

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4676

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED NOVEMBER 15, 2021

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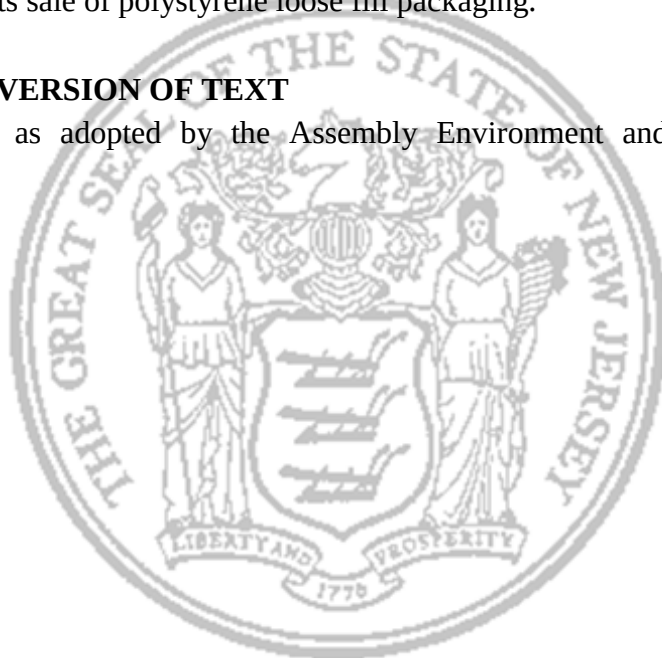
Assemblyman Calabrese

SYNOPSIS

Establishes postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Environment and Solid Waste Committee.



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 “Manufacturer” means a person that: (1) produces or generates a
28 rigid plastic container, paper carryout bag, plastic carryout bag, or
29 plastic trash bag that does not contain a product and that is sold or
30 offered for sale in the State; or (2) is the brand owner of a product
31 that is sold or offered for sale in the State and that is packaged in a
32 rigid plastic container, plastic beverage container, or glass
33 container. “Manufacturer” shall not include: (1) a person who only
34 licenses a brand or trademark for a product and does not produce,
35 package, or sell the product in the State; and (2) a person who, at a
36 single physical location, produces, packages, and sells a product
37 directly to a consumer at retail, which may include a grocery store,
38 restaurant, bar, cafeteria, café, food truck, food cart, or similar
39 establishment.

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

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

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

1 disposal. “Plastic” shall not include material that is designed to be
2 composted in a municipal or industrial aerobic composting facility
3 and that is certified by a recognized third-party independent
4 verification body as meeting the standards therefor established by
5 the American Society for Testing and Materials in ASTM D6400 or
6 ASTM D6868.

7 “Plastic beverage container” means an individual, separate
8 bottle, can, jar, carton, or other container made of plastic that is
9 hermetically sealed or made airtight with a metal or plastic cap, and
10 that contains a beverage. “Plastic beverage container” shall not
11 include any label, cap, closure, or other item affixed to the
12 container.

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

17 “Plastic trash bag” means a bag that is made of plastic, is at least
18 0.70 mils thick, and is designed and manufactured for use as a
19 container to hold, store, or transport materials to be discarded,
20 composted, or recycled, and includes, but is not limited to, a
21 garbage bag, lawn or leaf bag, can-liner bag, kitchen bag, or
22 compactor bag.

23 “Postconsumer recycled content” means a material or product
24 that has completed its intended end use and product life cycle, and
25 which has been separated from the solid waste stream for the
26 purposes of collection and recycling. “Postconsumer recycled
27 content” shall not include secondary waste material or materials and
28 by-products generated from, and commonly used within, an original
29 manufacturing and fabrication process.

30 “Rigid plastic container” means a container made of plastic that
31 has a relatively inflexible finite shape or form, has a minimum
32 capacity of eight fluid ounces or its equivalent volume and a
33 maximum capacity of five fluid gallons or its equivalent volume,
34 and is capable of maintaining its shape while empty or while
35 holding other products.

36
37 2. a. A manufacturer shall achieve compliance with the
38 postconsumer recycled content requirements of this act based on the
39 average amount of postconsumer recycled content, by weight,
40 contained in its products. A manufacturer shall calculate the
41 average amount of postconsumer recycled content contained in its
42 products using data specific to products sold or offered for sale in
43 New Jersey, if such data are available. If a manufacturer
44 demonstrates to the department that State-specific data are not
45 available or feasible to generate, then the manufacturer may utilize
46 national data to calculate the average amount of postconsumer
47 recycled content contained in its products. The calculation of
48 averages may be based on a manufacturer's entire product line or

1 separated into product sub-lines, provided that all of the
2 manufacturer's products are accounted for in the calculations.

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

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

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

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

17

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

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

27 b. A rigid plastic container shall be exempt from the
28 postconsumer recycled content requirements of subsection a. of this
29 section if it:

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

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

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

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

41 (5) is manufactured for use in the shipment of hazardous
42 materials and is: (a) prohibited from being manufactured with used
43 material by federal packaging material specifications set forth in 49
44 C.F.R. s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the
45 testing standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R.
46 s.178.609, or (c) is subject to the recommendations of the United
47 Nations on the transport of dangerous goods; or

1 (6) is a refillable container or a reusable container. For the
2 purposes of this paragraph, “refillable container” means a rigid
3 plastic container that is routinely returned to and refilled by the
4 manufacturer with the same product packaged by the container; and
5 “reusable container” means a rigid plastic container that is routinely
6 reused by consumers to store the original product packaged by the
7 container.

8
9 4. a. (1) Beginning two years after the effective date of this
10 act, all plastic beverage containers sold or offered for sale in the
11 State by a manufacturer shall contain, on average, at least 15
12 percent postconsumer recycled content.

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

17 b. The provisions of subsection a. of this section shall not
18 apply to a refillable beverage container. For the purposes of this
19 subsection, “refillable beverage container” means a beverage
20 container that holds 150 fluid ounces or less of beverage, and which
21 is routinely returned to the manufacturer to be refilled and resold.

22
23 5. a. Beginning two years after the effective date of this act, all
24 glass containers sold or offered for sale in the State by a
25 manufacturer shall contain, on average, at least 35 percent
26 postconsumer recycled content; except that, if a manufacturer
27 certifies to the department that its use of postconsumer recycled
28 content is made up of at least 50 percent mixed-color cullet, then
29 the glass containers shall only be required to contain, on average, at
30 least 25 percent postconsumer recycled content.

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

36
37 6. Beginning two years after the effective date of this act, all
38 paper carryout bags sold or offered for sale in the State by a
39 manufacturer shall contain, on average, at least 40 percent
40 postconsumer recycled content; except that a paper carryout bag
41 that holds eight pounds or less shall only be required to contain, on
42 average, at least 20 percent postconsumer recycled content.

43
44 7. All plastic carryout bags sold or offered for sale in the State
45 by a manufacturer shall:

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

1 b. beginning five years after the effective date of this act,
2 contain, on average, at least 40 percent postconsumer recycled
3 content.

4
5 8. a. All plastic trash bags sold or offered for sale in the State
6 by a manufacturer shall:

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

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

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

21
22 9. a. Notwithstanding the provisions of this act to the contrary,
23 the department may, pursuant to the “Administrative Procedure
24 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
25 of the postconsumer recycled content requirements established in
26 sections 3 through 8 of this act. In making an adjustment pursuant
27 to this section, the department shall consider:

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

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

32 (3) the availability of recycled material suitable for
33 manufacturers to meet the postconsumer recycled content
34 requirements, including the availability of high-quality recycled
35 plastic or glass, and food-grade recycled plastic or glass;

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

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

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

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

45

46 10. a. A package or container that contains milk products,
47 plant-based products with names that include the names of dairy
48 foods such as “milk,” medical food, or infant formula shall be

1 exempt from the postconsumer recycled content requirements of
2 this act.

3 b. (1) A package or container that contains food shall be exempt
4 from the postconsumer recycled content requirements of this act for
5 a period of five years beginning on the effective date of this act,
6 except that the exemption provided in this paragraph shall not apply
7 to a plastic beverage container or a glass container filled with a
8 beverage.

9 (2) The department may, in its discretion, extend the five-year
10 exemption provided in paragraph (1) of this subsection. Upon
11 expiration of the exemption, a manufacturer shall be subject to the
12 applicable postconsumer recycled content requirements in effect at
13 the time of the expiration, unless the manufacturer applies to, and
14 receives from, the department a waiver pursuant to section 11 of
15 this act.

16 c. As used in this section:

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

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

22

23 11. a. A manufacturer may apply to the department for a waiver
24 from the postconsumer recycled content requirements established
25 pursuant to this act. The department may grant a waiver pursuant to
26 this section if the manufacturer demonstrates, and the department
27 finds, in writing, that:

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

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

34 (3) the manufacturer cannot comply with the postconsumer
35 recycled content requirements due to inadequate availability of
36 recycled material or a substantial disruption in the supply of recycled
37 material; or

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

40 b. In order to qualify for a waiver from the postconsumer recycled
41 content requirements of this act, a manufacturer shall submit to the
42 department documentation from a federal or State agency or certified
43 third-party expert, as appropriate, demonstrating that the manufacturer
44 cannot comply with the postconsumer recycled content requirements
45 for one of the reasons set forth in subsection a. of this section, and pay
46 a \$1,000 waiver fee. The department may modify the amount of the
47 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
48 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s

1 costs to administer, monitor, and enforce the provisions of this section.
2 Notwithstanding the provisions of this subsection to the contrary, a
3 manufacturer that demonstrates to the department that the
4 manufacturer's gross revenue is below \$5,000,000 shall not be
5 required to pay the waiver fee established pursuant to this section.

6 c. The department may grant a waiver from the postconsumer
7 recycled content requirements for a period of not less than two years,
8 as determined by the department. The department shall publish any
9 determination to grant a waiver from the postconsumer recycled
10 content requirements on its Internet website. The department shall
11 develop a standardized form and procedure for manufacturers to apply
12 for a waiver pursuant to this section.

13

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

26 b. The department shall adopt, pursuant to the "Administrative
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
28 regulations setting forth the substantive requirements for an
29 alternative compliance plan required pursuant to subsection a. of
30 this section.

31 c. The department shall have the authority to approve or
32 disapprove an alternative compliance plan prepared and submitted
33 pursuant to this section, and to require a manufacturer to make any
34 revisions or modifications to its alternative compliance plan as the
35 department determines necessary, consistent with the provisions of
36 this act and the rules and regulations adopted by the department.

37 d. A manufacturer shall undertake all of the actions described
38 in the alternative compliance plan. Failure by a manufacturer to
39 comply with an approved alternative compliance plan shall
40 constitute a violation of this act.

41 e. The department may enter into a contract or other legally
42 binding agreement with one or more trade associations representing
43 manufacturers, which shall allow the trade association, in lieu of the
44 manufacturers, to prepare and submit an alternative compliance
45 plan pursuant to this section and to undertake the actions described
46 in the alternative compliance plan.

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

20 b. Notwithstanding the provisions of section 16 of this act to the
21 contrary, a manufacturer that fails to register with the department
22 pursuant to subsection a. of this section shall first receive a written
23 warning. A manufacturer that receives a written warning shall register
24 with the department no later than 90 days after receipt of the warning.
25 A manufacturer that receives a written warning and that fails to
26 register with the department within 90 days of receipt of the warning
27 shall be subject to the penalties set forth in section 16 of this act.

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

1 department deems necessary. The department shall establish an
2 electronic certification process on its Internet website; however, the
3 lack of an electronic certification process shall not negate the
4 requirement for a manufacturer to certify its compliance pursuant to
5 this subsection.

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

16 b. Each manufacturer shall maintain records, in a form
17 prescribed by the department, that demonstrate, for all rigid plastic
18 containers, plastic beverage containers, glass containers, paper
19 carryout bags, plastic carryout bags, or plastic trash bags generated
20 or produced by the manufacturer, whether and how the
21 manufacturer has complied with the postconsumer recycled content
22 requirements, or whether the manufacturer qualifies for an
23 exemption or waiver from the postconsumer recycled content
24 requirements. The department may adopt specific requirements for
25 the records required to be maintained pursuant to this subsection
26 and may request the records from a manufacturer at any time. A
27 manufacturer shall submit records to the department no later than
28 30 days after receipt of a request, unless the department extends that
29 timeframe.

30 c. The department may audit or investigate a manufacturer, at
31 any time, to assess the manufacturer's compliance with the
32 requirements of this act. Each year, the department may audit, or
33 cause to be audited, a random sample of manufacturers in order to
34 determine compliance with this act. A manufacturer shall cooperate
35 fully with any audit or investigation conducted pursuant to this
36 section. The department may require a manufacturer to pay the
37 costs of an audit conducted pursuant to this subsection.

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

41
42 15. a. Beginning two years after the effective date of this act, no
43 person shall sell or offer for sale in the State any polystyrene loose
44 fill packaging.

45 b. As used in this section:

46 "Polystyrene foam" means blown polystyrene and expanded and
47 extruded foams that are thermoplastic petrochemical materials
48 utilizing a styrene monomer and processed by a number of

1 techniques, including, but not limited to, fusion of polymer spheres
2 (expandable bead polystyrene), injection molding, foam molding,
3 and extrusion-blow molding (extruded foam polystyrene).

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

7
8 16. a. Whenever, on the basis of available information, the
9 commissioner finds that a person is in violation of this act, the
10 commissioner may take one or more of the following actions:

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

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

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

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

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

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

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

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

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

41 d. (1) The commissioner is authorized to impose a civil
42 administrative penalty of not less than \$1,000 and not more than
43 \$25,000 for each violation of this act or any rule or regulation adopted
44 pursuant thereto, and each day of the violation shall constitute an
45 additional, separate, and distinct offense. Any amount imposed under
46 this subsection shall be assessed pursuant to rules and regulations
47 adopted by the commissioner for violations of similar type,
48 seriousness, and duration. The commissioner shall have the authority

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

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

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

41 e. Any person who violates this act, an order issued pursuant to
42 subsection b. of this section, or a court order issued pursuant to
43 subsection c. of this section, or who fails to pay in full a civil
44 administrative penalty levied pursuant to subsection d. of this section,
45 shall be subject, upon order of a court, to a civil penalty not to exceed
46 \$50,000, and each day of the violation shall constitute an additional,
47 separate, and distinct offense. Any penalty imposed pursuant to this
48 subsection may be collected, and any costs incurred in connection

1 therewith may be recovered, in a summary proceeding pursuant to the
2 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et
3 seq.). The Superior Court and the municipal court shall have
4 jurisdiction to enforce the “Penalty Enforcement Law of 1999.”

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

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

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

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

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

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

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

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

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

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

27 b. Prior to the adoption of rules and regulations, and as necessary
28 thereafter, the department may develop guidance as necessary for the
29 implementation of this act. The department shall publish any such
30 guidance on its Internet website.

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

44
45 24. This act shall take effect immediately.