

**SENATE, No. 3853**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED JUNE 1, 2021

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Requires producers of packaging products sold in New Jersey to adopt and implement packaging product stewardship plans.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT requiring producers of packaging products sold in New  
2 Jersey to adopt and implement packaging product stewardship  
3 plans, and supplementing 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. This act shall be known and may be cited as the “Packaging  
9 Product Stewardship Act.”  
10

11 2. As used in this act:

12 “Commissioner” means the Commissioner of Environmental  
13 Protection.

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

16 “Environmentally sound management practices” means policies  
17 or procedures for the collection, storage, transportation, reuse, and  
18 recycling or disposal of discarded packaging products, which  
19 policies or procedures are established by the department and  
20 implemented by a producer or a group of producers to: ensure  
21 compliance with all applicable federal, State, and local laws, rules,  
22 regulations, and ordinances; protect human health and the  
23 environment; and address such matters as adequate recordkeeping  
24 and accurate tracking and documentation of the collection,  
25 transportation, reuse, and recycling or disposal of discarded  
26 packaging products within the State.

27 “Packaging product” means any product or material that is  
28 designed and used for the containment, protection, handling,  
29 delivery, or presentation of another product, including, but not  
30 limited to, a food or beverage item, and that is sold, offered for sale,  
31 imported, or distributed in the State. “Packaging product” includes:  
32 primary packaging that constitutes a sales unit at the point of  
33 purchase; secondary packaging that is used to group other products  
34 for multiunit sale or is intended to brand or display another product;  
35 tertiary packaging that is used either for the transportation and  
36 distribution of another product directly to the consumer or for the  
37 protection of the product during transport; service packaging,  
38 including carry-out bags, bulk goods bags, take-out bags, home  
39 delivery food service packaging, and prescription bottles, which are  
40 designed and intended to be filled at the point of sale; beverage  
41 containers; ancillary elements that are attached to another product  
42 and that serve a packaging function; and any other product, whether  
43 constituted of paper, plastic, glass, metal, a mixture thereof, or any  
44 other material, which serves a packaging function.

45 “Packaging product stewardship plan” or “stewardship plan”  
46 means the plan that is developed by an individual producer or a  
47 group of producers, pursuant to section 3 of this act, and which  
48 provides for the environmentally sound life-cycle management, by

1 participating producers, of packaging products that are sold, offered  
2 for sale, imported, or distributed by such producers in this State.

3 “Participating producer” means a producer who, acting either  
4 individually or as part of a group of producers, is participating in  
5 the development or implementation of a packaging product  
6 stewardship plan pursuant to this act.

7 “Producer” means the manufacturer of a packaging product who  
8 sells, offers for sale, or distributes the product in the State under the  
9 person’s own name or brand; the owner or licensee of a trademark  
10 under which a packaging product is sold, offered for sale, or  
11 distributed in this State, whether or not the trademark is registered  
12 in this State; any person who sells, offers for sale, or distributes a  
13 packaging product in the State; and any person who imports a  
14 packaging product for use by a commercial enterprise that sells,  
15 offers for sale, or distributes packaging products in this State.  
16 “Producer” does not include a municipality or other local  
17 government unit.

18 “Recycling” means any process by which materials or products  
19 that would otherwise become solid waste are collected, separated,  
20 or processed and returned to the economic mainstream in the form  
21 of raw materials or products. “Recycling” does not include energy  
22 recovery or energy generation resulting from combustion or  
23 incineration processes.

24 “Reuse” means the return of a packaging product back into the  
25 economic stream for use in the same kind of application intended  
26 for the original packaging product, without effectuating a change in  
27 the original composition or identity of the product or the  
28 components thereof.

29 “Sell” or “sale” means any transfer of title for consideration,  
30 including, but not limited to, remote sales transactions conducted  
31 through sales outlets, catalogs, or the Internet, or through any other  
32 similar means.

33

34 3. a. Not more than 180 days after the date of enactment of  
35 this act, each producer in the State shall, either individually or as  
36 part of a collective group of producers, develop a packaging product  
37 stewardship plan, in consultation with the department, and submit  
38 the plan to the commissioner for approval. The purposes of the  
39 stewardship plan shall be to:

40 (1) ensure that participating producers remain responsible for  
41 managing and facilitating the collection, transportation, reuse, and  
42 recycling or disposal of all discarded packaging products in the  
43 State, in accordance with environmentally sound management  
44 practices;

45 (2) encourage participating producers to increase the post-  
46 consumer content in packaging products and reduce the amount of  
47 waste generated from discarded packaging products;

- 1 (3) prioritize and promote the reuse and recycling of discarded  
2 packaging products; and
- 3 (4) otherwise minimize public sector involvement in the life-  
4 cycle management of packaging waste.
- 5 b. To the extent practicable, a packaging product stewardship  
6 plan adopted pursuant to this section shall utilize existing solid  
7 waste collection and recycling infrastructure in the State.
- 8 c. A stewardship plan adopted pursuant to this section shall:
- 9 (1) identify, and provide contact information for, each producer  
10 participating in the plan;
- 11 (2) include a comprehensive list of the packaging products that  
12 are covered by the plan, including, as applicable, the brand names  
13 of any such packaging products;
- 14 (3) identify the means, methods, processes, procedures, systems,  
15 and strategies that will be used by participating producers to: (a)  
16 reduce, through product design modifications and program  
17 innovation, the amount of material that is used for each packaging  
18 product and the amount of waste resulting from use of each  
19 packaging product; (b) facilitate and promote the prompt and  
20 efficient collection of discarded packaging products throughout the  
21 State in a manner that is as, or more, convenient for consumers than  
22 the other collection programs available prior to the implementation  
23 of the packaging product stewardship plan; (c) transport discarded  
24 packaging products to authorized storage and recycling facilities;  
25 and (d) facilitate the reuse of discarded packaging products for  
26 alternate second-life purposes, the processing and recycling of  
27 discarded packaging products that cannot be reused for alternate  
28 second-life purposes, and the proper end-of-life disposal, in  
29 accordance with environmentally sound management practices, of  
30 discarded packaging products that cannot be reused or recycled;
- 31 (4) identify performance goals for a minimum post-consumer  
32 recycled material content rate and a minimum recycling rate for  
33 packaging products, and describe how such goals will be met or  
34 exceeded over time. The performance goals established under this  
35 paragraph shall provide, at a minimum, for: (a) all single-use  
36 packaging products to be composed of at least 75 percent post-  
37 consumer content by January 1, 2027; (b) all single-use packaging  
38 products to be readily recyclable or compostable by January 1,  
39 2030; and (c) all single-use plastic packaging to be reduced to the  
40 maximum extent practicable, or by at least 25 percent, by January 1,  
41 2030;
- 42 (5) describe the ways in which existing municipal solid waste  
43 collection and recycling infrastructure will be used to implement  
44 the stewardship plan, as provided by subsection b. of this section,  
45 or, if existing infrastructure will not be used, provide an explanation  
46 as to why it is necessary to establish separate infrastructure, as well  
47 as a description of how the separate infrastructure system will

1 function, and an indication of the date by which the separate  
2 infrastructure system is expected to commence operations;

3 (6) describe the ways in which the participating producers will  
4 work with existing waste haulers, storage and recycling facilities,  
5 and counties and municipalities throughout the State to effectuate  
6 the collection, transportation, reuse, and recycling or disposal of  
7 packaging products, in accordance with environmentally sound  
8 management practices, and identify the name and address of all  
9 authorized recyclers that will be directly utilized pursuant to the  
10 plan;

11 (7) certify that participating producers will use open,  
12 competitive, and fair procurement practices when directly entering  
13 into contractual agreements with municipalities and other service  
14 providers pursuant to the stewardship plan;

15 (8) describe the means and methods, developed in accordance  
16 with the provisions of subsection d. of this section, that will be used  
17 by participating producers to finance the collection, transportation,  
18 reuse, and recycling or other environmentally sound disposal of  
19 discarded packaging products under the stewardship plan;

20 (9) identify the process that was used, during the development  
21 of the stewardship plan, to receive, consider, and implement the  
22 comments of various stakeholders, as well as the nature of  
23 stakeholder comments received during the plan development period,  
24 and describe the extent to which the stakeholders' comments were  
25 incorporated into the stewardship plan;

26 (10) describe the means and methods that will be used by  
27 participating producers to facilitate public outreach, education, and  
28 communication with respect to the stewardship plan, in accordance  
29 with the provisions of section 5 of this act;

30 (11) describe how the stewardship plan will be administered,  
31 and identify the staff members who will be responsible for ensuring  
32 proper administration of the plan; and

33 (12) include any other information required by the  
34 commissioner.

35 d. A packaging product stewardship plan shall provide for the  
36 costs associated with the collection, transportation, reuse, and  
37 recycling or disposal of discarded packaging products to be borne  
38 by those producers who are participating in the plan. The  
39 department and participating producers shall jointly develop a  
40 financing system to ensure the provision of prompt payment by  
41 participating producers to counties and municipalities, recycling  
42 and other solid waste collection and disposal facilities, and other  
43 appropriate entities that provide services pursuant to the  
44 stewardship plan. The financing system developed under this  
45 subsection shall be evaluated by an independent financial auditor,  
46 as designated by the department, to ensure that the system is  
47 sufficient to cover all of the costs associated with implementation of  
48 the stewardship plan.

1       4. a. Not more than 120 days after receipt of a completed  
2 packaging product stewardship plan, submitted pursuant to section  
3 3 of this act, the commissioner shall approve, conditionally  
4 approve, or disapprove the plan and provide written notice of the  
5 determination to the participating producers. If the commissioner  
6 does not provide written notice of the determination made pursuant  
7 to this section within the timeframe specified by this subsection, the  
8 plan shall be deemed to have been approved, and the participating  
9 producers shall proceed to implement the plan as provided by  
10 paragraph (1) of subsection c. of this section. In making a  
11 determination pursuant to this section, the commissioner may solicit  
12 information from the representatives of recycling facilities and  
13 other stakeholders, as the commissioner deems appropriate.

14       b. A stewardship plan shall not be approved, pursuant to this  
15 section, unless the commissioner determines that:

16       (1) the participating producers have engaged in satisfactory  
17 consultation with stakeholders in the development of the plan;

18       (2) the plan adequately addresses all of the elements described  
19 in subsection c. of section 3 of this act in sufficient detail to  
20 demonstrate that the objectives of the plan will be met; and

21       (3) the plan contains an adequate financing mechanism,  
22 developed in consultation with the department pursuant to  
23 subsection d. of section 3 of this act, and verified by an independent  
24 financial auditor.

25       c. (1) If a packaging product stewardship plan is approved  
26 pursuant to this section, participating producers shall implement the  
27 approved plan within 90 days after receipt of the commissioner's  
28 written notice or after the expiration of the 120-day timeframe  
29 established by subsection a. of this section, as the case may be, or  
30 within another timeframe agreed to by the commissioner.

31       (2) If a packaging product stewardship plan is conditionally  
32 approved pursuant to this section, the commissioner's written notice  
33 shall specify the conditions that are to be satisfied in order for the  
34 plan to be deemed approved pursuant to this act. The participating  
35 producers shall implement the conditionally approved plan, in  
36 accordance with the conditions specified in the notice, either within  
37 90 days after receipt of the commissioner's notice or within another  
38 timeframe agreed to by the commissioner.

39       (3) If a packaging product stewardship plan is disapproved  
40 pursuant to this section, the commissioner's written notice shall be  
41 accompanied by a detailed statement describing the reasons for  
42 disapproval. Not more than 30 days after receipt of the  
43 commissioner's notice and accompanying statement of the reasons  
44 for disapproval, the participating producers shall submit a revised  
45 packaging product stewardship plan to the commissioner, who shall  
46 approve, conditionally approve, or disapprove of the revised plan in  
47 accordance with the provisions of subsection a. of this section.

1 d. Not more than 90 days after approving a packaging product  
2 stewardship plan pursuant to this section, or any revisions thereto,  
3 the commissioner shall post the plan at a publicly accessible  
4 location on the department's Internet website, together with a list of  
5 the producers participating in the plan and a list of the packaging  
6 products covered thereunder.

7 e. (1) A stewardship plan approved pursuant to this section  
8 shall be reviewed and updated by the participating manufacturers,  
9 and reapproved by the commissioner, at least once every five years,  
10 in accordance with the procedures specified in this section.

11 (2) Notwithstanding the provisions of paragraph (1) of this  
12 subsection to the contrary, the commissioner may, at any time,  
13 review a previously approved packaging product stewardship plan  
14 to determine whether the plan is being implemented in accordance  
15 with this act. If the commissioner, at any time, finds that the  
16 approved plan, as implemented, is deficient, the commissioner may  
17 order the participating producers to incorporate modifications to the  
18 plan or to the implementation thereof, as may be necessary to  
19 ensure that the plan, as implemented, fully complies with the  
20 provisions of this act.

21 f. The commissioner may assess a reasonable fee to  
22 participating producers to cover the costs that are incurred by the  
23 department in association with the review, implementation, and  
24 enforcement of the producers' packaging product stewardship plans  
25 pursuant to this act.

26

27 5. a. Producers participating in an approved packaging product  
28 stewardship plan shall conduct public outreach and provide  
29 consumers with educational and informational materials, in a form  
30 and manner prescribed by the department, related to the packaging  
31 product stewardship plan and the services provided thereunder.  
32 Participating producers shall also respond to questions, and address  
33 concerns, that are directly raised by consumers in association with  
34 the implementation of the stewardship plan.

35 b. The outreach conducted, and the educational and  
36 informational materials provided, under this subsection shall:

37 (1) provide information on the proper end-of-life management  
38 of discarded packaging products, including the end-of-life recycling  
39 and other environmentally sound disposal options that are available  
40 under the stewardship plan, as well as the location and availability  
41 of curbside and drop-off collection opportunities;

42 (2) provide instructions to enable consumers to carry out the  
43 recycling or composting of discarded packaging products, which  
44 instructions shall be easily accessible, easy to understand, and, to  
45 the extent practicable, applicable on a Statewide basis, taking into  
46 account the differences among local laws and processing  
47 capabilities;

1 (3) describe the environmental impact associated with the  
2 improper disposal of packaging products, and encourage consumers  
3 to avoid the littering of discarded packaging products;

4 (4) notify consumers that participating producers will be  
5 responsible for covering the costs of implementing the stewardship  
6 plan; and

7 (5) provide consumers with any other information required by  
8 the department.

9 c. The public outreach and education program, established  
10 pursuant to subsection a. of this section, shall:

11 (1) utilize all available forms of media, including, but not  
12 limited to, television, radio, print media, signage, the Internet, and  
13 social media, to provide information directly to consumers in the  
14 State;

15 (2) be coordinated with the various municipalities in the State  
16 and incorporate electronic, print, web-based, and social media  
17 elements that individual municipalities may elect to use, at their  
18 discretion, to provide education directly to their residents;

19 (3) to the extent deemed necessary and appropriate, provide for  
20 participating producers to affix, to their packaging products, a label  
21 that contains information necessary to help consumers responsibly  
22 manage and recycle the packaging products at the end of their  
23 useful life; and

24 (4) to the extent practicable, be coordinated with other similar  
25 public outreach and education programs in the State, as necessary to  
26 avoid consumer confusion and facilitate the consolidated use of  
27 available resources.

28 d. In addition to engaging in public outreach and education, as  
29 required by subsection a. of this section, the producers participating  
30 in an approved packaging product stewardship plan shall be  
31 authorized to provide retailers with educational and informational  
32 materials related to the stewardship plan, the services provided  
33 thereunder, and the role of retailers in facilitating the successful  
34 implementation of the plan. The educational and informational  
35 materials provided to a retailer under this subsection may include,  
36 but need not be limited to, printed materials, signage, templates of  
37 materials that can be reproduced by retailers and provided thereby  
38 to consumers at the time of a product's purchase, and advertising  
39 materials that promote consumer participation in the packaging  
40 product stewardship plan.

41  
42 6. a. Commencing 18 months after the effective date of this  
43 act, a producer shall not sell, offer for sale, distribute, or import for  
44 sale or distribution in the State, any packaging products unless the  
45 producer is participating in the implementation of, or has fully  
46 implemented, a packaging product stewardship plan approved by  
47 the commissioner pursuant to section 4 of this act.



1       b. In addition to the penalties provided by section 8 of this act,  
2 if a producer violates the terms and conditions of an approved  
3 packaging product stewardship plan in which the producer is  
4 participating, the commissioner may order the producer to stop  
5 selling, offering for sale, distributing, or importing for sale or  
6 distribution, any packaging products in the State.

7  
8       7. a. Not more than one year after an approved packaging  
9 product stewardship plan is implemented pursuant to subsection c.  
10 of section 4 of this act, and annually thereafter, the producers  
11 participating in the plan shall collectively submit a written report to  
12 the department evaluating the implementation of the plan. Each  
13 annual report shall include, but need not be limited to, the following  
14 information:

15       (1) a list of the producers participating in the plan and the  
16 packaging products covered under the plan;

17       (2) a description of the methods used to collect, transport, reuse,  
18 and recycle or dispose of discarded packaging products under the  
19 stewardship plan, in accordance with environmentally sound  
20 management practices;

21       (3) the total volume of discarded packaging products collected  
22 under the stewardship plan;

23       (4) the volume of collected packaging products that have been  
24 disposed under the stewardship plan, by method of disposition,  
25 including reuse, recycling, and disposal in accordance with  
26 environmentally sound management practices;

27       (5) the total cost of implementing the stewardship plan, as  
28 determined by an independent financial audit, including separate  
29 figures for the costs of collection, transportation, reuse, recycling,  
30 disposal, outreach, and any other activities that involved the  
31 expenditure of funds under the stewardship plan; and

32       (6) samples of the educational materials that have been  
33 provided, to consumers and retailers pursuant to section 5 of this  
34 act, together with an evaluation of the methods used to disseminate  
35 those materials and an assessment of the effectiveness of those  
36 materials, including associated levels of waste prevention and reuse  
37 or recycling that have been evidenced since outreach efforts were  
38 commenced pursuant to section 5 of this act;

39       (7) an evaluation of the effectiveness of the stewardship plan  
40 and any steps necessary to improve the plan's effectiveness; and

41       (8) any other information required by the commissioner.

42       b. Within 90 days after receipt of each annual report submitted  
43 pursuant to this section, the commissioner shall:

44       (1) review the report;

45       (2) post the report on the department's Internet website; and

46       (3) prepare, and post on the department's Internet website, a  
47 summary report describing the progress that is being made under

1 the stewardship plan and any corrective action ordered by the  
2 commissioner pursuant to this act.

3 c. The department shall not disclose any financial, production,  
4 or sales data reported by a producer pursuant to this section, except  
5 that the department may disclose such data in aggregate or summary  
6 format, provided that the producers and their financial, production,  
7 or sales data are not specifically identified, and provided that the  
8 summary omits any reference to unique characteristics from which  
9 the identities of individual producers might be inferred or otherwise  
10 ascertained.

11

12 8. a. Whenever the commissioner finds that a person has  
13 violated any provision of this act, any rule or regulation adopted  
14 pursuant thereto, or any provision of a stewardship plan approved  
15 thereunder, or has knowingly made a false statement,  
16 representation, or certification in any application, record, plan, or  
17 other document filed or required to be maintained pursuant to this  
18 act, the commissioner may:

19 (1) issue an order, in accordance with subsection b. of this  
20 section, requiring the violator to comply with the provisions of this  
21 act, the rules or regulations adopted pursuant thereto, or the  
22 stewardship plan approved thereunder, as the case may be;

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

25 (3) levy a civil administrative penalty in accordance with  
26 subsection d. of this section; or

27 (4) bring an action for a civil penalty in accordance with  
28 subsection e. of this section.

29 Pursuit of any of the remedies specified under this section shall  
30 not preclude the seeking of any other remedy specified.

31 b. Whenever the commissioner finds that a person has violated  
32 this act, any rule or regulation adopted pursuant thereto, or any  
33 provision of a stewardship plan approved thereunder, the  
34 commissioner may issue an administrative enforcement order to the  
35 person: specifying the provision or provisions that the person has  
36 violated; citing the action that constituted the violation; requiring  
37 the person's compliance with the provision violated; and giving  
38 notice of the person's right to a hearing on the matters contained in  
39 the administrative enforcement order. The person subject to the  
40 order shall have 20 calendar days from receipt of the order within  
41 which to deliver to the commissioner a written request for a  
42 hearing. After the hearing, and upon finding that a violation has  
43 occurred, the commissioner may issue a final order. If no hearing is  
44 requested, the order shall become final after the expiration of the  
45 20-day period. A request for hearing shall not automatically stay  
46 the effect of the order.

47 c. The commissioner shall be authorized to institute a civil  
48 action in Superior Court for appropriate relief from any violation of

1 the provisions of this act, or of any rule or regulation adopted  
2 pursuant thereto, or of a stewardship plan approved thereunder.

3 Such relief may include, singly or in combination:

4 (1) a temporary or permanent injunction;

5 (2) recovery of the reasonable costs of any investigation or  
6 inspection that led to the discovery of the violation, and for the  
7 recovery of the reasonable costs of preparing and bringing a civil  
8 action commenced under this subsection;

9 (3) recovery of reasonable costs incurred by the State in  
10 removing, correcting, or terminating the adverse effects resulting  
11 from the violation for which a civil action has been commenced and  
12 brought under this subsection;

13 (4) recovery of compensatory damages caused by a violation for  
14 which a civil action has been commenced and brought under this  
15 subsection. Assessments under this subsection shall be paid to the  
16 State Treasurer, except that compensatory damages may be paid by  
17 specific order of the court to any persons who have been aggrieved  
18 by the violation.

19 d. (1) The commissioner shall be authorized to assess a civil  
20 administrative penalty of not less than \$5,000 nor more than  
21 \$10,000 for each violation, provided that each day during which the  
22 violation continues shall constitute an additional, separate, and  
23 distinct offense. In assessing a civil administrative penalty, the  
24 commissioner shall consider the severity of the violation, the  
25 measures taken to prevent further violations, and whether the  
26 penalty will act as an appropriate deterrent.

27 (2) Prior to the assessment of a civil administrative penalty  
28 under this subsection, the person committing the violation shall be  
29 notified by certified mail or personal service that the penalty is  
30 being assessed. The notice shall identify the section of the statute,  
31 rule, regulation, or order, or the provision of the stewardship plan,  
32 that was violated; recite the facts alleged to constitute a violation;  
33 state the basis for the amount of the civil administrative penalties to  
34 be assessed; and affirm the rights of the alleged violator to a  
35 hearing. The ordered party shall have 35 days from receipt of the  
36 notice within which to deliver to the commissioner a written request  
37 for a hearing. After the hearing and upon finding that a violation  
38 has occurred, the commissioner may issue a final order after  
39 assessing the amount of the fine specified in the notice. If no  
40 hearing is requested, the notice shall become a final order after the  
41 expiration of the 35-day period. Payment of the assessment is due  
42 when a final order is issued or the notice becomes a final order.

43 (3) The authority to levy an administrative order is in addition to  
44 all other enforcement provisions in this act, and the payment of any  
45 assessment shall not be deemed to affect the availability of any  
46 other enforcement provisions in connection with the violation for  
47 which the assessment is levied. The department may compromise

1 any civil administrative penalty assessed under this section in an  
2 amount and with conditions the department determines appropriate.

3 e. A person who violates any provision of this act, or any rule  
4 or regulation adopted pursuant thereto, or the provisions of a  
5 stewardship plan approved thereunder, or an administrative order  
6 issued pursuant to subsection b. of this section, or a court order  
7 issued pursuant to subsection c. of this section, or who fails to pay a  
8 civil administrative penalty in full pursuant to subsection d. of this  
9 section, or who knowingly makes any false or misleading statement  
10 on any application, record, report, or other document required to be  
11 submitted to the department, shall be subject, upon order of a court,  
12 to a civil penalty not to exceed \$10,000 per day of the violation, and  
13 each day during which the violation continues shall constitute an  
14 additional, separate, and distinct offense. Any civil penalty  
15 imposed pursuant to this subsection may be collected with costs in a  
16 summary proceeding pursuant to the "Penalty Enforcement Law of  
17 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or may be collected in  
18 a civil action commenced by the commissioner. In addition to any  
19 penalties, costs, or interest charges, the Superior Court, or the  
20 municipal court as the case may be, may assess against the violator  
21 the amount of economic benefit accruing to the violator from the  
22 violation.

23 f. All penalties collected by the department pursuant to this act  
24 shall be appropriated and allocated annually for the continued  
25 administration and enforcement of this act.

26

27 9. a. Except as provided in subsection b. of this section, an  
28 action undertaken by a producer or group of producers, which  
29 affects the types or quantities of packaging products being recycled  
30 or the cost or structure of any collection or recycling program, shall  
31 not be deemed to constitute a violation of any State law relating to  
32 antitrust, restraint of trade, unfair trade practices, or the regulation  
33 of trade or commerce, so long as the action is necessary to plan for  
34 or implement the organized collection or recycling of packaging  
35 products pursuant to this act.

36 b. Subsection a. of this section shall not apply to:

37 (1) any agreement establishing or affecting the price of a  
38 product; or

39 (2) any agreement restricting the output or production of a  
40 product or the geographic area or customers to which a product will  
41 be sold.

42

43 10. The Commissioner of Environmental Protection shall adopt  
44 rules and regulations, pursuant to the "Administrative Procedure  
45 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to  
46 implement the provisions of this act.

47

48 11. This act shall take effect immediately.

STATEMENT

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This bill requires every producer of packaging products sold in the State, either individually or as a part of a group of producers, to develop and implement a packaging product stewardship plan, in consultation with the Department of Environmental Protection (department). The bill defines “producer” to mean: the manufacturer of a packaging product who sells, offers for sale, or distributes the product in the State under the person’s own name or brand; the owner or licensee of a trademark under which a packaging product is sold, offered for sale, or distributed in this State, whether or not the trademark is registered in this State; any person who sells, offers for sale, or distributes a packaging product in the State; and any person who imports a packaging product for use by a commercial enterprise that sells, offers for sale, or distributes packaging products in this State. The term would not include a municipality or other local government unit. The bill further defines “packaging product” to mean any product or material that is designed and used for the containment, protection, handling, delivery, or presentation of another product, including, but not limited to, a food or beverage item, that is sold, offered for sale, imported, or distributed in the State. The term expressly includes: primary, secondary, and tertiary packaging; service packaging, including carry-out bags, bulk goods bags, take-out bags, home delivery food service packaging, and prescription bottles, which are designed and intended to be filled at the point of sale; beverage containers; ancillary elements that are attached to another product and that serve a packaging function; and any other product, whether constituted of paper, plastic, glass, metal, a mixture thereof, or any other material, which serves a packaging function.

The purpose of a stewardship plan is to: 1) ensure that participating producers remain responsible for managing and facilitating the collection, transportation, reuse, and recycling or disposal of all discarded packaging products in the State, in accordance with environmentally sound management practices; 2) encourage participating producers to increase the post-consumer content in packaging products and reduce the amount of waste generated from discarded packaging products; 3) prioritize and promote the reuse and recycling of discarded packaging products; and 4) otherwise minimize public sector involvement in the life-cycle management of packaging waste.

To the extent practicable, a packaging product stewardship plan is to provide for the use of existing solid waste collection and recycling infrastructure in the State. The stewardship plan is also to provide for all of the costs associated with the collection, transportation, reuse, and recycling or disposal of discarded packaging products to be borne by participating producers. The bill

1 requires the department and participating producers to jointly  
2 develop a method to ensure the provision of prompt payment to  
3 counties and municipalities, recycling and other solid waste  
4 collection and disposal facilities, and other appropriate entities that  
5 provide services pursuant to the plan.

6 Each packaging product stewardship plan that is adopted  
7 pursuant to the bill is to identify, and provide contact information  
8 for, each producer participating in the plan, and is to also include a  
9 comprehensive list of the packaging products that are covered by  
10 the plan. Each plan is additionally required to:

11 1) identify the means, methods, processes, procedures, systems,  
12 and strategies that will be used by participating producers to: a)  
13 reduce, through product design modifications and program  
14 innovation, the amount of material used for each packaging product  
15 and the amount of waste resulting from use of each packaging  
16 product; b) facilitate and promote the prompt and efficient  
17 collection of discarded packaging products throughout the State in a  
18 manner that is as, or more, convenient for consumers than the other  
19 collection programs available prior to the implementation of the  
20 packaging product stewardship plan; c) transport discarded  
21 packaging products to authorized storage and recycling facilities;  
22 and d) facilitate the reuse of discarded packaging products for  
23 alternate second-life purposes, the processing and recycling of used  
24 packaging products that cannot be reused for alternate second-life  
25 purposes, and the proper end-of-life disposal, in accordance with  
26 environmentally sound management practices, of discarded  
27 packaging products that cannot be reused or recycled;

28 2) identify performance goals for a minimum post-consumer  
29 recycled material content rate and a minimum recycling rate for  
30 packaging products, and describe how such goals will be met or  
31 exceeded;

32 3) describe the ways in which existing municipal solid waste  
33 collection and recycling infrastructure will be used to implement  
34 the stewardship plan or, if existing infrastructure will not be used,  
35 provide an explanation as to why it is necessary to establish a  
36 separate infrastructure, as well as a description of how the separate  
37 infrastructure system will function, and an indication of the date by  
38 which the separate infrastructure system is expected to be placed  
39 into operation;

40 4) describe the ways in which the producer or stewardship  
41 organization will work with existing waste haulers, recyclers, and  
42 counties and municipalities throughout the State to effectuate the  
43 collection, transportation, reuse, recycling, and other disposal of  
44 packaging products, in accordance with environmentally sound  
45 management practices, and identify the name and location of all  
46 authorized recyclers that will be directly utilized pursuant to the  
47 plan;

- 1 5) certify that the participating producers will use open,  
2 competitive, and fair procurement practices when directly entering  
3 into contractual agreements with municipalities and other service  
4 providers, pursuant to the stewardship plan;
- 5 6) describe the means and methods that will be used by  
6 participating producers to finance the collection, transportation,  
7 reuse, and recycling or other environmentally sound disposal of  
8 discarded packaging products under the stewardship plan;
- 9 7) identify the process that was used, during the development  
10 of the stewardship plan, to receive, consider, and implement the  
11 comments of various stakeholders, as well as the nature of  
12 stakeholder comments received during the plan development period,  
13 and describe the extent to which the stakeholders' comments were  
14 incorporated into the stewardship plan;
- 15 8) describe the means and methods that will be used by  
16 participating producers to facilitate public outreach, education, and  
17 communication with respect to the stewardship plan, in accordance  
18 with the bill's provisions;
- 19 9) describe how the stewardship plan will be administered, and  
20 identify the staff members who will be responsible for ensuring  
21 proper administration of the plan; and
- 22 10) include any other information the commissioner deems  
23 appropriate.

24 The performance goals established in a stewardship plan are to  
25 provide, at a minimum, for all single-use packaging products to be  
26 composed of at least 75 percent post-consumer content by January  
27 1, 2027; all single-use packaging products to be readily recyclable  
28 or compostable by January 1, 2030; and all single-use plastic  
29 packaging to be reduced to the maximum extent practicable, or by  
30 at least 25 percent, by January 1, 2030.

31 A stewardship plan adopted pursuant to the bill may not be  
32 implemented without the prior approval of the Commissioner of  
33 Environmental Protection (commissioner). Not more than 120 days  
34 after the commissioner receives a completed packaging product  
35 stewardship plan, the commissioner will be required to approve,  
36 conditionally approve, or disapprove the plan and provide written  
37 notice of the determination to the participating manufacturers. If  
38 the commissioner does not provide written notice of such  
39 determination within this 120-day timeframe, the plan will be  
40 deemed to have been approved.

41 If the plan is approved, participating producers will be required  
42 to implement the plan within 90 days after receipt of the  
43 commissioner's notice or the expiration of the 120-day timeframe  
44 set for the determination, as the case may be, or within another  
45 timeframe agreed to by the commissioner. If the plan is  
46 conditionally approved, the commissioner's written notice is to  
47 specify the conditions that are to be satisfied in order for the plan to  
48 be deemed approved and implemented under the bill, and the

1 participating producers will be required to implement the  
2 conditionally approved plan, in accordance with the conditions  
3 stated in the notice, either within 90 days after receipt of the  
4 commissioner's notice or within another timeframe agreed to by the  
5 commissioner. If the plan is disapproved, the commissioner's  
6 written notice is to be accompanied by a detailed statement  
7 describing the reasons for disapproval. Not more than 30 days after  
8 receipt of the notice of disapproval, the participating producers will  
9 be required to submit a revised plan to the commissioner, who will  
10 be required to approve, conditionally approve, or disapprove of the  
11 revised plan in accordance with the bill's provisions.

12 Within 90 days after approving a packaging product stewardship  
13 plan, or any revisions thereto, the department will be required to  
14 post the plan on the department's Internet website, together with a  
15 list identifying the producers participating in the plan and the  
16 packaging products covered thereunder.

17 The bill requires a packaging product stewardship plan to be  
18 reviewed and updated by the participating manufacturers, and  
19 resubmitted to the department, at least once every five years.  
20 However, the bill also authorizes the commissioner, at any time, to  
21 review a previously approved stewardship plan and order  
22 modifications to the plan in order to ensure that it is being  
23 implemented in accordance with the bill's provisions.

24 Producers implementing a packaging product stewardship plan  
25 will be required to engage in public outreach, to address public  
26 questions and concerns, and to provide consumers with educational  
27 and informational materials related to the stewardship plan and the  
28 services that are available thereunder. Participating producers will  
29 also be authorized to provide educational and informational  
30 materials to retailers regarding the implementation of the  
31 stewardship plan.

32 Eighteen months after the bill's effective date, a producer will be  
33 prohibited from selling, offering for sale, importing, or distributing  
34 any packaging product in the State unless the producer is engaged  
35 in the implementation of, or has fully implemented, a packaging  
36 product stewardship plan in accordance with the bill. The bill  
37 further provides that, if a producer violates the terms and conditions  
38 of an approved packaging product stewardship plan in which the  
39 producer is participating, the commissioner may order the producer  
40 to stop selling, offering for sale, distributing, or importing for sale  
41 or distribution, any packaging products in the State. The bill also  
42 establishes various civil and administrative penalties for persons  
43 who violate the provisions of the bill, any rules or regulations  
44 adopted pursuant thereto, any stewardship plan approved  
45 thereunder, or any order issued by the commissioner in enforcing  
46 the bill.

47 Producers participating in an approved stewardship plan will be  
48 required to submit an annual report to the department describing the



1 actions being undertaken by participating producers pursuant to the  
2 plan, and evaluating the plan's costs and effectiveness. The  
3 commissioner will be required to post each annual report on the  
4 department's Internet website, and will be further required to  
5 prepare, and post on the department's Internet website, a summary  
6 report describing the progress that is being made under each  
7 stewardship plan, as well as any corrective action that has been  
8 ordered by the commissioner under the bill.

9 The bill specifies that any actions undertaken by producers under  
10 the bill will not be deemed to constitute a violation of any State law  
11 relating to antitrust, restraint of trade, unfair trade practices, or the  
12 regulation of trade or commerce, so long as the action is necessary  
13 to plan for or implement the organized collection or recycling of  
14 packaging products pursuant to the bill's provisions. However, this  
15 exemption from liability will not apply to any agreement that  
16 establishes or affects the price of a product or that restricts the  
17 output or production of a product or the geographic area or  
18 customers to which a product will be sold.