

AMENDED IN SENATE JULY 10, 2003  
AMENDED IN ASSEMBLY MAY 6, 2003  
AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 455**

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**Introduced by Assembly Member Chu**  
**(~~Coauthor: Assembly Member Levine~~)**  
*(Coauthors: Assembly Members Koretz, Levine, Lieber, and Longville)*

February 14, 2003

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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, 2006, a manufacturer, ~~supplier, or~~ distributor, *importer, agent, or supplier*, as defined, from offering for sale or for promotional purposes in this state any package or packaging component that includes any

regulated metal, defined as lead, cadmium, mercury, or hexavalent chromium, 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, 2006, a manufacturer, ~~supplier,~~ or distributor, *importer, agent, or supplier* from offering for sale or for promotional purposes in this state any product in a package that includes those intentionally introduced regulated metals. The bill would specify a schedule for the summed incidental concentration level of regulated metal that may be present in a single component package or individual packaging component, which would be set at 600 parts per million by weight between January 1, 2006, and January 1, 2007, 250 parts per million by weight on and after January 1, 2007, and until January 1, 2008, and 100 parts per million by weight thereafter.

The bill would provide an exemption process; from those requirements; for a package or a packaging component that meets specified conditions, including, among other things, if the regulated metal is added to comply with specified health or safety requirements of a state or federal law, or if there is no feasible alternative for adding regulated metal. The bill would also provide an exemption process; from those requirements; for a package or packaging component that has a controlled distribution and reuse, if the manufacturer or distributor submits information to the department that complies with specified requirements, including demonstrating that there is an environmental benefit of the controlled distribution and reuse. The bill would provide that some exemptions expire on January 1, 2010. The bill would require a manufacturer or distributor that requests specified exemptions to enter into a written agreement with the department, pursuant to which the manufacturer or distributor would reimburse the department for costs incurred by the department in processing or responding to the request. The bill would require all reimbursement received by the department to be deposited in the Hazardous Waste Control Account;.

The bill would require, on and after January 1, 2006, each manufacturer, distributor, *importer, agent,* 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 by the purchaser. The bill would require the department to provide the public with access to the information



submitted by a manufacturer, ~~distributors~~ distributor, importer, agent, or supplier.

The department would be required, by January 1, 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 expiration date of an exemption condition, 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.



1 (4) Lead, mercury, cadmium, and hexavalent chromium, on the  
2 basis of available scientific and medical evidence, are of particular  
3 concern.

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

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

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

14 25214.12. For purposes of this article, the following terms  
15 have the following meanings:

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

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

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

30 (d) (1) *“Importer or agent” means a person who does either*  
31 *of the following:*

32 (A) *Acts as an intermediary for the purchase of a package or*  
33 *packaging component for resale from a manufacturer in another*  
34 *country to a purchaser in this state, and who may receive a*  
35 *commission or fee based on that sale.*

36 (B) *Is the importer of record listed on the United States*  
37 *Customs Service forms for imported packaging or packaging*  
38 *components.*

39 (2) *An importer or agent does not include a person who takes*  
40 *title to a package or packaging component.*



1 (e) (1) “Intentional introduction” means the act of  
2 deliberately utilizing a regulated metal in the formation of a  
3 package or packaging component where its continued presence is  
4 desired in the final package or packaging component to provide a  
5 specific characteristic, appearance, or quality.

6 (2) “Intentional introduction” does not include either of the  
7 following:

8 (A) The use of a regulated metal as a processing agent or  
9 intermediate to impart certain chemical or physical changes during  
10 manufacturing, where the incidental retention of a residue of that  
11 metal in the final package or packaging component is not desired  
12 or deliberate, if the final package or packaging component is in  
13 compliance with subdivision (c) of Section 25214.13.

14 (B) The use of recycled materials as feedstock for the  
15 manufacture of new packaging materials, where some portion of  
16 the recycled materials may contain amounts of a regulated metal,  
17 if the new package or packaging component is in compliance with  
18 subdivision (c) of Section 25214.13.

19 ~~(e)~~

20 (f) “Incidental presence” means the presence of a regulated  
21 metal as an unintended or undesired ingredient of a package or  
22 packaging component.

23 ~~(f)~~

24 (g) “Manufacturer” means any person, firm, association,  
25 partnership, or corporation producing a package or packaging  
26 component.

27 ~~(g)~~

28 (h) “Manufacturing” means the physical or chemical  
29 modification of a material to produce packaging or a packaging  
30 component.

31 ~~(h)~~

32 (i) “Package” means any container, produced either  
33 domestically or in a foreign country, providing a means of  
34 marketing, protecting, or handling a product, including a unity  
35 package, an intermediate package or a shipping container, as  
36 defined in the American Society of Testing and Materials (ASTM)  
37 specification D 996. “Package” also includes unsealed  
38 receptacles, such as carrying cases, crates, cups, pails, rigid foil  
39 and other trays, wrappers and wrapping films, bags, and tubs.

40 ~~(i)~~



1 (j) “Packaging component” means any individual assembled  
2 part of a package that is produced either domestically or in a  
3 foreign country, including, but not necessarily limited to, any  
4 interior or exterior blocking, bracing, cushioning,  
5 weatherproofing, exterior strapping, coatings, closures, *inks*,  
6 *labels*, dyes, pigments, adhesives, stabilizers, or any other  
7 additives. Tin-plated steel that meets the American Society for  
8 Testing and Materials (ASTM) specification A 623 shall be  
9 considered as a single package component. Electrogalvanized  
10 coated steel and hot dipped coated galvanized steel that meet the  
11 American Society for Testing and Materials (ASTM)  
12 qualifications ~~A 525 and A 879~~ A591, A653, A879, and A924 shall  
13 be treated in the same manner as tin-plated steel.

14 ~~(j)~~

15 (k) “Purchaser” means a person who purchases and takes title  
16 to a package or a packaging component, from a manufacturer or  
17 supplier, for the purpose of packaging a product manufactured,  
18 distributed, or sold by the purchaser.

19 ~~(k)~~

20 (l) “Recycled material” means a material generated by a  
21 business or a consumer that has been separated from solid waste  
22 for the purpose of recycling the material as a secondary material  
23 feedstock. Recycled materials include paper, plastic, wood, glass,  
24 ceramics, metals, and other materials, except that recycled  
25 material does not include a regulated metal that has been separated  
26 from other materials into its elemental or other chemical state for  
27 recycling as a secondary material feedstock.

28 ~~(l)~~

29 (m) “Regulated metal” means lead, mercury, cadmium, or  
30 hexavalent chromium.

31 ~~(m)~~

32 (n) “Supplier” means any person, firm, association,  
33 partnership, or corporation that sells, offers for sale, or offers for  
34 promotional purposes, a package or packaging component that is  
35 used by any other person, firm, association, partnership, or  
36 corporation to package a product.

37 ~~(n)~~

38 (o) “Toxics in Packaging Clearinghouse” means the Toxics in  
39 Packaging Clearinghouse (TPCH) of the Council of State  
40 Governments, which was formed in 1992 to promote model toxics



1 in packaging legislation in an effort to reduce the amount of heavy  
2 metals in packaging and packaging components that are sold or  
3 distributed throughout the United States.

4 25214.13. (a) Except as provided in Section 25214.14, on  
5 and after January 1, 2006, a manufacturer, distributor, *importer*,  
6 *agent*, or supplier may not offer for sale or for promotional  
7 purposes in this state a package or packaging component that  
8 includes a regulated metal, in the package itself, or in a packaging  
9 component, if the regulated metal has been intentionally  
10 introduced as an element during manufacturing or distribution.

11 (b) Except as provided in Section 25214.14, on and after  
12 January 1, 2006, a manufacturer, distributor, *importer*, *agent*, or  
13 supplier may not offer for sale or for promotional purposes in this  
14 state a product in a package that includes a regulated metal, in the  
15 package itself, or in a packaging component, if the regulated metal  
16 has been intentionally introduced as an element during  
17 manufacturing or distribution.

18 (c) Except as provided in Section 25214.14, the summed  
19 incidental concentration level of regulated metal present in *a*  
20 single-component package or individual packaging component  
21 may not exceed the following:

22 (1) On and after January 1, 2006, until January 1, 2007, 600  
23 parts per million by weight.

24 (2) On and after January 1, 2007, until January 1, 2008, 250  
25 parts per million by weight.

26 (3) On and after January 1, 2008, 100 parts per million by  
27 weight.

28 25214.14. A package or a packaging component is exempt  
29 from the requirements of Section 25214.13, and shall be deemed  
30 in compliance with this article, if the package or packaging  
31 component meets any of the following conditions:

32 (a) The package or packaging component is marked with a code  
33 indicating a date of manufacture prior to January 1, 2006.

34 (b) (1) A manufacturer of a package or packaging component  
35 has obtained an exemption, pursuant to the process described in  
36 paragraph (2), for a regulated metal that has been added to the  
37 package or packaging component in the manufacturing, forming,  
38 printing, or distribution process to comply with the health or safety  
39 requirements of a federal or state law.





1 (2) The department shall grant an exemption under paragraph  
2 (1) from Section 25214.13 for two years only if both of the  
3 following conditions are met:

4 (A) The manufacturer of the package or packaging component  
5 submits supporting information with the request for an initial and  
6 a renewed exemption.

7 (B) The supporting information demonstrates that the package  
8 or packaging component is eligible for the exemption.

9 (c) (1) The package or packaging component exceeds the  
10 maximum concentration level set forth in subdivision (c) of  
11 Section 25214.13 only because of the addition of a recycled  
12 material.

13 (2) This subdivision, and all exemptions provided pursuant to  
14 it, expire on January 1, 2010.

15 (d) (1) A manufacturer of a package or packaging component  
16 has obtained an exemption, pursuant to the process described in  
17 paragraph (2), for use of a regulated metal for which there is no  
18 feasible alternative in the manufacturing, forming, printing, or  
19 distribution process.

20 (2) The department shall grant an exemption under paragraph  
21 (1) from Section 25214.13 for two years only if both of the  
22 following conditions are met:

23 (A) The manufacturer of the package or packaging component  
24 submits supporting information with the request for an initial and  
25 a renewed exemption.

26 (B) The supporting information demonstrates that the package  
27 or packaging component is eligible for the exemption.

28 (3) Notwithstanding paragraph (2), the department may not  
29 exempt the use of a regulated metal pursuant to this subdivision for  
30 the purposes of marketing.

31 (4) For purposes of this subdivision, “no feasible alternative”  
32 means the use of a regulated metal is essential to the protection,  
33 safe handling, or function of the package’s contents and technical  
34 constraints preclude the substitution of other materials.

35 (e) (1) A package or packaging component that is reused but  
36 exceeds the summed incidental concentration level of regulated  
37 metal set forth in subdivision (c) of Section 25214.13, if all of the  
38 following apply:





1 (A) The product being conveyed by the package ~~or the package~~  
2 or packaging component is otherwise regulated under a federal or  
3 state health or safety requirement.

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

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

9 (2) This subdivision, and all exemptions provided pursuant to  
10 it, expire on January 1, 2010.

11 (f) (1) A manufacturer or distributor of a package or  
12 packaging component has obtained an exemption, pursuant to the  
13 process described in paragraph (2), for use of a regulated metal that  
14 exceeds the summed incidental concentration level set forth in  
15 subdivision (c) of Section 25214.13 in a package or packaging  
16 component that has a controlled distribution and reuse.

17 (2) The department shall grant an exemption under paragraph  
18 (1) from Section 25214.13 for two years only if both of the  
19 following conditions are met:

20 (A) The manufacturer or distributor of the package or  
21 packaging component submits supporting information that  
22 complies with the requirements set forth in paragraph (3) with the  
23 request for an initial and a renewed exemption.

24 (B) The supporting information demonstrates that the package  
25 or packaging component is eligible for the exemption.

26 (3) The supporting information that a manufacturer or  
27 distributor shall submit to the department, before the department  
28 may grant an exemption pursuant to this subdivision, shall include  
29 all of the following:

30 (A) Information that demonstrates that the environmental  
31 benefit of the controlled distribution and reuse of the package or  
32 packaging component is significantly greater, as compared to the  
33 same package or packaging component manufactured in  
34 compliance with the maximum summed incidental concentration  
35 level of regulated metal set forth in subdivision (c) of Section  
36 25214.13.

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



1 (C) A method of regulatory and financial accountability, so that  
2 a specified percentage of the reusable packages or packaging  
3 components, manufactured and distributed to other persons are not  
4 discarded by those persons after use, but are returned to the  
5 manufacturer or designee.

6 (D) A system of inventory and record maintenance to account  
7 for reusable packages or packaging components, placed in, and  
8 removed from, service.

9 (E) A means of transforming returned packages or packaging  
10 components, that are no longer reusable into recycled materials for  
11 manufacturing, or a means of collecting and managing returned  
12 packages or packaging components as a waste in accordance with  
13 federal and state laws.

14 (F) A system of annually reporting to the department any  
15 changes to the system and changes in designees.

16 (4) This subdivision, and all ~~exemption~~ *exemptions* provided  
17 pursuant to it, expire on January 1, 2010.

18 (g) (1) A glass or ceramic package or packaging component  
19 that has a vitrified label when tested in accordance with the Waste  
20 Extraction Test, described in Appendix II of Chapter 11  
21 (commencing with Section 66261.1) of Division 4.5 of Title 22 of  
22 the California Code of Regulations, and does not exceed 1.0 ppm  
23 for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for  
24 lead. A glass or ceramic package or packaging component  
25 containing mercury is not exempted pursuant to this subdivision.

26 (2) This subdivision, and all exemptions provided pursuant to  
27 it, expire on January 1, 2010.

28 25214.15. (a) A manufacturer or distributor that requests an  
29 exemption pursuant to subdivision (b), (d), or (f) of Section  
30 25214.14 shall enter into a written agreement with the department  
31 pursuant to which that manufacturer or distributor shall reimburse  
32 the department, pursuant to Article 9.2 (commencing with Section  
33 25206.1), for costs incurred by the department in processing or  
34 responding to the request.

35 (b) The department shall deposit all reimbursements received  
36 pursuant to this section in the Hazardous Waste Control Account  
37 for appropriation in accordance with Section 25174.

38 25214.16. (a) On and after January 1, 2006, each  
39 manufacturer, distributor, *importer*, *agent*, or supplier shall furnish  
40 a certificate of compliance to the purchaser of a package or



1 packaging component stating that the package or packaging  
2 component is in compliance with the requirements of this article.  
3 However, if, pursuant to Section 25214.14, the package is exempt  
4 from the requirements of Section 25214.13, the certificate of  
5 compliance shall state the specific basis upon which the exemption  
6 is claimed. The certificate of compliance shall be signed by an  
7 authorized official of the manufacturer, distributor, *importer*,  
8 *agent*, or supplier. A copy of the certificate of compliance shall be  
9 kept on file by the manufacturer, distributor, *importer*, *agent*, or  
10 supplier of the package or packaging component. A manufacturer,  
11 distributor, *importer*, *agent*, or supplier shall furnish a certificate  
12 of compliance, or a copy thereof, to the department, upon its  
13 request.

14 (b) A purchaser of a package or packaging component subject  
15 to subdivision (a) shall retain the certificate of compliance for as  
16 long as the package or packaging component is in use by the  
17 purchaser.

18 (c) If a manufacturer, distributor, *importer*, *agent*, or supplier  
19 of a package or packaging component subject to subdivision (a)  
20 reformulates or creates a new package or packaging component,  
21 the manufacturer, distributor, *importer*, *agent*, or supplier shall  
22 provide the purchaser with an amended or new certificate of  
23 compliance for the reformulated or new package or packaging  
24 component.

25 (d) The department, pursuant to the California Public Records  
26 Act (Chapter 3.5 (commencing with Section 6250) of Division 7  
27 of Title 1 of the Government Code), shall provide the public with  
28 access to the information relating to a package or packaging  
29 component submitted by a manufacturer, distributor, *importer*,  
30 *agent*, or supplier of a package or packaging component.

31 25214.18. (a) On or before January 1, 2009, and at least once  
32 every five years thereafter, the department shall, in consultation  
33 with the Toxics in Packaging Clearinghouse, review the  
34 implementation of this article. The department shall submit a  
35 report, based upon that review, to the Governor and the  
36 Legislature. The report may contain recommendations to add  
37 other hazardous substances contained in packaging to the list set  
38 forth in subdivision (l) of Section 25214.12 in order to further  
39 reduce the toxicity of packaging waste, and a description of the  
40 nature of the substitutes used in lieu of regulated metal.



1 (b) The department shall, in consultation with the Toxics in  
2 Packaging Clearinghouse, review the expiration date of an  
3 exemption condition granted pursuant to subdivision (c), (e), (f),  
4 or (g) of Section 25214.14 and determine whether to extend that  
5 expiration date. This review shall commence no later than the  
6 January 1 that is two years prior to the expiration of the exemption  
7 condition. A report based upon that review shall be submitted to  
8 the Governor and the Legislature by January 1 of the year prior to  
9 the expiration of the exemption condition.

10 25214.19. This article does not affect any duty or other  
11 requirement imposed under any other federal or state law.

12 SEC. 2. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.

