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**LD 1467**  
**Proposed amendment, Representative Doudera**

*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 a deposit on a plastic beverage container under section 3103.

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 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.

HL. "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 an initiator of deposit 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 contain, on average and in the aggregate, at least 25% post-consumer recycled plastic or the initiator has paid the fee required by subsection 5.

Except as provided in subsection 7, beginning January 1, 2031, a manufacturer an initiator of deposit 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 contain, on average and in the aggregate, at least 30% post-consumer recycled plastic or the initiator 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 compliance with the post-consumer recycled requirement in subsection 2, a manufacturer an initiator 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 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 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 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 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 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 sold, offered for sale or distributed for sale in the State in that prior calendar year.

A. If the manufacturer initiator of deposit has determined the data required to be reported under this subsection using regional or territorial data, the manufacturer initiator 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 submits a report required under this subsection, the manufacturer initiator 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 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 or initiator of deposit 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 or 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 behalf does not relieve the initiator from complying with the other requirements of this section.

G. Not more than once every five years, the department may require initiators of deposit 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.

An initiator of deposit may elect to satisfy the requirements of this paragraph by submitting to the department a manufacturer's or third-party 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 under paragraph A.

H. If an initiator of deposit 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 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 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) An initiator of deposit 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.

**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 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 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 must calculate the figure ~~calculated under this subparagraph must be calculated using~~ based on the information reported by the ~~manufacturer~~ initiator pursuant to subsection 4.

(2)B. The ~~department~~ initiator of deposit 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 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 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 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 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 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 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 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 initiator of deposit 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 or manufacturer to be unable to meet the applicable post-consumer recycled plastic requirement of subsection 2.

C. An initiator of deposit 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 or manufacturer as incomplete for processing if the initiator 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 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 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 or manufacturer has been granted two consecutive waiver requests pursuant to this subsection, the department must require the initiator 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 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 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 or manufacturer has failed to implement an approved corrective action plan, the department shall require the ~~manufacturer~~ initiator 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 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 or manufacturer pursuant to this subsection, the initiator 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 manufacturers and initiators of deposit 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 under subsection 4.



A. Beginning February 15, 2028, and annually thereafter, the report under this subsection must include information regarding manufacturer initiator of deposit compliance with the requirements of subsection 2, including, at a minimum, information on the number of noncompliant manufacturers initiators, 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 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. The amendment makes other clarifying changes to the definitions in the bill.

2. It regulates the activities of and actions to be taken by initiators of deposit with respect to the post-consumer recycled plastic content of such beverage containers it sells, offers for sale

or distributes for sale in the State, unlike the bill which imposes such regulations on manufacturers of plastic beverage containers.

3. It increases the amount of the annual registration fee paid by initiators of deposit from \$250 to \$500 but exempts from payment of that fee any initiator 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 not more than once every 5 years.

5. It authorizes the Department of Environmental Protection to prohibit an initiator of deposit 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 on any manufacturer, dealer or distributor that sells, offers for sale or distributes that initiator's plastic beverage containers subsequent to receiving a notification from the department regarding the prohibition.

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.

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 makes other technical changes and clarifications to the bill.