An Act to Reduce Plastic Packaging Waste

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

Presented by Representative GRAMLICH of Old Orchard Beach.
Cosponsored by Senator BENNETT of Oxford and
Representatives: CARLOW of Buxton, DOUDERA of Camden, HOBBS of Wells, JAUCH of Topsham, MILLIKEN of Blue Hill, Speaker TALBOT ROSS of Portland, Senators: BLACK of Franklin, INGWERSSEN of York.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1617 is enacted to read:

§1617. Reduction of plastic packaging

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chemical of concern" has the same meaning as in section 1691, subsection 2-A.

B. "Compostable" means, with respect to packaging, able to undergo degradation by biological processes during composting to yield carbon dioxide, water, inorganic compounds and biomass at a rate consistent with other materials that undergo degradation by biological processes and leave no visible, distinguishable or toxic residue, including no adverse impact on the ability of compost to support plant growth once the compost is placed in soil.

C. "Manufacturer" means the person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

D. "Nondetectable pigment" means a pigment added to plastic packaging, including, but not limited to, carbon black pigment, that cannot be detected by sorting equipment commonly used in recycling facilities.

E. "Packaging" means a discrete type of material, or a category of material that includes multiple discrete types of material with similar management requirements and similar commodity values, used for the containment, protection, delivery, presentation or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer of the product.

F. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic organic solid that is moldable and to which additives or other substances may have been added. "Plastic" does not include natural polymers that have not been chemically modified.

G. "Plastic packaging" means packaging that is composed wholly or in large part of plastic but does not include:

   (1) A disposable food service container as defined in section 1571, subsection 3 or 3-A; or
   (2) A polystyrene foam cooler or ice chest used for the processing or shipping of seafood.

H. "Product" means an item manufactured, assembled, packaged or otherwise prepared for sale to consumers and sold or distributed for personal, residential, commercial or industrial use, including for use in making other products.

I. "Prohibited plastic packaging" means:

   (1) Plastic packaging that contains nondetectable pigments;
(2) Plastic bottles that are composed wholly or partially of polyethylene terephthalate and are opaque or are pigmented a color other than transparent blue or transparent green;

(3) Plastic packaging that is rigid and is composed wholly or partially of polyethylene terephthalate glycol;

(4) Plastic packaging that is composed wholly or partially of polystyrene, including expanded polystyrene;

(5) Plastic packaging that is composed wholly or partially of polyvinyl chloride, including polyvinylidene chloride;

(6) Plastic packaging that is composed wholly or partially of polyethylene terephthalate and is manufactured using antimony or cobalt as a processing aid or additive; and

(7) Any other type of prohibited plastic packaging designated by the department by rule pursuant to subsection 2.

J. "Recyclable" means, with respect to packaging, able to be transformed or remanufactured into usable or marketable materials through means other than landfill disposal, incineration or energy recovery or energy generation through combustion.

K. "Reusable" means, with respect to packaging, able to be used by a person other than the original consumer in the same manner and purpose for which the packaging was originally produced.

2. Prohibited plastic packaging; designation by rule. The department may adopt rules designating additional types of prohibited plastic packaging upon a finding that the plastic packaging type is not readily reusable, recyclable or compostable in the State and:

A. Contains a chemical of concern or other chemical that can reasonably be expected to create hazardous human health conditions during its manufacturing, recycling or composting or to adversely affect human health or the environment;

B. Is unnecessary for the containment, protection, delivery, presentation or distribution of the product it packages or can be replaced with a reusable alternative;

C. Can reasonably be expected to hinder or disrupt commercial recycling or composting systems due to its format, composition or size; or

D. Has a high likelihood of entering the natural environment, whether as litter or otherwise.

A rule adopted under this section must specify an effective date for the rule that is at least one year after the final adoption of the rule.

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Prohibition. Beginning January 1, 2025, a person may not sell, offer for sale or distribute for sale in the State a product contained, protected, delivered, presented or distributed in or using prohibited plastic packaging.

4. Certificate of compliance. If the department has reason to believe that a product is being sold, offered for sale or distributed for sale in the State contained, protected,
delivered, presented or distributed in or using prohibited plastic packaging in violation of subsection 3, the department may direct the manufacturer or distributor of the product to, within 30 days:

A. Provide the department with a certificate attesting that the product is not contained, protected, delivered, presented or distributed in or using prohibited plastic packaging; or

B. Notify persons that sell that product in this State that the sale of that product is prohibited in this State and provide the department with a list of the names and addresses of those notified.

5. Administration and enforcement; rulemaking; reports. The department shall implement, administer and enforce this section.

A. The department may adopt rules as necessary for the implementation, administration and enforcement of this section. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

B. On or before January 15, 2027, and biennially 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 reduction of plastic packaging under this section. The report may include, but is not limited to, identification of additional types of plastic packaging that can reasonably be expected to hinder or disrupt commercial recycling or composting systems or that contain known or likely chemicals of concern and recommendations for measures to further reduce plastic packaging under this section. After reviewing the report, the committee may report out legislation related to the report.

SUMMARY

This bill provides that, beginning January 1, 2025, a person may not sell, offer for sale or distribute for sale in the State a product contained, protected, delivered, presented or distributed in or using prohibited plastic packaging.

"Prohibited plastic packaging" is defined in the bill to include plastic packaging that contains nondetectable pigments; plastic bottles that are composed wholly or partially of polyethylene terephthalate and are opaque or are pigmented a color other than transparent blue or transparent green; plastic packaging that is rigid and is composed wholly or partially of polyethylene terephthalate glycol; plastic packaging that is composed wholly or partially of polystyrene, including expanded polystyrene; plastic packaging that is composed wholly or partially of polyvinyl chloride, including polyvinylidene chloride; plastic packaging that is composed wholly or partially of polyethylene terephthalate and is manufactured using antimony or cobalt as a processing aid or additive. The Department of Environmental Protection may adopt major substantive rules to designate additional types of prohibited plastic packaging based on the plastic packaging satisfying statutorily specified criteria for prohibition.