

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 337

Session of
1993

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JAMES AND THOMAS, FEBRUARY 8, 1993

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 7, 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.

6 TABLE OF CONTENTS

7 Chapter 1. Preliminary Provisions
8 Section 101. Short title.
9 Section 102. Legislative findings.
10 Section 103. Definitions.
11 Chapter 3. Regulation of Toxic Packaging
12 Section 301. Toxic packaging prohibited.
13 Section 302. Exemptions.
14 Section 303. Certificate of compliance.
15 Section 304. Certifications to be provided to department.
16 Chapter 5. Investigatory Powers

1 Section 501. Right to enter and inspect.

2 Section 502. Laboratory analysis.

3 Section 503. Removal of articles.

4 Chapter 7. Enforcement

5 Section 701. Enforcement orders.

6 Section 702. Restraining violations.

7 Section 703. Civil penalties.

8 Section 704. Criminal penalties.

9 Section 705. Remedies of citizens.

10 Section 706. Concurrent remedies.

11 ~~Chapter 9. Financial Provisions~~

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12 ~~Section 901. Toxic Packaging Reduction Fund.~~

13 ~~Section 902. Fees.~~

14 Chapter 11. Miscellaneous Provisions

15 Section 1101. State review.

16 Section 1102. Public access.

17 Section 1103. Repeals.

18 Section 1104. Effective date.

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. Tin-
2 plated steel that meets ASTM specification A623, hot-dip and
3 electrolytic galvanized steel meeting ASTM specification A525
4 and A879 respectively, and galvanized wire meeting specification
5 A641 or A777 shall be considered as a single package component.

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

11 CHAPTER 3

12 REGULATION OF TOXIC PACKAGING

13 Section 301. Toxic packaging prohibited.

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

24 (b) Sale of product.--As soon as feasible but not later than
25 one year from the effective date of this act, no product shall
26 be offered for sale or for promotional purposes by its
27 manufacturer or distributor in this Commonwealth in a package
28 which includes, in the package itself or in any of its packaging
29 components, inks, dyes, pigments, adhesives, stabilizers or any
30 other additives containing any lead, cadmium, mercury or

1 hexavalent chromium which has been intentionally introduced as
2 an element during manufacturing or distribution, as opposed to
3 the incidental presence of any of these elements.

4 (c) Schedule of limit on concentration levels.--The sum of
5 concentration levels of lead, cadmium, mercury and hexavalent
6 chromium present in any package or packaging component shall not
7 exceed the following:

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

10 (2) Two hundred fifty parts per million by weight
11 (0.025%) effective two years after adoption of this act.

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

14 Section 302. Exemptions.

15 All packages and packaging components shall be subject to
16 this act except the following:

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

20 (2) Those packages or packaging components to which
21 lead, cadmium, mercury or hexavalent chromium have been added
22 in the manufacturing, forming, printing or distribution
23 process in order to comply with health or safety requirements
24 of Federal law or for which there is no feasible alternative,
25 provided that the manufacturer of a package or packaging
26 component must petition the department for any exemption
27 under this paragraph for a particular package or packaging
28 component based upon either criterion. The department may
29 grant a two-year exemption if warranted by the circumstances.

30 This exemption may, upon meeting either criterion of this

paragraph, be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling or function of the package's contents.

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

(4) Packages and packaging components intended to protect, secure, close, unitize and provide pilferage protection for any product destined for commercial use.

Section 303. Certificate of compliance.

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

1 (b) Subsequent changes.--If the manufacturer or supplier of
2 the package or packaging component reformulates or creates a new
3 package or packaging component, the manufacturer or supplier
4 shall provide an amended or new certificate of compliance for
5 the reformulated or new package or packaging component.

6 Section 304. Certifications to be provided to department.

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

21 CHAPTER 5

22 INVESTIGATORY POWERS

23 Section 501. Right to enter and inspect.

24 (a) General rule.--The department shall have the right to
25 enter the premises of a package manufacturer, product
26 manufacturer, distributor or retailer at which packages or
27 packaging components are manufactured or stored, or at which
28 products packaged in packages or packaging components are sold
29 or offered for sale or for promotional purposes, in order to
30 determine compliance with the provisions of this act, or any

1 rule or regulation adopted hereunder.

2 (b) Inspection.--The department may, at any time during
3 normal business hours and upon presentation of appropriate
4 credentials, conduct inspections, including the taking of
5 samples of products packaged in a package or packaging
6 component, for the purpose of testing the package or packaging
7 component. The department may be required to purchase any
8 product packaged in a package or packaging component for which a
9 sample is sought at a retail establishment, if requested to do
10 so by the retailer.

11 Section 502. Laboratory analysis.

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

22 Section 503. Removal of articles.

23 Whenever the department finds that a package or packaging
24 component fails to comply with the provisions of this act, or
25 any rule or regulation adopted pursuant thereto, the department
26 may issue an order requiring the distributor or retailer, as the
27 department deems appropriate, to remove or arrange for the
28 removal of the entire allotment of the product packaged in the
29 noncomplying package or packaging component from the premises,
30 and directing that the distributor or retailer return the entire

1 allotment of the product packaged in the noncomplying package or
2 packaging component to the product manufacturer for credit or
3 reimbursement.

4 CHAPTER 7

5 ENFORCEMENT

6 Section 701. Enforcement orders.

7 (a) Issuance.--The department may issue such orders to
8 persons as it deems necessary to aid in the enforcement of this
9 act. The power of the department to issue an order under this
10 act is in addition to any other remedy which may be afforded to
11 the department under this act or any other act.

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

20 (c) Assessments for inspections, testing, etc.--Additionally
21 a violator may be assessed the reasonable costs of any
22 inspection, including the costs of any sampling or testing of
23 packages or packaging components that led to the establishment
24 of the violation, and for the reasonable costs of preparing and
25 litigating the case under this act.

26 Section 702. Restraining violations.

27 (a) Injunctions.--In addition to any other remedies provided
28 in this act, the department may institute a suit in equity in
29 the name of the Commonwealth where unlawful conduct exists for
30 an injunction to restrain a violation of this act or any order

1 issued pursuant thereto. The Commonwealth shall not be required
2 to furnish bond or other security in connection with such
3 proceedings. In addition to an injunction, the court, in the
4 equity proceedings, may levy civil penalties as specified in
5 section 703.

6 (b) Jurisdiction.--In addition to any other remedies
7 provided for in this act, upon relation of any district attorney
8 of any county affected or upon relation of the solicitor of any
9 county or municipality affected, an action in equity may be
10 brought in a court of competent jurisdiction for an injunction
11 to restrain any and all violations of this act or the
12 regulations promulgated pursuant thereto.

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

17 Section 703. Civil penalties.

18 (a) Assessment.--In addition to proceeding under any other
19 remedy available at law or in equity for a violation of any
20 provision of this act or any order of the department issued
21 under this act, the department may assess a civil penalty upon a
22 person for such violation. In determining the amount of the
23 penalty, the department shall consider the willfulness of the
24 violation, savings resulting to the person in consequence of the
25 violation, deterrence of future violations and other relevant
26 factors.

27 (b) Escrow.--When the department assesses a civil penalty,
28 it shall inform the person of the amount of the penalty. The
29 person charged with the penalty shall then have 30 days to pay
30 the penalty in full or, if the person wishes to contest either

1 the amount of the penalty or the fact of the violation, either
2 to forward the proposed amount to the department for placement
3 in an escrow account with the State Treasurer or with a bank in
4 this Commonwealth or to post an appeal bond in the amount of the
5 penalty. The bond must be executed by a surety licensed to do
6 business in this Commonwealth and must be satisfactory to the
7 department. If, through administrative or judicial review of the
8 proposed penalty, it is determined that no violation occurred or
9 that the amount of the penalty shall be reduced, the department
10 shall, within 30 days, remit the appropriate amount to the
11 person, with an interest accumulated by the escrow deposit.
12 Failure to forward money or the appeal bond to the department
13 within 30 days shall result in a waiver of all legal rights to
14 contest the violation or the amount of the penalty.

15 (c) Amount.--The maximum civil penalty which may be assessed
16 under this section shall be \$10,000 for a first violation and
17 \$25,000 for a second and each subsequent violation. Each
18 violation of any provision of this act or any order issued under
19 this act shall constitute a separate offense under this section.

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

22 Section 704. Criminal penalties.

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

28 (b) Second or subsequent offense.--Any person who, within
29 two years after a conviction of a misdemeanor for any violation
30 of this act, violates any provision of this act or any order

1 issued under this act commits a misdemeanor of the second degree
2 and shall, upon conviction, be sentenced to pay a fine of
3 \$25,000 for each violation or to imprisonment for a period of
4 not more than two years, or both.

5 (c) Violations to be separate offense.--Each violation of
6 any provision of this act or any order issued under this act
7 shall constitute a separate offense under subsections (a) and
8 (b).

9 Section 705. Remedies of citizens.

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

14 (b) Jurisdiction.--The Environmental Hearing Board is given
15 jurisdiction over citizen suit actions brought under this
16 section against the department. Actions against any other
17 persons under this section may be taken in a court of competent
18 jurisdiction. The jurisdiction is in addition to any rights of
19 action now or hereafter existing in equity or under the common
20 law or statutory law.

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

1 (d) Award of costs.--The Environmental Hearing Board or a
2 court of competent jurisdiction, in issuing any final order in
3 any action brought under subsection (a), may award costs of
4 litigation, including reasonable attorney and expert witness
5 fees, to any party, whenever the board or court determines the
6 award is appropriate.

7 Section 706. Concurrent remedies.

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

12 ~~CHAPTER 9~~ <—

13 ~~FINANCIAL PROVISIONS~~

14 ~~Section 901. Toxic Packaging Reduction Fund.~~

15 ~~(a) Establishment. There is hereby established a separate~~
16 ~~account in the State Treasury to be known as The Toxic Packaging~~
17 ~~Reduction Fund. The fund shall be administered by the~~
18 ~~department.~~

19 ~~(b) Receipts. The fund shall be the depository for all~~
20 ~~finances, fees, assessments, charges, monetary penalties and other~~
21 ~~moneys collected under this act.~~

22 ~~(c) Appropriation. All moneys in the fund shall be utilized~~
23 ~~exclusively by the department to administer and enforce the~~
24 ~~provisions of this act and the rules adopted hereunder. All~~
25 ~~moneys in the fund are hereby appropriated to the department on~~
26 ~~a continuing basis.~~

27 ~~Section 902. Fees.~~

28 ~~The department may, in the manner provided by law, promulgate~~
29 ~~a schedule of fees to be charged for any of the services to be~~
30 ~~performed or rendered in connection with this act, and for the~~

1 ~~costs of compliance monitoring and administration. The fee~~
2 ~~schedule shall reasonably reflect the duration or complexity of~~
3 ~~the specific service performed or rendered, information reviewed~~
4 ~~or inspection, sampling or testing conducted.~~

5 CHAPTER 11

6 MISCELLANEOUS PROVISIONS

7 Section 1101. State review.

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

20 Section 1102. Public access.

21 Any request from a member of the public for any certificate
22 of compliance from the manufacturer or supplier of a package or
23 packaging component shall be:

24 (1) Made in writing with a copy provided to the
25 department.

26 (2) Made specific as to package or packaging component
27 information requested.

28 (3) Responded to by the manufacturer or supplier within
29 60 days.

30 Section 1103. Repeals.

1 All acts and parts of acts are repealed insofar as they are
2 inconsistent with this act.
3 Section 1104. Effective date.
4 This act shall take effect in 60 days.