

## Assembly Bill No. 2901

### CHAPTER 575

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 25214.1.5, 25214.3.1, 25214.3.2, 25214.3.3, 25214.3.4, 25214.22, 25214.22.1, 25214.23, 25214.24, and 25214.26 to, the Health and Safety Code, relating to toxics.

[Approved by Governor September 29, 2008. Filed with  
Secretary of State September 29, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2901, 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 a party to 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 declare that the provisions regulating lead in jewelry do not effect prescribed duties, requirements, obligations, or legal actions.

The bill would additionally subject a person who violates those provisions to administrative or 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 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.

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 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.

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

SECTION 1. Section 25214.1 of the Health and Safety Code is amended to read:

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

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

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

(c) “Children” means children aged six and younger.

(d) “Children’s jewelry” means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children’s jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

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

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

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

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalogue, or online Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalogue, or online Internet Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(e) (1) “Class 1 material” means any of the following materials:

(A) Stainless or surgical steel.

(B) Karat gold.

(C) Sterling silver.

(D) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(E) Natural or cultured pearls.

(F) Glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, including cubic zirconium or CZ, rhinestones, and cloisonne.

(G) A gemstone that is cut and polished for ornamental purposes, except as provided in paragraph (2).

(H) Elastic, fabric, ribbon, rope, or string, unless it contains intentionally added lead and is listed as a class 2 material.

(I) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, wood, that is in its natural state and is not treated in a way that adds lead.

(J) Adhesive.

(2) The following gemstones are not class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(f) "Class 2 material" means any of the following materials:

(1) Electroplated metal that meets the following standards:

(A) On and before August 30, 2009, a metal alloy with less than 10 percent lead by weight that is electroplated with suitable under and finish coats.

(B) On and after August 31, 2009, a metal alloy with less than 6 percent lead by weight that is electroplated with suitable under and finish coats.

(2) Unplated metal with less than 1.5 percent lead that is not otherwise listed as a class 1 material.

(3) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) that meets the following standards:

(A) On and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight.

(B) On and after August 31, 2009, less than 0.02 percent (200 parts per million) lead by weight.

(4) A dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(g) "Class 3 material" means any portion of jewelry that meets both of the following criteria:

(1) Is not a class 1 or class 2 material.

(2) Contains less than 0.06 percent (600 parts per million) lead by weight.

(h) "Component" means any part of jewelry.

(i) "Jewelry" means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

- (I) Earring.
- (J) Necklace.
- (K) Pin.
- (L) Ring.
- (M) Body piercing jewelry.
- (N) Jewelry placed in the mouth for display or ornament.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an ornament specified in paragraph (1).

(4) A watch in which a timepiece is a component of an ornament specified in paragraph (1), excluding the timepiece itself if the timepiece can be removed from the ornament.

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

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

SEC. 1.5. Section 25214.1.5 is added to the Health and Safety Code, to read:

25214.1.5. (a) This article does not do any of the following:

(1) Affect a duty or other requirement otherwise imposed under federal or state law.

(2) Alter or diminish a legal obligation otherwise required in common law, by statute, or by regulation.

(3) Create or enlarge a defense to an action to enforce a legal obligation otherwise required in common law, by statute, or by regulation.

(b) The Legislature finds and declares that the addition of this section during the 2007–08 Regular Session of the Legislature is declaratory of existing law.

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

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

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

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

- (2) A nonmetallic material that is a class 2 material.
- (3) A metallic material that is either a class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight.
- (4) Glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.
- (5) Printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight.
- (6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.
- (c) Notwithstanding subdivision (a), on and after March 1, 2008, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes body piercing jewelry for retail sale or promotional purposes in the state unless the body piercing jewelry is made of one or more of the following materials:
  - (1) Surgical implant stainless steel.
  - (2) Surgical implant grade of titanium.
  - (3) Niobium (Nb).
  - (4) Solid 14 karat or higher white or yellow nickel-free gold.
  - (5) Solid platinum.
  - (6) A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

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

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

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

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

- (A) The nature and extent of the violation.
- (B) The number of, and severity of, the violations.
- (C) The economic effect of the penalty on the violator.
- (D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.
- (E) The willfulness of the violator's misconduct.
- (F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25214.3.3. 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 this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

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

25214.3.4. 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 this article is subject to a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

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

25214.4. The test methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B, 3051A, and 3052, as specified in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (Third Edition, as currently updated) for the material being tested, except as otherwise provided in Sections 24214.4.1 and 25214.4.2, and in accordance with all of the following procedures:

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

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

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

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

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

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

(g) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods shall not be used 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.

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

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

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

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

(a) “Authorized official” means a representative of a manufacturer or supplier who is authorized pursuant to the laws of this state to bind the manufacturer or supplier regarding the accuracy of the content of a certificate of compliance.

(b) “ASTM” means the American Society for Testing and Materials.

(c) “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.

(d) (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.

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

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

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

(h) (1) Except as provided in paragraph (2) “package” means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package or a shipping container, as defined in the ASTM

specification D996. “Package” also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

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

(i) “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 ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(j) “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.

(k) “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.

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

(m) (1) “Supplier” means a person who does or is 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.

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

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

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

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

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

25214.13. (a) Except as provided in Section 25214.14, on and after January 1, 2006, a manufacturer 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, a person may not offer for sale or for promotional purposes in this state a package, packaging component, or product in a package if the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component exceeds 100 parts per million by weight.

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

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 manufacturer or supplier complies with the applicable documentation requirements specified in Section 25214.15 and 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.

(c) (1) The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable 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 has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use for which there is no feasible alternative.

(2) For purposes of this subdivision, “a use for which there is no feasible alternative” means a use, other than for purposes of marketing, for which a 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.

(e) (1) The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable

maximum concentration level set forth in subdivision (c) of Section 25214.13, and all of the following apply:

(A) The product being conveyed by the package, 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) The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

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

(g) (1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, 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 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) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to this section, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

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

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

(1) The percentage of reused materials.

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

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

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

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

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

(1) The percentage of reused materials.

(2) Information and evidence 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 applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) 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.

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

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

(6) 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 waste in accordance with applicable federal and state law.

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

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

(1) Applicable test data.

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

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

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

(A) Submit the required documentation to the department.

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

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

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier

shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

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

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

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

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

25214.17. (a) Except as provided in subdivision (b), 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 pursuant to this article.

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

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

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

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 (l) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 21. 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.