

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 455

Introduced by Assembly Member Chu

February 14, 2003

An act to add Article 10.3 (commencing with Section 25214.11) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 455, as amended, Chu. Packaging materials: regulated metals.

(1) Existing hazardous waste control laws regulate the disposal of discarded appliances, lead acid batteries, small household batteries, recyclable latex paint, and household hazardous waste. Existing law prohibits any person from managing any hazardous waste, except as provided in the hazardous waste control laws and regulations. A violation of the hazardous waste control laws is a crime.

This bill would enact the "Toxics in Packaging Prevention Act," and would define terms. The act would prohibit, on and after January 1, ~~2004~~ 2006, a manufacturer or distributor, as defined, from offering for sale or for promotional purposes in this state any package or packaging component that includes any lead, cadmium, mercury, or hexavalent chromium ~~in specified amounts~~, if that regulated metal has been intentionally introduced as an element during manufacturing or distribution, as defined. The act would also prohibit, on and after January 1, ~~2004~~ 2006, a manufacturer or distributor from offering for sale or for promotional purposes in this state any product in a package that includes those *intentionally introduced* regulated metals ~~in those~~

~~amounts.~~ The bill would specify a schedule for the ~~total amount of the~~ *summed incidental* concentration levels of lead, cadmium, mercury, and hexavalent chromium that may be present in any package or packaging component, which would be set at 600 parts per million by weight ~~until~~ *between* January 1, ~~2005~~ 2006, and January 1, 2007, 250 parts per million by weight ~~until~~ *on and after* January 1, 2007, and January 1, ~~2006~~ 2008, and 100 parts per million by weight thereafter.

The bill would exempt, from those requirements, a package or a packaging component that meets specified conditions, including, among other things, if the lead, cadmium, mercury, or hexavalent chromium is added to comply with specified health or safety requirements *of a federal law*, or if there is no feasible alternative for adding those regulated metals, ~~as determined by the Department of Toxic Substances Control pursuant to a specified procedure.~~ The bill would also exempt, from those requirements, a package or packaging component manufactured on or before January 1, 2010, that has a controlled distribution and reuse, if ~~the department determines that~~ the manufacturer or distributor has submitted a plan to the department that complies with ~~the regulations that the department would be required to adopt~~ *specified requirements*, and ~~the department makes a finding regarding the~~ *there is an* environmental benefit of the controlled distribution and reuse. *The bill would require a manufacturer or distributor that requests an exemption to pay a fee for the costs of reviewing and approving the request. The bill would require the fee to be deposited in the Hazardous Waste Control Account, to be expended by the Department of Toxic Substances Control, only upon appropriation by the Legislature and only for the costs of conducting those reviews.*

The bill would require, on and after January 1, ~~2004~~ 2006, each manufacturer or supplier to furnish a certificate of compliance to the purchaser of a package or packaging component stating that the package or packaging component is in compliance with the act. The bill would require a purchaser to retain the certificate of compliance for as long as the package or packaging component is in use. The bill would require the department to provide the public with access to the information submitted by a manufacturer or supplier.

~~The bill would require the department to adopt regulations to implement the act in consultation with the Toxics in Packaging Clearinghouse.~~



The department would be required, by January 1, ~~2007~~ 2009, and at least once every 5 years thereafter, in consultation with the Toxics in Packaging Clearinghouse, to review the implementation of the act and to submit a report, based upon that review, to the Governor and the Legislature. The department would also be required to review the extension of any exemption, pursuant to a specified procedure.

Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.3 (commencing with Section
2 25214.11) is added to Chapter 6.5 of Division 20 of the Health and
3 Safety Code, to read:

4
5 Article 10.3. Toxics in Packaging Prevention Act
6

7 25214.11. (a) The Legislature finds and declares all of the
8 following:

9 (1) The management of solid waste can pose a wide range of
10 hazards to public health and safety and to the environment.

11 (2) Packaging comprises a significant percentage of the overall
12 solid waste stream.

13 (3) The presence of heavy metals in packaging is a part of the
14 total concern regarding the disposal of hazardous waste in the solid
15 waste stream, in light of the presence of heavy metals in emissions
16 or ash when packaging is incinerated, or in leachate when
17 packaging is disposed of in a solid waste landfill.

18 (4) Lead, mercury, cadmium, and hexavalent chromium, on the
19 basis of available scientific and medical evidence, are of particular
20 concern.



1 (5) It is desirable, as a first step in reducing the toxicity of
2 packaging waste, and reducing the hazardous materials that may
3 be disposed of in solid waste landfills, to eliminate the addition of
4 these heavy metals to packaging.

5 (6) The intent of this article is to achieve this reduction in
6 toxicity without impeding or discouraging the expanded use of
7 recycled materials in the production of packaging and its
8 components.

9 (b) This article shall be known, and may be cited as, the
10 “Toxics in Packaging Prevention Act.”

11 25214.12. For purposes of this article, the following terms
12 have the following meanings:

13 (a) “Consumer” means a person who purchases, and takes title
14 to, a package, or a product in a package, for purposes of that
15 consumer’s own use or consumption.

16 (b) “Distribution” means the practice of taking title to a
17 package or a packaging component for promotional purposes or
18 resale. A person involved solely in delivering a package or a
19 packaging component on behalf of a third party is not engaging in
20 distribution.

21 (c) “Distributor” means any person, firm, or corporation who
22 takes title to a good, produced either domestically or in a foreign
23 country, that is purchased for resale or promotional purposes.
24 “Distributor” does not include a person involved solely in
25 delivering a package or a packaging component on behalf of a third
26 party.

27 (d) (1) “Intentional introduction” means the act of
28 deliberately utilizing a regulated metal in the formation of a
29 package or packaging component where its continued presence is
30 desired in the final package or packaging component to provide a
31 specific characteristic, appearance, or quality.

32 (2) “Intentional introduction” does not include either of the
33 following:

34 (A) The use of a regulated metal as a processing agent or
35 intermediate to impart certain chemical or physical changes during
36 manufacturing, where the incidental retention of a residue of that
37 metal in the final package or packaging component is not desired
38 or deliberate, if the final package or packaging component is in
39 compliance with subdivision (c) of Section 25214.13.



1 (B) The use of recycled materials as feedstock for the
2 manufacture of new packaging materials, where some portion of
3 the recycled materials may contain amounts of a regulated metal,
4 if the new package or packaging component is in compliance with
5 subdivision (c) of Section 25214.13.

6 (e) “Incidental presence” means the presence of a regulated
7 metal as an unintended or undesired ingredient of a package or
8 packaging component.

9 (f) “Manufacturer” means any person, firm, association,
10 partnership, or corporation producing a package or packaging
11 component.

12 (g) “Manufacturing” means the physical or chemical
13 modification of a material to produce packaging or a packaging
14 component.

15 (h) “Package” means any container, produced either
16 domestically or in a foreign country, providing a means of
17 marketing, protecting, or handling a product, including a unity
18 package, an intermediate package or a shipping container, as
19 defined in the American Society of Testing and Materials (ASTM)
20 specification D 996. “Package” also includes unsealed
21 receptacles, such as carrying cases, crates, cups, pails, rigid foil
22 and other trays, wrappers and wrapping films, bags, and tubs.

23 (i) “Packaging component” means any individual assembled
24 part of a package that is produced either domestically or in a
25 foreign country, including, but not necessarily limited to, any
26 interior or exterior blocking, bracing, cushioning,
27 weatherproofing, exterior strapping, coatings, closures, inks, and
28 labels. Tin-plated steel that meets the American Society for
29 Testing and Materials (ASTM) specification A 623 shall be
30 considered as a single package component. Electrogalvanized
31 coated steel and hot dipped coated galvanized steel that meet the
32 American Society for Testing and Materials (ASTM)
33 qualifications A 525 and A 879 shall be treated in the same manner
34 as tin-plated steel.

35 (j) “Purchaser” means any person who purchases and takes
36 title to a package, a packaging component, or a product in a
37 package, from a manufacturer or supplier, but does not include a
38 consumer.



1 (k) "Recycled material" means a material that has been reused
2 in the production of another product and has been diverted from
3 disposal in a landfill.

4 (l) "Regulated metal" means a material specified in
5 subdivision (c) of Section 25214.13.

6 ~~(t)~~

7 (m) "Supplier" means any person, firm, association,
8 partnership, or corporation that sells, offers for sale, or offers for
9 promotional purposes, a package or packaging component that is
10 used by any other person, firm, association, partnership, or
11 corporation to package a product.

12 ~~(m)~~

13 (n) "Toxics in Packaging Clearinghouse" means the Toxics in
14 Packaging Clearinghouse (TPCH) of the Council of State
15 Governments, which was formed in 1992 to promote model toxics
16 in packaging legislation in an effort to reduce the amount of heavy
17 metals in packaging and packaging components that are sold or
18 distributed throughout the United States.

19 25214.13. (a) Except as provided in ~~subdivision (d) and in~~
20 Section 25214.14, on and after January 1, ~~2004~~ 2006, a
21 manufacturer or distributor ~~shall~~ may not offer for sale or for
22 promotional purposes in this state any package or packaging
23 component that includes any lead, cadmium, mercury, or
24 hexavalent chromium ~~in the amount specified in subdivision (e),~~
25 in the package itself, or in any packaging component, ink, dye,
26 pigment, adhesive, stabilizer, or any other additive, if the regulated
27 metal has been intentionally introduced as an element during
28 manufacturing or distribution.

29 (b) Except as provided in ~~subdivision (d) and in~~ Section
30 25214.14, on and after January 1, ~~2004~~ 2006, a manufacturer or
31 distributor ~~shall~~ may not offer for sale or for promotional purposes
32 in this state any product in a package that includes any lead,
33 cadmium, mercury, or hexavalent chromium ~~in the amount~~
34 ~~specified in subdivision (e),~~ in the package itself, or in any
35 packaging component, ink, dye, pigment, adhesive, stabilizer, or
36 any other additive, if the regulated metal has been intentionally
37 introduced as an element during manufacturing or distribution.

38 (c) ~~The total amount of the~~ Except as provided in Section
39 25214.14, the summed incidental concentration levels of lead,
40 cadmium, mercury, and hexavalent chromium present in any



1 package or packaging component ~~that is subject to this section~~
2 ~~shall~~ may not exceed the following:

3 (1) On and after January 1, ~~2004, until January 1, 2005~~ 2006,
4 *until January 1, 2007*, 600 parts per million by weight.

5 (2) On and after January 1, ~~2005, until January 1, 2006~~ 2007,
6 *until January 1, 2008*, 250 parts per million by weight.

7 (3) On and after January 1, ~~2006~~ 2008, 100 parts per million by
8 weight.

9 ~~(d) Subdivisions (a) and (b) do not apply to any package or~~
10 ~~packaging component that includes only an incidental presence of~~
11 ~~a regulated metal.~~

12 25214.14. A package or a packaging component is exempt
13 from the requirements of Section 25214.13, and shall be deemed
14 in compliance with this article, if the package or packaging
15 component meets any of the following conditions:

16 (a) The package or packaging component is marked with a code
17 indicating a date of manufacture prior to January 1, 2004.

18 (b) (1) Lead, cadmium, mercury, or hexavalent chromium has
19 been added to the package or packaging component in the
20 manufacturing, forming, printing, or distribution process to
21 comply with the health or safety requirements of a federal law, ~~as~~
22 ~~determined by the department pursuant to this subdivision.~~

23 (2) A manufacturer of a package or packaging component may
24 request the department for an exemption pursuant to this
25 subdivision for a particular package or packaging component, and
26 the department ~~may~~ shall grant an exemption from Section
27 25214.13 for up to two years, if ~~the department determines~~ the
28 package or packaging component is eligible for the exemption.
29 The department ~~may~~ shall renew an exemption granted pursuant
30 to this subdivision, upon reapplication for exemption, if the
31 package or packaging component is eligible for an exemption
32 during the period for which the exemption is requested.

33 (c) (1) The package or packaging component exceeds the
34 maximum contaminant levels set forth in subdivision (c) of
35 Section 25214.13 only because of the addition of a recycled
36 material.

37 (2) Paragraph (1) does not apply to any cadmium, lead,
38 mercury, or hexavalent chromium that has been recovered or
39 separated from other materials for use as a metal or metallic
40 compound.



1 (3) This subdivision shall apply only to a package or packaging
2 component manufactured on or before January 1, 2010.

3 (d) (1) A package or packaging component to which lead,
4 cadmium, mercury, or hexavalent chromium has been added in the
5 manufacturing, forming, printing, or distribution process, and for
6 which there is no feasible alternative for that use, ~~as determined by~~
7 ~~the department pursuant to this subdivision.~~

8 (2) A manufacturer of a package or packaging component may
9 request the department for an exemption pursuant to this
10 subdivision for a particular package or packaging component, and
11 the department ~~may~~ shall grant an exemption from Section
12 25214.13 for up to two years, if ~~the department determines~~ the
13 package or packaging component is eligible for the exemption.
14 The department ~~may~~ shall renew an exemption granted pursuant
15 to this subdivision, upon reapplication for exemption, if ~~the~~
16 ~~department determines~~ the package or packaging component is
17 eligible for an exemption during the period for which the
18 exemption is requested.

19 (3) For purposes of this subdivision, “a use for which there is
20 no feasible alternative” is one for which ~~the department~~
21 ~~determines that~~ the regulated substance is essential to the
22 protection, safe handling, or function of the package’s contents
23 and ~~that~~ for which technical constraints preclude the substitution
24 of other materials. However, the department ~~shall~~ may not exempt
25 the use of any regulated metal pursuant to this subdivision for the
26 purposes of marketing.

27 (e) (1) A package or packaging component that is reused but
28 exceeds the contaminant levels set forth in subdivision (c) of
29 Section 25214.13, if all of the following apply:

30 (A) The product being conveyed by the package or the package
31 or packaging component is otherwise regulated under a federal or
32 state health or safety requirement.

33 (B) The transportation of the packaged product is regulated
34 under federal or state transportation requirements.

35 (C) The disposal of the package is otherwise performed
36 according to the requirements of this chapter or Chapter 8
37 (commencing with Section 114960) of Part 9 of Division 104.

38 (2) This subdivision shall apply only to a package or packaging
39 component manufactured on or before January 1, 2010.



1 (f) (1) A package or packaging component that has a
2 controlled distribution and reuse that exceeds the contaminant
3 levels set forth in subdivision (c) of Section 25214.13,~~as~~
4 ~~determined by the department pursuant to this subdivision.~~

5 (2) A manufacturer or distributor of a package or packaging
6 component may request the department for an exemption pursuant
7 to this subdivision for a particular package or packaging
8 component. The department ~~may~~ *shall* grant an exemption from
9 Section 25214.13 pursuant to this subdivision for up to two years,
10 if the manufacturer or distributor submits a plan to the department
11 ~~that the department determines complies with the regulations~~
12 ~~adopted by the department pursuant to paragraph (3) and the~~
13 ~~department determines that~~ *to the department a plan, pursuant to*
14 *paragraph (3), that complies with this article, and the*
15 environmental benefit of the controlled distribution and reuse is
16 significantly greater, as compared to the same package
17 manufactured in compliance with the maximum contaminant
18 levels set forth in subdivision (c) of Section 25214.13.

19 (3) ~~The department shall adopt regulations pursuant to Section~~
20 ~~25214.17 specifying the elements of the plan that a manufacturer~~
21 ~~or distributor shall submit to the department, before the~~
22 ~~department may grant an exemption pursuant to this subdivision.~~
23 ~~The regulations shall require the plan to~~ *shall* include all of the
24 following:

25 (A) A means of identifying, in a permanent and visible manner,
26 any reusable package or packaging component, containing a
27 regulated metal for which the exemption is sought.

28 (B) A method of regulatory and financial accountability, so that
29 a specified percentage of the reusable packages or packaging
30 components, manufactured and distributed to other persons are not
31 discarded by those persons after use, but are returned to the
32 manufacturer or designee.

33 (C) A system of inventory and record maintenance to account
34 for reusable packages or packaging components, placed in, and
35 removed from, service.

36 (D) A means of transforming returned packages or packaging
37 components, that are no longer reusable into recycled materials for
38 manufacturing or into manufacturing wastes, that are subject to
39 existing federal or state laws or regulations governing those



1 manufacturing wastes, to ensure that these wastes do not enter the
2 commercial or municipal waste stream.

3 (E) A system of annually reporting to the department any
4 changes to the system and changes in designees.

5 (4) This subdivision shall apply only to a package or packaging
6 component manufactured on or before January 1, 2010.

7 (g) (1) A glass or ceramic package or packaging component
8 that has a vitrified label when tested in accordance with the
9 ~~Toxicity Characteristic Leaching Procedures of US EPA Test~~
10 ~~Method and publication SW 846, 3rd edition, "Test Methods for~~
11 ~~Evaluating Solid Waste," Waste Extraction Test, described in~~
12 ~~Appendix II of Chapter 11 (commencing with Section 66261.1) of~~
13 ~~Division 4.5 of Title 22 of The California Code of Regulations, and~~
14 does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent
15 chromium, and 5.0 ppm for lead. A glass or ceramic package or
16 packaging component containing mercury is not exempted
17 pursuant to this subdivision.

18 (2) This subdivision applies only to a glass or ceramic package
19 or packaging component manufactured on or before January 1,
20 2005.

21 25214.15. *A manufacturer or distributor that requests an*
22 *exemption pursuant to Section 25214.14 shall pay a fee set by the*
23 *department to pay the costs of reviewing and approving the*
24 *request. The fee shall be deposited into the Hazardous Waste*
25 *Control Account and may be expended by the department only*
26 *upon appropriation by the Legislature and only for the costs of*
27 *conducting those reviews.*

28 25214.16. (a) On and after January 1, ~~2004~~ 2006, each
29 manufacturer or supplier shall furnish a certificate of compliance
30 to the purchaser of a package or packaging component stating that
31 the package or packaging component is in compliance with the
32 requirements of this article. However, if, pursuant to Section
33 25214.14, the package is exempt from the requirements of Section
34 25214.13, the certificate of compliance shall state the specific
35 basis upon which the exemption is claimed. The certificate of
36 compliance shall be signed by an authorized official of the
37 manufacturer or supplier. A copy of the certificate of compliance
38 shall be kept on file by the manufacturer or supplier of the package
39 or packaging component. A manufacturer or supplier shall furnish
40 a certificate of compliance, or a copy thereof, to the department,



1 upon its request, ~~and to a member of the public in accordance with~~
2 ~~subdivision (d).~~

3 (b) A purchaser of a package or packaging component subject
4 to subdivision (a) shall retain the certificate of compliance for as
5 long as the package or packaging component is in use.

6 (c) If a manufacturer or supplier of a package or packaging
7 component subject to subdivision (a) reformulates or creates a new
8 package or packaging component, the manufacturer or supplier
9 shall provide the purchaser with an amended or new certificate of
10 compliance for the reformulated or new package or packaging
11 component.

12 (d) The department, *pursuant to the California Public Records*
13 *Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of*
14 *Title 1 of the Government Code)*, shall provide the public with
15 access to the information relating to a package or packaging
16 component submitted by a manufacturer or supplier of a package
17 or packaging component.

18 ~~25214.17. The department shall adopt regulations to~~
19 ~~implement this article, including procedures for the issuance of an~~
20 ~~exemption pursuant to Section 25214.14. The department shall~~
21 ~~adopt these regulations in consultation with the Toxics in~~
22 ~~Packaging Clearinghouse.~~

23 ~~25214.18. (a) On and before January 1, 2007 or before~~
24 ~~January 1, 2009, and at least once every five years thereafter, the~~
25 ~~department shall, in consultation with the Toxics in Packaging~~
26 ~~Clearinghouse, review the implementation of this article. The~~
27 ~~department shall submit a report, based upon that review, to the~~
28 ~~Governor and the Legislature. The report may contain~~
29 ~~recommendations to add other hazardous substances contained in~~
30 ~~packaging to the list set forth in subdivision (c) of Section~~
31 ~~25214.13 in order to further reduce the toxicity of packaging~~
32 ~~waste, and a description of the nature of the substitutes used in lieu~~
33 ~~of lead, mercury, cadmium, and hexavalent chromium.~~

34 (b) The department shall, in consultation with the Toxics in
35 Packaging Clearinghouse, review the extension of any exemption
36 *condition* granted pursuant to Section 25214.14. This review shall
37 commence no later than the January 1 that is two years prior to the
38 expiration of the exemption. A report based upon that review shall
39 be submitted to the Governor and the Legislature by January 1 of
40 the year prior to the expiration of the exemption.



1 25214.19. This article does not affect any duty or other
2 requirement imposed under any other federal or state law.

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

