

# Senate Bill 14

Sponsored by Senator BEYER (Pre-session filed.)

## 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**.

Establishes product stewardship program for plastic packaging and plastic food serviceware.

Establishes Plastics Stewardship Fund. Continuously appropriates moneys in fund to Department of Environmental Quality for purposes of Act.

Imposes penalty for violation by manufacturer or stewardship organization of program provisions not to exceed \$10,000 per day for each day of violation. Imposes penalty for violation of program provisions by retailer not to exceed \$100 per day for each day of violation.

Becomes operative January 1, 2022.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to plastics; creating new provisions; amending ORS 459.995; and prescribing an effective  
3 date.

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

## PLASTICS STEWARDSHIP PROGRAMS

### **SECTION 1. As used in sections 1 to 11 of this 2021 Act:**

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8  
9 (1) **"Brand" means a name, symbols, words or marks that identify a covered product and**  
10 **attribute the covered product to the manufacturer of the covered product.**

11 (2) **"Covered product" means:**

12 (a) **Plastic packaging; and**

13 (b) **Plastic food serviceware generally intended for single use, including plates, cups,**  
14 **bowls, cutlery or straws.**

15 (3) **"Environmentally sound management" includes the following management practices,**  
16 **implemented in a manner that is designed to protect public health, safety and the environ-**  
17 **ment:**

18 (a) **Adequate record keeping;**

19 (b) **Detailed documentation of the methods used to:**

20 (A) **Manage covered products collected as part of a plastics stewardship program; and**

21 (B) **Track and document the fate of covered products from collection through final dis-**  
22 **position within this state and outside this state;**

23 (c) **Performance audits and inspections of recyclers, haulers and other parties as deter-**  
24 **mined by a stewardship organization;**

25 (d) **Compliance with worker health and safety requirements; and**

26 (e) **Maintenance of adequate liability insurance for a stewardship organization and con-**  
27 **tractors working for the stewardship organization.**

28 (4) **"Manufacturer" means any person, irrespective of the selling technique used, includ-**

**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 ing that of remote sales, that:

2 (a) Manufactures a covered product or sells, offers for sale or distributes the covered  
3 product in this state under the manufacturer’s own brand;

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

7 (c) Sells a covered product in or imports a covered product into the United States for  
8 use in a commercial enterprise that sells, offers for sale or distributes the covered product  
9 in this state.

10 (5) “Market share” means a manufacturer’s percentage of all covered products sold in  
11 this state during a specified time period, as calculated in accordance with methods estab-  
12 lished by the Environmental Quality Commission by rule.

13 (6) “Person” means the United States, the state or a public or private corporation, local  
14 government unit, public agency, individual, partnership, association, firm, trust, estate or  
15 other legal entity.

16 (7) “Plastic” means a synthetic material chemically formed by the polymerization of or-  
17 ganic substances that can be molded or extruded at high heat into various solid forms that  
18 may be solid, porous, flexible or rigid, including elastomers, fibers, adhesives and surface  
19 coatings.

20 (8) “Plastic packaging” means:

21 (a) Plastics used for the containment or protection of products;

22 (b) Single-use bags, including but not limited to shopping bags;

23 (c) Take-out containers; and

24 (d) Other products, as determined by the Environmental Quality Commission by rule.

25 (9) “Plastics stewardship program” means a statewide program for the collection and  
26 environmentally sound management of plastics that is funded and operated by a stewardship  
27 organization pursuant to a plan approved by the Department of Environmental Quality under  
28 section 4 of this 2021 Act.

29 (10) “Remote sales” means sales made through remote offerings such as sales outlets,  
30 catalogs or the Internet.

31 (11) “Retailer” means a person that offers new covered products for sale at retail  
32 through any means, including but not limited to remote sales.

33 (12) “Stewardship organization” means a corporation, nonprofit organization or other le-  
34 gal entity designated by a manufacturer or a group of manufacturers to implement a plastics  
35 stewardship program.

36 **SECTION 2.** (1) A manufacturer or retailer may not sell or offer for sale, irrespective  
37 of the selling technique used, including that of remote sales, a covered product in this state  
38 unless:

39 (a) The covered product is predominantly composed of a material that is included on the  
40 recyclable plastics list established by the Environmental Quality Commission under section  
41 9 of this 2021 Act; or

42 (b) The covered product is labeled with a brand that is included in a plan for a plastics  
43 stewardship organization that is submitted to and approved by the Department of Environ-  
44 mental Quality under sections 3 and 4 of this 2021 Act.

45 (2) A retailer is in compliance with subsection (1) of this section if, on the date the cov-

1 ered product is ordered from the manufacturer or its agent, the website maintained by the  
2 manufacturer's stewardship organization lists the manufacturer, along with the  
3 manufacturer's brand associated with the covered product, as a participant in an approved  
4 plastics stewardship program.

5 **SECTION 3.** (1) A stewardship organization must prepare and submit to the Department  
6 of Environmental Quality a plan for the development and implementation of a plastics  
7 stewardship program. A plastics stewardship program plan must describe how the  
8 stewardship organization will:

9 (a) Manage and conduct a plastics stewardship program;

10 (b) Fund the plastics stewardship program, including how the operator will fund all the  
11 costs incurred for the environmentally sound management of covered products during each  
12 phase of management, from collection of the covered products from the public through final  
13 disposition of the covered products;

14 (c) Provide for the collection of covered products at locations that are conveniently lo-  
15 cated throughout the state;

16 (d) Apportion the costs of the plastics stewardship program among each of the man-  
17 ufacturers participating in the stewardship organization;

18 (e) Provide for advertising and promoting collection opportunities statewide and on a  
19 regular basis;

20 (f) Manage and appropriately dispose of products received through collection activities  
21 that are not covered products; and

22 (g) Establish performance goals, including a statewide recovery rate for covered pro-  
23 ducts.

24 (2) In operating a plastics stewardship program, a stewardship organization shall:

25 (a) Implement the plan required under subsection (1) of this section no later than 60 days  
26 after the department approves the plan;

27 (b) Provide for the environmentally sound management of all covered products, regard-  
28 less of the manufacturer of the covered product and including orphan covered products, free  
29 of charge;

30 (c) Provide for the collection of covered products at locations that are conveniently lo-  
31 cated throughout the state;

32 (d) Notify retailers that sell or offer for sale covered products made or sold by man-  
33 ufacturers participating in the stewardship organization about the plastics stewardship pro-  
34 gram and provide the retailers with information about available collection opportunities that  
35 the retailers will need in order to comply with section 2 (1) of this 2021 Act; and

36 (e) Establish and maintain a website that provides information about collection sites  
37 under the plastics stewardship program, identifies manufacturers participating in the  
38 stewardship organization under the plan and lists covered products that are sold or offered  
39 for sale in this state by participating manufacturers.

40 (3) At least 180 days before the expiration of a plan approved under section 4 of this 2021  
41 Act, a stewardship organization shall submit a new plan in accordance with this section.

42 **SECTION 4.** (1) The Department of Environmental Quality shall approve a plastics  
43 stewardship program plan submitted under section 3 of this 2021 Act if the proposed plan a  
44 stewardship organization submits is complete, the proposed plan meets the requirements of  
45 section 3 (1) of this 2021 Act and the stewardship organization pays the fee established by the

1 Department of Environmental Quality under section 6 (1)(a) of this 2021 Act.

2 (2)(a) Not later than 60 days after receiving a plan under section 3 of this 2021 Act, the  
 3 department shall approve or reject the plan. If the department rejects the plan, the depart-  
 4 ment shall inform the stewardship organization of the reason or reasons for the rejection.

5 (b) Not later than 60 days after the department rejects a plan under paragraph (a) of this  
 6 subsection, a stewardship organization must submit to the department a revised plan. Not  
 7 later than 90 days after receiving a revised plan under this paragraph, the department shall  
 8 approve or reject the revised plan.

9 (3) A plan approved under this section is valid for four years.

10 **SECTION 5.** (1) By April 1 of each year, or by a later date as determined by the Depart-  
 11 ment of Environmental Quality, a stewardship organization shall provide a report for review  
 12 by the department that details how the plastics stewardship program plan approved by the  
 13 department under section 4 of this 2021 Act was implemented during the previous calendar  
 14 year.

15 (2) A report under this section must include:

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

18 (b) The respective market shares of the manufacturer's participating in the plastics  
 19 stewardship program; and

20 (c) An evaluation of the stewardship organization's success in meeting the performance  
 21 goals established under section 3 (1)(g) of this 2021 Act.

22 **SECTION 6.** (1) The Department of Environmental Quality shall establish and collect the  
 23 following fees from a stewardship organization:

24 (a) A fixed, one-time fee reasonably calculated to cover the costs of reviewing a plastics  
 25 stewardship program plan submitted under section 3 of this 2021 Act.

26 (b) An annual fee, charged to each stewardship organization, reasonably calculated to  
 27 cover the costs of administering, implementing and enforcing sections 1 to 11 of this 2021  
 28 Act.

29 (2) The fee calculated for each stewardship organization under subsection (1)(b) of this  
 30 section must be proportionate to the market share of all covered products sold in this state  
 31 by the manufacturers participating in the stewardship organization. The department may  
 32 make a reasonable estimate of the market share of a manufacturer for any year for which  
 33 market share information for that manufacturer has not been provided to the department.

34 (3) Fees collected by the department under this section shall be deposited in the State  
 35 Treasury to the credit of the Plastics Stewardship Fund established under section 8 of this  
 36 2021 Act.

37 **SECTION 7.** (1) In accordance with the applicable provisions of ORS chapter 183 relating  
 38 to contested case proceedings, the Department of Environmental Quality may issue an order  
 39 requiring compliance with the provisions of sections 1 to 11 of this 2021 Act.

40 (2) The department may bring an action against any person that is in violation of the  
 41 provisions of sections 1 to 11 of this 2021 Act.

42 **SECTION 8.** The Plastics Stewardship Fund is established, separate and distinct from the  
 43 General Fund. Interest earned by the Plastics Stewardship Fund shall be credited to the  
 44 fund. Moneys in the fund are continuously appropriated to the Department of Environmental  
 45 Quality and may be used only to pay the costs of administering, implementing and enforcing

1 sections 1 to 11 of this 2021 Act.

2 **SECTION 9.** (1) **The Environmental Quality Commission shall by rule identify plastics**  
 3 **that are suitable for recycling collection in this state.**

4 (2) **In determining whether a plastic is suitable for recycling collection in this state, the**  
 5 **commission shall consider:**

6 (a) **The stability, maturity, accessibility and viability of end markets for the plastic;**

7 (b) **Environmental health and safety considerations;**

8 (c) **The anticipated yield loss for the plastic during the recycling process;**

9 (d) **The plastic’s compatibility with existing recycling infrastructure;**

10 (e) **The amount of the plastic available;**

11 (f) **The practicalities of sorting and storing the plastic;**

12 (g) **Contamination;**

13 (h) **The ability for waste generators to easily identify and properly prepare the plastic;**

14 (i) **Economic factors;**

15 (j) **Environmental factors from a life-cycle perspective; and**

16 (k) **The policy expressed in ORS 459.015.**

17 **SECTION 10.** **The Legislative Assembly declares that the collaboration of manufacturers**  
 18 **and stewardship organizations to develop and implement plastics stewardship programs is in**  
 19 **the best interests of the public. Therefore, the Legislative Assembly declares its intent that**  
 20 **the development, implementation and operation of plastics stewardship programs as required**  
 21 **by sections 1 to 11 of this 2021 Act shall be exempt from state antitrust laws. The Legislative**  
 22 **Assembly further declares its intent to provide immunity for the development, implementa-**  
 23 **tion and operation of plastics stewardship programs as required by sections 1 to 11 of this**  
 24 **2021 Act from federal antitrust laws. This section does not authorize any person to engage**  
 25 **in activities or to conspire to engage in activities that constitute per se violations of state**  
 26 **or federal antitrust laws that are not authorized under sections 1 to 11 of this 2021 Act.**

27 **SECTION 11.** **The Environmental Quality Commission may adopt rules as necessary to**  
 28 **implement sections 1 to 11 of this 2021 Act.**

29 **SECTION 12.** **ORS 459.995 is amended to read:**

30 459.995. (1) **Except as provided in subsection (2) of this section, in addition to any other penalty**  
 31 **provided by law:**

32 (a) **Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,**  
 33 **459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order**  
 34 **of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or**  
 35 **recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal,**  
 36 **storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining**  
 37 **to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to**  
 38 **exceed \$25,000 per day for each day of the violation.**

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

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

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

4 (e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) **or section 2 of this**  
5 **2021 Act** incurs a civil penalty not to exceed \$100 per day for each day of the violation.

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

8 (g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827,  
9 459A.830 to 459A.837 or 459A.842 incurs a civil penalty not to exceed \$1,000 per day for each day  
10 of the violation.

11 **(h) Any manufacturer or stewardship organization that violates sections 1 to 11 of this**  
12 **2021 Act or any rule adopted under sections 1 to 11 of this 2021 Act incurs a civil penalty not**  
13 **to exceed \$10,000 per day for each day of the violation.**

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

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

20  
21 **MISCELLANEOUS**

22  
23 **SECTION 13. Sections 1 to 11 of this 2021 Act and the amendments to ORS 459.995 by**  
24 **section 12 of this 2021 Act apply to all manufacturers engaging in the activities set forth in**  
25 **section 2 of this 2021 Act on or after January 1, 2022.**

26 **SECTION 14. (1) Sections 1 to 11 of this 2021 Act and the amendments to ORS 459.995**  
27 **by section 12 of this 2021 Act become operative on January 1, 2022.**

28 **(2) The Environmental Quality Commission and the Department of Environmental Qual-**  
29 **ity may take any action before the operative date specified in subsection (1) of this section**  
30 **that is necessary for the commission and the department to exercise, on and after the op-**  
31 **erative date specified in subsection (1) of this section, all of the duties, functions and powers**  
32 **conferred on the commission and the department by sections 1 to 11 of this 2021 Act and the**  
33 **amendments to ORS 459.995 by section 12 of this 2021 Act.**

34 **SECTION 15. Initial plans for plastics stewardship programs under section 3 of this 2021**  
35 **Act must be submitted to the Director of the Department of Environmental Quality no later**  
36 **than October 1, 2022.**

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38 **CAPTIONS**

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40 **SECTION 16. The unit captions used in this 2021 Act are provided only for the conven-**  
41 **ience of the reader and do not become part of the statutory law of this state or express any**  
42 **legislative intent in the enactment of this 2021 Act.**

43  
44 **EFFECTIVE DATE**

1        **SECTION 17.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
2 regular session of the Eighty-first Legislative Assembly adjourns sine die.  
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