

SENATE, No. 2268

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senator McNAMARA

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.).

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

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7 1. 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
30 packages or packaging components[;].

31 "Packaging component" means any individual assembled part of a
32 package including, but not limited to, any interior or exterior blocking,
33 bracing, cushioning, weatherproofing, exterior strapping, coating,
34 closure, ink, label, dye, pigment, adhesive, stabilizer or any other

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 additive; except that a "coating" shall not include a thin tin or zinc
2 layer applied to base steel or sheet steel during manufacturing of the
3 steel or package; except that tin-plated steel that meets ASTM
4 specification A-623 shall be considered as a single package
5 component, and electro-galvanized coated steel and hot dipped coated
6 galvanized steel that meets the ASTM specification A-525 and A-879
7 shall be treated in the same manner as tin-plated steel.

8 "Product manufacturer" means any person who purchases packages
9 or packaging components from a package manufacturer for the
10 purposes of marketing, protecting or handling the contents of the
11 package or packaging component, including a product intended for
12 retail sale[;].

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

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

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

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

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

37 c. The sum of the concentration levels of lead, cadmium, mercury
38 or hexavalent chromium present in any package or packaging
39 component, which shall constitute an incidental presence, shall not
40 exceed the following levels:

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

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

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

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

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

7 "Intentionally introduced" shall not include:

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

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

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

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

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

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

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

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

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

45 (5) Those packages or packaging components to which lead,
46 cadmium, mercury or hexavalent chromium have been added in the

1 manufacturing, forming, printing or distribution process in order to
2 comply with health or safety requirements of federal law, provided that
3 the package manufacturers of such package or packaging component
4 shall petition the department for an exemption and receive approval
5 from the department based upon a satisfactory demonstration that the
6 criterion is met; provided that an exemption under this paragraph shall
7 be for a period of no more than two years, except that the package
8 manufacturer may apply to the department for renewals of the
9 exemption for periods of no more than two years;

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

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

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

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

43 (10) Those packages or packaging components that are reused,
44 provided that the related product is regulated under federal or State
45 health or safety requirements and that the transportation of the related
46 product is regulated under federal or State transportation

1 requirements, and the disposal of the related product is performed
2 according to federal or State radioactive or hazardous waste disposal
3 requirements; provided that an exemption under this paragraph shall
4 expire on January 1, 2000.

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

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

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

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

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

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

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

32 [The exemption provided in paragraph (6) may be renewed by the
33 department for periods not to exceed two years, except that any
34 renewal granted by the department for the exemption provided in
35 paragraph (6) shall be based on evidence furnished to the department
36 that there is no feasible or practical alternative or substitute for the
37 specified package or packaging component.]

38 (12) Those packages or packaging components that are glass or
39 ceramic that have a vitrified decoration and when tested in accordance
40 with the toxicity characteristic leaching procedure (TCLP) of the
41 United States Environmental Protection Agency Test Method SW-846
42 does not exceed 1.0 ppm for cadmium and 5.0 ppm for lead; provided
43 that an exemption under this paragraph shall expire on January 1,
44 2000.

45 The exemptions provided in paragraphs (8) and (9) shall expire on
46 January 1, 1997, except that any exemption provided in paragraphs (8)

1 or (9) may be renewed by the department after this date for periods
2 not to exceed two years. Any renewal granted by the department for
3 the exemption provided in paragraphs (8) or (9) shall be based on
4 evidence furnished to the department that there is no feasible method
5 to reduce the concentration levels of lead for the specified package or
6 packaging component.

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

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

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

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

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

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

33 a. The report shall include:

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

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

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

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

46 (1) a determination as to whether the continued use of the

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

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

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

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

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13 5. This act shall take effect immediately.

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STATEMENT

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18 The "Toxic Packaging Reduction Act," P.L.1991, c.520
19 (C.13:1E-99.44 et seq.) requires manufacturers of packaging or
20 packaging materials to reduce the amounts of toxic substances added
21 to packages or packaging components used to market products sold
22 within New Jersey. The act is based on model legislation drafted by
23 the Coalition of Northeastern Governors (CONEG). Eighteen states
24 nationwide have enacted legislation based on the model.

25 This bill would revise the "Toxic Packaging Reduction Act"
26 according to recommendations proposed by CONEG. The bill would
27 extend to January 1, 2000 the exemption for packaging or packaging
28 components with post-consumer waste material, and broaden that
29 exemption to apply to recycled materials. The bill would clarify the
30 definition of "incidental presence" and "intentionally introduced." The
31 bill would also add an exemption for reusable packaging. Additional
32 provisions of the bill provide for two year renewals of certain
33 exemptions, incorporate an exemption for decorated glass and ceramic
34 packaging, and define various terms. Finally, the bill revises a
35 reference to the Source Reduction Task Force of CONEG.

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40 Amends the "Toxic Packaging Reduction Act."