

SENATE, No. 2515

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 4, 2020

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Establishes recycled content requirements for plastic containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2020)

1 AN ACT concerning the sale of certain containers and packaging
2 products in the State and supplementing Title 13 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in sections 1 through 14 of this act:

9 “Beverage” means milk, alcoholic beverages, including beer or
10 other malt beverages, liquor, wine, vermouth and sparkling wine,
11 and nonalcoholic beverages, including fruit juice, mineral water and
12 soda water and similar nonalcoholic carbonated and noncarbonated
13 drinks intended for human consumption.

14 “Department” means the Department of Environmental
15 Protection.

16 “Food” means articles used for food or drink for humans and
17 articles used for components of any such article.

18 “Manufacturer” means a person that: (1) produces or generates a
19 rigid plastic container, plastic beverage container, glass container,
20 paper carryout bag, reusable carryout bag made of plastic film, or
21 plastic trash bag that is sold or offered for sale in the State; or (2)
22 produces or generates a product that is sold or offered for sale in the
23 State and packaged in a rigid plastic container, plastic beverage
24 container, or glass container.

25 “Package” means a container used to protect, store, contain,
26 transport, display, or sell a product.

27 “Paper carryout bag” means a bag made of paper that is sold or
28 provided by a store or other retail establishment to a customer for
29 the purpose of wrapping, containing, or carrying out food,
30 beverages, or other retail goods.

31 “Person” means an individual, corporation, company,
32 association, society, firm, partnership, or joint stock company.

33 “Plastic” means a synthetic material made from linking
34 monomers through a chemical reaction to create an organic polymer
35 chain that can be molded or extruded at high heat into various solid
36 forms, which retain their defined shapes during their life cycle and
37 after disposal.

38 “Plastic beverage container” means an individual bottle or can
39 composed primarily of plastic that is hermetically sealed or made
40 airtight with a metal or plastic cap, and that contains a beverage.

41 “Plastic film” means any thin, nonwoven, flexible plastic.

42 “Plastic trash bag” means a bag that is made of plastic, is at least
43 0.70 mils thick, and is designed and manufactured for use as a
44 container to hold, store, or transport materials to be discarded,
45 composted, or recycled, and includes, but is not limited to, a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 garbage bag, composting bag, lawn or leaf bag, can-liner bag,
2 kitchen bag, compactor bag, or recycling bag.

3 “Recycled content” means the portion of a package’s total
4 weight that is composed of recycled material, as determined by a
5 material balance approach that calculates total recycled material in
6 the package as a percentage of the total weight of the package.

7 “Recycled material” means a material or product that has
8 completed its intended end use and product life cycle, and which
9 has been separated from the solid waste stream for the purposes of
10 collection and recycling; except that “recycled material” shall not
11 include secondary waste material or materials and by-products
12 generated from, and commonly used within, an original
13 manufacturing and fabrication process.

14 “Reusable carryout bag” means a bag that is sold or provided by
15 a store to a customer for the purpose of transporting groceries,
16 prepared foods, or retail goods, and that is designed and
17 manufactured for multiple reuse.

18 “Rigid plastic container” means a package composed primarily
19 of plastic that has a relatively inflexible finite shape or form, has a
20 capacity of between eight ounces and five gallons, and is capable of
21 maintaining its shape while empty or while holding other products.
22

23 2. a. Except as provided in subsection c. of this section,
24 beginning January 1, 2022, each rigid plastic container sold, offered
25 for sale, or used in association with the sale or offer for sale of a
26 product in the State by a manufacturer shall:

27 (1) contain at least 35 percent recycled content; or

28 (2) be made of a plastic that is being recycled in the State at a
29 rate of 35 percent.

30 b. A rigid plastic container shall be deemed to meet the
31 requirements of paragraph (2) of subsection a. of this section if:

32 (1) rigid plastic containers, in the aggregate, are being recycled
33 in the State at a rate of 35 percent;

34 (2) the rigid plastic container is a specific resin type of rigid
35 plastic container and that resin type of rigid plastic container is
36 being recycled in the State at a rate of 35 percent; or

37 (3) the rigid plastic container is a particular product-associated
38 package and that type of product-associated package is being
39 recycled in the State at a rate of 35 percent.

40 c. A rigid plastic container shall be exempt from the
41 requirements of subsection a. of this section if it:

42 (1) is a plastic beverage container, to which the requirements of
43 section 3 of this act apply;

44 (2) contains drugs, medical devices, medical food, or infant
45 formula as defined in the Federal Food, Drug, and Cosmetic Act, 21
46 U.S.C. s.301 et seq.;

1 (3) contains toxic or hazardous products regulated by the
2 “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C.
3 s.136 et seq.;

4 (4) is associated with a product produced in or brought into the
5 State that is destined for shipment to other destinations outside the
6 State and that remains with the product upon shipment;

7 (5) is necessary to provide tamper-resistant seals for public
8 health purposes;

9 (6) is a source reduced package. A rigid plastic container shall
10 qualify as a source reduced package if the percentage of package
11 weight per unit of product has been reduced by at least 10 percent
12 when compared with the packaging used for the same product by
13 the same manufacturer five years earlier. In no case may packaging
14 reduction be achieved, for purposes of this paragraph, by
15 substituting a different material category for a material that
16 constituted a substantial part of the packaging in question, or by
17 packaging changes that adversely impact either the potential for the
18 package to be recycled or contain recycled material. Exemptions
19 under this paragraph shall be limited to five years, shall not be
20 renewable, and shall not be applicable to packages for which the
21 percentage of package weight per unit of product increased after
22 January 1, 2021; or

23 (7) is a refillable container or a reusable container. A rigid
24 plastic container shall qualify as a refillable container if the
25 container is routinely returned to and refilled by the manufacturer at
26 least five times with the same product packaged by the container. A
27 rigid plastic container shall qualify as a reusable container if the
28 container is routinely reused by consumers at least five times to
29 store the same product packaged by the container.

30 d. Each year, the department shall determine the recycling rate
31 for rigid plastic containers in the aggregate. If, for any year, the
32 department determines that the recycling rate for rigid plastic
33 containers in the aggregate is less than 35 percent, the department
34 shall also determine whether the recycling rate for rigid plastic
35 containers made from each of the major resin types is 35 percent or
36 more. The department shall determine the recycling rate for rigid
37 plastic containers in the aggregate, specific resin types of rigid
38 plastic containers, and product associated packages based on the
39 percentage, as measured by weight, of such packages sold or
40 offered for sale in the State that are recycled the preceding calendar
41 year. The department shall publish the determinations made
42 pursuant to this subsection on its Internet website.

43 e. If, in any year, the department determines that the recycling
44 rate for rigid plastic containers is less than 35 percent, the
45 department shall prepare and submit a report to the Legislature
46 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the
47 members of the Senate Environment and Energy Committee and the
48 Assembly Environment and Solid Waste Committee, or their

1 successors, which assesses the reasons why the recycling rate is
2 below 35 percent, and includes a review of the status of collection
3 programs in the State and the capacity available in the State to
4 process rigid plastic containers collected and reclaim the resin from
5 the collected rigid plastic containers. The department may include
6 in its report any recommendations for legislative or regulatory
7 action necessary to improve the recycling rate for rigid plastic
8 containers.

9 f. The department shall not enforce the provisions of this
10 section during the first full calendar year after the department
11 determines, for the first time, that the recycling rate for rigid plastic
12 containers is less than 35 percent. For any period for which the
13 department determines that the recycling rate for rigid plastic
14 containers equals or exceeds 35 percent, a manufacturer shall not be
15 required to keep records that demonstrate compliance as provided
16 pursuant to subsection b. of section 10 of this act.

17 g. For the purposes of this section, “product-associated
18 package” means a brand-specific rigid plastic container line, which
19 may have one or more sizes, shapes, or designs and which is used in
20 conjunction with a particular, generic product line.

21
22 3. a. Beginning January 1, 2022, through December 31, 2025,
23 each plastic beverage container sold, offered for sale, or filled with
24 a beverage sold or offered for sale in the State by a manufacturer
25 shall contain at least 10 percent recycled content.

26 b. Beginning January 1, 2026, through December 31, 2030,
27 each plastic beverage container sold, offered for sale, or filled with
28 a beverage sold or offered for sale in the State by a manufacturer
29 shall contain at least 25 percent recycled content.

30 c. On and after January 1, 2031, each plastic beverage
31 container sold, offered for sale, or filled with a beverage sold or
32 offered for sale in the State by a manufacturer shall contain at least
33 50 percent recycled content.

34 d. The provisions of this section shall not apply to a refillable
35 plastic beverage container. For the purposes of this subsection, a
36 “refillable plastic beverage container” means a plastic beverage
37 container that has a capacity of 150 fluid ounces or less, holds 150
38 fluid ounces or less of beverage, and which ordinarily would be
39 returned to the manufacturer to be refilled and resold.

40
41 4. a. Beginning January 1, 2022, each glass container sold,
42 offered for sale, or filled with a food or beverage sold or offered for
43 sale in the State by a manufacturer shall contain at least 35 percent
44 recycled content; except that, if a manufacturer demonstrates to the
45 satisfaction of the department that its use of recycled content is
46 made up of at least 50 percent mixed-color cullet, then the
47 manufacturer shall use at least 25 percent recycled content in the
48 manufacturing of its glass containers.

1 b. As used in this section, “mixed-color cullet” means cullet
2 that does not meet the American Society for Testing and Materials
3 (ASTM) standard specifications for color mix of color sorted post-
4 filled glass as raw material for the manufacture of glass containers.

5
6 5. Beginning January 1, 2022, each paper carryout bag sold or
7 offered for sale in the State by a manufacturer shall:

8 a. contain at least 40 percent recycled content; except that a
9 paper carryout bag that holds eight pounds or less shall contain at
10 least 20 percent recycled content; and

11 b. have printed on the bag the name of the manufacturer, the
12 country where the bag was manufactured, and the percentage of
13 recycled content in the bag.

14
15 6. Each reusable carryout bag made of plastic film that is sold
16 or offered for sale in the State shall meet the following
17 requirements:

18 a. Beginning January 1, 2022, the reusable carryout bag shall
19 contain at least 20 percent recycled content; and

20 b. Beginning January 1, 2025, the reusable carryout bag shall
21 contain at least 40 percent recycled content.

22
23 7. a. Except as provided in subsection b. of this section,
24 beginning January 1, 2022, each plastic trash bag sold or offered for
25 sale in the State shall contain at least 10 percent recycled content.

26 b. The provisions of subsection a. of this section shall not
27 apply to a bag that is designed and manufactured to hold, store, or
28 transport hazardous waste or medical waste.

29
30 8. A manufacturer may apply to the department for a waiver
31 from, or reduction in, the recycled content requirements of sections
32 2 through 7 of this act. The department may approve, in writing, a
33 waiver or other relief pursuant to this section if the manufacturer
34 demonstrates, and the department finds, that it is not
35 technologically feasible for the manufacturer to achieve the
36 recycled content requirements, or the manufacturer cannot achieve
37 the recycled content requirements due to a lack of available
38 recycled material or other market conditions. The department shall
39 develop a standardized form for manufacturers to apply for a waiver
40 pursuant to this section.

41
42 9. a. Beginning January 1, 2022, no person shall sell or offer
43 for sale in the State polystyrene loose fill packaging.

44 b. Nothing in subsection a. of this section shall be construed to
45 prohibit a person from using polystyrene loose fill packaging to
46 package a product sold or offered for sale by the person after
47 January 1, 2022, if the person purchased the polystyrene loose fill

1 packaging prior to January 1, 2022 and the person does not resell
2 the polystyrene loose fill packaging.

3 c. As used in this section:

4 “Expanded polystyrene” means blown polystyrene and expanded
5 and extruded foams that are thermoplastic petrochemical materials
6 utilizing a styrene monomer and processed by any number of
7 techniques including, but not limited to, fusion of polymer spheres
8 (expandable bead foam), injection molding, foam molding, and
9 extrusion-blown molding (extruded foam polystyrene). “Expanded
10 polystyrene” shall not include rigid polystyrene.

11 “Polystyrene loose fill packaging,” commonly known as packing
12 peanuts, means a void-filling packaging product made of expanded
13 polystyrene that is used as a packaging fill.

14

15 10. a. On or before January 1 of each year, each manufacturer
16 shall certify, in writing, to the department that the rigid plastic
17 containers, plastic beverage containers, glass containers, paper
18 carryout bags, reusable carryout bags made of plastic film, or
19 plastic trash bags, as applicable, sold, offered for sale, or used in
20 association with the sale or offer for sale of a product in the State,
21 are in compliance with the requirements of this act, or are otherwise
22 exempt or have been approved for a waiver or other relief under the
23 provisions of this act. A manufacturer shall submit the certification
24 in the form and manner determined by the department under penalty
25 of perjury. The certification shall include the amount in pounds of
26 virgin plastic, glass, or paper products and recycled content used by
27 the manufacturer for its rigid plastic containers, plastic beverage
28 containers, glass containers, paper carryout bags, reusable carryout
29 bags made of plastic film, or plastic trash bags, as applicable, and
30 any other information the department determines necessary in order
31 to determine compliance with this act.

32 b. Each manufacturer shall maintain records that demonstrate,
33 for all rigid plastic containers, plastic beverage containers, glass
34 containers, paper carryout bags, reusable carryout bags made of
35 plastic film, or plastic trash bags generated or produced by the
36 manufacturer, whether and how the manufacturer has complied with
37 the requirements of this act, or for what reason, if any, the
38 manufacturer is exempt or has been approved for a waiver or other
39 relief from the requirements of this act. The department may adopt
40 specific requirements for the records required to be maintained
41 pursuant to this subsection. A manufacturer shall submit its records
42 to the department upon request. Any proprietary information or
43 trade secrets included in the records submitted to the department
44 shall not be made available to the general public. The department
45 may audit or investigate any manufacturer to assess the
46 manufacturer’s compliance with the requirements of this act.

1 11. a. Any person who violates the provisions of this act, or any
2 rule or regulation adopted pursuant thereto, shall be subject to a
3 civil administrative penalty of not more than \$10,000. If the
4 violation is of a continuing nature, each day during which the
5 violation continues shall constitute an additional, separate, and
6 distinct offense. The department may adopt a schedule of penalties
7 to be applied pursuant to this section. In determining the amount
8 of any penalty to be imposed, the commissioner shall consider the
9 nature, circumstances, extent, and severity of the violation. No
10 civil administrative penalty shall be imposed until after the person
11 has been notified by certified mail or personal service. The notice
12 shall include: a reference to the provision of this section, or any rule
13 or regulation adopted pursuant thereto, violated; a concise statement
14 of the facts alleged to constitute a violation; a statement of the
15 amount of the civil administrative penalties to be imposed; and a
16 statement of the person's right to a hearing. The person shall have
17 20 days from receipt of the notice within which to deliver to the
18 commissioner a written request for a hearing. Subsequent to the
19 hearing and upon finding that a violation has occurred, the
20 commissioner may issue a final order or civil administrative penalty
21 after imposing the amount of the fine specified in the notice. If no
22 hearing is requested, the notice shall become a final order or a final
23 civil administrative penalty upon the expiration of the 20-day
24 period. Payment of the penalty is due when a final order is issued
25 or when the notice becomes a final order or a final civil
26 administrative penalty. The authority to levy a civil administrative
27 penalty shall be in addition to all other enforcement provisions in
28 this act, and the payment of a civil administrative penalty shall not
29 be deemed to affect the availability of any other enforcement
30 provision in connection with the violation for which the penalty is
31 levied. A civil administrative penalty imposed under this
32 subsection may be compromised by the department upon the
33 posting of a performance bond by the violator, or upon terms and
34 conditions the department may establish by rule or regulation.

35 b. In addition to the assessment of a civil administrative
36 penalty pursuant to subsection a. of this section, the department
37 may, by administrative order, and upon an appropriate finding,
38 assess a violator for the reasonable costs of any audit, investigation,
39 or inspection which led to the establishment of the violation. The
40 department may retain any amount it collects pursuant to this
41 subsection.

42 c. In addition to, or in lieu of, assessing a civil administrative
43 penalty pursuant to subsection a. of this section, the department
44 may require a manufacturer to submit a corrective action plan to the
45 department detailing how the manufacturer will come into
46 compliance with the provisions of this act.

1 specific resin type of rigid plastic container and that type of
2 container is being recycled in the State at a rate of 35 percent; or (3)
3 the container is a particular product-associated package and that
4 type of product-associated package is being recycled in the State at
5 a rate of 35 percent. The bill exempts several types of rigid plastic
6 containers from the recycled content requirements.

7 Each year, the Department of Environmental Protection (DEP)
8 would determine the recycling rate for rigid plastic containers. If,
9 for any year, the DEP determines that the recycling rate for rigid
10 plastic containers is less than 35 percent, the DEP would also be
11 required to: (1) determine and publish on its Internet website
12 whether the recycling rate for rigid plastic containers made from
13 each of the seven major resin types is 35 percent or more; and (2)
14 prepare and submit a report to the Legislature assessing the reasons
15 why the recycling rate is below 35 percent, including a review of
16 the status of collection programs in the State and the State's
17 recycling capacity for rigid plastic containers. The DEP would not
18 enforce the recycled content requirements for rigid plastic
19 containers in the first full calendar year after it determines, for the
20 first time, that the recycling rate for rigid plastic containers is less
21 than 35 percent.

22 Under the bill, different recycled content requirements would
23 apply to plastic beverage containers. Specifically, beginning
24 January 1, 2022 through December 31, 2025, each plastic beverage
25 container sold, offered for sale, or filled with a beverage sold or
26 offered for sale in the State would be required to contain at least 10
27 percent recycled content. Beginning January 1, 2026 through
28 December 31, 2030, each plastic beverage container would be
29 required to contain at least 25 percent recycled content. On and
30 after January 1, 2031, each plastic beverage container would be
31 required to contain at least 50 percent recycled content. However,
32 the recycled content requirements would not apply to refillable
33 plastic beverage containers.

34 Additionally, beginning January 1, 2022, each glass container
35 sold, offered for sale, or filled with a food or beverage sold or
36 offered for sale in the State would be required to contain at least 35
37 percent recycled content. However, if a manufacturer demonstrates
38 to the satisfaction of the DEP that its use of recycled content is
39 made up of at least 50 percent mixed-color cullet, then the
40 manufacturer would only be required to use at least 25 percent
41 recycled content in the manufacturing of its glass containers.

42 Beginning January 1, 2022, each paper carryout bag sold or
43 offered for sale in the State would be required to contain at least 40
44 percent recycled content. However, a paper carryout bag that holds
45 eight pounds or less would only be required to contain at least 20
46 percent recycled content. Under the bill, a paper carryout bag
47 would also be required to have printed on the bag the name of the

1 manufacturer, the country where the bag was manufactured, and the
2 percentage of recycled content in the bag.

3 Under the bill, each reusable carryout bag made of plastic film
4 that is sold or offered for sale in the State would be required to
5 contain at least 20 percent recycled content beginning January 1,
6 2022, and 40 percent recycled content beginning January 1, 2025.
7 Beginning January 1, 2022, each plastic trash bag sold or offered
8 for sale in the State would be required to contain at least 10 percent
9 recycled content, but this provision would not apply to bags
10 designed and manufactured to hold, store, or transport hazardous
11 waste or medical waste.

12 Under the bill, a manufacturer would be permitted to apply to the
13 department for a waiver from, or reduction in, the recycled content
14 requirements of the bill. The department would be authorized to
15 grant a waiver or other relief if the manufacturer demonstrates, and
16 the department finds, that it is not technologically feasible for the
17 manufacturer to achieve the recycled content requirements, or the
18 manufacturer cannot achieve the requirements due to a lack of
19 available recycled material or other anomalous market conditions.

20 Under the bill, beginning January 1, 2022, a person would be
21 prohibited from selling, or offering for sale in the State, polystyrene
22 loose fill packaging, commonly known as “packing peanuts.”

23 Under the bill , each manufacturer would be required to certify,
24 in writing, to the DEP each year that the rigid plastic containers,
25 plastic beverage containers, glass containers, paper carryout bags,
26 reusable carryout bags made of plastic film, or plastic trash bags
27 sold, offered for sale, or used in association with the sale or offer
28 for sale of a product in the State are in compliance with the
29 requirements of the bill, or are otherwise exempt or have been
30 approved for a waiver or other relief. Each manufacturer would be
31 required to maintain records that demonstrate, for all rigid plastic
32 containers, plastic beverage containers, glass containers, paper
33 carryout bags, reusable carryout bags made of plastic film, or
34 plastic trash bags generated or produced by the manufacturer,
35 whether and how the manufacturer has complied with the
36 requirements of the bill, or for what reason, if any, the manufacturer
37 is exempt or has been approved for a waiver or other relief. A
38 manufacturer would be required to submit its records to the DEP
39 upon request. The DEP would also be authorized to audit or
40 investigate any manufacturer to assess its compliance with the
41 requirements of the bill.

42 Any person who violates the provisions of the bill would be
43 subject to a civil administrative penalty of not more than \$10,000,
44 and each day during which the violation continues would constitute
45 an additional, separate, and distinct offense. The DEP would be
46 authorized to adopt a schedule of penalties to be applied under the
47 bill. In addition to the assessment of a civil administrative penalty,
48 the DEP would be authorized to assess a violator for the reasonable

1 costs of any audit, investigation, or inspection which led to the
2 establishment of a violation. Also, the DEP would be authorized to
3 require a manufacturer to submit a corrective action plan detailing
4 how the manufacturer will come into compliance with the bill.

5 The bill would establish a special, nonlapsing account in the
6 Department of the Treasury to be known as the "Recycling
7 Enhancement Penalty Account." The account would be credited
8 with all penalties collected under the bill, and any interest or
9 investment income earned from the account. Moneys in the account
10 would be used, upon appropriation by the Legislature, for the sole
11 purpose of supporting recycling in the State. The DEP would make
12 recommendations each year to the Legislature on appropriate uses
13 of moneys in the account and transmit those recommendations to
14 the appropriate legislative committees.

15 The bill would prohibit a municipality or county from adopting
16 any rule, regulation, code, or ordinance regulating the recycled
17 content of rigid plastic containers, plastic beverage containers, glass
18 containers, paper carryout bags, reusable carryout bags made of
19 plastic film, or plastic trash bags after the effective date of the bill.
20 The bill would also supersede and preempt any municipal or county
21 rule, regulation, code, or ordinance regulating the recycled content
22 of those items.