

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 4518

(SENATE AUTHORS: DZIEDZIC)

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OFFICIAL STATUS
Introduction and first reading
Referred to Environment and Natural Resources Policy and Legacy Finance

- 1.1 A bill for an act
- 1.2 relating to solid waste; establishing product stewardship program for packaging
- 1.3 materials; establishing labeling requirements; requiring reports; requiring
- 1.4 rulemaking; proposing coding for new law in Minnesota Statutes, chapter 115A.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. [115A.1421] DEFINITIONS.
- 1.7 (a) For purposes of sections 115A.1421 to 115A.1443, the terms defined in this section
- 1.8 have the meanings given.
- 1.9 (b) "Brand" means a name, symbol, word, or mark that identifies a product, rather than
- 1.10 its components, and attributes the product to the owner of the name, symbol, word, or mark.
- 1.11 (c) "Commissioner" means the commissioner of the Pollution Control Agency.
- 1.12 (d) "Compost" means a stable humus-like material produced by the controlled biological
- 1.13 decomposition of organic matter through active management, but does not mean sewage,
- 1.14 septage, or materials derived from sewage or septage.
- 1.15 (e) "Compostable" means packaging that is certified by an independent third-party
- 1.16 certifier as capable of becoming compost through controlled aerobic biological
- 1.17 decomposition.
- 1.18 (f) "Contaminant" means a material that is:
- 1.19 (1) set out for recycling collection and is not properly prepared and on the list of materials
- 1.20 accepted for recycling collection by a recycling collection program; or
- 1.21 (2) shipped to a recycling end market and is not accepted or desired by that end market.

(g) "Contamination" means the presence of one or more contaminants in recyclable materials in an amount or concentration that negatively impacts the value of the material or negatively impacts a processor's ability to sort the material.

(h) "European article number" or "EAN" means a 13-digit barcode used for product identification purposes.

(i) "Franchisee" means a person granted a license by a franchisor to use the franchisor's trade name, service mark, or related characteristic and to share in the franchisor's proprietary knowledge or processes under an oral or written agreement for a definite or indefinite period.

(j) "Franchisor" means a person that grants a license to a franchisee to use the person's trade name, service mark, or related characteristic and to share in the person's proprietary knowledge or processes under an oral or written agreement for a definite or indefinite period.

(k) "Low-volume producer" means a producer that sold, offered for sale, or distributed for sale in or into the state during the previous calendar year products contained, protected, delivered, presented, or distributed in or using more than one but less than 15 tons of packaging material.

(l) "Material recovery facility" means a facility that receives, processes, and sells or otherwise distributes postconsumer materials for recycling.

(m) "Minnesota Tribal governments" has the meaning given in section 10.65, subdivision 2, clause (4).

(n) "Municipality" means a statutory or home rule charter city, town, or regional association acting on behalf of a city or town.

(o) "Nonreusable packaging" means packaging that is not reusable.

(p) "Packaging material" means any part of a package or container, including material used for containing, protecting, handling, delivering, transporting, distributing, and presenting a product that is sold, offered for sale, imported, or distributed in the state, including through Internet transactions. Packaging materials includes bags and secondary or transport packaging. Packaging material does not include:

(1) a discrete type of material intended to be used for long-term storage or protecting a durable product that can be expected to be usable for that purpose for a period of at least five years;

(2) a beverage container; or

(3) packaging that is reusable.

3.1 (q) "Political subdivision" has the meaning given in section 13.02, subdivision 11.

3.2 (r) "Postconsumer recycled material" means new material that is produced from
3.3 recovering, separating, collecting, and reprocessing material originally sold for consumption
3.4 and that would otherwise be disposed of or processed as waste. Postconsumer recycled
3.5 material does not include postindustrial material, preconsumer material, or material generated
3.6 by combustion, incineration, pyrolysis, gasification, solvolysis, chemical recycling, or any
3.7 other high-heat or chemical conversion process.

3.8 (s) "Producer" means:

3.9 (1) an entity that manufactures or uses in a commercial enterprise, sells, offers for sale,
3.10 or distributes packaging material in the state under the brand of the manufacturer;

3.11 (2) an entity that is not the manufacturer of packaging material but is the owner or
3.12 licensee of a trademark under which the covered product is used in commercial enterprise,
3.13 sold, offered for sale, or distributed in the state, whether or not the trademark is registered;
3.14 or

3.15 (3) an entity that imports packaging material into the United States or the state for use
3.16 in a commercial enterprise, sale, offer for sale, or distribution in the state.

3.17 Producer includes a low-volume producer and a franchisor of a franchise located in the
3.18 state, but does not include the franchisee operating the franchise. Producer does not include
3.19 an entity exempted from the program under section 115A.1423, paragraph (h).

3.20 (t) "Product stewardship organization" means the not-for-profit entity contracted by the
3.21 commissioner and authorized to collect and distribute producer fees.

3.22 (u) "Product stewardship program" or "program" means the program implemented under
3.23 sections 115A.1421 to 115A.1443 by the product stewardship organization to assess and
3.24 collect fees from producers based on the amount, by weight, of nonreusable packaging sold,
3.25 offered for sale, or distributed for sale in or into the state by each producer to pay for:

3.26 (1) investments in product redesign and reusable systems;

3.27 (2) fees to municipalities and political subdivisions;

3.28 (3) certain recycling and waste management programs; and

3.29 (4) investments in reuse and recycling education and infrastructure.

3.30 (v) "Readily recyclable" means packaging material for which the commissioner
3.31 determines that entities that process recyclable material generated in the state:

4.1 (1) can sort the material; and
4.2 (2) are willing to purchase the material in full bales when fully sorted in quantities equal
4.3 to or in excess of its supply, based on data from the previous two calendar years.

4.4 Readily recyclable does not include packaging material that contains a toxic substance.

4.5 (w) "Recycling" has the meaning given in section 115A.03, subdivision 25b.

4.6 (x) "Returnable" means that packaging can be conveniently returned after use to a reuse
4.7 or return system with an average annual return rate of no less than 80 percent.

4.8 (y) "Reusable" means a product that is:

4.9 (1) designed to be used repeatedly and is returnable for a number of use cycles that
4.10 exceeds those specified in section 115A.1435;

4.11 (2) free of toxic substances;

4.12 (3) safe for washing and sanitizing according to applicable food safety laws; and

4.13 (4) capable of being recycled at the end of use, with the exception of ceramic products.

4.14 (z) "Toxic substance" means a chemical or class of related chemicals listed in section
4.15 115A.1437 or a chemical designated as a chemical of high concern by the Department of
4.16 Health under section 116.9402.

4.17 (aa) "Unit" means each discrete component of a package or container, including material
4.18 that is used for containing, protecting, handling, delivering, transporting, distributing, and
4.19 presenting a product that is sold, offered for sale, imported, or distributed in the state,
4.20 including through Internet transactions.

4.21 (bb) "Universal product code" or "UPC" means a standard for encoding a set of lines
4.22 and spaces that can be scanned and interpreted into numbers for product identification
4.23 purposes. Universal product code includes any industry-accepted barcode used for product
4.24 identification purposes in a manner similar to a UPC, including but not limited to an EAN.

4.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.26 **Sec. 2. [115A.1422] PRODUCT STEWARDSHIP PROGRAM.**

4.27 (a) Sections 115A.1421 to 115A.1443 establish a product stewardship program by which
4.28 producers of packaging material that participate in a product stewardship organization must
4.29 make changes to their products' design to reduce packaging consumption and waste and
4.30 must pay fees based on the weight and type of packaging material sold, offered for sale, or
4.31 distributed for sale in or into the state.

(b) The product stewardship organization must assess and collect fees from producers and establish and manage the packaging responsibility account under section 115A.1430 to be used to award grants to eligible projects that reduce packaging waste by investing in reuse and refill systems; recycling infrastructure; and reuse, refill, and recycling education in the state.

(c) The commissioner must conduct a statewide needs assessment to determine the barriers and opportunities to reduce packaging waste and increase waste reduction, reuse, and recycling.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **[115A.1423] PRODUCER RESPONSIBILITIES; EXEMPTIONS.**

(a) Beginning two years after the effective date of this section, a producer may not sell, offer for sale, or distribute for sale in or into the state a product contained, protected, delivered, presented, or distributed in or using packaging material unless the producer complies with all applicable requirements of this section.

(b) Notwithstanding a producer's failure to comply with all applicable requirements of this section with respect to a type or types of packaging material, the commissioner may authorize the sale or distribution for sale in or into the state of another product or products of the producer that are contained, protected, delivered, presented, or distributed in or using a different type or types of packaging material for which that producer complies with all applicable requirements of this section.

(c) A producer must annually report to the product stewardship organization:

(1) the total amount of packaging material, by weight, sold, offered for sale, or distributed for sale in or into the state by the producer in the previous calendar year;

(2) the total amount of packaging material, by unit, sold, offered for sale, or distributed for sale in or into the state by the producer in the previous calendar year;

(3) the percentage of all packaging material the producer sold, offered for sale, or distributed for sale into the state through Internet transactions; and

(4) all information necessary for the product stewardship organization to meet its obligations under section 115A.1426.

(d) A producer must annually report to the commissioner information necessary for the commissioner to make a determination of the producer's compliance with:

(1) the nonreusable packaging reduction requirements of section 115A.1434;

- 6.1 (2) the reuse system requirements of section 115A.1435;
6.2 (3) the recycling or postconsumer recycled material requirements of section 115A.1436;
6.3 (4) the toxic substances in packaging requirements of section 115A.1437; and
6.4 (5) the labeling requirements of section 115A.1441.

6.5 (e) A producer that is not a low-volume producer must describe the methods used to
6.6 determine the amount reported under this section for each type of packaging material
6.7 associated with the producer's products, a description of the characteristics of each type of
6.8 packaging material, and a list of the producer's brands and the UPCs of the products
6.9 associated with each type of packaging material.

6.10 (f) A producer that is unable to fully satisfy the reporting requirements of this section
6.11 because of failure to obtain sufficient information regarding the characteristics of the
6.12 packaging associated with the producer's products sold, offered for sale, or distributed for
6.13 sale in or into the state may alternatively report an estimate of the total amount of that
6.14 packaging based on unit quantities and a description of methods used to calculate the
6.15 estimate.

6.16 (g) A producer must pay fees established by the commissioner under section 115A.1428
6.17 to the product stewardship organization.

6.18 (h) Notwithstanding any provision of this section to the contrary, a producer is exempt
6.19 from sections 115A.1421 to 115A.1443 in any calendar year in which:

6.20 (1) the producer received less than \$2,000,000 in total gross revenue during the previous
6.21 calendar year; or

6.22 (2) the producer sold, offered for sale, or distributed for sale in or into the state during
6.23 the previous calendar year products contained, protected, delivered, presented, or distributed
6.24 in or using less than one ton of packaging material in total.

6.25 (i) Within 30 days of receiving a request from the commissioner, a producer claiming
6.26 an exemption under this section must provide to the commissioner sufficient information
6.27 to demonstrate that the producer meets the requirements for an exemption under paragraph
6.28 (h).

6.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.1 Sec. 4. **[115A.1424] PRODUCT STEWARDSHIP ORGANIZATION; SELECTION.**

7.2 (a) Consistent with the requirements of this section, the commissioner must select and
7.3 enter into a contract with one product stewardship organization to operate a product
7.4 stewardship program.

7.5 (b) Consistent with applicable competitive bidding requirements under state purchasing
7.6 laws, the commissioner must issue a request for proposals for operating a product stewardship
7.7 program. The proposals must address operation of the program for ten years and must
7.8 include, at a minimum:

7.9 (1) a description of how the bidder will administer the program, including mechanisms
7.10 or processes to assist producers in reporting required information and to share methods by
7.11 which packaging material used by a producer may be modified so as to reduce the producer's
7.12 fee obligations and comply with the targets for reduction and reuse required in section
7.13 115A.1435 and targets for recycling or postconsumer recycled material required in section
7.14 115A.1436;

7.15 (2) a description of how the bidder intends to solicit and consider input from interested
7.16 persons, including but not limited to producers, political subdivisions, environmental
7.17 organizations, waste management and recycling establishments, and reuse system operators,
7.18 regarding the bidder's operation of the program;

7.19 (3) a description of how the bidder intends to establish and manage the packaging
7.20 responsibility account;

7.21 (4) a financial assurance plan that ensures all funds held in the packaging responsibility
7.22 account under section 115A.1430 are immediately and exclusively forfeited and transferred
7.23 to or otherwise made immediately available to the commissioner when the product
7.24 stewardship organization's contract with the commissioner is terminated by the commissioner
7.25 or expires, unless the product stewardship organization enters into a new contract with the
7.26 commissioner before the organization's existing contract expires;

7.27 (5) a proposed budget outlining the anticipated costs of operating the product stewardship
7.28 program, including:

7.29 (i) identification of any start-up costs;

7.30 (ii) a description of the method by which the bidder intends to determine and collect
7.31 producer fees during the initial start-up period of program operations; and

7.32 (iii) methods that will be used to reimburse or require additional fees by producers after
7.33 the initial start-up period, based on producer reporting of the actual amount of packaging

8.1 material sold, offered for sale, or distributed for sale in or into the state during the initial
8.2 start-up period; and

8.3 (6) a certification that the bidder will not share, except with the commissioner, information
8.4 provided to the bidder by a producer that is identified by the producer as proprietary
8.5 information. The certification must include a description of the methods by which the bidder
8.6 intends to ensure the confidentiality of the information.

8.7 (c) In accordance with state purchasing laws, the commissioner must enter into one
8.8 contract with a bidder that has submitted a proposal that meets the requirements of this
8.9 section. The commissioner must select the product stewardship organization within one
8.10 year of the date on which the final program rules are adopted.

8.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.12 Sec. 5. **[115A.1425] PRODUCT STEWARDSHIP ORGANIZATION;**
8.13 **OBLIGATIONS.**

8.14 (a) The product stewardship organization must:

8.15 (1) collect and compile data from producers according to section 115A.1426;

8.16 (2) collect fees due from producers according to section 115A.1428;

8.17 (3) use fees collected from producers to fund the needs assessment required in section
8.18 115A.1429;

8.19 (4) distribute funds from the packaging responsibility account according to section
8.20 115A.1430;

8.21 (5) offer technical support to producers;

8.22 (6) fund third-party, independent audits of inbound and outbound recyclable material
8.23 generated in the state and disposal of inbound and outbound materials and litter audits that
8.24 are conducted at least annually; and

8.25 (7) comply with rules adopted to implement sections 115A.1421 to 115A.1443.

8.26 (b) A product stewardship organization may not make campaign contributions, lobby,
8.27 or bring administrative or court actions against the commissioner, any third-party inspectors,
8.28 or any other party in connection with the program.

8.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.1 Sec. 6. **[115A.1426] PRODUCT STEWARDSHIP ORGANIZATION; REPORTING**
9.2 **REQUIREMENTS.**

9.3 A product stewardship organization must annually submit to the commissioner and make
9.4 available on its publicly accessible website a report that includes, at a minimum, the following
9.5 information for the previous calendar year:

9.6 (1) contact information for the product stewardship organization;

9.7 (2) a list of participating producers and the brands and the UPCs of products associated
9.8 with each producer;

9.9 (3) the total amount, by both weight and number of units, of each type of packaging
9.10 material sold or offered for sale within the state;

9.11 (4) the total amount, by both weight and number of units, of packaging material sold or
9.12 offered for sale in the state that is reusable;

9.13 (5) a complete accounting of payments made to and by the product stewardship
9.14 organization during the previous calendar year;

9.15 (6) a list of any producer noncompliance known to the product stewardship organization
9.16 and the steps the product stewardship organization is taking to bring noncompliant producers
9.17 into compliance;

9.18 (7) a description of the infrastructure and education grants made by the product
9.19 stewardship organization in previous calendar years and an evaluation of how those grants
9.20 increased access to recycling and reuse systems in the state;

9.21 (8) an assessment of the progress made toward achieving program goals, including but
9.22 not limited to the goals established in sections 115A.1434 to 115A.1436;

9.23 (9) an assessment of whether the fee schedule for producers adopted by the commissioner
9.24 under section 115A.1428 has been successful in incentivizing improvements to the design
9.25 of packaging material, including increases in the percentage of reusable packaging and
9.26 decreases in overall quantity of packaging by number of units;

9.27 (10) an assessment of whether the investments made under sections 115A.1432 and
9.28 115A.1433 have been successful in increasing the amount of packaging material that is
9.29 readily recyclable or reusable packaging and in incentivizing improvements to the design
9.30 of packaging material;

(11) any proposals to change the program or modify investments in education and infrastructure designed to achieve program goals to reduce the amount of packaging material used, increase access, or otherwise increase program efficiency;

(12) results of representative inbound and outbound audits of recyclable material processed and sold by material recycling facilities in the state, waste characterization of municipal solid waste being disposed of in the state, and litter audits;

(13) results of a third-party financial audit of the product stewardship organization; and

(14) any additional information required by the commissioner.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. **[115A.1427] COMMISSIONER'S RESPONSIBILITIES.**

(a) Within one year of the effective date of this section, the commissioner must adopt rules under chapter 14 setting fees for producers according to section 115A.1428. Fees must be set at a rate that will incentivize reductions in overall packaging and the adoption of reuse systems, increase postconsumer recycled material, and promote using recyclable packaging.

(b) The commissioner must revise fees:

(1) at least every three years to reflect new data received about material use and management; or

(2) whenever the targets established in sections 115A.1434 to 115A.1436 are not met.

(c) Within six months of the effective date of this section, the commissioner must conduct a reduction, reuse, and recycling needs assessment according to section 115A.1429 to identify barriers and opportunities for reducing, reusing, and recycling packaging.

(d) The commissioner must evaluate the program each year to ensure its proper functioning and to prevent fraud, waste, or abuse in expending money.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. **[115A.1428] ASSESSMENT OF FEES.**

(a) The commissioner must establish the manner in which producer fees on packaging materials are calculated. Producer fees must be calculated based on:

(1) the packaging material type; and

11.1 (2) the quantity of each packaging material type, by weight, that the producer sells, offers
11.2 for sale, or distributes in the state.

11.3 (b) At a minimum, the commissioner must establish fees on the following packaging
11.4 material types:

11.5 (1) paper;

11.6 (2) cardboard;

11.7 (3) corrugated cardboard;

11.8 (4) generic paper or cardboard;

11.9 (5) wood;

11.10 (6) glass;

11.11 (7) polypropylene;

11.12 (8) polyethylene terephthalate (PET);

11.13 (9) high-density polyethylene (HDPE);

11.14 (10) expanded polystyrene (EPS);

11.15 (11) low-density polyethylene (LDPE);

11.16 (12) polystyrene;

11.17 (13) bioplastics;

11.18 (14) plastic film;

11.19 (15) other plastics;

11.20 (16) steel or ferrous;

11.21 (17) aluminum;

11.22 (18) tinplate;

11.23 (19) generic metals; and

11.24 (20) ceramics.

11.25 (c) Fees must reflect:

11.26 (1) the net cost of curbside collection, commercial collection, or transfer station operation;

11.27 (2) on-site processing costs for each readily recyclable packaging material type;

11.28 (3) management cost of nonreadily recyclable packaging;

- 12.1 (4) transportation cost for each packaging material type;
- 12.2 (5) the commissioner's cost to administer sections 115A.1421 to 115A.1443;
- 12.3 (6) the product stewardship organization's administrative costs; and
- 12.4 (7) any other program costs determined by the commissioner.
- 12.5 (d) Fees for each type of packaging must be structured to promote environmentally
- 12.6 beneficial packaging design. Fees must be higher for packaging material that is not readily
- 12.7 recyclable than for packaging material that is readily recyclable. No fee may be established
- 12.8 on packaging that is reusable.
- 12.9 (e) The fee schedule adopted under this section must provide for a flat fee option to be
- 12.10 assessed on a tiered basis so that a low-volume producer pays no more than \$500 per ton
- 12.11 of packaging and no more than \$7,500 in total annual fees.
- 12.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.
- 12.13 **Sec. 9. [115A.1429] STATEWIDE REDUCTION, REUSE, AND RECYCLING**
- 12.14 **NEEDS ASSESSMENT.**
- 12.15 (a) Within six months of the effective date of this section, the commissioner must conduct
- 12.16 a statewide needs assessment to identify barriers and opportunities for reducing, reusing,
- 12.17 and recycling packaging.
- 12.18 (b) The commissioner must issue a request for proposals to conduct the needs assessment.
- 12.19 The proposals must include, at a minimum, a description of how the bidder will conduct a
- 12.20 statewide needs assessment that, at a minimum, includes an evaluation of:
- 12.21 (1) current barriers affecting the establishment of reduction and reuse programs;
- 12.22 (2) opportunities to establish reduction and reuse programs;
- 12.23 (3) current needs affecting recycling access and availability;
- 12.24 (4) opportunities to improve access to recycling;
- 12.25 (5) the capacity, cost, and needs associated with collecting and transporting recyclable
- 12.26 material;
- 12.27 (6) the processing capacity, market conditions, and opportunities in the state and
- 12.28 regionally for recyclable material;
- 12.29 (7) barriers to the marketability of recyclable materials generated in the state and potential
- 12.30 solutions;

13.1 (8) the amount, by weight, of material that is recycled by each material recovery facility
13.2 that accepts packaging material from the state;

13.3 (9) consumer education needs with respect to reuse systems, recycling, and reducing
13.4 contamination in collected recyclable material;

13.5 (10) the following costs:

13.6 (i) net cost of curbside collection, commercial collection, or transfer station operation;

13.7 (ii) on-site processing cost for each readily recyclable packaging material type;

13.8 (iii) management cost of nonreadily recyclable packaging;

13.9 (iv) transportation cost for each packaging material type; and

13.10 (v) any other program costs determined by the commissioner;

13.11 (11) the availability of employment opportunities in recycling and reuse systems for
13.12 women and minorities;

13.13 (12) the sufficiency and implementation of local government requirements related to
13.14 multifamily housing recycling services; and

13.15 (13) the location of landfills, incinerators, and transfer stations within the state, the
13.16 socioeconomic conditions surrounding the sites, and the permitted pollution levels at each
13.17 facility.

13.18 (c) The commissioner must update and revise the needs assessment every three years,
13.19 using money from the packaging responsibility account established in section 115A.1430.

13.20 (d) Within 18 months after the effective date of this section, the commissioner must
13.21 submit a report on the results of the needs assessment to the chairs and ranking minority
13.22 members of the senate and house of representatives committees with primary jurisdiction
13.23 over environment policy and finance.

13.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

13.25 **Sec. 10. [115A.1430] PACKAGING RESPONSIBILITY ACCOUNT ESTABLISHED;**
13.26 **AUTHORIZED EXPENDITURES.**

13.27 (a) The product stewardship organization must establish and manage a packaging
13.28 responsibility account according to this section. The product stewardship organization must
13.29 deposit into the account all fees received from producers.

(b) Beginning one year after the first payment of fees by producers, and annually thereafter, the product stewardship organization must reimburse the commissioner from the packaging responsibility account for the commissioner's costs associated with administering sections 115A.1421 to 115A.1443, including:

(1) costs associated with performing, revising, and updating the needs assessment, as required under section 115A.1429; and

(2) costs incurred by the commissioner in adopting rules and in administering and enforcing sections 115A.1421 to 115A.1443 before the effective date of the contract entered into by the commissioner and the product stewardship organization.

(c) Beginning one year after the first payment of fees by producers, and annually thereafter, the product stewardship organization must retain a portion of the money in the packaging responsibility account to pay the costs associated with its administration of the product stewardship organization, as provided under section 115A.1431. Reimbursement may include costs associated with the formation of the product stewardship organization.

(d) Beginning one year after the first payment of fees by producers, and annually thereafter, the product stewardship organization must distribute all revenues in the packaging responsibility account remaining after the reimbursements under paragraphs (b) and (c) and in section 115A.1431, paragraph (b), in the following proportions and for the following purposes:

(1) 50 percent of the money must be used for recycling infrastructure and education grants, according to section 115A.1432;

(2) 25 percent of the money must be used for reuse infrastructure and education grants, according to section 115A.1432; and

(3) 25 percent of the money must be distributed to political subdivisions and Minnesota Tribal governments to address recycling needs in those communities according to section 115A.1433.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 11. [115A.1431] ADMINISTRATIVE EXPENSES.

(a) Beginning one year after the first payment of fees by producers, and annually thereafter, the product stewardship organization must reimburse the commissioner from the packaging responsibility account for all costs incurred in administering sections 115A.1421 to 115A.1443, including but not limited to:

- 15.1 (1) administration of the agency's contract with any third-party certifier;
- 15.2 (2) costs incurred by the commissioner in managing the agency's contract with the
- 15.3 product stewardship organization;
- 15.4 (3) costs incurred during rulemaking;
- 15.5 (4) costs incurred reviewing grant proposals under sections 115A.1432 and 115A.1433;
- 15.6 and
- 15.7 (5) costs incurred in reviewing compliance information from the product stewardship
- 15.8 organization and individual producers.
- 15.9 (b) Beginning one year after the first payment of fees by producers, and annually
- 15.10 thereafter, the product stewardship organization must retain money in the packaging
- 15.11 responsibility account sufficient to pay the cost of administering the product stewardship
- 15.12 program, which cost must be annually verified by a third-party financial audit paid for by
- 15.13 the product stewardship organization as required in section 115A.1426, clause (13).
- 15.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

15.15 Sec. 12. **[115A.1432] GRANTS FOR RECYCLING AND REUSE**

15.16 **INFRASTRUCTURE AND EDUCATION.**

- 15.17 (a) Any interested person, municipality, business, organization, or institution may apply
- 15.18 to the product stewardship organization for a grant to carry out a project or projects to
- 15.19 improve recycling or reuse infrastructure or provide educational programming or materials
- 15.20 regarding recycling or reuse.
- 15.21 (b) A project is eligible to receive a grant under this section only if it fulfills needs
- 15.22 identified in the needs assessment conducted under section 115A.1429 and assists producers
- 15.23 to meet the requirements of section 115A.1435 or 115A.1436.
- 15.24 (c) Reuse grants may be used to invest in collection systems, washing systems, and
- 15.25 technology for tracking and data collection and to make capital expenditures on new and
- 15.26 emerging recycling technology, equipment, or facilities.
- 15.27 (d) A grant awarded for reuse infrastructure or education must meet at least one of the
- 15.28 following goals:
- 15.29 (1) increase transition of the packaging material from nonreusable to reusable;
- 15.30 (2) increase access to reuse infrastructure in the state;
- 15.31 (3) promote the circular economy;

(4) develop reuse instructions that are, to the extent practicable, consistent statewide, easy to understand, and easily accessible; and

(5) develop, in consultation with local governments and other stakeholders, reuse outreach and education programs and materials that are coordinated across regions of the state.

(e) The commissioner must review all grants proposed to be awarded by the product stewardship organization under this section. No grant may be awarded under this section that has not been approved by the commissioner.

(f) The commissioner must approve or deny a grant award proposed by the product stewardship organization within 90 days of receiving a request for review from the product stewardship organization.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 13. [115A.1433] GRANTS TO POLITICAL SUBDIVISIONS AND MINNESOTA TRIBAL GOVERNMENTS.

(a) The commissioner must adopt rules specifying the manner in which the product stewardship organization must provide funding to political subdivisions and Minnesota Tribal governments to address recycling needs, as determined by the needs assessment under section 115A.1429.

(b) Political subdivisions and Minnesota Tribal governments are eligible to receive funding only if they provide recycling services to all residents or members within their jurisdictional control.

(c) Two or more political subdivisions or Minnesota Tribal governments that provide recycling services may elect to jointly receive funding, provided that they demonstrate that their recycling services are interconnected.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 14. [115A.1434] NONREUSABLE PACKAGING REDUCTION REQUIREMENTS.

(a) A producer must reduce the total amount of nonreusable packaging by unit, on average and in the aggregate, across its brand according to the following schedule, measured by the length of time following the selection of the product stewardship organization under section 115A.1424:

(1) by ten percent, two years after;

17.1 (2) by 20 percent, four years after;

17.2 (3) by 30 percent, six years after;

17.3 (4) by 40 percent, eight years after; and

17.4 (5) by 50 percent, ten years after.

17.5 (b) The reductions required in paragraph (a) must be measured against the total amount
17.6 of packaging the producer sold, offered for sale, or distributed for sale in the state during
17.7 the calendar year in which this section became effective. For producers that did not sell,
17.8 offer for sale, or distribute for sale any packaging during the calendar year in which this
17.9 section became effective, the reductions required in paragraph (a) must be measured against
17.10 the first calendar year for which there is data on the amount of packaging the producer sold,
17.11 offered for sale, or distributed for sale in the state.

17.12 (c) The reductions required in this section may be achieved by eliminating nonreusable
17.13 packaging or by transitioning to a reuse model.

17.14 (d) A producer must report its compliance with the requirements of the applicable clause
17.15 of paragraph (a) to the commissioner.

17.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

17.17 Sec. 15. **[115A.1435] CRITERIA FOR NUMBER OF USES IN REUSE SYSTEMS.**

17.18 The commissioner must adopt rules that specify the minimum number of reuse cycles
17.19 required for each type of packaging material to be considered reusable, including but not
17.20 limited to:

17.21 (1) cups: a minimum of 125 uses;

17.22 (2) clamshells: a minimum of 50 uses;

17.23 (3) plates: a minimum of 63 uses; and

17.24 (4) glass bottles: a minimum of 20 uses.

17.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

17.26 Sec. 16. **[115A.1436] RECYCLING OR POSTCONSUMER RECYCLED**
17.27 **MATERIAL; REQUIREMENTS.**

17.28 (a) Each producer must ensure that all nonreusable packaging across its brand:

17.29 (1) is recycled at a rate of, at a minimum:

18.1 (i) 50 percent, five years after the selection of the product stewardship organization;

18.2 (ii) 80 percent, eight years after the selection of the product stewardship organization;

18.3 and

18.4 (iii) 90 percent, 12 years after the selection of the product stewardship organization; or

18.5 (2) incorporates, on average and in the aggregate, the following amount, by weight, of

18.6 postconsumer recycled material:

18.7 (i) 50 percent, five years after the selection of the product stewardship organization;

18.8 (ii) 80 percent, five years after the selection of the product stewardship organization;

18.9 and

18.10 (iii) 90 percent, 12 years after the selection of the product stewardship organization.

18.11 (b) In determining a producer's compliance with this section, a producer must rely on

18.12 the state data regarding packaging sales and material use, if available, or may alternatively

18.13 rely on the same type of data applicable to a region or territory of the United States that

18.14 includes the state.

18.15 (c) If a producer elects to rely on data regarding packaging sales and materials used

18.16 derived from data applicable to a region or territory of the United States that includes the

18.17 state, the producer must:

18.18 (1) prorate the regional or territorial data to estimate the state-specific figures based on

18.19 market share or population in a manner that ensures that the percentage of postconsumer

18.20 recycled material calculated for beverage containers sold in the state is the same percentage

18.21 as calculated for the larger region or territory; and

18.22 (2) document the methodology used to estimate the state-specific figures calculated

18.23 under clause (1).

18.24 (d) The commissioner may assess an administrative penalty under section 116.072 against

18.25 a producer that fails to comply with this section, calculated as follows:

18.26 (1) the commissioner must add the total amount by weight in pounds of postconsumer

18.27 recycled material and the total amount by weight in pounds of material that is not

18.28 postconsumer recycled material used by the producer in all the packaging the producer sold,

18.29 offered for sale, or distributed for sale in the state during the previous calendar year. Unless

18.30 otherwise determined by the commissioner, the figure calculated under this clause must be

18.31 calculated using the information reported by the manufacturer under paragraph (b);

19.1 (2) the commissioner must multiply the figure calculated under clause (1) by the
19.2 applicable minimum postconsumer recycled material percentage required under paragraph
19.3 (a), clause (2), during the previous calendar year;

19.4 (3) the commissioner must subtract from the figure calculated under clause (2) the total
19.5 amount by weight in pounds of postconsumer recycled material used by the producer in all
19.6 products the producer sold, offered for sale, or distributed for sale in packaging in the state
19.7 during the previous calendar years; and

19.8 (4) the commissioner must multiply that figure calculated under clause (3) by \$0.20. If
19.9 the figure calculated under this clause is less than or equal to zero, the commissioner may
19.10 not assess an administrative penalty.

19.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

19.12 Sec. 17. **[115A.1437] TOXIC SUBSTANCES IN PACKAGING.**

19.13 (a) Beginning one year after the effective date of this section, no person may manufacture,
19.14 knowingly sell, offer for sale, distribute for sale, or distribute for use in the state packaging
19.15 or reusable products containing any of the following toxic substances above the practical
19.16 quantification limit:

19.17 (1) ortho-phthalates;

19.18 (2) bisphenols;

19.19 (3) perfluoroalkyl and polyfluoroalkyl substances (PFAS);

19.20 (4) lead and lead compounds;

19.21 (5) hexavalent chromium and compounds;

19.22 (6) cadmium and cadmium compounds;

19.23 (7) mercury and mercury compounds;

19.24 (8) benzophenone and its derivatives;

19.25 (9) halogenated flame retardants;

19.26 (10) perchlorate;

19.27 (11) formaldehyde; and

19.28 (12) toluene.

(b) Beginning one year after the effective date of this section, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in the state packaging or reusable products containing:

(1) polyvinyl chloride;

(2) polystyrene; or

(3) polycarbonate.

(c) Beginning three years after the effective date of this section and every three years thereafter, the commissioner must, in collaboration with the Department of Health, designate at least ten but no more than 20 toxic substances in packaging, unless the commissioner determines that fewer than ten chemicals meet the definition of toxic substances. If the commissioner determines that fewer than ten toxic substances meet the definition, the commissioner must publish a detailed statement of findings and conclusions supporting the determination.

(d) Within 180 days of designating a toxic substance under paragraph (a), the commissioner must adopt rules to prohibit the newly designated toxic substance in packaging, with an effective date no later than two years after the rules are adopted.

(e) Beginning three years after the effective date of this section, a person may petition the commissioner to add a chemical or chemical class to the list of toxic substances in packaging. A petition must contain information that supports designating the chemical or chemical class as a toxic substance in packaging. Within 90 days of receiving a petition, the commissioner must either grant or deny the petition and publish a written explanation of the reasons for the decision. If the commissioner grants the petition in whole or part, the commissioner must designate the chemical or chemical class as a toxic substance in packaging and adopt rules within 180 days to prohibit the newly designated chemicals in packaging, with an effective date no later than two years after the rules are adopted.

(f) A producer that violates this section is subject to penalties according to the commissioner's rules. Notwithstanding any law to the contrary, any producer, distributor, retailer, or other responsible party that violates this section is subject to a fine for each violation and for each day that the violation occurs in an amount of not more than \$200,000.

EFFECTIVE DATE. This section is effective the day following final enactment.

21.1 Sec. 18. **[115A.1438] ANNUAL PRODUCT STEWARDSHIP PROGRAM REPORT.**

21.2 (a) Beginning one year after the product stewardship organization begins to collect fees
21.3 from producers, and on an annual basis thereafter, the commissioner, with the assistance of
21.4 the product stewardship organization, must submit a product stewardship program report
21.5 to the chairs and ranking minority members of the senate and house of representatives
21.6 committees with jurisdiction over environment policy and finance.

21.7 (b) The report must include, at a minimum:

21.8 (1) a list of all participating producers and the brands of products associated with each
21.9 producer;

21.10 (2) the number of units of packaging and type of packaging products, both nonreusable
21.11 and reusable, that were sold, offered for sale, or distributed in the state;

21.12 (3) a list of all packaging materials that are readily recyclable in the state;

21.13 (4) results of an audit of inbound and outbound readily recyclable packaging material
21.14 processed and sold within the state;

21.15 (5) a waste characterization study that specifies the quantity in tons of packaging material
21.16 in the waste stream, according to types of uses;

21.17 (6) a statewide litter survey that identifies the quantity of packaging material in litter
21.18 according to types of packaging material and the brands that produce the material;

21.19 (7) a list of the amount of packaging material, by packaging material type, sold or offered
21.20 for sale in the state that year;

21.21 (8) a description of grant awards made under section 115A.1432;

21.22 (9) the compliance of producers with the toxic substances ban under section 115A.1437;
21.23 and

21.24 (10) an assessment of program performance.

21.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

21.26 Sec. 19. **[115A.1439] PRODUCER COMPLIANCE INFORMATION.**

21.27 The product stewardship organization must provide the commissioner with a regularly
21.28 updated list of producers that are participating in the program and a list of UPCs of products
21.29 for which each producer has complied with the program's requirements and, if known to
21.30 the product stewardship organization, a list of producers that are not participating in the

22.1 program and are not compliant with the program's requirements. The commissioner must
22.2 post the information under this section on the agency website.

22.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

22.4 Sec. 20. **[115A.1440] ENFORCEMENT.**

22.5 (a) The commissioner must enforce sections 115A.1421 to 115A.1443 under sections
22.6 115.071 and 116.072. The commissioner may request a certificate of compliance from a
22.7 producer that attests that a producer's products meet the requirements of sections 115A.1421
22.8 to 115A.1443 and is signed by an authorized official of the producer. The commissioner
22.9 must post any certificate of compliance on the agency website for public access.

22.10 (b) The commissioner may bring a civil action to enjoin the sale, distribution, or
22.11 importation into the state of a packaging material in violation of sections 115A.1421 to
22.12 115A.1443.

22.13 (c) The penalties provided for in this section may be recovered in a civil action brought
22.14 by the attorney general.

22.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

22.16 Sec. 21. **[115A.1441] LABELING.**

22.17 (a) A producer must affix a label to all packaging material sold, offered for sale, or
22.18 distributed for sale in or into the state containing information from one of the following
22.19 clauses, in a format approved by the commissioner:

22.20 (1) the percentage of postconsumer recycled material in the packaging material;

22.21 (2) whether the packaging material is readily recyclable and how to recycle it; or

22.22 (3) whether the packaging material is compostable.

22.23 (b) All packaging material sold in the state must conform with the uniform labeling
22.24 system required by this section. Packaging that does not meet the requirements of this section
22.25 may not be sold, offered for sale, or distributed for sale in the state beginning two years
22.26 after the effective date of this section.

22.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

22.28 Sec. 22. **[115A.1442] ANTICOMPETITIVE CONDUCT.**

22.29 (a) A producer that organizes collection or recycling under sections 115A.1421 to
22.30 115A.1443 is authorized to engage in anticompetitive conduct to the extent necessary to

23.1 plan and implement its chosen organized collection or recycling system and is immune from
23.2 liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and
23.3 other regulation of trade or commerce.

23.4 (b) An organization of producers, an individual producer, and a producer's officers,
23.5 members, employees, and agents who cooperate with a political subdivision that organizes
23.6 collection or recycling under sections 115A.1421 to 115A.1443 are authorized to engage
23.7 in anticompetitive conduct to the extent necessary to plan and implement the organized
23.8 collection or recycling system, provided that the political subdivision actively supervises
23.9 the participation of each entity. An organization, entity, or person covered by this paragraph
23.10 is immune from liability under state law relating to antitrust, restraint of trade, unfair trade
23.11 practices, and other regulation of trade or commerce.

23.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

23.13 Sec. 23. **[115A.1443] RULEMAKING.**

23.14 The commissioner must, no later than one year after the effective date of this section,
23.15 adopt rules according to chapter 14 necessary to implement, administer, and enforce sections
23.16 115A.1421 to 115A.1443 .

23.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.