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**LD 2104**  
**PROPOSED AMENDMENT – SEN. CARSON**

**Sec. 1. 38 MRSA §2146** is enacted to read:

**§2146. Stewardship program for packaging**

*Amend new section 2146, subsections 1 and 2 as follows (changes shaded)*

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative collection program" means a program for the management of packaging material that is operated by an individual producer or group of producers and that has been approved by the department in accordance with subsection 9 7.

B. "Brand" has the same meaning as in section 1771, subsection 1.

C. "Franchisee" means a person that is 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 pursuant to an oral or written arrangement for a definite or indefinite period.

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

E. "Municipality" means a city, town, township, village or plantation; a refuse disposal district under chapter 17; or a regional association.

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

(1) A discrete type of material, or a category of material that includes multiple discrete types of material, intended to be used for the long-term storage or protection of a durable product and that can be expected to be usable for that purpose for a period of at least 5 years; or

(2) A discrete type of material, or a category of material that includes multiple discrete types of material, that is a beverage container, as defined in section 3102, subsection 2, subject to the requirements of chapter 33.

G. "Packaging stewardship fund" or "fund" means a privately held account established and managed by the stewardship organization pursuant to subsection 44 9.

H. "Packaging stewardship organization" or "stewardship organization" means the entity contracted by the department under subsection 2 to operate the packaging stewardship program.

I. "Packaging stewardship plan" or "plan" means the plan submitted to the department for approval pursuant to subsection 3 to be implemented by the stewardship organization.

J. "Packaging stewardship program" or "program" means the program implemented under this section by the stewardship organization to assess and collect payments from producers based on the weight of packaging material sold, offered for sale or distributed for sale in or into the State by each producer and to reimburse participating municipalities for certain incurred municipal recycling and waste management costs.

K. "Participating municipality" means a municipality that has complied with the requirements of subsection 10 8 and is eligible for reimbursement of certain costs in accordance with subsection 11 subsections 9 and 10.

L. "Producer" means a person that:

(1) Has legal ownership of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material; or

(2) Imports into the State for sale or distribution in or into the State a product contained, protected, delivered, presented or distributed in or using packaging material that is branded by a person that meets the requirements of subparagraph (1) and has no physical presence in the United States; or

(3) Sells, offers for sale or distributes for sale in the State, at wholesale or retail, a product contained, protected, delivered, presented or distributed in or using packaging material; that does not have legal ownership of the brand of the product; and that elects to fulfill the responsibilities of the producer under this section for that product.

"Producer" includes a franchisor of a franchise located in the State, but does not include the franchisee operating that franchise. "Producer" does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3).

M. "Proprietary information" has the same meaning as in section 1771, subsection 6-A.

N. "Readily recyclable" means, with respect to a type of packaging material, that the type of packaging material, as annually determined by the department in accordance with rules adopted pursuant to subsection 12 11, paragraph C A, subparagraph (1):

(1) Can be sorted by entities that process recyclable material generated in the State; and

(2) Has a consistent market for purchase, as based on data from the prior 2 calendar years. For the purposes of this subparagraph, "consistent market for purchase" means, with respect to a type of packaging material, that entities processing recyclable material are willing to purchase full bales of that type of fully sorted packaging material in quantities equal to or in excess of the supply of that fully sorted packaging material.

"Readily recyclable" does not include types of packaging material that entities that process recyclable material generally accept only in small quantities or that such entities typically sort out from other recyclable material during processing.

Q N. "Recycling" has the same meaning as in section 1771, subsection 7.

P O. "Similar municipalities" means 2 or more municipalities that, as annually determined by the department in accordance with rules adopted pursuant to subsection 12 11, paragraph D A, subparagraph (2), have similar population sizes and, similar geographic locations and share other department-specified criteria.

Q P. "Toxicity" means, with respect to packaging material, the presence in packaging material of prohibited intentionally introduced chemicals regulated pursuant to Title 32, chapter 26-A or food contact chemicals of high concern or priority food contact chemicals regulated pursuant to Title 32, chapter 26-B.

**2. Selection of stewardship organization; contract.** Consistent with the requirements of this subsection, the department shall select and enter into a contract with a packaging stewardship organization to operate the packaging stewardship program under this section.

A. Consistent with applicable competitive bidding requirements under state purchasing laws and following the initial adoption of rules by the department pursuant to subsection 11, on or before April 1, 2021, the department shall issue a request for proposals for the operation of the packaging stewardship program by a packaging stewardship organization. The proposals must be required to cover a 10-year operation of the packaging stewardship program by the successful applicant bidder and must be required to include, at a minimum:

(1) A description of how the applicant bidder will administer the stewardship organization, including evidence that the individuals who will administer the stewardship organization have adequate training and qualifications for such administration;

(a) The mechanism or process, to be developed with input from producers, by which producers may request and receive assistance from the stewardship organization in the reporting of required information; and

(b) The mechanism or process, to be developed with input from municipalities, by which participating municipalities may request and receive assistance from the stewardship organization in the reporting of required information;

(2) A description of how the applicant bidder intends to solicit and consider input from interested persons, including, but not limited to, producers and municipalities, regarding the development of the applicant's packaging stewardship plan and regarding the applicant's bidder's operation of the packaging stewardship program, if selected;

(3) A description of how the applicant bidder intends to establish and manage the packaging stewardship fund consistent with the requirements of subsection 11.9, including, but not limited to: (a) The, the staffing the applicant bidder intends to use for management of the fund, for providing technical support to producers and municipalities regarding program requirements and for administering payments to and reimbursements from the fund and the financial mechanisms, including investment types if any, the bidder intends to use to manage funds within the fund; and

(b) The intended allocation and disbursement of funds for education and infrastructure purposes consistent with subsection 11, paragraph F, subparagraph (3), including identification of strategies for improving recycling infrastructure in the State, a description of how the applicant will solicit and consider input from interested persons regarding the prioritization of such allocations and disbursements and a description of how the allocation and disbursement process will use a grant system that allows municipalities, producers and alternative collection program operators to receive the allocations and disbursements;

(4) A proposed financial assurance plan that ensures all funds held in the packaging stewardship fund are immediately and exclusively forfeited and transferred to or otherwise made immediately available to the department when the stewardship organization's contract with the department is terminated by the department or expires, unless the stewardship organization enters into a new contract with the department in accordance with paragraph B prior to the expiration of the stewardship organization's existing contract;

(5) A proposed budget outlining the anticipated costs of operating the packaging stewardship program, including identification of any start-up costs that will not be ongoing and a description of the method by which the applicant bidder intends to determine and collect producer payments during the first year initial start-up period of program operation to fund the program's operational costs during that first year initial start-up period and to reimburse or require additional payments by those producers subsequent to that first year initial start-up period based on producer reporting of the actual amount of packaging material sold, offered for sale or distributed for sale in or into the State by each producer during that first year initial start-up period. The proposed budget under this subparagraph may overestimate the cost of operating the program during its first year initial start-up period of operation but must describe the method and basis for any overestimate;

(6) A certification that the applicant bidder will not share, except with the department, information provided to the applicant bidder by a producer that is proprietary information and that is identified by the producer as proprietary information. The certification must include a description of the methods by which the applicant bidder intends to ensure the confidentiality of such information; and

(7) Any additional information required by the department.

B. In accordance with applicable requirements of state purchasing laws, the department shall enter into a contract with an applicant a bidder that has submitted a proposal in accordance with the requirements of this subsection, the term of which must cover 10 years of operation of the packaging stewardship program by the stewardship organization. The contract must, at a

minimum, include provisions to ensure that the stewardship organization will operate the program in accordance with all applicable statutory requirements and the rules adopted by the department.;

(1) Provisions requiring the stewardship organization to operate the program pursuant to that contract until the contract expires, the stewardship organization is unable to continue to perform its duties under the contract or the department terminates the contract as described in subparagraph (2). These provisions must include, but are not limited to:

(a) A requirement that the stewardship organization submit a packaging stewardship plan to the department for review and approval in accordance with subsection 3 within a specified time frame, implement that plan in accordance with subsection 5 within a specified time frame if approved and, as necessary and in accordance with subsection 4, implement amendments to the plan or corrective actions to the program;

(b) A requirement that the stewardship organization operate the packaging stewardship program under this section in a manner consistent with the approved plan and applicable provisions of the contract;

(c) A requirement that the stewardship organization establish and manage a packaging stewardship fund in accordance with subsection 11; and

(d) A requirement that the stewardship organization report annually to the department in accordance with subsection 6;

(2) Provisions ensuring the ability of the department to terminate the contract if the stewardship organization fails to comply with all provisions of the contract and with the provisions of the packaging stewardship plan, to be approved by the department under subsection 4, or if the department, pursuant to subsection 4, requires the stewardship organization to implement an amendment to the approved plan or a corrective action and the stewardship organization fails to implement the amendment or corrective action within the required time frame; and

(3) Provisions requiring all funds held in the packaging stewardship fund to be immediately and exclusively forfeited and transferred to or otherwise made immediately available to the department at the time that the stewardship organization's contract with the department expires or is terminated by the department in accordance with the financial assurance plan as described in paragraph A, subparagraph (4).

If, at the close of the competitive bidding process under this subsection, the department determines that no applicant bidder has submitted, in accordance with this subsection, a proposal that meets the requirements of this subsection, the department may reopen a new competitive bidding process under this subsection.

*Amend new section 2146, subsection 3 and 4 by deleting those subsections in their entirety*

*Amend new section 2146, subsections 5 and 6 as follows (changes shaded)*

**5. Implementation of plan; prohibition 3. Prohibition; producer compliance information.**  
In accordance with the schedule for implementation included in the stewardship organization's plan under subsection 3, paragraph B and any applicable terms of its contract with the department, the stewardship

organization shall implement the plan following department approval under subsection 4. This subsection prohibits the sale or distribution in the State of products of producers not in compliance with the requirements of this section and sets forth requirements for the collection and publication of producer compliance information.

A. ~~Following implementation of the plan under this subsection~~ Beginning one calendar year following the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 2:

(1) A producer not in compliance with all applicable requirements of this section 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 ~~and must provide all necessary support to retailers in the State to ensure that such products are not sold, offered for sale or distributed for sale in the State;~~ and

(2) A retailer ~~in the State~~ 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 if, based on the information made available by the department pursuant to paragraph C, the producer of that product is not in compliance with all applicable requirements of this section.

B. ~~Following implementation of the plan under this subsection, the~~ The stewardship organization shall provide to the department a list of producers that are participating in the program and are compliant with the program's requirements and, if known to the stewardship organization, a list of producers that are not participating in the program and are not compliant with the program's requirements. ~~The stewardship organization shall in a timely manner provide to the department any regularly updated information regarding producer compliance when such information becomes known to the stewardship organization.~~

C. Based on the information provided to the department under paragraph B and any other information considered by the department, the department shall make available on its publicly accessible website a regularly updated list of producers that the department has determined are compliant with all applicable requirements of this section and a list of producers that the department has determined are not compliant with all applicable requirements of this section. ~~The department shall periodically update that information based on additional information provided by the stewardship organization or any other information available to the department.~~ The department shall conduct outreach to retailers to ensure that retailers are aware of the information made available under this paragraph and any changes to that information.

**6 4. Annual reporting by stewardship organization. ~~On or before October 1st of the calendar year following the calendar year in which an approved plan is implemented under subsection 5, and annually thereafter~~** In accordance with the rules adopted by the department, the stewardship organization shall annually submit a report to the department that includes, at a minimum, the following information:

A. ~~Contact information for the stewardship organization;~~

B. ~~A list of participating producers and the brands of products associated with those producers;~~

C. ~~The total amounts of each type of packaging material sold, offered for sale or distributed for sale in or into the State by each participating producer;~~

D. As applicable, the total amount of each type of packaging material collected and managed by each participating producer through alternative collection programs approved by the department under subsection 9 7;

E. A complete accounting of payments made to and by the stewardship organization during the prior calendar year, including information on how the stewardship organization determined the amount of such payments;

F. A list of producers not participating in the program that are required to participate in the program, if known by the stewardship organization;

G. ~~An analysis~~ A description of education and infrastructure investments made by the stewardship organization in prior calendar years, ~~including information on the results of those investments and proposals for investments to be made in the current calendar year consistent with subsection 11, paragraph F, subparagraph (3); and;~~

H. The information described in subsection 2, paragraph A, updated as necessary and as may be required by the department; and

~~H I.~~ Any additional information required by the department.

*Amend new section 2146, subsection 7 by striking subsection 7 and inserting the following in its place*

**5. Producer payments.** In accordance with the provisions of this subsection and the rules adopted by the department, no later than 180 days after the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 2, and annually thereafter, a producer shall make payments to the stewardship organization to be deposited into the packaging stewardship fund under subsection 9, based on the amount of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer and not managed under an approved alternative collection program. The department shall adopt rules setting forth the manner in which such payments must be calculated for material that is readily recyclable and for material that is not readily recyclable.

*Amend new section 2146, subsections 8, 9 and 10 as follows (changes shaded)*

**8 6. Annual reporting by producers.** In accordance with ~~the requirements of the stewardship organization's approved plan~~ the rules adopted by the department, a producer shall annually report to the stewardship organization the total tons of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer in the prior calendar year; the characteristics of that packaging material that are relevant to the fee adjustment criteria ~~contained in the approved plan~~ as determined by the department by rule in accordance with subsection 11, paragraph A, subparagraph (5); and a list of all of the producer's brands associated with that packaging material.

**9 7. Alternative collection programs.** In accordance with the requirements of this subsection and the rules adopted by the department, a producer or group of producers may develop and operate an alternative collection program to collect and manage a type or types of packaging material sold, offered for sale or distributed for sale in or into the State by the producer or producers. A producer that manages a type of packaging material under an approved alternative collection program through reuse, recycling and, where approved, incineration of that packaging material may wholly or partially offset the producer's

payment obligations under the packaging stewardship program with respect to that same type of packaging material only.

A. A producer or group of producers seeking to implement an alternative collection program shall submit a proposal for the establishment of that program to the department for approval. The department shall review the proposal and shall approve or deny the proposal within 120 days of receipt. Any approval under this subsection must terminate 5 years from the date of that approval but may be extended for additional 5-year periods following the submission by the producer or producers of an updated proposal that is approved by the department consistent with this subsection. A producer or group of producers that has a proposal approved under this subsection and that intends to submit an updated proposal under this subsection before the expiration of its current approved proposal shall submit that updated proposal no later than 120 days prior to the date its current proposal expires. The department may approve an alternative collection program for a term of 5 years and, at the expiration of such term, the producer or group of producers operating the program may submit an updated proposal to the department for approval.

B. In determining whether to approve a proposal for the establishment of an proposed alternative collection program, the department shall consider:

(1) Whether the alternative collection program will provide convenient, free, statewide collection opportunities for the types of packaging material to be collected under that program;

(2) To what extent the alternative collection program intends to manage those types of packaging material to be collected under the program through reuse for an original purpose, through recycling or through disposal by incineration at an incineration facility. The department may not approve an alternative collection program that proposes management of a packaging material type through disposal by incineration at an incineration facility unless that packaging material is not readily recyclable and the program proposes a process to begin reuse or recycling of that type of packaging material within a period of 5 years or less;

(3) Whether the education and outreach strategies proposed for the alternative collection program can be expected to increase consumer awareness of the program throughout the State; and

(4) How the alternative collection program intends to accurately measure the amount of each packaging material type collected, reused, recycled, incinerated or otherwise managed under the program.

C. A change to an approved alternative collection program must be submitted to the department for review and approval prior to implementation of that change. A proposed modification to an approved alternative collection program must be submitted to the department for written approval. The department shall approve or deny a proposed modification based on application of the criteria described in paragraph B. The department may waive payment of any fees associated with review and approval of a proposed change modification to an approved alternative collection program if the review of the proposed modification does not require significant department staff time.

D. In accordance with the rules adopted by the department, the producer or producers managing an approved alternative collection program shall report annually to the stewardship organization and to the department the following information:

(1) The total tons of each type of packaging material collected, reused, recycled, incinerated at an incineration facility or otherwise managed under the alternative collection program in the prior calendar year, including a breakdown of the total tons of each type of material by participating producers to be credited to each producer participating in the alternative collection program;

(2) A list of the collection opportunities in the State for the types of packaging material managed under the alternative collection program that were made available in the prior calendar year;

(3) A description of the education and outreach strategies implemented by the alternative collection program in the prior calendar year to increase consumer awareness of the program throughout the State; and

(4) Any additional information required by the department.

E. If, based on its review of the annual report required under paragraph D or on a different basis, the department determines that an approved alternative collection program is not operating in a manner consistent with the proposal approved under this subsection or the provisions of this subsection, the department may require the producer or producers operating the program to implement corrective actions. If the producer or producers fail to implement a department-required corrective action within the time frame for implementation required by the department, the department may determine that the producer or producers are no longer eligible to offset payment obligations under the packaging stewardship program based on the management of packaging material under the alternative collection program and shall communicate that determination to the stewardship organization. shall provide written notice to the producer or producers operating the alternative collection program regarding the nature of the deficiency, the actions necessary to correct the deficiency and the time by which such actions must be implemented. If the department determines that the producer or group of producers have failed to implement the actions described in the written notice within the required time frame, the department shall notify the producers or group of producers as well as the stewardship organization in writing that the producer or group of producers are ineligible to offset payment obligations under the packaging stewardship program based on packaging material managed under the alternative collection program.

**10 8. Annual reporting by municipalities-Requirements for municipal reimbursements.** In accordance with the provisions of this subsection and the rules adopted by the department, a municipality may elect to, but is not required to, participate in the packaging stewardship program under this section.

A. To be eligible for reimbursement of costs under ~~subsection 11~~ subsections 9 and 10 as a participating municipality, a municipality must provide for the collection and recycling of all types of packaging material that are generated in the municipality and that are readily recyclable and must annually report to the stewardship organization all information necessary for the stewardship organization to determine the municipality's incurred costs for the recycling of recyclable material and for the and disposal of associated with collection, onsite processing, transportation and recycling or disposal of recyclable material and municipal solid waste, which must include, but is not limited to:

(1) Any costs incurred by the municipality in collecting, processing on site and transporting recyclable material and the revenue realized by the municipality in selling any recyclable material collected; and

(2) Any costs incurred by the municipality in disposing of municipal solid waste, including tipping fees paid, the tons of such waste disposed of, the costs incurred in transporting such waste for disposal and the costs incurred in the collection and processing on site of such waste; and

(3) Any other information required pursuant to subsection 10.

B. As required by the department by rule, a municipality shall report the information described in paragraph A to the stewardship organization on a form provided by the department stewardship organization, as approved by the department consistent with subsection 3, paragraph F, subparagraph (1).

C. Two or more municipalities may elect to jointly report to the stewardship organization the information described in paragraph A based on aggregated data from the municipalities and to jointly receive reimbursements pursuant to subsection 10.

*Amend new section 2146, subsection 11 by striking subsection 11 and inserting the following in its place*

**9. Packaging stewardship fund; authorized expenditures.** In accordance with the provisions of this subsection and the rules adopted by the department, the stewardship organization shall establish and manage a packaging stewardship fund. The stewardship organization shall deposit into the fund all payments received from producers in accordance with subsection 5 and shall expend those funds based on the following order of priority:

A. The stewardship organization shall first expend those funds to cover its actual operating costs, which may not exceed the estimated operating costs indicated in its contract with the department entered into pursuant to subsection 2 and which must be verified through a 3rd-party audit paid for by the stewardship organization;

B. The stewardship organization shall next expend any funds not expended pursuant to paragraph A to pay to the department all applicable fees required under subsection 11, paragraph B;

C. The stewardship organization shall next expend any funds not expended pursuant to paragraphs A and B to reimburse participating municipalities in accordance with subsection 10, except that, if after the expenditures described in paragraphs A and B are made, the fund no longer contains sufficient funds to fully reimburse all eligible participating municipalities, the stewardship organization shall decrease the reimbursements due to all eligible participating municipalities in a manner that equitably accounts for the insufficiency of the remaining funds;

D. If the balance of funds within the fund exceeds the amount reasonably expected to be expended by the stewardship organization pursuant to paragraphs A, B and C, the department may require the stewardship organization to segregate in a special account within the fund an amount of funding to be used in future years to ensure full reimbursements to participating municipalities in accordance with paragraph C;

E. The stewardship organization shall next expend any funds not expended pursuant to paragraphs A, B, C and D to make investments in education and infrastructure that support the recycling of packaging material in the State, which must be approved by the department prior to any such expenditures and which must incorporate input from producers and participating municipalities.

(1) The stewardship organization shall submit any proposed expenditure under this paragraph to the department for approval prior to making such expenditure.

(2) The department shall adopt rules setting approval criteria for the evaluation of proposed expenditures under this paragraph.

(3) The department shall approve or deny a proposed expenditure under this paragraph within 90 days of receipt of the proposal; and

F. If the balance of funds within the fund exceeds the amount reasonably expected to be expended by the stewardship organization pursuant to paragraphs A, B, C, D and E, the department may require the stewardship organization to transfer an amount of funding from the fund to the department to be used by the department to support waste diversion, reuse and recycling programs.

*Amend new section 2146 by inserting the following new subsection*

**10. Calculation and disbursement of municipal reimbursements.** In accordance with the provisions of this subsection and rules adopted by the department, the stewardship organization shall disburse from the fund payments to participating municipalities to reimburse those municipalities for incurred costs associated with collection, onsite processing, transportation and recycling or disposal of recyclable material and municipal solid waste.

A. In accordance with rules adopted by the department, the stewardship organization shall determine the amount of reimbursements to participating municipalities under this subsection based on the following information:

(1) Information provided by participating municipalities to the stewardship organization in accordance with subsection 8 regarding the costs incurred by those municipalities in recycling recyclable material, the costs incurred in disposing of municipal solid waste and the tons of municipal solid waste disposed of;

(2) Information provided to the department by recycling establishments pursuant to section 2145 and made available by the department to the stewardship organization, including the tons of recyclable material received by each recycling establishment from each generator of recyclable material and the tons of processed recyclable material sold by each recycling establishment;

(3) Information provided to the department by recycling establishments not located in the State or by participating municipalities and made available by the department to the stewardship organization regarding the tons of recyclable material brokered by those municipalities to those recycling establishments and processed and sold by those recycling establishments;

(4) Information obtained by the stewardship organization through the audits of facilities that process recyclable material generated in the State as required by the department by rule in accordance with subsection 11, paragraph A, subparagraph (7); and

(5) Any other information specified by the department by rule.

B. In accordance with procedures and requirements adopted by the department by rule, the stewardship organization shall use the information described in paragraph A to determine the total tons of each packaging material type recycled by all municipalities at each recycling establishment and the percentage of those total tons attributable to each participating municipality. In the case of two or more municipalities that jointly send recyclable material to a recycling establishment, the stewardship organization shall assume that an equal amount of the jointly sent material is attributable to each resident of each municipality unless those municipalities by agreement identify an unequal per capita division of that jointly sent material for the purposes of this subsection.

C. The department shall adopt rules setting forth the manner in which payments to participating municipalities under this subsection must be calculated by the stewardship organization for both material that is readily recyclable and material that is not readily recyclable, including, but not limited to, a method of calculation that incorporates consideration of the median costs realized by similar municipalities.

*Amend section 2146, subsection 12 by striking subsection 12 and inserting the following in its place*

**11. Administration and enforcement; rulemaking; fees; additional department responsibilities.** The department shall administer and enforce this section and shall adopt rules as necessary to implement, administer and enforce this section. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. Rules adopted by the department pursuant to this section must include, at a minimum:

(1) Processes for determining the types of packaging material that are to be considered readily recyclable for the purposes of subsection 1, paragraph N, which must allow for consideration of input from recycling establishments and from facilities that process recyclable material generated in the State. Those processes must include a transitional period between the time that a type of packaging material is determined to be readily recyclable or to not be readily recyclable and the time that such determinations will be effective for the purposes of determining producer payments and municipal reimbursements in accordance with this section;

(2) Processes and criteria for determining, not more frequently than annually, which municipalities are similar municipalities for the purposes of subsection 1, paragraph O based on the population sizes, geographic locations and other department-specified criteria;

(3) A schedule by which the stewardship organization must annually report to the department pursuant to subsection 4 and a schedule by which a producer or group of producers operating an approved alternative collection program must annually report to the stewardship organization and to the department pursuant to subsection 7, paragraph D;

(4) A schedule of producer payments required under subsection 5 based on the amount of each type of packaging material sold, offered for sale or distributed for sale in or into the State by a producer and not managed under an approved alternative collection program, adjusted as applicable pursuant to the adjustment schedule described in subparagraph (5);

(5) A schedule of adjustments to be used in determining the amount of producer payments required under subsection 5 that reflect a producer's use of recycled content in packaging material, the toxicity of a producer's packaging material and other incentives consistent with generally accepted industry standards;

(6) A schedule by which producers will be required to annually report to the stewardship organization in accordance with subsection 6 and to annually make payments to the stewardship organization in accordance with subsection 5;

(7) A description of the information that producers are annually required to submit to the stewardship organization under subsection 6 to be used by the stewardship organization in determining producer payments.

The rule must authorize a producer that is unable to fully satisfy the reporting requirements of subsection 6 due to a failure to obtain sufficient information regarding the characteristics of the packaging material the producer sells, offers for sale or distributes for sale in or into the State to alternatively report to the stewardship organization an estimate of the total weight of the producer's packaging material based on unit quantities, calculated using methods specified by the department by rule. Such estimates must be adjusted using assumptions regarding the characteristics of packaging material consistent with the adjustment criteria described in subparagraph (5) and, unless otherwise determined by the department, those adjustments must be based on the least favorable characteristics of and adjustment criteria for packaging material;

(8) A schedule by which municipalities are annually required to report to the stewardship organization the information required under subsection 8 to be considered participating municipalities eligible for payments under subsections 9 and 10; a description of the information that such municipalities are required to annually report; and a description of the method by which the costs incurred by such municipalities will be determined for each packaging material type, including incurred costs associated with collection, onsite processing, transportation and recycling or disposal of recyclable material and municipal solid waste;

(9) A process by which the stewardship organization will facilitate representative audits of recyclable material processed and sold by facilities that process recyclable material generated in the State, which must include:

(a) Requirements for the frequency of, coordination of and sampling techniques to be used in those audits, which must include random sampling;

(b) Requirements regarding how those audits, at a minimum, will be designed to solicit information regarding the extent to which recyclable material processed and sold by those facilities reflects the tons of each type of packaging material

recycled in the State and the ultimate destination of and intended use for that material;

(c) Requirements regarding how the audits will be designed so that information obtained through the audit of one facility will not be used to infer information about a different facility that uses different processing equipment, different sorting processes or different staffing levels to conduct such processing; and

(d) Requirements regarding how a facility will be allowed to request and receive an audit if it can credibly demonstrate that an audit result being applied to its material output is not representative of its current operations; and

(10) A process by which the stewardship organization will develop and submit for department review, and a process by which the department shall review and approve or deny, proposed expenditures from the fund for investments in education and infrastructure pursuant to subsection 9, paragraph E. The stewardship organization's development of such investment proposals must incorporate input from producers and participating municipalities.

B. Beginning at the time that the stewardship organization is required to submit its first annual report under subsection 4 as based on the schedule adopted by the department pursuant to paragraph A, subparagraph (3), and annually thereafter, the stewardship organization shall pay to the department an annual fee to cover the department's costs for review of the stewardship organization's annual report and the department's costs in the prior fiscal year for its oversight, administration and enforcement of the packaging stewardship program.

C. A producer or group of producers, when submitting a proposal to the department for the establishment of an alternative collection program or submitting a proposal to the department for modifications to an approved alternative collection program under subsection 7, shall pay to the department a reasonable fee associated with the department's review of the proposal or proposed modifications. A producer or group of producers operating an approved alternative collection program under subsection 7 shall pay to the department an annual fee, not to exceed \$10,000 per program, to cover the department's costs for review of the producer's or group's annual report and the department's costs for the oversight, administration and enforcement of the alternative collection program, which may be waived by the department if those activities by the department do not require significant department staff time.

*Amend section 2146, subsections 13, 14 and 15 as follows (changes shaded)*

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

A. The producer realized less than ~~\$1,000,000~~ \$2,000,000 in total gross revenue during the prior calendar year;

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

~~C. The producer conducted all of the producer's sales in the State during the prior calendar year at a single point of retail sale.~~

C. The producer employed in total 10 or fewer employees during the prior calendar year.

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

**14 13. Antitrust exclusions.** A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize a packaging stewardship program or an alternative collection program under this section, is immune from liability for the producer's or stewardship organization's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and implement the producer's or stewardship organization's packaging stewardship program or alternative collection program consistent with the provisions of this section.

**15 14. Proprietary information.** Proprietary information submitted to the department ~~in a packaging stewardship plan or in a proposal to establish an alternative collection program, in an amendment to an approved plan or a proposed change to an approved alternative collection program or pursuant to the reporting~~ pursuant to the requirements of this section or the rules adopted pursuant to this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

*Amend the bill by inserting after section 1 of the bill the following section*

**Sec. 2. Department of Environmental Protection; stewardship program for packaging; major substantive rulemaking.** On or before December 31, 2021, the Department of Environmental Protection shall initiate major substantive rulemaking consistent with Title 5, chapter 375, subchapter 2-A to adopt rules necessary for the implementation, administration and enforcement of a stewardship program for packaging pursuant to the Maine Revised Statutes, Title 38, section 2146.

## SUMMARY

This amendment makes the following specified changes to the bill and includes numerous additional, technical and other changes necessary to incorporate those specified changes.

1. It amends the definition of “municipality” to include refuse disposal districts and regional associations.
2. It amends the definition of “producer” to remove inclusion of persons that sell, offer for sale or distribute for sale in the State products in or using packaging material and that elect to fulfill the responsibilities of a producers. It also excludes from that definition nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3).
3. It amends the definition of “toxicity” to include reference to intentionally introduced chemicals regulated pursuant to the Maine Revised Statutes, Title 32, chapter 26-A.

4. It deletes the definition of “packaging stewardship plan” and makes a number of changes to the bill to remove the requirement that a stewardship organization contracted by the Department of Environmental Protection to operate the packaging stewardship program submit a program plan for approval. Instead, the amendment requires the department to adopt major substantive rules for the implementation, administration and enforcement of the packaging stewardship law, which will set the operational and other requirements for the packaging stewardship program. Those rules must be adopted prior the issuance by the department of a request for proposals for the operation of the packaging stewardship program by a stewardship organization. The amendment provides that such rulemaking must be initiated by December 31, 2021 and sets forth the scope and requirements of that rulemaking.

5. It removes from the bill the specific methods by which the stewardship organization is to calculate producer payments and participating municipality reimbursements, instead leaving the determination of such methods to department rulemaking.

6. It amends the bill in a number of places to require the stewardship organization to consider input from producers and municipalities in the development and operation of certain aspects of the packaging stewardship program.

7. It provides that prohibitions on the sale of products of producers not in compliance with the requirements of the packaging stewardship law take effect one calendar year following the effective date of the contract between the stewardship organization and the department. It also provides that producers are required to begin making payments to the stewardship organization 180 calendar days following the effective date of that same contract.

8. It provides that, to be eligible for reimbursement of costs as a participating municipality, a municipality is required to submit certain information to the stewardship organization and must provide for the collection and recycling of types of packaging material that are generated in the municipality and that are readily recyclable.

9. It clarifies the order of priority to be used by the stewardship organization in expending funds from the packaging stewardship fund, which includes the establishment of a reserve account to ensure full reimbursements to participating municipalities in future years.

10. It provides that the department determination of the types of packaging that are to be considered readily recyclable must include a transitional period between the time that a type of packaging material is determined to be readily recyclable and the time that such a determination will be effective for the purposes of determining producer payments and municipal reimbursements.

11. It provides an alternative method, to be specified in department rule, for a producer to report required information to the stewardship organization in the event that a producer fails to obtain sufficient information regarding the characteristics of the packaging material it sells, offers for sale or distributes for sale in the State.

12. It amends the small producer exemption to increase the gross revenue threshold from \$1,000,000 to \$2,000,000; to remove the exemption based on a producer conducting all sales in the State at a single point of retail sale; and to include an exemption for a producer that employs in total 10 or fewer employees.