

## CHAPTER 307

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

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

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

C.13:1E-99.46 Definitions.

3. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

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

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

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

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

"Package manufacturer" means any person who manufactures packages or packaging components.

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

"Product manufacturer" means any person who purchases packages or packaging components from a package manufacturer for the purposes of marketing, protecting or handling the contents of the package or packaging component, including a product intended for retail sale.

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

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

C.13:1E-99.47 Sale of certain packages, components, packaged products, restricted; terms defined.

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

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

c. The sum of the concentration levels of lead, cadmium, mercury or hexavalent chromium

present in any package or packaging component, which shall constitute an incidental presence, shall not exceed the following levels:

- (1) Not more than 600 parts per million by weight (0.06%) after January 1, 1993;
- (2) Not more than 250 parts per million by weight (0.025%) after January 1, 1994;
- (3) Not more than 100 parts per million by weight (0.01%) after January 1, 1995.

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

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

"Intentionally introduced" shall not include:

- (1) Using a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of a regulated metal in the final package or packaging component is neither desired nor deliberate, if the final package or packaging component is in compliance with this act; or
- (2) Using recycled materials as feed stock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of the regulated metals if the new package or packaging component is in compliance with this act.

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

C.13:1E-99.48 Exemptions, criteria.

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

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

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

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

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

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

(6) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process for the use of which there is no feasible or practical alternative, provided that the package manufacturers of such package or packaging component shall petition the department for an exemption and receive approval from the department based upon a satisfactory demonstration that the criterion is met; provided that an exemption under this paragraph shall be for a period of no more than two years, except that the package manufacturer may apply to the department for renewals of the exemption for periods of no more than two years;

(7) Those packages or packaging components that would not exceed the maximum

contaminant levels set forth in subsection c. of section 4 of this act but for the addition of recycled materials; except that the exemption provided in this paragraph shall expire on January 1, 2000;

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

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

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

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

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

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

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

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

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

(e) A system of annually reporting to the commissioner changes to the system and changes in designees; or

(12) Those packages or packaging components that are glass or ceramic that have a vitrified decoration and when tested in accordance with the toxicity characteristic leaching procedure (TCLP) of the United States Environmental Protection Agency Test Method SW-846 does not exceed 1.0 ppm for cadmium and 5.0 ppm for lead; provided that an exemption under this paragraph shall expire on January 1, 2000.

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

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

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

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.

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

C.13:1E-99.56 Review, report.

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

a. The report shall include:

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

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

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

Any recommendation to include an additional toxic substance on 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;

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

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

5. This act shall take effect immediately.

Approved January 8, 1998.