

Model Packaging Reduction and Recycling Act

Developed by [Beyond Plastics](#) and [Just Zero](#)

Purpose and Use of this Model Legislation

Virtually everything we buy is needlessly overpackaged. In fact, roughly [33% of household trash](#) is packaging waste. Much of which is unrecyclable plastic that is either burned, buried, or littered. Confronting this endless wave of packaging waste can feel impossible. Especially because [our recycling system is failing](#).

One of the largest reasons for all this packaging waste is that companies don't have any responsibility for the packaging waste associated with their products. As a result, these companies look for the cheapest, easiest way to package, market, and sell their products, while we are stuck dealing with the waste.

But it doesn't need to be this way. This model legislation is designed to make large companies pay for the packaging waste they create.

This model legislation requires companies to reduce the amount of packaging they use to sell, distribute, and market their products. This reduction can be achieved by eliminating excess packaging, as well as by switching to reusable or refillable packaging. What's more, these companies will also pay fees based on the amount and type of packaging they use. The money generated from these fees will be used to reimburse local governments for costs associated with collecting and recycling packaging waste. The money will also be used to provide funding for projects and programs that help companies meet the packaging reduction requirements. Additionally, the legislation also bans the use of certain toxic chemicals in packaging and creates a regulatory program that empowers the State Environmental Agency with the ability to prohibit additional toxic chemicals over time.

Here's how the law works:

- (1) Everything Kicks Off with a Comprehensive Statewide Needs Assessment. To kick-start the implementation of the legislation, the State Environmental Agency will perform a comprehensive statewide packaging reduction needs assessment. The assessment will calculate how much packaging waste is currently generated in the state and evaluate and identify barriers and opportunities for reducing, reusing, and recycling packaging materials.
- (2) State Environmental Agency Selects a Non-Profit to Help Implement the Program. The State Environmental Agency will select an independent non-

profit to operate as the Packaging Reduction Organization. The Packaging Reduction Organization is empowered to assist companies with complying with the law, collect compliance data from companies, and collect fees from companies based on the amount and type of packaging each company uses to sell, distribute, and market their products. The Packaging Reduction Organization will be overseen by the State Environmental Agency.

(3) Companies Begin Paying Fees and Reporting Compliance Information.

After the needs assessment is finalized and the Packaging Reduction Organization is set up, companies will register with the Packaging Reduction Organization and begin paying fees. The fees will be set by the State Environmental Agency based on the amount and type of packaging material each company uses to sell, distribute, and market their products in the state. Fees will be adjusted to incentivize companies to reduce the amount of packaging they use, increase the reusability and recyclability of packaging materials, and reduce the presence of toxic materials in packaging materials. Small companies are exempted from the requirements of the law.

(4) The Packaging Reduction Organization and State Environmental Agency

Distribute the Money Generated from the Fees. Next, the Packaging Reduction Organization will distribute the money generated from the fees. The fees will first be used to reimburse the Packaging Reduction Organization and State Environmental Organization for administering the law. The fees will also be used to reimburse local governments for the costs incurred paying to collect and recycle packaging waste. All remaining money will be used to pay for investments into projects and programs that help reduce packaging and packaging waste. The Packaging Reduction Organization will solicit proposals for projects and programs and make recommendations to the State Environmental Agency about which ones should be funded. The Agency has final say over which projects and programs are funded.

(5) Companies Begin Working Toward the Packaging Reduction

Requirements. When a company registers with the Packaging Reduction Organization, the company has to submit information about the amount of packaging the company used to sell, distribute, or market its products in the state the previous year. This will form a baseline which the packaging reduction requirements are measured against.

(6) Companies Begin Working Toward the Packaging Recycling

Requirements. In addition to reducing packaging, companies will also have to meet specific recycling requirements. The legislation requires that each company prove that all of their packaging is made of materials that meet

specific recycling rates in the state. This way, the packaging waste that isn't reduced is being recycled.

- (7) Companies Begin Phasing Out the Use of Specific Toxic Substances in Packaging. Finally, three years after the first fees are collected, each company will have to demonstrate that the packaging they use to sell, distribute, or market their products in the state is free of specific toxic substances. What's more, every three years, the State Environmental Agency will add new toxic substances to the list to make sure new and emerging chemicals of concern aren't allowed to be in packaging.

This model legislation is designed to drastically reduce the amount of packaging waste generated each year, while also making sure that companies are paying their fair share to cover the costs of dealing with all this waste.

Section 1: Definitions

- (a) "Beverage container" means a container used to contain all drinks in liquid form and intended for human consumption.
- (b) "Bio-plastic" or "bio-plastics" means plastic produced from biological sources such as vegetable fats and oils, polysaccharides, sugar, proteins, or other materials that are designed to be biodegradable.
- (c) "Brand" means any mark, word, name, symbol, design, device, or graphical element or a combination thereof, including a registered or unregistered trademark, that identifies and distinguishes a product from other products.
- (d) "Commissioner" means the Commissioner of Department of Environmental Protection.
- (e) "Comptroller" means the chief fiscal officer of the state.
- (f) "Department" means the Department of Environmental Protection.
- (g) "Discarded/Discards" [synonymous with "Generated/Generation"] means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.
- (h) "Disposal" means the landfilling or incineration of packaging material. "Disposal" shall also include energy recovery or energy generation by any means, including, but not limited to, combustion, pyrolysis, gasification,

solvolysis, thermal desorption, waste to fuel, or any other chemical conversion process, or molecular conversion process. “Disposal” shall also include the use of materials as landfill cover.

- (i) “Environmental justice community” means any neighborhood or community which is composed predominantly of persons of color or persons below the poverty line, that is subject to a disproportionate burden of environmental hazards.
- (j) “Generated/Generation” [synonymous with “Discarded/Discards”] means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.
- (k) “Local Government” means any municipal corporation, governmental subdivision of the State, local government unit, special district, school, local or regional board, commission, or authority authorized by law to plan or provide for waste management services for a specific geographical area
- (l) “Packaging” or “Packaging Material” means a discrete material or category of material, regardless of recyclability, including but not limited to such material types as paper, plastic, glass, metal, or multi-material, that is used for the containment, protection, handling, delivery, transport, distribution, or presentation of another product that is sold, offered for sale, imported, or distributed in the state.

Packaging does not include:

- (1) Medical devices and packaging which are included with products regulated as a drug, medical device, or dietary supplement by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*, Sec. 3.2(E) of 21 U.S. Code of Federal Regulations, or the Dietary Supplement Health and Education Act
- (2) Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products or biological origin, and other covered materials regulated by the United States Department of Agriculture under the Virus, Serum, Toxin Act, 21 U.S.C. 151-159;
- (3) Packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 *et seq.* or other applicable federal law, rule, or regulation; and

- (4) Beverage containers subject to a returnable container deposit, if applicable.¹
- (m) “Packaging Reduction Organization” means the non-profit entity or entities contracted by the Department and authorized to collect producer fees, assist producers with compliance with the requirements of this Act, provide technical assistance to producers, and implement the Packaging Reduction and Recycling Program.
- (n) “Packaging Reduction and Recycling Program” or “Program” means the program implemented by the Packaging Reduction Organization, and overseen by the Department, to reduce packaging, assess and collect information and payments from producers based on the amount of packaging used by the producer to contain, protect, deliver, present, or distribute their products, in order to pay for the development of packaging reduction programs including, but not limited to, reusable and refillable packaging systems and infrastructure, reimbursements to local government to cover the cost of packaging recycling, and investments in education and outreach.
- (o) “Post-Consumer Recycled Material” means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. “Post-Consumer Recycled Material” does not include post-industrial material or pre-consumer material, or material generated by means of advanced recycling, chemical recycling, combustion, gasification, incineration, pyrolysis, solvolysis, thermal desorption, waste-to-energy, waste-to-fuel, or any other chemical or molecular conversion process.
- (p) “Producer” means:
- (1) A person or entity that manufactures or uses in commercial enterprise a product sold, offered for sale, contained, protected, delivered, presented, or distributed in or using packaging into the state under the brand of the manufacture;

¹ Beyond Plastic and Just Zero strongly encourage each state to pass a beverage container deposit law or “bottle bill.” Bottle bills are a specific type of producer responsibility program that exclusively focus on collecting, managing, refilling, and recycling beverage containers. These programs are the most effective way to handle beverage containers. Therefore, beverage containers should be managed by best practice deposit laws that cover all beverages, set the minimum deposit at ten cents and tie deposit increases to redemption rate targets, include specific requirements for the operation of redemption channels, and set enforceable targets requiring companies to shift to refillable/reusable beverage containers. States with existing deposit laws that only cover a portion of the beverage market should modernize their deposit programs to include all recyclable beverage containers, rather than attempt to have some beverages covered by the deposit law and others covered by this Act.

- (2) clause (1) does not apply, a person or entity that is not the manufacturer of the product, but is the owner or licensee of a trademark, regardless of whether the trademark is registered, under which a product is sold, offered for sale, contained, protected, delivered, presented, or distributed in or using packaging; or
- (3) If clause (1) and (2) do not apply, a person or entity that imports a product that is contained, protected, delivered, or presented in packaging, into the United States or the state for use in commercial enterprise in the state.

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

- (q) “Product Line” means a group of related products all marketed under a single brand name that is sold by the same producer to distinguish products from each other for better usability for customers.
- (r) “Recyclable” means a product or packaging material a) that can be sorted by entities that process post-consumer materials generated in the state, b) that has a consistent regional market for purchase by end users in the production of new products, and c) which can be recycled with minimal losses of material during processing and manufacturing. Whether a product or packaging type meets these criteria shall be determined by an annual review process as described in Section 5 (c) below.

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

- (s) “Recycled” means the use of discarded packaging materials or products in the production of a new product or packaging in place of virgin materials. Material will not be considered “recycled” if it is used as landfill cover. “Recycled” material does not include contaminants, residues, and other process losses.
- (t) “Recycling” means the series of activities by which material is: (a) collected, transported, sorted, and processed; (b) used in industrial feedstocks in place of virgin materials to manufacture new products with minimal loss of material quality and quantity, as determined through the process set forth in Section 5 (c) below.

“Recycling” does not include energy recovery or energy generation by any means, including but not limited to advanced recycling, chemical

recycling, combustion, gasification, incineration, pyrolysis, solvolysis, thermal desorption, waste-to-energy, waste-to-fuel, or any other chemical or molecular conversion process. It also does not include landfill disposal of discarded material or discarded product component materials, including the use of materials as landfill cover.

- (u) “Recycling Rate” means the percentage of any given packaging type that is ultimately recycled. The recycling rate for any packaging material shall be calculated as the total weight of packaging that is recycled in a given year divided by the total weight of packaging generated. Material losses (contaminants and residues) accruing during collection, processing and manufacturing new products do not count as recycled and should not be in the numerator of the equation.
- (v) “Reuse” means the return of packaging back into the economic stream for use in the same kind of application intended for the original packaging, without effectuating a change in the original composition of the package, the identity of the product, or the components thereof.
- (w) “Reuse and refill system” means a program or set of mechanisms designed to facilitate multiple uses of packaging; Mechanisms may include, but are not limited to, deposits, incentives, curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution networks.
- (x) “Reusable or refillable packaging and containers” means packaging material and containers that are specifically designed and manufactured to maintain its shape and structure, and be materially durable for repeated sanitizing, washing, and reuse.
- (y) “Toxic substance” means a chemical or chemical class identified by a state agency, federal agency, international intergovernmental agency, accredited research university, or other scientific entity deemed authoritative by the Department on the basis of credible scientific evidence as being one or more of the following:
 - (1) A chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant, immunotoxin, neurotoxicant, or endocrine disruptor.
 - (2) A chemical or chemical class that is persistent or bioaccumulative.
 - (3) A chemical or chemical class that may harm the normal development of a fetus or child or cause other developmental toxicity in humans or wildlife.
 - (4) A chemical or chemical class that may harm organs or cause other systemic toxicity.

- (5) A chemical or chemical class that may have adverse air quality impacts, adverse ecological impacts, adverse soil quality impacts, or adverse water quality impacts.
- (6) A chemical or chemical class that the Department has determined has equivalent toxicity to the above criteria.
- (z) "Unit" means each discrete component of a package or container, including material that is used for the containment, protection, handling, delivery, transport, distribution, and presentation of a product that is sold, offered for sale, imported, or distributed in the state, including through internet transactions.
- (aa) "Universal Product Code" or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers for product identification purposes. "Universal product code" includes any industry-accepted barcode used for product identification purposes in a manner similar to a UPC, including, but not limited to, a European Article Number.

Section 2: Packaging Reduction and Recycling Program

- (a) This Act establishes a Packaging Reduction and Recycling Program by which producers who sell, offer for sale, or distribute products contained, protected, delivered, presented, or distributed in packaging shall pay fees based on the quantity and type of packaging used in the state. The fees shall be used to fund the administration of this program. Producers shall also be required to make changes to the design of their products in order to meet packaging reduction and recycling requirements.
- (b) The Department shall contract with a non-profit, 501(c)(3) to act as the Packaging Reduction Organization, which shall collect packaging reduction, generation, and recycling information and fee payments, as described in Section 8, from participating producers. The payments collected from producers shall be deposited into the Packaging Reduction Fund to reimburse local governments for the costs associated with reducing and managing packaging waste, reimburse the Department for their administration of the program, and to support eligible projects that reduce packaging waste by investing in packaging reduction and elimination, reuse and refill systems and programs, recycling infrastructure, and comprehensive multi-media educational programs.
- (c) No later than eighteen months after the effective date of this Act, the Department shall conduct a statewide packaging reduction, reuse, and recycling needs assessment as described in Section 7 of this Act to determine the current state of packaging reuse, recycling, and disposal,

and to identify barriers and opportunities to reduce the amount of packaging discarded and disposed of, and to increase the reusability and recyclability of packaging.

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

Section 3: Producer Responsibilities and Exemptions for Small Producers.

- (a) One year after the selection of the Packaging Reduction Organization as required by section 4 of this act, a producer shall not sell, offer for sale, or distribute into the state a product contained, protected, delivered, presented, or distributed in packaging unless the producer is:
 - (1) Registered with the Packaging Reduction Organization; and
 - (2) In full compliance with all requirements of this act.
- (b) A producer shall annually report to the Packaging Reduction Organization:
 - (1) The total amount, by unit, of each type of packaging material sold, offered for sale, or distributed for sale into the state by the producer in the prior calendar year;
 - (2) All information necessary for producer and the Packaging Reduction Organization to meet its obligations required pursuant to section 5 of this act.
- (c) A producer shall annually submit a written statement, signed by the chief executive officer, verifying the producer's compliance with:
 - (1) The toxic substance reduction requirements of section 10 of this act;
 - (2) The packaging reduction requirements of section 11 of this act; and
 - (3) The packaging recycling requirements of section 13 of this act.
- (d) A producer is exempt from the requirements and prohibitions of this act in a calendar year in which:
 - (1) The producer realized less than \$1,000,000 in total gross revenue during the prior calendar year; or
 - (2) The producer sold, offered for sale, or distributed for sale products contained, protected, delivered, presented, or distributed in or using less than one ton of packaging material in total during the prior calendar year.
- (e) A producer claiming an exemption pursuant to subsection (d) of this section shall provide the department with sufficient information to demonstrate that the claimant is eligible for an exemption.

Section 4: Selection of the Packaging Reduction Organization

- (a) Consistent with the requirements of this Section, within one year after the promulgation of rules as required by Section 14 of this Act, the Department shall select and enter into a contract with a non-profit organization to act as the Packaging Reduction Organization in order to operate the Packaging Reduction and Recycling Program for a period of ten years.
- (b) Consistent with applicable competitive bidding requirements under state purchasing laws and following the initial adoption of rules by Department pursuant to Section 14 of this Act, the Department shall issue a request for a proposal for the operation of the Packaging Reduction and Recycling Program. The proposals must be required to cover the 10-year operation of the program by the successful bidder and must be required to include, at a minimum, the following information:
 - (1) A description of how the bidder will administer the Packaging Reduction and Recycling Program, including the mechanisms and processes for providing assistance to producers to comply with the reporting requirements of this Act;
 - (2) The mechanisms and processes the bidder will use to compile information from participating producers;
 - (3) How the bidder intends to establish and manage the Packaging Reduction Fund, including, but not limited to, public participation, the staffing the bidder intends to use for management of the fund, and the plan for providing technical support to interested persons regarding use of the funds;
 - (4) A financial assurance plan that ensures all funds held in the Packaging Reduction Fund are immediately and exclusively forfeited and transferred to or otherwise made immediately available to the Department if the Packaging Reduction Organization contract with the Department is terminated by the Department, or expires;
 - (5) A proposed budget outlining the anticipated costs of operating the producer responsibility program, including identification of any start-up costs that will not be ongoing and a description of the method by which the bidder intends to determine and collect producer payments during the initial startup period;
 - (6) A certification that the bidder will not share, except with the Department, information provided to the bidder by a producer that is proprietary information and that is identified by the producer as proprietary information. The certification must include a description of the methods by which the bidder intends to ensure the confidentiality of such information; and

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

Section 5: Responsibilities of the Packaging Reduction Organization

- (a) The Packaging Reduction Organization shall:
 - (1) Register all producers;
 - (2) Collect and compile data from producers as required by Section 3 of this Act;
 - (3) Collect fees due from producers as required by Section 8 of this Act;
 - (4) Reimburse the Department and the State Comptroller for the costs associated with conducting the needs assessment required by Sections 7, 8, and 9 of this Act;
 - (5) Distribute funds to reimburse local governments and private companies for the costs associated with the implementation of reduction and refill and reuse programs, collection, transportation, and recycling of packaging materials as required by Section 9 of this Act;
 - (6) Make recommendations to the Department regarding investments toward packaging reduction, reuse, and recycling as required by Section 9 of this Act; and
 - (7) Offer technical support to participating producers, with an emphasis on support to small businesses, to assist them with compliance with the requirements of this Act, including information about procuring affordable alternatives to non-compliant packaging and reducing packaging.
- (b) Annually, the Packaging Reduction Organization shall submit a report to the Department that, at a minimum, must include the following information:
 - (1) Contact information for the Packaging Reduction Organization;
 - (2) A list of all participating producers, brand(s), and products identified by the Universal Product Code (UPC) that the producer sells, offers for sale, or distributes into the state that are contained, protected, delivered, presented, or distributed in or using packaging;
 - (3) The total amount, by both weight and number of units of each type of packaging material used to contain, protect, handle, deliver, transport, distribute, or present products sold, offered for sale, or distributed into the state by each individual producer during the prior calendar year;
 - (4) The total amount, by both weight and number of units, of each type of packaging material used to contain, protect, handle, deliver, transport,

distribute, or present products sold, offered for sale, or distributed into the state by all producers during the prior calendar year.

- (5) A complete accounting of all payments made to and by the Packaging Reduction Organization during the prior calendar year;
 - (6) A list of producers believed to be out of compliance with the requirements of this Act, and the reason the Packaging Reduction Organization believes the producer to be out of compliance. Information on non-compliant companies shall be provided to the State Attorney General's Office in a timely fashion and for possible enforcement action by that office.
 - (7) A description of the educational and outreach efforts made by the Packaging Reduction Organization in the prior calendar year, and how those efforts were designed to reduce packaging waste, and increase reuse and recycling of packaging materials.
 - (8) An assessment of whether the fee structure adopted by the Department pursuant to Section 8 of this Act has been effective in incentivizing improvements to the design of packaging material, including actual reduction of packaging, increases in reusable and refillable packaging, recycling rates for packaging materials, and decreases in the amount of packaging;
 - (9) A description of the reimbursements and expenditures made pursuant to Section 9 of this Act; and
 - (10) Any additional information required by the Department.
- (c) The Packaging Reduction Organization shall conduct an annual review process to determine whether products and packaging materials are recyclable. This review shall be conducted in consultation with representatives of end markets, including recycled commodities brokers and manufacturers who purchase post-consumer material for use in manufacturing new products. For the purposes of calculating producer payments and municipal reimbursements in accordance with this Act, this annual process must include a transitional period between the date the determination is finalized and the date it goes into effect.
- (d) The Packaging Reduction Organization shall conduct public outreach and provide consumers with educational and informational materials related to reducing the amount of packaging discarded, recycled, and disposed of in the state.
- (1) The outreach and education shall, at a minimum, include:
 - i. A description of the environmental, social, economic, and environmental justice impacts associated with improper disposal of packaging materials;

- ii. At least 3 public hearings in geographically diverse parts of the state each year, to solicit public input on the implementation and effectiveness of the law and suggested improvements.
 - iii. Information regarding the management of discarded packaging including reuse, recycling, composting, and disposal by landfilling and incineration;
 - iv. The location and availability of curbside and drop-off collection opportunities for packaging waste, including deposit and take-back programs;
 - v. description of the environmental, social, economic, and environmental justice impacts associated with failure to reuse or recycle packaging materials;
 - vi. Information regarding municipal reimbursement for the costs associated with packaging reuse, recycling, and disposal; and
 - vii. Any other information required by the Department.
- (e) The public outreach and education conducted by the Packaging Reduction Organization shall:
- i. Utilize all available forms of media, including, but not limited to, television, radio, print, electronic, and web-based media to provide information directly to residents in the state, in multiple languages;
 - ii. Be coordinated with the various local governments in the state to incorporate electronic, print, web-based and social media elements that individual local governments may elect to use, at their discretion, to provide education directly to their residents;
 - iii. Be provided to producers for inclusion on their packaging's label to inform consumers about the methods to responsibly reuse, recycle, or dispose of the packaging; and
 - iv. be coordinated with other similar public outreach and education programs in the state as necessary to avoid consumer confusion and facilitate the consolidation of available resources.
- (f) In addition to engaging in the public education and outreach required by subsection (c) of this Section, the Packaging Reduction Organization shall be authorized to provide producers and retailers with educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded packaging. The educational and informational materials provided to the retailer under this subsection may include, but need not be limited to, printed materials, signage, templates of materials that can be reproduced by retailers and provided thereby to consumers at the time of a product's purchase, and advertising materials that promote and encourage consumers to properly reuse, recycle, or dispose of packaging materials.

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

Section 6: Responsibilities of the Department

- (a) Beginning one year after the selection of the Packaging Reduction Organization pursuant to Section 4 of this Act, and annually thereafter, the Department shall work with the Packaging Reduction Organization to:
 - (1) calculate the amount of packaging that was generated during the prior calendar year;
 - (2) calculate the recycling rate for all packaging during the prior calendar year;
 - (3) calculate the recycling rate for each packaging material type during the prior calendar year; and
 - (4) develop a list of producers believed to be out of compliance with the requirements of this Act.
- (b) In the event that the Department determines that the Packaging Reduction Organization no longer meets the requirements of this Act, or fails to implement and administer the requirements of this Act in a manner that effectuates the purposes of this Act, the Department shall revoke its approval of the Packaging Reduction Organization, and shall select a new Packaging Reduction Organization to replace it, or, in the alternative, may elect to operate the program itself.
- (c) The Department or state Attorney General shall take enforcement action against all non-compliant producers in accordance with Section 15 of this Act.

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

- (a) Consistent with applicable competitive bidding requirements, within one year after promulgating the rules required to implement this Act, and every five years thereafter, the Department shall issue a request for proposals to conduct a statewide packaging reduction, reuse, and recycling needs assessment, hereinafter “needs assessment” to identify barrier and opportunities for reducing, reusing, and recycling packaging materials. The proposals must include, at a minimum, a description of how the bidder will conduct the needs assessment to evaluate the following:
 - (1) The current recycling rate for each type of packaging material;

- (2) The amount, by weight and material type, of packaging recycled at each recycling facility that accepts discarded packaging generated in the state;
 - (3) The processing capacity, market conditions, and opportunities in the state and regionally for recyclable materials;
 - (4) The net cost of end-of-life management of discarded packaging in the state, including the cost associated with the collection, transportation, sorting, recycling, landfilling, or incineration of discarded packaging;
 - (5) The availability of opportunities in the recycling, and reuse system for minority-and-women-owned businesses;
 - (6) Current barriers affecting recycling access and availability in the state;
 - (7) Current barriers to the marketability of recyclable materials generated in the state;
 - (8) Opportunities for the creation of packaging reuse and refill programs in the state;
 - (9) Opportunities for the improvement of packaging recycling in the state, including the development of end markets for recycled packaging materials.
 - (10) Current barriers affecting the creation and implementation of packaging reuse and refill programs; and
 - (11) Consumer education needs in the state with respect to packaging waste reduction, recycling, reducing contamination in recycling, and reuse and refill systems for packaging.
- (b) After reviewing proposals, the Department shall select an applicant to perform the needs assessment. If, at the close of the competitive bidding process, the Department determines that no applicant can successfully perform the needs assessment, the Department must perform the needs assessment itself, or designate another state office to do it.
- (c) The cost incurred by the Department or its state designee associated with conducting the needs assessment shall be paid for by funds from the Packaging Reduction and Recycling Fund.
- (d) The Department shall report the results of the study to the public, the media, state legislature, the Governor, the State Comptroller and the Attorney General, who are all directed to coordinate enforcement of this law.

Section 8: Assessment of Fees

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

- (b) The payments shall be calculated based on the total amount, by weight, of each type of packaging material used to contain, protect, deliver, present, or distribute a product sold, offered for sale, or distributed into the state by the producer in the prior calendar year.
- (c) The list of packaging material types for which there is a specific fee must include, at a minimum, the following material types:
 - (1) Polyethylene terephthalate (PET or PETE);
 - (2) High density polyethylene (HDPE);
 - (3) Polyvinyl Chloride (PVC)
 - (4) Low density polyethylene (LDPE)
 - (5) Polypropylene (PP)
 - (6) Polystyrene (PS) including expanded polystyrene
 - (7) Other plastic resin types not specifically identified here;
 - (8) Bio-plastics;
 - (9) Paper;
 - (10) Cardboard;
 - (11) Wood;
 - (12) Glass;
 - (13) Bi-metal, steel and other ferrous metals;
 - (14) Aluminum and other non-ferrous metals; and
 - (15) Mixed materials including laminates and packaging containing more than one of the above materials
 - (16) Any other material used for consumer packaging.
- (d) The fees shall be designed to cover, at a minimum, the total cost associated with:
 - (1) The collection transportation, and management of each type of packaging material used to contain, protect, deliver, present, or distribute products sold, offered for sale, or distributed into the state by all producers;
 - (2) The Department's and other state agencies administration of this Act;
 - (3) The Packaging Reduction Organization's administration of the Packaging Reduction and Recycling Program;
 - (4) The cost associated with the development of the statewide packaging reduction, reuse, and recycling needs assessment pursuant to Section 7 of this Act; and
 - (5) Any other factors determined by the Department.
- (e) The fees adopted under this Section must delineate criteria to be used to initially establish and subsequently adjust producer payments in a manner that incentivizes:
 - (1) a reduction in the total packaging as measured by weight used by producers, and discarded by consumers, businesses, institutions, and

- other users. Weight reductions shall not be achieved by substituting plastic for other materials types.
- (2) an increase in the proportion of a producer's total packaging that is managed within a reuse and refill system;
 - (3) an increase in the proportion of a producer's total packaging that is deemed recyclable as determined by an annual review process as described in Section 5 (c) of this Act.
 - (4) an increase in the proportion of a producer's total packaging that is ultimately recycled;
 - (5) a reduction in toxic components in packaging materials; and
 - (6) a reduction in litter from packaging materials.
- (f) There shall be no fee assessed on packaging that is designed for reuse and refill and contained within a reuse or refill system.
- (g) The Department shall update and revise the fees every three years.

Section 9: Packaging Reduction Fund

- (a) There is hereby established, a separate, non-lapsing, interest-bearing fund to be known as the Packaging Reduction Fund, which will be managed by the Packaging Reduction Organization with oversight from the Department.
- (b) The Packaging Reduction Organization shall deposit into the fund all payments received from producers in accordance with Section 8 of this Act, and all penalties collected pursuant to Section 14 of this Act.
- (c) Beginning one year after the first payment of fees by producers pursuant to Section 8 of this Act, and annually thereafter, the Packaging Reduction Organization shall:
 - (1) Retain a portion of the fees deposited into the Packaging Reduction Fund to cover the costs associated with its administration of the Packaging Reduction and Recycling Program.
 - (2) Reimburse, the Department, the Office of the Inspector General, the Office of Attorney General, the State Comptroller and all other state entities for the costs associated with administering and enforcing the requirements of this Act and its implementation regulations. This reimbursement shall include costs associated with performing, revising, and updating the Statewide Packaging Reduction, Reuse, and Recycling Needs Assessment required by Section 7 of this Act. This reimbursement shall also cover any costs incurred by the Department in adopting rules, revising rules, and administering and enforcing the requirements of this Act.
- (d) Beginning one year after the first payments of fees by producers pursuant to Section 8 of this Act, and annually thereafter, the Packaging Reduction Organization shall distribute money from the Packaging Reduction Fund to

reimburse local governments for the costs incurred for the management, reduction, and recycling of packaging waste, so long as the local government provides recycling services to all residents, businesses, schools, and institutions in their jurisdiction. Local governments that contract with private haulers and recyclers to handle the management, reduction, and recycling of packaging waste are eligible for reimbursement, so long as the private hauler or recycler provides recycling services to all residents, businesses, schools, and institutions within the local government's jurisdiction. Nothing in this subsection, shall be interpreted as allowing for the reimbursement of costs associated with the disposal of packaging.

- (e) Beginning one year after the first payment of fees by producers pursuant to Section 8 of this Act, and annually thereafter, the Packaging Reduction Organization shall make all remaining funds following the reimbursement and distributions required by subsections (c) and (d) of this Section, available for projects and programs that will help achieve the packaging reduction requirements of Section 10 of this Act, and the packaging recycling requirements of Section 11 of this Act. Annually, the money allocated for projects and programs under this subsection shall be at least 50% of the money provided to local government pursuant to subsection (d) of this section.
 - (1) Funds may be used for investment in collection systems, transportation systems, reuse systems, washing systems, redistribution systems, technology for tracking and data collection, capital expenditures on new and emerging technology focused on reusable and refillable packaging, as well as equipment, and facilities, and other projects determined by the Department to facilitate the goals and objectives of this Act.
 - (2) Funds may also be used for investment in public outreach and education in ways that increase access and participation in packaging reduction, reuse, refill, and recycling systems throughout the state.
 - (3) The Packaging Reduction Organization shall prioritize investments for projects and programs that will directly benefit environmental justice communities, including, but not limited to, communities that are home to a landfill, incinerator, transfer station, or waste-to-energy facility.
 - (4) Any investments made pursuant to this subsection must be approved by the Department. The Department shall approve or deny proposed investments within 90 days of receipt of a proposal from the Packaging Reduction Organization. The investments may be approved, at the discretion of the Department, so long as the proposed investment will, at a minimum:

- i. Increase the transition of packaging from non-reusable to reduced, reusable or refillable packaging.
- ii. Increase access to reuse and refill infrastructure in the state.
- iii. Increase the capacity of reuse and refill infrastructure in the state.
- iv. Provide reuse and refill instructions that are, to the extent practicable, consistent statewide, easy to understand, translated into various commonly used languages, and easily accessible.
- v. Provide for outreach and education that are coordinated across programs or regions to avoid confusion for residents, and developed in consultation with local government and the public.

Section 10: Packaging Reduction Requirements

- (a) Each individual producer is required to meet the packaging reduction requirements contained in this section.
 - (1) Beginning two years after a producer first registers with the Packaging Reduction Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by 10% by weight.
 - (2) Beginning four years after a producer first registers with the Packaging Reduction Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by 20% by weight
 - (3) Beginning six years after a producer first registers with the Packaging Reduction Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by 30% by weight.
 - (4) Beginning eight years after a producer first registers with the Packaging Reduction Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by 40% by weight.
 - (5) Beginning ten years after a producer first registers with the Packaging Reduction Organization, a producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by 50% by weight.
- (b) The reductions required by this subsection shall be measured against the total amount of packaging the producer used to contain, protect, deliver,

present, or distribute the products they sold, offered for sale, or distributed for sale, during the first year they registered with the Packaging Reduction Organization.

- (c) The reductions required by this subsection may be achieved by using the following strategies:
 - (1) Elimination of packaging components;
 - (2) Reduction of packaging components;
 - (3) Using reuse and refill systems; and
 - (4) Packaging rightsizing, lightweighting, and optimization.
- (d) The reductions required by this subsection shall not be achieved by substituting plastic for other materials
- (e) In the case of a producer that enters the market with 50% or more by weight of its packaging being reusable and contained within a reuse and refill system, that producer may apply to the Department for a waiver from the packaging reduction requirements.

Section 11: Packaging Recycling Requirements

- (a) Each individual producer is required to meet the packaging recycling requirements contained in this Section.
- (b) A producer is required to ensure that the packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute into the state, is made of a material that meets the following recycling rates:
 - (1) Not less than 30% within five years after the enactment of this Act;
 - (2) Not less than 50% within eight years after the enactment of this Act; and
 - (3) Not less than 70% within twelve years after the enactment of this Act.
- (c) The requirements of subsection (b) of this Section shall not apply to reusable or refillable packaging or containers.

Section 12: Toxic Reduction Requirements

- (a) Beginning two years after the promulgation of rules pursuant to Section 14 of this Act, no person or entity may sell, offer for sale, or distributed into the state any packaging containing the following toxic substance:
 - (1) Ortho-phthalates;
 - (2) Bisphenols;
 - (3) Per- and polyfluoroalkyl substances (PFAS);
 - (4) Lead and lead compounds;
 - (5) Hexavalent chromium and compounds;
 - (6) Cadmium and cadmium compounds;
 - (7) Mercury and mercury compounds;
 - (8) Benzophenone and its derivatives;

- (9) Halogenated flame retardants;
 - (10) Perchlorate;
 - (11) Formaldehyde;
 - (12) Toluene;
 - (13) Antimony and compounds; and
 - (14) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).
- (b) Beginning two years after the promulgation of rules pursuant to Section 14 of this Act, no person or entity shall sell, offer for sale, or distributed for use in this state any packaging containing:
- (1) Polyvinyl chloride;
 - (2) Polystyrene; or
 - (3) Polycarbonate.
- (c) Beginning three years after the promulgation of rules pursuant to Section 14 of this Act, and every three years thereafter, the Department shall designate at least ten additional toxic substances or families of toxic substances that may no longer be sold, offered for sale, distributed for sale, or distributed for use in packaging in this state unless it determines there are not ten chemicals that meet the definition of toxic substances. If the Department determines there are not ten toxic substances that meet such a definition, it shall publish a detailed statement of its findings and conclusions supporting such determination.
- (d) Within 180 days of designating a toxic substance, the Department shall adopt regulations to prohibit the newly designated toxic substance in packaging, with an effective date no later than two years after such designation.
- (e) Any producer that violates this Section shall be subject to a fine for each violation not to exceed fifty thousand dollars per violation. For the purposes of this Section, each product line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction violation shall be considered a violation.

Section 13: Establishment of the Office of Inspector General

- (a) The Department shall establish a standalone independent Office of Inspector General within the Department. The Office of Inspector General shall evaluate the programs created by this Act on an annual basis to ensure it is properly functioning, and the producers are in compliance with the requirements of this Act.
- (b) The Office of Inspector General shall have the authority to investigate the compliance of producers with all provisions of this Act and to bring enforcement violations against non-compliant producers.

Section 14: Rulemaking

- (a) The Department may promulgate rules as necessary to implement, administer, and enforce this Act. All rules developed under the Act shall be promulgated no later than one year after the effective date of this Act.
- (b) The Department shall solicit input from the public of any draft rules to implement this Section, solicit public comment on draft rules for a period of at least 90 days, and hold a public hearing on the draft rules.
- (c) The rules adopted by the Department pursuant to this Section must include, at a minimum:
 - (1) A process for contracting with the Packaging Reduction Organization pursuant to the requirements of Section 4 of this Act;
 - (2) A process for annually determining a schedule of producer fees and payment collections pursuant to the requirements of Section 7 of this Act;
 - (3) A process for collecting all necessary information to ensure producer compliance with the requirements of this Act;
 - (4) A process for evaluating whether a producer is in compliance with the packaging reduction requirements of Section 10 of this Act;
 - (5) A process for evaluating whether a producer is in compliance with the packaging recycling requirements of Section 11 of this Act;
 - (6) A process for evaluating whether a producer is in compliance with the toxic packaging reduction requirements of Section 12 of this Act;
 - (7) A process for determining on an annual basis the types of packaging material that are recyclable;
 - (8) A process for the assessment of the Packaging Reduction Organization and the Packaging Reduction and Recycling Program;
 - (9) Requirements for the Packaging Reduction Organization to conduct a representative audit of recyclable material processed and sold by facilities that process recyclable material generated in the state and of municipal solid waste disposed of in the state;
 - (10) A process for establishing and enforcing penalties for all violations of the requirements of this Act;
 - (11) A process for determining new toxic substances in packaging pursuant to Section 12 of this Act;
 - (12) A process for how the Department will oversee and monitor the Packaging Reduction Organization's management of the Packaging Reduction Fund, including a process for submitting and reviewing proposals from the Packaging Reduction Organization regarding investments in projects and programs that will help achieve the packaging reduction requirements of Section 10 of this Act, and the packaging recycling requirements of Section 11 of this Act; and
 - (13) A process for determining whether information is proprietary information and therefore must be handled as confidential information.

Section 15: Penalties and Enforcement

- (a) Failure to comply with the requirements of this Act shall subject the Packaging Reduction Organization or an individual producer to penalties for violations. The Department, Office of Inspector General, and the Office of the Attorney General, may conduct investigations, including inspecting operations, facilities, and records of producers and the Packaging Reduction Organization, and by performing audits of producers and the Packaging Reduction Organization, to determine whether entities are complying with the requirements of this Act.
- (b) The Department, the Office of Inspector General, and the Office of the Attorney General, shall notify the Packaging Reduction Organization and producers of any conduct or practice that does not comply with the requirements of this Act and of any inconsistencies identified in an audit.
- (c) The Department, the Office of Inspector General, and the Office of the Attorney General, may issue a notice of violation to, and impose an administrative civil penalty not to exceed one hundred thousand dollars (\$100,000) per day per violation on any entity not in compliance with this chapter or any of the regulations the Department adopts to implement this Act. For the purposes of this Section, each product line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction violation shall be considered a violation.
- (d) Any funds collected under this Section shall be deposited into the Packaging Reduction Fund.

Section 16: Enforcement by Citizen Suit²

- (a) In accordance with *[insert the applicable citizen suit provisions of the State]*, any ten citizens of the State may commence a civil action on their behalf against any person or entity, including the State, the Department, the Packaging Reduction Organization, an individual or group of Producers, and the office of Inspector general, who are alleged to be in violation of the requirements of this Act or its implementing regulations.
- (b) No action may commence under this Section unless the plaintiffs have given *[insert notice requirements of the applicable State in terms of days, i.e. 60 days]* notice of its intention to file a claim against the alleged noncompliant party.
- (c) In any action brought under this Section, the Department, if not a party, may intervene as a matter of right.

² Beyond Plastics and Just Zero also strongly encourages the inclusion of a fee shifting mechanism that allows citizens to be paid reasonable attorney fees and litigation costs associated with a successful citizen suit brought to enforce the requirements of this act. This should be similar to the requirements for citizen suit provisions under the federal Endangered Species Act. See, 16 U.S. Code § 1540(g).