

# House Bill 2592

Sponsored by Representative SOLLMAN; Representatives DEXTER, SCHOUTEN, WILDE (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires producers to form or join extended producer responsibility programs for packaging, food serviceware and printing and writing paper.

Establishes Extended Producer Responsibility Fund.

Prohibits sale of products that make deceptive or misleading claims about recyclability.

Requires commingled recycling processing facility to obtain disposal site permit.

Imposes penalty not to exceed \$100 per day for violation of program provisions by retailer and penalty not to exceed \$25,000 per day for violation by producer or extended producer responsibility organization.

Requires extended producer responsibility organization to first implement program no later than July 1, 2025.

Provides that labeling and facility permitting provisions become operative July 1, 2025.

Applies to covered products sold on or after July 1, 2025.

## A BILL FOR AN ACT

Relating to extended producer responsibility programs; creating new provisions; amending ORS 459.995; and repealing ORS 459A.675, 459A.680 and 459A.685.

**Be It Enacted by the People of the State of Oregon:**

## EXTENDED PRODUCER RESPONSIBILITY PROGRAM

### (Extended Producer Responsibility Organizations)

#### **SECTION 1. Definitions.** As used in sections 1 to 23 of this 2021 Act:

(1) **“Commingled recycling” means the recycling or recovery of two or more materials that are mixed together and that generally would be separated into individual materials at a commingled recycling processing facility in order to be marketed.**

(2) **“Commingled recycling processing facility” means a facility that:**

(a) **Receives source separated recyclable materials that are commingled mixtures of commodity types; and**

(b) **Separates the recyclable materials described in paragraph (a) of this subsection into marketable commodities or streams of materials that are intended for use or further processing by others.**

(3)(a) **“Covered product” means:**

(A) **Packaging;**

(B) **Printing and writing paper; and**

(C) **Food serviceware generally intended for single use, including but not limited to:**

(i) **Paper or plastic plates, cups, bowls, cutlery or straws;**

(ii) **Aluminum foil; and**

(iii) **Pie plates.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) "Covered product" does not include:

2 (A) A beverage container, as defined in ORS 459A.700;

3 (B) Bound books; and

4 (C) Napkins, paper towels or other paper intended to be used for cleaning or the absorp-  
5 tion of liquids.

6 (4) "Extended producer responsibility organization" means a corporation, nonprofit or-  
7 ganization or other legal entity designated by a group of producers to implement an extended  
8 producer responsibility program.

9 (5) "Extended producer responsibility program" means a statewide program for the col-  
10 lection and management of covered products that is funded and operated by an extended  
11 producer responsibility organization pursuant to a plan approved by the Department of En-  
12 vironmental Quality under section 9 of this 2021 Act.

13 (6) "Local government" has the meaning given that term in ORS 174.116.

14 (7) "Local government's agent" includes a collection service franchise holder under ORS  
15 459A.085 or any person authorized by a local government to provide collection services as  
16 defined in ORS 459.005.

17 (8) "Packaging" includes:

18 (a) Sales packaging or primary packaging that constitutes a sales unit to the consumer  
19 at point of purchase and most closely contains a product or food or beverage item;

20 (b) Grouped packaging or secondary packaging used to group products for multiunit sale  
21 or intended to brand or display the product;

22 (c) Transport packaging or tertiary packaging used for transportation or distribution di-  
23 rectly to a consumer or to protect the product during transport;

24 (d) Ancillary elements hung or attached to a product that perform a packaging function;

25 (e) Single-use bags, including shopping bags; and

26 (f) Any other materials, including paper, plastic, glass or metal or a mixture thereof,  
27 used for the containment, protection, handling, delivery or presentation of goods.

28 (9) "Printing and writing paper" includes, but is not limited to, newspaper, magazines,  
29 flyers, brochures, booklets, catalogs, telephone directories and paper used for copying, writ-  
30 ing or other general use.

31 (10) "Producer" means a person that:

32 (a) Manufactures a covered product or sells, offers for sale or distributes the covered  
33 product in this state under the manufacturer's own brand;

34 (b) Is the owner or licensee of a trademark under which a covered product is sold, offered  
35 for sale or distributed in this state, whether or not the trademark is registered in this state;

36 (c) Sells a covered product in or imports a covered product into the United States for  
37 use in a commercial enterprise that sells, offers for sale or distributes the covered product  
38 in this state; or

39 (d) Sells, offers for sale or distributes the covered product in this state.

40 (11)(a) "Recycling" means the series of activities by which a material is:

41 (A) Collected and sorted; and

42 (B) Processed in a manner that does not change the basic molecular structure of the  
43 material being recycled.

44 (b) "Recycling" does not include:

45 (A) Any method of sorting, processing and aggregating materials from solid waste that

1 does not preserve the original material quality, and, as a result, the aggregated material is  
2 no longer usable for its initial purpose or product and can only be used for inferior purposes  
3 or products.

4 (B) The use of solid waste:

- 5 (i) As a fuel or fuel substitute;
- 6 (ii) For energy production; or
- 7 (iii) Within a landfill.

8 (C) The conversion of solid waste into alternative products, including chemicals,  
9 feedstocks, fuels and energy, through:

- 10 (i) Pyrolysis;
- 11 (ii) Hydrolysis;
- 12 (iii) Methanolysis;
- 13 (iv) Gasification;
- 14 (v) Enzymatic breakdown; or
- 15 (vi) Similar technologies.

16 (12) “Responsible end market” means a materials market in which the recycling or re-  
17 covery of materials or the disposal of contaminants is conducted in a way that:

- 18 (a) Benefits the environment; and
- 19 (b) Minimizes risks to public health and worker health and safety.

20 (13) “Reuse” means the return of a covered product into the economic stream to be re-  
21 filled or used in the same kind of application as before without a change in its identity if:

- 22 (a) It is technically feasible under current market conditions to do so; and
- 23 (b) The covered product can be refilled or used for 100 cycles or a greater amount ap-  
24 propriate for that covered product, as determined by the Environmental Quality Commission  
25 by rule.

26 (14) “Small producer” means a producer that:

- 27 (a) Is a nonprofit organization;
- 28 (b) Is a public body as defined in ORS 174.109;
- 29 (c) Has a gross revenue of less than \$1 million in this state for the organization’s most  
30 recent fiscal year; or
- 31 (d) Produced or sold in Oregon less than one metric ton of covered products for use in  
32 this state in the most recent calendar year.

33 **SECTION 2. Restrictions on sales.** (1) A producer or retailer may not sell or offer for  
34 sale, irrespective of the selling technique used, including that of remote sale, a covered  
35 product in this state unless the covered product is labeled with a brand that is included in  
36 a plan for an extended producer responsibility program that is approved by the Department  
37 of Environmental Quality under section 9 of this 2021 Act.

38 (2) A retailer is in compliance with subsection (1) of this section if, on the date the cov-  
39 ered product is ordered from the producer or the producer’s agent:

- 40 (a) The website maintained by the producer’s extended producer responsibility organiza-  
41 tion lists the producer, along with the producer’s brand associated with the covered product,  
42 as a participant in an approved extended producer responsibility program; or
- 43 (b) The website maintained by the Department of Environmental Quality lists the pro-  
44 ducer and covered product as exempt.

45 **SECTION 3. Exemption for small producers.** (1) A small producer is exempt from the

1 requirements of section 2 (1) of this 2021 Act if the small producer registers with the De-  
 2 partment of Environmental Quality as provided in this section.

3 (2) A small producer that sells, offers for sale or distributes covered products in this  
 4 state may annually register with the department in the form and manner prescribed by the  
 5 department.

6 (3) The department shall maintain a website listing small producers that are registered  
 7 with the department and the brands associated with each small producer.

8 **SECTION 4. Extended producer responsibility program plan.** (1) An extended producer  
 9 responsibility organization must prepare and submit to the Department of Environmental  
 10 Quality a plan for the development and implementation of an extended producer responsibil-  
 11 ity program. An extended producer responsibility program plan must describe how the ex-  
 12 tended producer responsibility organization will:

13 (a) Develop and implement an extended producer responsibility program;

14 (b) Fund the extended producer responsibility program from collection to processing and  
 15 marketing using a funding mechanism that satisfies the requirements of section 6 of this  
 16 2021 Act;

17 (c) Provide for the collection for recycling and management of materials identified on the  
 18 statewide recycling list described in section 5 of this 2021 Act;

19 (d) Collect and analyze information necessary for the extended producer responsibility  
 20 organization to meet the reporting requirements of section 11 of this 2021 Act;

21 (e) Ensure that covered products are collected from residential, commercial and govern-  
 22 mental generators of waste;

23 (f) Abate and remove litter from public spaces, including the ocean and public parks;

24 (g) Make investments in recycling infrastructure to ensure that covered products can  
 25 be recycled throughout the state;

26 (h) Reimburse local governments or local governments' agents for the cost of trans-  
 27 porting recyclable materials to commingled recycling processing facilities;

28 (i) Meet the reuse and recycling performance requirements established under section 7  
 29 of this 2021 Act;

30 (j) Meet the post-consumer recycled content requirements established under section 8  
 31 of this 2021 Act;

32 (k) Source reduce covered products to the greatest extent practicable;

33 (L) Coordinate with local governments and collection service providers to provide for the  
 34 collection for recycling or disposal of covered products in the same manner and on the same  
 35 day as other solid waste;

36 (m) Provide reimbursements to local governments for the collection for recycling or  
 37 disposal of covered products;

38 (n) Coordinate with other extended producer responsibility organizations operating in this  
 39 state; and

40 (o) Ensure that covered products collected for recycling are marketed to responsible end  
 41 markets.

42 (2) An extended producer responsibility program plan must demonstrate that a sufficient  
 43 number of producers has joined the extended producer responsibility organization to allow  
 44 the organization to effectively operate an extended producer responsibility program.

45 (3) An extended producer responsibility organization must prepare and submit a plan

1 under this section every two years. Except for an initial plan, a plan submitted under this  
 2 section must describe how the extended producer responsibility organization consulted with  
 3 stakeholders and incorporated stakeholder feedback into its plan.

4 **SECTION 5. Statewide recycling list.** (1) A plan submitted under section 4 of this 2021  
 5 Act must include a statewide recycling list consisting of covered products that are appro-  
 6 priate for recycling throughout the state. A covered product may not be placed on the  
 7 statewide recycling list unless the covered product meets the following conditions:

8 (a) It must be technically and economically feasible to recycle the covered product;

9 (b) Commingled recycling processing facilities must have the capacity to recycle the  
 10 covered product and must be located in enough regions of the state, or in neighboring states,  
 11 to allow the material collected throughout the state to be recycled; and

12 (c) The end-user of the covered product must not be required to remove a component  
 13 of the covered product, including a label, shrink sleeve or filter, before the covered product  
 14 can be recycled.

15 (2) An extended producer responsibility organization must ensure that covered products  
 16 included on the list established under this section can be collected for recycling throughout  
 17 the state. The list must prescribe the collection methods to be used for each covered prod-  
 18 uct, but an extended producer responsibility organization may rely on different collection  
 19 methods to collect the same covered product in different geographic areas of the state.

20 **SECTION 6. Fees charged by extended producer responsibility organization.** (1) An ex-  
 21 tended producer responsibility organization shall establish a schedule of fees to be paid by  
 22 members of the organization. The fees established pursuant to this section must be sufficient  
 23 to meet the financial obligations of the organization under sections 1 to 23 of this 2021 Act.

24 (2) A schedule established under this section must establish base fee rates for all covered  
 25 products sold or distributed in this state by the producers registered with the extended pro-  
 26 ducer responsibility organization.

27 (3) In addition to the base fees described in subsection (2) of this section, an extended  
 28 producer responsibility organization's fee schedule must incentivize producers to continually  
 29 reduce the environmental and human health impacts of covered products by offering fee ad-  
 30 justments to producers that make or have made changes to the ways in which they produce,  
 31 use and market covered products. Fee adjustments developed under this subsection must  
 32 reflect:

33 (a) The higher cost of managing covered products that:

34 (A) Bond materials together, making the covered product more difficult to recycle, such  
 35 as plastic bonded with paper or metal;

36 (B) Would typically be recyclable but, as a consequence of the design of the covered  
 37 product, has the effect of disrupting recycling processes;

38 (C) Include labels, inks, liners and adhesives containing heavy metals or other toxic  
 39 substances; or

40 (D) Cannot be recycled.

41 (b) The lower cost of managing covered products that:

42 (A) Have nondetachable caps or other innovations and design characteristics to prevent  
 43 littering;

44 (B) Are specifically designed for reuse and have a high reuse rate; or

45 (C) Have lower environmental impacts, including covered products made of:

1 (i) Sustainable or renewably sourced materials; or

2 (ii) Any combination of recycled or post-consumer materials or materials derived from  
3 litter totaling at least 90 percent.

4 (4)(a) Notwithstanding subsections (2) and (3) of this section, an extended producer re-  
5 sponsibility organization may exempt producers that sell or distribute a disproportionately  
6 small share of covered products in this state from the fees established under subsections (1)  
7 and (2) of this section or establish a uniform, reduced fee for producers that sell or distribute  
8 a disproportionately small share of covered products in this state.

9 (b) If an extended producer responsibility organization establishes an exemption or re-  
10 duced fee under paragraph (a) of this subsection, the extended producer responsibility  
11 organization's fee schedule must progressively increase the fee that a producer that was  
12 subject to the exemption or reduced fee is required to pay until the producer is required to  
13 pay the full base fee required under subsection (2) of this section.

14 (5) A producer or retailer may not identify the fee charged under this section as a sepa-  
15 rate line item on a receipt or invoice.

16 (6) The Department of Environmental Quality may regulate the use of exemptions and  
17 reduced fees under subsection (4) of this section in the manner prescribed by the Environ-  
18 mental Quality Commission by rule.

19 **SECTION 7. Reuse and recycling performance requirements.** (1) An extended producer  
20 responsibility program must meet the reuse and recycling performance requirements estab-  
21 lished by this section.

22 (2) For all covered products sold or delivered in this state:

23 (a) By 2026, 55 percent must be reused or recycled, five percent of which must be reused.

24 (b) By 2030, 75 percent must be reused or recycled, ten percent of which must be reused.

25 (3) In addition to the overall reuse and recycling performance requirements described in  
26 subsection (2) of this section, covered products sold or distributed in this state must meet  
27 the following material reuse and recycling performance requirements:

28 (a) For rigid plastic:

29 (A) By 2026, 25 percent must be reused or recycled; and

30 (B) By 2030, 60 percent must be reused or recycled.

31 (b) For flexible plastic:

32 (A) By 2026, 10 percent must be reused or recycled; and

33 (B) By 2030, 25 percent must be reused or recycled.

34 (c) For paper:

35 (A) By 2026, 60 percent must be reused or recycled; and

36 (B) By 2030, 85 percent must be reused or recycled.

37 (d) For aluminum:

38 (A) By 2026, 55 percent must be reused or recycled; and

39 (B) By 2030, 75 percent must be reused or recycled.

40 (e) For steel:

41 (A) By 2026, 45 percent must be reused or recycled; and

42 (B) By 2030, 75 percent must be reused or recycled.

43 (f) For glass:

44 (A) By 2026, 70 percent must be reused or recycled; and

45 (B) By 2030, 85 percent must be reused or recycled.

1 (4) For each material category of covered products, the combined reuse and recycling  
2 rate must be calculated as the sum of the amount of reused material and the amount of  
3 recycled material managed by the extended producer responsibility organization in a given  
4 year divided by the amount of covered products supplied into the state by the members of  
5 the extended producer responsibility organization in the same year, expressed as a percent-  
6 age.

7 (5) For purposes of this section, the amount of recycled material for each category of  
8 covered product must be measured at the following calculation points:

9 (a) For rigid plastic material:

10 (A) The point at which the material does not undergo further processing before entering  
11 pelletization, extrusion or molding; or

12 (B) The point at which the material is flaked and does not undergo further processing  
13 before use in a final product.

14 (b) For flexible plastic material:

15 (A) The point at which the material does not undergo further processing before entering  
16 pelletization, extrusion or molding; or

17 (B) The point at which the material is flaked and does not undergo further processing  
18 before use in a final product.

19 (c) For paper, the point at which the material does not undergo further processing before  
20 entering a pulping operation.

21 (d) For aluminum, the point at which the material does not undergo further processing  
22 before entering a metal smelter or furnace.

23 (e) For steel, the point at which the material does not undergo further processing before  
24 entering a metal smelter or furnace.

25 (f) For glass, the point at which the material does not undergo further processing before  
26 entering a glass furnace or the production of filtration media, abrasive materials, glass fiber  
27 insulation and construction materials.

28 (6) An extended producer responsibility organization that does not achieve the reuse and  
29 recycling performance requirements established by this section must submit an amendment  
30 to its extended producer responsibility program plan under section 10 of this 2021 Act within  
31 90 days of submitting a report under section 11 of this 2021 Act that describes the  
32 organization's failure to achieve the reuse and recycling performance requirements. The plan  
33 amendment must include changes to the plan specifying how the program will be modified  
34 to meet the requirements of this section.

35 **SECTION 8. Post-consumer recycled content requirements.** (1) An extended producer  
36 responsibility program must meet the post-consumer recycled content requirements of this  
37 section.

38 (2) Covered products sold or distributed in this state must meet the following annual  
39 minimum post-consumer recycled content requirements, by material category, for the total  
40 quantity of covered products sold or distributed in this state:

41 (a) For rigid plastic:

42 (A) By 2026, 30 percent; and

43 (B) By 2030, 50 percent.

44 (b) For flexible plastic:

45 (A) By 2026, 10 percent; and

- 1 (B) By 2030, 30 percent.
- 2 (c) For paper packaging:
- 3 (A) By 2026, 50 percent; and
- 4 (B) By 2030, 75 percent.
- 5 (d) For other paper products:
- 6 (A) By 2026, 25 percent; and
- 7 (B) By 2030, 50 percent.
- 8 (e) For aluminum:
- 9 (A) By 2026, 50 percent; and
- 10 (B) By 2030, 70 percent.
- 11 (f) For steel:
- 12 (A) By 2026, 30 percent; and
- 13 (B) By 2030, 50 percent.
- 14 (g) For glass:
- 15 (A) By 2026, 40 percent; and
- 16 (B) By 2030, 60 percent.

17 (3) An extended producer responsibility organization that does not achieve the post-  
 18 consumer recycled content requirements established by this section must submit an  
 19 amendment to its extended producer responsibility program plan under section 10 of this 2021  
 20 Act within 90 days of submitting a report under section 11 of this 2021 Act that describes the  
 21 organization’s failure to achieve the post-consumer recycled content requirements. The plan  
 22 amendment must include changes to the plan specifying how the program will be modified  
 23 to meet the requirements of this section.

24 **SECTION 9. Approval by department.** (1) The Department of Environmental Quality shall  
 25 approve a plan submitted under section 4 of this 2021 Act or an amendment submitted under  
 26 section 10 of this 2021 Act if the extended producer responsibility organization submits a  
 27 completed plan or amendment and the proposed plan or amendment meets the requirements  
 28 of section 4 or 10 of this 2021 Act.

29 (2)(a) Not later than 90 days after receiving a plan or amendment, the department shall  
 30 approve or reject the plan or amendment. If the department rejects the plan or amendment,  
 31 the department shall inform the extended producer responsibility organization of the reason  
 32 or reasons for the rejection.

33 (b) Not later than 90 days after the department rejects a plan or amendment under par-  
 34 agraph (a) of this subsection, an extended producer responsibility organization must submit  
 35 to the department a revised plan or amendment. Not later than 90 days after receiving a  
 36 revised plan or amendment under this paragraph, the department shall approve or reject the  
 37 revised plan or amendment.

38 (3) An extended producer responsibility organization must implement a plan or amend-  
 39 ment approved under this section within 60 days of the date on which the department ap-  
 40 proves the plan or amendment.

41 **SECTION 10. Plan amendments.** (1) An extended producer responsibility organization  
 42 shall submit an amendment to an extended producer responsibility program plan to the De-  
 43 partment of Environmental Quality for approval:

- 44 (a) When required to do so under section 7 (6) or 8 (3) of this 2021 Act; or
- 45 (b) When required to do so by rules adopted by the Environmental Quality Commission.



1 (2) Not less than once per month, an extended producer responsibility organization shall  
2 provide written notice to the department of any changes made during the previous month  
3 to a plan approved by the department under section 9 of this 2021 Act that are changes for  
4 which an amendment is not required under subsection (1) of this section. Changes subject  
5 to notice under this subsection shall be described by the commission by rule.

6 (3) The department shall review and approve any change for which notice is given under  
7 subsection (2) of this section if the department determines that the change has no material  
8 impact on the implementation and administration of a plan that has been previously ap-  
9 proved by the department under section 9 of this 2021 Act.

10 **SECTION 11. Annual report.** (1) By April 1 of each year, or by a later date as determined  
11 by the Department of Environmental Quality, an extended producer responsibility organiza-  
12 tion shall provide a report for review by the department that details how the plan approved  
13 by the department under section 9 of this 2021 Act was implemented during the previous  
14 calendar year.

15 (2) A report under this section must include:

16 (a) Information about the services that were provided and the materials collected during  
17 the previous calendar year;

18 (b) The respective market shares of the producers participating in the extended producer  
19 responsibility program;

20 (c) An evaluation of the extended producer responsibility organization's success in  
21 meeting the reuse and recycling performance requirements established under section 7 of  
22 this 2021 Act;

23 (d) An evaluation of the extended producer responsibility organization's success in  
24 meeting the post-consumer recycled content requirements established under section 8 of this  
25 2021 Act;

26 (e) A report by an independent certified public accountant, retained by the extended  
27 producer responsibility organization at the organization's expense, on the accountant's audit  
28 of the organization's financial statements; and

29 (f) Verifiable information that covered products collected for recycling were marketed to  
30 responsible end markets.

31  
32 (Product Labeling)

33  
34 **SECTION 12. Product labeling.** (1) As used in this section:

35 (a) "Chasing arrows symbol" means:

36 (A) An equilateral triangle formed by three arrows, curved at their midpoints, depicting  
37 a clockwise path, with a short gap separating the apex of each arrow from the base of the  
38 adjacent arrow; or

39 (B) A substantially similar symbol.

40 (b) "Product" includes any item sold in this state, the packaging of the item or the ma-  
41 terial used to make the item or packaging.

42 (c) "Resin identification code" means a number that corresponds with a type of plastic  
43 resin used to make a plastic product or its packaging.

44 (2)(a) A person may not distribute, sell or offer to sell, including by means of remote sale,  
45 any product that makes a deceptive or misleading claim about the recyclability of the prod-

1 uct or the product's packaging in this state.

2 (b) A product that displays a chasing arrows symbol, a chasing arrows symbol sur-  
3 rounding a resin identification code or any other symbol or statement indicating the product  
4 is recyclable is deemed to be deceptive or misleading unless:

5 (A) The material of the product or its packaging is identified on the statewide recycling  
6 list established under section 5 of this 2021 Act as a material that is suitable for on-route  
7 collection; or

8 (B) The product is labeled in accordance with rules adopted by the Environmental Quality  
9 Commission under subsection (3) of this section.

10 (3) The commission shall establish by rule labeling standards for products that make  
11 claims about the recyclability of the product or the product's packaging. Labeling standards  
12 established under this subsection may require a statement identifying the correct recycling  
13 method for the material.

14 (4) Rules, or amendments to rules other than minor corrections, adopted by the com-  
15 mission under subsection (3) of this section may not become effective until two years after  
16 the date on which the rule or amendment is adopted.

17  
18 (Commingled Recycling Processing Facilities)

19  
20 **SECTION 13. Permit required.** (1) A person may not establish or operate a commingled  
21 recycling processing facility in this state unless the person obtains a disposal site permit is-  
22 sued by the Department of Environmental Quality under ORS 459.205.

23 (2) A disposal site permit issued to a commingled recycling processing facility must re-  
24 quire the facility to:

25 (a) Sort all materials collected from the public so that materials do not become contam-  
26 inants in other waste streams;

27 (b) Market materials to responsible end markets;

28 (c) Manage contaminants to avoid impacts to other waste streams or facilities;

29 (d) Refrain from creating a public nuisance or health hazard or creating air or water  
30 pollution or other adverse impact to public health or the environment; and

31 (e) Accurately report outbound contamination levels and the final disposition of materials  
32 held by the processor.

33 (3) The Environmental Quality Commission shall prescribe by rule the requirements for  
34 a permit issued under this section.

35 **SECTION 14. Certification program.** (1) The Department of Environmental Quality shall  
36 establish a program or approve a program established by a third party to certify commingled  
37 recycling processing facilities. The department may issue certificates under the program or  
38 develop a list of approved contractors to issue certificates.

39 (2) A commingled recycling processing facility certified under this section must satisfy  
40 the requirements of section 13 of this 2021 Act.

41 **SECTION 15. Prohibition on delivery of commingled recyclables to certain facilities.** A  
42 local government or the local government's agent may not deliver commingled recyclables  
43 collected to satisfy an obligation to provide the opportunity to recycle as required by ORS  
44 459A.005 and 459A.007 to a commingled recycling processing facility unless:

45 (1) At the time the local government or the local government's agent delivered or con-

1 tracted to deliver or transport materials to the facility:

- 2 (a) The processor held a valid permit issued under section 13 of this 2021 Act;
  - 3 (b) The processor held a valid certificate issued under section 14 of this 2021 Act; or
  - 4 (c) The processor certifies that it meets the requirements of section 13 or 14 of this 2021
- 5 Act, even though the processor does not hold a permit or certificate.
- 6 (2) The processor ensures the health, safety and wellness of workers in its facilities, re-
  - 7 gardless of whether the workers are employees, independent contractors or employees of
  - 8 another business.
  - 9 (3) The processor provides workers with a living wage and supportive benefits.

10  
11 (Advisory Committee)

12  
13 **SECTION 16. Advisory committee.** (1) The Director of the Department of Environmental  
14 Quality shall appoint an extended producer responsibility program advisory committee of not  
15 more than 10 members representing the interests of the following entities in the stewardship  
16 of covered products:

- 17 (a) Commingled recycling processing facilities;
- 18 (b) Local governments;
- 19 (c) Producers;
- 20 (d) Environmental organizations;
- 21 (e) Public health organizations; and
- 22 (f) The public at large.

23 (2) The advisory committee shall advise the Department of Environmental Quality re-

24 garding:

- 25 (a) The review and approval of any plan or plan amendment for the development and
- 26 implementation of an extended producer responsibility program, including the statewide re-
- 27 cycling list developed pursuant to section 5 of this 2021 Act;
- 28 (b) The review of annual reports submitted by an extended producer responsibility or-
- 29 ganization under section 11 of this 2021 Act; and
- 30 (c) The development of rules regarding reimbursements to local governments under sec-
- 31 tion 17 of this 2021 Act.

32 **SECTION 17. Reimbursements to local governments or their agents.** The Environmental  
33 Quality Commission, in consultation with the advisory committee appointed under section  
34 16 of this 2021 Act, shall adopt rules to prescribe the manner and amounts of reimburse-  
35 ments made to a local government or the local government's agent by extended producer  
36 responsibility organizations for the collection of covered products by the local government  
37 or the local government's agent.

38  
39 (Miscellaneous Provisions)

40  
41 **SECTION 18. Fees.** (1) The Department of Environmental Quality shall establish and  
42 collect the following fees from an extended producer responsibility organization:

- 43 (a) A fixed, one-time fee reasonably calculated to cover the costs of reviewing an ex-
- 44 tended producer responsibility program plan or plan amendment.
- 45 (b) An annual fee charged to each extended producer responsibility organization reason-

ably calculated to cover the costs of administering, implementing and enforcing sections 1 to 23 of this 2021 Act.

(2) The fee calculated for each extended producer responsibility organization under subsection (1)(b) of this section must be proportionate to the market share of all covered products sold in this state by the producers participating in the extended producer responsibility organization. The department may make a reasonable estimate of the market share of a producer for any year for which market share information for that producer has not been provided to the department.

(3) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of the Extended Producer Responsibility Fund established under section 19 of this 2021 Act.

**SECTION 19. Extended Producer Responsibility Fund established.** The Extended Producer Responsibility Fund is established, separate and distinct from the General Fund. Interest earned by the Extended Producer Responsibility Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of administering, implementing and enforcing sections 1 to 23 of this 2021 Act.

**SECTION 20. Enforcement.** (1) In accordance with the applicable provisions of ORS chapter 183 relating to contested case proceedings, the Department of Environmental Quality may issue an order requiring compliance with the provisions of sections 1 to 23 of this 2021 Act.

(2) The department, or any other person, may bring a civil action against any person that violates the provisions of sections 1 to 23 of this 2021 Act.

**SECTION 21. Antitrust.** The Legislative Assembly declares that the collaboration of producers and extended producer responsibility organizations to develop and implement extended producer responsibility programs is in the best interests of the public. Therefore, the Legislative Assembly declares its intent that the development, implementation and operation of extended producer responsibility programs as required by sections 1 to 23 of this 2021 Act shall be exempt from state antitrust laws. The Legislative Assembly further declares its intent to provide immunity for the development, implementation and operation of extended producer responsibility programs as required by sections 1 to 23 of this 2021 Act from federal antitrust laws. This section does not authorize any person to engage in activities or to conspire to engage in activities that constitute per se violations of state or federal antitrust laws that are not authorized under sections 1 to 23 of this 2021 Act.

**SECTION 22. Relief from obligation to provide opportunity to recycle.** Notwithstanding the requirements of ORS 459A.007 and 459A.008, the Environmental Quality Commission shall establish by rule a process by which a city, county or metropolitan service district is relieved of its obligation to provide the opportunity to recycle, as defined in ORS 459A.005, in whole or in part, to the extent that an extended producer responsibility organization will provide collection services or education and promotion programming that satisfy the requirements of ORS 459A.007 and 459A.008 in the city, county or metropolitan service district.

**SECTION 23. Rules.** The Environmental Quality Commission may adopt rules as necessary to implement sections 1 to 23 of this 2021 Act.

**SECTION 24.** ORS 459.995 is amended to read:

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335[, 459A.675 to 459A.685] or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to exceed \$25,000 per day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 is a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs a civil penalty not to exceed \$500 for each violation.

(d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a separate violation.

(e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) **or section 2 of this 2021 Act** incurs a civil penalty not to exceed \$100 per day for each day of the violation.

(f) Any producer that violates the provisions of ORS 459A.825 (1) incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827, 459A.830 to 459A.837 or 459A.842 incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

**(h) Any producer or extended producer responsibility organization that violates sections 1 to 23 of this 2021 Act or any rule adopted under sections 1 to 23 of this 2021 Act incurs a civil penalty not to exceed \$25,000 per day for each day of the violation.**

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 is not subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

**REPEALS**

**SECTION 25. ORS 459A.675, 459A.680 and 459A.685 are repealed.**

**OPERATIVE AND APPLICABILITY DATES**

**SECTION 26. (1) Sections 12 to 15 of this 2021 Act become operative on July 1, 2025.**

**(2) The Department of Environmental Quality and the Environmental Quality Commis-**

1 sion may take any action before the operative date specified in subsection (1) of this section  
2 that is necessary to enable the department or commission to exercise, on and after the op-  
3 erative date specified in subsection (1) of this section, all the duties, powers and functions  
4 conferred on the department or commission by sections 12 to 15 of this 2021 Act.

5 **SECTION 27.** The restrictions on producers and retailers by section 2 (1) of this 2021 Act  
6 apply to covered products sold on or after July 1, 2025.

7  
8 **TEMPORARY PROVISIONS**

9  
10 **SECTION 28.** (1) An extended producer responsibility organization must submit an initial  
11 plan for an extended producer responsibility program no later than January 1, 2024.

12 (2) Notwithstanding section 9 (3) of this 2021 Act, an extended producer responsibility  
13 organization shall first implement an extended producer responsibility program as described  
14 in an initial plan submitted under subsection (1) of this section no later than July 1, 2025.

15  
16 **UNIT AND SECTION CAPTIONS**

17  
18 **SECTION 29.** The unit and section captions used in this 2021 Act are provided only for  
19 the convenience of the reader and do not become part of the statutory law of this state or  
20 express any legislative intent in the enactment of this 2021 Act.  
21

---