

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO WASTE MANAGEMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 PART I

2 SECTION 1. The legislature finds that as the State strives  
3 to fulfill its commitments to reduce waste and effectively  
4 mitigate the impacts of climate change, extended producer  
5 responsibility policies offer an opportunity to create mutually  
6 beneficial partnerships with the businesses that produce  
7 packaging waste.

8 Extended producer responsibility policies are designed to  
9 transfer some portion of the costs of managing the waste  
10 generated by the sale of consumer goods to the entities that  
11 produce those goods. These policies stand in contrast to  
12 existing policies that place this responsibility solely on  
13 taxpayers. The failure of recycling programs and the multiple  
14 crises created by plastic pollution, which fouls air, water, and  
15 biological systems worldwide, are the primary drivers leading to  
16 the call for such innovative solutions.



1           The legislature further finds that Hawaii has a unique role  
2 to play in creating extended producer responsibility solutions  
3 due to the State's relatively small resident population, remote  
4 location bounded by the Pacific ocean, and global image as a  
5 relatively pristine environment. The fact that the islands  
6 attract millions of visitors each year adds to Hawaii's value as  
7 a proving ground for forward-thinking waste reduction  
8 initiatives.

9           The legislature also finds that the corporations that  
10 produce the greatest volume of consumer goods have a  
11 correspondingly unique role to play in solving the problems  
12 caused by the proliferation of packaging waste. Among these  
13 corporations, sixteen of the top twenty are signatories to the  
14 Global Commitment for a New Plastics Economy, an initiative  
15 developed by the Ellen MacArthur Foundation and the United  
16 Nations Environmental Programme as a primary means for  
17 implementing waste-related sustainable development goals. These  
18 existing commitments have signatories who are on track to reduce  
19 the volume of plastic packaging waste that their business models  
20 generate and ensure that whatever remains is either reusable,  
21 recyclable, or compostable.





1 SECTION 2. **Definitions.** As used in this Act:

2 "Baseline volume" means the volume of packaging waste a  
3 county sends to a landfill or a power plant that burns municipal  
4 solid waste as a fuel, or both, during the calendar year  
5 beginning and ending on a date determined by rule.

6 "Brand" means a symbol, word, or mark that identifies a  
7 fast-moving consumer good.

8 "Covered material or product" means, regardless of  
9 recyclability:

10 (1) Any part of a package or container, including material  
11 that is used for the containment, protection,  
12 handling, delivery, and presentation of a product that  
13 is sold, offered for sale, imported, or distributed in  
14 the State; and

15 (2) Primary, secondary, and tertiary packaging intended  
16 for the consumer market; service packaging designed  
17 and intended to be filled at the point of sale,  
18 including carry-out bags and bulk goods bags; and  
19 beverage containers.

20 "Covered producer" means a producer that either:



1 (1) Produces a packaging volume of more than ten thousand  
2 metric tons internationally; or

3 (2) Has international gross sales of fast-moving consumer  
4 goods of more than \$500,000,000.

5 "Department" means the department of health.

6 "Fast-moving consumer good" means a:

7 (1) Non-durable consumer good that is packaged using a  
8 covered material or product; or

9 (2) Covered material or product if the covered material or  
10 product is being sold as a product instead of being  
11 used as packaging.

12 "Person" means any individual, business, partnership,  
13 limited liability company, corporation, not-for-profit  
14 organization, association, government entity, public benefit  
15 corporation, or public authority.

16 "Packaging volume" means the packaging volume that a  
17 producer places on the market.

18 "Producer" means any person, except for the State or any of  
19 its political subdivisions; that:

20 (1) Manufactures a fast-moving consumer good under the  
21 person's own name or brand; and



1 (2) Either:

2 (A) Sells, offers for sale, distributes, or imports a  
3 fast-moving consumer good as owner or licensee of  
4 a trademark or brand under which a fast-moving  
5 consumer good is sold or distributed in the  
6 State; or

7 (B) Sells, offers for sale, or distributes a  
8 fast-moving consumer good in the State.

9 "Program year" means a full calendar year beginning and  
10 ending on a date determined by rule; provided that the final  
11 program year shall be determined by rule.

12 "Reuse" means to extend the life of a product, package, or  
13 resource by either using more than once with little to no  
14 processing (same or new function), repairing it so it can be  
15 used longer, or sharing, renting, selling, or donating it to  
16 another party. This definition excludes materials used as a  
17 fuel substitute and those used for energy production (i.e.  
18 incineration).

19 SECTION 3. **Sales prohibition.** Beginning and ending on a  
20 date determined by rules adopted by the department, no covered  
21 producer shall sell or offer for sale any fast-moving consumer



1 good for delivery in this State unless the covered producer has  
2 registered pursuant to section 4 of this Act and complied with  
3 any other applicable provisions of this Act.

4 SECTION 4. **Fast-moving consumer good covered producer**  
5 **responsibility.** (a) Beginning on a date determined by rules  
6 adopted by the department, each covered producer shall register  
7 with the department and pay to the department a fee as provided  
8 in subsection (e).

9 (b) Each covered producer who is registered shall submit  
10 an annual renewal of its registration by January 1 of each  
11 subsequent program year, with the payment of a fee as provided  
12 in subsection (e).

13 (c) The registration and each renewal shall include a list  
14 of all of the covered producer's brands of fast-moving consumer  
15 goods and shall be effective on the second day of the succeeding  
16 month after receipt by the department of the registration or  
17 renewal.

18 (d) The registration and each renewal shall include the  
19 covered producer's sales volume for the preceding year and the  
20 estimated packaging volume placed in the market in the State by  
21 the covered producer's sales volume during that year. The



1 packaging volume generated in the State shall be used to  
2 calculate the fee in subsection (e).

3 (e) The fee to be paid at the time of registration or  
4 renewal shall be \$100 for each metric ton of packaging placed in  
5 the market in the State by the covered producer.

6 SECTION 5. **Extended producer responsibility special fund.**

7 (a) There is established in the state treasury the extended  
8 producer responsibility special fund into which shall be  
9 deposited:

- 10 (1) All fees, payments, and penalties collected by the  
11 department pursuant to this Act;
- 12 (2) Any appropriation by the legislature into the special  
13 fund;
- 14 (3) Any grant or donation made to the special fund; and
- 15 (4) Any interest earned on the balance of the special  
16 fund.

17 (b) The extended producer responsibility special fund  
18 shall be administered by the department.

19 (c) Moneys in the special fund shall be expended as  
20 follows:





- 1           (1) Beginning with a fiscal year determined by rule, the  
2           department shall allocate moneys to each county for  
3           the costs of creating the countywide needs assessment  
4           required pursuant to section 6;
- 5           (2) Funds in excess of those required to cover the costs  
6           of the countywide needs assessments shall be awarded  
7           by the department to qualified applicants for projects  
8           and programs that eliminate packaging waste through  
9           the development of reuse and refill systems within the  
10          State;
- 11          (A) The department shall have the authority to  
12          subcontract the administration of a grant program  
13          to a qualified nonprofit that will process  
14          applications and make awards; provided that no  
15          producer regulated under the law is connected to  
16          the nonprofit in charge of managing the awards in  
17          a way that could impact the award process.
- 18          (3) Any distribution of funds pursuant to this subsection  
19          shall be approved by the department. The department  
20          shall approve or deny a proposal for funding within  
21          ninety days of receipt of a proposal. The proposals



1 for funding may be approved, at the discretion of the  
2 department; provided that the proposal will, at a  
3 minimum:

- 4 (A) Eliminate packaging waste;
- 5 (B) Increase the transition of packaging from non-  
6 reusable to reusable or refillable packaging;
- 7 (C) Increase access to reuse and refill  
8 infrastructure, programs, and projects in the  
9 State;
- 10 (D) Increase the capacity of reuse and refill  
11 infrastructure, programs, and projects and the  
12 State;
- 13 (E) Provide reuse and refill instruction that are, to  
14 the extent practicable, consistent statewide,  
15 easy to understand, translated into various  
16 commonly-used languages, and easily accessible;  
17 and
- 18 (F) Provide for outreach and education that are  
19 coordinated across programs or regions to avoid  
20 confusion for residents, and developed in



1                   consultation with local government and the  
2                   public; and

3           (4) The department may expend an amount not to exceed  
4           \$                   in each fiscal year to administer the  
5           extended producer responsibility program established  
6           by this Act.

7           SECTION 6. **Needs assessment.** (a) Each county shall  
8 develop a countywide needs assessment, which shall:

9           (1) Detail the resources needed to reduce the volume of  
10           packaging waste the county sends to landfills by fifty  
11           per cent from the respective county's baseline volume  
12           by a date determined by rule; provided that for a  
13           county with a population greater than five hundred  
14           thousand, the needs assessment shall detail the  
15           resources needed to reduce by fifty per cent of its  
16           baseline volume the volume of packaging waste the  
17           county sends to a landfill or to a power plant that  
18           burns municipal solid waste as a fuel; provided  
19           further that a county with a population greater than  
20           five hundred thousand shall categorize its resource  
21           needs by method of packaging waste disposal; and



1           (2) Detail the resources needed to reduce the amount of  
2           packaging waste the county sends to a landfill by  
3           eighty per cent from the respective county's baseline  
4           volume by a date determined by rule; provided that for  
5           a county with a population greater than five hundred  
6           thousand, the needs assessment shall detail the  
7           resources needed to reduce by eighty per cent of its  
8           baseline volume the amount of packaging waste the  
9           county sends to a landfill or to a power plant that  
10          burns municipal solid waste as a fuel; provided  
11          further that a county with a population greater than  
12          five hundred thousand shall categorize its resource  
13          needs by method of packaging waste disposal.

14          (b) Each county shall submit its countywide needs  
15          assessment to the department no later than a date determined by  
16          rule. The department shall compile the assessments and  
17          consolidate them along with any recommendations made by the  
18          counties and shall work with the counties and registered covered  
19          producers to establish guidelines on the use of moneys in the  
20          extended producer responsibility special fund; provided that  
21          priority shall be given to packaging reuse programs.



1 (c) The department shall submit an annual report to the  
2 legislature no later than twenty days prior to the convening of  
3 each regular session beginning after the establishment of the  
4 extended producer responsibility program that contains a summary  
5 of:

- 6 (1) County needs assessments;
- 7 (2) Moneys deposited into the extended producer  
8 responsibility special fund;
- 9 (3) The use of any moneys from the extended producer  
10 responsibility special fund; and
- 11 (4) Any other findings and recommendations, including any  
12 proposed legislation.

13 **SECTION 7. Financial and proprietary information; report.**

14 Notwithstanding any law to the contrary, financial or  
15 proprietary information, including trade secrets, commercial  
16 information, and business plans, submitted to the department  
17 under this Act shall be confidential and exempt from public  
18 disclosure to the extent permitted by chapter 92F, Hawaii  
19 Revised Statutes.



1           SECTION 8. **Rules.** The department may adopt rules pursuant  
2 to chapter 91, Hawaii Revised Statutes, necessary to implement  
3 this Act.

4           SECTION 9. **Enforcement.** (a) The department may conduct  
5 or require audits and conduct inspections to determine  
6 compliance under this Act. Except as provided in subsection  
7 (c), the department and the attorney general shall be empowered  
8 to enforce this Act and take necessary action against any  
9 covered producer for failure to comply with this Act or rules  
10 adopted thereunder.

11           (b) The attorney general may file suit in the name of the  
12 State to enjoin an activity related to the sale of fast-moving  
13 consumer goods in violation of this Act.

14           (c) The department shall issue a warning notice to a  
15 person for the person's first violation of this Act. The person  
16 shall comply with this Act within sixty days of the date the  
17 warning notice was issued or be subject to the penalties  
18 provided by law or rule, including but not limited to penalties  
19 set forth in subsections (d) and (e).

20           (d) Any person who violates any requirement of this Act  
21 may be assessed a penalty of up to \$1,000 for the first



1 violation and up to \$2,000 for the second and each subsequent  
2 violation, in addition to any additional penalties required or  
3 imposed pursuant to this Act; provided that each day of  
4 continued violation shall constitute a separate violation.

5 (e) The department shall determine additional penalties  
6 based on adverse impact to the environment, unfair competitive  
7 advantage, and other considerations that the department deems  
8 appropriate.

9 SECTION 10. **Administrative penalties; fees.** In addition  
10 to any other administrative or judicial remedy provided by this  
11 Act or rules adopted under this Act for a violation thereof, the  
12 department may impose by order administrative penalties; set,  
13 charge, and collect administrative fines; recover administrative  
14 fees and costs, including attorney's fees and costs; and bring  
15 legal action to recover administrative fines and fees and costs,  
16 including attorney's fees and costs.

17 SECTION 11. **Applicability.** This Act shall not apply to  
18 any material that is used in the packaging of a product that is  
19 regulated as a drug, medical device, or dietary supplement by  
20 the U.S. Food and Drug Administration under the Federal Food,  
21 Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., sec. 3.2(e) of 21



1 U.S. Code of Federal Regulations or the Dietary Supplement  
2 Health and Education Act.

3 PART III

4 SECTION 12. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$ or so  
6 much thereof as may be necessary for fiscal year 2023-2024 for  
7 deposit into the extended producer responsibility special fund  
8 established in section 5 of this Act.

9 SECTION 13. There is appropriated out of the extended  
10 producer responsibility special fund the sum of \$ or  
11 so much thereof as may be necessary for fiscal year 2024-2025  
12 for the counties to prepare countywide need assessments;  
13 provided that the moneys shall be expended as follows:

- 14 County of Hawaii \$
- 15 County of Kauai \$
- 16 County of Maui \$
- 17 City and county of Honolulu \$

18 The sums appropriated shall be expended by the respective  
19 county for the purposes of this Act.





1           The sum appropriated shall constitute the State's share of  
2 the cost of the mandated program under article VIII, section 5,  
3 of the state constitution.

4           SECTION 14. There is appropriated out of the extended  
5 producer responsibility special fund the sum of \$           or  
6 so much thereof as may be necessary for fiscal year 2023-2024  
7 for the administration of the extended producer responsibility  
8 program.

9           The sum appropriated shall be expended by the department of  
10 health for the purposes of this Act.

11           SECTION 15. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$           or so  
13 much thereof as may be necessary for fiscal year 2023-2024 for  
14 one full-time equivalent (1.0 FTE) position for the extended  
15 producer responsibility program to develop rules, oversee and  
16 manage goals and objectives related to waste management, analyze  
17 and assess waste reduction targets, and develop reports.

18           The sum appropriated shall be expended by the department of  
19 health for the purposes of this Act.



1 SECTION 16. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4 SECTION 17. This Act shall take effect on July 1, 2023,  
5 and shall be repealed five years after the adoption of the rules  
6 promulgated by the department to implement this Act; provided  
7 that if there are moneys remaining in the extended producer  
8 responsibility special fund when this Act is repealed, the  
9 department of health and the counties may continue to expend the  
10 remaining moneys in a manner consistent with this Act after  
11 June 30, 2028, until all moneys have been expended.

12

INTRODUCED BY:

  
\_\_\_\_\_



# S.B. NO. 1458

**Report Title:**

Department of Health; Counties; Extended Producer Responsibility; Waste Reduction; Packaging; Fast-Moving Consumer Goods; Special Fund; Appropriations

**Description:**

Establishes an Extended Producer Responsibility Program. Requires certain producers of fast-moving consumer goods to register with the Department of Health and pay an annual fee based on the amount of packaging volume the covered producer places on the market each calendar year. Provides for the deposit of fees into an Extended Producer Responsibility Special Fund. Provides for the expenditure of moneys from the Extended Producer Responsibility Special Fund for the creation of a report that assesses the resources needed to reduce the volume of packaging waste sent to landfills or power plants that burn municipal solid waste as a fuel by fifty per cent and eighty per cent by a date to be determined by rule. Appropriates funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

