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HOUSE BILL NO. 709

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend the Code of Virginia by adding a section numbered 10.1-1424.4, relating to Packaging Stewardship Program and Fund; established.*

 Patron—Keam

 Committee Referral Pending
Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 10.1-1424.4 as follows:

§ 10.1-1424.4. Packaging Stewardship Program and Fund.

A. As used in this section:

"Alternative collection program" means a program for the management of packaging material operated by one or more producers that has been approved by the Department.

"Fund" means the Packaging Stewardship Fund established pursuant to this section.

"Packaging material" means a discrete type of material, or category of material, used for the containment, protection, delivery, presentation, or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer. "Packaging material" does not include a discrete type of material, or category of material, that is (i) intended to be used for the long-term storage or protection of a durable product and can be expected to be used for such purpose for at least five years; (ii) a beverage container; (iii) a container for architectural paint; or (iv) otherwise excluded from the definition of "packaging material" by regulations adopted by the Department.

"Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical conditions, including fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs, and fresh fruit and vegetables. "Perishable food" does not include food that is sold, offered for sale, or distributed for sale frozen.

"Producer" means a person who (i) has legal ownership of the brand of a product sold, offered for sale, or distributed for sale in or into the Commonwealth that uses packaging material or (ii) is the sole entity that imports into the Commonwealth for sale, offer for sale, or distribution for sale a product that uses packaging material. "Producer" includes the franchisor of a franchise located in the Commonwealth, but does not include the franchisee operating the franchise. "Producer" does not include a nonprofit organization exempt from taxation under U.S. Internal Revenue Code § 501(c)(3).

"Program" means the Packaging Stewardship Program established pursuant to this section.

"Stewardship organization" means an organization with which the Department has entered into a contract pursuant to subsection B to administer the provisions of the Program.

B. The Department may contract with a stewardship organization to administer the provisions of the Program.

C. The Department or the stewardship organization shall conduct a statewide recycling needs assessment that shall evaluate (i) current funding needs affecting recycling access and availability; (ii) capacity, costs, and needs associated with the collection and transportation of recyclable material; (iii) the processing capacity, market conditions, and opportunities for recyclable material; (iv) consumer education needs with respect to recycling and reducing contamination in collected recyclable material; and (v) any other evaluation deemed necessary by the Department.

D. 1. Beginning January 1, 2023, a producer shall pay an annual fee to the Department, to be deposited into the Fund, based on the net amount of each type of packaging material sold, offered for sale, or distributed for sale by the producer and not otherwise managed by the producer under an approved alternative collection program. The Department shall develop regulations setting forth the calculation and determination of fees due pursuant to this subsection. Such rules may set such fees based on net weight or volume. The fees shall take into account whether a type of packaging material is readily recyclable or not readily recyclable so as to incentivize the use of readily recyclable packaging materials by producers.

2. Subject to approval by the Department, a producer or group of producers may develop and operate an alternative collection program to collect and manage some or all types of packaging materials sold, offered for sale, or distributed for sale in or into the Commonwealth by the producer through reuse, recycling, and, where appropriate, incineration. Development and operation of an alternative collection program may be used to partially or fully offset the amount of fees owed by a

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59 producer pursuant to subdivision 1 for the types of packaging materials accepted into the alternative
60 collection program. The Department shall establish regulations governing application for approval and
61 terms of approval for an alternative collection program.

62 3. A producer shall be exempt from the requirements of this section in any calendar year in which:

63 1. For calendar years 2023 and 2024, the producer realized less than \$2 million in total gross
64 revenue during the prior calendar year, or for calendar years 2025 and later, the producer realized less
65 than \$5 million in total gross revenue during the prior calendar year;

66 2. The producer sold, offered for sale, or distributed for sale in or into the Commonwealth products
67 using less than one ton of packaging material in total;

68 3. The producer realized more than 50 percent of its total gross revenue in the prior calendar year
69 from the sale of goods acquired through insurance salvages, closeouts, bankruptcies, or liquidations; or

70 4. The producer primarily sold, offered for sale, or distributed for sale in or into the Commonwealth
71 to retailers or directly to consumers products that were perishable food that used less than 15 tons of
72 packaging material in total.

73 E. 1. A locality may participate in the Program by providing for the collection and recycling of
74 packaging material that is generated in the locality. A participating locality shall annually report to the
75 Department or the stewardship organization, on a form provided by the Department, information
76 necessary to determine the locality's costs associated with collection, processing, transporting, and
77 recycling or otherwise managing packing material. Two or more localities may jointly participate in
78 operating a local collection program pursuant to this subsection.

79 2. A participating locality shall be eligible for an annual disbursement from the Fund based on the
80 median per-ton cost of managing packaging material that is readily recyclable and the median per-ton
81 cost of managing packaging material that is not readily recyclable.

82 F. 1. There is hereby created in the state treasury a special nonreverting fund to be known as the
83 Packaging Stewardship Fund. The Fund shall be established on the books of the Comptroller. All fees
84 received from producers pursuant to this section shall be paid into the state treasury and credited to the
85 Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
86 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
87 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the
88 purposes of (i) disbursing funds to participating localities pursuant to subsection E; (ii) covering the
89 operating costs of the Department and, if appropriate, the stewardship organization in administering the
90 Program, including costs related to the adoption of rules and regulations; and (iii) investments in
91 recycling infrastructure and recycling education by the Department or by the stewardship organization
92 upon approval by the Department. Expenditures and disbursements from the Fund shall be made by the
93 State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.