

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4676

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED NOVEMBER 15, 2021

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Co-Sponsored by:

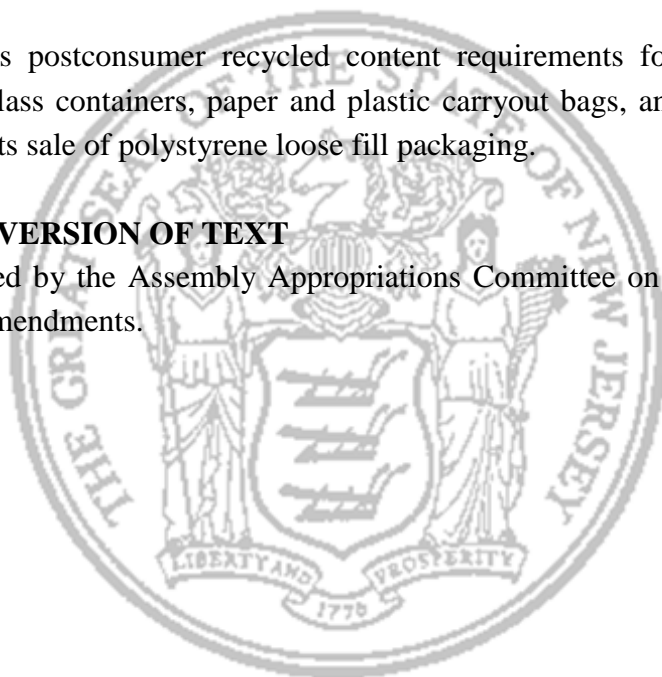
Assemblyman Calabrese

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.



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

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

7
8 1. As used in this act:

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

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

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

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

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

27 ¹“Licensee” means a manufacturer or entity who licenses a brand
28 and manufactures a product under that brand.¹

29 “Manufacturer” means ¹“[a person that]”¹ : (1) ¹a person that¹
30 produces or generates a rigid plastic container, paper carryout bag,
31 plastic carryout bag, or plastic trash bag that does not contain a
32 product and that is sold or offered for sale in the State; ¹“[or]”¹ (2) ¹a
33 person that¹ is the brand owner of a product that is sold or offered
34 for sale in the State and that is packaged in a rigid plastic container,
35 plastic beverage container, or glass container ¹, unless the brand
36 owner identifies a licensee who agrees to accept responsibility under
37 this act and the licensee informs the department in writing of the
38 agreement; or (3) in the absence of a person meeting the criteria in (1)
39 or (2) of this definition over whom the State may exercise jurisdiction,
40 a person who imports or distributes a product into or within the State
41 that is sold or offered for sale in the State and that is packaged in a
42 rigid plastic container, plastic beverage container, or glass container¹ .

43 “Manufacturer” shall not include ¹“[”¹: (1) a person who only licenses
44 a brand or trademark for a product and does not produce, package,
45 or sell the product in the State; and (2) ¹“]”¹ a person who, at a single

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:

¹Assembly AAP committee amendments adopted December 13, 2021.

1 physical location, produces, packages, and sells a product directly
2 to a consumer at retail, which may include a grocery store,
3 restaurant, bar, cafeteria, café, food truck, food cart, or similar
4 establishment.

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

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

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

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

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

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

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

43 “Rigid plastic container” means a container made of plastic that
44 has a relatively inflexible finite shape or form, has a minimum
45 capacity of eight fluid ounces or its equivalent volume and a
46 maximum capacity of five fluid gallons or its equivalent volume,
47 and is capable of maintaining its shape while empty or while
48 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. A manufacturer shall calculate the
5 average amount of postconsumer recycled content contained in its
6 products using data specific to products sold or offered for sale in
7 New Jersey, if such data are available. If a manufacturer
8 demonstrates to the department that State-specific data are not
9 available or feasible to generate, then the manufacturer may utilize
10 national data to calculate the average amount of postconsumer
11 recycled content contained in its products. The calculation of
12 averages may be based on a manufacturer's entire product line or
13 separated into product sub-lines, provided that all of the
14 manufacturer's products are accounted for in the calculations.

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

18 (1) prorate the national data based on market share or
19 population, to ensure that the percentage of postconsumer recycled
20 content calculated for products sold in New Jersey is the same
21 percentage as calculated for the nation; and

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

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

29

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

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

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

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

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

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

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

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

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

21
22 4. a. (1) Beginning two years after the effective date of this
23 act, all plastic beverage containers sold or offered for sale in the
24 State by a manufacturer shall contain, on average, at least 15
25 percent postconsumer recycled content.

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

30 b. The provisions of subsection a. of this section shall not
31 apply to a refillable beverage container. For the purposes of this
32 subsection, “refillable beverage container” means a beverage
33 container that holds 150 fluid ounces or less of beverage, and which
34 is routinely returned to the manufacturer to be refilled and resold.

35
36 5. a. Beginning two years after the effective date of this act, all
37 glass containers sold or offered for sale in the State by a
38 manufacturer shall contain, on average, at least 35 percent
39 postconsumer recycled content; except that, if a manufacturer
40 certifies to the department that its use of postconsumer recycled
41 content is made up of at least 50 percent mixed-color cullet, then
42 the glass containers shall only be required to contain, on average, at
43 least 25 percent postconsumer recycled content.

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

1 6. Beginning two years after the effective date of this act, all
2 paper carryout bags sold or offered for sale in the State by a
3 manufacturer shall contain, on average, at least 40 percent
4 postconsumer recycled content; except that a paper carryout bag
5 that holds eight pounds or less shall only be required to contain, on
6 average, at least 20 percent postconsumer recycled content.

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

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

13 b. beginning five years after the effective date of this act,
14 contain, on average, at least 40 percent postconsumer recycled
15 content.

16
17 8. a. All plastic trash bags sold or offered for sale in the State
18 by a manufacturer shall:

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

22 (2) beginning five years after the effective date of this act,
23 contain, on average, at least 20 percent postconsumer recycled
24 content.

25 b. The provisions of subsection a. of this section shall not
26 apply to a bag that is designed and manufactured to hold, store, or
27 transport hazardous waste or regulated medical waste. For the
28 purposes of this subsection, “hazardous waste” means any solid
29 waste defined as hazardous waste by the department pursuant to
30 P.L.1970, c.39 (C.13:1E-1 et seq.); and “regulated medical waste”
31 means the same as that term is defined in section 3 of P.L.1989,
32 c.34 (C.13:1E-48.3).

33
34 9. a. Notwithstanding the provisions of this act to the contrary,
35 the department may, pursuant to the “Administrative Procedure
36 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
37 of the postconsumer recycled content requirements established in
38 sections 3 through 8 of this act. In making an adjustment pursuant
39 to this section, the department shall consider:

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

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

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

1 (4) the capacity of recycling or processing infrastructure;
2 (5) the progress made by manufacturers in meeting the
3 postconsumer recycled content requirements; and

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

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

10

11 10. a. A package or container that contains milk products,
12 plant-based products with names that include the names of dairy
13 foods such as “milk,” medical food, or infant formula shall be
14 exempt from the postconsumer recycled content requirements of
15 this act.

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

22 (2) The department may, in its discretion, extend the five-year
23 exemption provided in paragraph (1) of this subsection. Upon
24 expiration of the exemption, a manufacturer shall be subject to the
25 applicable postconsumer recycled content requirements in effect at
26 the time of the expiration, unless the manufacturer applies to, and
27 receives from, the department a waiver pursuant to section 11 of
28 this act.

29 c. As used in this section:

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

33 “Milk product” means the same as that term is defined by the
34 United States Food and Drug Administration.

35

36 11. a. A manufacturer may apply to the department for a waiver
37 from the postconsumer recycled content requirements established
38 pursuant to this act. The department may grant a waiver pursuant to
39 this section if the manufacturer demonstrates, and the department
40 finds, in writing, that:

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

45 (2) it is not technologically feasible for the manufacturer to
46 achieve the postconsumer recycled content requirements;

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

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

7 b. In order to qualify for a waiver from the postconsumer recycled
8 content requirements of this act, a manufacturer shall submit to the
9 department documentation from a federal or State agency or certified
10 third-party expert, as appropriate, demonstrating that the manufacturer
11 cannot comply with the postconsumer recycled content requirements
12 for one of the reasons set forth in subsection a. of this section, and pay
13 a \$1,000 waiver fee. The department may modify the amount of the
14 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
15 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s
16 costs to administer, monitor, and enforce the provisions of this section.
17 Notwithstanding the provisions of this subsection to the contrary, a
18 manufacturer that demonstrates to the department that the
19 manufacturer’s gross revenue is below \$5,000,000 shall not be
20 required to pay the waiver fee established pursuant to this section.

21 c. The department may grant a waiver from the postconsumer
22 recycled content requirements for a period of not less than two years,
23 as determined by the department. The department shall publish any
24 determination to grant a waiver from the postconsumer recycled
25 content requirements on its Internet website. The department shall
26 develop a standardized form and procedure for manufacturers to apply
27 for a waiver pursuant to this section.

28

29 12. a. The department may require a manufacturer that is
30 temporarily exempt from the postconsumer recycled content
31 requirements of this act pursuant to subsection b. of section 10 of
32 this act, or that has submitted a request for a waiver pursuant to
33 section 11 of this act, to prepare and submit to the department an
34 alternative compliance plan that demonstrates that the manufacturer
35 is taking, and will continue to take, all feasible actions to ensure the
36 reduction, collection, recycling, and reuse of rigid plastic
37 containers, plastic beverage containers, glass containers, paper
38 carryout bags, plastic carryout bags, or plastic trash bags made from
39 virgin plastic, glass, or paper, as applicable, and to ensure the use of
40 postconsumer recycled content.

41 b. The department shall adopt, pursuant to the “Administrative
42 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
43 regulations setting forth the substantive requirements for an
44 alternative compliance plan required pursuant to subsection a. of
45 this section.

46 c. The department shall have the authority to approve or
47 disapprove an alternative compliance plan prepared and submitted
48 pursuant to this section, and to require a manufacturer to make any

1 revisions or modifications to its alternative compliance plan as the
2 department determines necessary, consistent with the provisions of
3 this act and the rules and regulations adopted by the department.

4 d. A manufacturer shall undertake all of the actions described
5 in the alternative compliance plan. Failure by a manufacturer to
6 comply with an approved alternative compliance plan shall
7 constitute a violation of this act.

8 e. The department may enter into a contract or other legally
9 binding agreement with one or more trade associations representing
10 manufacturers, which shall allow the trade association, in lieu of the
11 manufacturers, to prepare and submit an alternative compliance
12 plan pursuant to this section and to undertake the actions described
13 in the alternative compliance plan.

14
15 13. a. Beginning six months after the effective date of this act,
16 and annually thereafter, each manufacturer shall register with the
17 department, in a form and manner as prescribed by the department,
18 and pay an annual registration fee of \$1,000. The department may
19 modify the amount of the registration fee, pursuant to the
20 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.),
21 as necessary to reflect the department’s costs to implement,
22 administer, monitor, and enforce the provisions of this act. The
23 department shall establish an electronic registration process on its
24 Internet website; however, the lack of an electronic registration
25 process shall not negate the requirement for a manufacturer to register
26 pursuant to this subsection. Notwithstanding the provisions of this
27 subsection to the contrary: (1) a manufacturer that demonstrates to
28 the department that the manufacturer’s gross revenue is below
29 \$5,000,000 shall not be required to pay the registration fee
30 established pursuant to this section; or (2) a manufacturer that
31 produces or generates only products that are exempt from the
32 provisions of this act shall be required to register with the
33 department only once, and shall be exempt from the registration fee.

34 b. Notwithstanding the provisions of section 16 of this act to the
35 contrary, a manufacturer that fails to register with the department
36 pursuant to subsection a. of this section shall first receive a written
37 warning. A manufacturer that receives a written warning shall register
38 with the department no later than 90 days after receipt of the warning.
39 A manufacturer that receives a written warning and that fails to
40 register with the department within 90 days of receipt of the warning
41 shall be subject to the penalties set forth in section 16 of this act.

42
43 14. a. (1) Beginning three years and six months after the
44 effective date of this act, and annually thereafter, each manufacturer
45 shall certify, in writing, to the department whether or not the rigid
46 plastic containers, plastic beverage containers, glass containers,
47 paper carryout bags, plastic carryout bags, or plastic trash bags, as
48 applicable, sold, offered for sale, or used in association with the

1 sale or offer for sale of a product in the State, are in compliance
 2 with the postconsumer recycled content requirements of this act, or
 3 are otherwise exempt or have been approved for a waiver from the
 4 requirements. If the manufacturer claims an exemption from the
 5 requirements of this act, the manufacturer shall set forth the specific
 6 basis upon which the exemption is claimed, and submit such proof
 7 as the department determines necessary. The certification shall be
 8 signed by an authorized representative of the manufacturer. A
 9 manufacturer shall submit the certification, in the form and manner
 10 determined by the department, under penalty of perjury. The
 11 certification shall include the amount, in pounds, of virgin plastic,
 12 glass, or paper and the amount, in pounds, of postconsumer
 13 recycled material used by the manufacturer for any products subject
 14 to the requirements of this act, and any other information as the
 15 department deems necessary. The department shall establish an
 16 electronic certification process on its Internet website; however, the
 17 lack of an electronic certification process shall not negate the
 18 requirement for a manufacturer to certify its compliance pursuant to
 19 this subsection.

20 (2) The department may, in consultation with manufacturers,
 21 study: (a) whether there exist independent, third-party verification
 22 organizations that can verify manufacturers' compliance with the
 23 requirements of this act; and (b) appropriate accreditation standards
 24 for such organizations. The department may prepare and submit a
 25 report including its findings to the Governor, to the Legislature
 26 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the
 27 members of the Senate Environment and Energy Committee and the
 28 Assembly Environment and Solid Waste Committee, or their
 29 successors.

30 b. Each manufacturer shall maintain records, in a form
 31 prescribed by the department, that demonstrate, for all rigid plastic
 32 containers, plastic beverage containers, glass containers, paper
 33 carryout bags, plastic carryout bags, or plastic trash bags generated
 34 or produced by the manufacturer, whether and how the
 35 manufacturer has complied with the postconsumer recycled content
 36 requirements, or whether the manufacturer qualifies for an
 37 exemption or waiver from the postconsumer recycled content
 38 requirements. The department may adopt specific requirements for
 39 the records required to be maintained pursuant to this subsection
 40 and may request the records from a manufacturer at any time. A
 41 manufacturer shall submit records to the department no later than
 42 30 days after receipt of a request, unless the department extends that
 43 timeframe.

44 c. The department may audit or investigate a manufacturer, at
 45 any time, to assess the manufacturer's compliance with the
 46 requirements of this act. Each year, the department may audit, or
 47 cause to be audited, a random sample of manufacturers in order to
 48 determine compliance with this act. A manufacturer shall cooperate

1 fully with any audit or investigation conducted pursuant to this
2 section. The department may require a manufacturer to pay the
3 costs of an audit conducted pursuant to this subsection.

4 d. The department shall annually publish a list of registered
5 manufacturers, their compliance status, and other information the
6 department deems appropriate on the department's Internet website.
7

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

11 b. As used in this section:

12 "Polystyrene foam" means blown polystyrene and expanded and
13 extruded foams that are thermoplastic petrochemical materials
14 utilizing a styrene monomer and processed by a number of
15 techniques, including, but not limited to, fusion of polymer spheres
16 (expandable bead polystyrene), injection molding, foam molding,
17 and extrusion-blow molding (extruded foam polystyrene).

18 "Polystyrene loose fill packaging," commonly known as packing
19 peanuts, means a void-filling packaging product made of
20 polystyrene foam that is used as a packaging fill.
21

22 16. a. Whenever, on the basis of available information, the
23 commissioner finds that a person is in violation of this act, the
24 commissioner may take one or more of the following actions:

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

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

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

31 (4) bring an action for a civil penalty in accordance with
32 subsection e. of this section;

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

35 (6) notify the public of a manufacturer which, at any time during a
36 reporting period, was not in compliance with the requirements of this
37 act.

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

40 b. Whenever, on the basis of available information, the
41 commissioner finds that a person is in violation of this act, the
42 commissioner may issue an order: (1) specifying the provision or
43 provisions of this act, or the rule or regulation adopted pursuant
44 thereto, of which the person is in violation; (2) citing the action that
45 caused the violation; (3) requiring compliance with the provision of
46 this act or the rule or regulation adopted pursuant thereto of which the
47 person is in violation; and (4) giving notice to the person of his right to
48 a hearing on the matters contained in the order.

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

7 d. (1) The commissioner is authorized to impose a civil
8 administrative penalty of not less than \$1,000 and not more than
9 \$25,000 for each violation of this act or any rule or regulation adopted
10 pursuant thereto, and each day of the violation shall constitute an
11 additional, separate, and distinct offense. Any amount imposed under
12 this subsection shall be assessed pursuant to rules and regulations
13 adopted by the commissioner for violations of similar type,
14 seriousness, and duration. The commissioner shall have the authority
15 to assess penalties prior to the establishment of rules and regulations
16 governing penalties to the extent that such penalties are reasonable and
17 based on other violations of a similar type, seriousness, and duration.
18 No civil administrative penalty shall be imposed until after the person
19 has been notified by certified mail or personal service. The notice
20 shall include: a reference to the section of the act, rule, regulation,
21 order, or permit violated; a concise statement of the facts alleged to
22 constitute a violation; a statement of the amount of the civil
23 administrative penalties to be imposed; and a statement of the person's
24 right to a hearing. The person shall have 20 days from receipt of the
25 notice within which to deliver to the commissioner a written request
26 for a hearing. Subsequent to the hearing and upon finding that a
27 violation has occurred, the commissioner may issue a final order or
28 civil administrative penalty after imposing the amount of the fine
29 specified in the notice. If no hearing is requested, the notice shall
30 become a final order or a final civil administrative penalty upon the
31 expiration of the 20-day period. Payment of the penalty is due when a
32 final order is issued or when the notice becomes a final order or a final
33 civil administrative penalty. The authority to levy a civil
34 administrative penalty is in addition to all other enforcement
35 provisions in this act, and the payment of a civil administrative penalty
36 shall not be deemed to affect the availability of any other enforcement
37 provision in connection with the violation for which the penalty is
38 levied. A civil administrative penalty imposed under this subsection
39 may be compromised by the commissioner upon the posting of a
40 performance bond by the violator, or upon terms and conditions the
41 commissioner may establish by rule or regulation.

42 (2) With respect to violations related to the amount of recycled
43 content contained in a manufacturer's products, in lieu of the penalties
44 provided for in paragraph (1) of this subsection, the department shall
45 assess a civil administrative penalty on a per-pound basis for each
46 pound of virgin material that is used by a manufacturer in its products
47 where recycled material is required pursuant to this act. The

1 department shall establish the per-pound penalty in the rules and
2 regulations adopted to implement this act.

3 (3) In addition to the assessment of a civil administrative penalty,
4 the commissioner may, by administrative order and upon an
5 appropriate finding, assess a violator for the reasonable costs of any
6 investigation, inspection, or audit which led to the establishment of the
7 violation.

8 e. Any person who violates this act, an order issued pursuant to
9 subsection b. of this section, or a court order issued pursuant to
10 subsection c. of this section, or who fails to pay in full a civil
11 administrative penalty levied pursuant to subsection d. of this section,
12 shall be subject, upon order of a court, to a civil penalty not to exceed
13 \$50,000, and each day of the violation shall constitute an additional,
14 separate, and distinct offense. Any penalty imposed pursuant to this
15 subsection may be collected, and any costs incurred in connection
16 therewith may be recovered, in a summary proceeding pursuant to the
17 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et
18 seq.). The Superior Court and the municipal court shall have
19 jurisdiction to enforce the “Penalty Enforcement Law of 1999.”

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

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

36
37 17. Any proprietary information or trade secrets included in any
38 registration, certification, alternative compliance plan, corrective
39 action plan, or any other record submitted to the department
40 pursuant to this act shall not be made available to the general public
41 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as
42 the open public records act.

43
44 18. a. There is established in the Department of the Treasury a
45 special, nonlapsing account to be known as the “Recycling
46 Enhancement Penalty Account.” The account shall be credited with
47 all penalties collected pursuant to section 16 of this act, and any
48 interest or investment income earned on monies in the account.

1 Moneys in the account may be utilized by the department for
2 administrative expenses incurred in connection with the
3 enforcement or implementation of this act, for the public education
4 program required pursuant to subsection b. of this section, and for
5 other efforts to support recycling markets in the State as the
6 department may determine.

7 b. The department, in consultation with the Association of New
8 Jersey Recyclers and the organization under contract with the
9 department to administer the Clean Communities Program pursuant
10 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and
11 implement a Statewide public information and education program to
12 encourage, support, and increase the recycling of rigid plastic
13 containers, plastic beverage containers, glass containers, paper
14 carryout bags, plastic carryout bags, and any other containers or
15 packaging products, which may include, but need not be limited to,
16 television, radio, and print advertisements, signage, or classroom
17 education.

18
19 19. A municipality or county shall not adopt any rule,
20 regulation, code, or ordinance regulating the postconsumer recycled
21 content of rigid plastic containers, plastic beverage containers, glass
22 containers, paper carryout bags, plastic carryout bags, or plastic
23 trash bags after the effective date of this act. The provisions of this
24 act shall supersede and preempt any municipal or county rule,
25 regulation, code, or ordinance regulating the recycled content of
26 rigid plastic containers, plastic beverage containers, glass
27 containers, paper carryout bags, plastic carryout bags, or plastic
28 trash bags that was enacted prior to the effective date of this act.

29
30 20. Nothing in this act shall be construed to impose liability on
31 any news media that accept or publish advertising for any product
32 that would otherwise be subject to the provisions of this act.

33
34 21. Nothing in this act shall be construed to alter, limit, or
35 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-
36 99.126 et al.).

37
38 22. a. No later than two years after the effective date of this act,
39 the department shall adopt, pursuant to the “Administrative
40 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
41 regulations necessary for the implementation of this act.

42 b. Prior to the adoption of rules and regulations, and as necessary
43 thereafter, the department may develop guidance as necessary for the
44 implementation of this act. The department shall publish any such
45 guidance on its Internet website.

1 23. No later than five years after the effective date of this act,
2 the department shall prepare and submit a report to the Governor, to
3 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-
4 19.1), and to the members of the Senate Environment and Energy
5 Committee and the Assembly Environment and Solid Waste
6 Committee, or their successors, assessing the implementation of this
7 act, evaluating the act's effectiveness in stimulating the recycling
8 markets in the State, and making any recommendations for
9 legislative or administrative action necessary to further the purposes
10 of this act, including recommendations for whether and how the
11 State should encourage, require, or support other uses of recycled
12 material.

13

14 24. This act shall take effect immediately.