

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

UNEDITED
UNREVISED
DRAFT
12.27.21

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LLS NO. 22-0075.02 Sarah Lozano x3858

HOUSE BILL

HOUSE SPONSORSHIP

Cutter,

SENATE SPONSORSHIP

Priola and Gonzales,

BILL TOPIC: "Producer Responsibility In Recycling Program"
DEADLINES: Finalize by: JAN 13, 2022 File by: JAN 18, 2022

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF THE PRODUCER RESPONSIBILITY IN
102 RECYCLING PROGRAM. <{Any more detail in the title?}>

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill summary for this measure has been intentionally omitted and will appear on future redrafts of this measure.

1 *Be it enacted by the General Assembly of the State of Colorado:*

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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1 THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 25-17-608 (1)(b),
2 INCLUDES:

- 3 (I) PACKAGING MATERIAL;
4 (II) PAPER PRODUCTS, AND
5 (III) SINGLE-USE FOOD SERVICEWARE.

6 (b) "COVERED MATERIALS" DOES NOT INCLUDE:

7 (I) MATERIALS USED FOR LONG-TERM STORAGE OR PROTECTION OF
8 A PRODUCT AND THAT CAN BE EXPECTED TO BE USABLE FOR THAT PURPOSE
9 FOR AT LEAST FIVE YEARS;

10 (II) MATERIALS THAT ARE UNSAFE OR UNSANITARY TO RECYCLE
11 BECAUSE OF THEIR INTENDED USE, AS DETERMINED BY THE EXECUTIVE
12 DIRECTOR BY RULE;

13 (III) BOUND BOOKS;

14 (IV) BEVERAGE CONTAINERS SUBJECT TO A RETURNABLE
15 CONTAINER DEPOSIT, IF APPLICABLE;

16 (V) MATERIALS THAT ARE REGULATED AS A DRUG, MEDICAL
17 DEVICE, OR DIETARY SUPPLEMENT BY THE FEDERAL FOOD AND DRUG
18 ADMINISTRATION UNDER THE "FEDERAL FOOD, DRUG, AND COSMETIC
19 ACT", 21 U.S.C. SEC. 301 ET SEQ., AS AMENDED, OR ANY FEDERAL
20 REGULATION PROMULGATED THERETO, OR ANY EQUIPMENT AND
21 MATERIALS USED TO MANUFACTURE SUCH PRODUCTS;

22 (VI) ANIMAL BIOLOGICS, INCLUDING VACCINES, BACTERINS,
23 ANTISERA, DIAGNOSTIC KITS, AND OTHER PRODUCTS OF BIOLOGICAL
24 ORIGIN AND ANY OTHER MATERIALS THAT ARE REGULATED UNDER THE
25 "VIRUS, SERUM, AND TOXIN ACT", 21 U.S.C. SEC. 151 ET SEQ., AS
26 AMENDED;

27 (VII) TOXIC OR HAZARDOUS MATERIALS THAT ARE REGULATED

1 UNDER THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT",
2 7 U.S.C. SEC. 136, ET SEQ., AS AMENDED; AND

3 (VIII) ARCHITECTURAL PAINT COVERED UNDER A PAINT
4 STEWARDSHIP PROGRAM IN ACCORDANCE WITH PART 4 OF THIS ARTICLE
5 17.

6 (6) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
7 AND ENVIRONMENT CREATED IN SECTION 24-1-119.

8 (7) "ENVIRONMENTALLY SOUND MANAGEMENT PRACTICES" MEANS
9 POLICIES THAT ENSURE COMPLIANCE WITH ALL APPLICABLE
10 ENVIRONMENTAL LAWS, INCLUDING LAWS ADDRESSING:

11 (a) RECORD KEEPING;

12 (b) TRACKING AND DOCUMENTING THE DISPOSAL OF COVERED
13 MATERIALS WITHIN AND OUTSIDE THE STATE; AND

14 (c) ENVIRONMENTAL LIABILITY COVERAGE FOR PROFESSIONAL
15 SERVICES AND CONTRACTOR OPERATIONS.

16 (8) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
17 THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

18 (9) "FINAL PLAN" MEANS THE PLAN PROPOSAL, INCLUDING ANY
19 AMENDMENTS, THAT HAS BEEN APPROVED AND FINALIZED BY THE
20 EXECUTIVE DIRECTOR PURSUANT TO SECTION 25-17-605 (5).

21 (10) "FRONT RANGE" MEANS THE COUNTIES OF ADAMS,
22 ARAPAHOE, BOULDER, DOUGLAS, ELBERT, EL PASO, JEFFERSON,
23 LARIMER, PUEBLO, TELLER, AND WELD AND THE CITIES AND COUNTIES OF
24 BROOMFIELD AND DENVER.

25 (11) "INDUSTRIAL RECYCLING" MEANS **TBD**.

26 (12) "LOCAL GOVERNMENT" MEANS A HOME-RULE OR STATUTORY
27 COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

1 (13) "MATERIALS RECOVERY FACILITY" MEANS A FACILITY FOR
2 PROCESSING SOURCE-SEPARATED COVERED MATERIALS BEFORE THEY ARE
3 CONVEYED TO END-MARKET BUSINESSES, AS DEFINED IN SECTION
4 25-16.5-112 (4)(a).

5 (14) "MECHANICAL RECYCLING" MEANS TBD.

6 (15) "MINIMUM RECYCLABLE LIST" MEANS THE LIST OF COVERED
7 MATERIALS DEVELOPED UNDER SECTION 25-17-606 (1)(a).

8 (16) "NEEDS ASSESSMENT" MEANS THE ASSESSMENT OF THE
9 STATE'S RECYCLING NEEDS CONDUCTED PURSUANT TO SECTION 25-17-605
10 (3).

11 (17) "NONPROFIT ORGANIZATION" MEANS A TAX-EXEMPT
12 CHARITABLE OR SOCIAL WELFARE ORGANIZATION OPERATING UNDER
13 SECTION 501(c)(3) OR 501(c)(4) OF THE FEDERAL "INTERNAL REVENUE
14 CODE OF 1986", AS AMENDED.

15 (18) (a) "PACKAGING MATERIAL" MEANS ANY MATERIAL,
16 REGARDLESS OF RECYCLABILITY, THAT IS INTENDED FOR SINGLE OR
17 SHORT-TERM USE AND IS USED FOR THE CONTAINMENT, PROTECTION,
18 HANDLING, DELIVERY, OR PRESENTATION OF PRODUCTS AT THE POINT OF
19 SALE. <{Is "short-term use" the opposite of "long-term storage and
20 protection" referenced in subsection (5)(b)(I) and indicating the ability
21 to be used for at least 5 years? If so, should "short-term use" be defined
22 here to make that clear? If not, what does "short-term use" mean?}>

23 (b) "PACKAGING MATERIAL" INCLUDES PAPER, PLASTIC, GLASS,
24 METAL, CARTONS, SECONDARY OR TERTIARY PACKAGING MATERIALS USED
25 FOR DIRECT TRANSPORTATION OR DISTRIBUTION TO THE CONSUMER,
26 FLEXIBLE FOAM OR OTHER RIGID PACKAGING MATERIALS, OR ANY
27 COMBINATION OF SUCH MATERIALS. <{What does "secondary or tertiary

1 *packaging materials" mean? It appears to mean packaging materials*
2 *used for safe transport of goods. Is that correct? Should the term be*
3 *defined here as it seems like a term of art that won't be obvious to the*
4 *average reader.}>*

5 (19) "PAPER PRODUCTS" INCLUDE:

6 (a) FLYERS;

7 (b) BROCHURES;

8 (c) BOOKLETS;

9 (d) CATALOGS;

10 (e) TELEPHONE DIRECTORIES;

11 (f) NEWSPAPERS;

12 (g) MAGAZINES; AND

13 (i) PAPER USED FOR WRITING OR ANY OTHER PURPOSE.

14 (20) "PLAN PROPOSAL" MEANS THE PLAN PROPOSAL FOR THE
15 IMPLEMENTATION OF THE PROGRAM SUBMITTED TO THE ADVISORY BOARD
16 IN ACCORDANCE WITH SECTION 25-17-605 (4).

17 (21) "POST-CONSUMER RECYCLED CONTENT RATE" MEANS THE
18 AMOUNT OF POST-CONSUMER RECYCLED MATERIALS USED IN THE
19 PRODUCTION OF COVERED MATERIALS IN A CALENDAR YEAR DIVIDED BY
20 THE AMOUNT OF COVERED MATERIALS USED FOR PRODUCTS SOLD,
21 OFFERED FOR SALE, OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO THE
22 STATE IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

23 *<{How does this get determined? Is every producer responsible for*
24 *counting/weighing all their covered materials?}>*

25 (22) (a) "POST-CONSUMER RECYCLED MATERIAL" MEANS ONLY
26 THOSE COVERED PRODUCTS THAT HAVE SERVED THEIR INTENDED END USE
27 AS CONSUMER ITEMS AND THAT HAVE BEEN SEPARATED OR DIVERTED

1 FROM THE WASTE STREAM FOR THE PURPOSES OF COLLECTION AND
2 RECYCLING AS A SECONDARY MATERIAL FEEDSTOCK.

3 (b) "POST-CONSUMER RECYCLED MATERIAL" DOES NOT INCLUDE
4 WASTE MATERIAL GENERATED DURING OR AFTER THE COMPLETION OF A
5 MANUFACTURING OR CONVERTING PROCESS. *<{What is a converting
6 process? And should it instead be referenced as a "conversion
7 process"?}>*

8 (23) "PRODUCER" MEANS A PERSON THAT:

9 (a) USES A COVERED MATERIAL UNDER THE PERSON'S OWN NAME
10 OR BRAND AND WHO SELLS, OFFERS FOR SALE, OR DISTRIBUTES A PRODUCT
11 THAT USES THE COVERED MATERIAL IN THE STATE;

12 (b) IMPORTS A PRODUCT THAT USES A COVERED MATERIAL AS THE
13 OWNER OR LICENSEE OF A TRADEMARK OR BRAND UNDER WHICH THE
14 PRODUCT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE; OR

15 (c) SELLS, OFFERS FOR SALE, OR DISTRIBUTES A PRODUCT THAT
16 USES A COVERED MATERIAL IN THE STATE. *<{I moved the producer
17 exemptions to its own section at the end of the part.}>*

18 (24) "PRODUCER RESPONSIBILITY DUES" MEANS AMOUNTS
19 ESTABLISHED IN SECTION 25-17-605 (4)(d)(II) THAT A PRODUCER
20 PARTICIPATING IN THE PROGRAM PAYS ANNUALLY INTO THE PROGRAM.

21 (25) "PRODUCER RESPONSIBILITY IN RECYCLING PROGRAM" OR
22 "PROGRAM" MEANS THE PRODUCER RESPONSIBILITY IN RECYCLING
23 PROGRAM CREATED IN ACCORDANCE WITH SECTION 25-17-605.

24 (26) "PRODUCER RESPONSIBILITY ORGANIZATION" OR
25 "ORGANIZATION" MEANS THE NONPROFIT ORGANIZATION SELECTED TO
26 IMPLEMENT THE PROGRAM PURSUANT TO SECTION 25-17-605 (1).

27 (27) "PROPRIETARY INFORMATION" MEANS INFORMATION THAT, IF

1 MADE PUBLIC:

2 (a) WOULD DIVULGE COMPETITIVE BUSINESS INFORMATION OR
3 TRADE SECRETS OF THE ENTITY THAT DEVELOPED THE INFORMATION; OR

4 (b) WOULD REASONABLY HINDER THE ENTITY'S COMPETITIVE
5 ADVANTAGE IN THE MARKET.

6 (28) "READILY-RECYCLABLE MATERIAL" MEANS A COVERED
7 MATERIAL THAT IS INCLUDED ON THE MINIMUM RECYCLABLE LIST.

8 (29) "RECOVERY" OR "RECOVERED" MEANS THE DIVERSION OF
9 COVERED MATERIALS THAT:

10 (a) MIGHT HAVE OTHERWISE BEEN DISPOSED OF AS WASTE; AND

11 (b) ~~HAVE BEEN~~ PROCESSED AT A MATERIALS RECOVERY FACILITY.

12 (30) "RECOVERY RATE" MEANS THE AMOUNT OF COVERED
13 MATERIALS RECOVERED BY THE PROGRAM OVER A CALENDAR YEAR
14 DIVIDED BY THE AMOUNT OF COVERED MATERIALS USED FOR PRODUCTS
15 SOLD, OFFERED FOR SALE, OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO
16 THE STATE IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

17 (31) (a) "RECYCLING" MEANS A PROCESS THAT TRANSFORMS
18 DISCARDED PRODUCTS, COMPONENTS, OR BY-PRODUCTS INTO NEW USABLE
19 OR MARKETABLE MATERIALS AND THAT MAY CHANGE THE PRODUCT'S
20 IDENTITY.

21 (b) "RECYCLING" INCLUDES MECHANICAL RECYCLING.

22 (c) "RECYCLING" DOES NOT MEAN:

23 (I) ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF
24 COMBUSTING DISCARDED PRODUCTS, COMPONENTS, OR BY-PRODUCTS
25 WITH OR WITHOUT OTHER WASTE PRODUCTS;

26 (II) INDUSTRIAL RECYCLING; OR

27 (III) SCRAP METALING.

1 (32) "RECYCLING RATE" MEANS THE AMOUNT OF COVERED
2 MATERIALS THAT ARE RECYCLED OR REUSED UNDER THE PROGRAM IN A
3 CALENDAR YEAR DIVIDED BY THE AMOUNT OF COVERED MATERIALS USED
4 FOR PRODUCTS SOLD, OFFERED FOR SALE, OR DISTRIBUTED BY PRODUCERS
5 WITHIN OR INTO THE STATE IN THE SAME CALENDAR YEAR, EXPRESSED AS
6 A PERCENTAGE.

7 (33) (a) "RECYCLING SERVICES" MEANS SERVICES PROVIDED FOR
8 THE RECYCLING OF COVERED MATERIALS, INCLUDING THE COLLECTION,
9 TRANSPORTATION, AND PROCESSING OF COVERED MATERIALS.

10 (b) "RECYCLING SERVICES" INCLUDES CURBSIDE SERVICES,
11 DROP-OFF CENTERS, AND COMMERCIAL COLLECTION SITES.

12 (c) "RECYCLING SERVICES" DOES NOT INCLUDE SCRAP METALING
13 OR INDUSTRIAL RECYCLING SERVICES.

14 (34) "RESPONSIBLE END MARKET" MEANS TBD.

15 (35) "RETAILER" MEANS A PERSON THAT SELLS OR OFFERS FOR
16 SALE PRODUCTS TO CONSUMERS WITHIN OR INTO THE STATE, INCLUDING
17 SALES MADE THROUGH AN INTERNET TRANSACTION, AND FOR WHICH
18 COVERED MATERIALS ARE USED.

19 (36) "REUSE" OR "REFILL" MEANS THE RETURN INTO THE
20 MARKETPLACE OF A PRODUCT THAT HAS ALREADY BEEN USED FOR USE IN
21 THE SAME MANNER AS ORIGINALLY INTENDED WITHOUT A CHANGE IN THE
22 PRODUCT'S PURPOSE.

23 (37) "SERVICE PROVIDER" MEANS A PUBLIC OR PRIVATE ENTITY,
24 OTHER THAN THE PRODUCER RESPONSIBILITY ORGANIZATION, THAT
25 PROVIDES RECYCLING SERVICES IN THE STATE.

26 (38) "SINGLE-USE FOOD SERVICEWARE" MEANS A SINGLE-USE ITEM
27 THAT A RETAIL FOOD ESTABLISHMENT, AS DEFINED IN SECTION 25-4-1602

1 (14), OR THIRD-PARTY FOOD DELIVERY SERVICE, AS DEFINED IN SECTION
2 30-11-129 (1)(c), PROVIDES A CUSTOMER TO ASSIST THE CUSTOMER IN
3 CONSUMING FOOD OR A BEVERAGE THAT THE RETAIL FOOD
4 ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE PROVIDED THE
5 CUSTOMER.

6 **25-17-604. Producer responsibility advisory board.** (1) THE
7 PRODUCER RESPONSIBILITY ADVISORY BOARD IS HEREBY CREATED IN THE
8 DEPARTMENT.

9 (2) THE ADVISORY BOARD CONSISTS OF THE FOLLOWING EIGHT
10 VOTING MEMBERS AND ONE NONVOTING MEMBER, APPOINTED BY THE
11 EXECUTIVE DIRECTOR: *<{Open issue - there is an even number of voting
12 members. Also, should the executive director be nominating the
13 members? Also, should the department have a representative on the
14 board as a non-voting member?}>*

15 (a) THREE VOTING MEMBERS REPRESENTING MUNICIPALITIES IN
16 THE STATE, AS FOLLOWS:

17 (I) ONE MEMBER REPRESENTING A MUNICIPALITY WITH FEWER
18 THAN TEN THOUSAND RESIDENTS;

19 (II) ONE MEMBER REPRESENTING A MUNICIPALITY IN THE FRONT
20 RANGE; AND

21 (III) ONE MEMBER REPRESENTING A MUNICIPALITY NOT LOCATED
22 IN THE FRONT RANGE;

23 (b) ONE VOTING MEMBER REPRESENTING A STATEWIDE
24 ENVIRONMENTAL ORGANIZATION;

25 (c) ONE VOTING MEMBER REPRESENTING A MATERIALS RECOVERY
26 FACILITY;

27 (d) ONE VOTING MEMBER REPRESENTING A PRIVATE OR PUBLIC

1 SECTOR RECYCLING COLLECTION PROVIDER;

2 (e) ONE VOTING MEMBER REPRESENTING A MANUFACTURER OF
3 PACKAGING MATERIALS THAT UTILIZES POST-CONSUMER RECYCLED
4 MATERIAL;

5 (f) ONE VOTING MEMBER REPRESENTING AN ENVIRONMENTAL
6 JUSTICE ORGANIZATION, AN UNDERSERVED POPULATION, OR A CONSUMER
7 ADVOCACY GROUP; AND

8 (g) ONE NONVOTING MEMBER REPRESENTING THE PRODUCER
9 RESPONSIBILITY ORGANIZATION. <{Should the organization be required
10 to recuse itself when discussing the proposed plan or any
11 amendments?}>

12 (3) ALL APPOINTMENTS TO THE ADVISORY BOARD SHALL BE MADE
13 NO LATER THAN JANUARY 31, 2023. <{What happens in the event of
14 vacancies and resignations? Also, should members have terms? Should
15 the terms be staggered?}>

16 (4) THE EXECUTIVE DIRECTOR SHALL CONVENE THE FIRST MEETING
17 OF THE ADVISORY BOARD NO LATER THAN MARCH 1, 2023. AT THE FIRST
18 MEETING, THE VOTING MEMBERS SHALL SELECT A CHAIR AND VICE-CHAIR
19 FROM AMONG THE VOTING MEMBERS. <{How often does the chair switch,
20 if at all?}>

21 THE ADVISORY BOARD SHALL CONDUCT ANNUAL MEETINGS
22 AND MAY CONDUCT MEETINGS MORE FREQUENTLY UPON THE REQUEST OF
23 THE CHAIR OR FIVE OR MORE OF THE VOTING MEMBERS. THE
24 ORGANIZATION MAY PROVIDE TECHNICAL AND STAFF ASSISTANCE TO THE
25 ADVISORY BOARD.

26 (5) ADVISORY BOARD MEMBERS ARE ENTITLED TO BE REIMBURSED
27 FOR NECESSARY TRAVEL AND OTHER REASONABLE EXPENSES INCURRED IN
THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

1 (6) THE ADVISORY BOARD SHALL:

2 (a) ADVISE THE ORGANIZATION ON THE NEEDS ASSESSMENT IN
3 ACCORDANCE WITH SECTION 25-17-605 (3)(b);

4 (b) REVIEW THE NEEDS ASSESSMENT REPORTED TO THE ADVISORY
5 BOARD PURSUANT TO SECTION 25-17-605 (3)(c);

6 (c) REVIEW THE PLAN PROPOSAL SUBMITTED UNDER SECTION
7 25-17-605 (4);

8 (d) RECOMMEND ANY NECESSARY AMENDMENTS TO THE PLAN
9 PROPOSAL OR THE FINAL PLAN TO THE EXECUTIVE DIRECTOR;

10 (e) REVIEW THE ANNUAL REPORT SUBMITTED BY THE
11 ORGANIZATION UNDER SECTION 25-17-607 (2)(a);

12 (f) RECOMMEND ANY NECESSARY ADDITIONS TO THE LIST OF
13 COVERED MATERIALS TO THE EXECUTIVE DIRECTOR PURSUANT TO SECTION
14 25-7-608 (1)(b); AND

15 (g) CONSULT WITH THE ORGANIZATION ON THE DEVELOPMENT AND
16 UPDATING OF THE MINIMUM RECYCLABLE LIST.

17 (7) THE ADVISORY BOARD MAY RECOMMEND CHANGES TO THE
18 FINAL PLAN TO THE ORGANIZATION AND THE EXECUTIVE DIRECTOR AT ANY
19 TIME.

20 **25-17-605. Producer responsibility in recycling program -**
21 **needs assessment - plan proposal - rules.** (1) ON OR BEFORE MARCH 31,
22 2023, *<{Timing - the advisory board is scheduled to have its first*
23 *meeting by March 1, 2023. If the executive director is consulting with*
24 *the advisory board on the selection of the organization, this is not*
25 *enough time.}>* THE EXECUTIVE DIRECTOR SHALL SELECT A PRODUCER
26 RESPONSIBILITY ORGANIZATION TO IMPLEMENT AND ADMINISTER THE
27 PRODUCER RESPONSIBILITY IN RECYCLING PROGRAM STATEWIDE. THE

1 ORGANIZATION SELECTED BY THE EXECUTIVE DIRECTOR MUST HAVE A
2 GOVERNING BOARD THAT REPRESENTS A DIVERSE RANGE OF PRODUCERS.

3 **<{What happens in the event of the organization's withdrawal?}>**

4 (2) THE PRODUCER RESPONSIBILITY ORGANIZATION SHALL:

5 (a) CONDUCT THE NEEDS ASSESSMENT IN CONSULTATION WITH THE
6 ADVISORY BOARD;

7 (b) SUBMIT A PLAN PROPOSAL IN ACCORDANCE WITH SUBSECTION
8 (4) OF THIS SECTION THAT COVERS A PERIOD OF FIVE YEARS;

9 (c) CONSULT WITH THE ADVISORY BOARD IN THE DEVELOPMENT
10 OF THE PLAN PROPOSAL PRIOR TO ITS SUBMISSION; AND

11 (d) OPERATE AND ADMINISTER THE PROGRAM IN ACCORDANCE
12 WITH THE FINAL PLAN, THE PROVISIONS OF THIS PART 6, AND THE RULES
13 ADOPTED BY THE EXECUTIVE DIRECTOR UNDER THIS PART 6.

14 (3) (a) ON OR BEFORE [REDACTED], **<{When does the needs assessment**
15 **need to get started by?}>** THE ORGANIZATION SHALL HIRE AN

16 INDEPENDENT THIRD PARTY APPROVED BY THE EXECUTIVE DIRECTOR TO
17 CONDUCT AN ASSESSMENT OF THE STATE'S RECYCLING NEEDS. PRIOR TO
18 THE COMMENCEMENT OF THE NEEDS ASSESSMENT, THE ORGANIZATION
19 SHALL CONSULT WITH THE ADVISORY BOARD ON THE SCOPE OF THE NEEDS
20 ASSESSMENT AND PROVIDE ANY NECESSARY RECOMMENDATIONS TO THE
21 THIRD-PARTY CONSULTANT CONDUCTING THE NEEDS ASSESSMENT. AT A
22 MINIMUM, THE NEEDS ASSESSMENT MUST IDENTIFY:

23 (I) THE LEVELS OF RECYCLING SERVICES PROVIDED IN THE STATE
24 BY GEOGRAPHIC AREA, INCLUDING ANY REUSE OR REFILL SYSTEMS
25 UTILIZED, AND ANY ASSOCIATED COSTS;

26 (II) ANY ADDITIONAL RECYCLING SERVICES AND INFRASTRUCTURE
27 NEEDED FOR THE PROGRAM TO MEET OR EXCEED THE CONVENIENCE

1 STANDARDS SET FORTH IN SECTION 25-17-606;

2 (III) A PROPOSED LIST OF COVERED MATERIALS FOR INCLUSION IN
3 A MINIMUM RECYCLABLE LIST;

4 (IV) THE MARKET CONDITIONS AND OPPORTUNITIES FOR THE USE
5 OF RECYCLED COVERED MATERIALS IN THE STATE BY GEOGRAPHIC AREA;

6 (V) OPPORTUNITIES FOR THE USE OF INNOVATIVE NEW
7 TECHNOLOGIES FOR THE RECYCLING AND REUSE OF COVERED MATERIALS;
8 AND

9 (VI) EDUCATION NEEDS IN THE STATE WITH RESPECT TO THE
10 RECYCLING AND REUSE OF COVERED MATERIALS.

11 (b) THE ORGANIZATION SHALL CONSULT WITH THE ADVISORY
12 BOARD THROUGHOUT THE NEEDS ASSESSMENT PROCESS.

13 (c) THE ORGANIZATION SHALL REPORT THE RESULTS OF THE NEEDS
14 ASSESSMENT TO THE ADVISORY BOARD AND THE EXECUTIVE DIRECTOR.
15 THE EXECUTIVE DIRECTOR SHALL POST THE RESULTS OF THE NEEDS
16 ASSESSMENT ON THE DEPARTMENT'S WEBSITE AND PROVIDE PUBLIC
17 NOTICE AND AN OPPORTUNITY TO COMMENT ON THE RESULTS OF THE
18 NEEDS ASSESSMENT.

19 (4) ON OR BEFORE JULY 31, 2024, <{*Timing - the organization*
20 *was only selected 16 months before this. That gives the organization 16*
21 *months to conduct a statewide needs assessment and develop a*
22 *statewide recycling plan.*}> THE ORGANIZATION SHALL SUBMIT A PLAN
23 PROPOSAL FOR THE PROGRAM TO THE ADVISORY BOARD. THE PLAN
24 PROPOSAL MUST COVER A PERIOD OF FIVE YEARS AND MUST BE UPDATED
25 AND RESUBMITTED TO THE ADVISORY BOARD EVERY FIVE YEARS
26 THEREAFTER. TO BE APPROVED, A PLAN PROPOSAL MUST:

27 (a) PROVIDE CONTACT INFORMATION FOR THE ORGANIZATION AND

1 A REPRESENTATIVE OF THE ORGANIZATION;

2 (b) DESCRIBE HOW THE PLAN PROPOSAL IS ADDRESSING AND
3 IMPLEMENTING THE FINDINGS OF THE NEEDS ASSESSMENT;

4 (c) DESCRIBE THE MANNER IN WHICH THE ORGANIZATION
5 SOLICITED AND CONSIDERED INPUT FROM INTERESTED PERSONS AND THE
6 ADVISORY BOARD IN DEVELOPING THE PLAN PROPOSAL. THE
7 ORGANIZATION MUST PROVIDE A SUMMARY OF ANY COMMENTS TO THE
8 PLAN PROPOSAL FROM THE ADVISORY BOARD AND THE PUBLIC AND
9 IDENTIFY ANY SIGNIFICANT CHANGES MADE TO THE PLAN PROPOSAL BASED
10 ON SUCH COMMENTS;

11 (d) INCLUDE A COMPREHENSIVE LIST OF THE COVERED MATERIALS
12 COVERED UNDER THE PROGRAM IN ACCORDANCE WITH THIS PART 6 AND
13 THE EXECUTIVE DIRECTOR'S RULES ADOPTED PURSUANT TO SECTION
14 25-7-608 (1)(b);

15 (e) ESTABLISH RECYCLING PRACTICES THAT:

16 (I) MEET OR EXCEED THE CONVENIENCE STANDARDS SET FORTH IN
17 SECTION 25-17-606;

18 (II) USE OPEN, COMPETITIVE, AND FAIR PROCUREMENT PRACTICES
19 WHEN ENTERING INTO CONTRACTS WITH SERVICE PROVIDERS, AND, WHEN
20 ENTERING INTO CONTRACTS WITH PRIVATE SERVICE PROVIDERS, ADOPT A
21 PREFERENCE FOR SERVICE PROVIDERS WITH STRONG LABOR STANDARDS
22 AND WORKER SAFETY PRACTICES;

23 (III) ENSURE THAT ANY COVERED MATERIALS PROCESSED UNDER
24 A METHOD OTHER THAN MECHANICAL RECYCLING ARE TRANSFERRED TO
25 A RESPONSIBLE END MARKET; AND

26 (IV) USE ENVIRONMENTALLY SOUND MANAGEMENT PRACTICES
27 THAT PRIORITIZE END USES FOR COVERED MATERIALS THAT MAXIMIZE

1 BENEFITS TO THE ENVIRONMENT AND MINIMIZE RISKS TO PUBLIC HEALTH
2 AND SAFETY;

3 (d) ESTABLISH A FUNDING MECHANISM:

4 (I) THAT DOES NOT EXCEED THE DIRECT AND INDIRECT COSTS OF
5 IMPLEMENTING THE PROGRAM, INCLUDING THE COSTS OF:

6 (A) PROVIDING RECYCLING SERVICES UNDER THE PROGRAM AND
7 OTHER OPERATIONAL COSTS, INCLUDING THE COSTS OF REIMBURSING
8 SERVICE PROVIDERS;

9 (B) MEETING THE REPORTING REQUIREMENTS SET FORTH IN
10 SECTION 25-17-609 (2);

11 (C) THE NEEDS ASSESSMENT;

12 (D) THE DEVELOPMENT AND UPDATING OF THE FINAL PLAN;

13 (E) THE IMPLEMENTATION OF THE EDUCATION AND OUTREACH
14 PROGRAM SET FORTH IN SECTION 25-17-607; AND

15 (F) THE DEPARTMENT IN ADMINISTERING AND IMPLEMENTING THIS
16 PART 6, INCLUDING THE COSTS OF THE ADVISORY BOARD, THROUGH
17 REIMBURSEMENTS TO THE DEPARTMENT UNDER SECTION 25-17-610;

18 (II) THAT IS FUNDED THROUGH PRODUCER RESPONSIBILITY DUES
19 PAID ANNUALLY BY PRODUCERS. THE PRODUCER RESPONSIBILITY DUES
20 PAID BY A PRODUCER MUST BE BASED ON THE AMOUNT OF PRODUCTS
21 USING COVERED MATERIALS THAT ARE SOLD, OFFERED FOR SALE, OR
22 DISTRIBUTED BY THE PRODUCER IN THE STATE. THE PRODUCER
23 RESPONSIBILITY DUES FOR EACH COVERED MATERIAL MAY VARY BASED ON
24 THE MARKET VALUE OF THE COVERED MATERIAL USED AND HOW COSTLY
25 IT IS TO COLLECT, TRANSPORT, PROCESS, OR RECYCLE;

26 (III) THAT REQUIRES THAT ANY SURPLUS FUNDS GENERATED BY
27 THE PROGRAM BE PLACED BACK INTO THE PROGRAM FOR PROGRAM

1 IMPROVEMENTS OR A REDUCTION IN PRODUCER RESPONSIBILITY DUES;

2 <{Note - this language is important to ensure that the organization is
3 not profiting off of the program.}>

4 (IV) THAT INCENTIVIZES:

5 (A) REDUCTIONS IN THE AMOUNT OF PACKAGING MATERIALS USED
6 FOR PRODUCTS;

7 (B) INNOVATIONS AND PRACTICES TO ENHANCE THE
8 RECYCLABILITY OF COVERED MATERIALS;

9 (C) HIGH LEVELS OF POST-CONSUMER RECYCLED MATERIAL USE
10 IN A MANNER THAT DOES NOT DISRUPT THE RECYCLING OF OTHER
11 MATERIALS;

12 (D) DESIGN FOR THE REUSE AND REFILL OF COVERED MATERIALS;
13 AND

14 (E) HIGH REUSE AND REFILL RATES OF COVERED MATERIALS;

15 (V) THAT DISINCENTIVIZES:

16 (A) DESIGNS AND PRACTICES THAT INCREASE THE ~~COSTS OF~~
17 COVERED MATERIALS;

18 (B) DESIGNS AND PRACTICES THAT DISRUPT THE RECYCLING OF
19 OTHER MATERIALS; AND

20 (C) PRODUCERS FROM USING COVERED MATERIALS THAT ARE NOT
21 ON THE MINIMUM RECYCLABLE LIST;

22 (e) (I) INCLUDE REIMBURSEMENT RATES ~~FOR THE~~ RECYCLING
23 SERVICES PROVIDED BY SERVICE PROVIDERS. THE REIMBURSEMENT RATES
24 MUST: <{Should there be any limits on local governments being able to

25 be reimbursed for services that are already paid for by local taxes?}>

26 (A) BE CALCULATED USING OBJECTIVE COST FORMULAS;

27 (B) TO THE EXTENT POSSIBLE, BE BASED ON DOCUMENTED DIRECT

1 COSTS INCURRED BY THE SERVICE PROVIDER; AND

2 (C) TAKE INTO ACCOUNT THE DIFFERENT FACTORS AND
3 DEMOGRAPHIC CONDITIONS THAT EXIST IN DIFFERENT GEOGRAPHIC AREAS
4 OF THE STATE AND THE COSTS ASSOCIATED WITH PROVIDING RECYCLING
5 SERVICES TO THOSE GEOGRAPHIC AREAS;

6 (II) INCLUDE COST FORMULAS AND REIMBURSEMENT RATES THAT
7 VARY BETWEEN SERVICE PROVIDERS THAT ARE BASED ON:

8 (A) REGIONAL COSTS;

9 (B) POPULATION DENSITY RATES;

10 (C) TYPE OF RECYCLING SERVICE USED;

11 (D) NUMBER AND TYPES OF COVERED ENTITIES SERVED; AND

12 (E) ANY ADDITIONAL COST FACTORS IDENTIFIED IN THE NEEDS
13 ASSESSMENT;

14 (f) INCLUDE A PROPOSED BUDGET AND A DESCRIPTION OF THE
15 PROCESS USED TO DETERMINE PRODUCER RESPONSIBILITY DUES AND
16 REIMBURSEMENT RATES FOR SERVICE PROVIDERS;

17 (g) ESTABLISH A MINIMUM RECYCLABLE LIST IN ACCORDANCE
18 WITH SECTION 25-17-606 (1)(a);

19 (h) SET MINIMUM RECOVERY RATES, MINIMUM RECYCLING RATES,
20 AND MINIMUM POST-CONSUMER RECYCLED CONTENT RATES FOR EACH
21 TYPE OF COVERED MATERIAL COVERED UNDER THE PROGRAM;

22 (i) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH SERVICE
23 PROVIDERS TO:

24 (I) UTILIZE AND EXPAND ON EXISTING RECYCLING SERVICES AND
25 INFRASTRUCTURE;

26 (II) REDUCE CONTAMINATION OF COVERED MATERIALS DELIVERED
27 TO MATERIAL RECOVERY FACILITIES BY REQUIRING EACH MATERIAL

1 RECOVERY FACILITY PARTICIPATING IN THE PROGRAM TO REPORT
2 ANNUALLY TO THE ORGANIZATION ON CONTAMINATION LEVELS AT EACH
3 MATERIAL RECOVERY FACILITY;

4 (III) INVEST IN NEW OR UPGRADED RECYCLING INFRASTRUCTURE;

5 (IV) MITIGATE THE IMPACTS OF COVERED MATERIALS ON OTHER

6 MATERIALS AT SORTING AND PROCESSING FACILITIES; AND <{Is impact

7 *different from contamination in this context? If so, how?}>*

8 (V) INVEST IN MARKET DEVELOPMENT FOR COVERED MATERIALS;

9 (j) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH
10 PRODUCERS TO REDUCE THE PACKAGING OF PRODUCTS USING COVERED
11 MATERIALS THROUGH PRODUCT DESIGN CHANGES, THE DEVELOPMENT OR
12 EXPANSION OF SYSTEMS FOR REUSABLE PACKAGING, AND PRODUCT
13 INNOVATION;

14 (k) DESCRIBE HOW THE ORGANIZATION WILL IMPLEMENT THE
15 EDUCATION AND OUTREACH PROGRAM SET FORTH IN SECTION 25-17-607;
16 AND

17 (l) INCLUDE ANY ADDITIONAL INFORMATION REQUIRED BY THE
18 DEPARTMENT.

19 (5) (a) THE ADVISORY BOARD SHALL REVIEW THE PLAN PROPOSAL
20 FOR COMPLIANCE WITH THIS PART 6. THE ADVISORY BOARD SHALL
21 CONSULT WITH THE ORGANIZATION THROUGHOUT ITS REVIEW OF THE PLAN
22 PROPOSAL. WITHIN SIXTY DAYS AFTER THE SUBMISSION OF THE PLAN
23 PROPOSAL TO THE ADVISORY BOARD, THE ADVISORY BOARD SHALL
24 FORWARD THE PLAN PROPOSAL TO THE EXECUTIVE DIRECTOR WITH ANY
25 RECOMMENDED AMENDMENTS.

26 (b) WITHIN SIXTY DAYS AFTER RECEIVING THE PLAN PROPOSAL,
27 THE EXECUTIVE DIRECTOR SHALL EITHER APPROVE THE PLAN PROPOSAL AS

1 SUBMITTED BY THE ORGANIZATION TO THE ADVISORY BOARD, APPROVE
2 THE PLAN PROPOSAL AS AMENDED BY THE ADVISORY BOARD, OR REJECT
3 THE PLAN PROPOSAL. IN CONSULTATION WITH THE ORGANIZATION AND
4 THE ADVISORY BOARD, THE EXECUTIVE DIRECTOR MAY MAKE ADDITIONAL
5 AMENDMENTS TO THE PLAN PROPOSAL BEFORE THE EXECUTIVE DIRECTOR'S
6 APPROVAL. IF THE EXECUTIVE DIRECTOR REJECTS THE PLAN PROPOSAL,
7 THE EXECUTIVE DIRECTOR SHALL NOTIFY THE ORGANIZATION OF THE
8 REJECTION AND THE REASONS FOR ITS REJECTION, AND THE ORGANIZATION
9 MUST SUBMIT AN UPDATED PLAN PROPOSAL TO THE ADVISORY BOARD
10 WITHIN SIXTY DAYS AFTER RECEIVING THE EXECUTIVE DIRECTOR'S
11 REJECTION.

12 (c) AFTER THE EXECUTIVE DIRECTOR'S APPROVAL OF THE PLAN
13 PROPOSAL AS A FINAL PLAN, THE EXECUTIVE DIRECTOR SHALL PUBLISH THE
14 FINAL PLAN ON THE DEPARTMENT'S WEBSITE. THE ORGANIZATION SHALL
15 BEGIN IMPLEMENTING THE FINAL PLAN WITHIN SIX MONTHS AFTER THE
16 EXECUTIVE DIRECTOR'S APPROVAL OF THE PLAN PROPOSAL. THE
17 EXECUTIVE DIRECTOR MAY RESCIND APPROVAL OF THE FINAL PLAN AT ANY
18 TIME BY PROVIDING THE ORGANIZATION AND THE ADVISORY BOARD WITH
19 A STATEMENT OF THE REASONS FOR RESCINDING APPROVAL OF THE FINAL
20 PLAN.

21 (6) THE ORGANIZATION MAY SUBMIT PROPOSED AMENDMENTS TO
22 THE FINAL PLAN AT ANY POINT TO THE ADVISORY BOARD. THE ADVISORY
23 BOARD SHALL REVIEW THE PROPOSED AMENDMENTS AND MAY
24 RECOMMEND THOSE PROPOSED AMENDMENTS OR ANY PROPOSED
25 AMENDMENTS OF ITS OWN TO THE EXECUTIVE DIRECTOR FOR THE
26 EXECUTIVE DIRECTOR TO APPROVE, MODIFY, OR REJECT THE PROPOSED
27 AMENDMENTS IN ACCORDANCE WITH THE REQUIREMENTS AND

1 PROCEDURES SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION.

2 *<{To determine what procedure amendments to the final plan will have*
3 *to follow. Do you want the same procedure as the plan proposal? The*
4 *drawback is that it may take some time to implement plan changes and*
5 *the plan will likely need to be changed often. However, there needs to*
6 *be some government oversight in plan changes. }>*

7 (7) THE EXECUTIVE DIRECTOR MAY REQUIRE THE ORGANIZATION
8 TO REVIEW OR REVISE THE FINAL PLAN PRIOR TO THE END OF THE
9 FIVE-YEAR PERIOD DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

10 (8) THE DEPARTMENT SHALL ENFORCE THIS PART 6 IN
11 ACCORDANCE WITH SECTION 25-17-611 AND PROMULGATE RULES IN
12 ACCORDANCE WITH ARTICLE 4 OF TITLE 24 AS MAY BE NECESSARY FOR THE
13 ENFORCEMENT OF THIS PART 6.

14 **25-17-606. Minimum recyclable list - convenience standards.**

15 (1)(a) THE ORGANIZATION SHALL DEVELOP A MINIMUM RECYCLABLE LIST
16 OF COVERED MATERIALS BASED ON THE AVAILABILITY OF RECYCLING
17 SERVICES, RECYCLING INFRASTRUCTURE, AND RECYCLING MARKETS FOR
18 COVERED MATERIALS IN THE STATE, AS DETERMINED BY THE NEEDS
19 ASSESSMENT. ~~THE MINIMUM RECYCLABLE LIST MAY VARY BY GEOGRAPHIC~~
20 ~~AREA DEPENDING ON REGIONAL MARKETS AND REGIONAL RECYCLING~~
21 ~~COLLECTION AND PROCESSING INFRASTRUCTURE.~~

22 (b) THE ORGANIZATION SHALL UPDATE THE MINIMUM RECYCLABLE
23 LIST ON AN ANNUAL BASIS IN RESPONSE TO RECYCLING COLLECTION AND
24 PROCESSING IMPROVEMENTS AND CHANGES IN RECYCLING END MARKETS.
25 THE ADVISORY BOARD SHALL REVIEW AND MAKE AMENDMENTS TO, AND
26 THE EXECUTIVE DIRECTOR SHALL APPROVE, MODIFY, OR REJECT, ANY
27 UPDATES TO THE MINIMUM RECYCLABLE LIST IN ACCORDANCE WITH THE

1 PROCEDURES SET FORTH IN SECTION 25-17-605 (5). *<{Again, should this*
2 *procedure look like the review of the plan proposal?}>*

3 (c) ALL SERVICE PROVIDERS MUST PROVIDE RECYCLING SERVICES
4 FOR ALL READILY-RECYCLABLE MATERIALS INCLUDED ON A MINIMUM
5 RECYCLABLE LIST ~~THAT APPLIES TO THE JURISDICTION IN WHICH THE~~
6 ~~RECYCLING SERVICES ARE PROVIDED~~ TO BE ELIGIBLE FOR REIMBURSEMENT
7 FOR RECYCLING SERVICES PROVIDED UNDER THE PROGRAM.

8 (d) THE EXECUTIVE DIRECTOR MAY GRANT A SERVICE PROVIDER
9 AN EXCEPTION TO THE REQUIREMENTS OF SUBSECTION (1)(c) OF THIS
10 SECTION IF THE SERVICE PROVIDER DEMONSTRATES TO THE REASONABLE
11 SATISFACTION OF THE EXECUTIVE DIRECTOR THAT IT IS NOT ABLE TO
12 PROVIDE RECYCLING SERVICES FOR A READILY RECYCLABLE MATERIAL.

13 (2) THE ORGANIZATION SHALL PROVIDE COVERED ENTITIES WITH
14 WIDESPREAD, CONVENIENT, AND EQUITABLE ACCESS TO RECYCLING
15 SERVICES FOR ALL READILY RECYCLABLE MATERIALS, ~~AT NO ADDITIONAL~~
16 ~~COST TO THE COVERED ENTITY, WITH THE GOAL OF ACHIEVING A~~
17 ~~STATEWIDE~~ ~~PERCENT RECYCLING RATE, RECOVERY RATE, AND~~
18 ~~POST-CONSUMER RECYCLED CONTENT RATE BY JANUARY 1, 2035.~~ *<{What*
19 *is the target that the organization will be basing the needs assessment*
20 *on? There likely needs to be some kind of hard number to guide the*
21 *needs assessment and plan components. Also, should the rates/goals be*
22 *based on the amount of covered materials recycled, recovered, etc. or*
23 *the amount of readily recyclable materials recycled, recovered, etc.*
24 *Right now it is the former. Also, how are service providers going to be*
25 *compensated for providing the additional recycling services that will be*
26 *provided to accomplish the percentage goal in this subsection (2) if the*
27 *additional recycling services are being provided at no additional cost to*

1 *covered entities? If service providers are reimbursed for their costs*
2 *through the program, they would still have to pay the upfront costs of*
3 *providing the additional services. Will that work for them?}>*

4 (3) TO THE EXTENT POSSIBLE, RECYCLING SERVICES FOR READILY
5 RECYCLABLE MATERIALS MUST BE PROVIDED IN A MANNER THAT IS AS
6 CONVENIENT AS THE COLLECTION OF SOLID WASTE IN THE COVERED
7 ENTITY'S GEOGRAPHIC AREA.

8 ~~(4) IN PROVIDING RECYCLING SERVICES TO A GEOGRAPHIC AREA~~
9 ~~WHERE THE LOCAL GOVERNMENTS WITH JURISDICTION IN THE GEOGRAPHIC~~
10 ~~AREA DO NOT PROVIDE CURBSIDE SERVICES FOR THE COLLECTION OF SOLID~~
11 ~~WASTE, THE ORGANIZATION MUST CONSTRUCT AND OPERATE LONG-TERM~~
12 ~~FACILITIES IN THE GEOGRAPHIC AREA TO COLLECT READILY RECYCLABLE~~
13 ~~MATERIALS. THE FACILITIES MUST BE LOCATED AT EACH SOLID WASTES~~
14 ~~DISPOSAL SITE AND FACILITY IN THE GEOGRAPHIC AREA. <{The local~~
15 *government may not let the organization construct facilities next to the*
16 *site for a variety of reasons, including a lack of room for their*
17 *construction, so it might make sense to give the organization some*
18 *leeway here. Moreover, the siting of waste diversion facilities seems to*
19 *fall under a local government's 1041 powers regarding land use*
20 *decisions, so local government approval would be required.}>*

21 ~~(5) IN PROVIDING RECYCLING SERVICES TO MULTI-FAMILY~~
22 ~~DWELLINGS WITH ON-SITE CENTRALIZED WASTE SITES, THE ORGANIZATION~~
23 ~~MUST OFFER THE OWNER OF THE MULTI-FAMILY DWELLING EQUIVALENT~~
24 ~~ON-SITE RECYCLING SERVICES FOR READILY RECYCLABLE MATERIALS.~~

25 (6) TO THE EXTENT POSSIBLE, ANY COVERED ENTITIES IN THE
26 STATE THAT ARE RECEIVING RECYCLING SERVICES AS OF AUGUST 1, 2022,
27 MUST CONTINUE TO RECEIVE EQUIVALENT RECYCLING SERVICES THROUGH

1 THE PROGRAM OR A LOCAL GOVERNMENT SERVICE. <{"On the effective
2 date of this act" is unclear so our office prefers to give a specified date
3 instead. I used August 1, 2022 as an example, because that's fairly close
4 to when the bill will go into effect, but we can use whatever date you
5 would like.}>

6 (7) THE ORGANIZATION SHALL NOT RESTRICT A PERSON'S ABILITY
7 TO CONTRACT DIRECTLY WITH SERVICE PROVIDERS TO OBTAIN RECYCLING
8 SERVICES FOR COVERED MATERIALS.

9 **25-17-607. Education and outreach program.** (1) THE
10 ORGANIZATION SHALL DEVELOP AND IMPLEMENT A STATEWIDE
11 EDUCATION AND OUTREACH PROGRAM THAT PROVIDES PROGRAMMING
12 AND MATERIALS ON THE RECYCLING AND REUSE OF COVERED MATERIALS,
13 INCLUDING PROGRAMMING AND MATERIALS ON: <{"Will the education and
14 outreach programming and materials be free of cost? If so, that should
15 be indicated here.}>

16 (a) PROPER END-OF-LIFE MANAGEMENT OF COVERED MATERIALS;

17 (b) THE LOCATION AND AVAILABILITY OF RECYCLING SERVICES
18 UNDER THE PROGRAM; AND

19 (c) HOW TO PREVENT LITTERING IN THE PROCESS OF PROVIDING
20 RECYCLING SERVICES FOR COVERED MATERIALS.

21 (2) THE EDUCATION AND OUTREACH PROGRAM MUST, AT A
22 MINIMUM:

23 (a) PROVIDE CLEAR AND CONCISE RECYCLING INSTRUCTIONS THAT
24 ARE CONSISTENT STATEWIDE AND ACCESSIBLE FOR ALL DEMOGRAPHIC
25 GROUPS;

26 (b) DEVELOP METHODS TO TARGET:

27 (I) SERVICE PROVIDERS;

- 1 (II) CONSUMERS;
2 (III) RETAILERS;
3 (IV) PRODUCERS; AND
4 (V) UNDERSERVED POPULATIONS OF THE STATE. <{*Underserved*

5 *how and who determines if they are underserved?*>

6 (c) UTILIZE ELECTRONIC, PRINT, AND SOCIAL MEDIA PLATFORMS TO
7 DISTRIBUTE AND MARKET THE PROGRAMMING AND MATERIALS;

8 (d) BE DESIGNED TO HELP THE STATE ACHIEVE THE MINIMUM
9 RECOVERY RATES, MINIMUM RECYCLING RATES, AND MINIMUM
10 POST-CONSUMER RECYCLED CONTENT RATES SET FORTH IN THE FINAL
11 PLAN; AND

12 ~~(e) INCORPORATE A PLAN FOR THE ORGANIZATION TO WORK WITH~~
13 ~~PRODUCERS TO DEVELOP LABELS OR MARKINGS FOR COVERED MATERIALS~~
14 ~~IN ACCORDANCE WITH APPLICABLE FEDERAL AND STATE LAW TO ASSIST~~
15 ~~CONSUMERS IN THE RESPONSIBLE RECYCLING OF COVERED MATERIALS.~~

16 (3) THE ORGANIZATION SHALL CONSULT WITH THE EXECUTIVE
17 DIRECTOR AND THE ADVISORY BOARD ON THE DEVELOPMENT AND
18 DISTRIBUTION OF PROGRAMMING AND MATERIALS AND ~~MAY~~ COORDINATE
19 WITH LOCAL GOVERNMENTS, NON-PROFIT ORGANIZATIONS, AND SERVICE
20 PROVIDERS ON PROVIDING OUTREACH TO COMMUNITIES THROUGHOUT THE
21 STATE.

22 (4) THE ORGANIZATION SHALL DEVELOP A METHODOLOGY FOR
23 EVALUATING AND REPORTING THE EFFECTIVENESS OF THE EDUCATION AND
24 OUTREACH PROGRAM THAT ALLOWS THE EXECUTIVE DIRECTOR TO
25 MEASURE THE EDUCATION AND OUTREACH PROGRAM'S OVERALL
26 EFFECTIVENESS.

27 **25-17-608. Prohibition - review of covered materials -**

1 **alternative collection programs - local governments - rules.**

2 (1)(a) EFFECTIVE JANUARY 1, 2026, A PRODUCER SHALL NOT SELL, OFFER
3 FOR SALE, OR DISTRIBUTE ANY PRODUCTS THAT USE COVERED MATERIALS
4 IN THE STATE UNLESS THE PRODUCER IS PARTICIPATING IN THE PROGRAM
5 OR AN ALTERNATIVE COLLECTION PROGRAM.

6 (b) IN CONSULTATION WITH THE ADVISORY BOARD AND THE
7 ORGANIZATION, THE EXECUTIVE DIRECTOR SHALL PERIODICALLY REVIEW
8 THE LIST OF COVERED MATERIALS AND DETERMINE WHETHER TO ADD ANY
9 ADDITIONAL COVERED MATERIALS TO THE LIST BY RULE. <{*Could the*
10 *executive director, by rule, remove a covered material from the list?*>

11 (2)(a) A PRODUCER OR GROUP OF PRODUCERS MAY DEVELOP AND
12 OPERATE AN ALTERNATIVE COLLECTION PROGRAM TO PROVIDE RECYCLING
13 SERVICES FOR ALL OR SOME TYPES OF COVERED MATERIALS. A PRODUCER
14 THAT PARTICIPATES IN AN ALTERNATIVE COLLECTION PROGRAM APPROVED
15 BY THE EXECUTIVE DIRECTOR MAY WHOLLY OR PARTIALLY OFFSET THE
16 PRODUCER'S PAYMENT OBLIGATIONS UNDER THE PROGRAM WITH RESPECT
17 TO THE TYPES OF COVERED MATERIALS INCLUDED IN THE ALTERNATIVE
18 COLLECTION PROGRAM.

19 (b) A PRODUCER OR GROUP OF PRODUCERS SEEKING TO IMPLEMENT
20 AN ALTERNATIVE COLLECTION PROGRAM SHALL SUBMIT AN ALTERNATIVE
21 COLLECTION PROGRAM PLAN PROPOSAL THAT COMPLIES WITH THE
22 REQUIREMENTS OF SECTION 25-17-605 (4). THE ADVISORY BOARD SHALL
23 REVIEW AND MAKE RECOMMENDATIONS ON, AND THE EXECUTIVE
24 DIRECTOR SHALL APPROVE, MODIFY, OR REJECT, ANY ALTERNATIVE
25 COLLECTION PROGRAM PLAN PROPOSALS OR AMENDMENTS IN
26 ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 25-17-605
27 (5). <{*Will alternative collection programs be held to the same*

1 *standards as the plan proposal? What guidelines will the executive*
2 *director use in reviewing those programs?}>*

3 (3) WITHIN FIVE YEARS AFTER THE IMPLEMENTATION OF THE
4 PROGRAM OR ANY ALTERNATIVE COLLECTION PROGRAM, EACH PROGRAM
5 MUST MEET THE MINIMUM RECOVERY RATES, MINIMUM RECYCLING RATES,
6 AND MINIMUM POST-CONSUMER RECYCLED CONTENT RATES SET FORTH IN
7 EACH PROGRAM'S RESPECTIVE PLAN. IF, BASED ON THE ANNUAL REPORT
8 SUBMITTED UNDER SECTION 25-17-609 (2), THE PROGRAM IS NOT ON
9 TRACK TO MEET THE MINIMUM RECOVERY RATES, MINIMUM RECYCLING
10 RATES, AND MINIMUM POST-CONSUMER MATERIAL CONTENT RATES SET
11 FORTH IN EACH PROGRAM'S RESPECTIVE PLAN, THE EXECUTIVE DIRECTOR
12 MAY REQUIRE THE ORGANIZATION TO AMEND ITS RESPECTIVE PLAN UNDER
13 SECTION 25-17-605 (7).

14 (4) A RETAILER MAY NOT CHARGE ANY KIND OF FEE TO
15 CONSUMERS THAT IS INTENDED TO RECOUP A PRODUCER'S COSTS IN
16 COMPLYING WITH THIS PART 6. <*If the producer raises the price of*
17 *product without indicating that it's a fee to recoup the costs of*
18 *participation, how would that be known or reported to the organization*
19 *or department?}>*

20 (5) THE DEPARTMENT, THE ORGANIZATION, AND A PRODUCER OR
21 GROUP OF PRODUCERS IMPLEMENTING AN ALTERNATIVE COLLECTION
22 PROGRAM:

23 (a) MUST KEEP CONFIDENTIAL ANY PROPRIETARY INFORMATION
24 PROVIDED BY A PRODUCER; AND

25 (b) SHALL NOT INCLUDE ANY PROPRIETARY INFORMATION
26 PROVIDED BY A PRODUCER IN THE PROPOSED PLAN, THE FINAL PLAN, OR
27 ANY AMENDMENT TO THE FINAL PLAN.

1 (6) (a) THE PROGRAM AND ANY ALTERNATIVE COLLECTION
2 PROGRAM MUST COMPLY WITH ANY FIRE, HAZARDOUS WASTE, OR OTHER
3 RELEVANT ORDINANCES OR RESOLUTIONS ADOPTED BY A LOCAL
4 GOVERNMENT.

5 (b) NOTWITHSTANDING ANY LAW TO THE CONTRARY, A LOCAL
6 GOVERNMENT IS NOT REQUIRED TO PROVIDE SERVICES FOR THE PROGRAM
7 OR AN ALTERNATIVE COLLECTION PROGRAM.

8 **25-17-609. Producer responsibility dues - annual reporting.**

9 (1) (a) NO LATER THAN JULY 1, 2025, AND ANNUALLY THEREAFTER, A
10 PRODUCER SHALL PAY PRODUCER RESPONSIBILITY DUES TO THE
11 ORGANIZATION BASED ON THE AMOUNT OF PRODUCTS USING COVERED
12 MATERIALS THAT ARE SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE
13 STATE BY THE PRODUCER.

14 (2) (a) BEFORE MARCH 31 OF THE SECOND YEAR OF THE
15 PROGRAM'S IMPLEMENTATION, AND ANNUALLY THEREAFTER, THE
16 ORGANIZATION SHALL SUBMIT A REPORT TO THE ADVISORY BOARD AND
17 EXECUTIVE DIRECTOR DESCRIBING THE PROGRESS OF THE PROGRAM. THE
18 EXECUTIVE DIRECTOR SHALL POST THE REPORT ON THE DEPARTMENT'S
19 WEBSITE. THE PROGRAM REPORT MUST INCLUDE THE FOLLOWING
20 INFORMATION FROM THE PRECEDING CALENDAR YEAR:

21 (I) THE TOTAL AMOUNT OF PRODUCTS USING COVERED MATERIALS
22 THAT ARE SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE BY
23 PRODUCERS;

24 (II) THE TOTAL AMOUNT OF PRODUCER RESPONSIBILITY DUES
25 COLLECTED UNDER THE PROGRAM, ~~WITH THE DATA BROKEN DOWN BY THE~~
~~26 PRODUCER RESPONSIBILITY DUE AMOUNT PAID BY EACH PRODUCER FOR~~
27 EACH TYPE OF COVERED MATERIAL;

1 (III) THE TOTAL AMOUNT, BY WEIGHT ~~OR VOLUME~~, OF EACH TYPE
2 OF COVERED MATERIAL RECOVERED OR RECYCLED UNDER THE PROGRAM,
3 WITH THE DATA BROKEN DOWN BY:

4 (A) TYPE OF COVERED MATERIAL COLLECTED;

5 (B) MEANS OF COLLECTION, WHETHER BY CURBSIDE SERVICE,
6 DROP-OFF CENTER, OR COMMERCIAL COLLECTION SITE;

7 (C) METHOD OF WASTE HANDLING USED TO HANDLE THE
8 COLLECTED COVERED MATERIAL; AND

9 (D) GEOGRAPHIC AREA;

10 (IV) THE TOTAL AMOUNT, BY WEIGHT OR VOLUME, OF
11 POST-CONSUMER RECYCLED MATERIALS USED IN THE PRODUCTION OF
12 COVERED MATERIALS;

13 (V) THE RECYCLING RATE, RECOVERY RATE, AND MINIMUM
14 POST-CONSUMER RECYCLED CONTENT RATE FOR EACH TYPE OF COVERED
15 MATERIAL AND A DESCRIPTION OF THE ORGANIZATION'S PROCESS IN
16 ACHIEVING THE RELATED GOALS SET FORTH IN THE FINAL PLAN;

17 (VI) A SUMMARY OF THE EDUCATION AND OUTREACH EFFORTS
18 IMPLEMENTED IN ACCORDANCE WITH SECTION 25-17-607, INCLUDING:

19 (A) SAMPLES OF ANY MATERIALS DISTRIBUTED; AND

20 (B) A DESCRIPTION OF THE METHODOLOGY USED AND THE RESULTS
21 OF THE EVALUATION CONDUCTED PURSUANT TO SECTION 25-17-607 (4).

22 THE RESULTS MUST INCLUDE THE PERCENTAGE OF CONSUMERS,
23 PRODUCERS, AND RETAILERS MADE AWARE OF THE WAYS TO RECYCLE AND
24 REUSE RECYCLED MATERIALS.

25 (VII) A LIST OF THE NAMES, LOCATIONS, AND HOURS OF
26 OPERATION FOR CURBSIDE SERVICES, DROP-OFF CENTERS, AND
27 COMMERCIAL COLLECTION SITES ACCEPTING OR COLLECTING COVERED

1 MATERIALS UNDER THE PROGRAM; AND

2 (VIII) A COPY OF AN INDEPENDENT THIRD PARTY'S REPORT
3 AUDITING THE PROGRAM. THE AUDIT MUST INCLUDE A DETAILED LIST OF
4 THE PROGRAM'S COSTS AND REVENUES.

5 (b) BEFORE MARCH 31 OF THE SECOND YEAR OF AN ALTERNATIVE
6 COLLECTION PROGRAM'S IMPLEMENTATION, AND ANNUALLY THEREAFTER,
7 THE PRODUCER OR GROUP OF PRODUCERS IMPLEMENTING THE
8 ALTERNATIVE COLLECTION PROGRAM SHALL SUBMIT A REPORT TO THE
9 ADVISORY BOARD AND EXECUTIVE DIRECTOR DESCRIBING THE PROGRESS
10 OF THE PROGRAM AND THE REPORT MUST INCLUDE THE INFORMATION
11 DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, AS APPLICABLE, FROM
12 THE PRECEDING CALENDAR YEAR. THE EXECUTIVE DIRECTOR SHALL POST
13 THE REPORT ON THE DEPARTMENT'S WEBSITE.

14 (c) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE
15 EXECUTIVE DIRECTOR SHALL ANNUALLY COMPILE THE RESULTS OF THE
16 REPORTS RECEIVED PURSUANT TO SUBSECTIONS (2)(a) AND (2)(b) OF THIS
17 SECTION INTO A GENERAL REPORT DESCRIBING THE PROGRESS OF THE
18 PROGRAM. THE EXECUTIVE DIRECTOR SHALL INCLUDE THE EXECUTIVE
19 DIRECTOR'S THE ADVISORY BOARD'S ACTIVITIES AND EXPENSES
20 REIMBURSED IN THE GENERAL REPORT. THE EXECUTIVE DIRECTOR SHALL
21 POST THE REPORT ON THE DEPARTMENT'S WEBSITE. THE EXECUTIVE
22 DIRECTOR SHALL ANNUALLY PRESENT THE GENERAL REPORT TO THE
23 HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE AND THE
24 PUBLIC AND BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE OF
25 THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES.
26 <{Are these the legislative bodies that you would like the executive
27 director to report to? Do you want any reporting to the governor?}>

1 **25-17-610. Producer responsibility in recycling program**
2 **administration fund - creation - purpose.** (1) THERE IS HEREBY
3 CREATED IN THE STATE TREASURY THE PRODUCER RESPONSIBILITY IN
4 RECYCLING PROGRAM ADMINISTRATION FUND, REFERRED TO IN THIS
5 SECTION AS THE "FUND".

6 (2) THE PURPOSE OF THE FUND IS FOR THE REIMBURSEMENT OF THE
7 DEPARTMENT FOR THE REASONABLE COSTS INCURRED IN THE
8 ADMINISTRATION OF THIS PART 6.

9 (3) THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE
10 MONEY TO THE FUND FOR THE PURPOSE SET FORTH IN SUBSECTION (2) OF
11 THIS SECTION.

12 (4) THE FUND CONSISTS OF MONEY TRANSMITTED TO THE FUND
13 PURSUANT TO SUBSECTION (5) OF THIS SECTION.

14 (5) ONLY THE MONEY FROM PRODUCER RESPONSIBILITY DUES THAT
15 IS NECESSARY FOR THE DEPARTMENT'S REASONABLE COSTS INCURRED IN
16 THE ADMINISTRATION OF THIS PART 6 SHALL BE TRANSMITTED FROM THE
17 ORGANIZATION TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME
18 TO THE FUND.

19 (6) AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND
20 UNENCUMBERED MONEY IN THE FUND REMAINS IN THE FUND AND SHALL
21 NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER
22 FUND. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF
23 MONEY IN THE FUND REMAINS IN THE FUND AND DOES NOT DIVERT TO THE
24 GENERAL FUND. <{*Note - all the funds used to reimburse the state for*
25 *administrative expenses would count towards the TABOR cap.*}>

26 **25-17-611. Violations - enforcement - administrative penalty.**
27 (1) A PRODUCER OR ORGANIZATION THAT VIOLATES THIS PART 6 IS LIABLE

1 FOR AN ADMINISTRATIVE PENALTY NOT TO EXCEED:

2 (a) FOR A FIRST VIOLATION, AN INITIAL PENALTY OF FIVE
3 THOUSAND DOLLARS FOR THE FIRST DAY OF EACH VIOLATION AND ONE
4 THOUSAND FIVE HUNDRED DOLLARS PER DAY FOR EACH DAY THE
5 VIOLATION CONTINUES;

6 (b) FOR A SECOND VIOLATION COMMITTED WITHIN TWELVE
7 MONTHS AFTER A PRIOR VIOLATION, AN INITIAL PENALTY OF TEN
8 THOUSAND DOLLARS FOR THE FIRST DAY OF EACH VIOLATION AND THREE
9 THOUSAND DOLLARS PER DAY FOR EACH DAY THE VIOLATION CONTINUES;
10 AND

11 (c) FOR A THIRD VIOLATION COMMITTED WITHIN TWELVE MONTHS
12 AFTER A PRIOR VIOLATION, AN INITIAL PENALTY OF TWENTY THOUSAND
13 DOLLARS FOR THE FIRST DAY OF EACH VIOLATION AND SIX THOUSAND
14 DOLLARS PER DAY FOR EACH DAY THE VIOLATION CONTINUES.

15 (2) IF A PRODUCER OR ORGANIZATION IS LIABLE PURSUANT TO
16 SUBSECTION (1) OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL SERVE
17 BY PERSONAL SERVICE OR BY CERTIFIED MAIL AN ORDER THAT IMPOSES AN
18 ADMINISTRATIVE PENALTY ON THE PRODUCER OR ORGANIZATION.

19 (3) THE PRODUCER OR ORGANIZATION MAY SUBMIT A WRITTEN
20 REQUEST TO THE EXECUTIVE DIRECTOR FOR A HEARING BY PERSONAL
21 SERVICE OR BY CERTIFIED MAIL WITHIN THIRTY CALENDAR DAYS AFTER
22 THE DATE OF THE ORDER IMPOSING AN ADMINISTRATIVE PENALTY. AN
23 ADMINISTRATIVE LAW JUDGE FROM THE OFFICE OF ADMINISTRATIVE
24 COURTS SHALL CONDUCT THE HEARING IN ACCORDANCE WITH SECTION
25 24-4-105.

26 (4) IF A REQUEST FOR A HEARING IS FILED, PAYMENT OF ANY
27 MONETARY PENALTY IS STAYED PENDING A FINAL DECISION BY THE

1 ADMINISTRATIVE LAW JUDGE AFTER A HEARING ON THE MERITS. THE
2 DEPARTMENT IS NOT PRECLUDED FROM IMPOSING AN ADMINISTRATIVE
3 PENALTY AGAINST THE PRODUCER OR ORGANIZATION FOR SUBSEQUENT
4 VIOLATIONS OF THIS PART 6 COMMITTED DURING THE PENDENCY OF THE
5 STAY.

6 (5) THE DEPARTMENT BEARS THE BURDEN OF PROOF BY A
7 PREPONDERANCE OF THE EVIDENCE IN A HEARING HELD PURSUANT TO THIS
8 SECTION.

9 (6) THE EXECUTIVE DIRECTOR MAY ENTER INTO A SETTLEMENT
10 AGREEMENT WITH A PRODUCER OR ORGANIZATION ASSESSED AN
11 ADMINISTRATIVE PENALTY UNDER THIS SECTION.

12 (7) THE EXECUTIVE DIRECTOR SHALL TRANSFER ANY MONEY
13 COLLECTED UNDER THIS SECTION TO THE STATE TREASURER, WHO SHALL
14 DEPOSIT THE MONEY INTO THE RECYCLING RESOURCES ECONOMIC
15 OPPORTUNITY FUND CREATED IN SECTION 25-16.5-106.5 (1).

16 **25-17-612. Limited exemption from antitrust, restraint of**
17 **trade, and unfair trade practices provisions.** IF THE PROGRAM OR AN
18 ALTERNATIVE COLLECTION PROGRAM ENGAGES IN AN ACTIVITY
19 PERFORMED SOLELY IN FURTHERANCE OF IMPLEMENTING THE PROGRAM OR
20 ALTERNATIVE COLLECTION PROGRAM AND IN COMPLIANCE WITH THIS PART
21 6, THE ACTIVITY IS NOT A VIOLATION OF THE ANTITRUST, RESTRAINT OF
22 TRADE, AND UNFAIR TRADE PRACTICES PROVISIONS OF THE "UNFAIR
23 PRACTICES ACT", ARTICLE 2 OF TITLE 6 OR THE "COLORADO ANTITRUST
24 ACT OF 1992", ARTICLE 4 OF TITLE 6.

25 **25-17-613. Eligibility for state or local incentive programs.**
26 NOTHING IN THIS PART 6 AFFECTS A PERSON'S ELIGIBILITY FOR ANY STATE
27 OR LOCAL INCENTIVE PROGRAMS FOR WHICH THE PERSON IS OTHERWISE

1 ELIGIBLE.

2 **25-17-614. Producer exemptions.** A PRODUCER IS EXEMPT FROM
3 THE REQUIREMENTS OF THIS PART 6 IF THE PRODUCER IS:

4 (a) A PERSON WITH LESS THAN ONE MILLION DOLLARS IN REALIZED
5 GROSS TOTAL REVENUE DURING THE PRIOR CALENDAR YEAR;

6 (b) A PERSON THAT HAS SOLD, OFFERED FOR SALE, OR DISTRIBUTED
7 LESS THAN ONE TON OF PRODUCTS USING COVERED MATERIALS WITHIN OR
8 INTO THE STATE DURING THE PRIOR CALENDAR YEAR;

9 (c) A LOCAL GOVERNMENT; OR *<{Local governments are
10 exempted here but not the state. Is that the intent? If so, how would the
11 state participate in the program? How would payments be made? And
12 from which state fund?}>*

13 (d) A NONPROFIT ORGANIZATION.

14 **SECTION 2. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety. *<{A safety clause is
17 needed if the intent is for the law to be in effect by July 2022.}>*