

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

H.B. 279  
Mar 6, 2023  
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40156-CC-2

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 PRODUCTS USING PACKAGING MATERIALS AND TO BAN THE  
4 MANUFACTURE AND DISTRIBUTION OF PACKAGING MATERIALS  
5 CONTAINING CERTAIN TOXIC SUBSTANCES IN ORDER TO PROTECT PUBLIC  
6 HEALTH.

7 The General Assembly of North Carolina enacts:

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

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

13 "Part 2J. Extended Producer Responsibility.

14 "§ 130A-309.235. Definitions.

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

- 17 (1) Collector. – Any publicly or privately owned solid waste management  
18 services or recycler that gathers discarded packaging materials from  
19 residential, commercial, industrial, or governmental establishments.
- 20 (2) Fulfillment service provider. – A person that handles, on behalf of a  
21 responsible producer, products in which the producer retains a property  
22 interest and offers at least two of the following services as part of a  
23 commercial activity: (i) warehousing, (ii) packaging, and (iii) addressing and  
24 shipping. For purposes of this Part, "fulfillment service provider" does not  
25 include postal or freight service providers.
- 26 (3) Packaging material. – Any part of a package or container, regardless of  
27 recyclability or compostability, including material types such as paper, plastic,  
28 glass, or metal, that is used for the containment, protection, handling, delivery,  
29 transport, distribution, and presentation of a product that is sold, offered for  
30 sale, or distributed in North Carolina. Bags are included within this definition.  
31 Packaging material does not include any of the following:
- 32 a. Material, or a category of material, intended to be used for long-term  
33 storage or protection of a durable product that can be expected to be  
34 usable for that purpose for a period of at least five years.



- 1            b. Medical devices and packaging that are included with products  
2            regulated as a drug, medical device, or dietary supplement under the  
3            Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321, et seq.  
4            c. Packaging products used to contain substances hazardous to the  
5            environment, regulated under the Federal Insecticide, Fungicide, and  
6            Rodenticide Act, 7 U.S.C. § 136, et seq.  
7            (4) Postconsumer waste material. – As defined in G.S. 105-129.25.  
8            (5) Producer responsibility fund. – A privately held account established and  
9            managed by the producer responsibility organization pursuant to  
10           G.S. 130A-309.237(d).  
11           (6) Producer responsibility organization or organization. – A not-for-profit entity  
12           formed by one or more responsible producers to act as an agent on behalf of  
13           each producer to develop and implement a stewardship plan.  
14           (7) Readily-recyclable. – Recyclable material, as defined in G.S. 130A-290, that  
15           the Department determines can be sorted by business entities in this State and  
16           has a consistent market for purchase.  
17           (8) Recycling rate. – The percentage of discarded packaging material that is  
18           managed through recycling or reuse, which is calculated by dividing the  
19           amount of discarded packaging material collected and recycled or reused by  
20           the total amount of discarded packaging material collected over a program  
21           year.  
22           (9) Responsible producer or producer. – Any of the following:  
23           a. A person that manufactures a product contained, protected, delivered,  
24           presented, or distributed in or using packaging material and sells,  
25           offers for sale, uses in a commercial enterprise, or distributes the  
26           product in or into the State under the brand of the manufacturer.  
27           b. If sub-subdivision a. of this subdivision does not apply, a person who  
28           is not the manufacturer of the product but is the owner or licensee of a  
29           trademark under which the product contained, protected, delivered,  
30           presented, or distributed in or using packaging material is sold, offered  
31           for sale, used in a commercial enterprise, or distributed in or into the  
32           State, regardless of whether the trademark is registered.  
33           c. If sub-subdivisions a. and b. of this subdivision do not apply, a person  
34           that sells a product contained, protected, delivered, presented, or  
35           distributed in or using packaging material and is intended to be filled  
36           in the State at the point of sale.  
37           d. If sub-subdivisions a., b., and c. of this subdivision do not apply, a  
38           person that sells, offers for sale, uses in a commercial enterprise, or  
39           distributes a product contained, protected, delivered, presented, or  
40           distributed in or using packaging material.  
41           e. Fulfillment service providers.  
42           (10) Reusable. – An object or material designed to be used repeatedly for a number  
43           of use cycles.  
44           (11) Stewardship plan. – A detailed plan that describes the manner in which  
45           responsible producers shall comply with the requirements of this Part and all  
46           rules adopted by the Commission pursuant to this Part.

47 **"§ 130A-309.236. Requirements for responsible producers.**

48           (a) Registration Required. – Each responsible producer shall register with the Department  
49           before selling, offering for sale, or distributing in North Carolina a product contained, protected,  
50           delivered, presented, or distributed in or using packaging materials.

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

6       **(c) Non-Reusable Packaging Material Reduction Requirements.** – According to the  
7 following schedule, each responsible producer shall reduce the total amount of non-reusable  
8 packaging materials used for containing, protecting, delivering, presenting, and distributing  
9 products sold, offered for sale, or distributed in this State (i) by unit, (ii) on average, and (iii) in  
10 the aggregate:

11           (1) Ten percent (10%) after two years following approval of the stewardship plan.

12           (2) Twenty percent (20%) after four years following approval of the stewardship  
13 plan.

14           (3) Thirty percent (30%) after six years following approval of the stewardship  
15 plan.

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

18       The reductions required by this subsection shall be measured against the total amount of  
19 packaging material the responsible producer used for containing, protecting, delivering,  
20 presenting, and distributing the products it sold, offered for sale, or distributed in this State during  
21 the respective calendar year.

22       **(d) Recycling-Rate Requirements.** – Each responsible producer shall ensure that all  
23 non-reusable packaging material, in the aggregate, used for containing, protecting, delivering,  
24 presenting, and distributing the products it sold, offered for sale, or distributed in this State is  
25 recycled at a rate consistent with the following schedule:

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

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

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

32       **(e) Postconsumer Waste Material Content Requirements.** – Each responsible producer  
33 shall ensure that all non-reusable packaging material used for containing, protecting, delivering,  
34 presenting, and distributing the products it sold, offered for sale, or distributed in this State  
35 incorporates, on average and in the aggregate, the following amount, by weight, of postconsumer  
36 waste material in accordance with the following schedule:

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

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

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

43 **"§ 130A-309.237. Producer responsibility organizations; participation fees.**

44       **(a) Membership Requirement.** – Each responsible producer shall establish or join a  
45 producer responsibility organization to act as an agent on behalf of the producer for the purposes  
46 of satisfying its obligations under this Part. A producer may participate in more than one producer  
47 responsibility organization if each organization is established for a different category of  
48 packaging materials. Any producer responsibility organization formed for the purpose of  
49 complying with this Part shall be established and operated as an organization described in section  
50 501(c)(3) of the Internal Revenue Code of 1986.

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

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

- 13            (1) Costs to provide curbside collection of packaging material, or other levels of  
14 collection service, that is, at a minimum, as convenient as the recycling  
15 collection service offered in the particular jurisdiction prior to the  
16 implementation of the stewardship plan.
- 17            (2) Costs to process a producer's packaging material for acceptance by secondary  
18 material markets.
- 19            (3) Whether the packaging material includes labels, inks, and adhesives  
20 containing heavy metals or other hazardous wastes that would contaminate  
21 the recycling process.
- 22            (4) Whether the packaging material is specifically designed to be reusable or  
23 refillable and has a high reuse or refill rate.
- 24            (5) The percentage of postconsumer waste material in a producer's packaging  
25 material.
- 26            (6) Contributions to greenhouse gas emissions from the production, use,  
27 collection, processing, and marketing of the packaging material.

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

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

- 34            (1) To reimburse participating collectors in accordance with G.S. 130A-309.240.
- 35            (2) To fund collection and convenience obligations, required pursuant to  
36 G.S. 130A-309.241.
- 37            (3) To fund the outreach and education programming, required pursuant to  
38 G.S. 130A-309.243.
- 39            (4) To fund the actual operating costs of the organization, which may not exceed  
40 the estimated operating costs indicated in the stewardship plan approved by  
41 the Department pursuant to G.S. 130A-309.239.
- 42            (5) To pay fees assessed by the Department for the purposes of implementing this  
43 Part.

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

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

1 **"§ 130A-309.238. Stewardship plan.**

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

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

- 12 (1) Contact information for the producer responsibility organization and the  
13 responsible producers covered under the stewardship plan.
- 14 (2) A comprehensive list of the packaging materials for which the producer or  
15 producer responsibility organization is responsible under the stewardship  
16 plan.
- 17 (3) A description of how the producer responsibility organization, along with its  
18 member producers, will meet or exceed the requirements established in  
19 G.S. 130A-309.236.
- 20 (4) A description of how the packaging materials covered under the stewardship  
21 plan will be collected and managed using environmentally sound management  
22 practices.
- 23 (5) A description of how the producer responsibility organization will work with  
24 collectors to comply with the collection and convenience requirements  
25 pursuant to G.S. 130A-309.241.
- 26 (6) A proposal for implementing the outreach and education program, required  
27 pursuant to G.S. 130A-309.243, in a manner that increases access to recycling  
28 throughout the State.
- 29 (7) A proposal for implementing the labeling requirements pursuant to  
30 G.S. 130A-309.242, including a description of how the producer  
31 responsibility organization will ensure compliance by assisting its member  
32 producers and regularly verifying labeling claims through independent,  
33 third-party audits.
- 34 (8) A description of the participation fees and the methodology used for  
35 determining the structure of the participation fees, allocated to responsible  
36 producers, that meet the requirements of this Part and are sufficient to cover  
37 the cost of developing, submitting, implementing, and updating the  
38 stewardship plan and maintaining a financial reserve sufficient to implement  
39 the stewardship plan in a financially prudent and responsible manner.
- 40 (9) A description of how the producer responsibility organization plans to  
41 establish and manage the producer responsibility fund, including staffing to  
42 manage the fund, ensuring equity of access to collection opportunities for  
43 customers across the State, providing technical support to responsible  
44 producers regarding program requirements, administering and collecting  
45 payments to and reimbursements from the fund, and the investment types, if  
46 any, the organization intends to use to manage monies within the fund.
- 47 (10) A description of the process for collectors to recoup all reasonable  
48 activity-based costs, both operational and capital, from the producer  
49 responsibility organization for collecting, transporting, or sorting packaging  
50 materials covered under the stewardship plan.

1           (11) A description of how stakeholder comments were considered in the  
2 development of the stewardship plan, including a summary and analysis of the  
3 issues raised and significant changes recommended by stakeholders, a  
4 statement of the reasons why any significant changes were not incorporated  
5 into the proposed stewardship plan, and a description of any changes made to  
6 the proposed stewardship plan as a result of such comments.

7           (12) Any additional information requested by the Department.

8           (c) A producer responsibility organization shall provide stakeholders, including units of  
9 local government, municipal solid waste management facilities, recycling facilities, collectors,  
10 and other members of the general public with an opportunity to review and comment on the draft  
11 stewardship plan prior to its submission to the Department.

12           (d) A producer responsibility organization may prepare a revised stewardship plan and  
13 submit it to the Department at any time the organization considers appropriate in response to  
14 changed circumstances, including to incorporate additional responsible producers to an existing  
15 stewardship plan.

16 **"§ 130A-309.239. Review and approval of proposed stewardship plans.**

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

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

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

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

26           (3) Proposes participation fees that:

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

30           b. Adequately incentivize waste reduction and recycling compatibility  
31 innovations and practices and discourage designs and practices that  
32 increase the costs of managing packaging materials.

33           c. Equitably allocate implementation costs among responsible producers.

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

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

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

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

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

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

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

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

3 **"§ 130A-309.240. Collector reimbursement.**

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

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

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

16 (d) Collector Responsibilities. –

17 (1) To facilitate the producer responsibility organization's determination of the  
18 cost of recycling, participating collectors shall annually report to the  
19 organization all information necessary for the organization to determine the  
20 collector's incurred net costs associated with the collection, processing,  
21 transportation, and recycling and disposal of packaging material covered  
22 under the stewardship plan.

23 (2) Participating collectors shall not charge fees to customers for reimbursable  
24 costs.

25 **"§ 130A-309.241. Collection and convenience.**

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

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

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

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

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

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

43 **"§ 130A-309.242. Labeling.**

44 Responsible producers shall indicate on all packaging material used for containing,  
45 protecting, delivering, presenting, or distributing products sold, offered for sale, or distributed in  
46 the State (i) the percentage of postconsumer waste material content, (ii) whether the packaging  
47 material is readily recyclable, and (iii) whether the packaging material is compostable. Such  
48 labels must be in a form deemed appropriate by the Department pursuant to rules adopted by the  
49 Commission.

50 **"§ 130A-309.243. Outreach and education.**

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

- 3           (1) Proper end-of-life management of packaging materials.  
4           (2) The location and availability of curbside and drop-off collection opportunities.  
5           (3) Recycling and composting instructions that are (i) consistent statewide, except  
6 as necessary to take into account differences among local ordinances and  
7 processing capabilities, (ii) easy to understand, and (iii) easily accessible.

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

- 9           (1) Be designed to achieve the packaging material requirements established  
10 pursuant to G.S. 130A-309.236.  
11           (2) Incorporate, at a minimum, electronic, print, web-based, and social media  
12 elements that local governments may utilize at their discretion.  
13           (3) Include, at a minimum, (i) consulting on education and outreach with local  
14 governments and other stakeholders, (ii) coordinating with and assisting local  
15 governments and solid waste facility operators, and other entities providing  
16 services, and (iii) developing and providing outreach and education to the  
17 diverse ethnic populations in the State.  
18           (4) Include a plan to work with responsible producers to label packaging materials  
19 with information to assist consumers in responsibly managing and recycling  
20 the packaging materials.

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

25 **"§ 130A-309.244. Reporting requirements and audits.**

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

- 30           (1) The total amount of packaging material, by weight and unit, used for  
31 containing, protecting, delivering, presenting, or distributing products sold,  
32 offered for sale, or distributed into the State by each of its responsible  
33 producers in the prior calendar year.  
34           (2) Any information necessary for the Department to make a determination of the  
35 producer responsibility organization's, and its member producers', compliance  
36 with all of the following:  
37           a. The non-reusable packaging reduction requirements, as provided by  
38 G.S. 130A-309.236(c).  
39           b. The recycling-rate requirements, as provided by  
40 G.S. 130A-309.236(d).  
41           c. The postconsumer waste material content requirements, as provided  
42 by G.S. 130A-309.236(e).  
43           d. The labeling requirements, as provided by G.S. 130A-309.242.  
44           (3) The total costs of implementing the stewardship plan, accompanied by a copy  
45 of an independent, third-party financial audit verifying these costs.  
46           (4) The participation fees allocated to each of its responsible producers, including  
47 a description of the methodology used to calculate the fees.  
48           (5) An accounting of the reimbursements to participating collectors, including a  
49 description of the methodology used to calculate the reimbursements.  
50           (6) Any additional information requested by the Department.



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

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

8 **"§ 130A-309.245. Fees.**

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

13 **"§ 130A-309.246. Penalties.**

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

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

18 **"§ 130A-309.247. Applicability.**

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

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

24           **(2)** The producer sold, offered for sale, or distributed for sale less than 1 ton of  
25 products in this State during the immediately preceding calendar year,  
26 including packaging materials used to contain, protect, deliver, present, or  
27 distribute the product.

28           **(3)** The producer conducted all product sales in this State during the immediately  
29 preceding calendar year at a single point of retail sale that was not supplied or  
30 operated as part of a franchise.

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

34 **"§ 130A-309.248. Rulemaking.**

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

36       **SECTION 1.(b)** This section becomes effective October 1, 2023, except that  
37 G.S. 130A-309.236(b), 130A-309.240, 130A-309.241, 130A-309.242, and 130A-309.243  
38 become effective October 1, 2025.

39  
40 **PART II. BAN CERTAIN TOXIC SUBSTANCES IN PACKAGING MATERIALS**

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

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

45 **"§ 130A-309.260. Prohibition on manufacture and distribution of packaging materials**  
46 **containing certain toxic substances.**

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

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

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

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

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

- 2           a. Ortho-phthalates.  
3           b. Bisphenols.  
4           c. PFAS.  
5           d. Lead and lead compounds.  
6           e. Hexavalent chromium and compounds.  
7           f. Cadmium and cadmium compounds.  
8           g. Mercury and mercury compounds.  
9           h. Benzophenone and its derivatives.  
10          i. Halogenated flame retardants.  
11          j. Perchlorate.  
12          k. Formaldehyde.  
13          l. Toluene.  
14          m. Polyvinyl chloride.  
15          n. Polystyrene.  
16          o. Polycarbonate.

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

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

20 **§ 130A-309.261. Civil penalties.**

21          (a) The Secretary may assess a civil penalty of not more than five thousand dollars  
22 (\$5,000) or, if the violation involves a hazardous waste, as defined in G.S. 130A-290, of not more  
23 than twenty-five thousand dollars (\$25,000) against any person who violates a requirement of  
24 this Part.

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

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

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

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

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

1 violator, the Secretary shall request the Attorney General to institute a civil action in the superior  
2 court of any county in which the violator resides or the violator's principal place of business is  
3 located to recover the amount of the assessment. A civil action must be filed within three years  
4 of the date the final agency decision or court order was served on the violator."

5 **SECTION 2.(b)** This section becomes effective October 1, 2025, and applies to  
6 persons on or after that date who knowingly manufacture, distribute, sell, or offer for sale any  
7 packaging materials containing covered toxic substances.

8  
9 **PART III. EFFECTIVE DATE**

10 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes  
11 law.