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STATE OF NEW JERSEY
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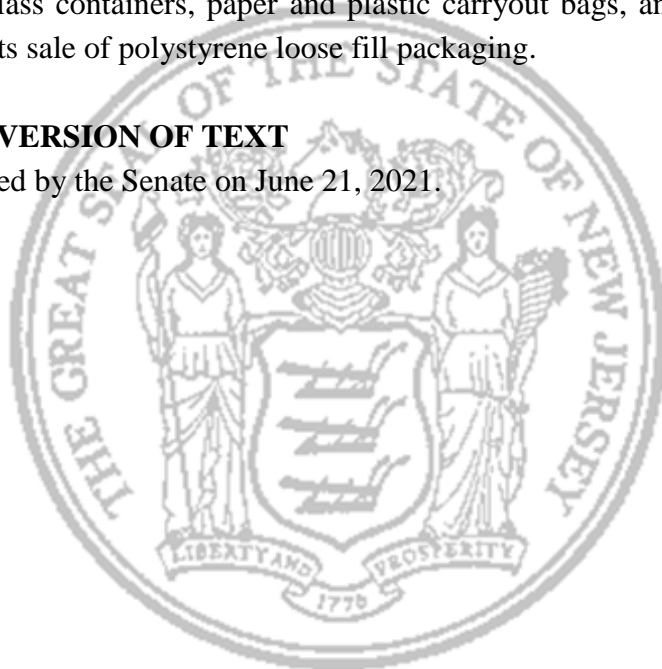
Senator Gill

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 amended by the Senate on June 21, 2021.



(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
10 products are in liquid, ready-to-drink form, and are intended for
11 human consumption: ²**【milk and milk products;】**² beer and other
12 malt beverages; wine and distilled spirit coolers; carbonated water,
13 including soda and carbonated mineral water; noncarbonated water,
14 including noncarbonated mineral water; carbonated soft drinks;
15 noncarbonated soft drinks and sport drinks; noncarbonated fruit
16 drinks that contain any percentage of fruit juice; coffee and tea
17 drinks; carbonated fruit drinks; and vegetable juice.

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

20 “Department” means the Department of Environmental
21 Protection.

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

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

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

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

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

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.

²Senate floor amendments adopted June 21, 2021.

1 “Plastic” means a synthetic material made from linking
2 monomers through a chemical reaction to create an organic polymer
3 chain that can be molded or extruded at high heat into various solid
4 forms retaining their defined shapes during the life cycle and after
5 disposal. “Plastic” shall not include material that is designed to be
6 composted in a municipal or industrial aerobic composting facility
7 and that is certified by a recognized third-party independent
8 verification body as meeting the standards therefor established by
9 the American Society for Testing and Materials in ASTM D6400 or
10 ASTM D6868.

11 “Plastic beverage container” means an individual, separate
12 bottle, can, jar, carton, or other container made of plastic that is
13 hermetically sealed or made airtight with a metal or plastic cap, and
14 that contains a beverage. 2“Plastic beverage container” shall not
15 include any label, cap, closure, or other item affixed to the
16 container.²

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

21 “Plastic trash bag” means a bag that is made of plastic, is at least
22 0.70 mils thick, and is designed and manufactured for use as a
23 container to hold, store, or transport materials to be discarded,
24 composted, or recycled, and includes, but is not limited to, a
25 garbage bag, ¹**composting bag,**¹ lawn or leaf bag, can-liner bag,
26 kitchen bag, or compactor bag.

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

34 “Rigid plastic container” means a container made of plastic that
35 has a relatively inflexible finite shape or form, has a minimum
36 capacity of eight fluid ounces or its equivalent volume and a
37 maximum capacity of five fluid gallons or its equivalent volume,
38 and is capable of maintaining its shape while empty or while
39 holding other products.

40
41 2. a. A manufacturer shall achieve compliance with the
42 postconsumer recycled content requirements of this act based on the
43 average amount of postconsumer recycled content, by weight,
44 contained in its products. ¹**For the first five years after the**
45 **effective date of this act, a** A¹ manufacturer ¹**may** shall¹
46 calculate the average amount of postconsumer recycled content
47 contained in its products using data specific to products sold or

1 offered for sale in New Jersey ¹~~or nationwide~~. Beginning five
2 years after the effective date of this act, a manufacturer shall
3 calculate the average amount of postconsumer recycled content in
4 its products using data specific to products sold or offered for sale
5 in New Jersey only. ~~], if such data are available. If a manufacturer~~
6 demonstrates to the department that State-specific data are not
7 available or feasible to generate, then the manufacturer may utilize
8 national data to calculate the average amount of postconsumer
9 recycled content contained in its products.¹ The calculation of
10 averages may be based on a manufacturer's entire product line or
11 separated into product sub-lines, provided that all of the
12 manufacturer's products are accounted for in the calculations.

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

16 (1) prorate the national data based on market share ²~~], or~~²
17 population, ²or another method as may be determined by the
18 department,² to ensure that the percentage of postconsumer
19 recycled content calculated for products sold in New Jersey is the
20 same percentage as calculated for the nation; and

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

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

28
29 3. a. (1) Beginning two years after the effective date of this
30 act, all rigid plastic containers sold, offered for sale, or used in
31 association with the sale or offer for sale of a product in the State
32 by a manufacturer shall contain, on average, at least 25 percent
33 postconsumer recycled content.

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

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

1 c.]² A rigid plastic container shall be exempt from the
2 postconsumer recycled content requirements of subsection a. of this
3 section if it:

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

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

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

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

15 (5) is manufactured for use in the shipment of hazardous
16 materials and is: (a) prohibited from being manufactured with used
17 material by federal packaging material specifications set forth in 49
18 C.F.R. s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the
19 testing standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R.
20 s.178.609, or (c) is subject to the recommendations of the United
21 Nations on the transport of dangerous goods; or

22 (6) is a refillable container or a reusable container. For the
23 purposes of this paragraph, “refillable container” means a rigid
24 plastic ¹[a]¹ container that is routinely returned to and refilled by
25 the manufacturer with the same product packaged by the container;
26 and “reusable container” means a rigid plastic container that is
27 routinely reused by consumers to store the original product
28 packaged by the container.

29
30 4. a. (1) Beginning two years after the effective date of this
31 act, all plastic beverage containers sold or offered for sale in the
32 State by a manufacturer shall contain, on average, at least 15
33 percent postconsumer recycled content.

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

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

1 c.]² The provisions of subsection a. of this section shall not
2 apply to a refillable beverage container. For the purposes of this
3 subsection, “refillable beverage container” means a beverage
4 container that holds 150 fluid ounces or less of beverage, and which
5 is routinely returned to the manufacturer to be refilled and resold.

6
7 5. a. Beginning two years after the effective date of this act, all
8 glass containers sold or offered for sale in the State by a
9 manufacturer shall contain, on average, at least 35 percent
10 postconsumer recycled content; except that, if a manufacturer
11 certifies to the department that its use of postconsumer recycled
12 content is made up of at least 50 percent mixed-color cullet, then
13 the glass containers shall only be required to contain, on average, at
14 least 25 percent postconsumer recycled content.

15 b. ²[Beginning two years after the effective date of this act, a
16 manufacturer shall label each glass container sold or offered for sale
17 in the State with ¹: (1)¹ the name of the manufacturer and the city,
18 state, and country where the manufacturer is located ¹which may be
19 designated as the location of the manufacturer’s corporate
20 headquarters; or (2) a uniform resource locator (URL) or quick
21 response (QR) code to an Internet website that contains the
22 information required pursuant to paragraph (1) of this subsection¹.

23 c.]² As used in this section, “mixed-color cullet” means cullet
24 that does not meet the American Society for Testing and Materials
25 (ASTM) standard specifications for the color mix of color-sorted,
26 post-filled glass as a raw material for the manufacture of glass
27 containers.

28
29 6. Beginning two years after the effective date of this act ²]:

30 a.],² all paper carryout bags sold or offered for sale in the State
31 by a manufacturer shall contain, on average, at least 40 percent
32 postconsumer recycled content; except that a paper carryout bag
33 that holds eight pounds or less shall only be required to contain, on
34 average, at least 20 percent postconsumer recycled content ²]; and

35 b. a manufacturer shall label each paper carryout bag sold or
36 offered for sale in the State with ¹: (1)¹ the name of the
37 manufacturer and the city, state, and country where the
38 manufacturer is located ¹which may be designated as the location of
39 the manufacturer’s corporate headquarters; or (2) a uniform
40 resource locator (URL) or quick response (QR) code to an Internet
41 website that contains the information required pursuant to
42 paragraph (1) of this subsection¹]².

43
44 7. All plastic carryout bags sold or offered for sale in the State
45 by a manufacturer shall:

- 1 a. beginning two years after the effective date of this act,
2 contain, on average, at least 20 percent postconsumer recycled
3 content; ²and²
- 4 b. beginning five years after the effective date of this act,
5 contain, on average, at least 40 percent postconsumer recycled
6 content ²]; and
- 7 c. beginning two years after the effective date of this act, be
8 labeled with ¹: (1)¹ the name of the manufacturer and the city,
9 state, and country where the manufacturer is located ¹which may be
10 designated as the location of the manufacturer's corporate
11 headquarters; or (2) a uniform resource locator (URL) or quick
12 response (QR) code to an Internet website that contains the
13 information required pursuant to paragraph (1) of this
14 subsection¹]².
15
- 16 8. a. ¹Beginning two years after the effective date of this act,
17 all ¹All¹ plastic trash bags sold or offered for sale in the State by a
18 manufacturer shall ¹:
19 (1) beginning two years after the effective date of this act,¹
20 contain, on average, at least 10 percent postconsumer recycled
21 content ¹; and
22 (2) beginning five years after the effective date of this act,
23 contain, on average, at least 20 percent postconsumer recycled
24 content¹.
- 25 b. ²Beginning two years after the effective date of this act, a
26 manufacturer shall label each container of plastic trash bags sold or
27 offered for sale in the State with ¹: (1)¹ the name of the
28 manufacturer and the city, state, and country where the
29 manufacturer is located ¹which may be designated as the location of
30 the manufacturer's corporate headquarters; or (2) a uniform
31 resource locator (URL) or quick response (QR) code to an Internet
32 website that contains the information required pursuant to
33 paragraph (1) of this subsection¹.
- 34 c. ²The provisions of subsection a. of this section shall not
35 apply to a bag that is designed and manufactured to hold, store, or
36 transport hazardous waste or regulated medical waste. For the
37 purposes of this subsection, "hazardous waste" means any solid
38 waste defined as hazardous waste by the department pursuant to
39 P.L.1970, c.39 (C.13:1E-1 et seq.); and "regulated medical waste"
40 means the same as that term is defined in section 3 of P.L.1989,
41 c.34 (C.13:1E-48.3).
42
- 43 9. a. Notwithstanding the provisions of this act to the contrary,
44 the department may, pursuant to the "Administrative Procedure
45 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
46 of the postconsumer recycled content requirements established in

sections 3 through 8 of this act. In making an adjustment pursuant to this section, the department shall consider:

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

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

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

(4) the capacity of recycling or processing infrastructure;

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

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

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

10. a. A package ¹or container¹ that ¹【contain】 contains¹ milk products, ²plant-based products with names that include the names of dairy foods such as “milk,”² medical food, or infant formula shall be exempt from the postconsumer recycled content requirements of this act ¹【for a period of five years beginning on the effective date of this act】¹.

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

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

¹【b.】 c.¹ As used in this section:

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

1 “Milk product” means the same as that term is defined ²[in the
2 Grade “A” Pasteurized Milk Ordinance promulgated]² by the
3 United States Food and Drug Administration.
4

5 11. a. A manufacturer may apply to the department for a waiver
6 from the postconsumer recycled content requirements established
7 pursuant to this act. The department may grant a waiver pursuant to
8 this section if the manufacturer demonstrates, and the department
9 finds, in writing, that:

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

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

16 (3) ¹the manufacturer cannot comply with the postconsumer
17 recycled content requirements due to inadequate availability of
18 recycled material or a substantial disruption in the supply of recycled
19 material; or

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

22 b. In order to qualify for a waiver from the postconsumer recycled
23 content requirements of this act, a manufacturer shall submit to the
24 department documentation from a federal or State agency or certified
25 third-party expert, as appropriate, demonstrating that the manufacturer
26 cannot comply with the postconsumer recycled content requirements
27 for one of the reasons set forth in subsection a. of this section, and pay
28 a \$1,000 waiver fee. The department may modify the amount of the
29 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
30 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s
31 costs to administer, monitor, and enforce the provisions of this section.

32 c. The department may grant a waiver from the postconsumer
33 recycled content requirements for ¹[any period of time as the
34 department deems appropriate] a period of not less than two years, as
35 determined by the department¹. The department shall publish any
36 determination to grant a waiver from the postconsumer recycled
37 content requirements on its Internet website. The department shall
38 develop a standardized form and procedure for manufacturers to apply
39 for a waiver pursuant to this section.
40

41 12. a. The department may require a manufacturer that is
42 ¹temporarily¹ exempt from the postconsumer recycled content
43 requirements of this act ¹pursuant to subsection b. of section 10 of
44 this act¹, or that has submitted a request for a waiver pursuant to
45 section 11 of this act, to prepare and submit to the department an
46 alternative compliance plan that demonstrates that the manufacturer
47 is taking, and will continue to take, all feasible actions to ensure the

1 reduction, ¹collection,¹ recycling, and reuse of rigid plastic
2 containers, plastic beverage containers, glass containers, paper
3 carryout bags, plastic carryout bags, or plastic trash bags made from
4 virgin plastic, glass, or paper, as applicable, and ¹to ensure¹ the use
5 of postconsumer recycled content.

6 b. The department shall adopt, pursuant to the “Administrative
7 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
8 regulations setting forth the substantive requirements for an
9 alternative compliance plan required pursuant to subsection a. of
10 this section ²**],** which may include, but need not be limited to, a
11 requirement that the manufacturer take alternative measures to
12 reduce its use of virgin plastics, glass, or paper, including
13 sustainable materials management protocols, light weighting,
14 lifecycle analyses, and such other measures as the department may,
15 by rule or regulation, require².

16 c. The department shall have the authority to approve or
17 disapprove an alternative compliance plan prepared and submitted
18 pursuant to this section, and to require a manufacturer to make any
19 revisions or modifications to its alternative compliance plan as the
20 department determines necessary, consistent with the provisions of
21 this act and the rules and regulations adopted by the department.

22 d. A manufacturer shall undertake all of the actions described
23 in the alternative compliance plan. Failure by a manufacturer to
24 comply with an approved alternative compliance plan shall
25 constitute a violation of this act.

26 e. The department may enter into a contract or other legally
27 binding agreement with one or more trade associations representing
28 manufacturers, which shall allow the trade association, in lieu of the
29 manufacturers, to prepare and submit an alternative compliance
30 plan pursuant to this section and to undertake the actions described
31 in the alternative compliance plan.

32 ²**f. The department shall publish a final alternative**
33 **compliance plan approved pursuant to this section on the**
34 **department’s Internet website.**¹²
35

36 13. a. Beginning ¹**on the September 1 next following]** six
37 months after¹ the effective date of this act, and ¹**each September 1]**
38 annually¹ thereafter, each manufacturer shall register with the
39 department, in a form and manner as prescribed by the department,
40 and pay an annual registration fee of \$1,000. The department may
41 modify the amount of the registration fee, pursuant to the
42 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.),
43 as necessary to reflect the department’s costs to implement,
44 administer, monitor, and enforce the provisions of this act. The
45 department shall establish an electronic registration process on its
46 Internet website; however, the lack of an electronic registration
47 process shall not negate the requirement for a manufacturer to register

1 pursuant to this subsection. ¹Notwithstanding the provisions of this
 2 subsection to the contrary, a manufacturer that produces or generates
 3 only products that are exempt from the provisions of this act shall be
 4 required to register with the department only once, and shall be exempt
 5 from the registration fee.¹

6 b. Notwithstanding the provisions of section 16 of this act to the
 7 contrary, a manufacturer that fails to register with the department
 8 pursuant to subsection a. of this section shall first receive a written
 9 warning. A manufacturer that receives a written warning shall register
 10 with the department no later than 90 days after receipt of the warning.
 11 A manufacturer that receives a written warning and that fails to
 12 register with the department within 90 days of receipt of the warning
 13 shall be subject to the penalties set forth in section 16 of this act.
 14

15 14. a. ¹(1)¹ Beginning ¹On the third September 1 three years
 16 and six months¹ after the effective date of this act, and ¹On each
 17 September 1 annually¹ thereafter, each manufacturer shall certify,
 18 in writing, to the department whether or not the rigid plastic
 19 containers, plastic beverage containers, glass containers, paper
 20 carryout bags, plastic carryout bags, or plastic trash bags, as
 21 applicable, sold, offered for sale, or used in association with the
 22 sale or offer for sale of a product in the State, are in compliance
 23 with the postconsumer recycled content requirements of this act, or
 24 are otherwise exempt or have been approved for a waiver from the
 25 requirements. If the manufacturer claims an exemption from the
 26 requirements of this act, the manufacturer shall set forth the specific
 27 basis upon which the exemption is claimed, and submit such proof
 28 as the department determines necessary. The certification shall be
 29 signed by an authorized representative of the manufacturer. A
 30 manufacturer shall submit the certification, in the form and manner
 31 determined by the department, under penalty of perjury. The
 32 certification shall include the amount, in pounds, of virgin plastic,
 33 glass, or paper and ¹the amount, in pounds, of¹ postconsumer
 34 recycled material used by the manufacturer for any products subject
 35 to the requirements of this act, and any other information as the
 36 department deems necessary. The department shall establish an
 37 electronic certification process on its Internet website; however, the
 38 lack of an electronic certification process shall not negate the
 39 requirement for a manufacturer to certify its compliance pursuant to
 40 this subsection.

41 ¹(2) The department may ²require that a manufacturer submit
 42 an independent, third-party verification of a compliance
 43 certification made pursuant to this subsection , in consultation with
 44 manufacturers, study: (a) whether there exist independent, third-
 45 party verification organizations that can verify manufacturers'
 46 compliance with the requirements of this act; and (b) appropriate
 47 accreditation standards for such organizations. The department may

1 prepare and submit a report including its findings to the Governor,
2 to the Legislature pursuant to section 2 of P.L.1991, c.164
3 (C.52:14-19.1), and to the members of the Senate Environment and
4 Energy Committee and the Assembly Environment and Solid Waste
5 Committee, or their successors² .¹

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

20 c. The department may audit or investigate a manufacturer, at
21 any time, to assess the manufacturer's compliance with the
22 requirements of this act. Each year, the department ¹~~shall~~ may¹
23 audit, or cause to be audited, a random sample of manufacturers in
24 order to determine compliance with this act. A manufacturer shall
25 cooperate fully with any audit or investigation conducted pursuant
26 to this section. The department may require a manufacturer to pay
27 the costs of an audit conducted pursuant to this subsection.

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

31

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

35 b. As used in this section:

36 "Polystyrene foam" means blown polystyrene and expanded and
37 extruded foams that are thermoplastic petrochemical materials
38 utilizing a styrene monomer and processed by a number of
39 techniques, including, but not limited to, fusion of polymer spheres
40 (expandable bead polystyrene), injection molding, foam molding,
41 and extrusion-blow molding (extruded foam polystyrene).

42 "Polystyrene loose fill packaging," commonly known as packing
43 peanuts, means a void-filling packaging product made of
44 polystyrene foam that is used as a packaging fill.

45

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

1 (1) issue an order in accordance with subsection b. of this section
2 requiring the person to comply;
3 (2) bring a civil action in accordance with subsection c. of this
4 section;
5 (3) levy a civil administrative penalty in accordance with
6 subsection d. of this section;
7 (4) bring an action for a civil penalty in accordance with
8 subsection e. of this section; ¹~~["or"]~~¹
9 (5) require a manufacturer to submit a corrective action plan
10 pursuant to subsection f. of this section ¹~~;~~ or
11 (6) notify the public of a manufacturer which, at any time during a
12 reporting period, was not in compliance with the requirements of this
13 act¹ .
14 The exercise of any of the remedies provided in this section shall
15 not preclude recourse to any other remedy so provided.
16 b. Whenever, on the basis of available information, the
17 commissioner finds that a person is in violation of this act, the
18 commissioner may issue an order: (1) specifying the provision or
19 provisions of this act, or the rule or regulation adopted pursuant
20 thereto, of which the person is in violation; (2) citing the action that
21 caused the violation; (3) requiring compliance with the provision of
22 this act or the rule or regulation adopted pursuant thereto of which the
23 person is in violation; and (4) giving notice to the person of his right to
24 a hearing on the matters contained in the order.
25 c. The commissioner is authorized to commence a civil action in
26 Superior Court for appropriate relief from a violation of this act. This
27 relief may include an assessment against the violator for the costs of
28 any investigation, inspection, or audit that led to the discovery and
29 establishment of the violation, and for the reasonable costs of
30 preparing and litigating the case under this subsection.
31 d. (1) The commissioner is authorized to impose a civil
32 administrative penalty of not less than \$1,000 and not more than
33 ¹~~["\$100,000"]~~ \$25,000¹ for each violation of this act or any rule or
34 regulation adopted pursuant thereto, and each day of the violation shall
35 constitute an additional, separate, and distinct offense. Any amount
36 imposed under this subsection shall be assessed pursuant to rules and
37 regulations adopted by the commissioner for violations of similar type,
38 seriousness, and duration. The commissioner shall have the authority
39 to assess penalties prior to the establishment of rules and regulations
40 governing penalties to the extent that such penalties are reasonable and
41 based on other violations of a similar type, seriousness, and duration.
42 No civil administrative penalty shall be imposed until after the person
43 has been notified by certified mail or personal service. The notice
44 shall include: a reference to the section of the act, rule, regulation,
45 order, or permit violated; a concise statement of the facts alleged to
46 constitute a violation; a statement of the amount of the civil
47 administrative penalties to be imposed; and a statement of the person's
48 right to a hearing. The person shall have 20 days from receipt of the

1 notice within which to deliver to the commissioner a written request
2 for a hearing. Subsequent to the hearing and upon finding that a
3 violation has occurred, the commissioner may issue a final order or
4 civil administrative penalty after imposing the amount of the fine
5 specified in the notice. If no hearing is requested, the notice shall
6 become a final order or a final civil administrative penalty upon the
7 expiration of the 20-day period. Payment of the penalty is due when a
8 final order is issued or when the notice becomes a final order or a final
9 civil administrative penalty. The authority to levy a civil
10 administrative penalty is in addition to all other enforcement
11 provisions in this act, and the payment of a civil administrative penalty
12 shall not be deemed to affect the availability of any other enforcement
13 provision in connection with the violation for which the penalty is
14 levied. A civil administrative penalty imposed under this subsection
15 may be compromised by the commissioner upon the posting of a
16 performance bond by the violator, or upon terms and conditions the
17 commissioner may establish by rule or regulation.

18 (2) ¹With respect to violations related to the amount of recycled
19 content contained in a manufacturer's products, in lieu of the penalties
20 provided for in paragraph (1) of this subsection, the department shall
21 assess a civil administrative penalty on a per-pound basis for each
22 pound of virgin material that is used by a manufacturer in its products
23 where recycled material is required pursuant to this act. The
24 department shall establish the per-pound penalty in the rules and
25 regulations adopted to implement this act.

26 (3)¹ In addition to the assessment of a civil administrative penalty,
27 the commissioner may, by administrative order and upon an
28 appropriate finding, assess a violator for the reasonable costs of any
29 investigation, inspection, or audit which led to the establishment of the
30 violation.

31 e. Any person who violates this act, an order issued pursuant to
32 subsection b. of this section, or a court order issued pursuant to
33 subsection c. of this section, or who fails to pay in full a civil
34 administrative penalty levied pursuant to subsection d. of this section,
35 shall be subject, upon order of a court, to a civil penalty not to exceed
36 ¹[\$100,000] \$50,000, and each day of the violation shall constitute an
37 additional, separate, and distinct offense¹ . Any penalty imposed
38 pursuant to this subsection may be collected, and any costs incurred in
39 connection therewith may be recovered, in a summary proceeding
40 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
41 (C.2A:58-10 et seq.). The Superior Court and the municipal court
42 shall have jurisdiction to enforce the "Penalty Enforcement Law of
43 1999."

44 f. The department is authorized to require a manufacturer that
45 violates the provisions of this act, or any rule or regulation adopted
46 pursuant thereto, to submit a corrective action plan describing how the
47 manufacturer intends to come into compliance with the provisions of
48 this act. The department shall adopt, pursuant to the "Administrative

1 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
2 regulations setting forth the substantive requirements for corrective
3 action plans.

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

12
13 17. Any proprietary information or trade secrets included in any
14 registration, certification, alternative compliance plan, corrective
15 action plan, or any other record submitted to the department
16 pursuant to this act shall not be made available to the general public
17 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as
18 the open public records act.

19
20 18. a. There is established in the Department of the Treasury a
21 special, nonlapsing account to be known as the “Recycling
22 Enhancement Penalty Account.” The account shall be credited with
23 all penalties collected pursuant to section 16 of this act, and any
24 interest or investment income earned on monies in the account.
25 Moneys in the account may be utilized by the department for
26 administrative expenses incurred in connection with the
27 enforcement or implementation of this act, for the public education
28 program required pursuant to subsection b. of this section, and for
29 other efforts to support recycling markets in the State as the
30 department may determine.

31 b. The department, in consultation with the Association of New
32 Jersey Recyclers and the organization under contract with the
33 department to administer the Clean Communities Program pursuant
34 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and
35 implement a Statewide public information and education program to
36 encourage, support, and increase the recycling of rigid plastic
37 containers, plastic beverage containers, glass containers, paper
38 carryout bags, plastic carryout bags, and any other containers or
39 packaging products, which may include, but need not be limited to,
40 television, radio, and print advertisements, signage, or classroom
41 education.

42
43 19. A municipality or county shall not adopt any rule,
44 regulation, code, or ordinance regulating the postconsumer recycled
45 content of rigid plastic containers, plastic beverage containers, glass
46 containers, paper carryout bags, plastic carryout bags, or plastic
47 trash bags after the effective date of this act. The provisions of this
48 act shall supersede and preempt any municipal or county rule,

1 regulation, code, or ordinance regulating the recycled content of
2 rigid plastic containers, plastic beverage containers, glass
3 containers, paper carryout bags, plastic carryout bags, or plastic
4 trash bags that was enacted prior to the effective date of this act.

5
6 20. Nothing in this act shall be construed to impose liability on
7 any news media that accept or publish advertising for any product
8 that would otherwise be subject to the provisions of this act.

9
10 21. Nothing in this act shall be construed to alter, limit, or
11 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-
12 99.126 et al.).

13
14 22. a. ¹~~【The】~~ No later than two years after the effective date of
15 this act, the¹ department shall adopt, pursuant to the
16 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
17 1 et seq.), rules and regulations necessary for the implementation of
18 this act.

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

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

37
38 24. This act shall take effect immediately.