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Sponsored by:

Senator BOB SMITH

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Senator LINDA R. GREENSTEIN

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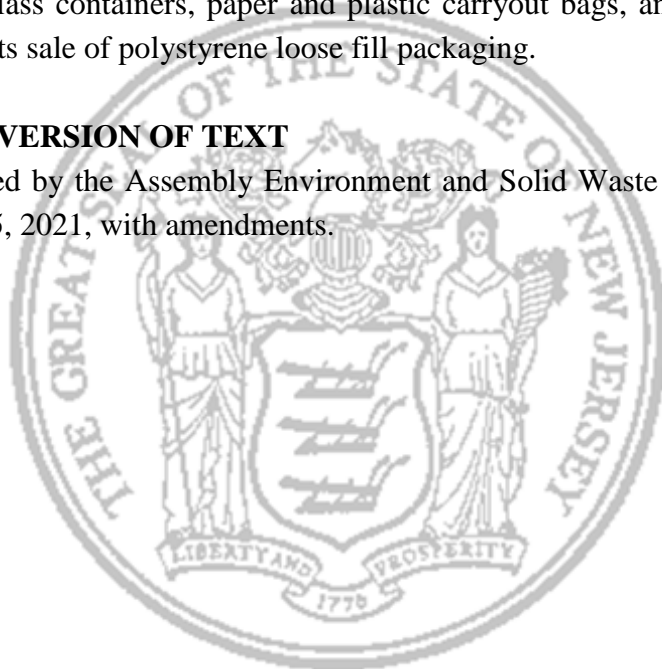
Senator Gill

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 Environment and Solid Waste Committee on November 15, 2021, with amendments.



(Sponsorship Updated As Of: 6/21/2021)

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 products
10 are in liquid, ready-to-drink form, and are intended for human
11 consumption: ²**[milk and milk products;]**² beer and other malt
12 beverages; wine and distilled spirit coolers; carbonated water,
13 including soda and carbonated mineral water; noncarbonated water,
14 including noncarbonated mineral water; carbonated soft drinks;
15 noncarbonated soft drinks and sport drinks; noncarbonated fruit drinks
16 that contain any percentage of fruit juice; coffee and tea drinks;
17 carbonated fruit drinks; and vegetable juice.

18 “Commissioner” means the Commissioner of Environmental
19 Protection.

20 “Department” means the Department of Environmental Protection.

21 “Food” means articles used for food or drink for consumption by
22 humans or other animals, and articles used for components of any such
23 article.

24 “Glass container” means a container made of glass that is filled
25 with a food or beverage.

26 “Manufacturer” means a person that: (1) produces or generates a
27 rigid plastic container, ¹**[plastic beverage container, glass container,]**¹
28 paper carryout bag, plastic carryout bag, or plastic trash bag that ¹does
29 not contain a product and that¹ is sold or offered for sale in the State;
30 or (2) ¹**[produces or generates]** is the brand owner of¹ a product that is
31 sold or offered for sale in the State and that is packaged in a rigid
32 plastic container, plastic beverage container, or glass container.

33 “Manufacturer” shall not include ³: (1) a person who only licenses a
34 brand or trademark for a product and does not produce, package, or
35 sell the product in the State; and (2)³ a person who, at a single physical
36 location, produces, packages, and sells a product directly to a
37 consumer at retail, ¹**[including, but not limited to,]** which may
38 include¹ a grocery store, restaurant, bar, cafeteria, café, food truck,
39 food cart, or similar 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, association,
44 society, firm, partnership, or joint stock company.

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:

¹Senate SBA committee amendments adopted June 17, 2021.

²Senate floor amendments adopted June 21, 2021.

³Assembly AEN committee amendments adopted November 15, 2021.

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

10 “Plastic beverage container” means an individual, separate bottle,
11 can, jar, carton, or other container made of plastic that is hermetically
12 sealed or made airtight with a metal or plastic cap, and that contains a
13 beverage. ²“Plastic beverage container” shall not include any label,
14 cap, closure, or other item affixed to the container.²

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

19 “Plastic trash bag” means a bag that is made of plastic, is at least
20 0.70 mils thick, and is designed and manufactured for use as a
21 container to hold, store, or transport materials to be discarded,
22 composted, or recycled, and includes, but is not limited to, a garbage
23 bag, ¹**composting bag,**¹ lawn or leaf bag, can-liner bag, kitchen bag,
24 or compactor bag.

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

32 “Rigid plastic container” means a container made of plastic that has
33 a relatively inflexible finite shape or form, has a minimum capacity of
34 eight fluid ounces or its equivalent volume and a maximum capacity of
35 five fluid gallons or its equivalent volume, and is capable of
36 maintaining its shape while empty or while holding other products.
37

38 2. a. A manufacturer shall achieve compliance with the
39 postconsumer recycled content requirements of this act based on the
40 average amount of postconsumer recycled content, by weight,
41 contained in its products. ¹**For the first five years after the**
42 **effective date of this act, a] A¹ manufacturer ¹may shall¹**
43 **calculate the average amount of postconsumer recycled content**
44 **contained in its products using data specific to products sold or**
45 **offered for sale in New Jersey ¹or nationwide. Beginning five**
46 **years after the effective date of this act, a manufacturer shall**
47 **calculate the average amount of postconsumer recycled content in**

1 its products using data specific to products sold or offered for sale
2 in New Jersey only. 1 , if such data are available. If a manufacturer
3 demonstrates to the department that State-specific data are not
4 available or feasible to generate, then the manufacturer may utilize
5 national data to calculate the average amount of postconsumer
6 recycled content contained in its products.¹ The calculation of
7 averages may be based on a manufacturer's entire product line or
8 separated into product sub-lines, provided that all of the
9 manufacturer's products are accounted for in the calculations.

10 b. 1If a manufacturer relies on national data to calculate the
11 average amount of postconsumer recycled content contained in its
12 products, the manufacturer shall:

13 (1) prorate the national data based on market share ²[.] or²
14 population, ²[or another method as may be determined by the
15 department,]² to ensure that the percentage of postconsumer
16 recycled content calculated for products sold in New Jersey is the
17 same percentage as calculated for the nation; and

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

21 c.¹ For the purposes of this section, "product" means a rigid
22 plastic container, plastic beverage container, glass container, paper
23 carryout bag, plastic carryout bag, or plastic trash bag that is subject
24 to the postconsumer recycled content requirements of this act.

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

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

35 b. ²[Beginning two years after the effective date of this act, a
36 manufacturer shall label each rigid plastic container with ¹: (1)¹ the
37 name of the manufacturer and the city, state, and country where the
38 manufacturer is located ¹which may be designated as the location of
39 the manufacturer's corporate headquarters; or (2) a uniform
40 resource locator (URL) or quick response (QR) code to an Internet
41 website that contains the information required pursuant to
42 paragraph (1) of this subsection¹.

43 c.² A rigid plastic container shall be exempt from the
44 postconsumer recycled content requirements of subsection a. of this
45 section if it:

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

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

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

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

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

17 (6) is a refillable container or a reusable container. For the
18 purposes of this paragraph, “refillable container” means a rigid
19 plastic ¹[a]¹ container that is routinely returned to and refilled by
20 the manufacturer with the same product packaged by the container;
21 and “reusable container” means a rigid plastic container that is
22 routinely reused by consumers to store the original product
23 packaged by the container.
24

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

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

33 b. ²[Beginning two years after the effective date of this act, a
34 manufacturer shall label each plastic beverage container sold or
35 offered for sale in the State with ¹: (1)¹ the name of the
36 manufacturer and the city, state, and country where the
37 manufacturer is located ¹which may be designated as the location of
38 the manufacturer’s corporate headquarters; or (2) a uniform
39 resource locator (URL) or quick response (QR) code to an Internet
40 website that contains the information required pursuant to
41 paragraph (1) of this subsection¹.

42 c. ²The provisions of subsection a. of this section shall not
43 apply to a refillable beverage container. For the purposes of this
44 subsection, “refillable beverage container” means a beverage
45 container that holds 150 fluid ounces or less of beverage, and which
46 is routinely returned to the manufacturer to be refilled and resold.
47

1 5. a. Beginning two years after the effective date of this act, all
2 glass containers sold or offered for sale in the State by a
3 manufacturer shall contain, on average, at least 35 percent
4 postconsumer recycled content; except that, if a manufacturer
5 certifies to the department that its use of postconsumer recycled
6 content is made up of at least 50 percent mixed-color cullet, then
7 the glass containers shall only be required to contain, on average, at
8 least 25 percent postconsumer recycled content.

9 b. ²Beginning two years after the effective date of this act, a
10 manufacturer shall label each glass container sold or offered for sale
11 in the State with ¹: (1)¹ the name of the manufacturer and the city,
12 state, and country where the manufacturer is located ¹which may be
13 designated as the location of the manufacturer's corporate
14 headquarters; or (2) a uniform resource locator (URL) or quick
15 response (QR) code to an Internet website that contains the
16 information required pursuant to paragraph (1) of this subsection¹.

17 c. ²As used in this section, "mixed-color cullet" means cullet
18 that does not meet the American Society for Testing and Materials
19 (ASTM) standard specifications for the color mix of color-sorted,
20 post-filled glass as a raw material for the manufacture of glass
21 containers.

22
23 6. Beginning two years after the effective date of this act ²]:

24 a. ²all paper carryout bags sold or offered for sale in the State
25 by a manufacturer shall contain, on average, at least 40 percent
26 postconsumer recycled content; except that a paper carryout bag
27 that holds eight pounds or less shall only be required to contain, on
28 average, at least 20 percent postconsumer recycled content ²]; and

29 b. a manufacturer shall label each paper carryout bag sold or
30 offered for sale in the State with ¹: (1)¹ the name of the
31 manufacturer and the city, state, and country where the
32 manufacturer is located ¹which may be designated as the location of
33 the manufacturer's corporate headquarters; or (2) a uniform
34 resource locator (URL) or quick response (QR) code to an Internet
35 website that contains the information required pursuant to
36 paragraph (1) of this subsection¹ ²].

37
38 7. All plastic carryout bags sold or offered for sale in the State
39 by a manufacturer shall:

40 a. beginning two years after the effective date of this act,
41 contain, on average, at least 20 percent postconsumer recycled
42 content; ²and²

43 b. beginning five years after the effective date of this act,
44 contain, on average, at least 40 percent postconsumer recycled
45 content ²]; and

46 c. beginning two years after the effective date of this act, be
47 labeled with ¹: (1)¹ the name of the manufacturer and the city,

1 state, and country where the manufacturer is located ¹which may be
2 designated as the location of the manufacturer's corporate
3 headquarters; or (2) a uniform resource locator (URL) or quick
4 response (QR) code to an Internet website that contains the
5 information required pursuant to paragraph (1) of this
6 subsection¹]².

7
8 8. a. ¹**]**Beginning two years after the effective date of this act,
9 all **]** All¹ plastic trash bags sold or offered for sale in the State by a
10 manufacturer shall ¹:

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

14 (2) beginning five years after the effective date of this act,
15 contain, on average, at least 20 percent postconsumer recycled
16 content¹.

17 b. ²**]**Beginning two years after the effective date of this act, a
18 manufacturer shall label each container of plastic trash bags sold or
19 offered for sale in the State with ¹: (1)¹ the name of the
20 manufacturer and the city, state, and country where the
21 manufacturer is located ¹which may be designated as the location of
22 the manufacturer's corporate headquarters; or (2) a uniform
23 resource locator (URL) or quick response (QR) code to an Internet
24 website that contains the information required pursuant to
25 paragraph (1) of this subsection¹.

26 c. **]**² The provisions of subsection a. of this section shall not
27 apply to a bag that is designed and manufactured to hold, store, or
28 transport hazardous waste or regulated medical waste. For the
29 purposes of this subsection, "hazardous waste" means any solid
30 waste defined as hazardous waste by the department pursuant to
31 P.L.1970, c.39 (C.13:1E-1 et seq.); and "regulated medical waste"
32 means the same as that term is defined in section 3 of P.L.1989,
33 c.34 (C.13:1E-48.3).

34
35 9. a. Notwithstanding the provisions of this act to the contrary,
36 the department may, pursuant to the "Administrative Procedure
37 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
38 of the postconsumer recycled content requirements established in
39 sections 3 through 8 of this act. In making an adjustment pursuant
40 to this section, the department shall consider:

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

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

45 (3) the availability of recycled material suitable for
46 manufacturers to meet the postconsumer recycled content

1 requirements, including the availability of high-quality recycled
2 plastic or glass, and food-grade recycled plastic or glass;
3 (4) the capacity of recycling or processing infrastructure;
4 (5) the progress made by manufacturers in meeting the
5 postconsumer recycled content requirements; and
6 (6) any other factors as determined by the department pursuant
7 to rule, regulation, or guidance.

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

12

13 10. a. A package ¹or container¹ that ¹【contain】 contains¹ milk
14 products, ²plant-based products with names that include the names
15 of dairy foods such as “milk,”² medical food, or infant formula
16 shall be exempt from the postconsumer recycled content
17 requirements of this act ¹【for a period of five years beginning on
18 the effective date of this act】¹ .

19 ¹b. (1) A package or container that contains food shall be
20 exempt from the postconsumer recycled content requirements of
21 this act for a period of five years beginning on the effective date of
22 this act, except that the exemption provided in this paragraph shall
23 not apply to a plastic beverage container or a glass container filled
24 with a beverage.

25 (2) The department may, in its discretion, extend the five-year
26 exemption provided in paragraph (1) of this subsection.¹ Upon
27 expiration of the ¹【five-year】¹ exemption ¹【period】¹, a
28 manufacturer ¹【of milk products, medical food, or infant formula
29 may apply to】 shall be subject to the applicable postconsumer
30 recycled content requirements in effect at the time of the expiration,
31 unless the manufacturer applies to, and receives from,¹ the
32 department ¹【for】¹ a waiver pursuant to section 11 of this act.

33 ¹【b.】 c.¹ As used in this section:

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

37 “Milk product” means the same as that term is defined ²【in the
38 Grade “A” Pasteurized Milk Ordinance promulgated】² by the
39 United States Food and Drug Administration.

1 11. a. A manufacturer may apply to the department for a waiver
2 from the postconsumer recycled content requirements established
3 pursuant to this act. The department may grant a waiver pursuant to
4 this section if the manufacturer demonstrates, and the department
5 finds, in writing, that:

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

10 (2) it is not technologically feasible for the manufacturer to
11 achieve the postconsumer recycled content requirements; ¹[or]¹

12 (3) ¹the manufacturer cannot comply with the postconsumer
13 recycled content requirements due to inadequate availability of
14 recycled material or a substantial disruption in the supply of recycled
15 material; or

16 (4)¹ the manufacturer cannot comply for another reason as
17 determined by the department pursuant to rule, regulation, or guidance.

18 b. In order to qualify for a waiver from the postconsumer recycled
19 content requirements of this act, a manufacturer shall submit to the
20 department documentation from a federal or State agency or certified
21 third-party expert, as appropriate, demonstrating that the manufacturer
22 cannot comply with the postconsumer recycled content requirements
23 for one of the reasons set forth in subsection a. of this section, and pay
24 a \$1,000 waiver fee. The department may modify the amount of the
25 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
26 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s
27 costs to administer, monitor, and enforce the provisions of this section.

28 ³Notwithstanding the provisions of this subsection to the contrary, a
29 manufacturer that demonstrates to the department that the
30 manufacturer’s gross revenue is below \$5,000,000 shall not be
31 required to pay the waiver fee established pursuant to this section.³

32 c. The department may grant a waiver from the postconsumer
33 recycled content requirements for ¹[any period of time as the
34 department deems appropriate] a period of not less than two years, as
35 determined by the department¹. The department shall publish any
36 determination to grant a waiver from the postconsumer recycled
37 content requirements on its Internet website. The department shall
38 develop a standardized form and procedure for manufacturers to apply
39 for a waiver pursuant to this section.

40
41 12. a. The department may require a manufacturer that is
42 ¹temporarily¹ exempt from the postconsumer recycled content
43 requirements of this act ¹pursuant to subsection b. of section 10 of
44 this act¹, or that has submitted a request for a waiver pursuant to
45 section 11 of this act, to prepare and submit to the department an
46 alternative compliance plan that demonstrates that the manufacturer
47 is taking, and will continue to take, all feasible actions to ensure the

1 reduction, ¹collection,¹ recycling, and reuse of rigid plastic
2 containers, plastic beverage containers, glass containers, paper
3 carryout bags, plastic carryout bags, or plastic trash bags made from
4 virgin plastic, glass, or paper, as applicable, and ¹to ensure¹ the use
5 of postconsumer recycled content.

6 b. The department shall adopt, pursuant to the “Administrative
7 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
8 regulations setting forth the substantive requirements for an
9 alternative compliance plan required pursuant to subsection a. of
10 this section ²**[**, which may include, but need not be limited to, a
11 requirement that the manufacturer take alternative measures to
12 reduce its use of virgin plastics, glass, or paper, including
13 sustainable materials management protocols, light weighting,
14 lifecycle analyses, and such other measures as the department may,
15 by rule or regulation, require²**]**.

16 c. The department shall have the authority to approve or
17 disapprove an alternative compliance plan prepared and submitted
18 pursuant to this section, and to require a manufacturer to make any
19 revisions or modifications to its alternative compliance plan as the
20 department determines necessary, consistent with the provisions of
21 this act and the rules and regulations adopted by the department.

22 d. A manufacturer shall undertake all of the actions described
23 in the alternative compliance plan. Failure by a manufacturer to
24 comply with an approved alternative compliance plan shall
25 constitute a violation of this act.

26 e. The department may enter into a contract or other legally
27 binding agreement with one or more trade associations representing
28 manufacturers, which shall allow the trade association, in lieu of the
29 manufacturers, to prepare and submit an alternative compliance
30 plan pursuant to this section and to undertake the actions described
31 in the alternative compliance plan.

32 ²**[**¹f. The department shall publish a final alternative
33 compliance plan approved pursuant to this section on the
34 department’s Internet website.¹²**]**
35

36 13. a. Beginning ¹**[**on the September 1 next following¹**]** six
37 months after¹ the effective date of this act, and ¹**[**each September 1¹**]**
38 annually¹ thereafter, each manufacturer shall register with the
39 department, in a form and manner as prescribed by the department,
40 and pay an annual registration fee of \$1,000. The department may
41 modify the amount of the registration fee, pursuant to the
42 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.),
43 as necessary to reflect the department’s costs to implement,
44 administer, monitor, and enforce the provisions of this act. The
45 department shall establish an electronic registration process on its
46 Internet website; however, the lack of an electronic registration
47 process shall not negate the requirement for a manufacturer to register

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

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

17
18 14. a. ¹(1)¹ Beginning ¹[on the third September 1] three years
19 and six months¹ after the effective date of this act, and ¹[on each
20 September 1] annually¹ thereafter, each manufacturer shall certify,
21 in writing, to the department whether or not the rigid plastic
22 containers, plastic beverage containers, glass containers, paper
23 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 ¹the amount, in pounds, of¹ 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 ¹(2) The department may ²[require that a manufacturer submit
45 an independent, third-party verification of a compliance
46 certification made pursuant to this subsection] , in consultation with
47 manufacturers, study: (a) whether there exist independent, third-

1 party verification organizations that can verify manufacturers'
2 compliance with the requirements of this act; and (b) appropriate
3 accreditation standards for such organizations. The department may
4 prepare and submit a report including its findings to the Governor,
5 to the Legislature pursuant to section 2 of P.L.1991, c.164
6 (C.52:14-19.1), and to the members of the Senate Environment and
7 Energy Committee and the Assembly Environment and Solid Waste
8 Committee, or their successors² .¹

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

23 c. The department may audit or investigate a manufacturer, at
24 any time, to assess the manufacturer's compliance with the
25 requirements of this act. Each year, the department ¹~~shall~~ may¹
26 audit, or cause to be audited, a random sample of manufacturers in
27 order to determine compliance with this act. A manufacturer shall
28 cooperate fully with any audit or investigation conducted pursuant
29 to this section. The department may require a manufacturer to pay
30 the costs of an audit conducted pursuant to this subsection.

31 d. The department shall annually publish a list of registered
32 manufacturers, their compliance status, and other information the
33 department deems appropriate on the department's Internet website.
34

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

38 b. As used in this section:

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

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

1 16. a. Whenever, on the basis of available information, the
2 commissioner finds that a person is in violation of this act, the
3 commissioner may take one or more of the following actions¹ :

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

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

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

10 (4) bring an action for a civil penalty in accordance with
11 subsection e. of this section; **or**¹

12 (5) require a manufacturer to submit a corrective action plan
13 pursuant to subsection f. of this section ¹; or

14 (6) notify the public of a manufacturer which, at any time during a
15 reporting period, was not in compliance with the requirements of this
16 act¹ .

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

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

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

34 d. (1) The commissioner is authorized to impose a civil
35 administrative penalty of not less than \$1,000 and not more than
36 **[\$100,000]** \$25,000¹ for each violation of this act or any rule or
37 regulation adopted pursuant thereto, and each day of the violation shall
38 constitute an additional, separate, and distinct offense. Any amount
39 imposed under this subsection shall be assessed pursuant to rules and
40 regulations adopted by the commissioner for violations of similar type,
41 seriousness, and duration. The commissioner shall have the authority
42 to assess penalties prior to the establishment of rules and regulations
43 governing penalties to the extent that such penalties are reasonable and
44 based on other violations of a similar type, seriousness, and duration.
45 No civil administrative penalty shall be imposed until after the person
46 has been notified by certified mail or personal service. The notice
47 shall include: a reference to the section of the act, rule, regulation,

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

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

30 (3)¹ In addition to the assessment of a civil administrative penalty,
31 the commissioner may, by administrative order and upon an
32 appropriate finding, assess a violator for the reasonable costs of any
33 investigation, inspection, or audit which led to the establishment of the
34 violation.

35 e. Any person who violates this act, an order issued pursuant to
36 subsection b. of this section, or a court order issued pursuant to
37 subsection c. of this section, or who fails to pay in full a civil
38 administrative penalty levied pursuant to subsection d. of this section,
39 shall be subject, upon order of a court, to a civil penalty not to exceed
40 ¹[\$100,000] \$50,000, and each day of the violation shall constitute an
41 additional, separate, and distinct offense¹ . Any penalty imposed
42 pursuant to this subsection may be collected, and any costs incurred in
43 connection therewith may be recovered, in a summary proceeding
44 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
45 (C.2A:58-10 et seq.). The Superior Court and the municipal court
46 shall have jurisdiction to enforce the "Penalty Enforcement Law of
47 1999."

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

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

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

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

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

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

11

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

15

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

19

20 22. a. ¹~~【The】~~ No later than two years after the effective date of
21 this act, the¹ department shall adopt, pursuant to the
22 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
23 1 et seq.), rules and regulations necessary for the implementation of
24 this act.

25 b. Prior to the adoption of rules and regulations, and as necessary
26 thereafter, the department may develop guidance as necessary for the
27 implementation of this act. ¹The department shall publish any such
28 guidance on its Internet website.¹

29

30 23. No later than five years after the effective date of this act,
31 the ¹~~【Advisory Council on Solid Waste Management, established~~
32 ~~pursuant to section 7 of P.L.1970, c.39 (C.13:1E-7),】~~ department¹
33 shall prepare and submit a report to the Governor, to the Legislature
34 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the
35 members of the Senate Environment and Energy Committee and the
36 Assembly Environment and Solid Waste Committee, or their
37 successors, assessing the implementation of this act, evaluating the
38 act’s effectiveness in stimulating the recycling markets in the State,
39 and making any recommendations for legislative or administrative
40 action necessary to further the purposes of this act, including
41 recommendations for whether and how the State should encourage,
42 require, or support other uses of recycled material.

43

44 24. This act shall take effect immediately.