

SENATE, No. 3135

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED APRIL 15, 2024

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JOHN F. MCKEON

District 27 (Essex and Passaic)

SYNOPSIS

Requires producers of plastic packaging and certain other plastic products to reduce quantity of plastic sold; restricts additional substances under "Toxic Packaging Reduction Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning packaging and plastic products, supplementing
2 Title 13 of the Revised Statutes, and amending P.L.1991, c.520.

3

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

6

7 1. (New section) As used in sections 1 through 4 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill):

9 "Commissioner" means the Commissioner of Environmental
10 Protection.

11 "Covered material" means plastic packaging material, single-use
12 plastic products collected in the municipal solid waste stream, and
13 plastic products that have the effect of disrupting recycling
14 processes, including, but not limited to, single-use plastic items
15 such as straws, utensils, cups, plates, and plastic bags. "Covered
16 material" shall not include: (1) medical devices and packaging
17 which are included with products regulated as a drug, medical
18 device, or dietary supplement by the United States Food and Drug
19 Administration under the federal "Food, Drug, and Cosmetic Act,"
20 21 U.S.C. s.301 et seq., 21 C.F.R. s.3.2(e), or Pub.L. 103-417,
21 known as the Dietary Supplement Health and Education Act; (2)
22 animal biologics, including vaccines, bacterins, antisera, diagnostic
23 kits, and other products or biological origin, and other packaging
24 materials regulated by the United States Department of Agriculture
25 pursuant to 21 U.S.C. ss.151-159, known as the Virus-Serum-Toxin
26 Act; (3) packaging regulated by the federal "Insecticide, Fungicide,
27 and Rodenticide Act, 7 U.S.C. s.136 et seq. or any other applicable
28 federal law, rule, or regulation; (4) packaging used to contain
29 hazardous or flammable products regulated by the 2012 federal
30 Occupational Safety and Health Administration Hazard
31 Communications Standard, 29 C.F.R. s.1910.1200; (5) infant
32 formula as defined in 21 U.S.C. s.301 et seq.; and (6) medical foods
33 as defined in 21 U.S.C. s.301 et seq.

34 "Department" means the Department of Environmental
35 Protection.

36 "Packaging material" means a discrete material or category of
37 material, regardless of recyclability, including, but not limited to,
38 material types that are flexible, foam, or rigid, which are used for
39 the containment, protection, handling, delivery, transport,
40 distribution, or presentation of another product that is sold, offered
41 for sale, imported, or distributed in the State, including through an
42 internet transaction.

43 "Producer" means: (1) the in-State manufacturer of a covered
44 material, or a product that is packaged in a covered material, which
45 is sold, offered for sale, or distributed in the State, or (2) if the

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.

1 covered material or product is manufactured outside the State, the
2 producer is the person that first distributes the covered material, or
3 product packaged in a covered material, in or into the State for the
4 purposes of selling or offering for sale the covered material or
5 product, as applicable, in the State.

6 "Recycling" means a process by which materials which would
7 otherwise become solid waste are collected, separated or processed,
8 and returned to the economic mainstream in the form of raw
9 materials or products. "Recycling" shall not include: (1) energy
10 recovery or energy generation by any means, including, but not
11 limited to, combustion, incineration, pyrolysis, gasification,
12 solvolysis, or waste-to-fuel; (2) any chemical conversion process;
13 or (3) landfill disposal.

14 "Toxic Packaging Task Force" or "task force" means the task
15 force established by section 3 of P.L. , c. (C.) (pending
16 before the Legislature as this bill).

17 "Toxic substance" means a chemical or chemical class identified
18 by a state agency, federal agency, international intergovernmental
19 agency, accredited research university, or other scientific entity
20 deemed authoritative by the department on the basis of credible
21 scientific evidence as being one or more of the following: (1) a
22 chemical or chemical class that is a carcinogen, mutagen,
23 reproductive toxicant, immunotoxin, neurotoxicant, or endocrine
24 disruptor; (2) a chemical or chemical class that is persistent or
25 bioaccumulative; (3) a chemical or chemical class that may harm
26 the normal development of a fetus or child or cause other
27 developmental toxicity in humans or wildlife; (4) a chemical or
28 chemical class that may harm organs or cause other systemic
29 toxicity; (5) a chemical or chemical class that may have adverse air
30 quality impacts, adverse ecological impacts, adverse soil quality
31 impacts, or adverse water quality impacts; or (6) a chemical or
32 chemical class that the department has determined has equivalent
33 toxicity to the above criteria.

34

35 2. (New section) a. Each producer shall reduce the amount, by
36 weight, of covered material annually sold, offered for sale, or
37 distributed in the State, including as packaging for products sold,
38 offered for sale, or distributed in the State by the producer, as
39 compared to the baseline value of the sales during the 12-month
40 period prior to the effective date of P.L. , c. (C.) (pending
41 before the Legislature as this bill), according to the following
42 schedule:

43 (1) no later than two years after the effective date of P.L. ,
44 c. (C.) (pending before the Legislature as this bill), the
45 amount shall be reduced to 90 percent of the baseline value;

46 (2) no later than four years after the effective date of P.L. ,
47 c. (C.) (pending before the Legislature as this bill), the
48 amount shall be reduced to 80 percent of the baseline value;

- 1 (3) no later than six years after the effective date of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), the
3 amount shall be reduced to 70 percent of the baseline value;
- 4 (4) no later than eight years after the effective date of P.L. ,
5 c. (C.) (pending before the Legislature as this bill), the
6 amount shall be reduced to 60 percent of the baseline value; and
- 7 (5) no later than 10 years after the effective date of P.L. ,
8 c. (C.) (pending before the Legislature as this bill), the
9 amount shall be reduced to 50 percent of the baseline value.
- 10 b. Commencing two years after the effective date of P.L. ,
11 c. (C.) (pending before the Legislature as this bill), no
12 producer shall sell, offer for sale, or distribute in the State a
13 cardboard packaging material, or a product packaged in such a
14 material, unless the cardboard packaging material contains a
15 minimum of 75 percent postconsumer recycled content, by weight,
16 and is recycled at a rate of at least 75 percent.
17
- 18 3. (New section) a. There is established within the department
19 a Toxic Packaging Task Force. The duties of the task force shall be
20 to review the toxicity of packaging in the State, and to recommend
21 to the department the designation of additional toxic substances
22 which shall be subject to the same prohibitions as those substances
23 listed in subsection c. of section 4 of P.L.1991, c.520 (C.13:1E-
24 99.47).
- 25 b. The Toxic Packaging Task Force shall be composed of five
26 members as follows:
- 27 (1) the Commissioner of Environmental Protection, or the
28 commissioner's designee, who shall serve as chair;
- 29 (2) one representative of the packaging industry, appointed by
30 the commissioner;
- 31 (3) one representative of environmental organizations, appointed
32 by the commissioner; and
- 33 (4) two members of the public with significant professional or
34 academic expertise in public health and toxicology, one of whom
35 shall be appointed by the President of the Senate and one of whom
36 shall be appointed by the Speaker of the General Assembly.
- 37 c. Appointments to the task force shall be for a term of five
38 years. An appointed member shall not serve consecutive terms.
39 Any vacancy in the public membership of the council shall be
40 filled, within six months after the date on which the vacancy occurs,
41 in the same manner provided for the initial appointments.
- 42 d. The task force shall meet at least four times per year, at the
43 call of the chair, to review and recommend to the department
44 whether there are additional toxic substances or classes of toxic
45 substances that should be subject to the same prohibitions as those
46 substances listed in subsection c. of section 4 of P.L.1991, c.520
47 (C.13:1E-99.47).

1 e. No later than one year after the Toxic Packaging Task Force
2 recommends to the department an additional substance to restrict
3 pursuant to subsection d. of this section, the department shall
4 implement this recommendation by adopting rules and regulations
5 in accordance with the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.).
7

8 4. (New section) a. Whenever the Commissioner of
9 Environmental Protection finds that a person has violated the
10 provisions of section 2 of P.L. , c. (C.) (pending before
11 the Legislature as this bill), the commissioner may:

12 (1) issue an order, in accordance with subsection c. of this
13 section, requiring the violator to comply with the provisions of
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 or the rules or regulations adopted pursuant thereto;

16 (2) bring a civil action in accordance with subsection d. of this
17 section;

18 (3) levy a civil administrative penalty in accordance with
19 subsection e. of this section;

20 (4) bring an action for a civil penalty in accordance with
21 subsection f. of this section; or

22 (5) notify the public of a producer that is not in compliance with
23 the requirements of section 2 of P.L. , c. (C.) (pending
24 before the Legislature as this bill).

25 b. Pursuit of any of the remedies specified under subsection a. of
26 this section shall not preclude the seeking of any other remedy
27 specified.

28 c. Whenever the commissioner finds that a producer has
29 violated the provisions of section 2 of P.L. , c. (C.)
30 (pending before the Legislature as this bill), the commissioner may
31 issue an administrative enforcement order to the person: specifying
32 the provision or provisions that the person has violated; citing the
33 action that constituted the violation; requiring the person's
34 compliance with the provision violated; and giving notice of the
35 person's right to a hearing on the matters contained in the
36 administrative enforcement order. The person subject to the order
37 shall have 20 calendar days from receipt of the order within which
38 to deliver to the commissioner a written request for a hearing. After
39 the hearing, and upon finding that a violation has occurred, the
40 commissioner may issue a final order. If no hearing is requested,
41 the order shall become final after the expiration of the 20-day
42 period. A request for a hearing shall not automatically stay the
43 effect of the order.

44 d. The commissioner shall be authorized to institute a civil
45 action in Superior Court for appropriate relief from any violation of
46 the provisions of section 2 of P.L. , c. (C.) (pending
47 before the Legislature as this bill), or of any rule or regulation

1 adopted pursuant thereto. Such relief may include, singly or in
2 combination:

3 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

21

22 5. Section 4 of P.L.1991, c.520 (C.13:1E-99.47) is amended to
23 read as follows:

24 4. a. On or after January 1, 1993, no person shall sell, offer for
25 sale, or offer for promotional purposes in this State any package or
26 packaging component which includes, in the package itself or in
27 any packaging component, inks, dyes, pigments, adhesives,
28 stabilizers or any other additives containing any lead, cadmium,
29 mercury or hexavalent chromium which has been intentionally
30 introduced as a chemical element during manufacturing or
31 distribution as opposed to the incidental presence of any of these
32 elements.

33 b. On or after January 1, 1993, no person shall sell, offer for
34 sale, or offer for promotional purposes in this State any product
35 contained in a package which includes, in the package itself or in
36 any packaging component, inks, dyes, pigments, adhesives,
37 stabilizers or any other additives containing any lead, cadmium,
38 mercury or hexavalent chromium which has been intentionally
39 introduced as a chemical element during manufacturing or
40 distribution as opposed to the incidental presence of any of these
41 elements.

42 c. The sum of the concentration levels of lead, cadmium,
43 mercury or hexavalent chromium present in any package or
44 packaging component, which shall constitute an incidental
45 presence, shall not exceed the following levels:

46 (1) Not more than 600 parts per million by weight (0.06 **[%]**
47 percent) after January 1, 1993;

1 (2) Not more than 250 parts per million by weight (0.025 **[%]**
2 percent) after January 1, 1994;

3 (3) Not more than 100 parts per million by weight (0.01 **[%]**
4 percent) after January 1, 1995.

5 As used in this section **[, "incidental"]** :

6 "Incidental presence" means the presence **[or a regulated metal]**
7 of a substance as an unintended or undesired ingredient of a
8 package or packaging component.

9 **[As used in this section, "intentionally"]** "Intentionally
10 introduced" means the deliberate use of a **[regulated heavy metal]**
11 substance to provide a desired characteristic, appearance, or quality.
12 "Intentionally introduced" shall not include:

13 (1) Using **[a regulated metal]** lead, cadmium, mercury, or
14 hexavalent chromium as a processing agent or intermediate to
15 impart certain chemical or physical changes during manufacturing,
16 whereupon the incidental retention of a residue of **[a regulated**
17 **metal]** lead, cadmium, mercury, or hexavalent chromium in the
18 final package or packaging component is neither desired nor
19 deliberate, if the final package or packaging component is in
20 compliance with **[this act]** the provisions of P.L.1991, c.520
21 (C.13:1E-99.44 et seq.) ; or

22 (2) Using recycled materials as feed stock for the manufacture
23 of new packaging materials, where some portion of the recycled
24 materials may contain amounts of the regulated **[metals if]**
25 substance, provided that the new package or packaging component
26 is in compliance with [this act] the provisions of P.L.1991, c.520
27 (C.13:1E-99.44 et seq.) .

28 d. Commencing two years after the effective date of P.L. ,
29 c. (C.) (pending before the Legislature as this bill), no
30 person shall sell, offer for sale, or offer for promotional purposes in
31 this State any package or packaging component, or any product
32 contained in a package, which includes, in the package itself or in
33 any packaging component, inks, dyes, pigments, adhesives,
34 stabilizers or any other additives containing any of the following
35 substances, which has been intentionally introduced as a chemical
36 element during manufacturing or distribution as opposed to the
37 incidental presence of any of these elements:

38 (1) perfluoroalkyl and polyfluoroalkyl substances (PFAS);

39 (2) ortho-phthalates;

40 (3) bisphenols;

41 (4) halogenated and organophosphorus flame retardants (HFRS,
42 OPFRS)

43 (5) non-detectable pigments including carbon black;

44 (6) oxo-degradable additives including oxo-biodegradable
45 additives;

- 1 (7) UV-328, 2-(2h-benzotriazol-2-yl)-4, 6-di-tert-pentylphenol,
2 or any other ultraviolet light absorbers including benzophenone and
3 its derivatives;
4 (8) short-, medium-, and long-chained chlorinated paraffins;
5 (9) toxic metals other than lead, cadmium, mercury, and
6 hexavalent chromium;
7 (10) antimony trioxide;
8 (11) formaldehyde;
9 (12) perchlorate;
10 (13) toluene; or
11 (14) vinyl chloride, including polyvinylidene chloride.
12 e. The department may, upon the recommendation of the Toxic
13 Packaging Task Force established pursuant to section 3 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill),
15 designate additional substances to be prohibited from being
16 included in packaging and packaging components by adopting rules
17 and regulations in accordance with the "Administrative Procedure
18 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
19 (cf: P.L.1997, c.307, s.2)

20

21 6. The Department of Environmental Protection shall, in
22 accordance with the "Administrative Procedure Act," P.L.1968,
23 c.410 (C.52:14B-1 et seq.), adopt rules and regulations as necessary
24 to implement this act.

25

26 7. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill would require the producers of plastic packaging and
32 certain other plastic products sold in the State to reduce the amount,
33 by weight, of their packaging or products sold annually. The bill
34 would also restrict additional substances under the "Toxic
35 Packaging Reduction Act," P.L.1991, c.520 (C.13:1E-99.44 et seq.).

36 Specifically, the source reduction component of the bill would
37 apply to (1) plastic packaging, (2) single-use plastic products that
38 are collected in the municipal solid waste stream, and (3) plastic
39 products that have the effect of disrupting recycling processes,
40 including, but not limited to, single-use plastic items such as straws,
41 utensils, cups, plates, and plastic bags. The definition of "covered
42 material" in section 1 of the bill would exclude various types of
43 products, including those regulated under certain federal laws.
44 Under the bill, producers of the products described above (including
45 producers of products that are packaged in plastic packaging) would
46 be required to decrease the amount of the packaging or products
47 that are sold annually, by weight, such that, after two years, the
48 quantity sold is 90 percent of the baseline amount, after four years,

1 the quantity sold is 80 percent of the baseline amount, after six
2 years, the quantity sold is 70 percent of the baseline amount, after
3 eight years, the quantity sold is 60 percent of the baseline amount,
4 and, after 10 years, the quantity sold is 50 percent of the baseline
5 amount.

6 The bill would also prohibit the sale of cardboard packaging
7 materials (including products sold in cardboard packaging
8 materials) unless the cardboard contains at least 75 percent
9 postconsumer recycled content and is recycled at a rate of at least
10 75 percent. Producers who violate these requirements would be
11 liable to civil and civil administrative penalties of up to \$10,000 per
12 day of noncompliance.

13 The bill would also amend the "Toxic Packaging Reduction Act"
14 to prohibit the sale of packaging (and products that are packaged in
15 packaging) that contains certain substances, including toxic metals,
16 per- and polyfluoroalkyl substances (PFAS), and vinyl chloride.
17 Under current law, only packaging that contains lead, mercury,
18 cadmium, or hexavalent chromium is restricted under the "Toxic
19 Packaging Reduction Act." Persons who violate the provisions of
20 the "Toxic Packaging Reduction Act" are liable to civil and civil
21 administrative penalties of up to \$7,500 per day of noncompliance,
22 for a first offense.

23 Finally, the bill would also establish a Toxic Packaging Task
24 Force, composed of the DEP commissioner or a designee and four
25 members of the public, appointed by the DEP commission and the
26 presiding officers of the Legislature. The task force would be
27 charged with recommending additional chemicals to regulate under
28 the "Toxic Packaging Reduction Act." Under the bill, the DEP
29 would be required to adopt rules and regulations to regulate a
30 chemical no later than one year after the task force's
31 recommendation.