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AMENDED IN SENATE JUNE 10, 2008
AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2901

Introduced by Assembly Member Brownley

February 22, 2008

An act to amend Sections 25214.1, 25214.2, 25214.3, 25214.4, 25214.4.2, 25214.12, 25214.13, 25214.14, 25214.15, 25214.17, and 25214.18 of, and to add Sections 25214.3.1, 25214.3.2, 25214.3.3, 25214.3.4, 25214.22, 25214.22.1, 25214.23, 25214.24, 25214.25, and 25214.26 to, the Health and Safety Code, relating to toxics.

LEGISLATIVE COUNSEL'S DIGEST

AB 2901, as amended, Brownley. Toxics: enforcement: lead jewelry: packaging.

(1) Existing law prohibits, on and after March 1, 2008, the manufacturing, shipping, selling, or offering for sale of jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law also prohibits any person, on and after September 1, 2007, from taking those actions with regard to children's jewelry, as defined, unless the children's jewelry is made entirely from certain specified materials.

Existing law excludes a person who violates these prohibitions from the criminal penalties otherwise imposed pursuant to the hazardous waste control laws and instead provides that a person who violates those prohibitions is liable for a civil penalty not to exceed \$2,500 per day for each violation, and ~~parties a party to the amended consent judgment~~

or a consent judgment entered in a specified consolidated action that contains certain terms *or the amended consent judgment* is deemed to be in compliance with the article. Existing law requires these collected civil penalties to be deposited in the Hazardous Waste Control Account, for expenditure by the Department of Toxic Substances Control, upon appropriation by the Legislature, to implement and enforce those prohibitions.

Existing law specifies the testing methods and protocols for determining compliance with these prohibitions and authorizes the department to adopt regulations that modify these testing protocols.

This bill would revise the definition of “jewelry” for purposes of those prohibitions and would additionally prohibit a person from offering for promotional purposes jewelry, including children’s jewelry, body piercing jewelry, and jewelry placed in the mouth for display or ornament, for retail sale or promotional purposes in the state unless it is made entirely from the specified materials.

The bill would additionally subject a person who violates those provisions to administrative civil penalties and would provide for the deposit of the collected administrative penalties into the account. The bill would *instead* prohibit parties that are signatories to the amended consent judgment ~~or a~~ *the* consent judgment entered in a specified consolidated action that contains certain terms from being subject to enforcement pursuant to the article.

The bill would allow an authorized representative of the department to enter and inspect a factory, warehouse, or establishment in which jewelry is manufactured, packed, held, or sold, for the purpose of administering and enforcing these provisions, upon obtaining consent or after obtaining an inspection warrant. The bill would specify procedures for the securing of samples and would additionally allow an authorized representative of the department to have access to all records of a carrier in commerce relating to the movement in commerce of jewelry.

The bill would require a manufacturer or supplier of jewelry to prepare and, at the request of the department, submit to the department within 28 days after the date of the request, specified technical documentation. A manufacturer or supplier would also be required to provide a specified certification to a person who sells or offers for sale that manufacturer’s or supplier’s jewelry, upon the request of that person, or to display the certification prominently on the shipping container or on the packaging of jewelry.

The bill would provide that a manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale or offers for promotional purposes jewelry containing lead in violation of those provisions is guilty of a misdemeanor punishable by a specified fine or imprisonment or by both that fine and imprisonment. The bill would also impose criminal penalties upon a manufacturer or supplier of jewelry who knowingly and with intent to deceive, falsifies any document or certificate required to be kept or produced pursuant to those provisions.

The bill would, except as specified, exempt a person who sells jewelry at retail or offers jewelry for retail sale from the *administrative or civil* penalties imposed by those provisions if the person makes a specified demonstration.

The bill would expand the testing protocols and require that the test methods selected be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods would be prohibited from use if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

The bill would authorize the department to adopt regulations to implement those provisions, including, but not limited to, adopting regulations that modify the testing protocols. The bill would also make technical and conforming changes regarding the provisions regulating the components of jewelry.

The bill would impose a state-mandated local program by creating new crimes.

(2) Existing law prohibits, on and after January 1, 2006, with exceptions, a manufacturer or supplier from offering for sale or for promotional purposes in this state a package or packaging component that includes an intentionally introduced regulated metal, in the package or in a packaging component. A manufacturer or supplier is required to furnish to the purchaser a certificate of compliance signed by an authorized official of the manufacturer or supplier. A violation of the hazardous waste control laws, and any regulations adopted pursuant to those laws, is a crime. A violation of the provisions prohibiting regulated metal in a package or packaging component, as part of the hazardous waste control laws, is a crime.

Existing law requires the department to keep confidential information submitted to the department by a manufacturer or supplier that the

manufacturer or supplier identifies as proprietary in nature, including trade secrets. The department is required to make available to the public any information that is not identified by the manufacturer or supplier as proprietary in nature.

This bill would, for purposes of those provisions regulating certain metals in packaging, revise the definitions of “package” and additionally define the term “authorized official.” The bill would revise the procedures for the handling of confidential information to instead require the department to keep confidential any information that is identified as a trade secret, in accordance with departmental procedures, and that the department determines meets the definition of a trade secret. The bill would instead require the department to make available to the public any information that is not a trade secret.

The bill would allow an authorized representative of the department to enter and inspect a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold, *and have access to specified records*, for the purpose of administering and enforcing these provisions, upon obtaining consent or after obtaining an inspection warrant. The bill would specify procedures for the securing of samples ~~and would additionally allow an authorized representative of the department to have access to all records of a carrier in commerce relating to the movement in commerce of any package or the holding of that package or packaging component.~~

The bill would, except as specified, exempt a person who offers for retail sale or promotional purposes a product in a package or a packaging component from administrative, ~~civil, or criminal~~ *or civil* penalties if the person makes a specified demonstration.

The bill would provide that a manufacturer or supplier of a package or packaging component who knowingly and intentionally offers for sale or promotional purposes a package or packaging component containing an intentionally introduced regulated metal in violation of those provisions is guilty of a misdemeanor punishable by a specified fine or imprisonment or by both that fine and imprisonment. This bill would thereby impose a state-mandated local program by creating a new crime.

The bill would authorize the department to adopt regulations to implement these provisions, as the department deems necessary to further the purposes of these provisions. The bill would also make technical and conforming changes regarding the provisions regulating

certain metals in packaging. Since a violation of these regulations would be a crime, the bill would impose a state-mandated local program.

(3) 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. Section 25214.1 of the Health and Safety Code
2 is amended to read:

3 25214.1. For purposes of this article, the following definitions
4 shall apply:

5 (a) "Amended consent judgment" means the amended consent
6 judgment in the consolidated action entitled *People vs. Burlington*
7 *Coat Factory Warehouse Corporation, et al.* (Alameda Superior
8 Court Lead Case No. RG 04-162075) that was entered by the court
9 on June 15, 2006.

10 (b) "Body piercing jewelry" means any part of jewelry that is
11 manufactured or sold for placement in a new piercing or a mucous
12 membrane, but does not include any part of that jewelry that is not
13 placed within a new piercing or a mucous membrane.

14 (c) "Children" means children aged six and younger.

15 (d) "Children's jewelry" means jewelry that is made for,
16 marketed for use by, or marketed to, children. For purposes of this
17 article, children's jewelry includes, but is not limited to, jewelry
18 that meets any of the following conditions:

19 (1) Represented in its packaging, display, or advertising, as
20 appropriate for use by children.

21 (2) Sold in conjunction with, attached to, or packaged together
22 with other products that are packaged, displayed, or advertised as
23 appropriate for use by children.

24 (3) Sized for children and not intended for use by adults.

25 (4) Sold in any of the following:

26 (A) A vending machine.

- 1 (B) Retail store, catalogue, or online Web site, in which a person
2 exclusively offers for sale products that are packaged, displayed,
3 or advertised as appropriate for use by children.
- 4 (C) A discrete portion of a retail store, catalogue, or online
5 *Internet* Web site, in which a person offers for sale products that
6 are packaged, displayed, or advertised as appropriate for use by
7 children.
- 8 (e) (1) “Class 1 material” means any of the following materials:
9 (A) Stainless or surgical steel.
10 (B) Karat gold.
11 (C) Sterling silver.
12 (D) Platinum, palladium, iridium, ruthenium, rhodium, or
13 osmium.
14 (E) Natural or cultured pearls.
15 (F) Glass, ceramic, or crystal decorative components, including
16 cat’s eye, cubic zirconia, including cubic zirconium or CZ,
17 rhinestones, and cloisonne.
18 (G) A gemstone that is cut and polished for ornamental purposes,
19 except as provided in paragraph (2).
20 (H) Elastic, fabric, ribbon, rope, or string, unless it contains
21 intentionally added lead and is listed as a class 2 material.
22 (I) All natural decorative material, including amber, bone, coral,
23 feathers, fur, horn, leather, shell, wood, that is in its natural state
24 and is not treated in a way that adds lead.
25 (J) Adhesive.
- 26 (2) The following gemstones are not class 1 materials: aragonite,
27 bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
28 phosgenite, samarskite, vanadinite, and wulfenite.
- 29 (f) “Class 2 material” means any of the following materials:
30 (1) Electroplated metal that meets the following standards:
31 (A) On and before August 30, 2009, a metal alloy with less than
32 10 percent lead by weight that is electroplated with suitable under
33 and finish coats.
34 (B) On and after August 31, 2009, a metal alloy with less than
35 6 percent lead by weight that is electroplated with suitable under
36 and finish coats.
37 (2) Unplated metal with less than 1.5 percent lead that is not
38 otherwise listed as a class 1 material.

- 1 (3) Plastic or rubber, including acrylic, polystyrene, plastic
2 beads and stones, and polyvinyl chloride (PVC) that meets the
3 following standards:
- 4 (A) On and before August 30, 2009, less than 0.06 percent (600
5 parts per million) lead by weight.
- 6 (B) On and after August 31, 2009, less than 0.02 percent (200
7 parts per million) lead by weight.
- 8 (4) A dye or surface coating containing less than 0.06 percent
9 (600 parts per million) lead by weight.
- 10 (g) “Class 3 material” means any portion of jewelry that meets
11 both of the following criteria:
- 12 (1) Is not a class 1 or class 2 material.
- 13 (2) Contains less than 0.06 percent (600 parts per million) lead
14 by weight.
- 15 (h) “Component” means any part of jewelry.
- 16 (i) “Jewelry” means any of the following:
- 17 (1) Any of the following ornaments worn by a person:
- 18 (A) An anklet.
- 19 (B) Arm cuff.
- 20 (C) Bracelet.
- 21 (D) Brooch.
- 22 (E) Chain.
- 23 (F) Crown.
- 24 (G) Cuff link.
- 25 (H) Hair accessory.
- 26 (I) Earring.
- 27 (J) Necklace.
- 28 (K) Pin.
- 29 (L) Ring.
- 30 (M) Body piercing jewelry.
- 31 (N) Jewelry placed in the mouth for display or ornament.
- 32 (2) Any bead, chain, link, pendant, or other component of an
33 ornament specified in paragraph (1).
- 34 (3) A charm, bead, chain, link, pendant, or other attachment to
35 shoes or clothing that can be removed and may be used as a
36 component of an ornament specified in paragraph (1).
- 37 (4) A watch in which a timepiece is a component of an ornament
38 specified in paragraph (1), excluding the timepiece itself if the
39 timepiece can be removed from the ornament.

1 (j) (1) “Surface coating” means a fluid, semifluid, or other
2 material, with or without a suspension of finely divided coloring
3 matter, that changes to a solid film when a thin layer is applied to
4 a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

5 (2) “Surface coating” does not include a printing ink or a
6 material that actually becomes a part of the substrate, including,
7 but not limited to, pigment in a plastic article, or a material that is
8 actually bonded to the substrate, such as by electroplating or
9 ceramic glazing.

10 SEC. 2. Section 25214.2 of the Health and Safety Code is
11 amended to read:

12 25214.2. (a) On and after March 1, 2008, a person shall not
13 manufacture, ship, sell, offer for sale, or offer for promotional
14 purposes jewelry for retail sale or promotional purposes in the
15 state unless the jewelry is made entirely from a class 1, class 2, or
16 class 3 material, or any combination thereof.

17 (b) Notwithstanding subdivision (a), on and after September 1,
18 2007, a person shall not manufacture, ship, sell, offer for sale, or
19 offer for promotional purposes children’s jewelry for retail sale or
20 promotional purposes in the state unless the children’s jewelry is
21 made entirely from one or more of the following materials:

22 (1) A nonmetallic material that is a class 1 material and that
23 does not otherwise violate the requirements of paragraph (4).

24 (2) A nonmetallic material that is a class 2 material.

25 (3) A metallic material that is either a class 1 material or contains
26 less than 0.06 percent (600 parts per million) lead by weight.

27 (4) Glass or crystal decorative components that weigh in total
28 no more than one gram, excluding any glass or crystal decorative
29 component that contains less than 0.02 percent (200 parts per
30 million) lead by weight and has no intentionally added lead.

31 (5) Printing ink or ceramic glaze that contains less than 0.06
32 percent (600 parts per million) lead by weight.

33 (6) Class 3 material that contains less than 0.02 percent (200
34 parts per million) lead by weight.

35 (c) Notwithstanding subdivision (a), on and after March 1, 2008,
36 a person shall not manufacture, ship, sell, offer for sale, or offer
37 for promotional purposes body piercing jewelry for retail sale or
38 promotional purposes in the state unless the body piercing jewelry
39 is made of one or more of the following materials:

40 (1) Surgical implant stainless steel.

- 1 (2) Surgical implant grade of titanium.
- 2 (3) Niobium (Nb).
- 3 (4) Solid 14 karat or higher white or yellow nickel-free gold.
- 4 (5) Solid platinum.
- 5 (6) A dense low-porosity plastic, including, but not limited to,
- 6 Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains
- 7 no intentionally added lead.

8 SEC. 3. Section 25214.3 of the Health and Safety Code is
9 amended to read:

10 25214.3. (a) Except as provided in Sections 25214.3.3 and
11 25214.3.4, a person who violates this article shall not be subject
12 to criminal penalties imposed pursuant to this chapter and shall
13 only be subject to the administrative or civil penalty specified in
14 subdivision (b).

15 (b) (1) A person who violates this article shall be liable for an
16 administrative or a civil penalty not to exceed two thousand five
17 hundred dollars (\$2,500) per day for each violation. That
18 administrative or civil penalty may be assessed and recovered in
19 an administrative action filed with the Office of Administrative
20 Hearings or in a civil action brought in any court of competent
21 jurisdiction.

22 (2) In assessing the amount of an administrative or a civil
23 penalty for a violation of this article, the presiding officer or the
24 court, as applicable, shall consider all of the following:

- 25 (A) The nature and extent of the violation.
- 26 (B) The number of, and severity of, the violations.
- 27 (C) The economic effect of the penalty on the violator.
- 28 (D) Whether the violator took good faith measures to comply
- 29 with this article and the time these measures were taken.
- 30 (E) The willfulness of the violator's misconduct.
- 31 (F) The deterrent effect that the imposition of the penalty would
- 32 have on both the violator and the regulated community as a whole.
- 33 (G) Any other factor that justice may require.

34 (c) Administrative and civil penalties collected pursuant to this
35 article shall be deposited in the Hazardous Waste Control Account,
36 for expenditure by the department, upon appropriation by the
37 Legislature, to implement and enforce this article.

38 (d) (1) Notwithstanding subdivision (b), a party that is a
39 signatory to the amended consent judgment, or a party that is a
40 signatory to a consent judgment entered in the consolidated action

1 entitled People vs. Burlington Coat Factory Warehouse
2 Corporation, et al. (Alameda Superior Court Lead Case No.
3 RG 04-162075) that contains identical or substantially identical
4 terms as provided in Sections 2, 3, and 4 of the amended consent
5 judgment, shall not be subject to enforcement pursuant to this
6 article, and an action brought to enforce this article against the
7 party shall be subject to Section 4 of the amended consent
8 judgment.

9 (2) The Legislature finds and declares that the amendment of
10 this subdivision by the act amending this section during the
11 2007–08 Regular Session of the Legislature is declaratory of
12 existing law.

13 (e) (1) For the purpose of administering and enforcing this
14 article, an authorized representative of the department, upon
15 obtaining consent or after obtaining an inspection warrant pursuant
16 to Title 13 (commencing with Section 1822.50) of Part 3 of the
17 Code of Civil Procedure, may, upon presenting appropriate
18 credentials and at a reasonable time, do any of the following:

19 (A) Enter a factory, warehouse, or establishment where jewelry
20 is manufactured, packed, held, or sold; enter a vehicle that is being
21 used to transport, hold, or sell jewelry; or enter a place where
22 jewelry is being held or sold.

23 (B) Inspect a factory, warehouse, establishment, vehicle, or
24 place described in subparagraph (A), and all pertinent equipment,
25 raw material, finished and unfinished materials, containers, and
26 labeling in the factory, warehouse, establishment, vehicle, or place.
27 In the case of a factory, warehouse, or establishment where jewelry
28 is manufactured, packed, held, or sold, this inspection shall include
29 any record, file, paper, process, control, and facility that has a
30 bearing on whether the jewelry is being manufactured, packed,
31 held, transported, sold, or offered for sale or for promotional
32 purposes in violation of this article.

33 (2) (A) An authorized representative of the department may
34 secure a sample of jewelry when taking an action authorized
35 pursuant to this subdivision. If the representative obtains a sample
36 prior to leaving the premises, he or she shall leave a receipt
37 describing the sample obtained.

38 (B) The department shall return, upon request, a sample that is
39 not destroyed during testing when the department no longer has
40 any purpose for retaining the sample.

1 (C) A sample that is secured in compliance with this section
2 and found to be in compliance with this article that is destroyed
3 during testing shall be subject to a claim for reimbursement.

4 (3) An authorized representative of the department shall have
5 access to all records of a carrier in commerce relating to the
6 movement in commerce of jewelry, or the holding of that jewelry
7 during or after the movement, and the quantity, shipper, and
8 consignee of the jewelry. A carrier shall not be subject to the other
9 provisions of this article by reason of its receipt, carriage, holding,
10 or delivery of jewelry in the usual course of business as a carrier.

11 (4) An authorized representative of the department shall be
12 deemed to have received implied consent to enter a retail
13 establishment, for purposes of this section, if the authorized
14 representative enters the location of that retail establishment where
15 the public is generally granted access.

16 SEC. 4. Section 25214.3.1 is added to the Health and Safety
17 Code, to read:

18 25214.3.1. (a) A manufacturer or supplier of jewelry that is
19 sold, offered for sale, or offered for promotional purposes shall
20 prepare and, at the request of the department, submit to the
21 department no more than 28 days after the date of the request,
22 technical documentation or other information showing that the
23 jewelry is in compliance with the requirements of this article.

24 (b) A manufacturer or supplier of jewelry sold or offered for
25 sale in this state shall do either of the following:

26 (1) Provide a certification to a person who sells or offers for
27 sale that manufacturer's or supplier's jewelry, upon the request of
28 that person.

29 (2) Display the certification prominently on the shipping
30 container or on the packaging of jewelry.

31 (c) The certification required by subdivision (b) shall attest that
32 the jewelry does not contain a level of lead that would prohibit the
33 jewelry from being sold or offered for sale pursuant to this article.

34 SEC. 5. Section 25214.3.2 is added to the Health and Safety
35 Code, to read:

36 25214.3.2. (a) Except as provided in subdivision (b), a person
37 who sells jewelry at retail or offers jewelry for retail sale shall not
38 be subject to an administrative, ~~civil, or criminal~~ *or civil* penalty
39 for a violation of this article if the person proves, by a
40 preponderance of evidence, all of the following:

1 (1) The person received a certificate of compliance for the
2 jewelry from the manufacturer or supplier.

3 (2) The certificate of compliance received pursuant to paragraph
4 (1) stated that the jewelry is in compliance with the requirements
5 of this article.

6 (3) The person relied on the certificate of compliance and did
7 not know, and had no reason to know, that the jewelry was in
8 violation of this article.

9 (4) Upon receiving a notice of violation from the department,
10 the person took corrective action by immediately removing the
11 jewelry from commerce.

12 (b) The affirmative defense specified in subdivision (a) does
13 not apply to, and may not be raised by, a person who has been
14 found in violation of this article on at least two prior occasions in
15 the preceding three years from the filing date of the current action.

16 SEC. 6. Section 25214.3.3 is added to the Health and Safety
17 Code, to read:

18 25214.3.3. A manufacturer or supplier of jewelry who
19 knowingly and intentionally manufactures, ships, sells, offers for
20 sale, or offers for promotional purposes jewelry containing lead
21 in violation of this article is guilty of a misdemeanor punishable
22 by a fine of not less than five thousand dollars (\$5,000) nor more
23 than one hundred thousand dollars (\$100,000), by imprisonment
24 in a county jail for not more than one year, or by both that fine and
25 imprisonment.

26 SEC. 7. Section 25214.3.4 is added to the Health and Safety
27 Code, to read:

28 25214.3.4. A manufacturer or supplier of jewelry who
29 knowingly and with intent to deceive, falsifies any document or
30 certificate required to be kept or produced pursuant to this article
31 is subject to a fine of not more than fifty thousand dollars
32 (\$50,000), by imprisonment in a county jail for not more than one
33 year, or by both that fine and imprisonment.

34 SEC. 8. Section 25214.4 of the Health and Safety Code is
35 amended to read:

36 25214.4. The test methods for determining compliance with
37 this article shall be conducted using the EPA reference methods
38 3050B, 3051A, and 3052, as specified in EPA Test Methods for
39 Evaluating Solid Waste, Physical/Chemical Methods, SW-846
40 (Third Edition, as currently updated) for the material being tested,

1 except as otherwise provided in Sections 24214.4.1 and 25214.4.2,
2 and in accordance with all of the following procedures:

3 (a) When preparing a sample, the laboratory shall make every
4 effort to assure that the sample removed from a jewelry piece is
5 representative of the component to be tested, and is free of
6 contamination from extraneous dirt and material not related to the
7 jewelry component to be tested.

8 (b) All jewelry component samples shall be washed prior to
9 testing using standard laboratory detergent, rinsed with laboratory
10 reagent grade deionized water, and dried in a clean ambient
11 environment.

12 (c) If a component is required to be cut or scraped to obtain a
13 sample, the metal snips, scissors, or other cutting tools used for
14 the cutting or scraping shall be made of stainless steel and washed
15 and rinsed before each use and between samples.

16 (d) A sample shall be digested in a container that is known to
17 be free of lead and with the use of an acid that is not contaminated
18 by lead, including analytical reagent grade digestion acids and
19 reagent grade deionized water.

20 (e) Method blanks, consisting of all reagents used in sample
21 preparation handled, digested, and made to volume in the same
22 exact manner and in the same container type as samples, shall be
23 tested with each group of 20 or fewer samples tested.

24 (f) The results for the method blanks shall be reported with each
25 group of sample results, and shall be below the stated reporting
26 limit for sample results to be considered valid.

27 (g) Test methods selected shall be those that best demonstrate
28 they can achieve total digestion of the sample material being
29 analyzed. Test methods shall not be used if they are inconsistent
30 with the specified application of the test method or do not
31 demonstrate the best performance or proficiency for achieving
32 total digestion of the sample material.

33 SEC. 9. Section 25214.4.2 of the Health and Safety Code is
34 amended to read:

35 25214.4.2. The department may adopt regulations to implement
36 this article, including, but not limited to, adopting regulations that
37 modify the testing protocols specified in Sections 25214.4 and
38 25214.4.1, as it deems necessary to further the purposes of this
39 article.

1 SEC. 10. Section 25214.12 of the Health and Safety Code is
2 amended to read:

3 25214.12. For purposes of this article, the following terms have
4 the following meanings:

5 (a) "Authorized official" means a representative of a
6 manufacturer or supplier who is authorized pursuant to the laws
7 of this state to bind the manufacturer or supplier regarding the
8 accuracy of the content of a certificate of compliance.

9 (b) "ASTM" means the American Society for Testing and
10 Materials.

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

15 (d) (1) "Intentional introduction" means the act of deliberately
16 utilizing a regulated metal in the formation of a package or
17 packaging component where its continued presence is desired in
18 the final package or packaging component to provide a specific
19 characteristic, appearance, or quality.

20 (2) "Intentional introduction" does not include either of the
21 following:

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

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

33 (e) "Incidental presence" means the presence of a regulated
34 metal as an unintended or undesired ingredient of a package or
35 packaging component.

36 (f) "Manufacturer" means any person, firm, association,
37 partnership, or corporation producing a package or packaging
38 component.

1 (g) “Manufacturing” means the physical or chemical
2 modification of a material to produce packaging or a packaging
3 component.

4 (h) (1) Except as provided in paragraph (2) “package” means
5 any container, produced either domestically or in a foreign country,
6 providing a means of marketing, protecting, or handling a product
7 from its point of manufacture to its sale or transfer to a consumer,
8 including a unity package, an intermediate package or a shipping
9 container, as defined in the ASTM specification D996. “Package”
10 also includes, but is not limited to, unsealed receptacles, including
11 carrying cases, crates, cups, pails, rigid foil and other trays,
12 wrappers and wrapping films, bags, and tubs.

13 (2) “Package” does not include a reusable bag, as defined in
14 subdivision (d) of Section 42250 of the Public Resources Code.

15 (i) “Packaging component” means any individual assembled
16 part of a package that is produced either domestically or in a
17 foreign country, including, but not necessarily limited to, any
18 interior or exterior blocking, bracing, cushioning, weatherproofing,
19 exterior strapping, coatings, closures, inks, labels, dyes, pigments,
20 adhesives, stabilizers, or any other additives. Tin-plated steel that
21 meets the ASTM specification A 623 shall be considered as a single
22 package component. Electrogalvanized coated steel and hot dipped
23 coated galvanized steel that meet the ASTM qualifications A 591,
24 A 653, A 879, and A 924 shall be treated in the same manner as
25 tin-plated steel.

26 (j) “Purchaser” means a person who purchases and takes title
27 to a package or a packaging component, from a manufacturer or
28 supplier, for the purpose of packaging a product manufactured,
29 distributed, or sold by the purchaser.

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

37 (l) “Regulated metal” means lead, mercury, cadmium, or
38 hexavalent chromium.

39 (m) (1) “Supplier” means a person who does or is one or more
40 of the following:

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

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

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

11 (D) Listed as the importer of record on a United States Customs
12 Service form for an imported package or packaging component.

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

16 (n) “Toxics in Packaging Clearinghouse” means the Toxics in
17 Packaging Clearinghouse (TPCH) of the Council of State
18 Governments.

19 SEC. 11. Section 25214.13 of the Health and Safety Code is
20 amended to read:

21 25214.13. (a) Except as provided in Section 25214.14, on and
22 after January 1, 2006, a manufacturer or supplier may not offer
23 for sale or for promotional purposes in this state a package or
24 packaging component that includes a regulated metal, in the
25 package itself, or in a packaging component, if the regulated metal
26 has been intentionally introduced into the package or packaging
27 component during manufacturing or distribution.

28 (b) Except as provided in Section 25214.14, on and after January
29 1, 2006, a person may not offer for sale or for promotional purposes
30 in this state a product in a package that includes a regulated metal,
31 in the package itself, or in a packaging component, if the regulated
32 metal has been intentionally introduced into the package or
33 packaging component during manufacturing or distribution.

34 (c) Except as provided in Section 25214.14, on and after January
35 1, 2006, a person may not offer for sale or for promotional purposes
36 in this state a package, packaging component, or product in a
37 package if the sum of the incidental total concentration levels of
38 all regulated metals present in a single-component package or in
39 an individual packaging component exceeds 100 parts per million
40 by weight.

1 SEC. 12. Section 25214.14 of the Health and Safety Code is
2 amended to read:

3 25214.14. A package or a packaging component is exempt
4 from the requirements of Section 25214.13, and shall be deemed
5 in compliance with this article, if the manufacturer or supplier
6 complies with the applicable documentation requirements specified
7 in Section 25214.15 and the package or packaging component
8 meets any of the following conditions:

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

11 (b) A regulated metal has been added to the package or
12 packaging component in the manufacturing, forming, printing, or
13 distribution process, to comply with the health or safety
14 requirements of a federal or state law.

15 (c) (1) The package or packaging component contains no
16 intentionally introduced regulated metals, but exceeds the
17 applicable maximum concentration level set forth in subdivision
18 (c) of Section 25214.13 only because of the addition of a recycled
19 material.

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

22 (d) (1) A regulated metal has been added to the package or
23 packaging component in the manufacturing, forming, printing, or
24 distribution process for a use for which there is no feasible
25 alternative.

26 (2) For purposes of this subdivision, “a use for which there is
27 no feasible alternative” means a use, other than for purposes of
28 marketing, for which a regulated metal is essential to the protection,
29 safe handling, or function, of the package’s contents, and technical
30 constraints preclude the substitution of other materials.

31 (e) (1) The package or packaging component is reused and
32 contains no intentionally introduced regulated metals, but exceeds
33 the applicable maximum concentration level set forth in subdivision
34 (c) of Section 25214.13, and all of the following apply:

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

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

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

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

6 (f) (1) The package or packaging component has a controlled
7 distribution and reuse and contains no intentionally introduced
8 regulated metals, but exceeds the applicable maximum
9 concentration level set forth in subdivision (c) of Section 25214.13.

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

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

21 (2) A glass bottle package with paint or applied ceramic
22 decoration on the bottle does not qualify for an exemption pursuant
23 to this section, if the paint or applied ceramic decoration contains
24 lead or lead compounds in excess of 0.06 percent by weight.

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

27 SEC. 13. Section 25214.15 of the Health and Safety Code is
28 amended to read:

29 25214.15. (a) A package or packaging component qualifies
30 for an exemption pursuant to Section 25214.14 only if the
31 manufacturer or supplier prepares, retains, and biennially updates
32 documentation containing all of the following information for that
33 package or packaging component:

34 (1) A statement that the documentation applies to an exemption
35 from the requirements of Section 25214.13.

36 (2) The name, position, and contact information for the person
37 who is the manufacturer's or supplier's contact person on all
38 matters concerning the exemption.

1 (3) An identification of the exemption and a reference to the
2 applicable subdivision in Section 25214.14 setting forth the
3 conditions for the exemption.

4 (4) A description of the type of package or packaging component
5 to which the exemption applies.

6 (5) Identification of the type and concentration of the regulated
7 metal or metals present in the package or packaging component,
8 and a description of the testing methods used to determine the
9 concentration.

10 (6) An explanation of the reason for the exemption.

11 (7) Supporting documentation that fully and clearly demonstrates
12 that the package or packaging component is eligible for the
13 exemption.

14 (8) The documentation listed in subdivisions (b), (c), (d), (e),
15 (f), (g), or (h), whichever is applicable for the exemption.

16 (b) In addition to the requirements specified in subdivision (a),
17 if an exemption is being claimed under subdivision (a) of Section
18 25214.14, the manufacturer or supplier shall prepare, retain, and
19 biennially update documentation containing all of the following
20 information for the package or packaging component to which the
21 exemption applies:

22 (1) Date of manufacture.

23 (2) Estimated time needed to exhaust current inventory.

24 (3) Alternative package or packaging component that meets the
25 requirements of Section 25214.13.

26 (c) In addition to the requirements specified in subdivision (a),
27 if an exemption is being claimed under subdivision (b) of Section
28 25214.14, the manufacturer or supplier shall prepare, retain, and
29 biennially update documentation that contains all of the following
30 information for each regulated metal intentionally introduced in
31 the package or packaging component to which the exemption
32 applies:

33 (1) Identification of the specific federal or state law requiring
34 the addition of the regulated metal to the package or packaging
35 component.

36 (2) Detailed information that fully and clearly demonstrates that
37 the addition of the regulated metal to the package or packaging
38 component is necessary to comply with the law identified pursuant
39 to paragraph (1).

1 (3) A description of past, current, and planned future efforts to
2 seek or develop alternatives to eliminate the use of the regulated
3 metal in the package or packaging component.

4 (4) A description of all alternative measures that have been
5 considered, and, for each alternative, an explanation as to why the
6 alternative is not satisfactory for purposes of achieving compliance
7 with the law identified pursuant to paragraph (1).

8 (d) In addition to the requirements specified in subdivision (a),
9 if an exemption is being claimed under subdivision (c) of Section
10 25214.14, the manufacturer or supplier shall prepare, retain, and
11 biennially update documentation containing all of the following
12 information for the package or packaging component to which the
13 exemption applies:

14 (1) The type and percentage of recycled material or materials
15 added to the package or packaging component.

16 (2) The type and concentration of each regulated metal contained
17 in each recycled material added to the package or packaging
18 component.

19 (3) Efforts to minimize or eliminate the regulated metals in the
20 package or packaging component.

21 (4) A description of past, current, and planned future efforts to
22 seek or develop alternatives to minimize or eliminate the use of
23 the regulated metal in the package or packaging component.

24 (e) In addition to the requirements specified in subdivision (a),
25 if an exemption is being claimed under subdivision (d) of Section
26 25214.14, the manufacturer or supplier shall prepare, retain, and
27 biennially update documentation containing all of the following
28 information for each regulated metal intentionally introduced into
29 the package or packaging component to which the exemption
30 applies:

31 (1) Detailed information and evidence that fully and clearly
32 demonstrates how the regulated metal contributes to, and is
33 essential to, the protection, safe handling, or functioning of the
34 package's contents.

35 (2) A description of past, current, and planned future efforts to
36 seek or develop alternatives to minimize or eliminate the use of
37 the regulated metal in the package or packaging component.

38 (3) A description of all alternative measures that have been
39 considered, and, for each alternative, an explanation as to the

1 technical constraints that preclude substitution of the alternative
2 for the use of the regulated metal.

3 (4) Documentation that the regulated metal is not being used
4 for the purposes of marketing.

5 (f) In addition to the requirements specified in subdivision (a),
6 if an exemption is being claimed under subdivision (e) of Section
7 25214.14, the manufacturer or supplier shall prepare, retain, and
8 biennially update documentation containing all of the following
9 information for the package or packaging component to which the
10 exemption applies:

11 (1) The percentage of reused materials.

12 (2) Identification of the federal or state health or safety law
13 regulating the product being conveyed by the package, the package,
14 or the packaging component.

15 (3) Identification of the federal or state transportation law
16 regulating the transportation of the packaged product.

17 (4) Information demonstrating that the package is disposed of
18 in accordance with the requirements of this chapter or Chapter 8
19 (commencing with Section 114960) of Part 9 of Division 104.

20 (5) A description of past, current, and planned future efforts to
21 seek or develop alternatives to minimize or eliminate the use of
22 the regulated metal in the package or packaging component.

23 (g) In addition to the requirements specified in subdivision (a),
24 if an exemption is being claimed under subdivision (f) of Section
25 25214.14, the manufacturer or supplier shall prepare, retain, and
26 biennially update documentation containing all of the following
27 information for the package or packaging component to which the
28 exemption applies:

29 (1) The percentage of reused materials.

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

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

39 (4) A method of regulatory and financial accountability, so that
40 a specified percentage of the reusable packages or packaging

1 components that are manufactured and distributed to other persons
2 are not discarded by those persons after use, but are returned to
3 the manufacturer or identified designees.

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

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

12 (7) A description of past, current, and planned future efforts to
13 seek or develop alternatives to minimize or eliminate the use of
14 the regulated metal in the package or packaging component.

15 (h) In addition to the requirements specified in subdivision (a),
16 if an exemption is being claimed under subdivision (g) of Section
17 25214.14, the manufacturer or supplier shall prepare, retain, and
18 biennially update the following documentation for the package or
19 packaging component to which the exemption applies:

20 (1) Applicable test data.

21 (2) A description of past, current, and planned future efforts to
22 seek or develop alternatives to minimize or eliminate the use of
23 the regulated metal in the package or packaging component.

24 (i) A manufacturer or supplier shall submit the documentation
25 required pursuant to subdivisions (a) to (h), inclusive, to the
26 department, as follows:

27 (1) Upon receipt of a written request from the department, the
28 manufacturer or supplier shall, on or before 30 calendar days after
29 the date of receipt, do one of the following:

30 (A) Submit the required documentation to the department.

31 (B) Submit a letter to the department indicating the date by
32 which the documentation shall be submitted, which may be no
33 more than 90 calendar days after the date of receipt of the
34 department's request.

35 (2) If the department finds that the documentation supplied
36 pursuant to paragraph (1) is incomplete or incorrect, the department
37 shall notify the manufacturer or supplier that the documentation
38 is incomplete or incorrect, and the manufacturer or supplier shall
39 submit complete and correct documentation to the department
40 within 60 calendar days after the date of receipt of the notification.

1 (j) If a manufacturer or supplier fails to comply with subdivision
2 (i) by any of the specified dates in that subdivision, the
3 manufacturer or supplier shall, with respect to the package or
4 packaging component to which the documentation request applies,
5 comply with one of the following:

6 (1) Immediately cease to offer the package or packaging
7 component for sale or for promotional purposes in this state.

8 (2) Replace the package or packaging component with a package
9 or packaging component that conforms with the regulated metals
10 limitations specified in Section 25214.13, in accordance with a
11 schedule approved in writing by the department.

12 (3) Submit complete and correct documentation for the package
13 or packaging component, in accordance with a schedule approved
14 in writing by the department.

15 SEC. 14. Section 25214.17 of the Health and Safety Code is
16 amended to read:

17 25214.17. (a) Except as provided in subdivision (b), the
18 department, pursuant to the California Public Records Act (Chapter
19 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
20 the Government Code), shall provide the public with access to all
21 information relating to a package or packaging component that
22 has been submitted to the department by a manufacturer or supplier
23 of a package or packaging component pursuant to this article.

24 (b) (1) The department shall keep confidential any information
25 identified by the manufacturer or supplier, pursuant to paragraph
26 (2), as a trade secret, as defined in Section 25173, in accordance
27 with departmental procedures that have been adopted pursuant to
28 Section 25173, if the department determines that this information
29 meets that definition of a trade secret.

30 (2) A manufacturer or supplier providing information to the
31 department pursuant to this article shall, at the time of submission,
32 identify all information that the manufacturer or supplier believes
33 is a trade secret. The department shall make available to the public
34 any information that is not a trade secret.

35 SEC. 15. Section 25214.18 of the Health and Safety Code is
36 amended to read:

37 25214.18. If the department determines that other substances
38 contained in packaging should be added as regulated metals to the
39 list set forth in subdivision (l) of Section 25214.12 in order to
40 further reduce the toxicity of packaging waste, the department may

1 submit recommendations to the Governor and the Legislature for
2 additions to the list, along with a description of the nature of the
3 substitutes used in lieu of the recommended additions to the list.

4 SEC. 16. Section 25214.22 is added to the Health and Safety
5 Code, to read:

6 25214.22. (a) Except as provided in subdivision (b), a person
7 who offers for retail sale or for promotional purposes a product in
8 a package or in a packaging component that includes a regulated
9 metal shall not be subject to any administrative, ~~civil, or criminal~~
10 *or civil* penalty for a violation of this article, if the person proves,
11 by a preponderance of evidence, all of the following:

12 (1) The person received a certificate of compliance for the
13 package or packaging component from the manufacturer or
14 supplier.

15 (2) The certificate of compliance received pursuant to paragraph
16 (1) stated that the package or packaging component is in
17 compliance with the requirements of this article.

18 (3) The person relied on the certificate of compliance and did
19 not know or had no reason to know that the package or packaging
20 component was in violation of this article.

21 (4) Upon receiving a notice of violation from the department,
22 the person took corrective action by immediately removing the
23 package or packaging component from commerce.

24 (b) The affirmative defense specified in subdivision (a) does
25 not apply to, and may not be raised by, a person who has been
26 found to be in violation of this article on at least two prior
27 occasions in the preceding three years from the filing date of the
28 current action.

29 SEC. 17. Section 25214.22.1 is added to the Health and Safety
30 Code, to read:

31 25214.22.1. A manufacturer or supplier of a package or
32 packaging component who knowingly and intentionally offers for
33 sale or for promotional purposes a package or packaging
34 component in violation of this article is guilty of a misdemeanor
35 punishable by a fine of not less than five thousand dollars (\$5,000)
36 nor more than one hundred thousand dollars (\$100,000), by
37 imprisonment in a county jail for not more than one year, or by
38 both the fine and imprisonment.

39 SEC. 18. Section 25214.23 is added to the Health and Safety
40 Code, to read:

1 25214.23. (a) For the purpose of administering and enforcing
2 this article, an authorized representative of the department, upon
3 obtaining consent or after obtaining an inspection warrant pursuant
4 to Title 13 (commencing with Section 1822.50) of Part 3 of the
5 Code of Civil Procedure, may, upon presenting appropriate
6 credentials and at a reasonable time, do any of the following:

7 (1) Enter a factory, warehouse, or establishment in which a
8 package or packaging component is manufactured, packed, held,
9 or sold; enter a vehicle that is being used to transport, hold, or sell
10 the package or packaging component; or enter a place where a
11 package or packaging component is suspected of being held or
12 sold in violation of this article.

13 (2) Inspect a factory, warehouse, establishment, vehicle, or place
14 described in paragraph (1), and all pertinent equipment, raw
15 material, finished and unfinished materials, containers, and labeling
16 in the factory, warehouse, establishment, vehicle, or place. In the
17 case of a factory, warehouse, or establishment in which a package
18 or packaging component is manufactured, packed, held, or sold,
19 inspection shall include any record, file, paper, process, control,
20 and facility that has a bearing on whether the package, packaging
21 component, or product in a package is being manufactured, packed,
22 held, transported, sold, offered for sale, or offered for promotional
23 purposes in violation of this article.

24 (3) *Have access to all records of a carrier in commerce relating*
25 *to the movement in commerce of a package or packaging*
26 *component, or the holding of that package or packaging component*
27 *during or after the movement, and the quantity, shipper, and*
28 *consignee of the package or packaging component. A carrier shall*
29 *not be subject to the other provisions of this article by reason of*
30 *its receipt, carriage, holding, or delivery of a product in a package*
31 *or packaging component in the usual course of business as a*
32 *carrier.*

33 (b) An authorized representative of the department shall be
34 deemed to have received implied consent to enter a retail
35 establishment, for purposes of this section if the authorized
36 representative enters the location of that retail establishment where
37 the public is generally granted access.

38 SEC. 19. Section 25214.24 is added to the Health and Safety
39 Code, to read:

1 25214.24. (a) When taking an action authorized pursuant to
2 Section 25214.23, an authorized representative of the department
3 may secure a sample of a package, packaging component, or
4 product in a package. If the representative obtains a sample prior
5 to leaving the premises, he or she shall leave a receipt describing
6 the sample obtained.

7 (b) The department shall return, upon request, a sample that is
8 not destroyed during testing when the department no longer has
9 any purpose for retaining the sample.

10 (c) A sample that is secured in compliance with this section and
11 found to be in compliance with this article that is destroyed during
12 testing shall be subject to a claim for reimbursement.

13 ~~SEC. 20. Section 25214.25 is added to the Health and Safety~~
14 ~~Code, to read:~~

15 ~~25214.25. An authorized representative of the department shall~~
16 ~~have access to all records of a carrier in commerce relating to the~~
17 ~~movement in commerce of a package or packaging component,~~
18 ~~or the holding of that package or packaging component during or~~
19 ~~after the movement, and the quantity, shipper, and consignee of~~
20 ~~the package or packaging component. A carrier shall not be subject~~
21 ~~to the other provisions of this article by reason of its receipt,~~
22 ~~carriage, holding, or delivery of a product in a package or~~
23 ~~packaging component in the usual course of business as a carrier.~~

24 ~~SEC. 21.~~

25 ~~SEC. 20. Section 25214.26 is added to the Health and Safety~~
26 ~~Code, to read:~~

27 25214.26. The department may adopt regulations to implement
28 this article, as deemed necessary to further the purposes of this
29 article.

30 ~~SEC. 22.~~

31 ~~SEC. 21. No reimbursement is required by this act pursuant to~~
32 ~~Section 6 of Article XIII B of the California Constitution because~~
33 ~~the only costs that may be incurred by a local agency or school~~
34 ~~district will be incurred because this act creates a new crime or~~
35 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
36 ~~for a crime or infraction, within the meaning of Section 17556 of~~
37 ~~the Government Code, or changes the definition of a crime within~~

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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