

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1467

H.P. 1083

House of Representatives, April 12, 2021

An Act To Promote a Circular Economy through Increased Post-consumer Recycled Plastic Content in Plastic Beverage Containers

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DOUDERA of Camden.
Cosponsored by Senator MAXMIN of Lincoln and
Representatives: BELL of Yarmouth, TUCKER of Brunswick, ZEIGLER of Montville,
Senators: BENNETT of Oxford, BRENNER of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §1612** is enacted to read:

3 **§1612. Plastic beverage containers**

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

6 A. "Beverage" has the same meaning as in section 3102, subsection 1.

7 B. "Beverage container" has the same meaning as in section 3102, subsection 2.

8 C. "Beverage manufacturing industry association" means an association that represents
9 the interests of companies that manufacture beverages.

10 D. "Manufacturer" means a person, partnership, association, corporation or other entity
11 that, through its own action or through contract or control of another entity, is primarily
12 responsible for the production of a beverage held in a plastic beverage container for
13 sale or distribution in the State.

14 E. "Nonrefillable" has the same meaning as in section 3102, subsection 14.

15 F. "Plastic" means a synthetic material made from fossil fuel or organic-based
16 polymers, such as polyethylene, polystyrene, polypropylene and polycarbonate, that
17 can be molded or blown into specific shapes.

18 G. "Plastic beverage container" means a nonrefillable beverage container that is
19 composed wholly or in large part of plastic. "Plastic beverage container" does not
20 include a beverage cap that may be screwed onto or otherwise affixed to a nonrefillable
21 beverage container.

22 H. "Post-consumer recycled plastic" means plastic produced from the recovery,
23 separation, collection and reprocessing of plastic that was originally sold for
24 consumption and that would otherwise be disposed of or processed as waste. "Post-
25 consumer recycled plastic" does not include post-industrial plastic or pre-consumer
26 plastic.

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

28 **2. Post-consumer recycled plastic requirement.** Except as provided in subsection
29 7, beginning January 1, 2026 and ending December 31, 2030, a manufacturer may not sell,
30 offer for sale or distribute for sale in the State a plastic beverage container unless the total
31 number of plastic beverage containers sold, offered for sale or distributed for sale in the
32 State by that manufacturer contain, on average and in the aggregate, at least 25% post-
33 consumer recycled plastic.

34 Except as provided in subsection 7, beginning January 1, 2031, a manufacturer may not
35 sell, offer for sale or distribute for sale in the State a plastic beverage container unless the
36 total number of plastic beverage containers sold, offered for sale or distributed for sale in
37 the State by that manufacturer contain, on average and in the aggregate, at least 30% post-
38 consumer recycled plastic.

39 **3. Determination of compliance with post-consumer recycled plastic**
40 **requirement; advisory committee.** For the purposes of determining a manufacturer's
41 compliance with the post-consumer recycled requirement in subsection 2, a manufacturer

1 may rely on Maine-specific data regarding plastic beverage container sales and material
2 use, if available, or may alternatively rely on the same type of data applicable to a region
3 or territory in the United States that includes Maine.

4 A. If a manufacturer elects to rely on data regarding plastic beverage container sales
5 and material use derived from data applicable to a region or territory in the United
6 States that includes Maine, the manufacturer shall:

7 (1) Prorate that regional or territorial data to determine Maine-specific figures
8 based on market share or population in a manner that ensures that the percentage
9 of post-consumer recycled plastic calculated for plastic beverage containers sold
10 in Maine is the same percentage as calculated for that larger region or territory; and

11 (2) Document the methodology used to determine those Maine-specific figures
12 calculated under subparagraph (1) in the report required under subsection 4.

13 B. The department may form an advisory committee composed of stakeholders to
14 determine the ability of manufacturers to measure and report the Maine-specific
15 information required under this subsection and to develop any recommendations for
16 improving the data determination and reporting process. The department may, as
17 necessary, contract with a qualified 3rd-party entity to assist the advisory committee in
18 developing recommendations under this paragraph. Any costs to the department
19 associated with this paragraph may be offset through fees collected under subsection 4
20 and administrative penalties paid under subsection 5.

21 **4. Manufacturer reporting; registration fee.** On or before April 1, 2024, and
22 annually thereafter, a manufacturer that has in the prior calendar year sold, offered for sale
23 or distributed for sale in the State a plastic beverage container shall submit a report to the
24 department identifying, by resin type where applicable, the amount by weight in pounds of
25 post-consumer recycled plastic, the amount by weight in pounds of plastic that is not post-
26 consumer recycled plastic and the percentage of post-consumer recycled plastic in the total
27 weight of all plastic beverage containers the manufacturer sold, offered for sale or
28 distributed for sale in the State in that prior calendar year.

29 A. If the manufacturer has determined the data required to be reported under this
30 subsection using regional or territorial data, the manufacturer shall describe in the
31 report the methodology used to determine the Maine-specific figures.

32 B. At the time that a manufacturer submits a report required under this subsection, the
33 manufacturer shall pay to the department an annual registration fee. The department
34 shall set the amount of the fee under this paragraph, which may not exceed \$250, and
35 which must be designed to offset the costs to the department of administering and
36 overseeing this section.

37 C. The department may conduct audits or take other necessary actions to verify the
38 accuracy of manufacturer data reported under this subsection.

39 D. Proprietary information submitted to the department in a report required under this
40 subsection or submitted to the department as part of an audit or other action taken by
41 the department under paragraph C that is identified by the submitter as proprietary
42 information is confidential and must be handled by the department in the same manner
43 as confidential information is handled under section 1310-B.

1 E. The department shall make available on its publicly accessible website all reports
2 submitted under this subsection, except that the department shall redact or remove from
3 such reports any proprietary information identified pursuant to paragraph D.

4 F. In the case of a manufacturer that has contracted with a distributor, as defined in
5 section 3102, subsection 8, to sell or distribute in the State the beverages it produces,
6 the distributor may at the direction of the manufacturer submit the report required under
7 this subsection on the manufacturer's behalf.

8 **5. Penalties.** Except as otherwise provided in this section, the department may assess
9 against a manufacturer that fails to comply with the requirements of subsection 2 an
10 administrative penalty as described in this subsection.

11 A. The department may assess against a manufacturer that fails to comply with the
12 requirements of subsection 2 an administrative penalty calculated as follows.

13 (1) The department shall add the total amount by weight in pounds of post-
14 consumer recycled plastic and the total amount by weight in pounds of plastic that
15 is not post-consumer recycled plastic used by the manufacturer in all plastic
16 beverage containers it sold, offered for sale or distributed for sale in the State
17 during the prior calendar year. Unless otherwise determined by the department,
18 the figure calculated under this subparagraph must be calculated using the
19 information reported by the manufacturer pursuant to subsection 4.

20 (2) The department shall multiply the figure calculated under subparagraph (1) by
21 the minimum post-consumer recycled plastic percentage required under subsection
22 2 during the prior calendar year.

23 (3) The department shall subtract from the figure calculated under subparagraph
24 (2) the total amount by weight in pounds of post-consumer recycled plastic used
25 by the manufacturer in all plastic beverage containers it sold, offered for sale or
26 distributed for sale in the State during the prior calendar year.

27 (4) The department shall multiply the figure calculated under subparagraph (3) by
28 20¢. If the figure calculated under this subparagraph is less than or equal to zero,
29 the department may not assess an administrative penalty under this subsection.

30 B. The penalties that may be assessed by the department under this subsection are
31 recoverable in an adjudicatory proceeding.

32 C. Notwithstanding any provision of law to the contrary, any penalties received by the
33 department pursuant to this subsection must be used by the department to offset its
34 costs related to the administration and enforcement of this section, except that if such
35 costs are fully offset, the department may deposit any additional penalties received in
36 the Maine Solid Waste Management Fund established in section 2201.

37 **6. Waiver.** At the request of a manufacturer and in accordance with the provisions of
38 this subsection, the department may grant a reduction in or waiver from an administrative
39 penalty that would otherwise be assessed against the manufacturer pursuant to subsection
40 5.

41 A. In determining whether to grant a reduction or waiver under this subsection, the
42 department shall consider, at a minimum, anomalous market conditions; disruption in,

1 or lack of, supply of post-consumer recycled plastic; and the efforts of the manufacturer
2 to acquire post-consumer recycled plastic.

3 B. As a condition of granting a reduction or waiver under this subsection, the
4 department may require the manufacturer to submit a corrective action plan describing
5 why the manufacturer has failed to comply with or expects to fail to comply with the
6 requirements of subsection 2 and the actions the manufacturer intends to implement to
7 ensure its compliance with those requirements during the current calendar year.

8 (1) The department may approve the corrective action plan as submitted, approve
9 the plan with required changes or reject the plan.

10 (2) The department may require the manufacturer to demonstrate implementation
11 of an approved corrective action plan before the department reduces or waives an
12 otherwise applicable administrative penalty.

13 (3) If the department rejects a corrective action plan it required a manufacturer to
14 submit under this paragraph or if the department determines that the manufacturer
15 has failed to implement an approved corrective action plan, the department shall
16 require the manufacturer to pay the full amount of the administrative penalty for
17 which the manufacturer requested a reduction or waiver.

18 C. Any costs accrued by the department in reviewing a manufacturer's request for an
19 administrative penalty reduction or waiver under this subsection, including the costs of
20 any 3rd-party contracting services required by the department, must be paid to the
21 department by the requesting manufacturer.

22 **7. Review of post-consumer recycled plastic requirements.** Beginning January 1,
23 2026, and not more than annually thereafter, the department may on its own initiative or at
24 the petition of a beverage manufacturing industry association, initiate a review of the
25 applicable post-consumer recycled plastic requirement under subsection 2 to determine
26 whether that requirement should be reduced due to market conditions for post-consumer
27 recycled plastic, including the demand for such plastic for food-grade application, and a
28 review of recycling rates, progress made by manufacturers in complying with the post-
29 consumer recycled plastic requirement under subsection 2 and any other factors reviewed
30 by the department.

31 A. After conducting the review authorized by this subsection, the department may
32 adopt rules reducing the applicable post-consumer recycled plastic content requirement
33 under subsection 2.

34 B. The department may adopt rules establishing the process by which a beverage
35 manufacturing industry association may petition the department to conduct a review
36 under this subsection.

37 **8. Department reporting.** Beginning February 15, 2025, and annually thereafter, the
38 department shall submit a report to the joint standing committee of the Legislature having
39 jurisdiction over environment and natural resources matters regarding the requirements of
40 this section and including any recommendations for changes to those requirements. The
41 report must describe, in the aggregate, the data submitted to the department by
42 manufacturers under subsection 4.

43 A. Beginning February 15, 2028, and annually thereafter, the report under this
44 subsection must include information regarding manufacturer compliance with the

1 requirements of subsection 2, including, at a minimum, information on the number of
2 noncompliant manufacturers, the number of penalty reduction or waiver requests
3 received and granted or rejected by the department under subsection 6, the total funds
4 generated from payment of the registration fee under subsection 4 and the payment of
5 administrative penalties under subsection 5 and a description of how any such funds
6 received were expended by the department. The report shall include any
7 recommendations by the department regarding whether the requirements of this section
8 should be amended to better ensure manufacturer compliance.

9 B. The report under this subsection may be included in the report required pursuant to
10 section 1772, subsection 1. After reviewing the report under this subsection, the joint
11 standing committee of the Legislature having jurisdiction over environment and natural
12 resources matters may report out legislation relating to the report.

13 **9. Administration and enforcement; rules.** The department shall administer and
14 enforce this section and may adopt rules to implement this section. Rules adopted pursuant
15 to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
16 2-A. The department may, as necessary, contract with qualified 3rd-party entities to assist
17 in the implementation of this section and the development of any rules to be adopted
18 pursuant to this subsection.

19 **10. Preemption.** Beginning April 1, 2024, the State intends to occupy the whole field
20 of regulation of the amount of post-consumer recycled plastic contained in plastic beverage
21 containers. A local government may not adopt an ordinance regulating the amount of post-
22 consumer recycled plastic contained in plastic beverage containers and, beginning April 1,
23 2024, any ordinance or regulation that violates this subsection is void and has no force or
24 effect.

25 SUMMARY

26 This bill provides that, beginning January 1, 2026, a manufacturer of beverages in
27 plastic beverage containers may not sell, offer for sale or distribute for sale in the State a
28 plastic beverage container unless the total number of plastic beverage containers sold,
29 offered for sale or distributed for sale in the State by that manufacturer contains, on average
30 and in the aggregate, at least 25% post-consumer recycled plastic. That post-consumer
31 recycled plastic requirement increases to 30% post-consumer recycled plastic beginning
32 January 1, 2031. The bill also requires the Department of Environmental Protection to
33 administer and enforce these provisions and authorizes the department to assess
34 administrative penalties against a noncompliant manufacturer based on the weight, in
35 pounds, of plastic beverage containers sold by that manufacturer that are not in compliance.