

SENATE BILL 573

By Campbell

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 67 and Title 68, relative to solid waste.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 211, is amended by adding the following as a new part:

68-211-1101.

(a) This part is known and may be cited as the "Tennessee Waste Reduction and Recycling Act."

(b) It is the intent of the general assembly that this part affect the development and implementation of a comprehensive approach to addressing packaging waste in this state, to include:

(1) Recovering valuable materials that would otherwise be lost to landfills, litter, and incineration while developing markets for these materials and supporting a circular economy in this state;

(2) Providing financial stability to local recycling systems and enabling the investment in recycling infrastructure and jobs; and

(3) Engaging producers of packaging in the innovative reduction and reuse of packaging materials.

68-211-1102.

As used in this part:

(1) "Advisory Board" means the producer responsibility program advisory board, established under § 68-211-1103;

(2) "Covered materials":

(A) Means packaging materials, except as provided in subdivision

(2)(B); and

(B) Does not include:

(i) Packaging materials intended to be used for the long-term storage or protection of a durable product and that are intended to transport, protect, or store the product for at least five (5) years;

(ii) Packaging material used exclusively in industrial or manufacturing processes;

(iii) Packaging material used to contain a product that is regulated as a drug, medical device, or dietary supplement by the federal food and drug administration under the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. § 301 et seq.), or any equipment and materials used to manufacture such products;

(iv) Packaging material used to contain a product that is regulated under the Virus-Serum-Toxin Act, as amended (21 U.S.C. § 151 et seq.);

(v) Packaging material used to contain a product that is required to be sold in packaging material that meets the requirements of the Poison Prevention Packaging Act, as amended (15 U.S.C. § 1471 et seq.); and

(vi) Any other material that the department, after consultation with the advisory board, determines by rule to not be a covered material;

(3) "Department" means the department of environment and conservation;

(4) "Packaging materials":

(A) Means, regardless of recyclability, a part of a package or container, including material that is used for the containment, protection, handling, delivery, and presentation of a product that is sold, offered for sale, imported, or distributed in this state; and

(B) Includes:

(i) Primary, secondary, and tertiary packaging intended for the consumer market; and

(ii) Service packaging designed and intended to be filled at the point of sale, including carry-out bags, bulk goods bags, and take-out and home delivery food service packaging;

(5) "Producer":

(A) Means a person who:

(i) Uses covered materials for the sale or distribution of a product in this state under the person's own name or brand;

(ii) Is a licensee of a trademark under which a covered material is sold, offered for sale, distributed, or otherwise used in a commercial enterprise in this state, regardless of whether the trademark is registered; or

(iii) Imports into this state a product that includes a covered material and that is sold, offered for sale, distributed, or otherwise used in a commercial enterprise in this state; and

(B) Does not include:

(i) A person with less than one million dollars (\$1,000,000) in realized gross total revenue during the immediately preceding calendar year;

(ii) A person who used less than one (1) ton of covered materials for products sold or distributed within or into this state during the immediately preceding calendar year;

(iii) A governmental entity of this state or a political subdivision of this state; or

(iv) A nonprofit organization that is exempt from federal income taxation under § 501(a) of the Internal Revenue Code, codified in 26 U.S.C. § 501(a), as an organization described in § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3);

(6) "Producer responsibility organization", or "PRO", means a nonprofit organization that is created by a group of producers to implement a producer responsibility plan;

(7) "Readily recyclable material" means a covered material that is included on the minimum recyclable list;

(8) "Recyclable" means a covered material that can technically and safely be recycled;

(9) "Recycling":

(A) Means the process by which recovered materials are transformed into new products, including the collection, separation, processing, and reuse of recovered materials either directly or as raw materials for the manufacture of new products; and

(B) Does not include:

(i) Energy recovery or energy generation by means of combustion;

(ii) Use of covered materials as or in production of a fuel;

or

(iii) Landfill disposal of discarded covered materials; and

(10) "Recycling services" means the services provided for the recovery and recycling of covered materials by local governments and other providers, including the collection, transportation, processing of covered materials from the consumer to the end market, curbside services, and drop-off centers.

68-211-1103.

(a) The commissioner of environment and conservation shall appoint a producer responsibility program advisory board.

(b) The advisory board is administratively attached to the department; provided, the department may select an impartial, third-party facilitator to convene and provide administrative support to the advisory board.

(c) The membership of the advisory board must represent all geographic regions of this state, including urban and rural counties and municipalities. The advisory board consists of the following thirteen (13) members:

(1) Three (3) voting members representing local governments in this state;

(2) One (1) voting member representing a materials recovery facility;
(3) One (1) voting member representing a hauler of recyclables;
(4) One (1) voting member representing an environmental nonprofit organization;

(5) One (1) voting member representing a community-based nonprofit organization working in the area of solid waste;

(6) One (1) voting member representing a trade association or chamber of commerce, or other business advocacy organization representing businesses that are headquartered in this state;

(7) One (1) voting member representing a packaging material supplier that is not a producer, with the member rotating to a packaging supplier of a different type of packaging material each term;

(8) One (1) voting member who has experience representing underserved communities;

(9) One (1) voting member representing a solid waste landfill;

(10) The commissioner of environment and conservation, or the commissioner's designee, who shall serve as a non-voting member; and

(11) One (1) non-voting member representing a PRO.

(d) The commissioner shall appoint the initial advisory board members by July 1, 2024. In making appointments to the advisory board, the commissioner shall strive to ensure that the makeup of the advisory board reflects and represents the demographic diversity of persons in this state.

(e) The members of the advisory board are appointed for terms of four (4) years. In making the initial appointments, the members appointed pursuant to subdivisions (c)(2)-(7) are appointed for four-year terms, and the members appointed pursuant to

subdivisions (c)(1), (8), (9), and (11) are appointed for two-year terms. Thereafter, all appointments are for the full four-year term. In the event of a vacancy, the commissioner shall fill the vacancy for the unexpired term.

(f) After all initial appointments to the advisory board are made, but no later than August 31, 2024, the commissioner, or the impartial, third-party facilitator selected under subsection (b), shall call the first meeting of the advisory board. At the first meeting, and at the first meeting of each year ending in an even number thereafter, the advisory board shall elect from among its appointed members a chair, vice chair, and any other officers deemed necessary.

(g) After the first meeting of the advisory board, the advisory board shall meet at the call of the chair and not less than two (2) times per year.

(h) Meetings of the advisory board must comply with the open meeting requirements of title 8, chapter 44.

(i) All records of the advisory board are public records for purposes of the public records law, compiled in title 10, chapter 7.

(j) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. All members of the advisory board shall serve as such without compensation, but are eligible for reimbursement of necessary traveling and other appropriate expenses while engaged in the work of the advisory board.

(k) If an appointed member is absent from more than two (2) consecutive meetings of the advisory board without good cause, then a vacancy is created.

(l) The advisory board shall:

- (1) Advise the PRO throughout the needs assessment process, as described in § 68-211-1106(a), and review the needs assessment;
- (2) Advise the PRO on the development of producer responsibility plan proposals, as described in § 68-211-1106(b);
- (3) Review a producer responsibility plan proposal submitted to the department under § 68-211-1105(b)(3), and recommend that the department approve or reject the proposal;
- (4) Review an individual producer responsibility program plan proposal submitted to the department under § 68-211-1108, and recommend that the department approve or reject the proposal; and
- (5) Review the annual reports required by § 68-211-1107.

68-211-1104.

The department shall:

- (1) Review and update a list of chemicals of high concern in packaging at least every three (3) years;
- (2) Consult with the producer responsibility organization and the advisory board in the development of the producer responsibility plan proposal;
- (3) Approve or reject a producer responsibility plan proposal submitted to the department under § 68-211-1105(b)(3);
- (4) Approve or reject an individual producer responsibility program plan proposal submitted to the department under § 68-211-1108;
- (5) Review the annual reports required by § 68-211-1107;
- (6) Administer, review, oversee, and enforce the producer responsibility plan;

(7) Review and annually update a minimum recyclables list that considers the availability of recycling services for each material; and

(8) Promulgate rules necessary to implement and administer this part.

All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

68-211-1105.

(a) By July 1, 2024, a producer shall establish a producer responsibility organization.

(b) The producer responsibility organization shall:

(1) Facilitate at least one (1) needs assessment, as described in § 68-211-1106, every ten (10) years in consultation with the advisory board and the department;

(2) Consult with the advisory board and the department in the development of the producer responsibility plan proposal;

(3) Submit a producer responsibility plan proposal that covers a period of five (5) years to the department and the advisory board; and

(4) Operate and administer the department-approved producer responsibility plan as a producer responsibility program.

(c) By July 1, 2025, the producer responsibility organization shall submit the results of the initial needs assessment to the department and the advisory board.

(d) By July 1, 2026, the producer responsibility organization shall submit a producer responsibility plan proposal to the department and the advisory board. When approved by the department, the PRO shall begin implementation of the producer responsibility plan within six (6) months of approval.

68-211-1106.

(a) The needs assessments required under § 68-211-1105(b)(1) must include:

(1) The service availability, capacity, performance, and gaps in the reuse and recycling services provided to residential and non-residential entities throughout this state and the prices paid for reuse and recycling services;

(2) The documented cost of reuse and recycling services incurred by public and private service providers to provide recycling services;

(3) The processing capacity of existing infrastructure, the additional infrastructure needed to meet or exceed the recycling levels set by the producer responsibility plan proposal, and opportunities for the use of innovative new technologies;

(4) The levels of contamination at recovery facilities and the impacts of the contamination;

(5) An evaluation of the opportunities and costs of various service methods to increase reuse and recycling rates overall;

(6) An assessment of covered material litter;

(7) The education needs in this state pertaining to reuse and recycling;
and

(8) Assessment and identification of materials for recommendation for inclusion on the minimum recyclables list maintained under § 68-211-1104(7).

(b) The producer responsibility plan proposal required under § 68-211-1105(b)(3) must:

(1) Include a list of participating producers;

(2) Describe how the producer responsibility plan proposal will address and implement the findings of the needs assessment in a fair and balanced manner;

- (3) Ensure recycling services for materials listed on the minimum recyclables list are fairly available to all residents;
- (4) Describe how staffing and administering the implementation of the producer responsibility plan will be handled;
- (5) Describe the manner in which the PRO solicited and considered input from stakeholders;
- (6) Describe how the PRO will track compliance amongst producers and will bring producers into compliance;
- (7) Establish a funding mechanism from PRO dues, as described in subsection (c), which will vary based on:
 - (A) The quantity of covered materials a producer sells, distributes, or imports in this state;
 - (B) Whether or not the covered materials are readily recyclable, which determination must account for associated impacts as well as the extent to which recycling services for a covered material are accessible to the consumer. The lowest amount of dues must apply to producers who use covered materials that are reusable and the highest dues must apply to producers who use covered materials that are not readily recyclable;
 - (C) The inclusion of chemicals of high concern in covered materials. The dues must be higher for producers who use covered materials that contain higher levels of high concern chemicals than other producers; and
 - (D) The use of recycled content in covered materials. The dues must be lower for producers who use covered materials that contain higher amounts of recycled content than other producers;

(8) Describe the strategy for reducing the quantity of covered materials in this state, including how producers participating in a producer responsibility plan will work together to reduce packaging through product design and program innovations;

(9) Describe the strategy for increasing packaging reuse in this state, including how producers will work together to design and implement innovative reuse processes;

(10) Describe the actions that will be taken to eliminate chemicals of high concern in materials used in the sale or distribution of any covered materials;

(11) Describe the actions taken or that will be taken for public outreach, education, and communication concerning the recycling of covered materials;

(12) Describe the process by which recycling services may request reimbursement for costs associated with transporting, collecting, and processing covered materials that are identified in the producer responsibility plan;

(13) Describe how the PRO will work with recycling services to utilize and expand on existing recycling services and infrastructure;

(14) Describe actions to be taken to reduce and remediate covered materials litter; and

(15) Include additional information as required by the advisory board and the department.

(c) In order to implement the producer responsibility plan, the PRO shall use a financing method that:

(1) Provides annual rates per ton of covered materials for reimbursing recycling services for one hundred percent (100%) of reasonable costs associated with:

- (A) Collecting covered materials;
 - (B) Transporting covered materials to a recycling facility;
 - (C) Processing covered materials in preparation for recycling, including removing contamination; and
 - (D) Recycling covered materials that are diverted to be recycled;
- (2) Establishes the reimbursement rates required by subdivision (c)(1)

based on:

- (A) The distance to the nearest recycling facility;
 - (B) The commodity value of recycled covered materials;
 - (C) The revenue generated from covered materials;
 - (D) The population size of a local jurisdiction; and
 - (E) Any other socioeconomic or geographic factors, as determined by the department;
- (3) Invests in reuse and recycling infrastructure improvement;
- (4) Covers the costs associated with implementing the producer

responsibility plan, including:

- (A) Administrative costs of the PRO;
 - (B) Reimbursing recycling services costs;
 - (C) Administration, review, oversight, and enforcement of the producer responsibility plan by the department; and
 - (D) Implementing the strategy in the producer responsibility plan for reducing covered material;
- (5) Covers the cost of covered material litter remediation and prevention;

(6) Places any surplus money generated by the program back into the program for program improvements or a reduction in producer responsibility dues; and

(7) Maintains a financial reserve sufficient to operate the program in a fiscally responsible manner.

(d) The PRO shall establish performance goals for each covered material type at five-, ten-, and fifteen-year rolling intervals. The performance goals must be informed by PRO experience and knowledge and include post-consumer recycled content goals, recyclability and recycling rate goals, reuse goals, packaging reduction goals, contamination reduction rate goals, and any other goals required by the advisory board or the department. The PRO shall review existing rates and dates for performance goals from other programs to use in establishing a minimum that aims to exceed the national average.

(e) On or after July 1, 2028, it is a violation of this part, subject to the penalties in § 68-211-1109, for a person to sell or distribute in this state any packaging designed to include ortho-phthalates, bisphenols, per and polyfluoroalkyl substances (PFAS), styrene, lead and lead compounds, cadmium, mercury, hexavalent chromium and hexavalent chromium compounds, perchlorate, benzophenone and its derivatives, formaldehyde, halogenated flame retardants, toluene, and other chemicals of high concern as determined by rule of the department.

(f) This part does not prohibit a PRO from establishing a deposit-return system as a strategy for increasing the capture and reuse or recycling of covered materials.

(g) A producer responsibility plan expires five (5) years from the date that the department approves the plan, unless the plan is renegotiated, renewed, or amended and approved by the department.

68-211-1107.

(a) The PRO shall annually report to the department and the advisory board the progress toward meeting producer responsibility plan requirements and goals for the immediately preceding year.

(b) The progress report required by subsection (a) must include:

(1) A detailed description of the reimbursement methods used for collecting, transporting, and processing covered materials;

(2) The status of achieving the performance goals established under § 68-211-1106(d), and if the goals have not been achieved, a description of the actions proposed to achieve the goals;

(3) The amount of each covered material type collected in this state, including the method of disposition of each covered material type;

(4) The amount of each collected covered material type exported from this state for processing broken down by destination and disposition;

(5) The amount and disposition of each covered material not recycled as a result of excessive contamination;

(6) The total cost of implementing the producer responsibility plan, as determined by an independent financial auditor;

(7) Samples of all educational materials provided to consumers or other entities pursuant to this part;

(8) A detailed description of the actions taken, and an evaluation of the methods used, to disseminate educational materials, including recommendations, if any, for how the educational component of the producer responsibility plan can be improved;

(9) A detailed description of investments made in market development for improving reuse, contamination reduction, and recycling infrastructure;

(10) A detailed description of actions taken and progress made in reducing covered material litter;

(11) Changes to the PRO dues structure; and

(12) Other information as required by the advisory board or the department.

68-211-1108.

(a) As an alternative method for participating in the producer responsibility program, a producer may submit to the advisory board and the department an individual producer responsibility program plan proposal, if the producer notifies the department of its intent to submit an individual plan no later than July 1, 2025, and by July 1 of each subsequent year. An individual producer responsibility program plan proposal must:

(1) Comply with the requirements of § 68-211-1106(b);

(2) Describe how the producer participating in the individual program will contribute to the costs of the department overseeing the program; and

(3) Describe any alternative collection programs operated by the producer and their recycling rates.

(b) The advisory board shall review an individual producer responsibility program plan proposal submitted under subsection (a) and make a recommendation concerning approval of the proposal to the department.

68-211-1109.

(a) On or after January 1, 2027, if the department has approved a producer responsibility plan, a producer shall not sell or distribute any products packaged in

covered materials in this state unless the producer is participating in the PRO producer responsibility plan or an individual producer responsibility plan.

(b) A producer or PRO that violates this part is subject to:

(1) For a first violation, a civil penalty of five thousand dollars (\$5,000) for the first day that the violation occurs and one thousand five hundred dollars (\$1,500) for each additional day the violation continues;

(2) For a second violation, a civil penalty of ten thousand dollars (\$10,000) for the first day that the violation occurs and three thousand dollars (\$3,000) for each additional day the violation continues; and

(3) For a third or subsequent violation, a civil penalty of twenty thousand dollars (\$20,000) for the first day that the violation occurs and six thousand dollars (\$6,000) for each additional day the violation continues.

(c) The department may rescind approval for a PRO producer responsibility plan or individual producer responsibility program plan at any time for good cause. If the department rescinds a plan, the PRO or individual producer may amend and resubmit the plan for approval.

(d) If, based upon the annual report, goals have not been met, the department may require the PRO to amend the producer responsibility plan or a producer to amend its individual producer responsibility program plan.

SECTION 2. Tennessee Code Annotated, Section 4-29-246(a), is amended by inserting the following as a new subdivision:

() Producer responsibility program advisory board, created by § 68-211-1103;

SECTION 3. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2023, the public welfare requiring it.