

# DRAFT

## SUMMARY

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

Establishes Extended Producer Responsibility Fund.

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

Requires commingled recycling processing facility to obtain disposal site permit.

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

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

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

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

## A BILL FOR AN ACT

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

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

## EXTENDED PRODUCER RESPONSIBILITY PROGRAM

### (Extended Producer Responsibility Organizations)

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

(1) “Commingled recycling” means the recycling or recovery of two or more materials that are mixed together and that generally would

1 be separated into individual materials at a commingled recycling pro-  
2 cessing facility in order to be marketed.

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

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

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

10 (3)(a) “Covered product” means:

11 (A) Packaging;

12 (B) Printing and writing paper; and

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

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

16 (ii) Aluminum foil; and

17 (iii) Pie plates.

18 (b) “Covered product” does not include:

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

20 (B) Bound books; and

21 (C) Napkins, paper towels or other paper intended to be used for  
22 cleaning or the absorption of liquids.

23 (4) “Extended producer responsibility organization” means a corpo-  
24 ration, nonprofit organization or other legal entity designated by a  
25 group of producers to implement an extended producer responsibility  
26 program.

27 (5) “Extended producer responsibility program” means a statewide  
28 program for the collection and management of covered products that  
29 is funded and operated by an extended producer responsibility organ-  
30 ization pursuant to a plan approved by the Department of Environ-  
31 mental Quality under section 9 of this 2021 Act.

1       **(6) “Local government” has the meaning given that term in ORS**  
2       **174.116.**

3       **(7) “Local government’s agent” includes a collection service fran-**  
4       **chise holder under ORS 459A.085 or any person authorized by a local**  
5       **government to provide collection services as defined in ORS 459.005.**

6       **(8) “Packaging” includes:**

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

10       **(b) Grouped packaging or secondary packaging used to group pro-**  
11       **ducts for multiunit sale or intended to brand or display the product;**

12       **(c) Transport packaging or tertiary packaging used for transporta-**  
13       **tion or distribution directly to a consumer or to protect the product**  
14       **during transport;**

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

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

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

21       **(9) “Printing and writing paper” includes, but is not limited to,**  
22       **newspaper, magazines, flyers, brochures, booklets, catalogs, telephone**  
23       **directories and paper used for copying, writing or other general use.**

24       **(10) “Producer” means a person that:**

25       **(a) Manufactures a covered product or sells, offers for sale or dis-**  
26       **tributes the covered product in this state under the manufacturer’s**  
27       **own brand;**

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

31       **(c) Sells a covered product in or imports a covered product into the**

1 **United States for use in a commercial enterprise that sells, offers for**  
2 **sale or distributes the covered product in this state; or**

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

5 **(11)(a) “Recycling” means the series of activities by which a mate-**  
6 **rial is:**

7 **(A) Collected and sorted; and**

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

10 **(b) “Recycling” does not include:**

11 **(A) Any method of sorting, processing and aggregating materials**  
12 **from solid waste that does not preserve the original material quality,**  
13 **and, as a result, the aggregated material is no longer usable for its**  
14 **initial purpose or product and can only be used for inferior purposes**  
15 **or products.**

16 **(B) The use of solid waste:**

17 **(i) As a fuel or fuel substitute;**

18 **(ii) For energy production; or**

19 **(iii) Within a landfill.**

20 **(C) The conversion of solid waste into alternative products, includ-**  
21 **ing chemicals, feedstocks, fuels and energy, through:**

22 **(i) Pyrolysis;**

23 **(ii) Hydropyrolysis;**

24 **(iii) Methanolysis;**

25 **(iv) Gasification;**

26 **(v) Enzymatic breakdown; or**

27 **(vi) Similar technologies.**

28 **(12) “Responsible end market” means a materials market in which**  
29 **the recycling or recovery of materials or the disposal of contaminants**  
30 **is conducted in a way that:**

31 **(a) Benefits the environment; and**

(b) Minimizes risks to public health and worker health and safety.

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

(a) It is technically feasible under current market conditions to do so; and

(b) The covered product can be refilled or used for 100 cycles or a greater amount appropriate for that covered product, as determined by the Environmental Quality Commission by rule.

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

(a) Is a nonprofit organization;

(b) Is a public body as defined in ORS 174.109;

(c) Has a gross revenue of less than \$1 million in this state for the organization’s most recent fiscal year; or

(d) Produced or sold in Oregon less than one metric ton of covered products for use in this state in the most recent calendar year.

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

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

(a) The website maintained by the producer’s extended producer responsibility organization lists the producer, along with the producer’s brand associated with the covered product, as a participant in an approved extended producer responsibility program; or

(b) The website maintained by the Department of Environmental

1 **Quality lists the producer and covered product as exempt.**

2 **SECTION 3. Exemption for small producers.** (1) A small producer  
3 **is exempt from the requirements of section 2 (1) of this 2021 Act if the**  
4 **small producer registers with the Department of Environmental**  
5 **Quality as provided in this section.**

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

9 **(3) The department shall maintain a website listing small producers**  
10 **that are registered with the department and the brands associated**  
11 **with each small producer.**

12 **SECTION 4. Extended producer responsibility program plan.** (1) An  
13 **extended producer responsibility organization must prepare and sub-**  
14 **mit to the Department of Environmental Quality a plan for the de-**  
15 **velopment and implementation of an extended producer responsibility**  
16 **program. An extended producer responsibility program plan must de-**  
17 **scribe how the extended producer responsibility organization will:**

18 **(a) Develop and implement an extended producer responsibility**  
19 **program;**

20 **(b) Fund the extended producer responsibility program from col-**  
21 **lection to processing and marketing using a funding mechanism that**  
22 **satisfies the requirements of section 6 of this 2021 Act;**

23 **(c) Provide for the collection for recycling and management of**  
24 **materials identified on the statewide recycling list described in section**  
25 **5 of this 2021 Act;**

26 **(d) Collect and analyze information necessary for the extended**  
27 **producer responsibility organization to meet the reporting require-**  
28 **ments of section 11 of this 2021 Act;**

29 **(e) Ensure that covered products are collected from residential,**  
30 **commercial and governmental generators of waste;**

31 **(f) Abate and remove litter from public spaces, including the ocean**

1 and public parks;

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

4 (h) Reimburse local governments or local governments' agents for  
5 the cost of transporting recyclable materials to commingled recycling  
6 processing facilities;

7 (i) Meet the reuse and recycling performance requirements estab-  
8 lished under section 7 of this 2021 Act;

9 (j) Meet the post-consumer recycled content requirements estab-  
10 lished under section 8 of this 2021 Act;

11 (k) Source reduce covered products to the greatest extent practica-  
12 ble;

13 (L) Coordinate with local governments and collection service pro-  
14 viders to provide for the collection for recycling or disposal of covered  
15 products in the same manner and on the same day as other solid  
16 waste;

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

19 (n) Coordinate with other extended producer responsibility organ-  
20 izations operating in this state; and

21 (o) Ensure that covered products collected for recycling are mar-  
22 keted to responsible end markets.

23 (2) An extended producer responsibility program plan must demon-  
24 strate that a sufficient number of producers has joined the extended  
25 producer responsibility organization to allow the organization to ef-  
26 fectively operate an extended producer responsibility program.

27 (3) An extended producer responsibility organization must prepare  
28 and submit a plan under this section every two years. Except for an  
29 initial plan, a plan submitted under this section must describe how the  
30 extended producer responsibility organization consulted with  
31 stakeholders and incorporated stakeholder feedback into its plan.

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

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

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

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

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

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

(2) A schedule established under this section must establish base fee rates for all covered products sold or distributed in this state by the producers registered with the extended producer responsibility organ-



1 **ization.**

2 **(3) In addition to the base fees described in subsection (2) of this**  
3 **section, an extended producer responsibility organization's fee sched-**  
4 **ule must incentivize producers to continually reduce the environ-**  
5 **mental and human health impacts of covered products by offering fee**  
6 **adjustments to producers that make or have made changes to the ways**  
7 **in which they produce, use and market covered products. Fee adjust-**  
8 **ments developed under this subsection must reflect:**

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

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

12 **(B) Would typically be recyclable but, as a consequence of the de-**  
13 **sign of the covered product, has the effect of disrupting recycling**  
14 **processes;**

15 **(C) Include labels, inks, liners and adhesives containing heavy**  
16 **metals or other toxic substances; or**

17 **(D) Cannot be recycled.**

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

19 **(A) Have nondetachable caps or other innovations and design**  
20 **characteristics to prevent littering;**

21 **(B) Are specifically designed for reuse and have a high reuse rate;**  
22 **or**

23 **(C) Have lower environmental impacts, including covered products**  
24 **made of:**

25 **(i) Sustainable or renewably sourced materials; or**

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

28 **(4)(a) Notwithstanding subsections (2) and (3) of this section, an**  
29 **extended producer responsibility organization may exempt producers**  
30 **that sell or distribute a disproportionately small share of covered**  
31 **products in this state from the fees established under subsections (1)**

1 and (2) of this section or establish a uniform, reduced fee for producers  
2 that sell or distribute a disproportionately small share of covered  
3 products in this state.

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

11 (5) A producer or retailer may not identify the fee charged under  
12 this section as a separate line item on a receipt or invoice.

13 (6) The Department of Environmental Quality may regulate the use  
14 of exemptions and reduced fees under subsection (4) of this section in  
15 the manner prescribed by the Environmental Quality Commission by  
16 rule.

17 SECTION 7. Reuse and recycling performance requirements. (1) An  
18 extended producer responsibility program must meet the reuse and  
19 recycling performance requirements established by this section.

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

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

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

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

29 (a) For rigid plastic:

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

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

**(b) For flexible plastic:**

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

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

**(c) For paper:**

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

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

**(d) For aluminum:**

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

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

**(e) For steel:**

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

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

**(f) For glass:**

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

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

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

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

**(a) For rigid plastic material:**

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

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

**(b) For flexible plastic material:**

1 (A) The point at which the material does not undergo further pro-  
2 cessing before entering pelletization, extrusion or molding; or

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

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

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

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

11 (f) For glass, the point at which the material does not undergo  
12 further processing before entering a glass furnace or the production  
13 of filtration media, abrasive materials, glass fiber insulation and con-  
14 struction materials.

15 (6) An extended producer responsibility organization that does not  
16 achieve the reuse and recycling performance requirements established  
17 by this section must submit an amendment to its extended producer  
18 responsibility program plan under section 10 of this 2021 Act within 90  
19 days of submitting a report under section 11 of this 2021 Act that de-  
20 scribes the organization's failure to achieve the reuse and recycling  
21 performance requirements. The plan amendment must include  
22 changes to the plan specifying how the program will be modified to  
23 meet the requirements of this section.

24 SECTION 8. Post-consumer recycled content requirements. (1) An  
25 extended producer responsibility program must meet the post-  
26 consumer recycled content requirements of this section.

27 (2) Covered products sold or distributed in this state must meet the  
28 following annual minimum post-consumer recycled content require-  
29 ments, by material category, for the total quantity of covered products  
30 sold or distributed in this state:

31 (a) For rigid plastic:

1 (A) By 2026, 30 percent; and

2 (B) By 2030, 50 percent.

3 (b) For flexible plastic:

4 (A) By 2026, 10 percent; and

5 (B) By 2030, 30 percent.

6 (c) For paper packaging:

7 (A) By 2026, 50 percent; and

8 (B) By 2030, 75 percent.

9 (d) For other paper products:

10 (A) By 2026, 25 percent; and

11 (B) By 2030, 50 percent.

12 (e) For aluminum:

13 (A) By 2026, 50 percent; and

14 (B) By 2030, 70 percent.

15 (f) For steel:

16 (A) By 2026, 30 percent; and

17 (B) By 2030, 50 percent.

18 (g) For glass:

19 (A) By 2026, 40 percent; and

20 (B) By 2030, 60 percent.

21 (3) An extended producer responsibility organization that does not  
22 achieve the post-consumer recycled content requirements established  
23 by this section must submit an amendment to its extended producer  
24 responsibility program plan under section 10 of this 2021 Act within 90  
25 days of submitting a report under section 11 of this 2021 Act that de-  
26 scribes the organization's failure to achieve the post-consumer recy-  
27 cled content requirements. The plan amendment must include changes  
28 to the plan specifying how the program will be modified to meet the  
29 requirements of this section.

30 SECTION 9. Approval by department. (1) The Department of Envi-  
31 ronmental Quality shall approve a plan submitted under section 4 of

1 this 2021 Act or an amendment submitted under section 10 of this 2021  
2 Act if the extended producer responsibility organization submits a  
3 completed plan or amendment and the proposed plan or amendment  
4 meets the requirements of section 4 or 10 of this 2021 Act.

5 (2)(a) Not later than 90 days after receiving a plan or amendment,  
6 the department shall approve or reject the plan or amendment. If the  
7 department rejects the plan or amendment, the department shall in-  
8 form the extended producer responsibility organization of the reason  
9 or reasons for the rejection.

10 (b) Not later than 90 days after the department rejects a plan or  
11 amendment under paragraph (a) of this subsection, an extended pro-  
12 ducer responsibility organization must submit to the department a  
13 revised plan or amendment. Not later than 90 days after receiving a  
14 revised plan or amendment under this paragraph, the department shall  
15 approve or reject the revised plan or amendment.

16 (3) An extended producer responsibility organization must imple-  
17 ment a plan or amendment approved under this section within 60 days  
18 of the date on which the department approves the plan or amendment.

19 SECTION 10. Plan amendments. (1) An extended producer respon-  
20 sibility organization shall submit an amendment to an extended pro-  
21 ducer responsibility program plan to the Department of Environmental  
22 Quality for approval:

23 (a) When required to do so under section 7 (6) or 8 (3) of this 2021  
24 Act; or

25 (b) When required to do so by rules adopted by the Environmental  
26 Quality Commission.

27 (2) Not less than once per month, an extended producer responsi-  
28 bility organization shall provide written notice to the department of  
29 any changes made during the previous month to a plan approved by  
30 the department under section 9 of this 2021 Act that are changes for  
31 which an amendment is not required under subsection (1) of this sec-

tion. Changes subject to notice under this subsection shall be described by the commission by rule.

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

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

(2) A report under this section must include:

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

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

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

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

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

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

(Product Labeling)

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

(a) “Chasing arrows symbol” means:

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

(B) A substantially similar symbol.

(b) “Product” includes any item sold in this state, the packaging of the item or the material used to make the item or packaging.

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

(2)(a) A person may not distribute, sell or offer to sell, including by means of remote sale, any product that makes a deceptive or misleading claim about the recyclability of the product or the product’s packaging in this state.

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

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

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

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



method for the material.

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

(Commingled Recycling Processing Facilities)

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

(2) A disposal site permit issued to a commingled recycling processing facility must require the facility to:

(a) Sort all materials collected from the public so that materials do not become contaminants in other waste streams;

(b) Market materials to responsible end markets;

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

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

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

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

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



1 (a) **Commingled recycling processing facilities;**

2 (b) **Local governments;**

3 (c) **Producers;**

4 (d) **Environmental organizations;**

5 (e) **Public health organizations; and**

6 (f) **The public at large.**

7 (2) **The advisory committee shall advise the Department of Envi-**  
8 **ronmental Quality regarding:**

9 (a) **The review and approval of any plan or plan amendment for the**  
10 **development and implementation of an extended producer responsibil-**  
11 **ity program, including the statewide recycling list developed pursuant**  
12 **to section 5 of this 2021 Act;**

13 (b) **The review of annual reports submitted by an extended producer**  
14 **responsibility organization under section 11 of this 2021 Act; and**

15 (c) **The development of rules regarding reimbursements to local**  
16 **governments under section 17 of this 2021 Act.**

17 **SECTION 17. Reimbursements to local governments or their agents.**

18 **The Environmental Quality Commission, in consultation with the ad-**  
19 **visory committee appointed under section 16 of this 2021 Act, shall**  
20 **adopt rules to prescribe the manner and amounts of reimbursements**  
21 **made to a local government or the local government's agent by ex-**  
22 **tended producer responsibility organizations for the collection of cov-**  
23 **ered products by the local government or the local government's**  
24 **agent.**

25  
26 **(Miscellaneous Provisions)**

27  
28 **SECTION 18. Fees. (1) The Department of Environmental Quality**  
29 **shall establish and collect the following fees from an extended pro-**  
30 **ducer responsibility organization:**

31 (a) **A fixed, one-time fee reasonably calculated to cover the costs**

1 of reviewing an extended producer responsibility program plan or plan  
2 amendment.

3 (b) An annual fee charged to each extended producer responsibility  
4 organization reasonably calculated to cover the costs of administering,  
5 implementing and enforcing sections 1 to 23 of this 2021 Act.

6 (2) The fee calculated for each extended producer responsibility or-  
7 ganization under subsection (1)(b) of this section must be propor-  
8 tionate to the market share of all covered products sold in this state  
9 by the producers participating in the extended producer responsibility  
10 organization. The department may make a reasonable estimate of the  
11 market share of a producer for any year for which market share in-  
12 formation for that producer has not been provided to the department.

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

16 SECTION 19. Extended Producer Responsibility Fund established.  
17 The Extended Producer Responsibility Fund is established, separate  
18 and distinct from the General Fund. Interest earned by the Extended  
19 Producer Responsibility Fund shall be credited to the fund. Moneys in  
20 the fund are continuously appropriated to the Department of Envi-  
21 ronmental Quality and may be used only to pay the costs of adminis-  
22 tering, implementing and enforcing sections 1 to 23 of this 2021 Act.

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

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

30 SECTION 21. Antitrust. The Legislative Assembly declares that the  
31 collaboration of producers and extended producer responsibility or-

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

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

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

## AMENDMENTS TO STATUTE

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

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

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

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

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

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

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

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

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

**(h) Any producer or extended producer responsibility organization that violates sections 1 to 23 of this 2021 Act or any rule adopted under sections 1 to 23 of this 2021 Act incurs a civil penalty not to exceed**

**\$25,000 per day for each day of the violation.**

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

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

## **REPEALS**

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

## **OPERATIVE AND APPLICABILITY DATES**

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

(2) The Department of Environmental Quality and the Environmental Quality Commission may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department or commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, powers and functions conferred on the department or commission by sections 12 to 15 of this 2021 Act.

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

## **TEMPORARY PROVISIONS**

**SECTION 28. (1) An extended producer responsibility organization**

1 must submit an initial plan for an extended producer responsibility  
2 program no later than January 1, 2024.

3 (2) Notwithstanding section 9 (3) of this 2021 Act, an extended pro-  
4 ducer responsibility organization shall first implement an extended  
5 producer responsibility program as described in an initial plan sub-  
6 mitted under subsection (1) of this section no later than July 1, 2025.

7  
8 **UNIT AND SECTION CAPTIONS**

9  
10 **SECTION 29.** The unit and section captions used in this 2021 Act  
11 are provided only for the convenience of the reader and do not become  
12 part of the statutory law of this state or express any legislative intent  
13 in the enactment of this 2021 Act.