

Date: (Filing No. S-)

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

132ND LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 579, L.D. 1423, “An Act to Improve Recycling by Updating the Stewardship Program for Packaging”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 38 MRSA §2146, sub-§1, ¶C-1 is enacted to read:

C-1. "Consumer" means a single-family or multifamily residence, school, municipal or state government facility, public space or commercial business that uses or partners with a municipal or state waste management service.

"Consumer" does not include a person that manufactures products if the packaging material for those products is managed and the costs of that management are paid for by the person or by a producer, and that packaging material:

(1) Is used solely for transportation of the products to persons that are not consumers; or

(2) Is used for or generated by the person as part of the manufacturing process for the products.

Sec. 2. 38 MRSA §2146, sub-§1, ¶N, as enacted by PL 2021, c. 455, §2, is amended to read:

N. "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 intended to be sold for consumption. "Post-consumer recycled material" does not include post-industrial material or pre-consumer material.

Sec. 3. 38 MRSA §2146, sub-§1, ¶O, as enacted by PL 2021, c. 455, §2, is repealed and the following enacted in its place:

O. "Producer" means:

(1) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold or offered for sale at a physical retail location in the State:

(a) The person that manufactured the product if the product is sold or offered for sale in the State under the manufacturer's brand or the packaging material does not identify the brand;

(b) If there is no person to which division (a) applies, the person that is licensed to manufacture and sell or offer the product for sale to consumers in the State under the brand or trademark of another manufacturer or person;

(c) If there is no person to which division (a) or (b) applies, the person that has legal ownership of the brand of the product;

(d) If there is no person to which divisions (a) to (c) apply that has a physical presence in the United States, the person that is the importer of record into the United States for the product for use in a commercial enterprise and that sells, offers for sale or distributes the product for sale in or into the State; or

(e) If there is no person to which divisions (a) to (d) apply, the person that first distributes the product for sale in or into the State;

(2) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold, offered for sale or distributed for sale in the State through an Internet-based or remote sales transaction and not at a physical retail location in the State:

(a) With respect to the packaging material that is used to directly contain or protect the product, a person identified pursuant to subparagraph (1), divisions (a) to (e); and

(b) With respect to the packaging material that is not used to directly contain or protect the product, a person that packages the item for delivery, presentation or distribution to the consumer; or

(3) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold, offered for sale or distributed for sale in the State in a manner not described in subparagraph (1) or (2), the person that first distributes the product for sale in or into the State.

"Producer" includes a low-volume producer but does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).

Notwithstanding subparagraphs (1) to (3), if the person that would otherwise be considered a producer under this paragraph is operating a business wholly or partially as a franchise, the producer is the franchisor if that franchisor has franchisees with a commercial presence in the State.

Notwithstanding subparagraphs (1) to (3), if a person that would otherwise be considered a producer under this paragraph enters into a signed agreement with another person to assign the responsibility to act as producer for the product or products of the person for the purposes of this section, that other person is considered the producer of the product or products for the purposes of this section if that other person registers

1 with the stewardship organization to participate in the program under this section on
2 behalf of the person and written certification of the assignment of responsibility is
3 provided to the stewardship organization.

4 **Sec. 4. 38 MRSA §2146, sub-§1, ¶U**, as enacted by PL 2021, c. 455, §2, is
5 amended to read:

6 U. "Toxicity" means, with respect to packaging material, the ~~presence in~~ intentional
7 addition to packaging material or the intentional use in the manufacturing, recycling or
8 disposal of packaging material of ~~intentionally introduced~~ metals or chemicals
9 regulated or listed pursuant to Title 32, chapter 26-A; food contact chemicals of high
10 concern or priority food contact chemicals regulated or listed pursuant to Title 32,
11 chapter 26-B; or chemicals of concern, chemicals of high concern or priority chemicals
12 identified pursuant to chapter 16-D.

13 **Sec. 5. 38 MRSA §2146, sub-§2**, as enacted by PL 2021, c. 455, §2, is amended to
14 read:

15 **2. Producer exemptions.** Notwithstanding any provision of this section to the
16 contrary, a producer is exempt from the requirements and prohibitions of this section in
17 any calendar year in which:

18 A. The producer realized less than \$2,000,000 in total gross revenue during the prior
19 calendar year, except that, for the period beginning one calendar year following the
20 effective date of the contract entered into by the department and the stewardship
21 organization pursuant to subsection 3 and ending 3 years after that effective date, a
22 producer that realized less than \$5,000,000 in total gross revenue during the prior
23 calendar year is exempt from the requirements and prohibitions of this section;

24 B. The producer sold, offered for sale or distributed for sale in or into the State during
25 the prior calendar year products contained, protected, delivered, presented or
26 distributed in or using less than one ton of packaging material in total; or

27 C. The producer realized more than 50% of its total gross revenue in the prior calendar
28 year from the sale of goods it acquired through insurance salvages, closeouts,
29 bankruptcies and liquidations; or

30 ~~D. The producer sold, offered for sale or distributed for sale in or into the State during~~
31 ~~the prior calendar year to retailers or direct to consumers products that were perishable~~
32 ~~food and that were contained, protected, delivered, presented or distributed in or using~~
33 ~~less than 15 tons of packaging material in total.~~

34 ~~As used in this paragraph, "perishable food" means any food that may spoil or~~
35 ~~otherwise become unfit for human consumption because of its nature, type or physical~~
36 ~~conditions, including, but not limited to, fresh and processed meats, poultry, seafood,~~
37 ~~dairy products, bakery products, eggs in the shells and fresh fruits and vegetables.~~
38 ~~"Perishable food" does not include any such food that is sold, offered for sale or~~
39 ~~distributed for sale frozen except for frozen wild blueberries.~~

40 Notwithstanding any provision of this section to the contrary, a producer is exempt from
41 the requirements and prohibitions of this section with respect to the first 15 tons of
42 packaging material used by the producer to contain, protect, deliver, present or distribute

1 products that were perishable food and that were sold, offered for sale or distributed for
2 sale in or into the State during the prior calendar year.

3 As used in this subsection, "perishable food" means any food that may spoil or otherwise
4 become unfit for human consumption because of its nature, type or physical conditions,
5 including, but not limited to, fresh and processed meats, poultry, seafood, dairy products,
6 bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does
7 not include any such food that is sold, offered for sale or distributed for sale frozen except
8 for frozen wild blueberries.

9 A producer claiming an exemption under this subsection shall provide to the department
10 sufficient information to demonstrate that the producer meets the requirements for an
11 exemption under this subsection within 30 days of receiving a request from the department
12 to provide such information.

13 **Sec. 6. 38 MRSA §2146, sub-§3, ¶A,** as enacted by PL 2021, c. 455, §2, is
14 amended by amending subparagraph (7), division (c) to read:

15 (c) The processing capacity, market conditions and opportunities in the State
16 and regionally for recyclable material; ~~and~~

17 **Sec. 7. 38 MRSA §2146, sub-§3, ¶A,** as enacted by PL 2021, c. 455, §2, is
18 amended by enacting a new subparagraph (7), division (e) to read:

19 (e) The producer payments schedule adopted by the department pursuant to
20 subsection 13 and the anticipated effect of that schedule on incentivizing the
21 use by producers of readily recyclable packaging materials and supporting the
22 solid waste management hierarchy under section 2101; and

23 **Sec. 8. 38 MRSA §2146, sub-§4, ¶B,** as enacted by PL 2021, c. 455, §2, is
24 amended to read:

25 B. The stewardship organization shall provide to the department a list of producers
26 that are participating in the program and a list of the UPCs of products ~~or a list of all~~
27 ~~producers and brands~~ for which the producer has complied with the program's
28 requirements and, if known to the stewardship organization, a list of producers that are
29 not participating in the program and are not compliant with the program's requirements.
30 The stewardship organization shall provide to the department regularly updated
31 producer compliance information described in this paragraph.

32 **Sec. 9. 38 MRSA §2146, sub-§4, ¶C,** as enacted by PL 2021, c. 455, §2, is
33 amended to read:

34 C. Based on information provided to the department under paragraph B and any other
35 information considered by the department, the department shall make available on its
36 publicly accessible website a regularly updated list of ~~UPCs of products~~ producers and
37 brands for which the department has determined the producer has complied with all
38 applicable requirements of this section and a list of producers and, where applicable,
39 specific products and the ~~UPCs~~ brands of those products for which the department has
40 determined the producer has not complied with all applicable requirements of this
41 section.

42 **Sec. 10. 38 MRSA §2146, sub-§6, ¶A** is enacted to read:

1 3. It amends the requirements for the statewide recycling needs assessment to be
2 conducted by the entity selected by the Department of Environmental Protection to serve
3 as the stewardship organization for the packaging stewardship program to include an
4 evaluation of the producer payments schedule adopted by the department by rule and the
5 anticipated effect of that schedule on incentivizing the use by producers of readily
6 recyclable packaging materials and supporting the State's solid waste management
7 hierarchy.

8 It also provides that, following the execution of a contract between the selected stewardship
9 organization and the department, the stewardship organization, based on the statewide
10 recycling needs assessment and other available information, may recommend to the
11 department that the adopted producer payments schedule be modified to better incentivize
12 the use by producers of readily recyclable packaging materials and support the State's solid
13 waste management hierarchy and the department may, in its discretion, initiate rulemaking
14 to implement any modifications to that schedule.

15 4. It clarifies the law regarding the requirements for producers or the stewardship
16 organization to provide or for the department to publish information regarding the UPCs
17 for products for which the producers are in compliance with or not in compliance with the
18 law.

19 5. It provides that a producer may not be required to pay an increased fee or penalty
20 under the law for packaging material that is not composed of post-consumer recycled
21 material if the packaging material is subject to state or federal laws, rules or regulations
22 that effectively prohibit the use of post-consumer recycled material in that packaging
23 material.

24 6. It amends the requirements for municipalities to participate in the packaging
25 stewardship program by clarifying that a participating municipality must provide for the
26 collection and recycling of any packaging material that is generated in the municipality and
27 is readily recyclable.

28 **FISCAL NOTE REQUIRED**

29 **(See attached)**