

[Fourth Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2515**

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

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ADOPTED DECEMBER 10, 2020

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

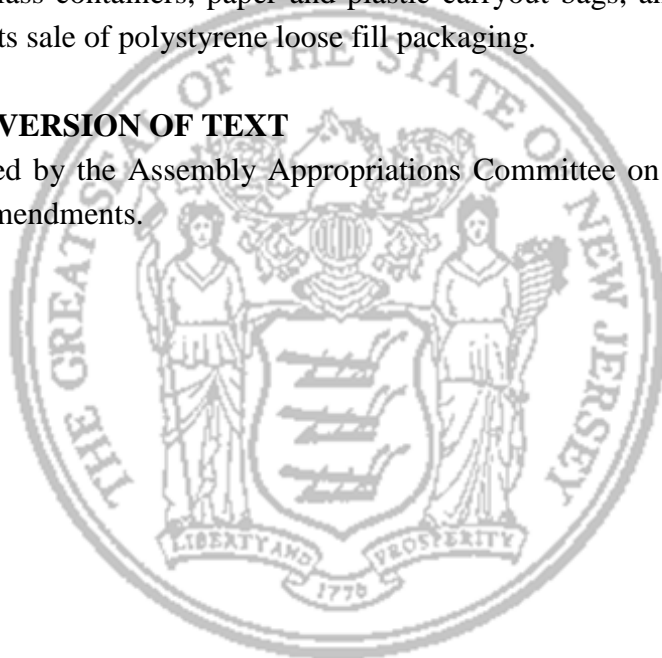
**Senator Gill**

**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 Assembly Appropriations Committee on December 13, 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: <sup>2</sup>**【milk and milk products;】**<sup>2</sup> beer and other malt  
12      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 drinks  
16      that contain any percentage of fruit juice; coffee and tea drinks;  
17      carbonated fruit 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      <sup>4</sup>“Licensee” means a manufacturer or entity who licenses a  
27      brand and manufactures a product under that brand.<sup>4</sup>

28      “Manufacturer” means <sup>4</sup>**【a person that】**<sup>4</sup> : (1) <sup>4</sup>a person that<sup>4</sup>  
29      produces or generates a rigid plastic container, <sup>1</sup>【plastic beverage  
30      container, glass container,】<sup>1</sup> paper carryout bag, plastic carryout bag,  
31      or plastic trash bag that <sup>1</sup>does not contain a product and that<sup>1</sup> is sold or  
32      offered for sale in the State; <sup>4</sup>【or】<sup>4</sup> (2) <sup>1</sup>【produces or generates】 <sup>4</sup>a  
33      person that<sup>4</sup> is the brand owner of<sup>1</sup> a product that is sold or offered for  
34      sale in the State and that is packaged in a rigid plastic container, plastic  
35      beverage container, or glass container <sup>4</sup>, unless the brand owner  
36      identifies a licensee who agrees to accept responsibility under this act  
37      and the licensee informs the department in writing of the agreement; or  
38      (3) in the absence of a person meeting the criteria in (1) or (2) of this  
39      definition over whom the State may exercise jurisdiction, a person  
40      who imports or distributes a product into or within the State that is  
41      sold or offered for sale in the State and that is packaged in a rigid  
42      plastic container, plastic beverage container, or glass container<sup>4</sup> .

43      “Manufacturer” shall not include <sup>4</sup>**【<sup>3</sup>: (1) a person who only licenses a**  
44      brand or trademark for a product and does not produce, package, or

**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:

<sup>1</sup>Senate SBA committee amendments adopted June 17, 2021.

<sup>2</sup>Senate floor amendments adopted June 21, 2021.

<sup>3</sup>Assembly AEN committee amendments adopted November 15, 2021.

<sup>4</sup>Assembly AAP committee amendments adopted December 13, 2021.

1 sell the product in the State; and (2)<sup>3</sup>]<sup>4</sup> a person who, at a single  
2 physical location, produces, packages, and sells a product directly to a  
3 consumer at retail, <sup>1</sup>[including, but not limited to,] which may  
4 include<sup>1</sup> a grocery store, restaurant, bar, cafeteria, café, food truck,  
5 food cart, or similar establishment.

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

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

11 “Plastic” means a synthetic material made from linking monomers  
12 through a chemical reaction to create an organic polymer chain that  
13 can be molded or extruded at high heat into various solid forms  
14 retaining their defined shapes during the life cycle and after disposal.

15 “Plastic” shall not include material that is designed to be composted in  
16 a municipal or industrial aerobic composting facility and that is  
17 certified by a recognized third-party independent verification body as  
18 meeting the standards therefor established by the American Society for  
19 Testing and Materials in ASTM D6400 or ASTM D6868.

20 “Plastic beverage container” means an individual, separate bottle,  
21 can, jar, carton, or other container made of plastic that is hermetically  
22 sealed or made airtight with a metal or plastic cap, and that contains a  
23 beverage. <sup>2</sup>“Plastic beverage container” shall not include any label,  
24 cap, closure, or other item affixed to the container.<sup>2</sup>

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

29 “Plastic trash bag” means a bag that is made of plastic, is at least  
30 0.70 mils thick, and is designed and manufactured for use as a  
31 container to hold, store, or transport materials to be discarded,  
32 composted, or recycled, and includes, but is not limited to, a garbage  
33 bag, <sup>1</sup>[composting bag,]<sup>1</sup> lawn or leaf bag, can-liner bag, kitchen bag,  
34 or compactor bag.

35 “Postconsumer recycled content” means a material or product that  
36 has completed its intended end use and product life cycle, and which  
37 has been separated from the solid waste stream for the purposes of  
38 collection and recycling. “Postconsumer recycled content” shall not  
39 include secondary waste material or materials and by-products  
40 generated from, and commonly used within, an original manufacturing  
41 and fabrication process.

42 “Rigid plastic container” means a container made of plastic that has  
43 a relatively inflexible finite shape or form, has a minimum capacity of  
44 eight fluid ounces or its equivalent volume and a maximum capacity of  
45 five fluid gallons or its equivalent volume, and is capable of  
46 maintaining its shape while empty or while holding other products.

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

20       b. <sup>1</sup>If a manufacturer relies on national data to calculate the  
21 average amount of postconsumer recycled content contained in its  
22 products, the manufacturer shall:

23       (1) prorate the national data based on market share <sup>2</sup>[.] or<sup>2</sup>  
24 population, <sup>2</sup>For another method as may be determined by the  
25 department,]<sup>2</sup> to ensure that the percentage of postconsumer  
26 recycled content calculated for products sold in New Jersey is the  
27 same percentage as calculated for the nation; and

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

31       c.<sup>1</sup> For the purposes of this section, "product" means a rigid  
32 plastic container, plastic beverage container, glass container, paper  
33 carryout bag, plastic carryout bag, or plastic trash bag that is subject  
34 to the postconsumer recycled content requirements of this act.

35

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

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

45       b. <sup>2</sup>~~Beginning two years after the effective date of this act, a~~  
46 manufacturer shall label each rigid plastic container with <sup>1</sup>: (1)<sup>1</sup> the  
47 name of the manufacturer and the city, state, and country where the

1 manufacturer is located <sup>1</sup>which may be designated as the location of  
2 the manufacturer's corporate headquarters; or (2) a uniform  
3 resource locator (URL) or quick response (QR) code to an Internet  
4 website that contains the information required pursuant to  
5 paragraph (1) of this subsection<sup>1</sup>.

6 c. <sup>2</sup>A rigid plastic container shall be exempt from the  
7 postconsumer recycled content requirements of subsection a. of this  
8 section if it:

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

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

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

17 (4) contains toxic or hazardous products regulated under the  
18 "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C.  
19 s.136 et seq.;

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

27 (6) is a refillable container or a reusable container. For the  
28 purposes of this paragraph, "refillable container" means a rigid  
29 plastic <sup>1</sup>[a]<sup>1</sup> container that is routinely returned to and refilled by  
30 the manufacturer with the same product packaged by the container;  
31 and "reusable container" means a rigid plastic container that is  
32 routinely reused by consumers to store the original product  
33 packaged by the container.  
34

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

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

43 b. <sup>2</sup>[Beginning two years after the effective date of this act, a  
44 manufacturer shall label each plastic beverage container sold or  
45 offered for sale in the State with <sup>1</sup>: (1)<sup>1</sup> the name of the  
46 manufacturer and the city, state, and country where the  
47 manufacturer is located <sup>1</sup>which may be designated as the location of

1 the manufacturer's corporate headquarters; or (2) a uniform  
2 resource locator (URL) or quick response (QR) code to an Internet  
3 website that contains the information required pursuant to  
4 paragraph (1) of this subsection<sup>1</sup>.

5 c. <sup>2</sup> The provisions of subsection a. of this section shall not  
6 apply to a refillable beverage container. For the purposes of this  
7 subsection, "refillable beverage container" means a beverage  
8 container that holds 150 fluid ounces or less of beverage, and which  
9 is routinely returned to the manufacturer to be refilled and resold.

10

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

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

27 c. <sup>2</sup> As used in this section, "mixed-color cullet" means cullet  
28 that does not meet the American Society for Testing and Materials  
29 (ASTM) standard specifications for the color mix of color-sorted,  
30 post-filled glass as a raw material for the manufacture of glass  
31 containers.

32

33 6. Beginning two years after the effective date of this act <sup>2</sup>:

34 a. <sup>2</sup> all paper carryout bags sold or offered for sale in the State  
35 by a manufacturer shall contain, on average, at least 40 percent  
36 postconsumer recycled content; except that a paper carryout bag  
37 that holds eight pounds or less shall only be required to contain, on  
38 average, at least 20 percent postconsumer recycled content <sup>2</sup>; and

39 b. a manufacturer shall label each paper carryout bag sold or  
40 offered for sale in the State with <sup>1</sup>: (1)<sup>1</sup> the name of the  
41 manufacturer and the city, state, and country where the  
42 manufacturer is located <sup>1</sup>which 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 subsection<sup>1</sup> <sup>2</sup>.

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

3       a. beginning two years after the effective date of this act,  
4 contain, on average, at least 20 percent postconsumer recycled  
5 content; <sup>2</sup>and<sup>2</sup>

6       b. beginning five years after the effective date of this act,  
7 contain, on average, at least 40 percent postconsumer recycled  
8 content <sup>2</sup>]; and

9       c. beginning two years after the effective date of this act, be  
10 labeled with <sup>1</sup>: (1)<sup>1</sup> the name of the manufacturer and the city,  
11 state, and country where the manufacturer is located <sup>1</sup>which may be  
12 designated as the location of the manufacturer's corporate  
13 headquarters; or (2) a uniform resource locator (URL) or quick  
14 response (QR) code to an Internet website that contains the  
15 information required pursuant to paragraph (1) of this  
16 subsection<sup>1</sup>]<sup>2</sup>.

17

18       8. a. <sup>1</sup>【Beginning two years after the effective date of this act,  
19 all】 All<sup>1</sup> plastic trash bags sold or offered for sale in the State by a  
20 manufacturer shall <sup>1</sup>:

21       (1) beginning two years after the effective date of this act,<sup>1</sup>  
22 contain, on average, at least 10 percent postconsumer recycled  
23 content <sup>1</sup>; and

24       (2) beginning five years after the effective date of this act,  
25 contain, on average, at least 20 percent postconsumer recycled  
26 content<sup>1</sup>.

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

36       c. <sup>2</sup>【The provisions of subsection a. of this section shall not  
37 apply to a bag that is designed and manufactured to hold, store, or  
38 transport hazardous waste or regulated medical waste. For the  
39 purposes of this subsection, “hazardous waste” means any solid  
40 waste defined as hazardous waste by the department pursuant to  
41 P.L.1970, c.39 (C.13:1E-1 et seq.); and “regulated medical waste”  
42 means the same as that term is defined in section 3 of P.L.1989,  
43 c.34 (C.13:1E-48.3).

44

45       9. a. Notwithstanding the provisions of this act to the contrary,  
46 the department may, pursuant to the “Administrative Procedure

1 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any  
2 of the postconsumer recycled content requirements established in  
3 sections 3 through 8 of this act. In making an adjustment pursuant  
4 to this section, the department shall consider:

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

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

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

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

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

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

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

22

23 10. a. A package <sup>1</sup>or container<sup>1</sup> that <sup>1</sup>【contain】 contains<sup>1</sup> milk  
24 products, <sup>2</sup>plant-based products with names that include the names  
25 of dairy foods such as “milk,”<sup>2</sup> medical food, or infant formula  
26 shall be exempt from the postconsumer recycled content  
27 requirements of this act <sup>1</sup>【for a period of five years beginning on  
28 the effective date of this act】<sup>1</sup>.

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

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

43 <sup>1</sup>【b.】 c.<sup>1</sup> As used in this section:

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



1 “Milk product” means the same as that term is defined <sup>2</sup>[in the  
2 Grade “A” Pasteurized Milk Ordinance promulgated]<sup>2</sup> 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; <sup>1</sup>[or]<sup>1</sup>

16 (3) <sup>1</sup>the 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)<sup>1</sup> 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 <sup>3</sup>Notwithstanding the provisions of this subsection to the contrary, a  
33 manufacturer that demonstrates to the department that the  
34 manufacturer’s gross revenue is below \$5,000,000 shall not be  
35 required to pay the waiver fee established pursuant to this section.<sup>3</sup>

36 c. The department may grant a waiver from the postconsumer  
37 recycled content requirements for <sup>1</sup>[any period of time as the  
38 department deems appropriate] a period of not less than two years, as  
39 determined by the department<sup>1</sup>. The department shall publish any  
40 determination to grant a waiver from the postconsumer recycled  
41 content requirements on its Internet website. The department shall  
42 develop a standardized form and procedure for manufacturers to apply  
43 for a waiver pursuant to this section.  
44

45 12. a. The department may require a manufacturer that is  
46 <sup>1</sup>temporarily<sup>1</sup> exempt from the postconsumer recycled content  
47 requirements of this act <sup>1</sup>pursuant to subsection b. of section 10 of

1 this act<sup>1</sup>, or that has submitted a request for a waiver pursuant to  
 2 section 11 of this act, to prepare and submit to the department an  
 3 alternative compliance plan that demonstrates that the manufacturer  
 4 is taking, and will continue to take, all feasible actions to ensure the  
 5 reduction, 'collection,' recycling, and reuse of rigid plastic  
 6 containers, plastic beverage containers, glass containers, paper  
 7 carryout bags, plastic carryout bags, or plastic trash bags made from  
 8 virgin plastic, glass, or paper, as applicable, and 'to ensure' the use  
 9 of postconsumer recycled content.

10 b. 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 an  
 13 alternative compliance plan required pursuant to subsection a. of  
 14 this section <sup>2</sup>], which may include, but need not be limited to, a  
 15 requirement that the manufacturer take alternative measures to  
 16 reduce its use of virgin plastics, glass, or paper, including  
 17 sustainable materials management protocols, light weighting,  
 18 lifecycle analyses, and such other measures as the department may,  
 19 by rule or regulation, require]<sup>2</sup>.

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

26 d. A manufacturer shall undertake all of the actions described  
 27 in the alternative compliance plan. Failure by a manufacturer to  
 28 comply with an approved alternative compliance plan shall  
 29 constitute a violation of this act.

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

36 <sup>2</sup>]'f. The department shall publish a final alternative  
 37 compliance plan approved pursuant to this section on the  
 38 department's Internet website.'<sup>1</sup><sup>2</sup>

39

40 13. a. Beginning <sup>1</sup>[on the September 1 next following] six  
 41 months after<sup>1</sup> the effective date of this act, and <sup>1</sup>[each September 1]  
 42 annually<sup>1</sup> thereafter, each manufacturer shall register with the  
 43 department, in a form and manner as prescribed by the department,  
 44 and pay an annual registration fee of \$1,000. The department may  
 45 modify the amount of the registration fee, pursuant to the  
 46 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.),  
 47 as necessary to reflect the department's costs to implement,

1 administer, monitor, and enforce the provisions of this act. The  
 2 department shall establish an electronic registration process on its  
 3 Internet website; however, the lack of an electronic registration  
 4 process shall not negate the requirement for a manufacturer to register  
 5 pursuant to this subsection. <sup>1</sup>Notwithstanding the provisions of this  
 6 subsection to the contrary <sup>3</sup>[.] : (1) a manufacturer that demonstrates  
 7 to the department that the manufacturer's gross revenue is below  
 8 \$5,000,000 shall not be required to pay the registration fee established  
 9 pursuant to this section; or (2) <sup>3</sup>a manufacturer that produces or  
 10 generates only products that are exempt from the provisions of this act  
 11 shall be required to register with the department only once, and shall  
 12 be exempt from the registration fee. <sup>1</sup>

13 b. Notwithstanding the provisions of section 16 of this act to the  
 14 contrary, a manufacturer that fails to register with the department  
 15 pursuant to subsection a. of this section shall first receive a written  
 16 warning. A manufacturer that receives a written warning shall register  
 17 with the department no later than 90 days after receipt of the warning.  
 18 A manufacturer that receives a written warning and that fails to  
 19 register with the department within 90 days of receipt of the warning  
 20 shall be subject to the penalties set forth in section 16 of this act.  
 21

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

1       <sup>1</sup>(2) The department may <sup>2</sup>require that a manufacturer submit  
2 an independent, third-party verification of a compliance  
3 certification made pursuant to this subsection <sup>1</sup>, in consultation with  
4 manufacturers, study: (a) whether there exist independent, third-  
5 party verification organizations that can verify manufacturers'  
6 compliance with the requirements of this act; and (b) appropriate  
7 accreditation standards for such organizations. The department may  
8 prepare and submit a report including its findings to the Governor,  
9 to the Legislature pursuant to section 2 of P.L.1991, c.164  
10 (C.52:14-19.1), and to the members of the Senate Environment and  
11 Energy Committee and the Assembly Environment and Solid Waste  
12 Committee, or their successors<sup>2</sup> .<sup>1</sup>

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

27       c. The department may audit or investigate a manufacturer, at  
28 any time, to assess the manufacturer's compliance with the  
29 requirements of this act. Each year, the department <sup>1</sup>~~shall~~ may<sup>1</sup>  
30 audit, or cause to be audited, a random sample of manufacturers in  
31 order to determine compliance with this act. A manufacturer shall  
32 cooperate fully with any audit or investigation conducted pursuant  
33 to this section. The department may require a manufacturer to pay  
34 the costs of an audit 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  
47 (expandable bead polystyrene), injection molding, foam molding,  
48 and extrusion-blow molding (extruded foam polystyrene).

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

4  
5       16. a. Whenever, on the basis of available information, the  
6       commissioner finds that a person is in violation of this act, the  
7       commissioner may take one or more of the following actions<sup>1</sup> :

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

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

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

14       (4) bring an action for a civil penalty in accordance with  
15       subsection e. of this section; ~~‘[or]’~~<sup>1</sup>

16       (5) require a manufacturer to submit a corrective action plan  
17       pursuant to subsection f. of this section <sup>1</sup>; ~~or~~

18       (6) notify the public of a manufacturer which, at any time during a  
19       reporting period, was not in compliance with the requirements of this  
20       act<sup>1</sup> .

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

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

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

38       d. (1) The commissioner is authorized to impose a civil  
39       administrative penalty of not less than \$1,000 and not more than  
40       ~~‘[ \$100,000 ] \$25,000’~~<sup>1</sup> for each violation of this act or any rule or  
41       regulation adopted pursuant thereto, and each day of the violation shall  
42       constitute an additional, separate, and distinct offense. Any amount  
43       imposed under this subsection shall be assessed pursuant to rules and  
44       regulations adopted by the commissioner for violations of similar type,  
45       seriousness, and duration. The commissioner shall have the authority  
46       to assess penalties prior to the establishment of rules and regulations  
47       governing penalties to the extent that such penalties are reasonable and

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

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

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

39 e. Any person who violates this act, an order issued pursuant to  
40 subsection b. of this section, or a court order issued pursuant to  
41 subsection c. of this section, or who fails to pay in full a civil  
42 administrative penalty levied pursuant to subsection d. of this section,  
43 shall be subject, upon order of a court, to a civil penalty not to exceed  
44 <sup>1</sup>[\$100,000] \$50,000, and each day of the violation shall constitute an  
45 additional, separate, and distinct offense<sup>1</sup> . Any penalty imposed  
46 pursuant to this subsection may be collected, and any costs incurred in  
47 connection therewith may be recovered, in a summary proceeding  
48 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274

1 (C.2A:58-10 et seq.). The Superior Court and the municipal court  
2 shall have jurisdiction to enforce the “Penalty Enforcement Law of  
3 1999.”

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

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

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

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

39 b. The department, in consultation with the Association of New  
40 Jersey Recyclers and the organization under contract with the  
41 department to administer the Clean Communities Program pursuant  
42 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and  
43 implement a Statewide public information and education program to  
44 encourage, support, and increase the recycling of rigid plastic  
45 containers, plastic beverage containers, glass containers, paper  
46 carryout bags, plastic carryout bags, and any other containers or  
47 packaging products, which may include, but need not be limited to,

1 television, radio, and print advertisements, signage, or classroom  
2 education.

3  
4 19. A municipality or county shall not adopt any rule,  
5 regulation, code, or ordinance regulating the postconsumer recycled  
6 content of rigid plastic containers, plastic beverage containers, glass  
7 containers, paper carryout bags, plastic carryout bags, or plastic  
8 trash bags after the effective date of this act. The provisions of this  
9 act shall supersede and preempt any municipal or county rule,  
10 regulation, code, or ordinance regulating the recycled content of  
11 rigid plastic containers, plastic beverage containers, glass  
12 containers, paper carryout bags, plastic carryout bags, or plastic  
13 trash bags that was enacted prior to the effective date of this act.

14  
15 20. Nothing in this act shall be construed to impose liability on  
16 any news media that accept or publish advertising for any product  
17 that would otherwise be subject to the provisions of this act.

18  
19 21. Nothing in this act shall be construed to alter, limit, or  
20 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-  
21 99.126 et al.).

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

32  
33 23. No later than five years after the effective date of this act,  
34 the <sup>1</sup>~~【Advisory Council on Solid Waste Management, established~~  
35 ~~pursuant to section 7 of P.L.1970, c.39 (C.13:1E-7),】~~ department<sup>1</sup>  
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.