

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1645

H.P. 1055

House of Representatives, April 12, 2023

### An Act to Reduce Plastic Packaging Waste

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Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative GRAMLICH of Old Orchard Beach.  
Cosponsored by Senator BENNETT of Oxford and  
Representatives: CARLOW of Buxton, DOUDERA of Camden, HOBBS of Wells, JAUCH of  
Topsham, MILLIKEN of Blue Hill, Speaker TALBOT ROSS of Portland, Senators: BLACK  
of Franklin, INGWERSEN of York.

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

2 **Sec. 1. 38 MRSA §1617** is enacted to read:

3 **§1617. Reduction of plastic packaging**

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

6 A. "Chemical of concern" has the same meaning as in section 1691, subsection 2-A.

7 B. "Compostable" means, with respect to packaging, able to undergo degradation by  
8 biological processes during composting to yield carbon dioxide, water, inorganic  
9 compounds and biomass at a rate consistent with other materials that undergo  
10 degradation by biological processes and leave no visible, distinguishable or toxic  
11 residue, including no adverse impact on the ability of compost to support plant growth  
12 once the compost is placed in soil.

13 C. "Manufacturer" means the person that manufactures a product or whose brand name  
14 is affixed to the product. In the case of a product imported into the United States,  
15 "manufacturer" includes the importer or first domestic distributor of the product if the  
16 person that manufactured or assembled the product or whose brand name is affixed to  
17 the product does not have a presence in the United States.

18 D. "Nondetectable pigment" means a pigment added to plastic packaging, including,  
19 but not limited to, carbon black pigment, that cannot be detected by sorting equipment  
20 commonly used in recycling facilities.

21 E. "Packaging" means a discrete type of material, or a category of material that  
22 includes multiple discrete types of material with similar management requirements and  
23 similar commodity values, used for the containment, protection, delivery, presentation  
24 or distribution of a product, including a product sold over the Internet, at the time that  
25 the product leaves a point of sale with or is received by the consumer of the product.

26 F. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic  
27 organic solid that is moldable and to which additives or other substances may have  
28 been added. "Plastic" does not include natural polymers that have not been chemically  
29 modified.

30 G. "Plastic packaging" means packaging that is composed wholly or in large part of  
31 plastic but does not include:

32 (1) A disposable food service container as defined in section 1571, subsection 3  
33 or 3-A; or

34 (2) A polystyrene foam cooler or ice chest used for the processing or shipping of  
35 seafood.

36 H. "Product" means an item manufactured, assembled, packaged or otherwise prepared  
37 for sale to consumers and sold or distributed for personal, residential, commercial or  
38 industrial use, including for use in making other products.

39 I. "Prohibited plastic packaging" means:

40 (1) Plastic packaging that contains nondetectable pigments;

1                   (2) Plastic bottles that are composed wholly or partially of polyethylene  
2                   terephthalate and are opaque or are pigmented a color other than transparent blue  
3                   or transparent green;

4                   (3) Plastic packaging that is rigid and is composed wholly or partially of  
5                   polyethylene terephthalate glycol;

6                   (4) Plastic packaging that is composed wholly or partially of polystyrene,  
7                   including expanded polystyrene;

8                   (5) Plastic packaging that is composed wholly or partially of polyvinyl chloride,  
9                   including polyvinylidene chloride;

10                  (6) Plastic packaging that is composed wholly or partially of polyethylene  
11                  terephthalate and is manufactured using antimony or cobalt as a processing aid or  
12                  additive; and

13                  (7) Any other type of prohibited plastic packaging designated by the department  
14                  by rule pursuant to subsection 2.

15                  J. "Recyclable" means, with respect to packaging, able to be transformed or  
16                  remanufactured into usable or marketable materials through means other than landfill  
17                  disposal, incineration or energy recovery or energy generation through combustion.

18                  K. "Reusable" means, with respect to packaging, able to be used by a person other than  
19                  the original consumer in the same manner and purpose for which the packaging was  
20                  originally produced.

21                  **2. Prohibited plastic packaging; designation by rule.** The department may adopt  
22                  rules designating additional types of prohibited plastic packaging upon a finding that the  
23                  plastic packaging type is not readily reusable, recyclable or compostable in the State and:

24                  A. Contains a chemical of concern or other chemical that can reasonably be expected  
25                  to create hazardous human health conditions during its manufacturing, recycling or  
26                  composting or to adversely affect human health or the environment;

27                  B. Is unnecessary for the containment, protection, delivery, presentation or distribution  
28                  of the product it packages or can be replaced with a reusable alternative;

29                  C. Can reasonably be expected to hinder or disrupt commercial recycling or  
30                  composting systems due to its format, composition or size; or

31                  D. Has a high likelihood of entering the natural environment, whether as litter or  
32                  otherwise.

33                  A rule adopted under this section must specify an effective date for the rule that is at least  
34                  one year after the final adoption of the rule.

35                  Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5,  
36                  chapter 375, subchapter 2-A.

37                  **3. Prohibition.** Beginning January 1, 2025, a person may not sell, offer for sale or  
38                  distribute for sale in the State a product contained, protected, delivered, presented or  
39                  distributed in or using prohibited plastic packaging.

40                  **4. Certificate of compliance.** If the department has reason to believe that a product  
41                  is being sold, offered for sale or distributed for sale in the State contained, protected,

1 delivered, presented or distributed in or using prohibited plastic packaging in violation of  
2 subsection 3, the department may direct the manufacturer or distributor of the product to,  
3 within 30 days:

4 A. Provide the department with a certificate attesting that the product is not contained,  
5 protected, delivered, presented or distributed in or using prohibited plastic packaging;  
6 or

7 B. Notify persons that sell that product in this State that the sale of that product is  
8 prohibited in this State and provide the department with a list of the names and  
9 addresses of those notified.

10 **5. Administration and enforcement; rulemaking; reports.** The department shall  
11 implement, administer and enforce this section.

12 A. The department may adopt rules as necessary for the implementation,  
13 administration and enforcement of this section. Rules adopted pursuant to this  
14 paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter  
15 2-A.

16 B. On or before January 15, 2027, and biennially thereafter, the department shall  
17 submit a report to the joint standing committee of the Legislature having jurisdiction  
18 over environment and natural resources matters regarding the reduction of plastic  
19 packaging under this section. The report may include, but is not limited to,  
20 identification of additional types of plastic packaging that can reasonably be expected  
21 to hinder or disrupt commercial recycling or composting systems or that contain known  
22 or likely chemicals of concern and recommendations for measures to further reduce  
23 plastic packaging under this section. After reviewing the report, the committee may  
24 report out legislation related to the report.

## 25 SUMMARY

26 This bill provides that, beginning January 1, 2025, a person may not sell, offer for sale  
27 or distribute for sale in the State a product contained, protected, delivered, presented or  
28 distributed in or using prohibited plastic packaging.

29 "Prohibited plastic packaging" is defined in the bill to include plastic packaging that  
30 contains nondetectable pigments; plastic bottles that are composed wholly or partially of  
31 polyethylene terephthalate and are opaque or are pigmented a color other than transparent  
32 blue or transparent green; plastic packaging that is rigid and is composed wholly or partially  
33 of polyethylene terephthalate glycol; plastic packaging that is composed wholly or partially  
34 of polystyrene, including expanded polystyrene; plastic packaging that is composed wholly  
35 or partially of polyvinyl chloride, including polyvinylidene chloride; plastic packaging that  
36 is composed wholly or partially of polyethylene terephthalate and is manufactured using  
37 antimony or cobalt as a processing aid or additive. The Department of Environmental  
38 Protection may adopt major substantive rules to designate additional types of prohibited  
39 plastic packaging based on the plastic packaging satisfying statutorily specified criteria for  
40 prohibition.