

[Second 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:**

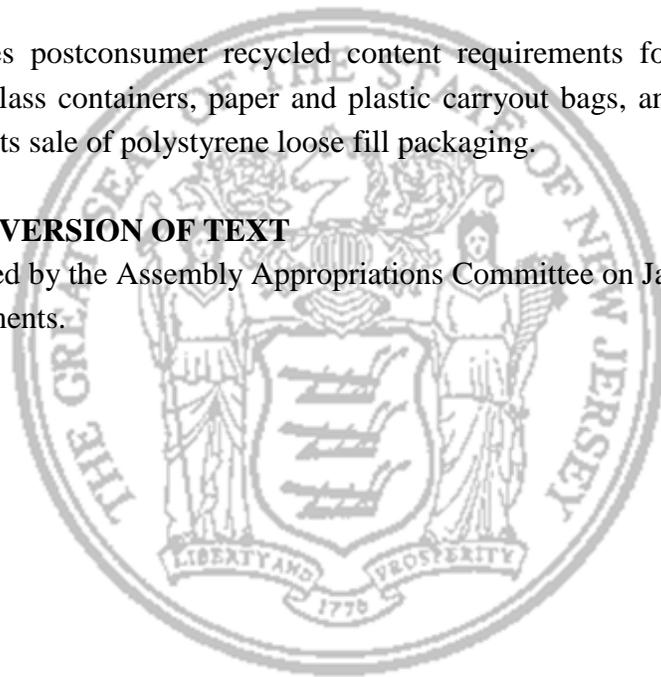
**Assemblyman Calabrese and Assemblywoman Vainieri Huttle**

**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 January 6, 2022, with amendments.



**(Sponsorship Updated As Of: 1/10/2022)**

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 <sup>2</sup>“Hot fill process” means a process to sterilize both a food  
28 product and its container during the food packaging process, in  
29 which the food product is heated to a temperature between 194 and  
30 203 degrees Fahrenheit and then injected into the container.<sup>2</sup>

31 <sup>1</sup>“Licensee” means a manufacturer or entity who licenses a brand  
32 and manufactures a product under that brand.<sup>1</sup>

33 “Manufacturer” means <sup>1</sup>**[a person that]**<sup>1</sup> : (1) <sup>1</sup>a person that<sup>1</sup>  
34 produces or generates a rigid plastic container, paper carryout bag,  
35 plastic carryout bag, or plastic trash bag that does not contain a  
36 product and that is sold or offered for sale in the State; <sup>1</sup>**[or]**<sup>1</sup> (2) <sup>1</sup>a  
37 person that<sup>1</sup> is the brand owner of a product that is sold or offered  
38 for sale in the State and that is packaged in a rigid plastic container,  
39 plastic beverage container, or glass container <sup>1</sup>, unless the brand  
40 owner identifies a licensee who agrees to accept responsibility  
41 under this act and the licensee informs the department in writing of  
42 the agreement; or (3) in the absence of a person meeting the criteria  
43 in (1) or (2) of this definition over whom the State may exercise  
44 jurisdiction, a person who imports or distributes a product into 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>Assembly AAP committee amendments adopted December 13, 2021.

<sup>2</sup>Assembly AAP committee amendments adopted January 6, 2022.

1 within the State that is sold or offered for sale in the State and that  
2 is packaged in a rigid plastic container, plastic beverage container,  
3 or glass container<sup>1</sup> . “Manufacturer” shall not include <sup>1</sup>[(1) a  
4 person who only licenses a brand or trademark for a product and  
5 does not produce, package, or sell the product in the State; and  
6 (2)]<sup>1</sup> a person who, at a single physical location, produces,  
7 packages, and sells a product directly to a consumer at retail, which  
8 may include a grocery store, restaurant, bar, cafeteria, café, food  
9 truck, food cart, or similar establishment.

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

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

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

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

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

35 “Plastic trash bag” means a bag that is made of plastic, is at least  
36 0.70 mils thick, and is designed and manufactured for use as a  
37 container to hold, store, or transport materials to be discarded,  
38 composted, or recycled, and includes, but is not limited to, a  
39 garbage bag, lawn or leaf bag, can-liner bag, kitchen bag, or  
40 compactor bag.

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

1 “Rigid plastic container” means a container made of plastic that  
2 has a relatively inflexible finite shape or form, has a minimum  
3 capacity of eight fluid ounces or its equivalent volume and a  
4 maximum capacity of five fluid gallons or its equivalent volume,  
5 and is capable of maintaining its shape while empty or while  
6 holding other products.

7  
8 2. a. A manufacturer shall achieve compliance with the  
9 postconsumer recycled content requirements of this act based on the  
10 average amount of postconsumer recycled content, by weight <sup>2</sup>or  
11 another metric, as determined by the department<sup>2</sup>, contained in its  
12 products. A manufacturer shall calculate the average amount of  
13 postconsumer recycled content contained in its products using data  
14 specific to products sold or offered for sale in New Jersey, if such  
15 data are available. If a manufacturer demonstrates to the  
16 department that State-specific data are not available or feasible to  
17 generate, then the manufacturer may utilize national data to  
18 calculate the average amount of postconsumer recycled content  
19 contained in its products. The calculation of averages may be based  
20 on a manufacturer's entire product line or separated into product  
21 sub-lines, provided that all of the manufacturer's products are  
22 accounted for in the calculations.

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

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

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

33 c. For the purposes of this section, “product” means a rigid  
34 plastic container, plastic beverage container, glass container, paper  
35 carryout bag, plastic carryout bag, or plastic trash bag that is subject  
36 to the postconsumer recycled content requirements of this act.

37  
38 3. a. (1) Beginning two years after the effective date of this  
39 act, all rigid plastic containers sold, offered for sale, or used in  
40 association with the sale or offer for sale of a product in the State  
41 by a manufacturer shall contain, on average, at least <sup>2</sup>[25] 10<sup>2</sup>  
42 percent postconsumer recycled content.

43 (2) Beginning five years after the effective date of this act, and  
44 every three years thereafter, the percentage of postconsumer  
45 recycled content required for rigid plastic containers pursuant to  
46 this section shall increase by <sup>2</sup>[five] 10<sup>2</sup> percent, until reaching 50  
47 percent.

1       b. A rigid plastic container shall be exempt from the  
2 postconsumer recycled content requirements of subsection a. of this  
3 section if it:

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

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

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

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

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

22       (6) is a refillable container or a reusable container. For the  
23 purposes of this paragraph, “refillable container” means a rigid  
24 plastic container that is routinely returned to and refilled by the  
25 manufacturer with the same product packaged by the container; and  
26 “reusable container” means a rigid plastic container that is routinely  
27 reused by consumers to store the original product packaged by the  
28 container.

29

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

34       (2) Beginning five years after the effective date of this act, and  
35 every three years thereafter, the amount of postconsumer recycled  
36 content required for plastic beverage containers pursuant to this  
37 section shall increase by five percent, until reaching 50 percent <sup>2</sup>;  
38 except that the postconsumer recycled content requirement for  
39 manufacturers who utilize a hot fill process shall not exceed 30  
40 percent<sup>2</sup>.

41       b. The provisions of subsection a. of this section shall not  
42 apply to a refillable beverage container. For the purposes of this  
43 subsection, “refillable beverage container” means a beverage  
44 container that holds 150 fluid ounces or less of beverage, and which  
45 is routinely returned to the manufacturer to be refilled and resold.

46

47       5. a. Beginning two years after the effective date of this act, all  
48 glass containers sold or offered for sale in the State by a

1 manufacturer shall contain, on average, at least 35 percent  
2 postconsumer recycled content; except that, if a manufacturer  
3 certifies to the department that its use of postconsumer recycled  
4 content is made up of at least 50 percent mixed-color cullet, then  
5 the glass containers shall only be required to contain, on average, at  
6 least 25 percent postconsumer recycled content.

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

12  
13 6. Beginning two years after the effective date of this act, all  
14 paper carryout bags sold or offered for sale in the State by a  
15 manufacturer shall contain, on average, at least 40 percent  
16 postconsumer recycled content; except that a paper carryout bag  
17 that holds eight pounds or less shall only be required to contain, on  
18 average, at least 20 percent postconsumer recycled content.

19  
20 7. All plastic carryout bags sold or offered for sale in the State  
21 by a manufacturer shall:

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

25 b. beginning five years after the effective date of this act,  
26 contain, on average, at least 40 percent postconsumer recycled  
27 content.

28  
29 8. a. All plastic trash bags sold or offered for sale in the State by  
30 a manufacturer shall:

31 (1) beginning two years after the effective date of this act, contain  
32 ~~2~~ **2**], on average, at least 10 percent] the following proportion of<sup>2</sup>  
33 postconsumer recycled content <sup>2</sup>:

34 (a) for plastic trash bags greater than 0.70 mils thick but less than  
35 0.80 mils thick, at least five percent;

36 (b) for plastic trash bags greater than 0.80 mils thick but less than  
37 1.00 mils thick, at least 10 percent; and

38 (c) for plastic trash bags equal to or greater than 1.00 mils thick, at  
39 least 20 percent<sup>2</sup> ; and

40 (2) beginning five years after the effective date of this act, contain  
41 ~~2~~ **2**], on average, at least 20 percent] the following proportion of<sup>2</sup>  
42 postconsumer recycled content <sup>2</sup>:

43 (a) for plastic trash bags greater than 0.70 mils thick but less than  
44 0.80 mils thick, at least 10 percent;

45 (b) for plastic trash bags greater than 0.80 mils thick but less than  
46 1.00 mils thick, at least 20 percent; and

1       (c) for plastic trash bags equal to or greater than 1.00 mils thick, at  
2 least 40 percent<sup>2</sup> .

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

10

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

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

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

21       (3) the availability of recycled material suitable for  
22 manufacturers to meet the postconsumer recycled content  
23 requirements, including the availability of high-quality recycled  
24 plastic or glass, and food-grade recycled plastic or glass;

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

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

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

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

34

35       10. a. A package or container that contains milk products,  
36 plant-based products with names that include the names of dairy  
37 foods such as “milk,” medical food, <sup>2</sup>food for special dietary use,<sup>2</sup>  
38 or infant formula shall be exempt from the postconsumer recycled  
39 content requirements of this act.

40       b. (1) A package or container that contains food shall be exempt  
41 from the postconsumer recycled content requirements of this act for  
42 a period of five years beginning on the effective date of this act,  
43 except that the exemption provided in this paragraph shall not apply  
44 to a plastic beverage container or a glass container filled with a  
45 beverage.

46       (2) The department may, in its discretion, extend the five-year  
47 exemption provided in paragraph (1) of this subsection. Upon  
48 expiration of the exemption, a manufacturer shall be subject to the

1 applicable postconsumer recycled content requirements in effect at  
2 the time of the expiration, unless the manufacturer applies to, and  
3 receives from, the department a waiver pursuant to section 11 of  
4 this act.

5 c. As used in this section:

6 <sup>2</sup>“Food for special dietary use” means the same as the term is  
7 defined in 21 U.S.C. s.350.<sup>2</sup>

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

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

13

14 11. a. A manufacturer may apply to the department for a waiver  
15 from the postconsumer recycled content requirements established  
16 pursuant to this act. The department may grant a waiver pursuant to  
17 this section if the manufacturer demonstrates, and the department  
18 finds, in writing, that:

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

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

25 (3) the manufacturer cannot comply with the postconsumer  
26 recycled content requirements due to inadequate availability of  
27 recycled material or a substantial disruption in the supply of recycled  
28 material; or

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

31 b. In order to qualify for a waiver from the postconsumer recycled  
32 content requirements of this act, a manufacturer shall submit to the  
33 department documentation from a federal or State agency or certified  
34 third-party expert, as appropriate, demonstrating that the manufacturer  
35 cannot comply with the postconsumer recycled content requirements  
36 for one of the reasons set forth in subsection a. of this section, and pay  
37 a \$1,000 waiver fee. The department may modify the amount of the  
38 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,  
39 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s  
40 costs to administer, monitor, and enforce the provisions of this section.  
41 Notwithstanding the provisions of this subsection to the contrary, a  
42 manufacturer that demonstrates to the department that the  
43 manufacturer’s gross revenue is below \$5,000,000 shall not be  
44 required to pay the waiver fee established pursuant to this section.

45 c. The department may grant a waiver from the postconsumer  
46 recycled content requirements for a period of not less than two years,  
47 as determined by the department. The department shall publish any  
48 determination to grant a waiver from the postconsumer recycled

1 content requirements on its Internet website. The department shall  
2 develop a standardized form and procedure for manufacturers to apply  
3 for a waiver pursuant to this section.  
4

5 12. a. The department may require a manufacturer that is  
6 temporarily exempt from the postconsumer recycled content  
7 requirements of this act pursuant to subsection b. of section 10 of  
8 this act, or that has submitted a request for a waiver pursuant to  
9 section 11 of this act, to prepare and submit to the department an  
10 alternative compliance plan that demonstrates that the manufacturer  
11 is taking, and will continue to take, all feasible actions to ensure the  
12 reduction, collection, recycling, and reuse of rigid plastic  
13 containers, plastic beverage containers, glass containers, paper  
14 carryout bags, plastic carryout bags, or plastic trash bags made from  
15 virgin plastic, glass, or paper, as applicable, and to ensure the use of  
16 postconsumer recycled content.

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

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

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

32 e. The department may enter into a contract or other legally  
33 binding agreement with one or more trade associations representing  
34 manufacturers, which shall allow the trade association, in lieu of the  
35 manufacturers, to prepare and submit an alternative compliance  
36 plan pursuant to this section and to undertake the actions described  
37 in the alternative compliance plan.  
38

39 13. a. Beginning six months after the effective date of this act,  
40 and annually thereafter, each manufacturer shall register with the  
41 department, in a form and manner as prescribed by the department,  
42 and pay an annual registration fee of \$1,000. The department may  
43 modify the amount of the registration fee, pursuant to the  
44 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.),  
45 as necessary to reflect the department’s costs to implement,  
46 administer, monitor, and enforce the provisions of this act. The  
47 department shall establish an electronic registration process on its  
48 Internet website; however, the lack of an electronic registration

1 process shall not negate the requirement for a manufacturer to register  
2 pursuant to this subsection. Notwithstanding the provisions of this  
3 subsection to the contrary: (1) a manufacturer that demonstrates to  
4 the department that the manufacturer's gross revenue is below  
5 \$5,000,000 shall not be required to pay the registration fee  
6 established pursuant to this section; or (2) a manufacturer that  
7 produces or generates only products that are exempt from the  
8 provisions of this act shall be required to register with the  
9 department only once, and shall be exempt from the registration fee.

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

18  
19 14. a. (1) Beginning three years and six months after the  
20 effective date of this act, and annually thereafter, each manufacturer  
21 shall certify, in writing, to the department whether or not the rigid  
22 plastic containers, plastic beverage containers, glass containers,  
23 paper carryout bags, plastic carryout bags, or plastic trash bags, as  
24 applicable, sold, offered for sale, or used in association with the  
25 sale or offer for sale of a product in the State, are in compliance  
26 with the postconsumer recycled content requirements of this act, or  
27 are otherwise exempt or have been approved for a waiver from the  
28 requirements. If the manufacturer claims an exemption from the  
29 requirements of this act, the manufacturer shall set forth the specific  
30 basis upon which the exemption is claimed, and submit such proof  
31 as the department determines necessary. The certification shall be  
32 signed by an authorized representative of the manufacturer. A  
33 manufacturer shall submit the certification, in the form and manner  
34 determined by the department, under penalty of perjury. The  
35 certification shall include the amount, in pounds, of virgin plastic,  
36 glass, or paper and the amount, in pounds, of postconsumer  
37 recycled material used by the manufacturer for any products subject  
38 to the requirements of this act, and any other information as the  
39 department deems necessary. The department shall establish an  
40 electronic certification process on its Internet website; however, the  
41 lack of an electronic certification process shall not negate the  
42 requirement for a manufacturer to certify its compliance pursuant to  
43 this subsection.

44 (2) The department may, in consultation with manufacturers,  
45 study: (a) whether there exist independent, third-party verification  
46 organizations that can verify manufacturers' compliance with the  
47 requirements of this act; and (b) appropriate accreditation standards  
48 for such organizations. The department may prepare and submit a

1 report including its findings to the Governor, to the Legislature  
2 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the  
3 members of the Senate Environment and Energy Committee and the  
4 Assembly Environment and Solid Waste Committee, or their  
5 successors.

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

20 c. The department may audit or investigate a manufacturer, at  
21 any time, to assess the manufacturer's compliance with the  
22 requirements of this act. Each year, the department may audit, or  
23 cause to be audited, a random sample of manufacturers in order to  
24 determine compliance with this act. A manufacturer shall cooperate  
25 fully with any audit or investigation conducted pursuant to this  
26 section. The department may require a manufacturer to pay the  
27 costs of an audit conducted pursuant to this subsection.

28 d. The department shall annually publish a list of registered  
29 manufacturers, their compliance status, and other information the  
30 department deems appropriate on the department's Internet website.

31

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

35 b. As used in this section:

36 "Polystyrene foam" means blown polystyrene and expanded and  
37 extruded foams that are thermoplastic petrochemical materials  
38 utilizing a styrene monomer and processed by a number of  
39 techniques, including, but not limited to, fusion of polymer spheres  
40 (expandable bead polystyrene), injection molding, foam molding,  
41 and extrusion-blow molding (extruded foam polystyrene).

42 "Polystyrene loose fill packaging," commonly known as packing  
43 peanuts, means a void-filling packaging product made of  
44 polystyrene foam that is used as a packaging fill.

45

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

- 1 (1) issue an order in accordance with subsection b. of this section
- 2 requiring the person to comply;
- 3 (2) bring a civil action in accordance with subsection c. of this
- 4 section;
- 5 (3) levy a civil administrative penalty in accordance with
- 6 subsection d. of this section;
- 7 (4) bring an action for a civil penalty in accordance with
- 8 subsection e. of this section;
- 9 (5) require a manufacturer to submit a corrective action plan
- 10 pursuant to subsection f. of this section; or
- 11 (6) notify the public of a manufacturer which, at any time during a
- 12 reporting period, was not in compliance with the requirements of this
- 13 act.

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

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

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

31 d. (1) The commissioner is authorized to impose a civil  
32 administrative penalty of not less than \$1,000 and not more than  
33 \$25,000 for each violation of this act or any rule or regulation adopted  
34 pursuant thereto, and each day of the violation shall constitute an  
35 additional, separate, and distinct offense. Any amount imposed under  
36 this subsection shall be assessed pursuant to rules and regulations  
37 adopted by the commissioner for violations of similar type,  
38 seriousness, and duration. The commissioner shall have the authority  
39 to assess penalties prior to the establishment of rules and regulations  
40 governing penalties to the extent that such penalties are reasonable and  
41 based on other violations of a similar type, seriousness, and duration.  
42 No civil administrative penalty shall be imposed until after the person  
43 has been notified by certified mail or personal service. The notice  
44 shall include: a reference to the section of the act, rule, regulation,  
45 order, or permit violated; a concise statement of the facts alleged to  
46 constitute a violation; a statement of the amount of the civil  
47 administrative penalties to be imposed; and a statement of the person's  
48 right to a hearing. The person shall have 20 days from receipt of the

1 notice within which to deliver to the commissioner a written request  
2 for a hearing. Subsequent to the hearing and upon finding that a  
3 violation has occurred, the commissioner may issue a final order or  
4 civil administrative penalty after imposing the amount of the fine  
5 specified in the notice. If no hearing is requested, the notice shall  
6 become a final order or a final civil administrative penalty upon the  
7 expiration of the 20-day period. Payment of the penalty is due when a  
8 final order is issued or when the notice becomes a final order or a final  
9 civil administrative penalty. The authority to levy a civil  
10 administrative penalty is in addition to all other enforcement  
11 provisions in this act, and the payment of a civil administrative penalty  
12 shall not be deemed to affect the availability of any other enforcement  
13 provision in connection with the violation for which the penalty is  
14 levied. A civil administrative penalty imposed under this subsection  
15 may be compromised by the commissioner upon the posting of a  
16 performance bond by the violator, or upon terms and conditions the  
17 commissioner may establish by rule or regulation.

18 (2) With respect to violations related to the amount of recycled  
19 content contained in a manufacturer's products, in lieu of the penalties  
20 provided for in paragraph (1) of this subsection, the department shall  
21 assess a civil administrative penalty on a per-pound basis for each  
22 pound of virgin material that is used by a manufacturer in its products  
23 where recycled material is required pursuant to this act. The  
24 department shall establish the per-pound penalty in the rules and  
25 regulations adopted to implement this act.

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

31 e. Any person who violates this act, an order issued pursuant to  
32 subsection b. of this section, or a court order issued pursuant to  
33 subsection c. of this section, or who fails to pay in full a civil  
34 administrative penalty levied pursuant to subsection d. of this section,  
35 shall be subject, upon order of a court, to a civil penalty not to exceed  
36 \$50,000, and each day of the violation shall constitute an additional,  
37 separate, and distinct offense. Any penalty imposed pursuant to this  
38 subsection may be collected, and any costs incurred in connection  
39 therewith may be recovered, in a summary proceeding pursuant to the  
40 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
41 seq.). The Superior Court and the municipal court shall have  
42 jurisdiction to enforce the "Penalty Enforcement Law of 1999."

43 f. The department is authorized to require a manufacturer that  
44 violates the provisions of this act, or any rule or regulation adopted  
45 pursuant thereto, to submit a corrective action plan describing how the  
46 manufacturer intends to come into compliance with the provisions of  
47 this act. The department shall adopt, pursuant to the "Administrative  
48 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and

1 regulations setting forth the substantive requirements for corrective  
2 action plans.

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

11

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

18

19 18. a. There is established in the Department of the Treasury a  
20 special, nonlapsing account to be known as the "Recycling  
21 Enhancement Penalty Account." The account shall be credited with  
22 all penalties collected pursuant to section 16 of this act, and any  
23 interest or investment income earned on monies in the account.  
24 Moneys in the account may be utilized by the department for  
25 administrative expenses incurred in connection with the  
26 enforcement or implementation of this act, for the public education  
27 program required pursuant to subsection b. of this section, and for  
28 other efforts to support recycling markets in the State as the  
29 department may determine.

30 b. The department, in consultation with the Association of New  
31 Jersey Recyclers and the organization under contract with the  
32 department to administer the Clean Communities Program pursuant  
33 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and  
34 implement a Statewide public information and education program to  
35 encourage, support, and increase the recycling of rigid plastic  
36 containers, plastic beverage containers, glass containers, paper  
37 carryout bags, plastic carryout bags, and any other containers or  
38 packaging products, which may include, but need not be limited to,  
39 television, radio, and print advertisements, signage, or classroom  
40 education.

41

42 19. A municipality or county shall not adopt any rule,  
43 regulation, code, or ordinance regulating the postconsumer recycled  
44 content of rigid plastic containers, plastic beverage containers, glass  
45 containers, paper carryout bags, plastic carryout bags, or plastic  
46 trash bags after the effective date of this act. The provisions of this  
47 act shall supersede and preempt any municipal or county rule,  
48 regulation, code, or ordinance regulating the recycled content of

1 rigid plastic containers, plastic beverage containers, glass  
2 containers, paper carryout bags, plastic carryout bags, or plastic  
3 trash bags that was enacted prior to the effective date of this act.  
4

5 20. Nothing in this act shall be construed to impose liability on  
6 any news media that accept or publish advertising for any product  
7 that would otherwise be subject to the provisions of this act.  
8

9 21. Nothing in this act shall be construed to alter, limit, or  
10 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-  
11 99.126 et al.).  
12

13 22. a. No later than two years after the effective date of this act,  
14 the department shall adopt, pursuant to the “Administrative Procedure  
15 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations  
16 necessary for the implementation of this act. <sup>2</sup>The rules and  
17 regulations shall also establish incentives, to the extent that funds are  
18 appropriated therefor, for manufacturers, recyclers, and retailers to  
19 collect and reuse polyethylene film.<sup>2</sup>

20 b. Prior to the adoption of rules and regulations, and as necessary  
21 thereafter, the department may develop guidance as necessary for the  
22 implementation of this act. The department shall publish any such  
23 guidance on its Internet website.  
24

25 23. No later than five years after the effective date of this act,  
26 the department shall prepare and submit a report to the Governor, to  
27 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
28 19.1), and to the members of the Senate Environment and Energy  
29 Committee and the Assembly Environment and Solid Waste  
30 Committee, or their successors, assessing the implementation of this  
31 act, evaluating the act’s effectiveness in stimulating the recycling  
32 markets in the State, and making any recommendations for  
33 legislative or administrative action necessary to further the purposes  
34 of this act, including recommendations for whether and how the  
35 State should encourage, require, or support other uses of recycled  
36 material.  
37

38 24. This act shall take effect immediately.