

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40765-CCfa-17B

Short Title: Break Free from Plastics & Forever Chemicals. (Public)

Sponsors: Representative Butler.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH EXTENDED PRODUCER RESPONSIBILITY FOR CERTAIN
3 PRODUCERS OF PACKAGING MATERIALS AND TO BAN THE MANUFACTURE
4 AND DISTRIBUTION OF PACKAGING MATERIALS CONTAINING CERTAIN
5 TOXIC SUBSTANCES IN ORDER TO PROTECT PUBLIC HEALTH.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. ESTABLISH EXTENDED PRODUCER RESPONSIBILITY FOR CERTAIN**
9 **PRODUCERS OF PACKAGING MATERIALS**

10 **SECTION 1.(a)** Article 9 of Chapter 130A of the General Statutes is amended by
11 adding a new Part to read:

12 "Part 2J. Extended Producer Responsibility.

13 "**§ 130A-309.235. Definitions.**

14 Unless a different meaning is required by the context, the following definitions apply
15 throughout this Part:

- 16 (1) Collector. – Any publicly or privately owned solid waste management
17 services or recycler that gathers discarded packaging materials from
18 residential, commercial, industrial, or governmental establishments.
- 19 (2) Packaging material. – Any part of a package or container, regardless of
20 recyclability or compostability, including material types such as paper, plastic,
21 glass, or metal, that is used for the containment, protection, handling, delivery,
22 transport, distribution, and presentation of a product that is sold, offered for
23 sale, or distributed in North Carolina. Bags are included within this definition.
24 Packaging material does not include any of the following:
- 25 a. Material, or a category of material, intended to be used for long-term
26 storage or protection of a durable product that can be expected to be
27 usable for that purpose for a period of at least five years.
- 28 b. Medical devices and packaging that are included with products
29 regulated as a drug, medical device, or dietary supplement under the
30 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321, et seq.
- 31 c. Packaging products used to contain substances hazardous to the
32 environment, regulated under the Federal Insecticide, Fungicide, and
33 Rodenticide Act, 7 U.S.C. § 136, et seq.
- 34 (3) Postconsumer waste material. – As defined in G.S. 105-129.25.



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- 1 (4) Producer responsibility fund. – A privately held account established and
2 managed by the producer responsibility organization pursuant to
3 G.S. 130A-309.237(d).
- 4 (5) Producer responsibility organization or organization. – A not-for-profit entity
5 formed by one or more responsible producers to act as an agent on behalf of
6 each producer to develop and implement a stewardship plan.
- 7 (6) Readily-recyclable. – Recyclable material, as defined in G.S. 130A-290, that
8 the Department determines can be sorted by business entities in this State and
9 has a consistent market for purchase.
- 10 (7) Recycling rate. – The percentage of discarded packaging material that is
11 managed through recycling or reuse, which is calculated by dividing the
12 amount of discarded packaging material collected and recycled or reused by
13 the total amount of discarded packaging material collected over a program
14 year.
- 15 (8) Responsible producer or producer. –
16 a. A person that manufactures and uses in a commercial enterprise, sells,
17 offers for sale, or distributes packaging material in the State under the
18 brand of the manufacturer.
- 19 b. If sub-subdivision a. of this subdivision does not apply, a person who
20 is not the manufacturer of the packaging material but is the owner or
21 licensee of a trademark under which the packaging material is used in
22 a commercial enterprise, sold, offered for sale, or distributed in the
23 State, regardless of whether the trademark is registered.
- 24 c. If sub-subdivisions a. and b. of this subdivision do not apply, a person
25 that sells packaging in the State that is intended to be filled at the point
26 of sale.
- 27 d. If sub-subdivisions a., b., and c. of this subdivision do not apply, a
28 person that imports the packaging material into the State for use in a
29 commercial enterprise, sale, offer for sale, or distribution in the State.
- 30 (9) Reusable. – An object or material designed to be used repeatedly for a number
31 of use cycles.
- 32 (10) Stewardship plan. – A detailed plan that describes the manner in which
33 responsible producers shall comply with the requirements of this Part and all
34 rules adopted by the Commission pursuant to this Part.

35 **"§ 130A-309.236. Requirements for responsible producers.**

36 (a) Registration Required. – Each responsible producer shall register with the Department
37 before selling, offering for sale, or distributing packaging materials in North Carolina.

38 (b) Stewardship Plan Required. – No responsible producer shall sell, offer for sale, or
39 distribute in North Carolina a product contained, protected, delivered, presented, or distributed
40 in or using packaging materials unless the producer participates as a member of a producer
41 responsibility organization for which a stewardship plan is approved by the Department, and
42 through that participation, satisfies the requirements of subsections (c), (d), and (e) of this section.

43 (c) Non-Reusable Packaging Material Reduction Requirements. – According to the
44 following schedule, each responsible producer shall reduce the total amount of non-reusable
45 packaging materials sold, offered for sale, or distributed in this State (i) by unit, (ii) on average,
46 and (iii) in the aggregate:

- 47 (1) Ten percent (10%) after two years following approval of the stewardship plan.
48 (2) Twenty percent (20%) after four years following approval of the stewardship
49 plan.
- 50 (3) Thirty percent (30%) after six years following approval of the stewardship
51 plan.

1 (4) Forty percent (40%) after eight years following approval of the stewardship
2 plan.

3 The reductions required by this subsection shall be measured against the total amount of
4 packaging material the responsible producer sold, offered for sale, or distributed in this State
5 during the respective calendar year.

6 (d) Recycling-Rate Requirements. – Each responsible producer shall ensure that all of its
7 non-reusable packaging material, in the aggregate, sold, offered for sale, or distributed in this
8 State is recycled at a rate consistent with the following schedule:

9 (1) Fifty percent (50%) after five years following approval of the stewardship
10 plan.

11 (2) Eighty percent (80%) after eight years following approval of the stewardship
12 plan.

13 (3) Ninety percent (90%) after 12 years following approval of the stewardship
14 plan.

15 (e) Postconsumer Waste Material Content Requirements. – Each responsible producer
16 shall ensure that all of its non-reusable packaging material sold, offered for sale, or distributed in
17 this State incorporates, on average and in the aggregate, the following amount, by weight, of
18 postconsumer waste material in accordance with the following schedule:

19 (1) Fifty percent (50%) after five years following approval of the stewardship
20 plan.

21 (2) Eighty percent (80%) after eight years following approval of the stewardship
22 plan.

23 (3) Ninety percent (90%) after 12 years following approval of the stewardship
24 plan.

25 **§ 130A-309.237. Producer responsibility organizations; participation fees.**

26 (a) Membership Requirement. – Each responsible producer of packaging materials sold
27 or distributed in this State shall establish or join a producer responsibility organization to act as
28 an agent on behalf of the producer for the purposes of satisfying its obligations under this Part.
29 A producer may participate in more than one producer responsibility organization if each
30 organization is established for a different category of packaging materials. Any producer
31 responsibility organization formed for the purpose of complying with this Part shall be
32 established and operated as an organization described in section 501(c)(3) of the Internal
33 Revenue Code of 1986.

34 (b) Participation Fees. – A producer responsibility organization shall establish
35 participation fees for its member producers that are sufficient to cover all costs of developing and
36 implementing the stewardship plan, including each producer's proportionate share of
37 administrative, enforcement, and outreach and education costs. The participation fee must reflect
38 the per ton costs associated with the collection, processing, transportation, and recycling and
39 disposal of a producer's packaging material.

40 (c) Fee Structure. – A producer responsibility organization shall structure the
41 participation fees to provide producers with financial incentives to reward waste reduction and
42 recycling compatibility innovations and practices and to discourage designs or practices that
43 increase costs of managing the products. The producer responsibility organization may adjust
44 fees to be paid by each participating producer based on factors that affect system costs. At a
45 minimum, fees shall be variable based on the following:

46 (1) Costs to provide curbside collection of packaging material, or other levels of
47 collection service that is, at a minimum, as convenient as the recycling
48 collection service offered in the particular jurisdiction prior to the
49 implementation of the stewardship plan.

50 (2) Costs to process a producer's packaging material for acceptance by secondary
51 material markets.

1 (3) Whether the packaging material includes labels, inks, and adhesives
2 containing heavy metals or other hazardous wastes that would contaminate
3 the recycling process.

4 (4) Whether the packaging material is specifically designed to be reusable or
5 refillable and has a high reuse or refill rate.

6 (5) The percentage of postconsumer waste material in a producer's packaging
7 material.

8 (6) Contributions to greenhouse gas emissions from the production, use,
9 collection, processing, and marketing of the packaging material.

10 The producer responsibility organization shall annually evaluate, revise, and submit an
11 updated fee assessment schedule to the Department.

12 (d) Producer Responsibility Fund. – A producer responsibility organization shall
13 establish and manage a producer responsibility fund. The organization shall deposit into the fund
14 all payments received from responsible producers in accordance with this section and shall
15 expend those funds for the following uses:

16 (1) To reimburse participating collectors in accordance with G.S. 130A-309.240.

17 (2) To fund collection and convenience obligations, required pursuant to
18 G.S. 130A-309.241.

19 (3) To fund the outreach and education programming, required pursuant to
20 G.S. 130A-309.243.

21 (4) To fund the actual operating costs of the organization, which may not exceed
22 the estimated operating costs indicated in the stewardship plan approved by
23 the Department pursuant to G.S. 130A-309.239.

24 (5) To pay fees assessed by the Department for the purposes of implementing this
25 Part.

26 (e) Payment of Participation Fees. – No later than 30 days after the approval of the
27 stewardship plan under G.S. 130A-309.239, and quarterly thereafter, a responsible producer shall
28 pay the producer responsibility organization any outstanding participation fees, to be deposited
29 into the producer responsibility fund.

30 (f) Producer Information Requirement. – A responsible producer participating in a
31 producer responsibility organization shall provide the organization with all information
32 necessary (i) for determining the producer's compliance with the stewardship plan and (ii) for
33 calculating the participation fees to be assessed to the producer.

34 **"§ 130A-309.238. Stewardship plan.**

35 (a) Each producer responsibility organization shall develop and submit a stewardship
36 plan to the Department. Such plan shall be effective for five years and shall be reviewed and
37 updated every five years following the approval of the initial plan. The Department may require
38 the stewardship plan to be reviewed or revised prior to the five-year period if the Department has
39 cause to believe the minimum non-reusable packaging material reduction rates, the minimum
40 recycling rates, the minimum postconsumer waste material content rates, or other requirements
41 established in accordance with an approved stewardship plan are not being met or followed by
42 the responsible producer or producer responsibility organization, or if there has been a change in
43 circumstances that warrants revision to the stewardship plan.

44 (b) Each stewardship plan shall contain, at a minimum, all of the following:

45 (1) Contact information for the producer responsibility organization and the
46 responsible producers covered under the stewardship plan.

47 (2) A comprehensive list of the packaging material products for which the
48 producer or producer responsibility organization is responsible under the
49 stewardship plan.

- 1 (3) A description of how the producer responsibility organization, along with its
2 member producers, will meet or exceed the requirements established in
3 G.S. 130A-309.236.
- 4 (4) A description of how the packaging materials covered under the stewardship
5 plan will be collected and managed using environmentally sound management
6 practices.
- 7 (5) A description of how the producer responsibility organization will work with
8 collectors to comply with the collection and convenience requirements
9 pursuant to G.S. 130A-309.241.
- 10 (6) A proposal for implementing the outreach and education program, required
11 pursuant to G.S. 130A-309.243, in a manner that increases access to recycling
12 throughout the State.
- 13 (7) A proposal for implementing the labeling requirements pursuant to
14 G.S. 130A-309.242, including a description of how the producer
15 responsibility organization will ensure compliance by assisting its member
16 producers and regularly verifying labeling claims through independent,
17 third-party audits.
- 18 (8) A description of the participation fees and the methodology used for
19 determining the structure of the participation fees, allocated to responsible
20 producers, that meet the requirements of this Part and are sufficient to cover
21 the cost of developing, submitting, implementing, and updating the
22 stewardship plan, and maintaining a financial reserve sufficient to implement
23 the stewardship plan in a financially prudent and responsible manner.
- 24 (9) A description of how the producer responsibility organization plans to
25 establish and manage the producer responsibility fund, including staffing to
26 manage the fund, ensuring equity of access to collection opportunities for
27 customers across the State, providing technical support to responsible
28 producers regarding program requirements, administering and collecting
29 payments to and reimbursements from the fund, and the investment types, if
30 any, the organization intends to use to manage monies within the fund.
- 31 (10) A description of the process for collectors to recoup all reasonable
32 activity-based costs, both operational and capital, from the producer
33 responsibility organization for collecting, transporting, or sorting packaging
34 materials covered under the stewardship plan.
- 35 (11) A description of how stakeholder comments were considered in the
36 development of the stewardship plan, including a summary and analysis of the
37 issues raised and significant changes recommended by stakeholders, a
38 statement of the reasons why any significant changes were not incorporated
39 into the proposed stewardship plan, and a description of any changes made to
40 the proposed stewardship plan as a result of such comments.
- 41 (12) Any additional information requested by the Department.
- 42 (c) A producer responsibility organization shall provide stakeholders, including units of
43 local government, municipal solid waste management facilities, recycling facilities, collectors,
44 and other members of the general public with an opportunity to review and comment on the draft
45 stewardship plan prior to its submission to the Department.
- 46 (d) A producer responsibility organization may prepare a revised stewardship plan and
47 submit it to the Department at any time the organization considers appropriate in response to
48 changed circumstances, including to incorporate additional responsible producers to an existing
49 stewardship plan.
- 50 **§ 130A-309.239. Review and approval of proposed stewardship plans.**

1 (a) No later than 90 days after the submission of the stewardship plan, the Department
2 shall make a determination to approve the plan as submitted, approve the plan with conditions,
3 or deny the plan.

4 (b) In reviewing any stewardship plan under this Part, the Department shall consider
5 whether the stewardship plan:

6 (1) Adequately addresses all requirements set forth in G.S. 130A-309.238 with
7 sufficient detail.

8 (2) Provides a feasible strategy detailing how responsible producers will satisfy
9 the requirements established in G.S. 130A-309.236.

10 (3) Proposes participation fees that:

11 a. Sufficiently cover the entire cost of implementing the stewardship plan
12 and complying with all other requirements of this Part, including any
13 rules adopted by the Commission pursuant to this Part.

14 b. Adequately incentivize waste reduction and recycling compatibility
15 innovations and practices and discourage designs and practices that
16 increase the costs of managing packaging materials.

17 c. Equitably allocates implementation costs among responsible
18 producers.

19 (4) Provides for widespread, convenient, and equitable collection opportunities,
20 as required pursuant to G.S. 130A-309.241.

21 (5) Provides for effective outreach and education programming, as required
22 pursuant to G.S. 130A-309.243.

23 (6) Provides a feasible strategy detailing how responsible producers will satisfy
24 the labeling requirements pursuant to G.S. 130A-309.242, including a
25 description of how the producer responsibility organization will verify each
26 producer's labeling claims through an independent, third-party audit.

27 (7) Proposes a schedule of collector reimbursement payments that are calculated
28 in a reasonable manner, pursuant to G.S. 130A-309.240, and that cover the
29 costs of collecting, recycling, processing, and disposing the packaging
30 materials listed under the stewardship plan.

31 (8) Establishes a reasonable process for participating collectors to apply for and
32 receive reimbursements from the producer responsibility organization.

33 (9) Provides sufficient information to establish that the producer responsibility
34 organization engaged in a reasonable stakeholder review process, as required
35 pursuant to G.S. 130A-309.238(c).

36 (10) Satisfies any other requirements adopted by the Commission.

37 (c) No later than six months after the date the stewardship plan is approved, the producer
38 responsibility organization and its member producers shall implement the approved plan.

39 **"§ 130A-309.240. Collector reimbursement.**

40 (a) Collector Reimbursement. – A producer responsibility organization shall be
41 responsible for calculating and dispersing funding for collectors that elect to be compensated by
42 the producer responsibility organization for the recovery, recycling, and processing of packaging
43 materials.

44 (b) Eligibility. – Collectors must provide for recycling of all recyclable packaging
45 material listed under a stewardship plan in order to be eligible for reimbursement under this
46 section.

47 (c) Calculation of Reimbursement. – The reimbursement rate shall be based on the cost
48 of residential curbside collection, including the cost of curbside containers where relevant, as
49 well as the processing cost for each readily recyclable material, the cost of handling non-readily
50 recyclable material types collected as part of a recycling operation, the transportation cost of
51 recycling for each material type, and any other cost factors as determined by the Department

1 (d) Collector Responsibilities. –

2 (1) To facilitate the producer responsibility organization's determination of the
3 cost of recycling, participating collectors shall annually report to the
4 organization all information necessary for the organization to determine the
5 collector's incurred net costs associated with the collection, processing,
6 transportation, and recycling and disposal of packaging material covered
7 under the stewardship plan.

8 (2) Participating collectors shall not charge fees to customers for reimbursable
9 costs.

10 **"§ 130A-309.241. Collection and convenience.**

11 (a) A producer responsibility organization shall provide for widespread, convenient, and
12 equitable access to collection opportunities for the packaging material identified under the
13 stewardship plan.

14 (b) A producer responsibility organization may rely on a range of means to collect various
15 categories of packaging material, including curbside collection, depot drop-off, and retailer
16 take-back. However, a producer responsibility organization shall provide for curbside or
17 multifamily recycling collection services if all of the following circumstances apply:

18 (1) The category of packaging materials is suitable for residential curbside
19 recycling collection and can be effectively sorted by the facilities receiving
20 the packaging material.

21 (2) The recycling facility providing processing and sorting service agrees to
22 accept the category of packaging material.

23 (3) The provider of residential curbside recycling service agrees to the producer
24 responsibility organization's reimbursement arrangement.

25 (4) The category of packaging material is not handled through a deposit and return
26 scheme, or a buyback system that relies on a collection system other than
27 curbside collection.

28 **"§ 130A-309.242. Labeling.**

29 Responsible producers shall indicate on all packaging material sold, offered for sale, or
30 distributed for sale in the State (i) the percentage of postconsumer waste material content, (ii)
31 whether the packaging material is readily recyclable, and (iii) whether the packaging material is
32 compostable. Such labels must be in a form deemed appropriate by the Department pursuant to
33 rules adopted by the Commission.

34 **"§ 130A-309.243. Outreach and education.**

35 (a) A producer responsibility organization shall provide effective outreach, education,
36 and communications to consumers throughout the State regarding:

37 (1) Proper end-of-life management of packaging materials.

38 (2) The location and availability of curbside and drop-off collection opportunities.

39 (3) Recycling and composting instructions that are (i) consistent Statewide,
40 except as necessary to take into account differences among local ordinances
41 and processing capabilities, (ii) easy to understand, and (iii) easily accessible.

42 (b) The outreach and education required pursuant to subsection (a) of this section shall:

43 (1) Be designed to achieve the packaging material requirements established
44 pursuant to G.S. 130A-309.236.

45 (2) Incorporate, at a minimum, electronic, print, web-based, and social media
46 elements that local governments may utilize at their discretion.

47 (3) Include, at a minimum, (i) consulting on education and outreach with local
48 governments and other stakeholders, (ii) coordinating with and assisting local
49 governments and solid waste facility operators, and other entities providing
50 services, and (iii) developing and providing outreach and education to the
51 diverse ethnic populations in the State.

1 (4) Include a plan to work with responsible producers to label packaging materials
2 with information to assist consumers in responsibly managing and recycling
3 the packaging materials.

4 (c) The Department shall review the effectiveness of outreach and education efforts under
5 this section to determine whether changes are necessary to improve those outreach and education
6 efforts and develop information that may be used to improve outreach and education efforts under
7 this section.

8 **"§ 130A-309.244. Reporting requirements and audits.**

9 (a) Each producer responsibility organization shall submit a report to the Department, in
10 a manner required by the Department, no later than July 1 each year following the approval of
11 the stewardship plan, evaluating progress toward meeting the requirements under this Part for
12 the immediately preceding year. The report shall include all of the following:

13 (1) The total amount of packaging material, by weight and unit, sold, offered for
14 sale, or distributed into the State by each of its responsible producers in the
15 prior calendar year.

16 (2) Any information necessary for the Department to make a determination of the
17 producer responsibility organization's, and its member producers', compliance
18 with all of the following:

19 a. The non-reusable packaging reduction requirements, as provided by
20 G.S. 130A-309.236(c).

21 b. The recycling-rate requirements, as provided by
22 G.S. 130A-309.236(d).

23 c. The postconsumer waste material content requirements, as provided
24 by G.S. 130A-309.236(e).

25 d. The labeling requirements, as provided by G.S. 130A-309.242.

26 (3) The total costs of implementing the stewardship plan, accompanied by a copy
27 of an independent, third-party financial audit verifying these costs.

28 (4) The participation fees allocated to each of its responsible producers, including
29 a description of the methodology used to calculate the fees.

30 (5) An accounting of the reimbursements to participating collectors, including a
31 description of the methodology used to calculate the reimbursements.

32 (6) Any additional information requested by the Department.

33 (b) The Department shall maintain the confidentiality of any information that is required
34 to be submitted by a responsible producer or producer responsibility organization under this Part
35 that is designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as
36 confidential or as a trade secret under G.S. 132-1.2.

37 (c) The Department shall compile and publish on its website a list of responsible
38 producers and producer responsibility organizations that are out of compliance with the
39 applicable stewardship plan or the requirements of this Part.

40 **"§ 130A-309.245. Fees.**

41 The Commission may adopt rules setting fees for responsible producers and producer
42 responsibility organizations that defray the Department's cost of administering this Part,
43 including costs related to reviewing and processing stewardship plans, overseeing the
44 implementation of the plans, and ensuring compliance with the requirements of this Part.

45 **"§ 130A-309.246. Penalties.**

46 (a) This Part may be enforced as provided by Part 2 of Article 1 of this Chapter.

47 (b) If a penalty is imposed on a producer responsibility organization under this section,
48 each responsible producer participating in the producer responsibility organization is jointly and
49 severally liable for the payment of the penalty.

50 **"§ 130A-309.247. Applicability.**

1 (a) Except as provided by G.S. 130A-309.236(a) and subsection (b) of this section,
2 responsible producers are exempt from this Part when they meet any of the following exceptions
3 in this subsection:

4 (1) The producer generated less than two million dollars (\$2,000,000) in gross
5 revenue during the immediately preceding calendar year.

6 (2) The producer sold, offered for sale, or distributed for sale in this State during
7 the immediately preceding calendar year less than 1 ton of packaging material,
8 including the product contained, protected, delivered, presented, or distributed
9 in the packaging material.

10 (3) The producer conducted all of the packaging material sales in this State during
11 the immediately preceding calendar year at a single point of retail sale that
12 was not supplied or operated as part of a franchise.

13 (b) A responsible producer shall submit to the Department sufficient information to
14 demonstrate that the producer, pursuant to subsection (a) of this section, is excluded from
15 regulation under this Part.

16 **"§ 130A-309.248. Rulemaking.**

17 The Commission may adopt rules to implement this Part."

18 **SECTION 1.(b)** This section becomes effective October 1, 2022, except that
19 G.S. 130A-309.236(b), 130A-309.240, 130A-309.241, 130A-309.242, and 130A-309.243
20 become effective October 1, 2024.

21
22 **PART II. BAN CERTAIN TOXIC SUBSTANCES IN PACKAGING MATERIALS**

23 **SECTION 2.(a)** Article 9 of Chapter 130A of the General Statutes is amended by
24 adding a new Part to read:

25 "Part 2K. Ban Manufacture and Distribution of Certain Toxic Substances in Packaging
26 Materials.

27 **"§ 130A-309.260. Prohibition on manufacture and distribution of packaging materials**
28 **containing certain toxic substances.**

29 (a) No person may knowingly do any of the following:

30 (1) Manufacture packaging material containing a covered toxic substance.

31 (2) Distribute, sell, or offer for sale, for use within the State or for export from the
32 State, any packaging material containing a covered toxic substance.

33 (b) For purposes of this section, the following definitions apply:

34 (1) Covered toxic substance. – Includes the following substances:

35 a. Ortho-phthalates.

36 b. Bisphenols.

37 c. PFAS.

38 d. Lead and lead compounds.

39 e. Hexavalent chromium and compounds.

40 f. Cadmium and cadmium compounds.

41 g. Mercury and mercury compounds.

42 h. Benzophenone and its derivatives.

43 i. Halogenated flame retardants.

44 j. Perchlorate.

45 k. Formaldehyde.

46 l. Toluene.

47 m. Polyvinyl chloride.

48 n. Polystyrene.

49 o. Polycarbonate.

50 (2) Packaging material. – As defined in G.S. 130A-309.235.

(3) PFAS. – Perfluoroalkyl and polyfluoroalkyl substances, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

"§ 130A-309.261. Civil penalties.

(a) The Secretary may assess a civil penalty of not more than five thousand dollars (\$5,000) or, if the violation involves a hazardous waste, as defined in G.S. 130A-290, of not more than twenty-five thousand dollars (\$25,000) against any person who violates a requirement of this Part.

(b) If any action or failure to act for which a penalty may be assessed under subsection (a) of this section is a repeat offense, the Secretary may assess a penalty not to exceed ten thousand dollars (\$10,000) per occurrence. A penalty for multiple occurrences shall not exceed two hundred thousand dollars (\$200,000) in any month.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located in order to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located to recover the amount of the assessment. A civil action must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 2.(b) This section becomes effective October 1, 2024, and applies to persons on or after that date who knowingly manufacture, distribute, sell, or offer for sale any packaging materials containing covered toxic substances.

PART III. FUNDING FOR IMPLEMENTATION

SECTION 3. There is appropriated from the General Fund to the Department of Environmental Quality the sum of ten thousand dollars (\$10,000) in nonrecurring funds for the 2022-2023 fiscal year to implement the requirements of this act.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.