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STATE OF NEW JERSEY
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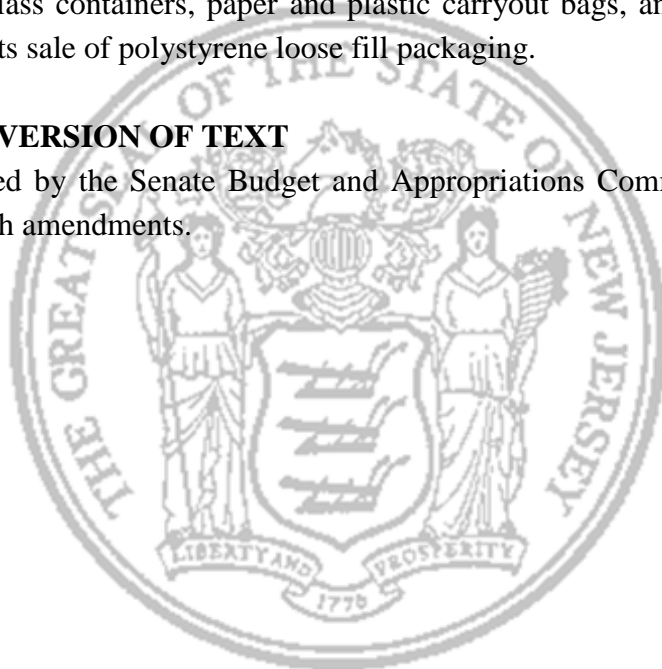
Senator Gill

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 17, 2021, with amendments.



(Sponsorship Updated As Of: 6/21/2021)

1 AN ACT concerning the use of postconsumer recycled content in
2 certain containers and packaging products and supplementing
3 Title 13 of the Revised 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 this act:

9 “Beverage” means any of the following products if those products
10 are in liquid, ready-to-drink form, and are intended for human
11 consumption: milk and milk products; beer and other malt beverages;
12 wine and distilled spirit coolers; carbonated water, including soda and
13 carbonated mineral water; noncarbonated water, including
14 noncarbonated mineral water; carbonated soft drinks; noncarbonated
15 soft drinks and sport drinks; noncarbonated fruit drinks that contain
16 any percentage of fruit juice; coffee and tea drinks; carbonated fruit
17 drinks; and vegetable juice.

18 “Commissioner” means the Commissioner of Environmental
19 Protection.

20 “Department” means the Department of Environmental Protection.

21 “Food” means articles used for food or drink for consumption by
22 humans or other animals, and articles used for components of any such
23 article.

24 “Glass container” means a container made of glass that is filled
25 with a food or beverage.

26 “Manufacturer” means a person that: (1) produces or generates a
27 rigid plastic container, ¹~~plastic beverage container, glass container,~~¹
28 paper carryout bag, plastic carryout bag, or plastic trash bag that ¹does
29 not contain a product and that¹ is sold or offered for sale in the State;
30 or (2) ¹~~produces or generates~~ is the brand owner of¹ a product that is
31 sold or offered for sale in the State and that is packaged in a rigid
32 plastic container, plastic beverage container, or glass container.
33 “Manufacturer” shall not include a person who, at a single physical
34 location, produces, packages, and sells a product directly to a
35 consumer at retail, ¹~~including, but not limited to,~~ which may
36 include¹ a grocery store, restaurant, bar, cafeteria, café, food truck,
37 food cart, or similar establishment.

38 “Paper carryout bag” means a bag made of paper that is sold or
39 provided by a store to a customer for the purpose of containing,
40 carrying, and transporting food, beverages, or retail goods.

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

43 “Plastic” means a synthetic material made from linking monomers
44 through a chemical reaction to create an organic polymer chain that
45 can be molded or extruded at high heat into various solid forms

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 17, 2021.

1 retaining their defined shapes during the life cycle and after disposal.
2 “Plastic” shall not include material that is designed to be composted in
3 a municipal or industrial aerobic composting facility and that is
4 certified by a recognized third-party independent verification body as
5 meeting the standards therefor established by the American Society for
6 Testing and Materials in ASTM D6400 or ASTM D6868.

7 “Plastic beverage container” means an individual, separate bottle,
8 can, jar, carton, or other container made of plastic that is hermetically
9 sealed or made airtight with a metal or plastic cap, and that contains a
10 beverage.

11 “Plastic carryout bag” means a bag made of plastic, of any
12 thickness, whether woven or nonwoven, that is sold or provided by a
13 store to a customer for the purpose of containing, carrying, and
14 transporting food, beverages, or retail goods.

15 “Plastic trash bag” means a bag that is made of plastic, is at least
16 0.70 mils thick, and is designed and manufactured for use as a
17 container to hold, store, or transport materials to be discarded,
18 composted, or recycled, and includes, but is not limited to, a garbage
19 bag, ¹composting bag, ¹lawn or leaf bag, can-liner bag, kitchen bag,
20 or compactor bag.

21 “Postconsumer recycled content” means a material or product that
22 has completed its intended end use and product life cycle, and which
23 has been separated from the solid waste stream for the purposes of
24 collection and recycling. “Postconsumer recycled content” shall not
25 include secondary waste material or materials and by-products
26 generated from, and commonly used within, an original manufacturing
27 and fabrication process.

28 “Rigid plastic container” means a container made of plastic that
29 has a relatively inflexible finite shape or form, has a minimum
30 capacity of eight fluid ounces or its equivalent volume and a maximum
31 capacity of five fluid gallons or its equivalent volume, and is capable
32 of maintaining its shape while empty or while holding other products.

33
34 2. a. A manufacturer shall achieve compliance with the
35 postconsumer recycled content requirements of this act based on the
36 average amount of postconsumer recycled content, by weight,
37 contained in its products. ¹For the first five years after the effective
38 date of this act, a] A¹ manufacturer ¹may] shall¹ calculate the
39 average amount of postconsumer recycled content contained in its
40 products using data specific to products sold or offered for sale in New
41 Jersey ¹or nationwide. Beginning five years after the effective date
42 of this act, a manufacturer shall calculate the average amount of
43 postconsumer recycled content in its products using data specific to
44 products sold or offered for sale in New Jersey only. ¹if such data are
45 available. If a manufacturer demonstrates to the department that State-
46 specific data are not available or feasible to generate, then the
47 manufacturer may utilize national data to calculate the average amount

1 of postconsumer recycled content contained in its products.¹ The
2 calculation of averages may be based on a manufacturer's entire
3 product line or separated into product sub-lines, provided that all of the
4 manufacturer's products are accounted for in the calculations.

5 b. ¹If a manufacturer relies on national data to calculate the
6 average amount of postconsumer recycled content contained in its
7 products, the manufacturer shall:

8 (1) prorate the national data based on market share, population, or
9 another method as may be determined by the department, to ensure
10 that the percentage of postconsumer recycled content calculated for
11 products sold in New Jersey is the same percentage as calculated for
12 the nation; and

13 (2) document the methodology used to prorate the national data in
14 the report required pursuant to paragraph (1) of subsection a. of section
15 14 of this act.

16 c.¹ For the purposes of this section, "product" means a rigid plastic
17 container, plastic beverage container, glass container, paper carryout
18 bag, plastic carryout bag, or plastic trash bag that is subject to the
19 postconsumer recycled content requirements of this act.

20

21 3. a. (1) Beginning two years after the effective date of this act,
22 all rigid plastic containers sold, offered for sale, or used in association
23 with the sale or offer for sale of a product in the State by a
24 manufacturer shall contain, on average, at least 25 percent
25 postconsumer recycled content.

26 (2) Beginning five years after the effective date of this act, and
27 every three years thereafter, the percentage of postconsumer recycled
28 content required for rigid plastic containers pursuant to this section
29 shall increase by five percent, until reaching 50 percent.

30 b. Beginning two years after the effective date of this act, a
31 manufacturer shall label each rigid plastic container with ¹: (1)¹ the
32 name of the manufacturer and the city, state, and country where the
33 manufacturer is located ¹which may be designated as the location of
34 the manufacturer's corporate headquarters; or (2) a uniform resource
35 locator (URL) or quick response (QR) code to an Internet website that
36 contains the information required pursuant to paragraph (1) of this
37 subsection¹.

38 c. A rigid plastic container shall be exempt from the
39 postconsumer recycled content requirements of subsection a. of this
40 section if it:

41 (1) is a plastic beverage container, to which the requirements of
42 section 4 of this act shall apply;

43 (2) is associated with a product produced in or brought into the
44 State that is destined for shipment to a destination outside the State,
45 and that remains with the product upon shipment;

1 (3) contains drugs, dietary supplements, medical devices, or
2 cosmetics as those terms are defined in the Federal Food, Drug, and
3 Cosmetic Act, 21 U.S.C. s.301 et seq.;

4 (4) contains toxic or hazardous products regulated under the
5 “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C. s.136
6 et seq.;

7 (5) is manufactured for use in the shipment of hazardous materials
8 and is: (a) prohibited from being manufactured with used material by
9 federal packaging material specifications set forth in 49 C.F.R.
10 s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing
11 standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R.
12 s.178.609, or (c) is subject to the recommendations of the United
13 Nations on the transport of dangerous goods; or

14 (6) is a refillable container or a reusable container. For the
15 purposes of this paragraph, “refillable container” means a rigid plastic
16 ¹[a] container that is routinely returned to and refilled by the
17 manufacturer with the same product packaged by the container; and
18 “reusable container” means a rigid plastic container that is routinely
19 reused by consumers to store the original product packaged by the
20 container.

21

22 4. a. (1) Beginning two years after the effective date of this act,
23 all plastic beverage containers sold or offered for sale in the State by a
24 manufacturer shall contain, on average, at least 15 percent
25 postconsumer recycled content.

26 (2) Beginning five years after the effective date of this act, and
27 every three years thereafter, the amount of postconsumer recycled
28 content required for plastic beverage containers pursuant to this
29 section shall increase by five percent, until reaching 50 percent.

30 b. Beginning two years after the effective date of this act, a
31 manufacturer shall label each plastic beverage container sold or
32 offered for sale in the State with ¹: (1)¹ the name of the manufacturer
33 and the city, state, and country where the manufacturer is located
34 ¹which may be designated as the location of the manufacturer’s
35 corporate headquarters; or (2) a uniform resource locator (URL) or
36 quick response (QR) code to an Internet website that contains the
37 information required pursuant to paragraph (1) of this subsection¹.

38 c. The provisions of subsection a. of this section shall not apply to
39 a refillable beverage container. For the purposes of this subsection,
40 “refillable beverage container” means a beverage container that holds
41 150 fluid ounces or less of beverage, and which is routinely returned to
42 the manufacturer to be refilled and resold.

43

44 5. a. Beginning two years after the effective date of this act, all
45 glass containers sold or offered for sale in the State by a manufacturer
46 shall contain, on average, at least 35 percent postconsumer recycled
47 content; except that, if a manufacturer certifies to the department that
48 its use of postconsumer recycled content is made up of at least 50

1 percent mixed-color cullet, then the glass containers shall only be
2 required to contain, on average, at least 25 percent postconsumer
3 recycled content.

4 b. Beginning two years after the effective date of this act, a
5 manufacturer shall label each glass container sold or offered for sale in
6 the State with ¹: (1)¹ the name of the manufacturer and the city, state,
7 and country where the manufacturer is located ¹which may be
8 designated as the location of the manufacturer's corporate
9 headquarters; or (2) a uniform resource locator (URL) or quick
10 response (QR) code to an Internet website that contains the
11 information required pursuant to paragraph (1) of this subsection¹.

12 c. As used in this section, "mixed-color cullet" means cullet that
13 does not meet the American Society for Testing and Materials
14 (ASTM) standard specifications for the color mix of color-sorted, post-
15 filled glass as a raw material for the manufacture of glass containers.

16

17 6. Beginning two years after the effective date of this act:

18 a. all paper carryout bags sold or offered for sale in the State by a
19 manufacturer shall contain, on average, at least 40 percent
20 postconsumer recycled content; except that a paper carryout bag that
21 holds eight pounds or less shall only be required to contain, on
22 average, at least 20 percent postconsumer recycled content; and

23 b. a manufacturer shall label each paper carryout bag sold or
24 offered for sale in the State with ¹: (1)¹ the name of the manufacturer
25 and the city, state, and country where the manufacturer is located
26 ¹which may be designated as the location of the manufacturer's
27 corporate headquarters; or (2) a uniform resource locator (URL) or
28 quick response (QR) code to an Internet website that contains the
29 information required pursuant to paragraph (1) of this subsection¹.

30

31 7. All plastic carryout bags sold or offered for sale in the State by
32 a manufacturer shall:

33 a. beginning two years after the effective date of this act, contain,
34 on average, at least 20 percent postconsumer recycled content;

35 b. beginning five years after the effective date of this act, contain,
36 on average, at least 40 percent postconsumer recycled content; and

37 c. beginning two years after the effective date of this act, be
38 labeled with ¹: (1)¹ the name of the manufacturer and the city, state,
39 and country where the manufacturer is located ¹which may be
40 designated as the location of the manufacturer's corporate
41 headquarters; or (2) a uniform resource locator (URL) or quick
42 response (QR) code to an Internet website that contains the
43 information required pursuant to paragraph (1) of this subsection¹.

44

45 8. a. ¹**【Beginning two years after the effective date of this act,**
46 **all】** All¹ plastic trash bags sold or offered for sale in the State by a
47 manufacturer shall ¹:

1 (1) beginning two years after the effective date of this act,¹
2 contain, on average, at least 10 percent postconsumer recycled content
3 ¹; and

4 (2) beginning five years after the effective date of this act, contain,
5 on average, at least 20 percent postconsumer recycled content¹.

6 b. Beginning two years after the effective date of this act, a
7 manufacturer shall label each container of plastic trash bags sold or
8 offered for sale in the State with ¹: (1)¹ the name of the manufacturer
9 and the city, state, and country where the manufacturer is located
10 ¹which may be designated as the location of the manufacturer's
11 corporate headquarters; or (2) a uniform resource locator (URL) or
12 quick response (QR) code to an Internet website that contains the
13 information required pursuant to paragraph (1) of this subsection¹.

14 c. The provisions of subsection a. of this section shall not apply to
15 a bag that is designed and manufactured to hold, store, or transport
16 hazardous waste or regulated medical waste. For the purposes of this
17 subsection, "hazardous waste" means any solid waste defined as
18 hazardous waste by the department pursuant to P.L.1970, c.39
19 (C.13:1E-1 et seq.); and "regulated medical waste" means the same as
20 that term is defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3).

21
22 9. a. Notwithstanding the provisions of this act to the contrary,
23 the department may, pursuant to the "Administrative Procedure
24 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
25 of the postconsumer recycled content requirements established in
26 sections 3 through 8 of this act. In making an adjustment pursuant
27 to this section, the department shall consider:

28 (1) changes in market conditions, including supply and demand
29 for postconsumer recycled content, collection rates, and bale
30 availability both domestically and globally;

31 (2) recycling rates, as may be determined by the department;

32 (3) the availability of recycled material suitable for
33 manufacturers to meet the postconsumer recycled content
34 requirements, including the availability of high-quality recycled
35 plastic or glass, and food-grade recycled plastic or glass;

36 (4) the capacity of recycling or processing infrastructure;

37 (5) the progress made by manufacturers in meeting the
38 postconsumer recycled content requirements; and

39 (6) any other factors as determined by the department pursuant
40 to rule, regulation, or guidance.

41 b. Any adjustment to the postconsumer recycled content
42 requirements made pursuant to this section shall be only for a time-
43 period, and only under such conditions, as the department may by
44 rule or regulation establish.

45
46 10. a. A package ¹or container¹ that ¹~~contain~~ contains¹ milk
47 products, medical food, or infant formula shall be exempt from the

1 postconsumer recycled content requirements of this act ¹[for a period
2 of five years beginning on the effective date of this act]¹ .

3 ¹b. (1) A package or container that contains food shall be exempt
4 from the postconsumer recycled content requirements of this act for a
5 period of five years beginning on the effective date of this act, except
6 that the exemption provided in this paragraph shall not apply to a
7 plastic beverage container or a glass container filled with a beverage.

8 (2) The department may, in its discretion, extend the five-year
9 exemption provided in paragraph (1) of this subsection.¹ Upon
10 expiration of the ¹[five-year]¹ exemption ¹[period]¹, a manufacturer
11 ¹[of milk products, medical food, or infant formula may apply to]
12 shall be subject to the applicable postconsumer recycled content
13 requirements in effect at the time of the expiration, unless the
14 manufacturer applies to, and receives from,¹ the department ¹[for]¹ a
15 waiver pursuant to section 11 of this act.

16 ¹[b.] c.¹ As used in this section:

17 “Medical food” and “infant formula” mean the same as those terms
18 are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
19 s.301 et seq.

20 “Milk product” means the same as that term is defined in the Grade
21 “A” Pasteurized Milk Ordinance promulgated by the United States
22 Food and Drug Administration.

23

24 11. a. A manufacturer may apply to the department for a waiver
25 from the postconsumer recycled content requirements established
26 pursuant to this act. The department may grant a waiver pursuant to
27 this section if the manufacturer demonstrates, and the department
28 finds, in writing, that:

29 (1) the manufacturer cannot achieve the postconsumer recycled
30 content requirements and remain in compliance with applicable rules
31 and regulations adopted by the United States Food and Drug
32 Administration, or any other State or federal law, rule, or regulation;

33 (2) it is not technologically feasible for the manufacturer to
34 achieve the postconsumer recycled content requirements; ¹[or]¹

35 (3) ¹the manufacturer cannot comply with the postconsumer
36 recycled content requirements due to inadequate availability of
37 recycled material or a substantial disruption in the supply of recycled
38 material; or

39 (4)¹ the manufacturer cannot comply for another reason as
40 determined by the department pursuant to rule, regulation, or guidance.

41 b. In order to qualify for a waiver from the postconsumer recycled
42 content requirements of this act, a manufacturer shall submit to the
43 department documentation from a federal or State agency or certified
44 third-party expert, as appropriate, demonstrating that the manufacturer
45 cannot comply with the postconsumer recycled content requirements
46 for one of the reasons set forth in subsection a. of this section, and pay
47 a \$1,000 waiver fee. The department may modify the amount of the

1 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
2 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s
3 costs to administer, monitor, and enforce the provisions of this section.

4 c. The department may grant a waiver from the postconsumer
5 recycled content requirements for ¹any period of time as the
6 department deems appropriate a period of not less than two years, as
7 determined by the department¹ . The department shall publish any
8 determination to grant a waiver from the postconsumer recycled
9 content requirements on its Internet website. The department shall
10 develop a standardized form and procedure for manufacturers to apply
11 for a waiver pursuant to this section.

12

13 12. a. The department may require a manufacturer that is
14 ¹temporarily¹ exempt from the postconsumer recycled content
15 requirements of this act ¹pursuant to subsection b. of section 10 of this
16 act¹ , or that has submitted a request for a waiver pursuant to section
17 11 of this act, to prepare and submit to the department an alternative
18 compliance plan that demonstrates that the manufacturer is taking, and
19 will continue to take, all feasible actions to ensure the reduction,
20 ¹collection,¹ recycling, and reuse of rigid plastic containers, plastic
21 beverage containers, glass containers, paper carryout bags, plastic
22 carryout bags, or plastic trash bags made from virgin plastic, glass, or
23 paper, as applicable, and ¹to ensure¹ the use of postconsumer recycled
24 content.

25 b. The department shall adopt, pursuant to the “Administrative
26 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
27 regulations setting forth the substantive requirements for an alternative
28 compliance plan required pursuant to subsection a. of this section,
29 which may include, but need not be limited to, a requirement that the
30 manufacturer take alternative measures to reduce its use of virgin
31 plastics, glass, or paper, including sustainable materials management
32 protocols, light weighting, lifecycle analyses, and such other measures
33 as the department may, by rule or regulation, require.

34 c. The department shall have the authority to approve or
35 disapprove an alternative compliance plan prepared and submitted
36 pursuant to this section, and to require a manufacturer to make any
37 revisions or modifications to its alternative compliance plan as the
38 department determines necessary, consistent with the provisions of this
39 act and the rules and regulations adopted by the department.

40 d. A manufacturer shall undertake all of the actions described in
41 the alternative compliance plan. Failure by a manufacturer to comply
42 with an approved alternative compliance plan shall constitute a
43 violation of this act.

44 e. The department may enter into a contract or other legally
45 binding agreement with one or more trade associations representing
46 manufacturers, which shall allow the trade association, in lieu of the
47 manufacturers, to prepare and submit an alternative compliance plan

1 pursuant to this section and to undertake the actions described in the
2 alternative compliance plan.

3 ¹f. The department shall publish a final alternative compliance
4 plan approved pursuant to this section on the department's Internet
5 website.¹

6
7 13. a. Beginning ¹~~on the September 1 next following~~ six
8 months after¹ the effective date of this act, and ¹~~each September 1~~
9 annually¹ thereafter, each manufacturer shall register with the
10 department, in a form and manner as prescribed by the department,
11 and pay an annual registration fee of \$1,000. The department may
12 modify the amount of the registration fee, pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
14 as necessary to reflect the department's costs to implement,
15 administer, monitor, and enforce the provisions of this act. The
16 department shall establish an electronic registration process on its
17 Internet website; however, the lack of an electronic registration
18 process shall not negate the requirement for a manufacturer to register
19 pursuant to this subsection. ¹Notwithstanding the provisions of this
20 subsection to the contrary, a manufacturer that produces or generates
21 only products that are exempt from the provisions of this act shall be
22 required to register with the department only once, and shall be exempt
23 from the registration fee.¹

24 b. Notwithstanding the provisions of section 16 of this act to the
25 contrary, a manufacturer that fails to register with the department
26 pursuant to subsection a. of this section shall first receive a written
27 warning. A manufacturer that receives a written warning shall register
28 with the department no later than 90 days after receipt of the warning.
29 A manufacturer that receives a written warning and that fails to
30 register with the department within 90 days of receipt of the warning
31 shall be subject to the penalties set forth in section 16 of this act.

32
33 14. a. ¹~~(1)~~¹ Beginning ¹~~on the third September 1~~ three years
34 and six months¹ after the effective date of this act, and ¹~~on each~~
35 September 1 annually¹ thereafter, each manufacturer shall certify, in
36 writing, to the department whether or not the rigid plastic containers,
37 plastic beverage containers, glass containers, paper carryout bags,
38 plastic carryout bags, or plastic trash bags, as applicable, sold, offered
39 for sale, or used in association with the sale or offer for sale of a
40 product in the State, are in compliance with the postconsumer recycled
41 content requirements of this act, or are otherwise exempt or have been
42 approved for a waiver from the requirements. If the manufacturer
43 claims an exemption from the requirements of this act, the
44 manufacturer shall set forth the specific basis upon which the
45 exemption is claimed, and submit such proof as the department
46 determines necessary. The certification shall be signed by an
47 authorized representative of the manufacturer. A manufacturer shall

1 submit the certification, in the form and manner determined by the
2 department, under penalty of perjury. The certification shall include
3 the amount, in pounds, of virgin plastic, glass, or paper and ¹the
4 amount, in pounds, of postconsumer recycled material used by the
5 manufacturer for any products subject to the requirements of this act,
6 and any other information as the department deems necessary. The
7 department shall establish an electronic certification process on its
8 Internet website; however, the lack of an electronic certification
9 process shall not negate the requirement for a manufacturer to certify
10 its compliance pursuant to this subsection.

11 ¹(2) The department may require that a manufacturer submit an
12 independent, third-party verification of a compliance certification
13 made pursuant to this subsection.¹

14 b. Each manufacturer shall maintain records, in a form prescribed
15 by the department, that demonstrate, for all rigid plastic containers,
16 plastic beverage containers, glass containers, paper carryout bags,
17 plastic carryout bags, or plastic trash bags generated or produced by
18 the manufacturer, whether and how the manufacturer has complied
19 with the postconsumer recycled content requirements, or whether the
20 manufacturer qualifies for an exemption or waiver from the
21 postconsumer recycled content requirements. The department may
22 adopt specific requirements for the records required to be maintained
23 pursuant to this subsection and may request the records from a
24 manufacturer at any time. A manufacturer shall submit records to the
25 department no later than 30 days after receipt of a request, unless the
26 department extends that timeframe.

27 c. The department may audit or investigate a manufacturer, at any
28 time, to assess the manufacturer's compliance with the requirements of
29 this act. Each year, the department ¹~~shall~~ may¹ audit, or cause to be
30 audited, a random sample of manufacturers in order to determine
31 compliance with this act. A manufacturer shall cooperate fully with
32 any audit or investigation conducted pursuant to this section. The
33 department may require a manufacturer to pay the costs of an audit
34 conducted pursuant to this subsection.

35 d. The department shall annually publish a list of registered
36 manufacturers, their compliance status, and other information the
37 department deems appropriate on the department's Internet website.

38

39 15. a. Beginning two years after the effective date of this act, no
40 person shall sell or offer for sale in the State any polystyrene loose
41 fill packaging.

42 b. As used in this section:

43 "Polystyrene foam" means blown polystyrene and expanded and
44 extruded foams that are thermoplastic petrochemical materials
45 utilizing a styrene monomer and processed by a number of
46 techniques, including, but not limited to, fusion of polymer spheres

1 (expandable bead polystyrene), injection molding, foam molding,
2 and extrusion-blow molding (extruded foam polystyrene).

3 “Polystyrene loose fill packaging,” commonly known as packing
4 peanuts, means a void-filling packaging product made of
5 polystyrene foam that is used as a packaging fill.

6

7 16. a. Whenever, on the basis of available information, the
8 commissioner finds that a person is in violation of this act, the
9 commissioner may ¹take one or more of the following actions¹ :

10 (1) issue an order in accordance with subsection b. of this section
11 requiring the person to comply;

12 (2) bring a civil action in accordance with subsection c. of this
13 section;

14 (3) levy a civil administrative penalty in accordance with
15 subsection d. of this section;

16 (4) bring an action for a civil penalty in accordance with
17 subsection e. of this section; ¹**[or]**¹

18 (5) require a manufacturer to submit a corrective action plan
19 pursuant to subsection f. of this section ¹; or

20 (6) notify the public of a manufacturer which, at any time during a
21 reporting period, was not in compliance with the requirements of this
22 act¹ .

23 The exercise of any of the remedies provided in this section shall
24 not preclude recourse to any other remedy so provided.

25 b. Whenever, on the basis of available information, the
26 commissioner finds that a person is in violation of this act, the
27 commissioner may issue an order: (1) specifying the provision or
28 provisions of this act, or the rule or regulation adopted pursuant
29 thereto, of which the person is in violation; (2) citing the action that
30 caused the violation; (3) requiring compliance with the provision of
31 this act or the rule or regulation adopted pursuant thereto of which the
32 person is in violation; and (4) giving notice to the person of his right to
33 a hearing on the matters contained in the order.

34 c. The commissioner is authorized to commence a civil action in
35 Superior Court for appropriate relief from a violation of this act. This
36 relief may include an assessment against the violator for the costs of
37 any investigation, inspection, or audit that led to the discovery and
38 establishment of the violation, and for the reasonable costs of
39 preparing and litigating the case under this subsection.

40 d. (1) The commissioner is authorized to impose a civil
41 administrative penalty of not less than \$1,000 and not more than
42 ¹**[\$100,000]** \$25,000¹ for each violation of this act or any rule or
43 regulation adopted pursuant thereto, and each day of the violation shall
44 constitute an additional, separate, and distinct offense. Any amount
45 imposed under this subsection shall be assessed pursuant to rules and
46 regulations adopted by the commissioner for violations of similar type,
47 seriousness, and duration. The commissioner shall have the authority

1 to assess penalties prior to the establishment of rules and regulations
2 governing penalties to the extent that such penalties are reasonable and
3 based on other violations of a similar type, seriousness, and duration.
4 No civil administrative penalty shall be imposed until after the person
5 has been notified by certified mail or personal service. The notice
6 shall include: a reference to the section of the act, rule, regulation,
7 order, or permit violated; a concise statement of the facts alleged to
8 constitute a violation; a statement of the amount of the civil
9 administrative penalties to be imposed; and a statement of the person's
10 right to a hearing. The person shall have 20 days from receipt of the
11 notice within which to deliver to the commissioner a written request
12 for a hearing. Subsequent to the hearing and upon finding that a
13 violation has occurred, the commissioner may issue a final order or
14 civil administrative penalty after imposing the amount of the fine
15 specified in the notice. If no hearing is requested, the notice shall
16 become a final order or a final civil administrative penalty upon the
17 expiration of the 20-day period. Payment of the penalty is due when a
18 final order is issued or when the notice becomes a final order or a final
19 civil administrative penalty. The authority to levy a civil
20 administrative penalty is in addition to all other enforcement
21 provisions in this act, and the payment of a civil administrative penalty
22 shall not be deemed to affect the availability of any other enforcement
23 provision in connection with the violation for which the penalty is
24 levied. A civil administrative penalty imposed under this subsection
25 may be compromised by the commissioner upon the posting of a
26 performance bond by the violator, or upon terms and conditions the
27 commissioner may establish by rule or regulation.

28 (2) ¹With respect to violations related to the amount of recycled
29 content contained in a manufacturer's products, in lieu of the penalties
30 provided for in paragraph (1) of this subsection, the department shall
31 assess a civil administrative penalty on a per-pound basis for each
32 pound of virgin material that is used by a manufacturer in its products
33 where recycled material is required pursuant to this act. The
34 department shall establish the per-pound penalty in the rules and
35 regulations adopted to implement this act.

36 (3)¹ In addition to the assessment of a civil administrative penalty,
37 the commissioner may, by administrative order and upon an
38 appropriate finding, assess a violator for the reasonable costs of any
39 investigation, inspection, or audit which led to the establishment of the
40 violation.

41 e. Any person who violates this act, an order issued pursuant to
42 subsection b. of this section, or a court order issued pursuant to
43 subsection c. of this section, or who fails to pay in full a civil
44 administrative penalty levied pursuant to subsection d. of this section,
45 shall be subject, upon order of a court, to a civil penalty not to exceed
46 ¹[\$100,000] \$50,000, and each day of the violation shall constitute an
47 additional, separate, and distinct offense¹ . Any penalty imposed
48 pursuant to this subsection may be collected, and any costs incurred in

1 connection therewith may be recovered, in a summary proceeding
2 pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274
3 (C.2A:58-10 et seq.). The Superior Court and the municipal court
4 shall have jurisdiction to enforce the “Penalty Enforcement Law of
5 1999.”

6 f. The department is authorized to require a manufacturer that
7 violates the provisions of this act, or any rule or regulation adopted
8 pursuant thereto, to submit a corrective action plan describing how the
9 manufacturer intends to come into compliance with the provisions of
10 this act. The department shall adopt, pursuant to the “Administrative
11 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
12 regulations setting forth the substantive requirements for corrective
13 action plans.

14 g. In addition to the penalties and remedies provided above, a
15 person who knowingly, purposely, or recklessly makes a false or
16 misleading statement on any certification or registration submitted to
17 the department pursuant to this act shall, upon conviction, be guilty of
18 a crime of the third degree and, notwithstanding the provisions of
19 N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000 and
20 restitution. The department shall refer the provider of any false or
21 misleading statement to the Attorney General for prosecution.

22
23 17. Any proprietary information or trade secrets included in any
24 registration, certification, alternative compliance plan, corrective
25 action plan, or any other record submitted to the department
26 pursuant to this act shall not be made available to the general public
27 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as
28 the open public records act.

29
30 18. a. There is established in the Department of the Treasury a
31 special, nonlapsing account to be known as the “Recycling
32 Enhancement Penalty Account.” The account shall be credited with
33 all penalties collected pursuant to section 16 of this act, and any
34 interest or investment income earned on monies in the account.
35 Moneys in the account may be utilized by the department for
36 administrative expenses incurred in connection with the
37 enforcement or implementation of this act, for the public education
38 program required pursuant to subsection b. of this section, and for
39 other efforts to support recycling markets in the State as the
40 department may determine.

41 b. The department, in consultation with the Association of New
42 Jersey Recyclers and the organization under contract with the
43 department to administer the Clean Communities Program pursuant
44 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and
45 implement a Statewide public information and education program to
46 encourage, support, and increase the recycling of rigid plastic
47 containers, plastic beverage containers, glass containers, paper
48 carryout bags, plastic carryout bags, and any other containers or

1 packaging products, which may include, but need not be limited to,
2 television, radio, and print advertisements, signage, or classroom
3 education.

4
5 19. A municipality or county shall not adopt any rule,
6 regulation, code, or ordinance regulating the postconsumer recycled
7 content of rigid plastic containers, plastic beverage containers, glass
8 containers, paper carryout bags, plastic carryout bags, or plastic
9 trash bags after the effective date of this act. The provisions of this
10 act shall supersede and preempt any municipal or county rule,
11 regulation, code, or ordinance regulating the recycled content of
12 rigid plastic containers, plastic beverage containers, glass
13 containers, paper carryout bags, plastic carryout bags, or plastic
14 trash bags that was enacted prior to the effective date of this act.

15
16 20. Nothing in this act shall be construed to impose liability on
17 any news media that accept or publish advertising for any product
18 that would otherwise be subject to the provisions of this act.

19
20 21. Nothing in this act shall be construed to alter, limit, or
21 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-
22 99.126 et al.).

23
24 22. a. ¹~~【The】~~ No later than two years after the effective date of
25 this act, the¹ department shall adopt, pursuant to the “Administrative
26 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
27 regulations necessary for the implementation of this act.

28 b. Prior to the adoption of rules and regulations, and as necessary
29 thereafter, the department may develop guidance as necessary for the
30 implementation of this act. ¹The department shall publish any such
31 guidance on its Internet website.¹

32
33 23. No later than five years after the effective date of this act, the
34 ¹~~【Advisory Council on Solid Waste Management, established~~
35 ~~pursuant to section 7 of P.L.1970, c.39 (C.13:1E-7),】~~ department¹
36 shall prepare and submit a report to the Governor, to the Legislature
37 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the
38 members of the Senate Environment and Energy Committee and the
39 Assembly Environment and Solid Waste Committee, or their
40 successors, assessing the implementation of this act, evaluating the
41 act’s effectiveness in stimulating the recycling markets in the State,
42 and making any recommendations for legislative or administrative
43 action necessary to further the purposes of this act, including
44 recommendations for whether and how the State should encourage,
45 require, or support other uses of recycled material.

46
47 24. This act shall take effect immediately.