

Main features

- Reduces disposable packaging as much as possible, saving taxpayer dollars.
- Requires increase of reuse, recycling, recyclability, and recycled content in order to effectively drive design changes.
- Fees paid by producers are assessed based on environmental criteria.
- Takes steps to fix recycling.
- Bans high priority toxic substances and materials from packaging materials.
- Strong transparency is built into the system through labeling, reporting, and oversight.
- A bottle return law is included in model legislation.

Fact Sheet:

Summary of State Packaging Reduction and Extended Producer Responsibility Policy

This model legislation is a type of program known as Extended Producer Responsibility (EPR), but adds environmental standards for packaging to drive real reductions in packaging waste and demands on natural resources. It covers the packaging found around everyday products bought in stores, restaurants, and online as well as packaging used to transport those products to businesses – essentially all packaging waste generated by residential units, both single and multi-family, as well as industrial, commercial, and institutional.

A number of organizations, including Upstream, contributed to the development of this model policy. We acknowledge the leadership role of the Conservation Law Foundation and Beyond Plastics, with support from Safer States, National Stewardship Action Council, Earthjustice, Toxic Free Future, the Container Recycling Institute, and NYPIRG.



Currently producers have little incentive to reduce packaging or design packaging with recyclability in mind, in part because they have no legal responsibility to manage the costs or logistics of packaging disposal. This model legislation seeks to change that. Many local governments are currently responsible for managing recycling – a very popular program among the public – but local governments do not control what comes their way. It is imperative that we reduce packaging because the best packaging is that which local governments never have to handle.

Here are the main features of this legislation:

- Reduces disposable packaging as much as possible, thereby saving taxpayer dollars.
- Requires increase of reuse, recycling, recyclability, and recycled content in order to effectively drive design changes.
- Fees paid by producers are assessed based on environmental criteria, with the lowest fees assessed on the least harmful packaging.

- Takes steps to fix recycling.
- Bans high priority toxic substances and materials from packaging materials.
- Strong transparency is built into the system through labeling, reporting, and oversight.
- Included in the model legislation is language for a bottle return law, since deposit systems for beverage containers are still the most effective way to ensure that material is recycled. If states already have a deposit law or “bottle bill” in statute, this does not interfere with that.

All 50 U.S. states have adopted, through law or regulation, the solid waste hierarchy: reduce, reuse, recycle. Yet our nation is producing more waste than ever – the vast majority of which is buried in landfills or burned in incinerators, often located in low income communities or communities of color. It is past time to put the full solid waste hierarchy into practice and prioritize reduction and reuse.













Model Legislation

#1: Environmental Design Standards

The model legislation creates a set of packaging requirements that must be reached by each producer, measured against their disposable packaging at the time of enactment. Note that beverage containers covered under a state mandatory beverage deposit law or “Bottle Bill” have been assigned their own requirements.





Each producer must first reduce their disposable packaging across their brand over time, through either elimination, reuse, or refill systems. This requirement begins at 10% two years after enactment and ramps up to 60% over the course of 12 years (see Table 1).

Table 1: Rates and Dates for Packaging Reduction

Packaging type	2 years	4 years	6 years	8 years	10 years
Reduce Disposable Packaging Through elimination or through reuse or refill					
Refill & Reusable Beverage Containers in Bottle Bill States					

Next, each remaining unit of disposable packaging must either contain recycled content or must be actually recycled, as defined in the legislation, according to the rates and dates set out in Table 2.

Table 2: Table 2: Rates and Dates for Recycled Content and Recycled

Packaging type	2 years	4 years	6 years	8 years	10 years
 Disposable Packaging, Recycled	25%	50%	75%	80%	90%
 Disposable Packaging, Recycled Content	10%	25%	40%	55%	85%
 Plastic Beverage Container, Recycled Content	-	25%	-	50%	60%
 Deposit Return System Containers, Return Rate	60%	70%	80%	90%	95%

In addition, the State’s environmental agency will contract with a third party certifier to develop a uniform labeling system. The third party certifier will work with producers to verify that they are meeting packaging reduction targets, and properly labeling any single-use packaging for recyclability and recycled content, or reusable packaging with a reuse label. There will be a transparent public process to develop the certification criteria over which the State’s environmental agency will have oversight.

#2: Eliminate Toxics in Packaging

Packaging that contains toxic substances poses a threat to the health of people and the environment during production, use, reuse, recycling and disposal. These toxic substances can leach out of packaging during use; expose workers producing or handling the packaging; be down-cycled into new products; and contaminate waterways and communities along the packaging lifecycle. In order to achieve a truly circular economy, packaging must be made from the safest materials, free of the most harmful toxic substances.

The legislation would ban the sale or distribution of any packaging or reusables containing the following chemicals or chemical classes:

- ➔ Ortho-phthalates
- ➔ Bisphenols
- ➔ Per and polyfluoroalkyl substances (PFAS)
- ➔ Styrene
- ➔ Lead and lead compounds
- ➔ Cadmium
- ➔ Mercury
- ➔ Hexavalent chromium and compounds
- ➔ Perchlorate
- ➔ Benzophenone and its derivatives
- ➔ Formaldehyde
- ➔ Halogenated flame retardants
- ➔ Toluene



Some materials that are made from toxic building blocks and/or have very high lifecycle impacts on frontline communities and the environment should not be used for packaging or reusables. Therefore, the law would also ban the sale and distribution of packaging or reusables made from the following materials:

- ➔ Polyvinyl chloride
- ➔ Polystyrene
- ➔ Polycarbonate

The legislation directs the State environmental agency to review and update the list of chemicals of high concern in packaging every three years.

#3: Producer Responsibility Organization

The State's Environmental Agency contracts with at least one non-profit Producer Responsibility Organization (PRO) that is responsible for:

- ➔ Collecting and compiling data from producers
- ➔ Collecting fees from producers
- ➔ Distributing funds to stakeholders
- ➔ Offering technical support to producers as they navigate their new packaging requirements.

Producers are required to report to and make payments to a PRO. The PRO will be barred from making campaign contributions, lobbying, or suing the State and no members of the Board of Directors at any PRO can have a conflict of interest.

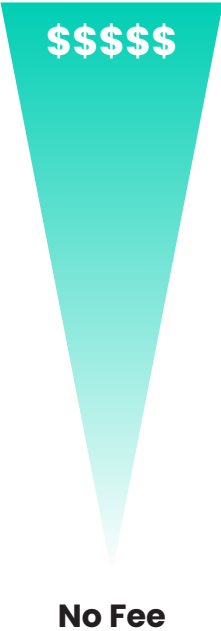






#4: Producer Payments

The legislation would require producers to make payments into a fund administered by a Producer Responsibility Organization. Payments are calculated based on (1) the packaging material type (glass, cardboard, rigid plastic, film plastic, etc.) and (2) how much packaging, by weight and number of items, that the producer puts into the market in that state. Fees will be modulated based on the framework found in Table 3. The state environmental

agency is required to promulgate regulations to implement the rates for types of packaging and will consult multiple stakeholders during that process. Fees shall be set at a rate that will drive packaging reductions, incentivise switching to reuse + refill systems, increase recycled content, and promote the use of recyclable packaging. The agency will be required to revise fees as data is collected about the waste management system.

Table 3: Eco-Modulated Packaging Fees

Fees	Type of package
	 <p>Disposable headed to landfill or incinerator</p>
	 <p>Readily Recyclable 1) being collected, sorted, processed, and recycled 2) has a consistent market for purchase.</p>
	 <p>Compostable</p>
	 <p>Reuse + Refill The packaging is reusable or refillable and contained within a reuse or refill system.</p>

The legislation would exempt small producers from packaging fees, but require that they still meet the reduction requirements in Table 1. Small producers are defined as those grossing less than \$2,000,000 in revenue/year or using less than one ton of packaging/year for their products. The legislation would assess fees on both household and commercial packaging.

#5: Fix Recycling

This legislation would require a reduction, reuse, and recycling needs assessment to be funded through the PRO and completed by the state environmental agency. Funding generated from the fees are directed to be spent on meeting the identified needs from the assessment. A portion of the funding would go to every municipality in the state, and must be used as determined by the needs assessment. Municipalities would be required to make recycling accessible to all residents as a prerequisite to receiving funding from the PRO.



#6: Funding Distribution

The legislation would divide the funding collected by the Producer Responsibility Organization(s) in the following ways:

Recycling Infrastructure Projects 60%

- Municipalities would receive a portion of the funding for projects identified through the needs assessment.
- Commercial entities that handle recycling, including Material Recovery Facilities, and large recyclers would be eligible to receive funding for projects identified in the needs assessment.

Refill & Reuse Infrastructure Projects 20%

- Municipalities and Private Entities would be eligible to receive funding for projects identified in the needs assessment.

Program Administration 20%

- The State Environmental Agency would receive a portion of this funding for their work to administer the program, including their contract with the 3rd party certifier to administer the labeling certification program.
- Third Party Certifier would receive a portion to administer the labeling certification program.
- Producer Responsibility Organization would receive a portion of the funding to administer the fund and fulfill its data collection, reporting, and technical assistance obligations.

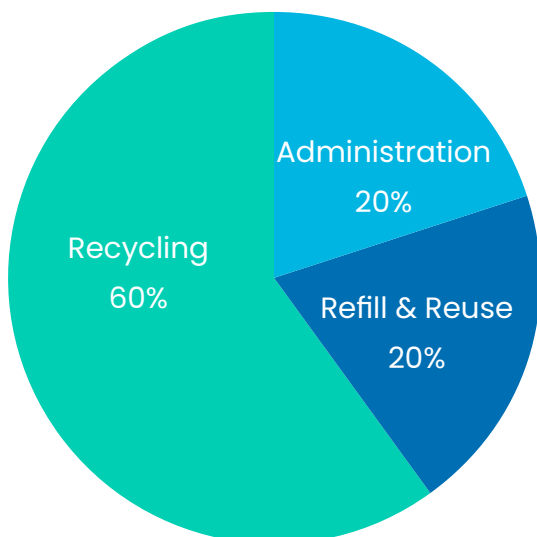


Table 4: Breakdown of funding uses

#7: Ensure Accountability and Effective Enforcement

The legislation would require that a packaging certification process be developed by the third party certifier to provide accountability and transparency. A uniform label must be affixed to each package before it is sold in the state. The label must first be approved by the duly authorized third-party.

The legislation would give the state environmental agency the authority and funding to provide oversight and enforce the law.



#8: Reports and Data

The Producer Responsibility Organization(s) and state environmental agency will be responsible for generating reports and publishing data. All reports and data must be made publically available. The data and reports include:

- A list of all participating producers and the brands of products associated with those producers.
- A baseline report of the number (in terms of items of packaging) and type of packaging products, both disposable and reusable, generated in the state and an annual report thereafter.
- A list of all materials that are readily recyclable in the state.
- Results of an audit of inbound and outbound recyclable material processed and sold within the state.
- Waste characterization studies that specify products in the waste stream according to types of uses.
- Litter surveys that identify products according to types of uses and brands.
- A list of the amount of packaging material and packaging material type sold/offered for sale within the state each year.
- A description of all grants issued as part of the Refill & Reuse Infrastructure Grant Program.
- Compile data verifying compliance of materials with toxics bans, and reporting on what chemicals are being used in packaging.

Conclusion

Many U.S. states have economies the size of countries. States should take bold and immediate action to enact the policies needed to address the global plastic pollution and climate change crises. The Pew report found that:

Breaking the plastic wave will require every nation to do its part, but in different ways. Middle- and low-income countries should focus on expanding collection of plastic waste, maximizing reduction and substitution, investing in sorting and recycling infrastructure, and reducing leakage from waste sites. High-income countries should **incentivize reductions in plastic usage, boost recycling rates**, end exports of plastic waste, and address microplastic leakage. *(emphasis added)*

Enacting this model legislation is exactly the type of action that American states can take to contribute to solving the global plastic pollution crisis. Furthermore, transitioning from a throw-away to a reuse economy will save businesses and government money by eliminating the on-going costs of purchasing packaging and managing it as waste and litter.

