQUEST REIMBURSEMENT FOR COSTS ASSOCIATED WITH TRANSPORTING, COLLECTING, AND PROCESSING PACKAGING MATERIALS THAT ARE IDENTIFIED IN THE PLAN, INCLUDING:

(I) THE PROCESS BY WHICH THE REQUEST WILL BE REVIEWED;

(II) THE PROCESS FOR APPROVING OR DENYING A REQUEST FOR REIMBURSEMENT; AND

(III) THE SCHEDULE FOR PROVIDING REIMBURSEMENT THAT INCLUDES REIMBURSEMENT ON AT LEAST A QUARTERLY BASIS; AND

(13) INCLUDE ANY OTHER INFORMATION THAT IS REQUIRED BY THE DEPARTMENT.

(C) BASED ON THE RESULTS OF THE STATEWIDE RECYCLING NEEDS ASSESSMENT CONDUCTED UNDER § 9-1702.2 OF THIS TITLE, THE DEPARTMENT, IN COORDINATION WITH A PRODUCER RESPONSIBILITY ORGANIZATION, SHALL ESTABLISH PERFORMANCE GOALS FOR EACH PACKAGING MATERIAL TYPE USING A BASELINE YEAR THAT IS INFORMED BY THE STATEWIDE RECYCLING NEEDS ASSESSMENT, INCLUDING ESTABLISHING RECYCLING RATE GOALS FOR EACH PACKAGING MATERIAL TYPE, AT 5-, 10-, AND 15-YEAR INTERVALS.

(D) (1) THE FINANCING METHOD THAT WILL BE USED BY A PRODUCER RESPONSIBILITY ORGANIZATION TO IMPLEMENT A PRODUCER RESPONSIBILITY PLAN SHALL:

(I) PROVIDE THE METHOD FOR EITHER DIRECT INVESTMENTS OR REIMBURSEMENTS FOR IMPROVING INFRASTRUCTURE FOR REUSE, COMPOSTING, AND RECYCLING IN ACCORDANCE WITH SUBSECTION (B)(11) OF THIS SECTION;

(II) PROVIDE A REASONABLE ANNUAL RATE PER TON OF RECYCLED OR COMPOSTED PACKAGING MATERIALS FOR REIMBURSING LOCAL GOVERNMENTS FOR COSTS ASSOCIATED WITH:

1. UP TO 50% OF THE COST OF COLLECTING PACKAGING MATERIALS THAT ARE IDENTIFIED IN THE PLAN;

2. TRANSPORTING RECYCLABLE OR COMPOSTABLE PACKAGING MATERIALS TO A RECYCLING OR COMPOSTING FACILITY;

3. PROCESSING PACKAGING MATERIALS, INCLUDING BY REMOVING CONTAMINATION; AND

4. RECYCLING PACKAGING MATERIALS THAT ARE DIVERTED TO BE RECYCLED OR COMPOSTED IN THE STATE;

(III) ESTABLISH A FEE STRUCTURE FOR PARTICIPATING PRODUCERS THAT IS SET IN A MANNER TO COVER COSTS ASSOCIATED WITH:

1. IMPLEMENTING THE PLAN, INCLUDING THE ADMINISTRATIVE COSTS OF A PRODUCER RESPONSIBILITY ORGANIZATION;

2. REIMBURSING LOCAL GOVERNMENTS FOR COSTS IN ACCORDANCE WITH ITEM (II) OF THIS PARAGRAPH;

3. THE ADMINISTRATION, REVIEW, OVERSIGHT, AND ENFORCEMENT OF THE PLAN BY THE DEPARTMENT;

4. IMPLEMENTING THE STRATEGY IN THE PLAN FOR REDUCING PACKAGING MATERIALS IN ACCORDANCE WITH SUBSECTION (B)(9) OF THIS SECTION; AND

5. IMPLEMENTING THE STRATEGY IN THE PLAN FOR IMPROVING REUSE, COMPOSTING, AND RECYCLING IN THE STATE IN ACCORDANCE WITH SUBSECTION (B)(11) OF THIS SECTION;

(IV) 1. DESCRIBE THE INCENTIVES TO ENCOURAGE PARTICIPATING PRODUCERS TO ENGAGE IN WASTE REDUCTION AND RECYCLING ACTIVITIES; AND

2. DESCRIBE THE DISINCENTIVES TO DISCOURAGE DESIGNS OR PRACTICES THAT INCREASE THE COST OF MANAGING PACKAGING MATERIALS;

(V) BE EVALUATED BY AN INDEPENDENT FINANCIAL AUDITOR, AS DESIGNATED BY THE DEPARTMENT, TO ENSURE THE COSTS OF IMPLEMENTING

THE PLAN ARE COVERED; AND

(VI) MEET ANY OTHER REQUIREMENT ESTABLISHED BY THE DEPARTMENT BY REGULATION.

(2) THE REIMBURSEMENT RATE ESTABLISHED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE BASED ON:

(I) THE POPULATION SIZE OF A LOCAL JURISDICTION;

(II) THE DISTANCE TO THE NEAREST RECYCLING OR COMPOSTING FACILITY;

(III) THE COMMODITY VALUE OF RECYCLED PACKAGING MATERIALS; AND

(IV) ANY SOCIOECONOMIC OR GEOGRAPHIC FACTOR, AS DETERMINED BY THE DEPARTMENT.

(3) THE FEE STRUCTURE ESTABLISHED UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION SHALL BE VARIABLE BASED ON:

(I) COSTS ASSOCIATED WITH TRANSPORTING, COLLECTING, AND PROCESSING PACKAGING MATERIALS;

(II) AN ECO-MODULATION OF FEES, INCLUDING ESTABLISHING:

1. A HIGHER FEE FOR PACKAGING MATERIALS WITH LOW RECYCLABILITY OR RECYCLED CONTENT; AND

2. A DISCOUNTED FEE FOR PACKAGING MATERIALS WITH HIGH RECYCLABILITY OR RECYCLED CONTENT; AND

(III) ANY OTHER FACTOR, AS DETERMINED BY THE DEPARTMENT.

(E) THE FUNDING THAT WILL BE USED FOR IMPROVING REUSE, COMPOSTING, AND RECYCLING SHALL INCLUDE INVESTMENT IN MARKET DEVELOPMENT AND EXISTING AND FUTURE REUSE, COMPOSTING, AND RECYCLING INFRASTRUCTURE, GIVING PRIORITY TO INVESTMENT IN EXISTING INFRASTRUCTURE, INCLUDING:

(1) INSTALLING OR UPGRADING EQUIPMENT TO IMPROVE THE

SORTING OF PACKAGING MATERIALS AT EXISTING SORTING AND PROCESSING FACILITIES;

(2) MITIGATING THE IMPACTS OF PACKAGING MATERIALS ON OTHER COMMODITIES AT EXISTING SORTING AND PROCESSING FACILITIES; AND

(3) CAPITAL EXPENDITURES FOR NEW TECHNOLOGY, EQUIPMENT, AND FACILITIES, BASED ON THE RESULTS OF THE STATEWIDE RECYCLING NEEDS ASSESSMENT CONDUCTED UNDER § 9-1702.2 OF THIS TITLE.

(F) THE DEPARTMENT SHALL REVIEW:

(1) THE PRODUCER RESPONSIBILITY PLAN REQUIRED UNDER SUBSECTION (A) OF THIS SECTION; AND

(2) THE WORK PRODUCT OF THE INDEPENDENT FINANCIAL AUDITOR DESIGNATED BY THE DEPARTMENT TO EVALUATE THE FINANCING COMPONENT OF THE PRODUCER RESPONSIBILITY PLAN UNDER SUBSECTION (D)(1)(V) OF THIS SECTION.

(G) (1) WITHIN 120 DAYS AFTER RECEIVING A PROPOSED PRODUCER RESPONSIBILITY PLAN, THE DEPARTMENT SHALL APPROVE, APPROVE WITH CONDITIONS, OR REJECT THE PLAN.

(2) IN MAKING A DETERMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL CONSIDER WHETHER:

(I) THE PRODUCER RESPONSIBILITY PLAN COMPLIES WITH THE REQUIREMENTS OF THIS SECTION, INCLUDING WHETHER THE FINANCING METHOD WILL COVER THE COSTS OF IMPLEMENTING THE PLAN; AND

(II) THE PRODUCER RESPONSIBILITY ORGANIZATION ENGAGED SUFFICIENTLY WITH STAKEHOLDERS, INCLUDING LOCAL GOVERNMENTS, IN DEVELOPING THE PLAN.

(H) WITHIN 6 MONTHS AFTER THE DATE A PRODUCER RESPONSIBILITY PLAN IS APPROVED UNDER THIS SECTION, A PRODUCER RESPONSIBILITY ORGANIZATION SHALL IMPLEMENT THE PLAN.

(I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN APPROVED PRODUCER RESPONSIBILITY PLAN SHALL EXPIRE AFTER 5 YEARS.

(2) A PRODUCER RESPONSIBILITY PLAN MAY CONTINUE AFTER 5 YEARS IF IT IS RENEGOTIATED, RENEWED, OR AMENDED AND APPROVED BY THE DEPARTMENT IN ACCORDANCE WITH THIS SUBTITLE.

(3) THE DEPARTMENT MAY RESCIND APPROVAL OF A PRODUCER RESPONSIBILITY PLAN AT ANY TIME FOR GOOD CAUSE.

(4) IF THE DEPARTMENT RESCINDS AN APPROVAL OF A PRODUCER RESPONSIBILITY PLAN UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE PRODUCER, OR IF APPLICABLE, THE PRODUCER RESPONSIBILITY ORGANIZATION MAY AMEND THE PLAN AND SUBMIT IT TO THE DEPARTMENT FOR APPROVAL IN ACCORDANCE WITH THIS SUBTITLE.

(5) IF, BASED ON THE ANNUAL REPORT SUBMITTED UNDER § 9-2407 OF THIS SUBTITLE, THE PERFORMANCE GOALS ESTABLISHED UNDER SUBSECTION (B)(3) OF THIS SECTION HAVE NOT BEEN ACHIEVED, THE DEPARTMENT MAY REQUIRE THAT A PRODUCER RESPONSIBILITY ORGANIZATION AMEND THE PRODUCER RESPONSIBILITY PLAN.

9-2405.

(A) THERE IS A PRODUCER RESPONSIBILITY PLAN ADVISORY COUNCIL.

(B) THE PURPOSE OF THE ADVISORY COUNCIL IS TO PROVIDE ADVICE TO THE DEPARTMENT AND PRODUCER RESPONSIBILITY ORGANIZATIONS FOR DRAFTING, AMENDING, AND IMPLEMENTING PRODUCER RESPONSIBILITY PLANS.

(C) (1) THE ADVISORY COUNCIL SHALL CONSIST OF A BROAD RANGE OF INTERESTED STAKEHOLDERS APPOINTED BY THE SECRETARY, INCLUDING:

(i) REPRESENTATIVES FROM THE FOLLOWING INDUSTRIES OR ENTITIES IN THE STATE:

- 1. LOCAL GOVERNMENT AGENCIES RESPONSIBLE FOR RECYCLING PROGRAMS;**
- 2. RECYCLABLES AND COMPOSTABLE MATERIALS COLLECTORS;**
- 3. RECYCLING PROCESSORS; AND**
- 4. COMPOST PROCESSORS;**

(II) A REPRESENTATIVE FROM EACH PRODUCER RESPONSIBILITY ORGANIZATION;

(III) REPRESENTATIVES OF AT LEAST TWO NONPROFIT ORGANIZATIONS IN THE STATE WITH MISSIONS RELATED TO REDUCING WASTE;

(IV) AT LEAST ONE REPRESENTATIVE OF AN ENVIRONMENTAL ADVOCACY ORGANIZATION;

(V) AT LEAST ONE REPRESENTATIVE OF AN ENVIRONMENTAL JUSTICE ADVOCACY ORGANIZATION; AND

(VI) AT LEAST TWO MEMBERS OF THE PUBLIC WHO RESIDE IN THE STATE.

(2) IN APPOINTING MEMBERS TO THE ADVISORY COUNCIL, THE SECRETARY SHALL, TO THE EXTENT PRACTICABLE, ENSURE THAT THE MEMBERSHIP OF THE ADVISORY COUNCIL REPRESENTS:

(I) ALL GEOGRAPHIC REGIONS OF THE STATE;

(II) LARGE AND SMALL COUNTIES AND MUNICIPALITIES; AND

(III) THE VARIABILITY IN HOW WASTE AND RECYCLABLE AND COMPOSTABLE MATERIALS ARE COLLECTED AND PROCESSED IN THE STATE.

(D) FROM AMONG THE ADVISORY COUNCIL MEMBERS, THE SECRETARY SHALL DESIGNATE TWO REPRESENTATIVES TO SERVE AS COCHAIRS.

(E) A MEMBER OF THE ADVISORY COUNCIL:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE ADVISORY COUNCIL; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(F) THE ADVISORY COUNCIL SHALL MEET AT LEAST QUARTERLY.

(G) THE ADVISORY COUNCIL SHALL:

(1) ON REQUEST BY A PRODUCER OR PRODUCER RESPONSIBILITY ORGANIZATION, PROVIDE ADVICE REGARDING THE DRAFTING OR AMENDING OF A

PRODUCER RESPONSIBILITY PLAN REQUIRED UNDER § 9-2404 OF THIS SUBTITLE;

(2) RECEIVE AND REVIEW THE PRODUCER RESPONSIBILITY PLANS SUBMITTED IN ACCORDANCE WITH § 9-2404 OF THIS SUBTITLE;

(3) RECEIVE AND REVIEW ANNUAL REPORTS SUBMITTED IN ACCORDANCE WITH § 9-2407 OF THIS SUBTITLE;

(4) MAKE RECOMMENDATIONS TO THE DEPARTMENT REGARDING PRODUCER RESPONSIBILITY PLAN APPROVAL; AND

(5) MAKE RECOMMENDATIONS TO THE DEPARTMENT AND PRODUCER RESPONSIBILITY ORGANIZATIONS REGARDING PRODUCER RESPONSIBILITY PLAN IMPLEMENTATION.

9-2406.

IN ACCORDANCE WITH THE REQUIREMENTS OF A PRODUCER RESPONSIBILITY ORGANIZATION, AS ESTABLISHED IN AN APPROVED PRODUCER RESPONSIBILITY PLAN ON FILE WITH THE DEPARTMENT, AND ANY OTHER REQUIREMENT ADOPTED BY THE DEPARTMENT, A LOCAL GOVERNMENT MAY REQUEST REIMBURSEMENT FROM A PRODUCER RESPONSIBILITY ORGANIZATION FOR COSTS ASSOCIATED WITH COLLECTING, TRANSPORTING, AND PROCESSING PACKAGING MATERIALS THAT ARE IDENTIFIED UNDER THE PLAN, INCLUDING COSTS ASSOCIATED WITH RECYCLING SERVICES FOR BUSINESSES, SCHOOLS, PUBLIC PLACES, RESIDENTIAL HOUSING, INCLUDING MULTIFAMILY HOUSING, AND ANY OTHER ENTITY.

9-2407.

(A) ON OR BEFORE OCTOBER 1 EACH YEAR, BEGINNING IN 2026, EACH PRODUCER RESPONSIBILITY ORGANIZATION THAT HAS AN APPROVED PRODUCER RESPONSIBILITY PLAN ON FILE WITH THE DEPARTMENT SHALL REPORT TO THE DEPARTMENT ON THE PROGRESS TOWARD MEETING PLAN REQUIREMENTS AND GOALS FOR THE IMMEDIATELY PRECEDING YEAR.

(B) THE REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

(1) A DETAILED DESCRIPTION OF THE REIMBURSEMENT METHODS USED FOR COLLECTING, TRANSPORTING, AND PROCESSING PACKAGING MATERIALS;

(2) (I) THE STATUS ON ACHIEVING THE PERFORMANCE GOALS ESTABLISHED UNDER § 9-2404(B)(3) OF THIS SUBTITLE; AND

(II) IF THE GOALS HAVE NOT BEEN ACHIEVED, A DESCRIPTION OF THE ACTIONS PROPOSED TO ACHIEVE THE GOALS;

(3) THE AMOUNT OF EACH PACKAGING MATERIAL TYPE COLLECTED IN THE STATE, INCLUDING THE METHOD OF DISPOSITION OF EACH PACKAGING MATERIAL TYPE;

(4) (I) THE NUMBER OF BEVERAGE CONTAINERS SOLD IN THE STATE AND THE NUMBER COLLECTED, BY MATERIAL TYPE;

(II) THE OVERALL REDEMPTION RATE AND EFFECTIVE RATE OF RECYCLING OF BEVERAGE CONTAINERS BY MATERIAL TYPE, AFTER SUBTRACTING CONTAMINATION RATES, AND BY NUMBER OF UNITS AND WEIGHT; AND

(III) 1. A DESCRIPTION OF THE LOCATION OF COLLECTION FACILITIES OR POINTS AND SORTING AND PROCESSING FACILITIES FOR BEVERAGE CONTAINERS;

2. A DESCRIPTION OF ANY IMPROVEMENTS MADE IN THE REPORTING YEAR TO INCREASE THE EASE AND CONVENIENCE FOR CONSUMERS TO RETURN BEVERAGE CONTAINERS;

3. A DESCRIPTION OF UNDERSERVED AREAS AND ACTIONS THAT WILL BE TAKEN BY THE PRODUCER RESPONSIBILITY ORGANIZATION TO IMPROVE THE AVAILABILITY OF COLLECTION FACILITIES OR POINTS IN UNDERSERVED AREAS; AND

4. ANY OTHER INFORMATION ON BEVERAGE CONTAINERS REQUIRED BY THE DEPARTMENT;

(5) THE TOTAL COST OF IMPLEMENTING THE PLAN, AS DETERMINED BY AN INDEPENDENT FINANCIAL AUDITOR INCLUDING:

(I) A COPY OF THE WORK PRODUCT OF THE INDEPENDENT FINANCIAL AUDITOR; AND

(II) FINANCIAL STATEMENTS DETAILING ALL PAYMENTS RECEIVED AND ISSUED BY THE PRODUCERS COVERED UNDER THE APPROVED PLAN;

(6) SAMPLES OF ALL EDUCATIONAL MATERIALS PROVIDED TO CONSUMERS OR OTHER ENTITIES;

(7) A DETAILED DESCRIPTION OF THE ACTIONS TAKEN AND AN EVALUATION OF THE METHODS USED TO DISSEMINATE EDUCATIONAL MATERIALS, INCLUDING RECOMMENDATIONS, IF ANY, FOR HOW THE EDUCATIONAL COMPONENT OF THE PLAN CAN BE IMPROVED;

(8) A DETAILED DESCRIPTION OF INVESTMENTS MADE IN MARKET DEVELOPMENT AND FOR IMPROVING REUSE, COMPOSTING, AND RECYCLING INFRASTRUCTURE; AND

(9) ANY OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT.

(C) FINANCIAL, PRODUCTION, OR SALES DATA REPORTED TO THE DEPARTMENT BY A PRODUCER RESPONSIBILITY ORGANIZATION SHALL BE KEPT CONFIDENTIAL BY THE DEPARTMENT AND MAY NOT BE SUBJECT TO PUBLIC INSPECTION.

(D) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE REPORT SHALL BE POSTED ON THE WEBSITE OF THE DEPARTMENT AND THE PRODUCER RESPONSIBILITY ORGANIZATION.

9-2408.

ANY PERSON PARTICIPATING IN A PRODUCER RESPONSIBILITY PLAN IN COMPLIANCE WITH THIS SUBTITLE IS IMMUNE FROM LIABILITY UNDER STATE LAW RELATING TO ANTITRUST AND RESTRAINT OF TRADE FOR ANY COOPERATED ACTIVITIES ARISING OUT OF THE RECYCLING, REUSE, AND DISPOSAL OF PACKAGING MATERIALS.

9-2409.

THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

9-2410.

A PRODUCER OR PRODUCER RESPONSIBILITY ORGANIZATION THAT VIOLATES THIS SUBTITLE IS SUBJECT TO:

(1) FOR A FIRST VIOLATION, A CIVIL PENALTY OF \$5,000;

(2) FOR A SECOND VIOLATION, A CIVIL PENALTY OF \$10,000; AND

(3) FOR A THIRD AND SUBSEQUENT VIOLATION, A CIVIL PENALTY OF \$20,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.