

ASSEMBLY, No. 1169

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman COHEN and Assemblywoman MURPHY

1 **AN ACT** concerning the use of certain toxic substances in packaging,
2 and amending P.L.1991, c.520 (C.13:1E-99.44 et seq.).
3

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

6

7 1. Section 4 of P.L.1991, c.520 (C.13:1E-99.47) is amended to
8 read as follows:

9 4. a. On or after January 1, 1993, no person shall sell, offer for
10 sale, or offer for promotional purposes in this State any package or
11 packaging component which includes, in the package itself or in any
12 packaging component, inks, dyes, pigments, adhesives, stabilizers or
13 any other additives containing any lead, cadmium, mercury or
14 hexavalent chromium which has been intentionally introduced as a
15 chemical element during manufacturing or distribution as opposed to
16 the incidental presence of any of these elements.

17 b. On or after January 1, 1993, no person shall sell, offer for sale,
18 or offer for promotional purposes in this State any product contained
19 in a package which includes, in the package itself or in any packaging
20 component, inks, dyes, pigments, adhesives, stabilizers or any other
21 additives containing any lead, cadmium, mercury or hexavalent
22 chromium which has been intentionally introduced as a chemical
23 element during manufacturing or distribution as opposed to the
24 incidental presence of any of these elements.

25 c. The sum of the concentration levels of lead, cadmium, mercury
26 or hexavalent chromium present in any package or packaging
27 component, which shall constitute an incidental presence, shall not
28 exceed the following levels:

29 (1) Not more than 600 parts per million by weight (0.06%) after
30 January 1, 1993;

31 (2) Not more than 250 parts per million by weight (0.025%) after
32 January 1, 1994;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (3) Not more than 100 parts per million by weight (0.01%) after
2 January 1, 1995.

3 As used in this section, "incidental presence" means the presence or
4 a regulated metal as an unintended or undesired ingredient of a
5 package or packaging component.

6 As used in this section, "intentionally introduced" means the
7 deliberate use of a regulated heavy metal to provide a desired
8 characteristic, appearance, or quality.

9 "Intentionally introduced" shall not include:

10 (1) Using a regulated metal as a processing agent or intermediate
11 to impart certain chemical or physical changes during manufacturing,
12 whereupon the incidental retention of a residue of a regulated metal in
13 the final package or packaging component is neither desired nor
14 deliberate, if the final package or packaging component is in
15 compliance with this act; or

16 (2) Using recycled materials as feed stock for the manufacture of
17 new packaging materials, where some portion of the recycled materials
18 may contain amounts of the regulated metals if the new package or
19 packaging component is in compliance with this act.

20 (cf: P.L.1991, c.520, s.4)

21

22 2. Section 5 of P.L.1991, c.520 (C.13:1E-99.48) is amended to
23 read as follows:

24 5. a. Any package manufacturer, product manufacturer or
25 distributor may, in accordance with rules or regulations adopted by the
26 department pursuant to the "Administrative Procedure Act," P.L.1968,
27 c.410 (C.52:14B-1 et seq.), claim an exemption from the provisions of
28 section 4 of this act for any package or packaging component meeting
29 any of the following criteria:

30 (1) Those packages or packaging components labeled with a code
31 indicating a date of manufacture prior to January 1, 1993; except that
32 the labeling requirement may be waived by the department in those
33 instances where it is not feasible or practical to label individual
34 packages or packaging components provided that suitable alternative
35 evidence of date of manufacture is furnished to the department;

36 (2) Those packages or packaging components used to contain
37 alcoholic beverages, including liquor, wine, vermouth and sparkling
38 wine, bottled prior to January 1, 1993;

39 (3) Those packages or packaging components which are glass
40 containers with ceramic labeling used to contain pharmaceutical
41 preparations; except that the exemption provided in this paragraph
42 shall expire on January 1, 1995;

43 (4) Those packages or packaging components which are glass
44 containers with ceramic labeling used to contain cosmetics; except that
45 the exemption provided in this paragraph shall expire on January 1,
46 1995;

1 (5) Those packages or packaging components to which lead,
2 cadmium, mercury or hexavalent chromium have been added in the
3 manufacturing, forming, printing or distribution process in order to
4 comply with health or safety requirements of federal law;

5 (6) Those packages or packaging components to which lead,
6 cadmium, mercury or hexavalent chromium have been added in the
7 manufacturing, forming, printing or distribution process and for the
8 use of which there is no feasible or practical alternative or substitute;
9 except that the exemption provided in this paragraph shall expire on
10 January 1, 1995;

11 (7) Those packages or packaging components that would not
12 exceed the maximum contaminant levels set forth in subsection c. of
13 section 4 of this act but for the addition of post-consumer waste
14 materials; except that the exemption provided in this paragraph shall
15 expire on January 1, [1997] 2000;

16 (8) Those packages or packaging components composed of metal
17 and commonly referred to as "tin cans" that are used to contain food
18 or food products intended for human consumption and that may
19 exceed the maximum contaminant levels set forth in subsection c. of
20 section 4 of this act due to the incidental presence of lead as a
21 naturally occurring chemical element in the metal that is unrelated to
22 the manufacturing process; or

23 (9) Those packages or packaging components composed of metal
24 and commonly referred to as "tin cans" that are used to contain paint,
25 chemicals or other nonfood products, to which lead has been added in
26 the manufacturing process for the purposes of forming, soldering or
27 sealing the can, or that may exceed the maximum contaminant levels
28 set forth in subsection c. of section 4 of this act due to the incidental
29 presence of lead as a naturally occurring chemical element in the metal
30 that is unrelated to the manufacturing process.

31 (10) Those packages or packaging components that are reused,
32 provided that the related product is regulated under federal or State
33 health or safety requirements and that the transportation of the related
34 product is regulated under federal or State transportation
35 requirements, and the disposal of the related product is performed
36 according to federal or State radioactive or hazardous waste disposal
37 requirements; provided that the an exemption under this paragraph
38 shall expire on January 1, 2000.

39 (11) Those packages or packaging components having a controlled
40 distribution and reuse, provided that the manufacturers or distributors
41 of such package or packaging component shall petition the
42 commissioner for exemption and receive approval from the
43 commissioner, based on satisfactory demonstration that the
44 environmental benefit of the controlled distribution and reuse is
45 significantly greater as compared to the same package manufactured
46 in compliance with the contaminant levels; provided that the an

1 exemption under this paragraph shall expire on January 1, 2000.

2 The manufacturer shall submit with the petition a plan that shall
3 include:

4 (a) A means of identifying in a permanent and visible manner those
5 reusable entities containing regulated metals for which an exemption
6 is sought;

7 (b) A method of regulatory and financial accountability so that a
8 specified percentage of the reusable entities manufactured and
9 distributed to other persons are not discarded by those persons after
10 use but are returned to the manufacturer or designee;

11 (c) A system of inventory and record maintenance to account for
12 the reusable entities placed in, and removed from, service;

13 (d) A means of transforming returned entities, that are no longer
14 reusable, into recycled materials for manufacturing or into
15 manufacturing waste that are subject to existing federal or State laws
16 or regulations governing manufacturing waste to ensure that these
17 wastes do not enter the commercial or municipal waste stream; and

18 (e) A system of annually reporting to the commissioner changes to
19 the system and changes in designees.

20 The exemption provided in paragraph (6) may be renewed by the
21 department for periods not to exceed two years, except that any
22 renewal granted by the department for the exemption provided in
23 paragraph (6) shall be based on evidence furnished to the department
24 that there is no feasible or practical alternative or substitute for the
25 specified package or packaging component.

26 The exemptions provided in paragraphs (8) and (9) shall expire on
27 January 1, 1997, except that any exemption provided in paragraphs (8)
28 or (9) may be renewed by the department after this date for periods
29 not to exceed two years. Any renewal granted by the department for
30 the exemption provided in paragraphs (8) or (9) shall be based on
31 evidence furnished to the department that there is no feasible method
32 to reduce the concentration levels of lead for the specified package or
33 packaging component.

34 For the purposes of this subsection, a use for which there is "no
35 feasible or practical alternative or substitute" means one in which the
36 use of lead, cadmium, mercury or hexavalent chromium is essential to
37 the protection, safe handling, or function of the contents of the
38 package.

39 b. Any package manufacturer, product manufacturer or distributor
40 claiming an exemption pursuant to subsection a. of this section shall
41 maintain on file a written declaration of exemption for each specified
42 package or packaging component for which an exemption is claimed.
43 Copies of each declaration of exemption shall be furnished to the
44 department upon its request and to members of the public in
45 accordance with the provisions of section 14 of this act.

46 c. Any product contained in a package or packaging component for

which an exemption is claimed may be sold by a retailer provided that
the declaration of exemption claimed is valid and in accordance with
the criteria provided in subsection a. of this section, as may be verified
by the department pursuant to section 9 of this act.²
(cf: P.L.1991, c.520, s.5)

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7 3. Section 13 of P.L.1991, c.520 (C.13:1E-99.56) is amended to
8 read as follows:

9 13. The department, in consultation with the Source Reduction
10 [Council] Task Force of the Coalition of Northeastern Governors
11 (CONEG), shall review the effectiveness of this act no later than 42
12 months after its effective date and shall provide to the Governor and
13 the Legislature a written report based upon that review.

14 a. The report shall include:

15 (1) a recommendation whether to continue the exemptions
16 provided in paragraphs (7), (8) and (9) of subsection a. of section 5 of
17 this act; and

18 (2) a description of the nature of the substitute elements used in
19 lieu of lead, cadmium, mercury or hexavalent chromium during the
20 manufacturing or distribution of a package or packaging component.

21 b. The report may contain recommendations to include additional
22 toxic substances contained in packages or packaging components on
23 the list set forth in section 4 of this act in order to further reduce the
24 toxicity of packaging waste.

25 Any recommendation to include an additional toxic substance on
26 the list set forth in section 4 of this act shall include:

(1) a determination as to whether the continued use of the proposed substance presents or will present an unreasonable risk to health or the environment, which determination shall utilize a nationally recognized risk assessment protocol taking into account the magnitude and severity of the environmental harm against the benefits of the substance to product manufacturers and the general public;

33 (2) a determination as to the availability of a substitute element to
34 be used in lieu of the proposed substance; and

35 (3) a description of other adverse effects which the addition of the
36 proposed substance to the list set forth in section 4 of this act may
37 have on product manufacturers or the general public.

38 (cf: P.L.1991, c.520, s.13)

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40 4. This act shall take effect immediately.

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STATEMENT

45 This bill would amend the "Toxic Packaging Reduction Act"
46 according to recommendations by the Coalition of Northeast

1 Governors (CONEG). The bill would extend to January 1, 2000 the
2 exemption for packaging or packaging components with
3 post-consumer waste material. The bill would clarify the definition of
4 "incidental presence" and "intentionally introduced." The bill would
5 also add an exemption for reusable packaging. Finally, the bill revises
6 a reference to the Source Reduction Task Force of CONEG.

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11 Amends the "Toxic Packaging Reduction Act."