

ASSEMBLY, No. 1752

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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SYNOPSIS

"Plastic Container Recycling Enhancement Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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

3

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

6

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

9

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

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

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

31

32 3. For the purposes of this act:

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

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

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

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

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

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

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

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

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

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

21

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

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

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

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

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

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

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

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

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

13

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

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

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

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

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

43

44 6. a. The department shall grant an exemption from the
45 recycled content requirement of subsection a. of section 4 of
46 P.L. , c. (C.) (pending before the Legislature as this bill) to
47 any container manufacturer or product manufacturer, or both, as

1 appropriate, if the department finds, in writing, that a particular
2 rigid plastic container with a maximum capacity of one United
3 States gallon, or its equivalent volume, which is manufactured, sold
4 or offered for sale in this State by a container manufacturer, or
5 designed and used to store a packaged product that is sold or
6 offered for sale in this State by a product manufacturer, meets one
7 of the following criteria:

- 8 (1) The rigid plastic container is a reusable container;
- 9 (2) The rigid plastic container is a refillable container; or
- 10 (3) The rigid plastic container is a source reduced container.

11 b. As used in this section:

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

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

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

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

1 7. a. On or before February 1, 2011, each container
2 manufacturer and product manufacturer shall submit to the
3 department a completed written certification verifying that the rigid
4 plastic containers manufactured, sold, or offered for sale in this
5 State by the container manufacturer, or the rigid plastic containers
6 used by the product manufacturer for its products that are sold or
7 offered for sale in this State, as appropriate, are: (1) in compliance
8 with the recycled content requirement of subsection a. of section 4
9 of P.L. , c. (C.) (pending before the Legislature as this bill);
10 (2) exempt pursuant to subsection b. of section 4 of
11 P.L. , c. (C.) (pending before the Legislature as this bill); (3)
12 eligible for a waiver pursuant to section 5 of P.L. , c. (C.)
13 (pending before the Legislature as this bill); or (4) eligible for an
14 exemption pursuant to section 6 of P.L. , c. (C.) (pending
15 before the Legislature as this bill).

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

23
24 8. a. On or before January 1, 2011, the department shall,
25 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
26 (C.52:14B-1 et seq.), adopt rules and regulations as are necessary to
27 implement the provisions of this act.

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

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

43 Any container manufacturer or product manufacturer who
44 violates the provisions of this act, or any rule, regulation or order
45 adopted pursuant thereto, is liable to a civil administrative penalty
46 of not more than \$10,000 for the first offense, not more than
47 \$20,000 for the second offense and not more than \$50,000 for the

1 third and each subsequent offense. If the violation is of a
2 continuing nature, each day during which it continues constitutes an
3 additional, separate and distinct offense. No civil administrative
4 penalty shall be levied except subsequent to the written notification
5 to the violator by certified mail or parcel service. The notice shall
6 include a reference to the section of this act, rule or regulation
7 violated; a concise statement of the facts alleged to constitute the
8 violation; a statement of the amount of civil penalties to be
9 imposed; and a statement of the violator's right to a hearing. The
10 violator shall have 20 days from receipt of the notice within which
11 to deliver to the department a written request for a hearing.
12 Subsequent to the hearing and upon a finding that violation has
13 occurred, the department may issue a final order assessing the
14 amount of the fine specified in the notice. If no hearing is
15 requested, the notice shall become a final order upon the expiration
16 of the 20 day period. Payment of the penalty is due when the final
17 order is issued or when a notice becomes a final order. The
18 authority to levy a civil administrative penalty, in addition to all
19 other enforcement provisions in this act, and the payment of a civil
20 administrative penalty, shall not be deemed to affect the availability
21 of any other enforcement provision in connection with the violation
22 for which the penalty is levied.

23 The department is authorized and empowered to compromise and
24 settle any claim for a penalty under this section in such amount in
25 the discretion of the department as may appear appropriate and
26 equitable under all of the circumstances.

27 Pursuant to this section, if the department determines that a
28 container manufacturer or product manufacturer has submitted a
29 certification as required pursuant to the provisions of 7 of
30 P.L. , c. (C.) (pending before the Legislature as this bill)
31 that is false or misleading, the department shall refer that entity to
32 the Attorney General for the prosecution of fraud.

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

1 b. A majority of the membership of the council shall constitute
2 a quorum for the transaction of council business. Action may be
3 taken and motions and resolutions adopted by the council at any
4 meeting thereof by the affirmative vote of a majority of the full
5 membership of the council. The council shall meet regularly as it
6 may determine.

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

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

29 The council shall recommend appropriate actions to promote,
30 educate and inform the public on the issues and benefits of
31 recycling rigid plastic containers and purchasing products packaged
32 in plastic containers made from recycled content.

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

37

38 11. This act shall take effect immediately.

39

40

41

STATEMENT

42

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

46 The recycled content requirement would not apply to any small
47 business enterprise which manufactures rigid plastic containers with
48 a maximum capacity of two United States gallons, or its equivalent

1 volume, or less. A "small business enterprise" means any business
2 which has its principal place of business in this State, is
3 independently owned and operated, and employs the equivalent of
4 fewer than 50 full-time employees.

5 The following rigid plastic containers would also be exempt
6 from the recycled content requirement:

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

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

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

18 (4) Rigid plastic containers which contain toxic or hazardous
19 products regulated by the "Federal Insecticide, Fungicide, and
20 Rodenticide Act";

21 (5) Rigid plastic containers which contain drugs, medical
22 devices, cosmetics, food, medical food, or infant formula as defined
23 by the "Federal Food, Drug, and Cosmetic Act"; and

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

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

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

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

42 The DEP is required to grant a waiver from the recycled content
43 requirement to any container manufacturer or product manufacturer,
44 or both, as appropriate, if the DEP makes a written finding that at
45 least 50%, by number, of a manufacturer's rigid plastic containers
46 sold or offered for sale in the State in the current calendar year
47 achieve the recycled content requirement and all of the

1 manufacturer's rigid plastic containers will comply with these
2 requirements on or before January 1, 2012.

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

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

- 16 (1) The rigid plastic container is a reusable container;
- 17 (2) The rigid plastic container is a refillable container; or
- 18 (3) The rigid plastic container is source reduced by 10%.

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

30 The DEP is required, as part of its rulemaking, to develop the
31 required certification forms. The certifications must be submitted
32 under penalty of perjury. Each container manufacturer and product
33 manufacturer would issue a certification to the DEP on an annual
34 basis. The annual certification must be submitted to the DEP on
35 February 1 of each consecutive year.

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

43 The bill establishes a Plastic Container Recycling Council. The
44 council would: study the technological feasibility of increasing the
45 recycled content of rigid plastic containers and expanding the types
46 of containers that may be manufactured from recycled material;
47 investigate the ways and means to enhance the development and
48 expansion of markets for post-consumer recycled plastic, including

1 State and local purchasing and procurement practices; study the
2 costs and practicality of new recycled content technologies,
3 including successful approaches to recycled plastic materials
4 development employed by other states; and study improved
5 processes designed to address the concerns raised by those
6 container manufacturers and product manufacturers committed to
7 packaging materials made from one hundred percent virgin plastic.

8 The council would recommend appropriate actions to promote,
9 educate and inform the public on the issues and benefits of
10 recycling rigid plastic containers and purchasing products packaged
11 in plastic containers made from recycled content. The council must
12 issue a final report of its findings and recommendations to the
13 Governor and the Legislature no later than two years after its
14 organizational meeting.