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AMENDED IN SENATE AUGUST 21, 2013

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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 25214.14 and 25214.15 of the Health and Safety Code, relating to hazardous materials, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Gordon. 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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 25214.14 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, 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 to,
33 the different levels of regulated metals in the packaging, the

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

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

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

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

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

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

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

39 (B) The transportation of the packaged product is regulated
40 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. 2. 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 (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 to
28 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, at least twice a year, on or before July 1 and January
34 1 of each year in which the exemption is being utilized. If the
35 department finds that the documentation supplied pursuant to this
36 section is incomplete or incorrect, the department shall notify the
37 manufacturer or supplier that the documentation is incomplete or
38 incorrect, and the manufacturer or supplier shall submit complete
39 and correct documentation to the department within 60 calendar
40 days after the date of receipt of the notification.

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

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

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

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

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 SEC. 4. *This act is an urgency statute necessary for the*
24 *immediate preservation of the public peace, health, or safety within*
25 *the meaning of Article IV of the Constitution and shall go into*
26 *immediate effect. The facts constituting the necessity are:*

27 *In order to extend this exemption and study various types of*
28 *materials for the purpose of beverage container recycling at the*
29 *earliest possible time, it is necessary for this act to take effect*
30 *immediately.*