

Assembly Bill No. 455

CHAPTER 679

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.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 455, 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, importer, agent, or supplier, as defined, from offering for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, defined as lead, cadmium, mercury, or hexavalent chromium, if that regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution, as defined. The act would also prohibit, on and after January 1, 2006, a person, as defined, from offering for sale or for promotional purposes in this state a product in a package that includes those intentionally introduced regulated metals. The bill would prohibit, on and after January 1, 2006, the sum of the incidental total concentration levels of all regulated metals present in a single-component package or individual packaging component from exceeding 100 parts per million by weight.

The bill would exempt from those requirements a package or a packaging component that meets specified conditions, including, among other things, if the package or packaging component is marked with a code indicating a date of manufacture before January 1, 2006, contains a regulated metal that has been added to comply with health or safety requirements of a state or federal law, or contains a regulated metal for which there is no feasible alternative that may be used in the package or packaging component, as specified. 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, 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 relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier.

The bill would authorize the department to submit recommendations to the Governor and the Legislature for additional substances that should be included as regulated metals.

The bill would provide that its provisions are severable and that it shall be liberally construed.

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.

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

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



Article 10.3. Toxics in Packaging Prevention Act

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

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

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

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

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

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

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

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

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

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

(b) (1) “Importer or agent” means a person who does either of the following:

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

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

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

(c) (1) “Intentional introduction” means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package



or packaging component to provide a specific characteristic, appearance, or quality.

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

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

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

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

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

(f) “Manufacturing” means the physical or chemical modification of a material to produce packaging or a packaging component.

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

(h) “Packaging component” means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the American Society for Testing and Materials (ASTM) specification A 623 shall be considered as a single package component. Electrolytically coated steel and hot dipped coated galvanized steel that meet the American Society for Testing and Materials (ASTM) qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(i) “Purchaser” means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for



the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(j) “Recycled material” means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(k) “Regulated metal” means lead, mercury, cadmium, or hexavalent chromium.

(l) (1) “Supplier” means a person who does one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(2) “Supplier” does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(m) “Toxics in Packaging Clearinghouse” means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

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

(b) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section 25214.14, on and after January 1, 2006, the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component may not exceed 100 parts per million by weight.

25214.14. A package or a packaging component is exempt from the requirements of Section 25214.13, and shall be deemed in compliance



with this article, if the package or packaging component meets any of the following conditions:

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

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law, and the manufacturer or supplier maintains documentation that fully and clearly demonstrates that the package or packaging component is eligible for this exemption.

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

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

(d) (1) A regulated metal, for which there is no feasible alternative that may be used in the package or packaging component, has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, and the manufacturer or supplier maintains documentation that fully and clearly demonstrates that the package or packaging component is eligible for this exemption.

(2) For purposes of this subdivision, “no feasible alternative that may be used” means that the use of the regulated metal is essential to the protection, safe handling, or function, of the package’s contents, and technical constraints preclude the substitution of other materials. This does not include the use of a regulated metal for marketing purposes.

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

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

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

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

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

(f) (1) A manufacturer or distributor of a package or packaging component has obtained an exemption, pursuant to the process described in paragraph (2), for use of a regulated metal that exceeds the summed incidental concentration level set forth in subdivision (c) of Section



25214.13 in a package or packaging component that has a controlled distribution and reuse.

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

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

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

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

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

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

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

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

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

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

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

(g) (1) A glass or ceramic package or packaging component that has a vitrified label when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section



66261.1) of Division 4.5 of Title 22 of the California Code of Regulations, and does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

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

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

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

25214.16. (a) On and after January 1, 2006, each manufacturer, importer, agent, or supplier shall 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 requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer, importer, agent, or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer, importer, agent, or supplier of the package or packaging component. A manufacturer, importer, agent, or supplier shall furnish a certificate of compliance, or a copy thereof, to the department, upon its request.

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

(c) If a manufacturer, importer, agent, or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer, importer, agent, or supplier shall provide the purchaser with an amended or new certificate of compliance for the reformulated or new package or packaging component.

(d) The department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been



submitted to the department by a manufacturer or supplier of a package or packaging component.

25214.18. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in subdivision (k) of Section 25214.12 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

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

25214.20. (a) The provisions of this article are severable, and if a court holds that a phrase, clause, sentence, or provision of this article is invalid, or that its applicability to a person or circumstance is invalid, the remainder of the article and its applicability to other persons and circumstances may not be affected.

(b) The provisions of this article shall be liberally construed to give effect to the purposes of this article.

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

