**Model Packaging Reduction and Recycling Needs Assessment Law**

**Overview**

Although passing any new legislation is a challenge, Packaging Reduction and Recycling Laws are particularly tricky. Enacting this type of legislation creates a large, statewide program that drastically transforms the way your state funds recycling programs and manages packaging waste. As a result, these laws are extremely complex and passing them requires a strong coalition of stakeholders all committed to supporting good policy.

This is especially important because as Packaging Reduction and Recycling Laws become more popular in legislatures across the country, the plastic industry and corporate lobbyists are pushing for [weak and ineffective versions of these laws](https://www.forbes.com/sites/christophermarquis/2022/06/27/beyond-plastics-shifting-the-waste-reduction-burden-from-consumers-to-producers/). To do this, they often introduce their own bills that don’t include key provisions necessary to reduce waste, improve recycling, and hold companies accountable. Another approach they use is to claim support for Packaging Reduction and Recycling bills introduced by the environmental community while working behind the scenes to weaken those bills.

This battle between corporate lobbyists and environmental activists often results in nothing getting passed. This struggle can play out for several years.

To help break the deadlock some states are instead opting to pass Packaging Reduction and Recycling Needs Assessment Laws to kickstart the process of developing a full Packaging Reduction and Recycling Program in the future. This is an incremental step that will help your state move closer to passing a full Packaging Reduction and Recycling Law.

Here’s how it works:

* The law requires your state environmental agency to hire a consultant to perform a comprehensive evaluation of your state’s current waste management system. This evaluation will provide key insights into how much packaging waste is generated in your state, how that waste is currently managed (reused, recycled, composted, or disposed), and what needs to be done to reduce packaging waste, promote reuse, and improve recycling and composting.
* Your state environmental agency, with the help of key stakeholders selected as part of an advisory council, will then review this information and develop a proposal for a full Packaging Reduction and Recycling Law.
* The completed needs assessment and proposed Packaging Reduction and Recycling Law will then be presented to the legislature for consideration.

**How to Use this Model Legislation**

Unlike our other model legislation, the Packaging Reduction and Recycling Needs Assessment Law is not in our customizable toolkit format. This is because there isn’t that much room for customization. There are currently only two states that have adopted Packaging Reduction and Recycling Needs Assessment Laws, and their policies are nearly identical.

However, that isn’t to say that this is a perfect one-size-fits-all approach. We recommend you carefully review:

* The suggested list of members that must be appointed to the Advisory Council in section 2, subsection (e). If there are stakeholders that are not mentioned that you feel should have a place on the advisory council – add them. If there are stakeholders that you don’t think belong on the advisory council – remove them. Similarly, feel free to adjust the number of representatives from each stakeholder category.
* The suggested list of information that must be evaluated as part of the Needs Assessment in section 3, subsection (d). If there is information you want included in the needs assessment that isn’t currently listed – add it. If there is information that you don’t think is relevant to your state’s recycling and waste management system – remove it.

**Section 1: Definition**

1. “Advisory Council” means the Statewide Packaging Reduction and Recycling Needs Assessment Advisory Council established under Section 2.
2. Commissioner” means the Commissioner of [Insert Name of Your State Environmental Agency]
3. "Curbside recycling" means the collection of recyclable materials at the site where the recyclable materials are generated.
4. Composting rate" means the percentage of discarded materials that are managed through composting. A composting rate is calculated by dividing the total weight of all packaging products that are collected for composting by the total weight of all packaging sold, distributed, or served to consumers in the State during the study period.
5. “Department” means the [Insert Name of Your State Environmental Agency]
6. "Drop-off recycling" means the collection of recyclable material at one or more centralized sites.
7. “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.
8. “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.
5. “Producer” means
6. 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;
7. If 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
8. 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.

1. “Recycling” means the series of activities by which material is collected, transported, sorted, processed, and used in industrial feedstocks in place of virgin materials to manufacture new products with minimal loss of material quality and quantity.

 “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.

1. “Recycling Rate” means the percentage of any given packaging type that is ultimately recycled. The overall recycling rate, and the recycling rate for any packaging material type, shall be calculated by dividing the total weight of packaging that is recycled by the total weight of packaging sold, distributed, or served to consumers in the state during the study period. Material losses, such as 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.
2. "Study period" means the period represented by the data compiled and analyzed in the completion of the Statewide Packaging Reduction and Recycling Needs Assessment. The study period shall be a minimum of a one-year calendar period not earlier than one year after the effective date of this act and shall be clearly defined in the scope of work. If more than one year of data is used, data shall be presented on an annual basis.

**Section 2: Statewide Packaging Reduction and Recycling Needs Assessment Advisory Council**

1. There is hereby established a Packaging Reduction and Recycling Needs Assessment Advisory Council.
2. The Advisory Council shall be appointed by the Commissioner within three months after the effective date of this act.
3. The Commissioner shall appoint members to the Advisory Council to provide advice and recommendations to the Department in drafting, amending, and finalizing the Statewide Packaging Reduction and Recycling Needs Assessment.
4. In appointing members to the Advisory Council under subsection (a), the Commissioner shall consider representatives from all geographic regions of the State, all sizes of communities in the State, all supply chain participants in the recycling and reuse system, and the racial and gender diversity of this State.
5. Members of the Advisory Council shall include, but shall not be limited to, the following members:
6. Four individuals representing rural and urban units of local government of varying sizes;
7. Four individuals representing producers of consumer products;
8. Two individuals representing recycling collection and processing facilities;
9. Two individuals representing retailers, one of whom shall represent a statewide association of retailers;
10. Two individuals representing environmental justice advocacy organizations or environmental justice communities;
11. Two individual representing environmental organizations;
12. Two individuals representing material-oriented trade groups;
13. One individual representing composting collection and processing facilities;
14. One individual representing a statewide manufacturing association; and
15. One individual representing manufactures of products containing postconsumer material, or one or more associations of such manufacturers.
16. An individual may be appointed to only one position on the Advisory Council. Upon completion of the duties of the Advisory Council, appointments to the Advisory Council shall be terminated and the Advisory Council shall be dissolved.
17. The duties of the Advisory Council are as follows:
18. Provide guidance on the scope of work for the Statewide Packaging Reduction and Recycling Needs Assessment required under Section 3;
19. Assist in the provision of data required to complete the needs assessment;
20. Review and comment on the needs assessment prior to completion; and
21. Evaluate and make recommendations, including legislative recommendations, on how to effectively establish and implement a producer responsibility program in the state for packaging.

**Section 3: Statewide Packaging Reduction and Recycling Needs Assessment**

1. The Department shall issue a competitive solicitation in accordance with applicable competitive bidding requirements under state law to select a qualified consultant to conduct a Statewide Packaging Reduction and Recycling Needs Assessment to assess reuse, recycling, and composting conditions in the state for packaging materials.
2. The Department shall select the consultant within six months after the effective date of this act.
3. All packaging sold, offered for sale, distributed, or imported into the state shall be included in the needs assessment.
4. The needs assessment shall address, at a minimum, the following factors:
5. The quantity, by weight and type, of packaging sold, offered for sale, distributed, or served to consumers in the state by material type and format;
6. Current collection systems for packaging in the state, including reuse, recycling, composting, and disposal;
7. Current access to recycling services across the state, including drop-off recycling services and curbside recycling services;
8. The processing capacity and infrastructure for reusable, recyclable, and compostable packaging collected in the state, including capacity and infrastructure outside the state which serves or may serve the state;
9. Current reuse, recycling, and composting rates for all packaging in the State by material type;
10. Current recycling rate for each type of packaging material;
11. Current reusability, recyclability, or compostability of packaging, by material type, for all packaging and paper products sold, offered for sale, distributed, or served in the state;
12. Current system-wide costs for the collection, reuse, recycling, and composting of packaging;
13. The packaging materials and types that are commonly littered in the state;
14. Current operational and capital funding limitations impacting reuse, recycling, and composting access and availability for packaging throughout the state;
15. Current barriers to the marketability of recyclable materials generated in the state;
16. Opportunities for the creation of packaging reuse and refill programs in the state;
17. Opportunities for the improvement of packaging recycling in the state, including the development of end markets for recycled packaging materials; and
18. Consumer education needs in the state with respect to packaging waste reduction, recycling, reducing contamination in recycling, and reuse and refill systems for packaging
19. Persons with data or information required to complete the needs assessment shall provide the Department with such data or information in a timely fashion to assist in completing the needs assessment.
20. The Department shall provide the draft needs assessment to the Advisory Council. The Advisory Council shall provide written comments to the Department within 60 days after receipt of the needs assessment.
21. The Department shall make a copy of the draft needs assessment available for public comment. The public may provide written comments to the Department within 60 days after the publication of the draft needs assessment.
22. The Department's consultant shall include an assessment of comments received in the revised draft needs assessment submitted to the Department and shall provide a summary and an analysis of any issues raised by the Advisory Council and the public, and significant changes suggested by any such comments, a statement of the reasons why any significant changes were not incorporated into the results of the study, and a description of any changes made to the results of the needs assessment as a result of such comments.
23. The needs assessment shall be finalized within two years after the effective date of this act.

**Section 4: Packaging Reduction and Recycling Report**

1. Six months after the competition of the Statewide Packaging Reduction and Recycling Needs Assessment required by Section 3 of this act, the Department and Advisory Council shall submit a report of its findings and recommendations to the governor and legislature.
2. The report shall include proposed legislation for the creation of a producer responsibility for packaging program that is financed by producers, that encourages packaging redesign to reduce the environmental impacts and human health impacts, that reduces generation of covered materials waste through waste reduction, reuse, recycling, and composting, and that provides for the collection, transportation, and processing of used covered materials for reuse, recycling, and composting.