

P.L. 1997, CHAPTER 307, *approved January 8, 1998*
Assembly, No. 1169 (*First Reprint*)

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 ¹1. Section 3 of P.L.1991, c.520 (C.13:1E-99.46) is amended to
8 read as follows:

9 3. As used in this act:

10 "Commissioner" means the Commissioner of Environmental
11 Protection **[and Energy;]**.

12 "Department" means the Department of Environmental Protection
13 **[and Energy;]**.

14 "Distribution" means the practice of taking title to packages or
15 packaging components for promotional purposes or resale.

16 "Distributor" means any person who distributes packaged products
17 intended for retail sale in packages or packaging components**[:]** , but
18 shall not include any person involved solely in delivering packages or
19 packaging components on behalf of third parties.

20 "Manufacturing" means the physical or chemical modification of a
21 material to produce packaging or packaging components.

22 "Package" means a container specifically manufactured for the
23 purposes of marketing, protecting or handling a product and shall
24 include a unit package, an intermediate package and a shipping
25 container as defined by the American Society for Testing and Materials
26 in ASTM D996; "package" shall also mean and include such unsealed
27 receptacles as carrying cases, crates, cups, pails, rigid foil and other
28 trays, wrappers and wrapping films, bags and tubs**[:]**.

29 "Package manufacturer" means any person who manufactures

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAW committee amendments adopted May 12, 1997.

1 packages or packaging components[;].

2 "Packaging component" means any individual assembled part of a
3 package including, but not limited to, any interior or exterior blocking,
4 bracing, cushioning, weatherproofing, exterior strapping, coating,
5 closure, ink, label, dye, pigment, adhesive, stabilizer or any other
6 additive; except that a "coating" shall not include a thin tin or zinc
7 layer applied to base steel or sheet steel during manufacturing of the
8 steel or package; except that tin-plated steel that meets ASTM
9 specification A-623 shall be considered as a single package
10 component, and electro-galvanized coated steel and hot dipped coated
11 galvanized steel that meets the ASTM specification A-525 and A-879
12 shall be treated in the same manner as tin-plated steel.

13 "Product manufacturer" means any person who purchases packages
14 or packaging components from a package manufacturer for the
15 purposes of marketing, protecting or handling the contents of the
16 package or packaging component, including a product intended for
17 retail sale[;].

18 "Retailer" means any person who engages in the sale within the
19 State of packaged products intended for retail sale in packages or
20 packaging components to a consumer at retail for off-premises use or
21 consumption.¹

22 (cf: P.L.1991, c.520, s.3)

23

24 ¹[1.] 2.¹ Section 4 of P.L.1991, c.520 (C.13:1E-99.47) is
25 amended to read as follows:

26 4. a. On or after January 1, 1993, no person shall sell, offer for
27 sale, or offer for promotional purposes in this State any package or
28 packaging component which includes, in the package itself or in any
29 packaging component, inks, dyes, pigments, adhesives, stabilizers or
30 any other additives containing any lead, cadmium, mercury or
31 hexavalent chromium which has been intentionally introduced as a
32 chemical element during manufacturing or distribution as opposed to
33 the incidental presence of any of these elements.

34 b. On or after January 1, 1993, no person shall sell, offer for sale,
35 or offer for promotional purposes in this State any product contained
36 in a package which includes, in the package itself or in any packaging
37 component, inks, dyes, pigments, adhesives, stabilizers or any other
38 additives containing any lead, cadmium, mercury or hexavalent
39 chromium which has been intentionally introduced as a chemical
40 element during manufacturing or distribution as opposed to the
41 incidental presence of any of these elements.

42 c. The sum of the concentration levels of lead, cadmium, mercury
43 or hexavalent chromium present in any package or packaging
44 component, which shall constitute an incidental presence, shall not
45 exceed the following levels:

46 (1) Not more than 600 parts per million by weight (0.06%) after

1 January 1, 1993;

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

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

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

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

12 "Intentionally introduced" shall not include:

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

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

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

24

25 ¹[2.] 3.¹ Section 5 of P.L.1991, c.520 (C.13:1E-99.48) is
26 amended to read as follows:

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

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

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

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

46 (4) Those packages or packaging components which are glass

1 containers with ceramic labeling used to contain cosmetics; except that
2 the exemption provided in this paragraph shall expire on January 1,
3 1995;

4 (5) Those packages or packaging components to which lead,
5 cadmium, mercury or hexavalent chromium have been added in the
6 manufacturing, forming, printing or distribution process in order to
7 comply with health or safety requirements of federal law ¹, provided
8 that the package manufacturers of such package or packaging
9 component shall petition the department for an exemption and receive
10 approval from the department based upon a satisfactory demonstration
11 that the criterion is met; provided that an exemption under this
12 paragraph shall be for a period of no more than two years, except that
13 the package manufacturer may apply to the department for renewals
14 of the exemption for periods of no more than two years¹ ;

15 (6) Those packages or packaging components to which lead,
16 cadmium, mercury or hexavalent chromium have been added in the
17 manufacturing, forming, printing or distribution process ¹[and]¹ for the
18 use of which there is no feasible or practical alternative ¹[or substitute;
19 except that the exemption provided in this paragraph shall expire on
20 January 1, 1995] , provided that the package manufacturers of such
21 package or packaging component shall petition the department for an
22 exemption and receive approval from the department based upon a
23 satisfactory demonstration that the criterion is met; provided that an
24 exemption under this paragraph shall be for a period of no more than
25 two years, except that the package manufacturer may apply to the
26 department for renewals of the exemption for periods of no more than
27 two years¹;

28 (7) Those packages or packaging components that would not
29 exceed the maximum contaminant levels set forth in subsection c. of
30 section 4 of this act but for the addition of ¹[post-consumer waste]
31 recycled¹ materials; except that the exemption provided in this
32 paragraph shall expire on January 1, [1997] 2000;

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

40 (9) Those packages or packaging components composed of metal
41 and commonly referred to as "tin cans" that are used to contain paint,
42 chemicals or other nonfood products, to which lead has been added in
43 the manufacturing process for the purposes of forming, soldering or
44 sealing the can, or that may exceed the maximum contaminant levels
45 set forth in subsection c. of section 4 of this act due to the incidental
46 presence of lead as a naturally occurring chemical element in the metal

1 that is unrelated to the manufacturing process.

2 (10) Those packages or packaging components that are reused,
3 provided that the related product is regulated under federal or State
4 health or safety requirements and that the transportation of the related
5 product is regulated under federal or State transportation
6 requirements, and the disposal of the related product is performed
7 according to federal or State radioactive or hazardous waste disposal
8 requirements; provided that ¹[the]¹ an exemption under this paragraph
9 shall expire on January 1, 2000.

10 (11) Those packages or packaging components having a
11 controlled distribution and reuse, provided that the manufacturers or
12 distributors of such package or packaging component shall petition the
13 ¹[commissioner] department¹ for ¹an¹ exemption and receive approval
14 from the ¹[commissioner] department ,¹based on satisfactory
15 demonstration that the environmental benefit of the controlled
16 distribution and reuse is significantly greater as compared to the same
17 package manufactured in compliance with the contaminant levels;
18 provided that ¹[the]¹ an exemption under this paragraph shall expire
19 on January 1, 2000.

20 The manufacturer shall submit with the petition a plan that shall
21 include:

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

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

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

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

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

38 ¹[The exemption provided in paragraph (6) may be renewed by the
39 department for periods not to exceed two years, except that any
40 renewal granted by the department for the exemption provided in
41 paragraph (6) shall be based on evidence furnished to the department
42 that there is no feasible or practical alternative or substitute for the
43 specified package or packaging component.]

44 (12) Those packages or packaging components that are glass or
45 ceramic that have a vitrified decoration and when tested in accordance
46 with the toxicity characteristic leaching procedure (TCLP) of the

1 United States Environmental Protection Agency Test Method SW-846
2 does not exceed 1.0 ppm for cadmium and 5.0 ppm for lead; provided
3 that an exemption under this paragraph shall expire on January 1,
4 2000.¹

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

13 For the purposes of this subsection, a use for which there is "no
14 feasible or practical alternative or substitute" means one in which the
15 use of lead, cadmium, mercury or hexavalent chromium is essential to
16 the protection, safe handling, or function of the contents of the
17 package.

18 b. Any package manufacturer, product manufacturer or distributor
19 claiming an exemption pursuant to subsection a. of this section shall
20 maintain on file a written declaration of exemption for each specified
21 package or packaging component for which an exemption is claimed.
22 Copies of each declaration of exemption shall be furnished to the
23 department upon its request and to members of the public in
24 accordance with the provisions of section 14 of this act.

25 c. Any product contained in a package or packaging component
26 for which an exemption is claimed may be sold by a retailer provided
27 that the declaration of exemption claimed is valid and in accordance
28 with the criteria provided in subsection a. of this section, as may be
29 verified by the department pursuant to section 9 of this act.

30 (cf: P.L.1991, c.520, s.5)

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32 ¹[3.] 4.¹ Section 13 of P.L.1991, c.520 (C.13:1E-99.56) is
33 amended to read as follows:

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

39 a. The report shall include:

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

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

46 b. The report may contain recommendations to include additional

1 toxic substances contained in packages or packaging components on
2 the list set forth in section 4 of this act in order to further reduce the
3 toxicity of packaging waste.

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

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

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

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

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

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19 ¹[4.] 5.¹ This act shall take effect immediately.

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23

24 Amends the "Toxic Packaging Reduction Act."