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STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE  
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

TO: Senator Anne Carney, Chair  
Representative Thom Harnett, Chair  
Joint Standing Committee on Judiciary

FROM: Senator Stacy Brenner, Chair *SB<sup>pa</sup>*  
Representative Ralph Tucker, Chair *RT<sup>dec</sup>*  
Joint Standing Committee on Environment and Natural Resources

DATE: June 1st, 2021

RE: Public records exception review of LD 1467

The Joint Standing Committee on Environment and Natural Resources is requesting the Judiciary Committee's review of a portion of the committee amendment to LD 1467, *An Act To Promote a Circular Economy through Increased Post-consumer Recycled Plastic Content in Plastic Beverage Containers* (Representative Doudera, sponsor) pursuant to Title 1, section 434. For reference, attached to this memorandum is a copy of the original version of the bill as well as a copy of the sponsor's proposed amendment that was adopted as the committee amendment.

Our Committee unanimously voted "ought to pass as amended" on LD 1467, incorporating that sponsor's proposed amendment, which we understand was developed in cooperation with a number of stakeholders including the Department of Environmental Protection ("the department").<sup>1</sup> We do not at this time have available a copy of the final committee amendment to LD 1467, however, the committee amendment does not make any changes to the specific provisions in the original bill or in the proposed amendment for which this review is requested.

LD 1467, as amended, establishes a new post-consumer recycled plastic content requirement for plastic beverage containers sold, offered for sale or distributed for sale in Maine. Under the proposal, as amended, that requirement must be met by an initiator of deposit under the State's container redemption law for any plastic beverage containers that contain a beverage other than spirits and by spirits manufacturers for any plastic beverage containers that contain spirits. Beginning January 1, 2026, an initiator of deposit or spirits manufacturer may not sell plastic beverage containers in the State unless the total number of plastic beverage containers sold by the initiator or spirits manufacturer in the prior calendar year contained, on average and in the aggregate, at least 25% post-

<sup>1</sup> There are 11 members on the unanimous committee amendment (Representatives Hanley and Tuell recorded as absent).

consumer recycled plastic. Beginning January 1, 2031, that requirement increases to at least 30% post-consumer recycled plastic.

If an initiator of deposit or spirits manufacturer is unable to meet the applicable post-consumer recycled plastic content requirement, it must instead pay a fee based upon the amount of virgin plastic used in its beverage containers that would have been required to be post-consumer recycled plastic in order to meet that requirement. Initiators and spirits manufacturers are required to annually report to the department a variety of information regarding Maine-based sale data, market share data, plastic content of its beverage containers and amounts and weight of both post-consumer and virgin plastic it sold in Maine. The department is authorized to conduct audits to verify such reported information and, every five years, is required to facilitate a third-party verification of such reported information.

This information that may be reported to the department by an initiator of deposit or spirits manufacturer and used by the department to determine compliance with the post-consumer recycled plastic content requirements may contain certain proprietary information. Section 1 of the bill, in new 38 MRSA §1612, subsection 4, paragraph D provides:

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

“Proprietary information” as defined in section 1 of the bill, in new 38 MRSA §1612, subsection 1, paragraph I, cross-references that term’s definition in 38 MRSA §1771, subsection 6-A, which reads:

**6-A. Proprietary information.** "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

38 MRSA §1310-B, which is referenced in the above language, contains the standard process for management of confidential material within Title 38 (a copy of that section of law is attached). That process, as described in statute, is generally as follows:

- If a submitter designates certain information submitted to the department as confidential, that information has to be segregated from other public department records;
- The department’s public records must indicate that such information has been submitted and designated as confidential and must describe the general nature of the information;
- If any entity submits a request to the department for that designated information, the department must notify the submitter of the request. The submitter must respond within 15 days of the receipt of such notice to demonstrate to the department’s satisfaction that the information is proprietary information and thus should not be disclosed.
- The department subsequently will determine whether the information is proprietary information and whether the information should be disclosed. The statute includes additional provisions regarding an appeal of the department’s decision on disclosure.

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The confidentiality language and definition of “proprietary information” in LD 1467 are extremely similar or identical to other confidentiality provisions in Title 38, all of which reference the section 1310-B process for the handling of confidential records (see, e.g., 38 MRSA §§1609(15), 1610(6-A)(F), 1661-A(4), 1776(10), 2144(5)(F) and 2324(3)).

Reviewing the statutory criteria for the proposed exception to public records in the committee amendment to LD 1467, we would comment as follows:

**A. Need to collect the information.** Under the proposal, an initiator of deposit or spirits manufacturer is required to submit to the department certain information that could include confidential proprietary information.

**B. Value in maintaining the information.** Maintenance of the information received by the department from initiators of deposit and spirits manufacturers is important in the determination of whether an initiator or spirits manufacturer meets or is operating in compliance with the post-consumer recycled plastic content requirements of the law.

**C. Federal law.** We are unaware of any federal law requiring this information to be confidential.

**D. Balancing the individual’s privacy rights and the public interest.** Review of the balancing of interests under this proposed exception is perhaps better considered under criteria E.

**E. Balancing the effect of disclosure on business competition against the public interest.** Public disclosure of this proprietary information may place the submitter at a competitive disadvantage and does not appear to serve a significant public interest.

**F. Interfering in public negotiations.** We are unaware of any connection between this information and negotiations involving a public body.

**G. Balancing the public interest and potential jeopardy to public safety or a member of the public.** We are unaware of any connection between the public interest in disclosure of this information and the safety of a member of the public or the public in general.

**H. Narrowness of the exception.** This exception only applies to certain information submitted to the department by an initiator of deposit or spirits manufacturer that is designated as confidential, is not otherwise publicly available and the disclosure of which would impair the competitive position of the submitter.

**I. Any other criteria.**

Thank you for reviewing this proposed public records exception. Please let us know if you require any additional information.

cc: Members, Environment and Natural Resources Committee



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1467

H.P. 1083

House of Representatives, April 12, 2021

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

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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.

*Robert 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.

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

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

**§1612. Plastic beverage containers**

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

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

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

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

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

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

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

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

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

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

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

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

**3. Determination of compliance with post-consumer recycled plastic requirement; advisory committee.** For the purposes of determining a manufacturer's 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



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

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

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

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

**SUMMARY**

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

Committee: ENR  
Drafter: DCT  
File name:  
LR (item)#: 0190(02)  
New Title?: NO  
Add Emergency?: NO  
Date: 5/28/21

LD 1467

**Proposed amendment, Representative Doudera**

*Amend the bill by inserting before section 1 the following sections:*

**Sec. 1. 28-A MRS §1355-A, sub-§5, ¶J is enacted to read:**

J. A rectifier and a holder of a distillery or small distillery license must comply with all applicable requirements of Title 38, section 1612.

**Sec. 2. 28-A MRS §1381, sub-§4 is amended to read:**

**4. Conditions on certificate of approval.** A certificate of approval under this section is subject to the laws of the State and the rules of the bureau, including, but not limited to, all applicable requirements of Title 38, section 1612.

*Amend the bill as follows (changes shaded):*

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

**§1612. Plastic beverage containers**

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

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

B. "Beverage container" has the same meaning as in section 3102, subsection 2 means a bottle, can, jar or other container made of glass, metal or plastic that has been sealed by a manufacturer and at the time of sale contains 4 liters or less of a beverage. "Beverage container" does not include a container composed, in whole or in part, of aluminum and plastic or aluminum and paper in combination as long as the aluminum content represents 10% or less of the unfilled container weight, the container materials represent 5% or less of the total weight of the container and its contents and the container is filled with a nonalcoholic beverage. "Beverage container" does not include a container composed of cardboard in combination with a plastic liner.

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

D. "Dealer" has the same meaning as in section 3102, subsection 6.

E. "Distributor" means a person who engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer who engages in such sales.

F. "Initiator of deposit" or "initiator" means a manufacturer, distributor or other person that initiates or is required to initiate under section 3103 a deposit on a plastic beverage container containing a beverage other than spirits.

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

EH. "Nonrefillable" has the same meaning as in section 3102, subsection 14 means a beverage container that, after being used by a consumer, is not to be reused as a beverage container by a manufacturer.

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

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

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

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

M. "Spirits" has the same meaning as in Title 28-A, section 2, subsection 31.

N. "Spirits manufacturer" means a person that is:

(1) An in-state rectifier, distillery or small distillery licensed under Title 28-A, section 1355-A that produces spirits contained in a plastic beverage container; or

(2) An out-of-state spirits supplier that transports spirits contained in a plastic beverage container into the State or causes such spirits to be transported into the State and has been issued a certificate of approval under Title 28-A, section 1381.

As used in this paragraph, "rectifier" has the same meaning as in Title 28-A, section 2, subsection 25 and "out-of-state spirits supplier" has the same meaning as in Title 28-A, section 1381, subsection 1.

**2. Post-consumer recycled plastic requirement.** Except as provided in subsection 7, beginning January 1, 2026 and ending December 31, 2030, a manufacturer an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless the total number of plastic beverage containers sold, offered for sale or distributed for sale in the State by that manufacturer initiator or spirits manufacturer contain, on average and in the aggregate, at least 25% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

Except as provided in subsection 7, beginning January 1, 2031, a manufacturer an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless the total number of plastic beverage containers sold, offered for sale or distributed for sale in the State by that manufacturer initiator or spirits manufacturer contain, on average and in the aggregate, at least 30% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

**3. Determination of compliance with post-consumer recycled plastic requirement; advisory committee.** For the purposes of determining a manufacturer's an initiator of deposit's or spirits manufacturer's compliance with the post-consumer recycled requirement in subsection 2, a manufacturer an initiator or spirits manufacturer may rely on Maine-specific data regarding plastic beverage container sales and material use, if available, or may alternatively rely on the same type of data applicable to a region or territory in the United States that includes Maine.

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

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

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

B. The department may form an advisory committee composed of stakeholders to determine the ability of manufacturers initiators of deposit and spirits manufacturers to measure and report the Maine-specific information required under this subsection and to develop any recommendations for improving the data determination and reporting process. The department may, as necessary, contract with a qualified 3rd-party entity to

assist the advisory committee in developing recommendations under this paragraph. Any costs to the department associated with this paragraph may be offset through any fees collected under subsection 4 and administrative penalties paid under subsection 5 by the department pursuant to this section.

**4. ~~Manufacturer Initiator of deposit and spirits manufacturer reporting;~~ registration fee payment of fees; product removal for noncompliance.** On or before April 1, 2024, and annually thereafter, a ~~manufacturer~~ an initiator of deposit or spirits manufacturer that has in the prior calendar year sold, offered for sale or distributed for sale in the State a plastic beverage container shall submit a report to the department identifying, by resin type where applicable, the amount by weight in pounds of post-consumer recycled plastic, the amount by weight in pounds of plastic that is not post-consumer recycled plastic and the percentage of post-consumer recycled plastic in the total weight of all plastic beverage containers the ~~manufacturer~~ initiator or spirits manufacturer sold, offered for sale or distributed for sale in the State in that prior calendar year.

A. If the ~~manufacturer~~ initiator of deposit or spirits manufacturer has determined the data required to be reported under this subsection using regional or territorial data, the ~~manufacturer~~ initiator or spirits manufacturer shall describe in the report the methodology used to determine the Maine-specific figures.

B. At the time that a ~~manufacturer~~ an initiator of deposit or spirits manufacturer submits a report required under this subsection, the ~~manufacturer~~ initiator or spirits manufacturer shall pay to the department an annual registration fee and, on or after January 1, 2026, any fee required by subsection 5. The department shall set the amount of the annual registration fee ~~under this paragraph~~, which may not exceed \$250 \$500, and which must be designed to offset the costs to the department of administering and overseeing this section. Any fees received by the department pursuant to this section must be deposited in the Maine Environmental Protection Fund established in section 351.

An initiator of deposit or spirits manufacturer that in the prior calendar year sold, offered for sale or distributed for sale in the State less than 10,000 plastic beverage containers or, in the aggregate, less than 200 pounds of plastic that is not post-consumer recycled plastic is not required to pay an annual registration fee under this paragraph but must otherwise comply with all applicable requirements of this section, including, but not limited to, submission of the report required under this subsection and payment of any fee required by subsection 5.

C. The department may conduct audits or take other necessary actions to verify the accuracy of ~~manufacturer~~ initiator of deposit or spirits manufacturer data reported under this subsection.

D. Proprietary information submitted to the department in a report required under this subsection or submitted to the department as part of an audit or other action taken by the department under paragraph C that is identified by the submitter as proprietary

\* information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B. \*

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

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

F. An initiator of deposit may submit the report required under this subsection using information provided to the initiator by a manufacturer. An initiator of deposit or a spirits manufacturer may contract with a third party to submit the report on the initiator's behalf. The submission of the report required under this subsection by an initiator of deposit using information provided by a manufacturer or by a third party on an initiator's or spirits manufacturer's behalf does not relieve the initiator or spirits manufacturer from complying with the other requirements of this section.

G. Not more than once every five years, the department may require initiators of deposit and spirits manufacturers to fund a third-party verification of accuracy of the information submitted under this subsection. The third party selected by the department to conduct such verification must be agreed upon by the initiators of deposit and spirits manufacturers.

An initiator of deposit or spirits manufacturer may elect to satisfy the requirements of this paragraph by submitting to the department a third-party verification, or, in the case of an initiator of deposit, a manufacturer's verification, of the accuracy of substantially similar information to that required to be reported under this subsection that was submitted to another state with a post-consumer recycled plastic content requirement that is substantially similar to the requirements of this section as long as that other state is included in the region or territory identified by the initiator or spirits manufacturer under paragraph A.

H. Except as provided in paragraph I, if an initiator of deposit or spirits manufacturer fails to submit the report and pay all applicable fees required under this subsection within 60 days of the reporting deadline, the department may prohibit the initiator or spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container.

(1) If, pursuant to this paragraph, the department prohibits an initiator of deposit from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to any manufacturer whose plastic beverage containers are sold, offered for sale or distributed for sale in the State by the initiator and to dealers

and distributors in the State. A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of the initiator commits a violation of this section.

(2) If, pursuant to this paragraph, the department prohibits a spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, which shall ensure that the plastic beverage containers of the spirits manufacturer are promptly removed from sale in the State.

(3) An initiator of deposit or spirits manufacturer prohibited by the department pursuant to this paragraph from selling, offering for sale or distributing for sale in the State any plastic beverage container that subsequently sells, offers for sale or distributes for sale in the State a plastic beverage container commits a violation of this section.

I. Notwithstanding any provision of this section to the contrary, if an initiator of deposit lacks the information necessary to submit the report required under this subsection by the reporting deadline and calculate the fee required under subsection 5 due to the failure of one or more manufacturers whose plastic beverage containers the initiator sold, offered for sale or distributed for sale in the State during the prior calendar year to provide such information to the initiator, the department may:

(1) Allow the initiator to submit the required report and calculate and pay the required fee based only on the manufacturer information available to the initiator and to thereby be deemed in full compliance with those requirements;

(2) Allow the initiator to sell, offer for sale or distribute for sale in the State any plastic beverage container of any manufacturer that provided the initiator with the information necessary to satisfy the reporting requirement and calculate the required fee but prohibit the initiator from selling, offering for sale or distributing for sale in the State any plastic beverage container of any manufacturer that failed to provide such information to the initiator. If the initiator of deposit sells, offers for sale or distributes for sale in the State a plastic beverage container subject to a prohibition imposed under this subparagraph, the initiator commits a violation of this section; and

(3) Provide written notification of a prohibition imposed under subparagraph (2) to manufacturers, dealers and distributors in the same manner as in paragraph H, subparagraph (1). A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of an

initiator of deposit subject to a prohibition imposed under subparagraph (2) commits a violation of this section.

**5. Penalties Post-consumer recycled plastic content fee.** Except as otherwise provided in this section, the department may assess against a manufacturer that fails to comply with the requirements of subsection 2 an administrative penalty as described in this subsection A. The department may assess against a manufacturer that fails to comply with the requirements of subsection 2 an administrative penalty calculated as follows. Pursuant to the provisions of this subsection, an initiator of deposit or spirits manufacturer shall calculate the amount of a post-consumer recycled plastic content fee and shall remit such amount to the department pursuant to subsection 4, paragraph B.

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

(2)B. The department initiator of deposit or spirits manufacturer shall multiply the figure calculated under subparagraph (1) paragraph A by the minimum post-consumer recycled plastic percentage required under subsection 2 during the prior calendar year.

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

(4)D. The department initiator of deposit or spirits manufacturer shall multiply the figure calculated under subparagraph (3) paragraph C by 20¢. If the figure calculated under this subparagraph paragraph is less than or equal to zero, the department may not assess an administrative penalty under this subsection the initiator of deposit or spirits manufacturer is not required to pay a post-consumer recycled plastic content fee to the department pursuant to subsection 4, paragraph B.

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

C. Notwithstanding any provision of law to the contrary, any penalties received by the department pursuant to this subsection must be used by the department to offset its costs related to the administration and enforcement of this section, except that if such costs are



fully offset, the department may deposit any additional penalties received in the Maine Solid Waste Management Fund established in section 2201.

6. Waiver. At the request of a manufacturer an initiator of deposit or spirits manufacturer, or as provided in paragraph A, a manufacturer, and in accordance with the provisions of this subsection, the department may grant a reduction in or one-year waiver from an administrative penalty payment of the fee that would otherwise be assessed against the manufacturer required pursuant to subsection 5 if the initiator, spirits manufacturer or manufacturer can demonstrate to the department's satisfaction that it was unable to meet the applicable post-consumer recycled plastic requirement of subsection 2 due to anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic.

A. In determining whether to grant a reduction or waiver under this subsection, the department shall consider, at a minimum, anomalous market conditions; disruption in, or lack of, supply of post consumer recycled plastic; and the efforts of the manufacturer to acquire post-consumer recycled plastic.

A. A manufacturer may on its own initiative request a waiver from the department pursuant to this subsection with respect to a plastic beverage container of the manufacturer for which an initiator of deposit is required pursuant to subsection 4 to submit a report and pay to the department an annual registration fee and the fee required pursuant to subsection 5. If a manufacturer requests a waiver pursuant to this paragraph, both the initiator of deposit and the manufacturer are responsible for responding to any informational requests made by the department pursuant to paragraph C.

B. A waiver request submitted under this subsection by an initiator of deposit or spirits manufacturer must be submitted with the report required under subsection 4 and must include payment to the department by the initiator of a \$100 waiver processing fee. A waiver request submitted under this subsection by a manufacturer pursuant to paragraph A must be submitted on or before the reporting deadline under subsection 4 and must include payment to the department by the manufacturer of a \$100 waiver processing fee. A waiver request must include sufficient information to demonstrate the anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic causing the initiator of deposit, spirits manufacturer or manufacturer to be unable to meet the applicable post-consumer recycled plastic requirement of subsection 2.

C. An initiator of deposit, spirits manufacturer or manufacturer that submits a waiver request to the department shall promptly respond to any request from the department for additional information relating to the waiver request. The department may return a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer as incomplete for processing if the initiator, spirits manufacturer or manufacturer fails to provide sufficient information for the department to review the waiver request or fails to promptly respond to a request from the department for additional information relating to the waiver request. A determination by the department under this paragraph to return a submitted waiver request as incomplete for processing does not constitute a final agency

action as defined in Title 5, section 8002, subsection 4 and may not be appealed to the board or to the Superior Court.

BD. As a condition of granting a reduction or waiver request under this subsection, the department may require the manufacturer an initiator of deposit, spirits manufacturer or manufacturer to submit a corrective action plan describing why the manufacturer has failed to comply with or expects to fail to comply with the requirements of subsection 2 and the actions the manufacturer initiator, spirits manufacturer or manufacturer intends to implement to ensure its compliance with those the requirements of subsection 2 during the current calendar year. If the initiator of deposit, spirits manufacturer or manufacturer has been granted two consecutive waiver requests pursuant to this subsection, the department must require the initiator, spirits manufacturer or manufacturer to submit a corrective action plan pursuant to this paragraph as a condition of granting a third waiver request.

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

(2) The department may require the manufacturer initiator of deposit, spirits manufacturer or manufacturer to demonstrate implementation of an approved corrective action plan before the department reduces or waives an otherwise applicable administrative penalty grants the waiver request submitted by the initiator, spirits manufacturer or manufacturer under this subsection.

(3) If the department rejects a corrective action plan it required a manufacturer to submit under this paragraph or if the department determines that the manufacturer initiator of deposit, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan, the department shall require the manufacturer initiator or spirits manufacturer to pay the full amount of the administrative penalty for which the manufacturer requested a reduction or waiver fee required pursuant to subsection 5 within 45 days of the date of the department's rejection of the corrective action plan or within 45 days of the department's determination that the initiator, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan.

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

E. If the department denies a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer pursuant to this subsection, the initiator or spirits manufacturer must pay to the department the fee required pursuant to subsection 5 within 45 days of the date of the department's denial of the waiver request.

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

A. A petition for review submitted pursuant to this subsection by a beverage manufacturing industry association shall be evaluated by the department based on information provided by the association and any other information available to the department. The department may require the beverage manufacturing industry association to fund a third-party verification of the accuracy of information submitted by the association under this subsection. The third party selected by the department to conduct such verification must be agreed upon by the beverage manufacturing industry association.

The department may reject the petition for review if the beverage manufacturing industry association fails to provide sufficient information, as determined by the department, for the department to make a determination under this subsection regarding the need for a reduction in the post-consumer recycled plastic requirement under subsection 2 or if the association fails to reach an agreement with the department regarding the selection of a third party to verify the accuracy of submitted information.

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

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

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

A. Beginning February 15, 2028, and annually thereafter, the report under this subsection must include information regarding manufacturer initiator of deposit and spirits manufacturer compliance with the requirements of subsection 2, including, at a minimum, information on the number of noncompliant manufacturers initiators and spirits manufacturers, the number of penalty reduction or waiver requests received and

granted or rejected by the department under subsection 6, and the total funds generated from payment of the annual registration fee under subsection 4 and the payment of administrative penalties the post-consumer recycled plastic content fee as calculated under subsection 5 and a description of how any such funds received were expended by the department. The report shall include any recommendations by the department regarding whether the requirements of this section should be amended to better ensure manufacturer initiator of deposit and spirits manufacturer compliance.

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

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

**10. Violations.** A person that violates a provision of this section is subject to civil penalties under section 349.

**1011. Preemption.** Beginning April 1, 2024, the State intends to occupy the whole field of regulation of the amount of post-consumer recycled plastic contained in plastic beverage containers. A local government may not adopt an ordinance regulating the amount of post-consumer recycled plastic contained in plastic beverage containers and, beginning April 1, 2024, any ordinance or regulation that violates this subsection is void and has no force or effect.

## SUMMARY

This amendment makes the following changes to the bill.

1. It incorporates definitions for “dealer,” “distributor” and “initiator of deposit” as those terms are defined under the State’s container redemption law, however, the term “initiator of deposit” is limited to those persons initiating a deposit on a plastic beverage container containing a beverage other than spirits. The amendment also adds definitions for “spirits” and “spirits manufacturer.” It makes other clarifying changes to the definitions in the bill.

2. Unlike the bill, which regulates manufacturers with respect to the post-consumer recycled plastic content of plastic beverage containers, the amendment regulates initiators of deposit and spirits manufacturers with respect to recycled plastic content.

3. It increases the amount of the annual registration fee paid by initiators of deposit and spirits manufacturers from \$250 to \$500 but exempts from payment of that fee any initiator or

spirits manufacturer that in the prior calendar year sold, offered for sale or distributed for sale in the State less than 10,000 plastic beverage containers or, in the aggregate, less than 200 pounds of plastic that is not post-consumer recycled plastic.

4. It clarifies the annual reporting requirements under the bill and provides for a third-party verification of accuracy of the information submitted by initiators of deposit and spirits manufacturers not more than once every 5 years.

5. It authorizes the Department of Environmental Protection to prohibit an initiator of deposit or spirits manufacturer that fails to submit the required annual report and pay all applicable fees within 60 days of the reporting deadline from selling, offering for sale or distributing in the State any plastic beverage containers and imposes penalties for a violation of that prohibition by the initiator of deposit or spirits manufacturer or a manufacturer, distributor or dealer in the State.

6. It removes administrative penalty provisions from the bill and instead provides for the annual calculation by and payment of a post-consumer recycled plastic content fee by an initiator of deposit or spirits manufacturer.

7. It clarifies the waiver process under the bill, including by authorizing a manufacturer of plastic beverage containers to submit a waiver request on its own initiative and by requiring payment to the department of a \$100 waiver processing fee.

8. It clarifies the process by which a beverage manufacturing industry association may petition the department for a review of the post-consumer recycled plastic content requirements and the criteria by which the department is to review such petitions.

9. It clarifies the penalties applicable for a violation of the provisions of law included in the bill, as amended.

10. It includes provisions in the State's liquor laws to ensure compliance with the recycled plastic content requirements by spirits manufacturers subject to those requirements.

11. It makes other technical changes and clarifications to the bill.

**Title 38: WATERS AND NAVIGATION****Chapter 13: WASTE MANAGEMENT****Subchapter 1: GENERAL PROVISIONS****§1310-B. Confidential information**

**1. Public records.** Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

[PL 1989, c. 794, §3 (AMD) .]

**2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals; recyclables.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27, information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 or information related to reporting on reportable recyclable materials submitted to the department under section 2145 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The

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designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

DEP PROCESS

[PL 2019, c. 291, Pt. B, §1 (AMD).]

**3. Release of information.** The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

[PL 1979, c. 699, §17 (NEW).]

**4. License and enforcement information.** Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[PL 1979, c. 699, §17 (NEW).]

**5. Rules.** The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.

[PL 1981, c. 470, Pt. A, §173 (AMD).]

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## 6. Prohibition; penalties.

A. It is unlawful to disclose designated information to any person not authorized by this section. [PL 1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [PL 1979, c. 699, §17 (NEW).]

C. Any person who knowingly discloses designated information, knowing that he is not authorized to do so, is subject to a civil penalty of not more than \$5,000. [PL 1979, c. 699, §17 (NEW).]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [PL 1979, c. 699, §17 (NEW).]

[PL 1979, c. 699, §17 (NEW).]

### SECTION HISTORY

PL 1979, c. 699, §17 (NEW). PL 1981, c. 470, §§A172,A173 (AMD). PL 1985, c. 267, §2 (AMD). PL 1987, c. 517, §24 (AMD). PL 1989, c. 794, §3 (AMD). PL 1989, c. 890, §§A40,B233 (AMD). PL 2001, c. 373, §1 (AMD). PL 2003, c. 661, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 561, §7 (AMD). PL 2005, c. 590, §3 (AMD). PL 2007, c. 466, Pt. A, §72 (AMD). PL 2009, c. 397, §1 (AMD). PL 2009, c. 579, Pt. A, §1 (AMD). PL 2009, c. 610, §1 (AMD). PL 2011, c. 420, Pt. A, §35 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2015, c. 250, Pt. C, §10 (AMD). PL 2019, c. 291, Pt. B, §1 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.  
If you need legal advice, please consult a qualified attorney.

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<b><i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i></b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
<b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		