

AMENDED IN SENATE AUGUST 21, 2013

AMENDED IN SENATE JULY 9, 2013

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MAY 28, 2013

AMENDED IN ASSEMBLY MAY 8, 2013

AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1001

**Introduced by Assembly Member Gordon
(Coauthor: Assembly Member Stone)**

February 22, 2013

~~An act to amend Sections 14538 and 14585 of the Public Resources Code, relating to recycling, and making an appropriation therefor. An act to amend Sections 25214.14 and 25214.15 of the Health and Safety Code, relating to hazardous materials.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Gordon. ~~Recycling centers: beverage containers. Hazardous materials: packaging: exemptions.~~

Existing law, the Toxics in Packaging Prevention Act, prohibits a manufacturer, importer, agent, or supplier, as defined, from offering for sale or for promotional purposes in this state a package or packaging component that includes specified regulated metals and prohibits a person from offering for sale or for promotional purposes in the state a product in a package that includes those intentionally introduced

regulated metals. A violation of the hazardous waste control laws, including the act, is a crime.

The act exempts from its requirements a package or a packaging component that meets any of specified conditions only if the manufacturer or supplier prepares, retains, and biennially updates documentation containing specified information for that package or packaging component and exempts, until January 1, 2010, a package or packaging component that contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in the act only because of the addition of a recycled material. The act requires, upon a written request from the Department of Toxic Substances Control, the manufacturer or supplier, on or before 30 calendar days after the date of receipt of the request, to submit the required documentation to the department or to submit a letter to the department indicating the date by which the documentation shall be submitted, as specified.

This bill would extend this exemption to January 1, 2017, would require, no later than July 1, 2014, a manufacturer or supplier of packaging exercising the exemption under this provision to coordinate with the department to develop a specified study or studies measuring the content and leaching of regulated metals from the packaging seeking the exemption, and would require the manufacturer or supplier, no later than July 1, 2015, to provide to the department a specified report documenting the results of the study or studies. The bill would require the manufacturer or supplier to reimburse the department for its actual costs associated with coordinating the development of the study or studies and in reviewing and evaluating the report.

The bill would expand the documentation required to be updated by the manufacturer or supplier claiming the exemption and would require the manufacturer or supplier to submit the documentation for all exemptions under the act at least twice a year, on or before July 1 and January 1 of each year in which the exemption is being utilized. By creating new crimes under the act, the bill would impose a state-mandated local program.

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.

~~(1) Existing law, the California Beverage Container Recycling and Litter Reduction Act, requires a distributor to pay a redemption payment for every beverage container sold or offered for sale in the state to the Department of Resources Recycling and Recovery. The department is required to deposit those amounts in the California Beverage Container Recycling Fund.~~

~~The act requires the department to certify recycling centers and requires, as a condition of certification, that if one or more certified entities have operated at the same location within the past 5 years, the operations at the location of the recycling center exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of the act.~~

~~This bill would authorize the department to waive this requirement if it makes a specified determination.~~

~~(2) The act continuously appropriates from the California Beverage Container Recycling Fund to the department the amount necessary to pay handling fees monthly, in the form and manner adopted by the department, to certain supermarket sites and recyclers to provide an incentive for the redemption of empty beverage containers in convenience zones. Existing law specifies procedures for determining the number of containers for which a handling fee may be paid pursuant to a claim filed as specified and requires the per-container handling fee to be set, until March 1, 2013, at an amount that is not less than the amount of the per-container handling fee that was in effect on July 1, 2011. Existing law requires the department to conduct a survey of beverage container recycling costs every 2 years and requires the department, after July 1, 2014, to determine the handling fee by conducting this survey and using the statewide weighted average costs incurred for the redemption of empty beverage containers.~~

~~This bill would delete the requirement that the handling fees be paid monthly and would instead require that claims for handling fees be filed electronically as part of a specified shipping report provided to the department. The bill would establish an unspecified amount of the handling fees the department is required to pay on and after January 1, 2014, based on an unspecified volume of beverage containers redeemed at each eligible recycling site, as defined.~~

~~The bill would authorize the department, on and after January 1, 2017, to adjust the unspecified amount of handling fees based on costs determined pursuant to a survey that department would be authorized to conduct on and after January 1, 2016, and not more frequently than~~

~~every 2 years thereafter. The bill would make an appropriation by changing the terms and conditions under which the department is authorized to make payments from a continuously appropriated fund.~~

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

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

1 *SECTION 1. Section 25214.14 of the Health and Safety Code*
 2 *is 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~~ 2017.

22 (3) (A) *No later than July 1, 2014, a manufacturer or supplier*
 23 *of packaging seeking an exemption under this subdivision shall*
 24 *coordinate with the department to develop a study or studies*
 25 *measuring the content and leaching of regulated metals from the*
 26 *packaging seeking the exemption. The study or studies and the*
 27 *report required pursuant to subparagraph (B) may be a result of*
 28 *individual or collaborative efforts by multiple manufacturers or*
 29 *suppliers. At a minimum, the study or studies shall include the*
 30 *collection of samples from a statistically representative number*
 31 *of packaging units that contain recycled material. The collection*
 32 *of samples shall provide information regarding, but not limited*

1 to, the different levels of regulated metals in the packaging, the
2 varying length of time the contents are contained in or exposed to
3 the packaging, the different types of contents in the packaging that
4 represent the range of chemical composition and pH that are
5 typically contained in the packaging, and the various temperatures
6 representing the range of temperatures in which products are
7 stored in the packaging. The study or studies shall use nationally
8 or internationally accepted testing methods for this type of
9 packaging to quantify the concentration of regulated metals in the
10 packaging and the concentration of regulated metals that not only
11 could leach from the packaging into the contents of the package
12 but also that could leach into a landfill environment.

13 (B) No later than July 1, 2015, a manufacturer or supplier of
14 packaging conducting the study or studies pursuant to
15 subparagraph (A) shall provide to the department a report
16 documenting the results of the study or studies.

17 (4) A manufacturer or supplier coordinating with the department
18 to develop a study or studies pursuant to subparagraph (A) of
19 paragraph (3), and submitting a report to the department pursuant
20 to subparagraph (B) of paragraph (3) shall reimburse the
21 department for its actual costs associated with coordinating the
22 development of the study or studies and in reviewing and evaluating
23 the report.

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

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

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

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

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

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

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

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

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

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

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

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

29 *SEC. 2. Section 25214.15 of the Health and Safety Code is*
30 *amended to read:*

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

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

38 (2) The name, position, and contact information for the person
39 who is the manufacturer's or supplier's contact person on all
40 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 (5) *A thorough description of the processes utilized in the*
25 *manufacture of the packaging, including, but not limited to, the*
26 *source and nature of feed stocks, physical and chemical processing,*
27 *and the quality assurance and quality control measures utilized*
28 *to identify and minimize the levels of regulated metals in the*
29 *packaging product that are due to the addition of a recycled*
30 *material.*

31 (e) In addition to the requirements specified in subdivision (a),
32 if an exemption is being claimed under subdivision (d) of Section
33 25214.14, the manufacturer or supplier shall prepare, retain, and
34 biennially update documentation containing all of the following
35 information for each regulated metal intentionally introduced into
36 the package or packaging component to which the exemption
37 applies:

38 (1) Detailed information and evidence that fully and clearly
39 demonstrates how the regulated metal contributes to, and is

1 essential to, the protection, safe handling, or functioning of the
2 package's contents.

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

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

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

12 (f) In addition to the requirements specified in subdivision (a),
13 if an exemption is being claimed under subdivision (e) of Section
14 25214.14, the manufacturer or supplier shall prepare, retain, and
15 biennially update documentation containing all of the following
16 information for the package or packaging component to which the
17 exemption applies:

18 (1) The percentage of reused materials.

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

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

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

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

30 (g) In addition to the requirements specified in subdivision (a),
31 if an exemption is being claimed under subdivision (f) of Section
32 25214.14, the manufacturer or supplier shall prepare, retain, and
33 biennially update documentation containing all of the following
34 information for the package or packaging component to which the
35 exemption applies:

36 (1) The percentage of reused materials.

37 (2) Information and evidence that demonstrates that the
38 environmental benefit of the controlled distribution and reuse of
39 the package or packaging component is significantly greater, as
40 compared to the same package or packaging component

1 manufactured in compliance with the applicable maximum
2 concentration level set forth in subdivision (c) of Section 25214.13.

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

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

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

14 (6) A means of transforming returned packages or packaging
15 components that are no longer reusable into recycled materials for
16 manufacturing, or a means of collecting and managing returned
17 packages or packaging components as waste in accordance with
18 applicable federal and state law.

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

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

27 (1) Applicable test data.

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

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

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

37 ~~(A) Submit the required documentation to the department.~~

38 ~~(B) Submit a letter to the department indicating the date by~~
39 ~~which the documentation shall be submitted, which may be no~~

1 ~~more than 90 calendar days after the date of receipt of the~~
2 ~~department's request.~~

3 ~~(2) If at least twice a year, on or before July 1 and January 1~~
4 ~~of each year in which the exemption is being utilized. If the~~
5 ~~department finds that the documentation supplied pursuant to~~
6 ~~paragraph (1) this section is incomplete or incorrect, the department~~
7 ~~shall notify the manufacturer or supplier that the documentation~~
8 ~~is incomplete or incorrect, and the manufacturer or supplier shall~~
9 ~~submit complete and correct documentation to the department~~
10 ~~within 60 calendar days after the date of receipt of the notification.~~

11 (j) If a manufacturer or supplier fails to comply with subdivision
12 ~~(i) by any of the specified dates in that subdivision,~~ the
13 manufacturer or supplier shall, with respect to the package or
14 packaging component to which the documentation request applies,
15 comply with one of the following:

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

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

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

25 *SEC. 3. No reimbursement is required by this act pursuant to*
26 *Section 6 of Article XIII B of the California Constitution because*
27 *the only costs that may be incurred by a local agency or school*
28 *district will be incurred because this act creates a new crime or*
29 *infraction, eliminates a crime or infraction, or changes the penalty*
30 *for a crime or infraction, within the meaning of Section 17556 of*
31 *the Government Code, or changes the definition of a crime within*
32 *the meaning of Section 6 of Article XIII B of the California*
33 *Constitution.*

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All matter omitted in this version of the bill appears in the bill as amended in the Senate, July 9, 2013. (JR11)

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