

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, ¶I,** as enacted by PL 2021, c. 455, §2, is amended to read:

I. "Packaging material" means a discrete type of material, or a category of material that includes multiple discrete types of material with similar management requirements and similar commodity values, used for the containment, protection, delivery, presentation or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer of the product. "Packaging material" does not include a discrete type of material, or a category of material that includes multiple discrete types of material, that is:

(1) Intended to be used for the long-term storage or protection of a durable product and that can be expected to be usable for that purpose for a period of at least 5 years;

(2) A beverage container, as defined in section 3102, subsection 2, subject to the requirements of chapter 33;

(3) A container for architectural paint, as defined in section 2144, subsection 1, paragraph A, as long as a paint stewardship program is in operation, has been approved by the department pursuant to section 2144 and the stewardship organization operating that program:

(a) Has demonstrated to the department's satisfaction that it recycles at least 90% of the containers of architectural paint collected under the program; or

(b) Subject to the approval of the department, if unable to satisfy the requirements of division (a), has demonstrated to the department's satisfaction that it recycles at least 80% of the containers of architectural paint collected under the program; or

(4) Excluded from the definition of "packaging material" by the department by rule adopted pursuant to subsection 13, paragraph D;

(5) Used for the containment, protection, delivery, presentation or distribution of drugs, dietary supplements, devices or cosmetics, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, infant formula as defined in 21 United States Code, Section 321(z), medical food as defined in 21 United States Code, Section 360ee(b)(3), fortified oral nutritional supplements used by persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition or failure to thrive, as those terms are defined by the World Health Organization's International Classification of Diseases, 11th Revision and biologics and diagnostic kits regulated under the federal Virus-Serum-Toxin Act;

(6) Used for the containment, protection, delivery, presentation or distribution of medical equipment or products used in medical settings, including components associated with medical equipment or products used in medical settings and disposable medical equipment; or

(7) Used for the containment, protection, delivery, presentation or distribution of products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act.

**Sec. 3. 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. 4. 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;

- 1                    (a) The person that manufactured the product if the product is sold or offered  
2                    for sale in the State under the manufacturer's brand or the packaging material  
3                    does not identify the brand;
- 4                    (b) If there is no person to which division (a) applies, the person that is licensed  
5                    to manufacture and sell or offer the product for sale to consumers in the State  
6                    under the brand or trademark of another manufacturer or person;
- 7                    (c) If there is no person to which division (a) or (b) applies, the person that  
8                    has legal ownership of the brand of the product;
- 9                    (d) If there is no person to which divisions (a) to (c) apply that has a physical  
10                   presence in the United States, the person that is the importer of record into the  
11                   United States for the product for use in a commercial enterprise and that sells,  
12                   offers for sale or distributes the product for sale in or into the State; or
- 13                   (e) If there is no person to which divisions (a) to (d) apply, the person that first  
14                   distributes the product for sale in or into the State;
- 15                   (2) For a product contained, protected, delivered, presented or distributed in or  
16                   using packaging material and sold, offered for sale or distributed for sale in the  
17                   State through an Internet-based or remote sales transaction and not at a physical  
18                   retail location in the State:
- 19                   (a) With respect to the packaging material that is used to directly contain or  
20                   protect the product, a person identified pursuant to subparagraph (1), divisions  
21                   (a) to (e); and
- 22                   (b) With respect to the packaging material that is not used to directly contain  
23                   or protect the product, a person that packages the item for delivery,  
24                   presentation or distribution to the consumer; or
- 25                   (3) For a product contained, protected, delivered, presented or distributed in or  
26                   using packaging material and sold, offered for sale or distributed for sale in the  
27                   State in a manner not described in subparagraph (1) or (2), the person that first  
28                   distributes the product for sale in or into the State.
- 29                   "Producer" includes a low-volume producer but does not include a nonprofit  
30                   organization exempt from taxation under the United States Internal Revenue Code of  
31                   1986, Section 501(c)(3).
- 32                   Notwithstanding subparagraphs (1) to (3), if the person that would otherwise be  
33                   considered a producer under this paragraph is operating a business wholly or partially  
34                   as a franchise, the producer is the franchisor if that franchisor has franchisees with a  
35                   commercial presence in the State.
- 36                   Notwithstanding subparagraphs (1) to (3), if a person that would otherwise be  
37                   considered a producer under this paragraph enters into a signed agreement with another  
38                   person to assign the responsibility to act as producer for the product or products of the  
39                   person for the purposes of this section, that other person is considered the producer of  
40                   the product or products for the purposes of this section if that other person registers  
41                   with the stewardship organization to participate in the program under this section on  
42                   behalf of the person and written certification of the assignment of responsibility is  
43                   provided to the stewardship organization.

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

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

10       **Sec. 6. 38 MRSA §2146, sub-§2**, as enacted by PL 2021, c. 455, §2, is amended to  
11 read:

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

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

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

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

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

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

37       Notwithstanding any provision of this section to the contrary, a producer is exempt from  
38 the requirements and prohibitions of this section with respect to the first 15 tons of  
39 packaging material used by the producer to contain, protect, deliver, present or distribute  
40 products that were perishable food and that were sold, offered for sale or distributed for  
41 sale in or into the State during the prior calendar year.

42       As used in this subsection, "perishable food" means any food that may spoil or otherwise  
43 become unfit for human consumption because of its nature, type or physical conditions,

1 including, but not limited to, fresh and processed meats, poultry, seafood, dairy products,  
2 bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does  
3 not include any such food that is sold, offered for sale or distributed for sale frozen except  
4 for frozen wild blueberries.

5 A producer claiming an exemption under this subsection shall provide to the department  
6 sufficient information to demonstrate that the producer meets the requirements for an  
7 exemption under this subsection within 30 days of receiving a request from the department  
8 to provide such information.

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

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

13 **Sec. 8. 38 MRSA §2146, sub-§3, ¶A**, as enacted by PL 2021, c. 455, §2, is  
14 amended by enacting a new subparagraph (7), division (e) to read:

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

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

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

28 **Sec. 10. 38 MRSA §2146, sub-§4, ¶C**, as enacted by PL 2021, c. 455, §2, is  
29 amended to read:

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

38 **Sec. 11. 38 MRSA §2146, sub-§6, ¶A** is enacted to read:

39 A. Notwithstanding any provision of this section to the contrary, a producer may not  
40 be required to pay an increased fee or penalty for packaging material that is not  
41 composed of post-consumer recycled material if the packaging material is subject to  
42 state or federal laws, rules or regulations that effectively prohibit the use of post-  
43 consumer recycled material in that packaging material.



1 as the stewardship organization for the packaging stewardship program to include an  
2 evaluation of the producer payments schedule adopted by the department by rule and the  
3 anticipated effect of that schedule on incentivizing the use by producers of readily  
4 recyclable packaging materials and supporting the State's solid waste management  
5 hierarchy.

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

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

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

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

26 **FISCAL NOTE REQUIRED**

27 **(See attached)**