
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
SEPTEMBER 16, 2021

AN ACT

1 Providing for the sale and recycling of covered products;
2 imposing duties on the Department of Environmental
3 Protection; and providing for registration of manufacturers.

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11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 CHAPTER 1

14 PRELIMINARY PROVISIONS

15 Section 101. Short title.

16 This act shall be known and may be cited as the Extended
17 Producer Responsibility Act.

18 Section 102. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Brand." Symbols, words or marks that identify a covered
23 product, rather than any of its components.

24 "Covered products." Any part of a package or container,
25 regardless of recyclability or compostability, that includes
26 material that is used for the containment, protection, handling,
27 delivery and presentation of goods that are sold, offered for
28 sale or distributed to consumers in this Commonwealth, including
29 through an Internet transaction. The term includes, but is not
30 limited to, the following classes of materials:

1 (1) Containers and packaging, which includes all
2 flexible or rigid material, including, but not limited to
3 paper, carton, plastic, glass or metal and any combination of
4 such materials that:

5 (i) is used to contain, protect, wrap or present
6 products at any stage in the movement of the product from
7 the responsible party to the ultimate user or consumer,
8 including tertiary packaging used for transportation or
9 distribution directly to a consumer;

10 (ii) is intended for a single or short-term use and
11 designed to contain, protect or wrap products, including
12 secondary packaging intended for the consumer market; or

13 (iii) does not include packaging used for the long-
14 term protection or storage of a product or with a life of
15 not less than five years.

16 (2) Paper products, including:

17 (i) paper and other cellulosic fibers, whether or
18 not the products are used as a medium for text or images,
19 except books and materials in the newspapers class of
20 materials; or

21 (ii) containers or packaging used to deliver printed
22 matter directly to the ultimate consumer or recipient.

23 (3) The term does not include the following:

24 (i) paper products that could become unsafe or
25 unsanitary to recycle by virtue of the product's
26 anticipated use;

27 (ii) literary, text and reference bound books; and

28 (iii) beverage containers.

29 "Curbside recycling." A recycling program that serves single
30 and multifamily residential units, schools, State or local

1 agencies or institutions that are operated by a municipality
2 under a contract with the municipality, private entity or other
3 public agency or through approved local solid waste management
4 plans.

5 "Department." The Department of Environmental Protection of
6 the Commonwealth.

7 "Person." An individual, trust, firm, joint stock company,
8 business concern, corporation, government agency, partnership,
9 limited liability company or association.

10 "Post-consumer recycled content." The content of a product
11 made of recycled materials derived from post-consumer recycled
12 materials or feedstock.

13 "Producer." The following:

14 (1) a person who manufactures covered products under the
15 person's own name or brand and who sells or offers for sale
16 the covered material or product in this Commonwealth;

17 (2) a person who imports covered products as the owner
18 or licensee of a trademark or brand under which the covered
19 material or product is sold or distributed in this
20 Commonwealth; or

21 (3) a person or company that offers for sale, sells or
22 distributes covered products in this Commonwealth.

23 "Recycling." A process by which covered devices that would
24 otherwise become solid waste or hazardous waste are collected,
25 transported, separated and processed, including disassembling,
26 dismantling or shredding, to be returned to use in the form of
27 raw materials or products in accordance with environmental
28 standards established by the Department of Environmental
29 Protection.

30 "Retail sales." The sale of covered products through sales

1 outlets, via the Internet, mail order or other means, regardless
2 of whether the retailer has a physical presence within this
3 Commonwealth.

4 "Retailer." A person who offers for sale, other than for
5 resale by the purchaser, covered products in this Commonwealth
6 by any means, including, but not limited to, sales outlets,
7 catalogs or the Internet.

8 "Sale" or "sell." A transfer for consideration of title,
9 including, but not limited to, a transaction conducted through a
10 sales outlet, catalog, the Internet or any other similar
11 electronic means. The term does not include a lease.

12 "Secretary." The Secretary of Environmental Protection of
13 the Commonwealth.

14 CHAPTER 3

15 DUTIES OF MANUFACTURERS AND RETAILERS

16 Section 301. Applicability.

17 The collection, transportation and recycling provisions of
18 this act shall apply only to covered products used by and
19 collected from a consumer in this Commonwealth.

20 Section 302. Sales prohibition.

21 (a) Manufacturer or retailer prohibition.--No later than 12
22 months after the effective date of this section, a manufacturer
23 or retailer may not sell or offer for sale in this Commonwealth
24 a covered product unless the brand is included on the list of
25 registered manufacturers maintained by the department pursuant
26 to subsection (b).

27 (b) List maintained by department.--No later than six months
28 after the effective date of this section, the department shall
29 maintain a list of each registered manufacturer, the brands of
30 all covered products reported in each manufacturer's

1 registration and the brands of covered materials and products
2 that no manufacturer has registered and post the list on the
3 department's publicly accessible Internet website.

4 (c) Duty of retailers to consult list.--

5 (1) Beginning no later than 12 months after the
6 effective date of this section, a retailer of a covered
7 product offered for sale in this Commonwealth shall consult
8 the list prior to selling the covered product.

9 (2) A retailer shall be considered to have complied with
10 paragraph (1) if, on the date that the covered products were
11 ordered by the retailer, the brand was on the list of
12 registered manufacturers and is posted on the Internet
13 website identified in subsection (b).

14 Section 303. Labeling requirement.

15 On or after the effective date of this section, no
16 manufacturer or retailer may sell or offer for sale in this
17 Commonwealth a covered product unless it is labeled with the
18 manufacturer's brand whether owned or licensed.

19 Section 304. Registration.

20 (a) Manufacturers registration.--

21 (1) A manufacturer of covered products offered for sale
22 in this Commonwealth shall register with the department by
23 January 30, 2022, or six months after the effective date of
24 this section, whichever is later, and pay a registration fee
25 of \$5,000.

26 (2) After January 30, 2022, or six months after the
27 effective date of this section, whichever is later, if a
28 manufacturer has not previously filed a registration, the
29 manufacturer shall file a registration with the department
30 prior to offering for sale or delivery in this Commonwealth

1 the manufacturer's covered products and shall pay to the
2 department a registration fee of \$5,000.

3 (3) A registered manufacturer shall submit an annual
4 renewal of its registration to the department and pay to the
5 department a registration fee of \$5,000 by January 1 of each
6 program year. The registration and annual renewal shall
7 include a list of all brands the manufacturer is using on its
8 covered products regardless of whether the manufacturer owns
9 or licenses the brand and shall be effective upon receipt by
10 the department.

11 (b) (Reserved).

12 Section 305. Manufacturer plan and reporting.

13 (a) Collection, transportation and recycling plan.--

14 (1) A manufacturer shall establish, conduct and manage a
15 plan to collect, transport and recycle a quantity of covered
16 products equal to the manufacturer's sales of covered
17 products within this Commonwealth. The plan shall be
18 submitted to the department for review.

19 (2) A group of manufacturers may submit a joint plan to
20 collect, transport and recycle the manufacturer's market
21 share.

22 (b) Contents of plan.--The plan required under subsection
23 (a) shall include:

24 (1) Methods that will be used to collect the covered
25 products, including the name and locations of proposed
26 collection sites.

27 (2) An estimated total weight of covered product to be
28 collected based upon total sales within this Commonwealth
29 during the previous year.

30 (3) The processes that will be used to recycle,

1 including a description of the recycling processes that will
2 be used and the names and locations of recyclers to be
3 directly utilized by the plan.

4 (4) Means that will be utilized to publicize the
5 collection opportunities, including specification of an
6 Internet website address or toll-free telephone number that
7 provides information about the manufacturer's program in
8 sufficient detail to allow consumers to learn how to return
9 covered products for recycling.

10 (5) The intention of the manufacturer to fulfill its
11 obligated share under this act, through operation of its own
12 program, either individually or with other manufacturers as a
13 group.

14 (6) A listing of all collection sites for covered
15 products.

16 (7) Other provisions as deemed necessary by the
17 department.

18 (c) Reporting by manufacturers.--

19 (1) In addition to reporting all brands under which its
20 covered devices are offered for sale, regardless of whether
21 the manufacturer owns or licenses the brand, the
22 manufacturer's annual report to the department shall include
23 the total amount of covered products sold within this
24 Commonwealth.

25 (2) The report required under paragraph (1) shall be
26 submitted to the department upon initial registration and
27 then by January 30 each year thereafter.

28 (3) When a manufacturer or group of manufacturers
29 conducts its own collection, transportation and recycling
30 program for covered products, the manufacturer or group of

1 manufacturers shall submit a report to the department
2 annually by January 30, beginning the year after the program
3 is initiated. The report shall consist of the total weight of
4 covered products collected from consumers in this
5 Commonwealth by the manufacturer or group of manufacturers
6 during the previous year and documentation verifying
7 collection and recycling of the devices.

8 (d) Approval of plan.--

9 (1) The department shall review a plan submitted to the
10 department under subsection (a) and, within 60 days of
11 receipt of the plan, determine whether the plan complies with
12 the provisions of this act.

13 (2) If the department approves the plan, the department
14 shall notify the manufacturer or group of manufacturers. If
15 the department rejects the plan, in whole or in part, the
16 department shall notify the manufacturer or group of
17 manufacturers and provide the reasons for the plan's
18 rejection. Rejection of a plan shall be based on the plan's
19 failure to provide the information required by subsection
20 (b).

21 (3) Within 30 days after receipt of the department's
22 rejection, the manufacturer or group of manufacturers may
23 revise and resubmit the plan to the department for approval.

24 (e) Effect of failure to comply with approved plan.--

25 (1) If the total weight in pounds of covered products
26 collected, transported and recycled during a program year by
27 a manufacturer or group of manufacturers is less than the sum
28 of the estimate contained within the approved plan, the
29 manufacturer or group of manufacturers shall submit to the
30 department by March 15 of the following year a payment to

1 cover the cost of collecting, transporting and recycling the
2 unmet portion of the sum of the obligated shares in weight.

3 (2) The payment shall be equal to the quantity of the
4 unmet portion, in pounds, plus an additional 10% of such
5 quantity, multiplied by the cost per pound for collection,
6 transportation and recycling of covered products.

7 (3) All payments collected under paragraph (2) shall be
8 deposited into the Recycling Fund.

9 (4) The department shall:

10 (i) Determine the average cost for collection and
11 transportation of covered products to be used in
12 calculating the penalties under this paragraph.

13 (ii) No more frequently than annually and no less
14 frequently than biennially, review these costs and shall
15 publish for public comment any proposed changes to these
16 costs.

17 (f) Multiple manufacturers.--

18 (1) Where more than one person may be deemed the
19 manufacturer of a brand of a covered device, any one or more
20 persons may assume responsibility for and satisfy the
21 obligations of a manufacturer under this act with respect to
22 covered devices bearing that brand.

23 (2) In the event that no person assumes responsibility
24 for and satisfies the obligations of a manufacturer under
25 this act with respect to covered devices bearing that brand,
26 for purposes of compliance with these provisions, the
27 responsible party shall be the person who satisfies paragraph
28 (1) of the definition of "producer."

29 (g) Construction.--Nothing in this act shall be construed to
30 exempt a person from liability that person would otherwise have

1 under applicable law.

2 Section 306. Retailer responsibility.

3 (a) Public notice.--A retailer shall notify customers of the
4 manner of recycling a covered device and of the locations for
5 the collection and return of covered devices. This notification
6 shall occur either by posting the information within the retail
7 location, by providing the retailer-developed information on the
8 department's toll-free telephone number, Internet website or
9 both.

10 (b) Compliance.--A retailer shall comply with sections
11 302(a) and (c) and 303.

12 Section 307. Exemptions.

13 A producer shall be exempt from the requirements of this act
14 if the producer generates less than one million dollars of gross
15 annual revenue within this Commonwealth.

16 CHAPTER 5

17 ADMINISTRATION

18 Section 501. Duties of department.

19 The department shall:

20 (1) Encourage the use of existing collection and
21 consolidation infrastructure for handling covered devices to
22 the extent that this infrastructure is accessible on a
23 regular and ongoing basis to at least 85% of the population
24 of this Commonwealth and is cost effective and
25 environmentally sound.

26 (2) Update the list maintained pursuant to section
27 302(b) upon receipt by the department of a manufacturer's
28 registration or an annual manufacturer registration renewal.

29 (3) Organize and coordinate public education and
30 outreach. The department shall work with retailers to develop

1 the appropriate public education and outreach materials and
2 to assist retailers as necessary in the conduct of their
3 public education and outreach efforts.

4 (4) Review all plans submitted by a manufacturer or
5 group of manufacturers for the collection, transportation and
6 recycling of covered products.

7 (5) Oversee the implementation of all approved plans and
8 take the necessary actions to ensure compliance with approved
9 plans.

10 Section 502. Annual report.

11 The department shall prepare and submit annually to the
12 General Assembly and post on its publicly accessible Internet
13 website a report that includes:

14 (1) The total weight of covered products collected in
15 this Commonwealth during the previous calendar year.

16 (2) A complete listing of all manufacturers' collection,
17 transportation and recycling programs and collection sites
18 operating in this Commonwealth during the prior calendar
19 year, the parties that operated them and the amount of
20 material by weight collected at each site.

21 (3) An evaluation of the effectiveness of the education
22 and outreach program.

23 (4) An evaluation of the existing collection and
24 processing infrastructure.

25 (5) Recommendations for expanding the program to include
26 additional electronic devices. All recommendations shall be
27 accompanied by an analysis of the positive and negative
28 aspects along with a cost benefit analysis of the
29 recommendations.

30 Section 503. Additional duties.

1 The department shall:

2 (1) Maintain an Internet website and toll-free telephone
3 number with up-to-date listings of where consumers may take
4 covered devices for recycling under this act.

5 (2) No more frequently than annually and no less
6 frequently than biennially, review the amount of the covered
7 product recycling and registration fee. The Environmental
8 Quality Board may promulgate regulations to adjust fees so
9 that the fees generate sufficient revenue reasonably
10 necessary to implement this act.

11 Section 504. Fees for collection or recycling of covered
12 products.

13 No manufacturer or retailer may charge a fee or cost to a
14 consumer for the collection, transportation or recycling of a
15 covered device, unless a financial incentive of equal or greater
16 value is provided to the consumer. The financial incentive may
17 be in the form of a coupon or rebate.

18 Section 505. Environmentally sound management requirements.

19 (a) Recycling requirement in accordance with law.--Covered
20 products collected through a program in this Commonwealth,
21 whether by a manufacturer, retailer, for-profit or not-for-
22 profit corporation or unit of government, shall be recycled in a
23 manner that is in compliance with all applicable Federal, State
24 and local laws, regulations and ordinances and may not be
25 exported for disposal in a manner that poses a significant risk
26 to the public health or the environment.

27 (b) Performance requirements.--

28 (1) All entities shall, at a minimum, demonstrate to the
29 satisfaction of the department that the facility to be used
30 to recycle covered devices has achieved and maintained third-

1 party accredited certification from:

2 (i) the Responsible Recycling (R2) Practices
3 Standard;

4 (ii) the e-Stewards standard; or

5 (iii) an internationally accredited third-party
6 environmental management standard for the safe and
7 responsible handling of covered devices.

8 (2) All entities shall provide information about
9 certification and standing to the department along with
10 other requirements regarding this subsection that may be
11 mandated by Federal or State law. The department shall make
12 this information available on its Internet website.

13 (c) Department to maintain Internet website.--The department
14 shall maintain an Internet website that includes a list of
15 entities and organizations that the department has determined
16 have met the performance requirements.

17 Section 506. Enforcement.

18 (a) Judicial action.--

19 (1) The Commonwealth, through the Attorney General and
20 the department, may initiate independent action to enforce
21 the provisions of this act including to remit the
22 registration fee pursuant to section 304(a) to the department
23 or failure by the manufacturer to submit a plan as required
24 under section 305.

25 (2) Any funds awarded by the court shall be used first
26 to offset enforcement expenses. Money in excess of the
27 enforcement expenses shall be deposited into the Recycling
28 Fund.

29 (b) Penalties.--

30 (1) A manufacturer that fails to label new covered

1 products with a brand as required under section 303, that
2 fails to register with the department and pay a registration
3 fee as required under section 304(a), may be assessed a
4 penalty of up to \$10,000 for the first violation and up to
5 \$25,000 for the second violation and each subsequent
6 violation in addition to paying for fees, payments and
7 penalties required by or imposed pursuant to this act.

8 (2) Except as otherwise provided under paragraph (1), a
9 person, including a retailer, that violates a requirement of
10 this act may be assessed a penalty of up to \$1,000 for the
11 first violation and up to \$2,000 for the second violation and
12 each subsequent violation, in addition to paying for fees,
13 payments and penalties required by or imposed under this act.

14 (3) All penalty money collected under paragraphs (1) and
15 (2) shall be deposited into the Recycling Fund.

16 (c) Injunctive relief.--A violation of the sales
17 prohibitions of this act may be enjoined in an action in the
18 name of the Commonwealth brought by the Attorney General.

19 Section 507. Regulations.

20 The Environmental Quality Board may adopt rules and
21 regulations as shall be necessary for the purpose of
22 administering this act. The regulations shall be promulgated in
23 accordance with the act of June 25, 1982 (P.L.633, No.181),
24 known as the Regulatory Review Act.

25 Section 508. Multistate implementation.

26 The department may participate in the establishment and
27 implementation of a regional, multistate organization or compact
28 to assist in carrying out the requirements of this act.

29 CHAPTER 7

30 MISCELLANEOUS PROVISIONS

1 Section 701. Expiration.

2 (a) Duty of secretary to monitor Federal law.--

3 (1) The secretary shall monitor the enactment of laws by
4 the Congress of the United States to determine whether a law
5 has been enacted that establishes a program directed to the
6 collection and recycling of covered devices.

7 (2) If the secretary determines that a law is enacted,
8 the secretary shall publish that determination as a notice in
9 the Pennsylvania Bulletin. The notice shall include a
10 statement that the effect of the notice is the immediate
11 expiration of this act as provided under subsection (b).

12 (b) Effect of secretary's determination.--This act shall
13 expire on the date a determination of the secretary under
14 subsection (a) is published in the Pennsylvania Bulletin.

15 Section 702. Effective date.

16 This act shall take effect in 60 days.