

House Bill 3390

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**.

Defines "recycled in Oregon." Modifies provisions regarding rigid plastic containers sold, offered for sale or used in association with sale or offer for sale of products in Oregon. Modifies product manufacturer and package manufacturer compliance requirements.

A BILL FOR AN ACT

1
2 Relating to plastic containers; amending ORS 459A.650, 459A.655 and 459A.660.

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

4 **SECTION 1.** ORS 459A.650 is amended to read:

5 459A.650. As used in ORS 459A.650 to 459A.665:

6 (1) "Package" means any container used to protect, store, contain, transport, display or sell
7 products.

8 (2) "Package manufacturer" means the producer or generator of a rigid plastic container for a
9 packaged product that is sold or offered for sale in Oregon.

10 (3) "Product-associated package" means a brand-specific rigid plastic container line, which may
11 have one or more sizes, shapes or designs and which is used in conjunction with a particular, ge-
12 neric product line.

13 (4) "Product manufacturer" means the producer or generator of a packaged product that is sold
14 or offered for sale in Oregon in a rigid plastic container.

15 (5) "Recycled content" means the portion of a package's weight that is composed of recycled
16 material, as determined by a material balance approach that calculates total recycled material input
17 as a percentage of total material input in the manufacture of the package.

18 (6) **"Recycled in Oregon" means generated in Oregon as plastic from rigid plastic con-**
19 **tainers used by consumers and collected, processed and intended to be manufactured into**
20 **another product, other than fuel or energy, either in Oregon or outside this state.**

21 [(6)] (7) "Recycled material" means a material that would otherwise be destined for solid waste
22 disposal, having completed its intended end use or product life cycle. Recycled material does not
23 include materials and by-products generated from, and commonly reused within, an original manu-
24 facturing and fabrication process.

25 [(7)] (8) "Rigid plastic container" means any package composed predominantly of plastic resin
26 which has a relatively inflexible finite shape or form with a minimum capacity of eight ounces and
27 a maximum capacity of five gallons, and that is capable of maintaining its shape while holding other
28 products.

29 **SECTION 2.** ORS 459A.655 is amended to read:

30 459A.655. (1) Except as provided in ORS 459A.660 (5), [*any*] rigid plastic [*container*] **containers**
31 sold, offered for sale or used in association with the sale or offer for sale of products in Oregon **by**

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 **a product manufacturer or a package manufacturer shall in the aggregate:**

2 (a) Contain 25 percent recycled content by January 1, 1995;

3 (b) Be made of plastic that is being recycled in Oregon at a rate of 25 percent by January 1,
4 1995; or

5 (c) Be a package that is used five or more times for the same or substantially similar use.

6 (2) A rigid plastic container shall meet the requirements in subsection (1)(b) of this section if
7 the container meets one of the following criteria:

8 (a) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recy-
9 cled in the state at a rate of 25 percent by January 1, 1995;

10 (b) It is a specified type of rigid plastic container and that type of rigid plastic container, in the
11 aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or

12 (c) It is a particular product-associated package and that type of package, in the aggregate, is
13 being recycled in the state at a rate of 25 percent by January 1, 1995.

14 **SECTION 3.** ORS 459A.660 is amended to read:

15 459A.660. (1) Each product manufacturer and package manufacturer shall maintain the records
16 specified in this section that demonstrate for all rigid plastic containers of the manufacturer, how
17 the manufacturer has complied with one or more of the requirements of ORS 459A.655, or for what
18 reason, if any, the containers are exempt under subsection (5) of this section for the applicable pe-
19 riod of time. **A product manufacturer or a package manufacturer may demonstrate compli-**
20 **ance by averaging the amount of recycled content or reuse of particular packages, including,**
21 **at the option of the manufacturer, the packages of affiliates of the manufacturer and its**
22 **subsidiaries and parent organizations.** Proprietary information included in the records, if sub-
23 mitted to the Department of Environmental Quality under this section shall not be made available
24 to the general public. The records documenting the compliance shall be submitted to the department
25 upon its request. Each manufacturer required to keep records under this section may be audited by
26 the department. The department shall not take enforcement action, audit or request copies of the
27 records kept by a manufacturer under this section before January 1, 1996, and until the department
28 calculates the recycling rates in ORS 459A.655 (2) for the calendar year 1995.

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

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

37 (4) If subsection (3) of this section applies, the product manufacturer also shall maintain a re-
38 cord of the written certification by the package manufacturer that the rigid plastic containers
39 comply with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b). The certification also shall state that the
40 package manufacturer will maintain the records required in subsection (3) of this section, and upon
41 request of the department, submit to the department records that include the information the de-
42 partment may require to determine compliance. The product manufacturer may rely on the certif-
43 ication as a defense in any action or proceeding for violation of or to enforce ORS 459A.650 to
44 459A.665, whether such action or proceeding is brought under ORS 459.992, 459.995 or under any
45 other law.

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 or infant formula as defined by
 4 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. A container shall be considered to contain food if it contains
 23 an article used, or intended to be used, for food, ice, confection or condiment, whether simple or
 24 compound, or any part or ingredient thereof or in the preparation thereof, and for human consump-
 25 tion, but a container shall not be considered to contain food if it contains a drinkable liquid and is
 26 a rigid plastic bottle. As used in this paragraph, "rigid plastic bottle" means a container that has
 27 a mouth narrower than its base.

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

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

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