

House Bill 3389

Sponsored by COMMITTEE ON BUSINESS AND LABOR

SUMMARY

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

Modifies list of exempt rigid plastic containers.

A BILL FOR AN ACT

Relating to plastic containers; amending ORS 459A.660.

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

SECTION 1. ORS 459A.660 is amended to read:

459A.660. (1) Each product manufacturer and package manufacturer shall maintain the records specified in this section that demonstrate for all rigid plastic containers of the manufacturer, how the manufacturer has complied with one or more of the requirements of ORS 459A.655, or for what reason, if any, the containers are exempt under subsection (5) of this section for the applicable period of time. Proprietary information included in the records, if submitted to the Department of Environmental Quality under this section shall not be made available to the general public. The records documenting the compliance shall be submitted to the department upon its request. Each manufacturer required to keep records under this section may be audited by the department. The department shall not take enforcement action, audit or request copies of the records kept by a manufacturer under this section before January 1, 1996, and until the department calculates the recycling rates in ORS 459A.655 (2) for the calendar year 1995.

(2) To the extent a rigid plastic container complies with ORS 459A.655 (1)(c) or (2)(c) because the product manufacturer's particular product-associated package or all of the product manufacturer's rigid plastic containers are being reused under ORS 459A.655 (1)(c) or recycled in the state at the rate specified in ORS 459A.655 (2)(c), the product manufacturer shall keep records that include the information the department may require to determine the product manufacturer's compliance.

(3) To the extent a rigid plastic container complies with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b), the package manufacturer shall keep records that include the information the department may require to determine the package manufacturer's compliance.

(4) If subsection (3) of this section applies, the product manufacturer also shall maintain a record of the written certification by the package manufacturer that the rigid plastic containers comply with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b). The certification also shall state that the package manufacturer will maintain the records required in subsection (3) of this section, and upon request of the department, submit to the department records that include the information the department may require to determine compliance. The product manufacturer may rely on the certification as a defense in any action or proceeding for violation of or to enforce ORS 459A.650 to 459A.665, whether such action or proceeding is brought under ORS 459.992, 459.995 or under any other law.

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

1 (5) Rigid plastic containers are exempt from the requirements of ORS 459A.655 if the containers
 2 are not subject to the requirements of ORS 459A.700 to 459A.740 and if:

3 (a) The containers contain drugs, medical devices, medical food, **cosmetics** or infant formula
 4 as defined by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.

5 (b) The packages are associated with products produced in or brought into the state that are
 6 destined for shipment to other destinations outside the state and that remain with such products
 7 upon such shipment.

8 (c) The packaging is necessary to provide tamper-resistant seals for public health purposes.

9 (d) The packages are reduced packages. A package shall qualify as reduced when the ratio of
 10 package weight per unit of product has been reduced by at least 10 percent when compared with
 11 the packaging used for the same product by the same packager five years earlier. In no case may
 12 packaging reduction be achieved, for purposes of this paragraph, by substituting a different material
 13 category for a material that constituted a substantial part of the packaging in question, or by
 14 packaging changes that adversely impact either the potential for the package to be recycled or
 15 contain recycled material. Exemptions under this paragraph shall be limited to five years, shall not
 16 be renewable and shall not be applicable to packages for which the ratio of package weight per unit
 17 of product increased after January 1, 1990.

18 (e) There has been substantial investment in achieving the recycling goal, viable markets for the
 19 material, if collected, can be demonstrated, the material is within five percent of the goal, there is
 20 substantial evidence of accelerating recycling rates and reasonable projections show that the mate-
 21 rial will meet the goal within two years.

22 (f) The containers contain food **as defined in ORS 616.695**. [*A container shall be considered to*
 23 *contain food if it contains an article used, or intended to be used, for food, ice, confection or condiment,*
 24 *whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for*
 25 *human consumption, but a container shall not be considered to contain food if it contains a drinkable*
 26 *liquid and is a rigid plastic bottle. As used in this paragraph, "rigid plastic bottle" means a container*
 27 *that has a mouth narrower than its base.*]

28 **(g) The containers contain pesticides as defined by the Federal Insecticide, Fungicide, and**
 29 **Rodenticide Act, 7 U.S.C. 136 et seq.**

30 **(h) The containers contain hazardous materials as defined in 49 U.S.C. 5102 et seq.**

31 (6) For any rigid plastic container not described in subsection (3) of this section, each product
 32 manufacturer shall keep records that include the information the department may require as evi-
 33 dence that the container is exempt from the requirements of ORS 459A.655.

34 (7) The department shall not enforce the provisions of ORS 459A.650 to 459A.660 during the first
 35 full calendar year after the department determines for the first time that the rate for compliance for
 36 rigid plastic containers in the aggregate is less than 25 percent. For any period for which the de-
 37 partment determines that the rate for compliance for rigid plastic containers in the aggregate equals
 38 or exceeds 25 percent, product manufacturers and package manufacturers are not required to keep
 39 records under this section and are not required to comply with the requirements of ORS 459A.655
 40 (1)(a) and (c) and (2)(b) and (c).