

ASSEMBLY, No. 2190

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

"Plastic Container Recycling Enhancement Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the recycling of rigid plastic containers, and
2 supplementing Title 13 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "Plastic
8 Container Recycling Enhancement Act."

9

10 2. The Legislature finds and declares that rigid plastic
11 containers represent a significant component of the solid waste
12 stream in New Jersey; and that the removal of rigid plastic
13 containers from the solid waste stream and the recycling of this
14 material will decrease the flow of solid waste to the State's landfills,
15 transfer stations and incineration facilities, aid in the conservation
16 and recovery of valuable resources, preserve natural resources and
17 create new markets for the recyclable materials separated by the
18 residents and businesses of this State, thus producing new jobs and
19 related business opportunities.

20 The Legislature further finds and declares that rigid plastic
21 containers, typically made from HDPE or PET resin, make up a
22 substantial portion of the rigid plastic container stream; that any
23 effort to reduce the flow of HDPE and PET containers to in-State
24 solid waste disposal facilities must necessarily include requirements
25 to achieve certain recycled content goals; and that these goals
26 should be increased over time in an orderly manner.

27 The Legislature, therefore, declares it to be in the environmental
28 and economic interests of the State of New Jersey to set minimum
29 recycled content standards and to encourage the recycling of rigid
30 plastic containers.

31

32 3. For the purposes of this act:

33 "Beverage" means milk, and nonalcoholic beverages, including
34 fruit juice, spring water, mineral water, soda water and similar
35 carbonated and noncarbonated soft drinks intended for human
36 consumption.

37 "Container manufacturer" means the producer or generator of a
38 rigid plastic container for a packaged product.

39 "Council" means the Plastic Container Recycling Council
40 established pursuant to section 10 of this act.

41 "Department" means the Department of Environmental
42 Protection.

43 "Personal care product" means hair care or skin care products
44 which are typically available for retail sale without a medical
45 prescription.

46 "Product manufacturer" means the producer or generator of a
47 product that is stored inside of a rigid plastic container.

1 "Recycled" means a product or material that has been re-used in
2 the production of another product and that would otherwise become
3 solid waste.

4 "Recycled content" means the portion of a container's weight that
5 is composed of recycled material as determined by a material
6 balance approach that calculates total recycled material input as a
7 percentage of total material input in the manufacture of the
8 container.

9 "Rigid plastic container" means any container composed
10 primarily of thermoplastic synthetic polymeric material, which has
11 a relatively finite shape or form with a minimum capacity of eight
12 ounces, or its equivalent volume, and a maximum capacity of six
13 and one-half United States gallons, or its equivalent volume, and
14 which is capable of maintaining its shape while holding, protecting,
15 storing, containing, transporting, displaying or selling a product.

16 "Small business enterprise" means any business which has its
17 principal place of business in this State, is independently owned and
18 operated, and employs the equivalent of fewer than 50 full-time
19 employees.

20

21 4. a. Every rigid plastic container manufactured, sold or
22 offered for sale in this State by a container manufacturer, or
23 designed and used to store a packaged product that is sold or
24 offered for sale in this State by a product manufacturer, shall have
25 at least 25% recycled content by January 1, 2011.

26 b. The following rigid plastic containers are exempt from the
27 recycled content requirement of this section:

28 (1) Any rigid plastic container manufactured by a small business
29 enterprise which manufactures rigid plastic containers with a
30 maximum capacity of two United States gallons, or its equivalent
31 volume, or less;

32 (2) Any rigid plastic container manufactured, sold or offered for
33 sale in this State by a personal care product container manufacturer,
34 or designed and used to store a personal care product that is sold or
35 offered for sale in this State by a product manufacturer;

36 (3) Any rigid plastic container manufactured, sold or offered for
37 sale in this State by a beverage container manufacturer, or designed
38 and used to store a beverage intended for human consumption that
39 is sold or offered for sale in this State by a product manufacturer;

40 (4) Rigid plastic containers produced in this State or out-of-state
41 which are destined for shipment to other destinations outside the
42 State and which remain with the products upon that shipment;

43 (5) Rigid plastic containers which contain toxic or hazardous
44 products regulated by the "Federal Insecticide, Fungicide, and
45 Rodenticide Act," 7 U.S.C. s.136 et seq.;

46 (6) Rigid plastic containers which contain drugs, medical
47 devices, cosmetics, food, medical food, or infant formula as defined

1 by the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. s.301 et
2 seq.; and

3 (7) Rigid plastic containers which are manufactured for use in
4 the shipment of hazardous materials and are prohibited from being
5 manufactured with used material by federal material specifications
6 set forth in Sections 178.509 and 178.522 of Title 49 of the Code of
7 Federal Regulations, or are subject to testing standards set forth in
8 Sections 178.600 to 178.609, inclusive, of Title 49 of the Code of
9 Federal Regulations, or to which recommendations of the United
10 Nations on the transport of dangerous goods are applicable.

11

12 5. a. The department may grant a waiver from the recycled
13 content requirement of subsection a. of section 4 of
14 P.L. , c. (C.) (pending before the Legislature as this bill) to
15 any container manufacturer or product manufacturer, or both, as
16 appropriate, if the department finds, in writing, that:

17 (1) It is technologically infeasible to use rigid plastic containers
18 that achieve the recycled content requirement; or

19 (2) The rigid plastic containers cannot meet the recycled content
20 requirement and remain in compliance with applicable provisions of
21 regulations adopted by the Food and Drug Administration or other
22 State or federal laws or regulations.

23 b. The department shall grant a waiver from the recycled
24 content requirement of subsection a. of section 4 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill) to any
26 container manufacturer or product manufacturer, or both, as
27 appropriate, if the department finds, in writing, that at least 50%, by
28 number, of a manufacturer's rigid plastic containers sold or offered
29 for sale in the State during calendar year 2011 will achieve the
30 recycled content requirement of subsection a. of section 4 of
31 P.L. , c. (C.) (pending before the Legislature as this bill) and
32 all of the manufacturer's rigid plastic containers will comply with
33 the requirement on or before January 1, 2012.

34 c. The department shall grant a temporary waiver, not to
35 exceed one year, from the recycled content requirement of
36 subsection a. of section 4 of P.L. , c. (C.) (pending before the
37 Legislature as this bill) for products packaged in rigid plastic
38 containers that are introduced and sold in this State after the
39 effective date of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41

42 6. a. The department shall grant an exemption from the
43 recycled content requirement of subsection a. of section 4 of
44 P.L. , c. (C.) (pending before the Legislature as this bill) to
45 any container manufacturer or product manufacturer, or both, as
46 appropriate, if the department finds, in writing, that a particular
47 rigid plastic container with a maximum capacity of one United
48 States gallon, or its equivalent volume, which is manufactured, sold

1 or offered for sale in this State by a container manufacturer, or
2 designed and used to store a packaged product that is sold or
3 offered for sale in this State by a product manufacturer, meets one
4 of the following criteria:

- 5 (1) The rigid plastic container is a reusable container;
 - 6 (2) The rigid plastic container is a refillable container; or
 - 7 (3) The rigid plastic container is a source reduced container.
- 8 b. As used in this section:

9 "Refillable container" means a rigid plastic container that the
10 department determines is routinely returned to and refilled by the
11 product manufacturer at least five times with the original product
12 packaged by the container;

13 "Reusable container" means a rigid plastic container that the
14 department determines is routinely reused by consumers at least
15 five times to store the original product packaged by the container;

16 "Source reduced container" means: (1) a rigid plastic container
17 for which the product manufacturer seeks compliance as of the
18 effective date of P.L. , c. (C.) (pending before the
19 Legislature as this bill), whose package weight per unit or use of
20 product has been reduced by 10% when compared with the
21 packaging used for that product by the product manufacturer during
22 the previous five calendar years; or (2) a rigid plastic container for
23 which the product manufacturer seeks compliance as of the
24 effective date of P.L. , c. (C.) (pending before the
25 Legislature as this bill), whose package weight per unit or use of
26 product has been reduced by 10% when compared with one of the
27 following: (a) the packaging used for the product by the product
28 manufacturer on the effective date of P.L. , c. (C.)
29 (pending before the Legislature as this bill); (b) the packaging used
30 for that product by the product manufacturer over the course of the
31 first full year of commerce in this State; or (c) the packaging used
32 in commerce that same year for similar products whose containers
33 have not been considered source reduced.

34 A rigid plastic container is not a source reduced container if the
35 packaging reduction was achieved by any of the following: a
36 different material type is substituted for a material that previously
37 constituted the principal material of the container; the container's
38 weight per unit or use of product was increased prior to the
39 effective date of P.L. , c. (C.) (pending before the
40 Legislature as this bill); or packaging changes that adversely affect
41 the potential for the rigid plastic container to be recycled or to be
42 manufactured utilizing recycled material.

43
44 7. a. On or before February 1, 2011, each container
45 manufacturer and product manufacturer shall submit to the
46 department a completed written certification verifying that the rigid
47 plastic containers manufactured, sold, or offered for sale in this
48 State by the container manufacturer, or the rigid plastic containers

1 used by the product manufacturer for its products that are sold or
2 offered for sale in this State, as appropriate, are: (1) in compliance
3 with the recycled content requirement of subsection a. of section 4
4 of P.L. , c. (C.) (pending before the Legislature as this bill);
5 (2) exempt pursuant to subsection b. of section 4 of
6 P.L. , c. (C.) (pending before the Legislature as this bill); (3)
7 eligible for a waiver pursuant to section 5 of P.L. , c. (C.)
8 (pending before the Legislature as this bill); or (4) eligible for an
9 exemption pursuant to section 6 of P.L. , c. (C.) (pending
10 before the Legislature as this bill).

11 b. The department shall, as part of its rulemaking, develop the
12 required certification forms. The certifications shall be submitted
13 under penalty of perjury, under the laws of the State of New Jersey.
14 Each container manufacturer and product manufacturer shall issue a
15 certification to the department on an annual basis. The annual
16 certification shall be submitted to the department on February 1 of
17 each consecutive year.

18
19 8. a. On or before January 1, 2011, the department shall,
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.), adopt rules and regulations as are necessary to
22 implement the provisions of this act.

23 b. The department may, in accordance with a fee schedule
24 adopted as a rule or regulation pursuant to the provisions of the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.), establish and charge reasonable fees for any of the services to
27 be performed in connection with this act, which shall cover the full
28 costs incurred by the department for the review of certification
29 forms and for other costs incurred by the department for
30 implementation of this act.

31
32 9. If any container manufacturer or product manufacturer
33 violates any of the provisions of this act, or any rule, regulation or
34 order adopted or issued pursuant thereto, the department may
35 institute a civil action in a court of competent jurisdiction for
36 injunctive or any other appropriate relief, to prohibit and prevent
37 this violation.

38 Any container manufacturer or product manufacturer who
39 violates the provisions of this act, or any rule, regulation or order
40 adopted pursuant thereto, is liable to a civil administrative penalty
41 of not more than \$10,000 for the first offense, not more than
42 \$20,000 for the second offense and not more than \$50,000 for the
43 third and each subsequent offense. If the violation is of a
44 continuing nature, each day during which it continues constitutes an
45 additional, separate and distinct offense. No civil administrative
46 penalty shall be levied except subsequent to the written notification
47 to the violator by certified mail or parcel service. The notice shall
48 include a reference to the section of this act, rule or regulation

1 violated; a concise statement of the facts alleged to constitute the
2 violation; a statement of the amount of civil penalties to be
3 imposed; and a statement of the violator's right to a hearing. The
4 violator shall have 20 days from receipt of the notice within which
5 to deliver to the department a written request for a hearing.
6 Subsequent to the hearing and upon a finding that violation has
7 occurred, the department may issue a final order assessing the
8 amount of the fine specified in the notice. If no hearing is
9 requested, the notice shall become a final order upon the expiration
10 of the 20 day period. Payment of the penalty is due when the final
11 order is issued or when a notice becomes a final order. The
12 authority to levy a civil administrative penalty, in addition to all
13 other enforcement provisions in this act, and the payment of a civil
14 administrative penalty, shall not be deemed to affect the availability
15 of any other enforcement provision in connection with the violation
16 for which the penalty is levied.

17 The department is authorized and empowered to compromise and
18 settle any claim for a penalty under this section in such amount in
19 the discretion of the department as may appear appropriate and
20 equitable under all of the circumstances.

21 Pursuant to this section, if the department determines that a
22 container manufacturer or product manufacturer has submitted a
23 certification as required pursuant to the provisions of 7 of
24 P.L. , c. (C.) (pending before the Legislature as this bill)
25 that is false or misleading, the department shall refer that entity to
26 the Attorney General for the prosecution of fraud.

27

28 10. a. There is established a Plastic Container Recycling
29 Council. The council shall consist of nine members appointed by
30 the Governor with the advice and consent of the Senate. Each of
31 these members shall be appointed for a term of two years. Of these
32 members, one shall be a representative of rigid plastic container
33 manufacturers, one shall be a representative of personal care
34 product manufacturers, one shall be a representative of beverage
35 container manufacturers, two shall be members of recognized
36 Statewide environmental organizations, one shall be a
37 representative of plastic container recyclers, one shall be a
38 representative of county recycling coordinators, one shall be a
39 representative of rigid plastic container manufacturers located in the
40 State, and one shall be a representative of rigid plastic container
41 manufacturers that is a small business enterprise.

42 b. A majority of the membership of the council shall constitute
43 a quorum for the transaction of council business. Action may be
44 taken and motions and resolutions adopted by the council at any
45 meeting thereof by the affirmative vote of a majority of the full
46 membership of the council. The council shall meet regularly as it
47 may determine.

1 The council shall appoint a chairperson from among its members
2 and such other officers as may be necessary. The council may,
3 within the limits of any funds appropriated or otherwise made
4 available to it for this purpose, appoint such staff or hire such
5 experts as it may require. Members of the council shall serve
6 without compensation, but the council may, within the limits of
7 funds appropriated or otherwise made available for such purposes,
8 reimburse its members for necessary expenses incurred in the
9 discharge of their official duties.

10 c. It shall be the duty of the council to study the technological
11 feasibility of increasing the recycled content of rigid plastic
12 containers and expanding the types of containers that may be
13 manufactured from recycled material; investigate the ways and
14 means to enhance the development and expansion of markets for
15 post-consumer recycled plastic, including State and local
16 purchasing and procurement practices; study the costs and
17 practicality of new recycled content technologies, including
18 successful approaches to recycled plastic materials development
19 employed by other states; and study improved processes designed to
20 address the concerns raised by those container manufacturers and
21 product manufacturers committed to packaging materials made
22 from one hundred percent virgin plastic.

23 The council shall recommend appropriate actions to promote,
24 educate and inform the public on the issues and benefits of
25 recycling rigid plastic containers and purchasing products packaged
26 in plastic containers made from recycled content.

27 d. The council shall issue a final report of its findings and
28 recommendations to the Governor and, pursuant to section 2 of
29 P.L.1991, c.164 (C.52:14-19.1), to the Legislature no later than two
30 years after its organizational meeting.

31
32 11. This act shall take effect immediately.
33
34

35 STATEMENT

36
37 This bill requires every rigid plastic container manufactured,
38 sold or offered for sale in this State to be composed of at least 25%
39 recycled content by January 1, 2011.

40 The recycled content requirement would not apply to any small
41 business enterprise which manufactures rigid plastic containers with
42 a maximum capacity of two United States gallons, or its equivalent
43 volume, or less. A "small business enterprise" means any business
44 which has its principal place of business in this State, is
45 independently owned and operated, and employs the equivalent of
46 fewer than 50 full-time employees.

47 The following rigid plastic containers would also be exempt
48 from the recycled content requirement:

1 (1) Any rigid plastic container manufactured, sold or offered for
2 sale in this State by a personal care product container manufacturer,
3 or designed and used to store a personal care product that is sold or
4 offered for sale in this State by a product manufacturer;

5 (2) Any rigid plastic container manufactured, sold or offered for
6 sale in this State by a beverage container manufacturer, or designed
7 and used to store a beverage intended for human consumption that
8 is sold or offered for sale in this State by a product manufacturer;

9 (3) Rigid plastic containers produced in this State or out-of-state
10 which are destined for shipment to other destinations outside the
11 State and which remain with the products upon that shipment;

12 (4) Rigid plastic containers which contain toxic or hazardous
13 products regulated by the “Federal Insecticide, Fungicide, and
14 Rodenticide Act”;

15 (5) Rigid plastic containers which contain drugs, medical
16 devices, cosmetics, food, medical food, or infant formula as defined
17 by the “Federal Food, Drug, and Cosmetic Act”; and

18 (6) Rigid plastic containers which are manufactured for use in
19 the shipment of hazardous materials and are prohibited from being
20 manufactured with used material by federal material specifications
21 set forth in Sections 178.509 and 178.522 of Title 49 of the Code of
22 Federal Regulations, or are subject to testing standards set forth in
23 Sections 178.600 to 178.609, inclusive, of Title 49 of the Code of
24 Federal Regulations, or to which recommendations of the United
25 Nations on the transport of dangerous goods are applicable.

26 The Department of Environmental Protection (DEP) may grant a
27 waiver from the recycled content requirement to any container
28 manufacturer or product manufacturer, or both, as appropriate, if
29 the DEP finds, in writing, one or more of the following:

30 (1) It is technologically infeasible to use rigid plastic containers
31 that achieve the applicable recycled content requirement; or

32 (2) The rigid plastic containers cannot meet the recycled content
33 plastic requirement and remain in compliance with applicable
34 provisions of regulations adopted by the Food and Drug
35 Administration or other State or federal laws or regulations.

36 The DEP is required to grant a waiver from the recycled content
37 requirement to any container manufacturer or product manufacturer,
38 or both, as appropriate, if the DEP makes a written finding that at
39 least 50%, by number, of a manufacturer's rigid plastic containers
40 sold or offered for sale in the State in the current calendar year
41 achieve the recycled content requirement and all of the
42 manufacturer's rigid plastic containers will comply with these
43 requirements on or before January 1, 2012.

44 The DEP is required to grant a temporary waiver, not to exceed
45 one year, from the recycled content requirement for products
46 packaged in rigid plastic containers that are introduced and sold in
47 this State after the effective date of the bill.

1 The DEP is required to grant an exemption from the recycled
2 content requirement to any container manufacturer or product
3 manufacturer, or both, as appropriate, if the DEP finds, in writing,
4 that a particular rigid plastic container with a maximum capacity of
5 one United States gallon, or its equivalent volume, which is
6 manufactured, sold or offered for sale in this State by a container
7 manufacturer, or designed and used to store a packaged product that
8 is sold or offered for sale in this State by a product manufacturer,
9 meets one of the following criteria:

10 (1) The rigid plastic container is a reusable container;

11 (2) The rigid plastic container is a refillable container; or

12 (3) The rigid plastic container is source reduced by 10%.

13 On or before February 1, 2011, each container manufacturer and
14 product manufacturer must submit to the DEP a completed written
15 certification verifying that the rigid plastic containers
16 manufactured, sold, or offered for sale in this State by the container
17 manufacturer, or the rigid plastic containers used by the product
18 manufacturer for its products that are sold or offered for sale in this
19 State are: (1) in compliance with the recycled content requirement;
20 (2) exempt from the requirement pursuant to one or more of the
21 criteria specified in the bill; (3) eligible for a waiver; or (4) eligible
22 for an exemption as a refillable, reusable or source reduced
23 container.

24 The DEP is required, as part of its rulemaking, to develop the
25 required certification forms. The certifications must be submitted
26 under penalty of perjury. Each container manufacturer and product
27 manufacturer would issue a certification to the DEP on an annual
28 basis. The annual certification must be submitted to the DEP on
29 February 1 of each consecutive year.

30 The DEP may, in accordance with a fee schedule adopted as a
31 rule or regulation pursuant to the provisions of the "Administrative
32 Procedure Act," establish and charge reasonable fees for any of the
33 services to be performed in connection with the bill, which are
34 intended to cover the full costs incurred by the DEP for the review
35 of certification forms and for other costs incurred in implementing
36 the act.

37 The bill establishes a Plastic Container Recycling Council. The
38 council would: study the technological feasibility of increasing the
39 recycled content of rigid plastic containers and expanding the types
40 of containers that may be manufactured from recycled material;
41 investigate the ways and means to enhance the development and
42 expansion of markets for post-consumer recycled plastic, including
43 State and local purchasing and procurement practices; study the
44 costs and practicality of new recycled content technologies,
45 including successful approaches to recycled plastic materials
46 development employed by other states; and study improved
47 processes designed to address the concerns raised by those
48 container manufacturers and product manufacturers committed to

1 packaging materials made from one hundred percent virgin plastic.
2 The council would recommend appropriate actions to promote,
3 educate and inform the public on the issues and benefits of
4 recycling rigid plastic containers and purchasing products packaged
5 in plastic containers made from recycled content. The council must
6 issue a final report of its findings and recommendations to the
7 Governor and the Legislature no later than two years after its
8 organizational meeting.