

ASSEMBLY, No. 5680

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Prohibits sale of certain packaging, paper, and plastic products unless producer implements plan to increase recycled content and recycling rates.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2021)

1 AN ACT concerning the content and disposal of certain products 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. As used in this act:

8 "Covered product" means a packaging product, paper product, or
9 plastic product, except that "covered product" shall not include:

10 (1) containers which contain toxic or hazardous products
11 regulated by the "Federal Insecticide, Fungicide, and Rodenticide
12 Act," 7 U.S.C. s.136 et seq.;

13 (2) containers which contain drugs, medical devices, cosmetics,
14 food, medical food, or infant formula as defined by the "Federal
15 Food, Drug, and Cosmetic Act," 21 U.S.C. s.301 et seq;

16 (3) containers which are manufactured for use in the shipment
17 of hazardous materials and are prohibited from being manufactured
18 with used material by federal material specifications set forth in
19 Sections 178.509 and 178.522 of Title 49 of the Code of Federal
20 Regulations, or are subject to testing standards set forth in Sections
21 178.600 to 178.609, inclusive, of Title 49 of the Code of Federal
22 Regulations;

23 (4) packaging intended for the protection or storage of a product
24 for at least five years;

25 (5) beverage containers;

26 (6) bound books; and

27 (7) products that could become unsafe or unsanitary to recycle
28 by virtue of their anticipated use.

29 "Department" means the Department of Environmental
30 Protection.

31 "Packaging product" means any part of a package or container,
32 including, but limited to, those composed of paper, cardboard,
33 plastic, glass, or metal, which is used to contain, protect, wrap, or
34 present products at any stage in the movement of the product from
35 the manufacturer to the consumer. "Packaging product" includes
36 secondary packaging intended for the consumer market and tertiary
37 packaging used for transportation or distribution.

38 "Paper product" means paper or a product composed of paper,
39 including, but not limited to, media for text or images, containers or
40 packaging used to deliver printed matter to the consumer, flyers,
41 brochures, booklets, catalogs, telephone directories, newspapers,
42 magazines, paper fiber, and paper used for writing or printing.

43 "Plastic product" means a product composed of any synthetic or
44 semisynthetic organic polymer, including, but not limited to,
45 polyethylene terephthalate, polyethylene, polyvinyl chloride,
46 polypropylene, polystyrene, and any polycarbonate. "Plastic
47 product" includes products composed of compostable plastic.

1 “Producer” means a person who imports or manufactures a
2 covered product under the person's own name or brand which is
3 sold or offered for sale in the State, or a person that sells, offers for
4 sale, or distributes a covered product in the State. “Producer” shall
5 not include a nonprofit organization, exempt from federal taxation
6 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,
7 or a local government unit.

8 “Producer responsibility organization” means a nonprofit
9 organization designated by a group of producers to act as an agent
10 on behalf of each producer to develop and implement a producer
11 responsibility plan pursuant to this act.

12
13 2. a. Commencing three years after the effective date of this act,
14 no producer shall sell, offer for sale, or distribute a covered product
15 for use in the State unless the producer, or a producer responsibility
16 organization acting as the producer’s designated agent, is engaged
17 in the implementation of, or has fully implemented, a producer
18 responsibility plan which has been approved by the department
19 pursuant to this act.

20 b. A producer shall be exempt from the requirements of this act
21 if the producer:

22 (1) generates less than \$1 million in annual revenues;

23 (2) generates less than one ton of covered products supplied to
24 State residents per year; or

25 (3) operates as a single point of retail sale and is not supplied or
26 operated as part of a franchise.

27 c. A producer may comply with the requirements of this act
28 individually, or form or join a producer responsibility organization
29 that fulfills the producer’s responsibilities pursuant to this act.

30
31 3. a. No later than one year after the effective date of this act, a
32 producer, or a producer responsibility organization acting as the
33 designated agent of the producer, shall develop and submit a
34 producer responsibility plan to the department. The producer
35 responsibility plan shall provide a reduction of the amount of virgin
36 material used in the production of covered products, an increase in
37 recycling rates for covered products, and an increase in the
38 producer’s responsibility for the end-of-life management of covered
39 products.

40 b. The producer responsibility plan shall cover a period of five
41 years, and shall be reviewed and updated every five years following
42 the approval of the original plan. The department may require the
43 review or revision of a plan prior to expiration of the five-year
44 period if the department has cause to believe the minimum post-
45 consumer recycled content rates, minimum recycling rates, or other
46 elements of the plan are not being met or followed by the producer,
47 or the producer responsibility organization, as applicable, or if there

1 has been a change in circumstances that warrants revision of the
2 plan.

3 The submitted plan shall include, but shall not be limited to:

4 (1) the name and contact information of the producer or
5 producer responsibility organization, if applicable, and the producer
6 or producers covered under the plan;

7 (2) the covered products for which the producer or producer
8 responsibility organization is responsible;

9 (3) a description of how comments of stakeholders were
10 considered in the development of the plan;

11 (4) a funding mechanism that allocates the costs to meet the
12 requirements of this act to producers that is sufficient to cover the
13 cost of developing, implementing, and updating the plan, and to
14 maintain a financial reserve sufficient to implement the plan in a
15 fiscally prudent and responsible manner;

16 (5) a description of the process for local government units to
17 recoup reasonable costs from the producer or producer
18 responsibility organization, including, as applicable, any
19 administrative, sorting, collection, transportation, or processing
20 costs, if the producer or producer responsibility organization uses
21 existing solid waste or collection services through a local
22 government unit to meet the minimum recycling rate for a covered
23 product;

24 (6) a proposed minimum post-consumer recycled content
25 requirement and minimum recycling rate for the producer's covered
26 products. If the producer generates covered products composed of
27 more than one material, a distinct minimum recycling rate shall be
28 proposed for each material, including paper, plastic, glass, and
29 metal, and each rate shall take into consideration current State and
30 federal rates;

31 (7) a set of criteria by which the producer will annually adjust
32 the plan's minimum recycling rates;

33 (8) a description of how the producer, or producer responsibility
34 organization, will meet the requirements for curbside collection
35 imposed by section 4 of this act;

36 (9) a description of the public outreach and education program
37 to be undertaken pursuant to section 5 of this act;

38 (10) a description of how the producer, or producer
39 responsibility organization, will meet or exceed the minimum
40 recycling rate for its covered products;

41 (11) a description of the process for end-of-life management of
42 each covered product, including recycling and disposal, using
43 environmentally sound management practices;

44 (12) a description of how a producer, or producer responsibility
45 organization, will reduce packaging through product design and
46 program innovations;

47 (13) a process to address concerns and questions from
48 government officials and consumers;

1 (14) a plan to label covered products with information to assist
2 consumers in responsibly managing and recycling covered products;
3 and

4 (15) any other information, as specified by the department in
5 rules and regulations adopted pursuant to section 9 of this act.

6 c. (1) No later than 120 days after receipt of a producer
7 responsibility plan, the department shall make a determination to
8 approve the plan as submitted, approve the plan with conditions, or
9 disapprove the plan. If the producer responsibility plan is
10 disapproved, the department shall inform the producer or producer
11 responsibility organization of the reasons for the disapproval. The
12 producer or producer responsibility organization shall have 30 days
13 thereafter to submit a revised producer responsibility plan to the
14 department. If the department does not provide notice of its
15 determination within 120 days after its receipt of a plan or a revised
16 plan, the plan shall be deemed to have been approved, and the
17 producer or producer responsibility organization, as the case may
18 be, shall proceed to implement the plan.

19 (2) The department shall verify the following features in
20 determining whether to approve a plan:

21 (a) the plan adequately addresses all elements described in
22 subsection b. of this section with sufficient detail to demonstrate
23 that the objective of the plan will be met;

24 (b) the producer has undertaken satisfactory consultation with
25 stakeholders and has provided an opportunity for stakeholder input
26 in the implementation and operation of the plan prior to submission
27 of the plan;

28 (c) the plan contains a funding mechanism which will cover the
29 entire cost of the program;

30 (d) the plan adequately provides funding for the costs of
31 collecting and processing covered products or reimbursing a local
32 government unit for increased solid waste or recycling costs, if
33 applicable;

34 (e) the plan takes into consideration a post-consumer content
35 rate and recycling rate that will create or enhance markets for
36 recycled materials; and

37 (f) the plan creates a convenient system for consumers to
38 recycle that is, at minimum, as convenient as the system in place on
39 the date of enactment of this act.

40 d. (1) No later than six months after the date the plan is
41 approved, the producer, or producer responsibility organization,
42 shall implement the approved plan.

43 (2) No later than one year after the department approves a
44 producer responsibility plan, the producer shall meet the minimum
45 post-consumer recycled material content rate and minimum
46 recycling rate for the covered product as approved by the
47 department in the producer responsibility plan.

1 4. a. In order to meet the minimum recycling rates established
2 pursuant to paragraph (6) of subsection b. of section 3 of this act, a
3 producer, or producer responsibility organization, may utilize
4 various means of collection, including curbside collection, depot
5 drop-off, or retailer take-back for its covered products. The
6 producer, or producer responsibility organization, shall make
7 available curbside or multi-family recycling collection services for
8 the duration of the producer responsibility plan for a covered
9 product to all single and multi-family residential units for which the
10 collection of source separated recyclable materials is provided by a
11 local government unit as of the date of enactment of this act. The
12 producer, or producer responsibility organization, may request that
13 the local government unit include covered products in the collection
14 of source separated recyclable materials, if:

15 (1) the covered product is suitable for residential curbside
16 recycling collection and can be effectively sorted by the facilities
17 receiving the curbside collected material;

18 (2) the provider of the residential curbside recycling service
19 agrees to include the covered product as an accepted material; and

20 (3) the provider of the residential curbside recycling service
21 agrees to the producer's or producer responsibility organization's
22 cost-share arrangement.

23 The failure of a local government unit to agree to collect a
24 covered product when the conditions specified in paragraphs (1)
25 through (3) of this subsection are not met shall not affect the
26 producer's responsibility to achieve the recycling rate for that
27 product, as specified in its producer responsibility plan.

28 b. A producer, or producer responsibility organization, may
29 provide means for the collection and recycling of its covered
30 products, including curbside collection, itself or through a contract
31 with a third party. A producer, or producer responsibility
32 organization, that utilizes the existing solid waste or recycling
33 services provided by a local government unit shall reimburse the
34 local government unit for increased solid waste or recycling costs
35 pursuant to paragraph (5) of subsection b. of section 3 of this act.

36 c. Any recycling services provided pursuant to this act by a
37 producer, producer responsibility organization, or third party under
38 contract with a producer or producer responsibility organization
39 shall not be construed to alter the responsibilities of local
40 government units under the "New Jersey Statewide Mandatory
41 Source Separation and Recycling Act," P.L.1987, c.102 (C.13:1E-
42 99.11 et al.).

43 d. Any solid waste or recycling services provided pursuant to
44 this act shall be carried out in accordance with applicable State laws
45 regulating the collection, disposal, or recycling of solid waste,
46 including, but not limited to, the "Solid Waste Management Act,"
47 P.L.1970, c.39 (C.13:1E-1 et seq.), and the "New Jersey Statewide
48 Mandatory Source Separation and Recycling Act," P.L.1987, c.102

1 (C.13:1E-99.11 et al.), and any rules or regulations adopted
2 pursuant thereto.

3

4 5. a. A producer, or a producer responsibility organization,
5 shall, no later than one year after the department approves its
6 producer responsibility plan, implement an outreach, education, and
7 communications campaign to consumers throughout the State
8 regarding:

9 (1) best end-of-life management practices for its covered
10 products;

11 (2) the location and availability of curbside or drop-off
12 collection opportunities for its covered products, as applicable;

13 (3) methods to prevent the littering of its covered products; and

14 (4) recycling or composting instructions, as applicable, that are:

15 (a) consistent Statewide, except as necessary to take into
16 account differences among local laws and processing capabilities;

17 (b) easy to understand; and

18 (c) easily accessible.

19 b. The outreach and education required pursuant to subsection
20 a. of this section shall:

21 (1) be designed to achieve the goals of the producer's producer
22 responsibility plan, including the prevention of contamination of
23 covered products, and meeting or exceeding the producer's
24 minimum post-consumer recycled content and recycling rates;

25 (2) be coordinated with other producers so as to avoid confusion
26 for consumers;

27 (3) include, at a minimum:

28 (a) consulting on education, outreach, and communications with
29 local governments and other stakeholders;

30 (b) coordinating with and assisting local municipal programs,
31 municipal contracted programs, solid waste collection companies,
32 and other entities providing pertinent services; and

33 (c) developing and providing outreach and education to low-
34 income and non-English-speaking residents in the State.

35

36 6. a. A producer responsibility organization shall establish
37 program participation charges for producers, which are sufficient to
38 cover all costs necessary to meet the requirements of this act.

39 b. A producer responsibility organization shall structure
40 program charges to provide producers with an incentive to reduce
41 waste and increase recycling compatibility, and with a disincentive
42 to increase the costs of the end-of-life management practices of the
43 products. The producer responsibility organization shall annually
44 adjust the charges to be paid by participating producers. At a
45 minimum, charges shall be variable based on:

46 (1) costs to provide curbside collection or other level of
47 consumer service that is, at minimum, as convenient as curbside

1 collection or as convenient as the waste collection system on the
2 date of enactment of this act;

3 (2) costs to process a producer's covered products to make them
4 suitable for sale to secondary material markets;

5 (3) whether the covered product would typically be recyclable
6 except that, as a consequence of the product's design, the product
7 has the effect of disrupting recycling processes, or includes labels,
8 inks, or adhesives containing heavy metals or other hazardous
9 waste;

10 (4) whether the covered products are specifically designed to be
11 reusable or refillable and have high reuse or refill rate; and

12 (5) the percentage of post-consumer recycled content contained
13 in the covered products, as verified either by the producer
14 responsibility organization or by an independent third-party
15 certified by the department, as long as the recycled content does not
16 disrupt the potential for future recycling.

17 c. A producer responsibility organization shall be responsible
18 for calculating, collecting from producers, and distributing to local
19 government units, reimbursement for reasonable costs for any
20 administrative, sorting, collection, transportation, or processing
21 costs, if the producer responsibility organization uses existing solid
22 waste or collection services through a local government unit to meet
23 the minimum recycling rate for a covered product. The cost
24 calculations shall be based on:

25 (1) the cost of residential curbside collection;

26 (2) the cost of on-site processing for each recyclable material;

27 (3) the cost of transportation of each material type;

28 (4) the revenue generated from recyclable materials; and

29 (5) any other cost factors, as specified by the department in
30 rules and regulations adopted pursuant to section 9 of this act.

31 d. To facilitate a producer responsibility organization's
32 calculation of Statewide recycling costs, participating local
33 government units shall report data related to their costs and the
34 value of collected materials, if any, to the producer responsibility
35 organization.

36

37 7. a. No later than one year after the approval of a producer
38 responsibility plan, and annually thereafter, the producer, or
39 producer responsibility organization, as applicable, shall submit a
40 report to the department that provides details about the
41 implementation of the plan during the previous year. The report
42 shall be posted on the department's website and on the website of
43 the producer, or producer responsibility organization. The annual
44 report shall include:

45 (1) a detailed description of the methods used to collect,
46 transport, and recycle covered products, including a description of
47 the collection methods made available to consumers and an
48 evaluation of the program's collection convenience;

- 1 (2) the total weight of covered products collected in the State;
- 2 (3) the weight and type of covered products collected in the
- 3 State, sorted by the method of disposition;
- 4 (4) a copy of a financial audit conducted by a qualified and
- 5 independent auditor, which includes the total cost of implementing
- 6 the producer responsibility plan;
- 7 (5) independently audited financial statements detailing all
- 8 deposits received and refunds paid by the producers covered by the
- 9 approved plan, and revenues and expenditures for any fees
- 10 associated with the approved plan that may be charged separately
- 11 and identified on the receipt of sale for the purchase of a covered
- 12 product;
- 13 (6) a detailed description of whether the program compensates
- 14 local government units, solid waste collection, sorting, and
- 15 reprocessing companies, or other entities for their recycling services
- 16 or other related services;
- 17 (7) samples of all educational materials provided to consumers
- 18 or other entities;
- 19 (8) a detailed list of efforts undertaken, and an evaluation of the
- 20 methods used, to disseminate educational materials; and
- 21 (9) recommendations, if any, for how the educational
- 22 component of the program can be improved.
- 23 b. The department shall not require public reporting of any
- 24 confidential information that the department finds to be protected
- 25 proprietary information. For purposes of this act, protected
- 26 proprietary information shall mean information that, if made public,
- 27 would divulge competitive business information, methods, or
- 28 processes entitled to protection as trade secrets of the producer or
- 29 producer responsibility organization, or information that would
- 30 reasonably hinder the producer or producer responsibility
- 31 organization's competitive advantage in the marketplace.
- 32
- 33 8. a. (1) A producer, or producer responsibility organization,
- 34 who violates this act, or any rule or regulation adopted pursuant
- 35 thereto, shall be subject, upon order of a court, to a civil penalty not
- 36 to exceed \$5,000 for a first offense. For a second violation
- 37 committed within 12 months of a prior violation, the producer or
- 38 producer responsibility organization shall be liable for a civil
- 39 penalty not to exceed \$10,000. For a third or subsequent violation
- 40 committed within 12 months of any prior violation, the producer or
- 41 producer responsibility organization shall be liable for a civil
- 42 penalty not to exceed \$20,000. Each day during which the violation
- 43 continues shall constitute a separate and distinct offense. Any
- 44 penalty imposed pursuant to this subsection may be collected, and
- 45 any costs incurred in connection therewith may be recovered, in a
- 46 summary proceeding pursuant to the "Penalty Enforcement Law of
- 47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court

1 and the municipal court shall have jurisdiction to enforce the
2 “Penalty Enforcement Law of 1999.”

3 (2) All producers participating in a producer responsibility
4 organization shall be jointly and severally liable for any penalties
5 assessed against the producer responsibility organization pursuant
6 to this section.

7 b. The Commissioner of Environmental Protection may institute
8 an action or proceeding for any violation of this act, or of any rule
9 or regulation adopted pursuant thereto, and the court may proceed
10 in the action in a summary manner. The department or the Attorney
11 General may institute a civil action for injunctive relief to enforce
12 this act and to prohibit and prevent a violation of this act, and the
13 court may proceed in the action in a summary manner.

14
15 9. The department shall adopt, pursuant to the "Administrative
16 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
17 regulations necessary to effectuate the purposes of this act. The
18 rules and regulations shall include, but shall not be limited to:

19 a. an application fee schedule to cover the department's costs in
20 administering the provisions of this act, and a method by which to
21 adjust the fee schedule annually; and

22 b. guidance necessary for a producer, or producer responsibility
23 organization, to develop and manage a funding mechanism to
24 implement a producer responsibility plan.

25
26 10. This act shall take effect immediately.
27
28

29 STATEMENT

30
31 This bill would require entities that produce certain packaging,
32 paper, and plastic products to develop and implement a producer
33 responsibility plan, which, among other things, establishes
34 minimum recycled content and recycling rate requirements for the
35 products. Beginning three years after the bill's enactment, the bill
36 would prohibit the entities from selling packaging, paper, and
37 plastic products in the State, unless they develop and implement a
38 producer responsibility plan that has been approved by the
39 Department of Environmental Protection (DEP).

40 Under the bill, "packaging product" includes any part of a
41 package or container which is used to contain, protect, wrap, or
42 present products at any stage in the movement of the product from
43 the manufacturer to the consumer. Similarly, the bill defines "paper
44 product" and "plastic product" broadly to include most products
45 composed of these materials. However, the bill contains several
46 exemptions, as enumerated in the definition of "covered product,"
47 in section 1 of the bill, including for products used to contain toxic

1 products, drugs, medical devices, cosmetics, food, medical food, or
2 infant formula.

3 The bill would apply to "producers," defined as a person who
4 imports or manufactures a covered product under the person's own
5 name or brand which is sold or offered for sale in the State, or a
6 person that sells, offers for sale, or distributes a covered product in
7 the State. However, certain producers are exempted from the bill's
8 provisions, as enumerated in section 2, including producers that
9 operate a single point of retail, and producers that generate less than
10 \$1 million in annual revenues or supply less than one ton of covered
11 products to residents of the State annually.

12 Under the bill, a producer would be required to develop and
13 submit to the DEP a producer responsibility plan no later than one
14 year after the bill's enactment. The bill would authorize producers
15 to cooperatively form a "producer responsibility organization," a
16 nonprofit organization that would develop and assist in
17 implementing the plan. The plan would cover a period of five
18 years, and would provide for the end-of-life management of the
19 producer's covered products. The bill would establish various
20 requirements for the content of plan, as enumerated in section 3 of
21 the bill, including a funding mechanism, minimum recycled content
22 and recycling rate requirements, a description of the process for
23 end-of-life management of each covered product, and a description
24 of how the producer will reduce packaging through product design
25 and program innovations. The DEP would have 120 days to
26 approve, conditionally approve, or disapprove the plan. If
27 approved, the producer would be required to implement the plan six
28 months after the date the plan is approved and to meet the minimum
29 recycled content and recycling rates one year after the plan is
30 approved.

31 In order to meet the minimum recycling rates established by a
32 producer responsibility plan, the bill would require that producers
33 provide curbside pickup for their products, if the product is suitable
34 for curbside pickup and if a provider of curbside recycling services
35 agrees to pick up the product. The bill would also authorize
36 producers to work with local government units to expand their
37 existing recycling services. The bill would require any producer
38 that does so to develop a process for the reimbursement of local
39 government units of reasonable costs from the producer including,
40 as applicable, any administrative, sorting, collection, transportation,
41 or processing costs. The bill would also authorize producers to
42 establish private systems of collection and recycling, including
43 drop-off locations and retailer take-back schemes.

44 The bill would require producers to implement an outreach,
45 education, and communications campaign to consumers throughout
46 the State no later than one year after the department approves its
47 producer responsibility plan. The bill would establish various items
48 of required content for the campaign, as enumerated in section 5 of

1 the bill, including best end-of-life management practices for the
2 producer's covered products, and the location and availability of
3 curbside or drop-off collection opportunities for covered products.

4 The bill would require producer responsibility organizations to
5 establish program participation charges for producers that are
6 sufficient to cover all costs necessary to meet the requirements of
7 the bill. The bill would also require that producer responsibility
8 organizations structure the program charges to provide producers
9 with an incentive to reduce waste and increase recycling
10 compatibility, and with a disincentive to increase the costs of the
11 end-of-life management practices of the products. The program
12 charges would be required to be adjusted annually, based on various
13 criteria enumerated in section 6 of the bill. The bill would also
14 make producer responsibility organizations responsible for
15 calculating, collecting, and distributing funds to local government
16 units to reimburse the local government unit for any additional
17 expenditures caused by the implementation of the organization's
18 producer responsibility plan.

19 Under the bill, a producer would be required to submit an annual
20 report to the DEP providing information on the implementation of
21 the producer responsibility plan. The report would be required to
22 be posted on the producer's website and the DEP's website, and
23 would be required to include, among other things, a copy of a
24 financial audit conducted by a qualified and independent auditor,
25 which contains the total cost of implementing the producer
26 responsibility plan.

27 Finally, the bill would establish civil penalties for violating the
28 bill's provisions. Any person who violates the bill's provisions
29 would be subject to a civil penalty not to exceed \$5,000 for a first
30 offense, \$10,000 for a second violation committed within 12
31 months of a prior violation, and \$20,000 for a third or subsequent
32 violation committed within 12 months of any prior violation. The
33 bill would also authorize the department or the Attorney General to
34 institute a civil action for injunctive relief to enforce the provisions
35 of the bill and to prohibit and prevent a violation.