
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 337 Session of
1993

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COLAIZZO, STEELMAN, ITKIN, CAPPABIANCA AND HENNESSEY,
FEBRUARY 8, 1993

REFERRED TO COMMITTEE ON CONSERVATION, FEBRUARY 8, 1993

AN ACT

1 Regulating toxic materials used in packaging and components
2 thereof; and providing for additional duties of the
3 Department of Environmental Resources, for certain
4 procedures, for remedies and enforcement and for civil and
5 criminal penalties.

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19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 CHAPTER 1

22 PRELIMINARY PROVISIONS

23 Section 101. Short title.

24 This act shall be known and may be cited as the Toxic
25 Packaging Reduction Law.

26 Section 102. Legislative findings.

27 The General Assembly finds and declares as follows:

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

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

(3) The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled.

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

(5) It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of these heavy metals to packaging.

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

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Environmental Resources of the Commonwealth.

"Distributor." Any person, firm or corporation who takes title to goods purchased for resale.

"Package." A container providing a means of marketing, protecting or handling a product and shall include a unit package, an intermediate package and a shipping container as defined in American Society for Testing Materials (ASTM) D996. The term shall also mean and include the unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and

1 other trays, wrappers and wrapping films, bags and tubs.

2 "Packaging component." Any individual assembled part of a
3 package such as, but not limited to, any interior or exterior
4 blocking, bracing, cushioning, weatherproofing, exterior
5 strapping, coatings, closures, inks, labels, dye, pigments,
6 adhesives, stabilizers or any other additive.

7 CHAPTER 3

8 REGULATION OF TOXIC PACKAGING

9 Section 301. Toxic packaging prohibited.

10 (a) Sale of package or component.--As soon as feasible but
11 not later than one year from the effective date of this act, no
12 package or packaging component shall be offered for sale or for
13 promotional purposes by its manufacturer or distributor in this
14 Commonwealth which includes, in the package itself or in any
15 packaging component, inks, dyes, pigments, adhesives,
16 stabilizers or any other additives containing any lead, cadmium,
17 mercury or hexavalent chromium which has been intentionally
18 introduced as an element during manufacturing or distribution,
19 as opposed to the incidental presence of any of these elements.

20 (b) Sale of product.--As soon as feasible but not later than
21 one year from the effective date of this act, no product shall
22 be offered for sale or for promotional purposes by its
23 manufacturer or distributor in this Commonwealth in a package
24 which includes, in the package itself or in any of its packaging
25 components, inks, dyes, pigments, adhesives, stabilizers or any
26 other additives containing any lead, cadmium, mercury or
27 hexavalent chromium which has been intentionally introduced as
28 an element during manufacturing or distribution, as opposed to
29 the incidental presence of any of these elements.

30 (c) Schedule of limit on concentration levels.--The sum of

1 concentration levels of lead, cadmium, mercury and hexavalent
2 chromium present in any package or packaging component shall not
3 exceed the following:

4 (1) Six hundred parts per million by weight (0.06%)
5 effective one year after adoption of this act.

6 (2) Two hundred fifty parts per million by weight
7 (0.025%) effective two years after adoption of this act.

8 (3) One hundred parts per million by weight (0.01%)
9 three years after adoption of this act.

10 Section 302. Exemptions.

11 All packages and packaging components shall be subject to
12 this act except the following:

13 (1) Those packages or package components with a code
14 indicating date of manufacture that were manufactured prior
15 to the effective date of this act.

16 (2) Those packages or packaging components to which
17 lead, cadmium, mercury or hexavalent chromium have been added
18 in the manufacturing, forming, printing or distribution
19 process in order to comply with health or safety requirements
20 of Federal law or for which there is no feasible alternative,
21 provided that the manufacturer of a package or packaging
22 component must petition the department for any exemption
23 under this paragraph for a particular package or packaging
24 component based upon either criterion. The department may
25 grant a two-year exemption if warranted by the circumstances.
26 This exemption may, upon meeting either criterion of this
27 paragraph, be renewed for two years. For purposes of this
28 paragraph, a use for which there is no feasible alternative
29 is one in which the regulated substance is essential to the
30 protection, safe handling or function of the package's

1 contents.

2 (3) Packages and packing components that would not
3 exceed the maximum contaminant levels set forth in section
4 301(c) but for the addition of postconsumer materials. This
5 paragraph shall expire five years after the effective date of
6 this act.

7 Section 303. Certificate of compliance.

8 (a) Issuance.--As soon as feasible but not later than one
9 year after the effective date of this act, a certificate of
10 compliance stating that a package or packaging component is in
11 compliance with the requirements of this act shall be furnished
12 by its manufacturer or supplier to its purchaser, provided,
13 however, where compliance is achieved under an exemption
14 provided in section 302(1) or (2), the certificate shall state
15 the specific basis upon which the exemption is claimed. The
16 certificate of compliance shall be signed by an authorized
17 official of the manufacturing or supplying company. The
18 purchaser shall retain the certificate of compliance for as long
19 as the package or packaging component is in use. A copy of the
20 certificate of compliance shall be kept on file by the
21 manufacturer or supplier of the package or packaging component.
22 Certificates of compliance or copies thereof shall be furnished
23 to the department upon its request and to members of the public.

24 (b) Subsequent changes.--If the manufacturer or supplier of
25 the package or packaging component reformulates or creates a new
26 package or packaging component, the manufacturer or supplier
27 shall provide an amended or new certificate of compliance for
28 the reformulated or new package or packaging component.

29 Section 304. Certifications to be provided to department.

30 The department may request, by certified mail, that any

1 package manufacturer, product manufacturer or distributor
2 transmit to the department a written certification that a
3 specified package or packaging component is in compliance with
4 the provisions of this act. The package manufacturer, product
5 manufacturer or distributor, as the case may be, shall submit
6 copies of each declaration of exemption and certification of
7 compliance to the department within 30 days of receipt of the
8 request. Upon receipt by the department of the information
9 requested from the package manufacturer, product manufacturer or
10 distributor, the department shall review this information and
11 shall verify that all certifications of compliance are complete
12 and that all declarations of exemption claimed are valid and in
13 accordance with this act.

14 CHAPTER 5

15 INVESTIGATORY POWERS

16 Section 501. Right to enter and inspect.

17 (a) General rule.--The department shall have the right to
18 enter the premises of a package manufacturer, product
19 manufacturer, distributor or retailer at which packages or
20 packaging components are manufactured or stored, or at which
21 products packaged in packages or packaging components are sold
22 or offered for sale or for promotional purposes, in order to
23 determine compliance with the provisions of this act, or any
24 rule or regulation adopted hereunder.

25 (b) Inspection.--The department may, at any time during
26 normal business hours and upon presentation of appropriate
27 credentials, conduct inspections, including the taking of
28 samples of products packaged in a package or packaging
29 component, for the purpose of testing the package or packaging
30 component. The department may be required to purchase any

1 product packaged in a package or packaging component for which a
2 sample is sought at a retail establishment, if requested to do
3 so by the retailer.

4 Section 502. Laboratory analysis.

5 Whenever the department finds that a package manufacturer,
6 product manufacturer or distributor has failed to respond to a
7 request for certification made by the department pursuant to
8 section 303 or 304, the department may issue an order requiring
9 the package manufacturer or product manufacturer, as it deems
10 appropriate, to submit a specified package or packaging
11 component to laboratory analysis, conducted at the ordered
12 person's expense by a laboratory certified by the department in
13 order to certify that the package or packaging component is in
14 compliance with the provisions of this act.

15 Section 503. Removal of articles.

16 Whenever the department finds that a package or packaging
17 component fails to comply with the provisions of this act, or
18 any rule or regulation adopted pursuant thereto, the department
19 may issue an order requiring the distributor or retailer, as the
20 department deems appropriate, to remove or arrange for the
21 removal of the entire allotment of the product packaged in the
22 noncomplying package or packaging component from the premises,
23 and directing that the distributor or retailer return the entire
24 allotment of the product packaged in the noncomplying package or
25 packaging component to the product manufacturer for credit or
26 reimbursement.

27 CHAPTER 7

28 ENFORCEMENT

29 Section 701. Enforcement orders.

30 (a) Issuance.--The department may issue such orders to

1 persons as it deems necessary to aid in the enforcement of this
2 act. The power of the department to issue an order under this
3 act is in addition to any other remedy which may be afforded to
4 the department under this act or any other act.

5 (b) Compliance.--It shall be the duty of any person to
6 proceed diligently to comply with any order issued under
7 subsection (a). If the person fails to proceed diligently or
8 fails to comply with the order within the time, if any, as may
9 be specified, the person shall be guilty of contempt and shall
10 be punished by the court in an appropriate manner, and for this
11 purpose, application may be made by the department to the
12 Commonwealth Court, which is hereby granted jurisdiction.

13 (c) Assessments for inspections, testing, etc.--Additionally
14 a violator may be assessed the reasonable costs of any
15 inspection, including the costs of any sampling or testing of
16 packages or packaging components that led to the establishment
17 of the violation, and for the reasonable costs of preparing and
18 litigating the case under this act.

19 Section 702. Restraining violations.

20 (a) Injunctions.--In addition to any other remedies provided
21 in this act, the department may institute a suit in equity in
22 the name of the Commonwealth where unlawful conduct exists for
23 an injunction to restrain a violation of this act or any order
24 issued pursuant thereto. The Commonwealth shall not be required
25 to furnish bond or other security in connection with such
26 proceedings. In addition to an injunction, the court, in the
27 equity proceedings, may levy civil penalties as specified in
28 section 703.

29 (b) Jurisdiction.--In addition to any other remedies
30 provided for in this act, upon relation of any district attorney

1 of any county affected or upon relation of the solicitor of any
2 county or municipality affected, an action in equity may be
3 brought in a court of competent jurisdiction for an injunction
4 to restrain any and all violations of this act or the
5 regulations promulgated pursuant thereto.

6 (c) Venue.--Actions instituted under this section may be
7 filed in the appropriate court of common pleas or in the
8 Commonwealth Court, which courts are hereby granted jurisdiction
9 to hear these actions.

10 Section 703. Civil penalties.

11 (a) Assessment.--In addition to proceeding under any other
12 remedy available at law or in equity for a violation of any
13 provision of this act or any order of the department issued
14 under this act, the department may assess a civil penalty upon a
15 person for such violation. In determining the amount of the
16 penalty, the department shall consider the willfulness of the
17 violation, savings resulting to the person in consequence of the
18 violation, deterrence of future violations and other relevant
19 factors.

20 (b) Escrow.--When the department assesses a civil penalty,
21 it shall inform the person of the amount of the penalty. The
22 person charged with the penalty shall then have 30 days to pay
23 the penalty in full or, if the person wishes to contest either
24 the amount of the penalty or the fact of the violation, either
25 to forward the proposed amount to the department for placement
26 in an escrow account with the State Treasurer or with a bank in
27 this Commonwealth or to post an appeal bond in the amount of the
28 penalty. The bond must be executed by a surety licensed to do
29 business in this Commonwealth and must be satisfactory to the
30 department. If, through administrative or judicial review of the

1 proposed penalty, it is determined that no violation occurred or
2 that the amount of the penalty shall be reduced, the department
3 shall, within 30 days, remit the appropriate amount to the
4 person, with an interest accumulated by the escrow deposit.
5 Failure to forward money or the appeal bond to the department
6 within 30 days shall result in a waiver of all legal rights to
7 contest the violation or the amount of the penalty.

8 (c) Amount.--The maximum civil penalty which may be assessed
9 under this section shall be \$10,000 for a first violation and
10 \$25,000 for a second and each subsequent violation. Each
11 violation of any provision of this act or any order issued under
12 this act shall constitute a separate offense under this section.

13 (d) Period of limitation.--Action under this section must be
14 brought within five years of the alleged violation.

15 Section 704. Criminal penalties.

16 (a) Misdemeanor.--Any person who violates any provision of
17 this act or any order issued under this act commits a
18 misdemeanor of the third degree and shall, upon conviction, be
19 sentenced to pay a fine of \$10,000 per day for each violation or
20 to imprisonment for a period of not more than one year, or both.

21 (b) Second or subsequent offense.--Any person who, within
22 two years after a conviction of a misdemeanor for any violation
23 of this act, violates any provision of this act or any order
24 issued under this act commits a misdemeanor of the second degree
25 and shall, upon conviction, be sentenced to pay a fine of
26 \$25,000 for each violation or to imprisonment for a period of
27 not more than two years, or both.

28 (c) Violations to be separate offense.--Each violation of
29 any provision of this act or any order issued under this act
30 shall constitute a separate offense under subsections (a) and

1 (b).

2 Section 705. Remedies of citizens.

3 (a) Authority to bring civil action.--Except as provided in
4 subsection (c), any aggrieved person may commence a civil action
5 on his own behalf against any person who is alleged to be in
6 violation of this act.

7 (b) Jurisdiction.--The Environmental Hearing Board is given
8 jurisdiction over citizen suit actions brought under this
9 section against the department. Actions against any other
10 persons under this section may be taken in a court of competent
11 jurisdiction. The jurisdiction is in addition to any rights of
12 action now or hereafter existing in equity or under the common
13 law or statutory law.

14 (c) Notice.--No action may be commenced under this section
15 prior to 60 days after the plaintiff has given notice of the
16 violation to the secretary and to any alleged violator of this
17 act or of a regulation or order of the department under this act
18 which has allegedly been violated, nor shall any action be
19 commenced under this section if the secretary has commenced and
20 is diligently prosecuting an administrative action before the
21 Environmental Hearing Board or a civil or criminal action in a
22 court of the United States or a state to require compliance with
23 this act.

24 (d) Award of costs.--The Environmental Hearing Board or a
25 court of competent jurisdiction, in issuing any final order in
26 any action brought under subsection (a), may award costs of
27 litigation, including reasonable attorney and expert witness
28 fees, to any party, whenever the board or court determines the
29 award is appropriate.

30 Section 706. Concurrent remedies.

1 The penalties and remedies prescribed by this act shall be
2 deemed concurrent, and the existence of or exercise of any
3 remedy shall not prevent the department from exercising any
4 other remedy hereunder, at law or in equity.

5 CHAPTER 9

6 FINANCIAL PROVISIONS

7 Section 901. Toxic Packaging Reduction Fund.

8 (a) Establishment.--There is hereby established a separate
9 account in the State Treasury to be known as The Toxic Packaging
10 Reduction Fund. The fund shall be administered by the
11 department.

12 (b) Receipts.--The fund shall be the depository for all
13 fines, fees, assessments, charges, monetary penalties and other
14 moneys collected under this act.

15 (c) Appropriation.--All moneys in the fund shall be utilized
16 exclusively by the department to administer and enforce the
17 provisions of this act and the rules adopted hereunder. All
18 moneys in the fund are hereby appropriated to the department on
19 a continuing basis.

20 Section 902. Fees.

21 The department may, in the manner provided by law, promulgate
22 a schedule of fees to be charged for any of the services to be
23 performed or rendered in connection with this act, and for the
24 costs of compliance monitoring and administration. The fee
25 schedule shall reasonably reflect the duration or complexity of
26 the specific service performed or rendered, information reviewed
27 or inspection, sampling or testing conducted.

28 CHAPTER 11

29 MISCELLANEOUS PROVISIONS

30 Section 1101. State review.

1 The department shall, in consultation with the Source
2 Reduction Council of the Council of Northeastern Governors,
3 review the effectiveness of this act no later than 42 months
4 after its adoption and shall provide a report based upon that
5 review to the Governor and the General Assembly. The report may
6 contain recommendations to add other toxic substances contained
7 in packaging to the list set forth in this act in order to
8 further reduce the toxicity of packaging waste and shall contain
9 a recommendation whether to continue the recycling exemption as
10 it is provided for in section 5(c) and a description of the
11 nature of the substitutes used in lieu of lead, mercury, cadmium
12 and hexavalent chromium.

13 Section 1102. Public access.

14 Any request from a member of the public for any certificate
15 of compliance from the manufacturer or supplier of a package or
16 packaging component shall be:

17 (1) Made in writing with a copy provided to the
18 department.

19 (2) Made specific as to package or packaging component
20 information requested.

21 (3) Responded to by the manufacturer or supplier within
22 60 days.

23 Section 1103. Repeals.

24 All acts and parts of acts are repealed insofar as they are
25 inconsistent with this act.

26 Section 1104. Effective date.

27 This act shall take effect in 60 days.