
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 337 Session of
1993

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JAMES AND THOMAS, FEBRUARY 8, 1993

SENATOR MUSTO, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE, AS
AMENDED, DECEMBER 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.

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16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 CHAPTER 1

19 PRELIMINARY PROVISIONS

20 Section 101. Short title.

21 This act shall be known and may be cited as the ~~Toxic~~ <—

22 ~~Packaging Reduction Law~~ SAFE PACKAGING ACT. <—

23 Section 102. Legislative findings.

24 The General Assembly finds and declares as follows:

25 (1) The management of solid waste can pose a wide range
26 of hazards to public health and safety and to the
27 environment.

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

30 (3) The presence of heavy metals in packaging is a part

1 of the total concern in light of their likely presence in
2 emissions or ash when packaging is incinerated, or in
3 leachate when packaging is landfilled.

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

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

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

14 Section 103. Definitions.

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

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

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

22 "Package." A container providing a means of marketing,
23 protecting or handling a product and shall include a unit
24 package, an intermediate package and a shipping container as
25 defined in American Society for Testing Materials (ASTM) D996.
26 The term shall also mean and include the unsealed receptacles
27 such as carrying cases, crates, cups, pails, rigid foil and
28 other trays, wrappers and wrapping films, bags and tubs. Tin-
29 plated steel that meets ASTM specification A623, hot-dip and
30 electrolytic galvanized steel meeting ASTM specification A525

1 and A879 respectively, and galvanized wire meeting specification
2 A641 or A777 shall be considered as a single package component.
3 The term shall not include a ceramic cup which incidentally
4 serves as a package for another product at the time of sale
5 where said cup's primary purpose and value is as a cup rather
6 than a package for another product.

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

12 CHAPTER 3

13 REGULATION OF TOXIC PACKAGING

14 Section 301. Toxic packaging prohibited.

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

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

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

5 ~~(c) Steel strapping. For the purposes of this section, the~~ <—
6 ~~addition of lead in the manufacture of steel strapping through~~
7 ~~the quenching process shall not be considered intentional~~
8 ~~introduction.~~

9 (C) STEEL STRAPPING.--FOR THE PURPOSES OF THIS SECTION, THE <—
10 USE OF LEAD IN THE PROCESS OF MANUFACTURING STEEL STRAPPING
11 SHALL NOT BE CONSIDERED INTENTIONAL INTRODUCTION.

12 (d) Schedule of limit on concentration levels.--The sum of
13 concentration levels of lead, cadmium, mercury and hexavalent
14 chromium present in any package or packaging component shall not
15 exceed the following:

16 (1) Six hundred parts per million by weight (0.06%)
17 effective two years after adoption of this act.

18 (2) Two hundred fifty parts per million by weight
19 (0.025%) effective three years after adoption of this act.

20 (3) One hundred parts per million by weight (0.01%) four
21 years after adoption of this act.

22 Section 302. Exemptions.

23 All packages and packaging components shall be subject to
24 this act except the following:

25 (1) Those packages or package components with a code
26 indicating date of manufacture that were manufactured prior
27 to the effective date of this act OR ANY ALCOHOLIC BEVERAGE <—
28 BOTTLED BEFORE THE EFFECTIVE DATE OF THIS ACT.

29 (2) Those packages or packaging components to which
30 lead, cadmium, mercury or hexavalent chromium have been added

1 in the manufacturing, forming, printing or distribution
2 process in order to comply with health or safety requirements
3 of Federal law or for which there is no feasible alternative,
4 provided that the manufacturer of a package or packaging
5 component must petition the department for any exemption
6 under this paragraph for a particular package or packaging
7 component based upon either criterion. The department may
8 grant a two-year exemption if warranted by the circumstances.
9 This exemption may, upon meeting either criterion of this
10 paragraph, be renewed for two years. For purposes of this
11 paragraph, a use for which there is no feasible alternative
12 is one in which the regulated substance is essential to the
13 protection, safe handling or function of the package's
14 contents.

15 (3) Packages and packing components that would not
16 exceed the maximum contaminant levels set forth in section
17 301(c) but for the addition of postconsumer materials. This
18 paragraph shall expire five years after the effective date of
19 this act.

20 (4) For two years from the effective date of this act
21 any glass or ceramic package that is recyclable, refillable
22 or reuseable that, as a unit, meets all current United States
23 Food and Drug Administration guidelines or regulations
24 applicable to a food contact area relating to limits on
25 potentially harmful substances contained in the glazing,
26 pigment, glass or ceramic material used to make the package.
27 Section 303. Certificate of compliance.

28 (a) Issuance.--As soon as feasible but not later than two
29 years after the effective date of this act, a certificate of
30 compliance stating that a package or packaging component is in

1 compliance with the requirements of this act shall be furnished
2 by its manufacturer or supplier to its purchaser, provided,
3 however, where compliance is achieved under an exemption
4 provided in section ~~302(1) or (2)~~ 302(2) OR (3), the certificate <—
5 shall state the specific basis upon which the exemption is
6 claimed. The certificate of compliance shall be signed by an
7 authorized official of the manufacturing or supplying company.
8 The purchaser shall retain the certificate of compliance for as
9 long as the package or packaging component is in use by the
10 purchaser to package products. A manufacturer of packaging or
11 packaging components may issue one certificate of compliance to
12 each customer covering every package or packaging component sold
13 to that customer. A copy of the certificate of compliance shall
14 be kept on file by the manufacturer or supplier of the package
15 or packaging component. Certificates of compliance or copies
16 thereof shall be furnished to the department upon its request
17 and to members of the public.

18 (b) Subsequent changes.--If the manufacturer or supplier of
19 the package or packaging component reformulates or creates a new
20 package or packaging component, the manufacturer or supplier
21 shall provide an amended or new certificate of compliance for
22 the reformulated or new package or packaging component. The
23 requirement to provide an amended certificate will not be
24 triggered by changes in size, shape and label copy unless such
25 changes affect compliance hereunder.

26 CHAPTER 5

27 INVESTIGATORY POWERS

28 Section 501. Right to enter and inspect.

29 The department shall have the right to enter the premises of
30 a package manufacturer or product manufacturer at which packages

1 or packaging components are manufactured or stored, in order to
2 determine compliance with the provisions of this act, or any
3 rule or regulation adopted hereunder.

4 CHAPTER 7
5 ENFORCEMENT

6 Section 701. Unlawful conduct.

7 It shall be unlawful for any person to:

8 (1) Violate any provision of this act.

9 (2) Tender for sale to a wholesaler or retailer any
10 package, packaging component or packaged product in violation
11 of this act.

12 (3) Furnish a certificate under section 303 when the
13 package or packaging component does not comply with section
14 301.

15 Section 702. Enforcement orders.

16 (a) Issuance.--The department may issue such orders to
17 persons as it deems necessary to aid in the enforcement of this
18 act. The power of the department to issue an order under this
19 act is in addition to any other remedy which may be afforded to
20 the department under this act or any other act.

21 (b) Compliance.--It shall be the duty of any person to
22 proceed diligently to comply with any order issued under
23 subsection (a). If the person fails to proceed diligently or
24 fails to comply with the order within the time, if any, as may
25 be specified, the person shall be guilty of contempt and shall
26 be punished by the court in an appropriate manner, and for this
27 purpose, application may be made by the department to the
28 Commonwealth Court, which is hereby granted jurisdiction.

29 Section 703. Restraining violations.

30 (a) Injunctions.--In addition to any other remedies

1 available to the department, the department may institute a suit
2 in equity in the name of the Commonwealth where unlawful conduct
3 exists for an injunction to restrain a violation of this act or
4 any order issued pursuant thereto. The Commonwealth shall not be
5 required to furnish bond or other security in connection with
6 such proceedings. In addition to an injunction, the court, in
7 the equity proceedings, may levy civil penalties as specified in
8 section 703.

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

16 (c) Concurrent remedies.--The penalties and remedies
17 prescribed by this act shall be deemed concurrent, and the
18 existence of or exercise of any remedy shall not prevent the
19 department from exercising any other remedy hereunder, at law or
20 in equity.

21 (d) Venue.--Actions instituted under this section may be
22 filed in the appropriate court of common pleas or in the
23 Commonwealth Court, which courts are hereby granted jurisdiction
24 to hear these actions.

25 Section 704. Civil penalties.

26 (a) Assessment.--In addition to proceeding under any other
27 remedy available at law or in equity for a violation of any
28 provision of this act or any order of the department issued
29 under this act, the department may assess a civil penalty upon a
30 person for such violation. In determining the amount of the

1 penalty, the department shall consider the willfulness of the
2 violation, savings resulting to the person in consequence of the
3 violation, deterrence of future violations and other relevant
4 factors.

5 (b) Escrow.--When the department assesses a civil penalty,
6 it shall inform the person of the amount of the penalty. The
7 person charged with the penalty shall then have 30 days to pay
8 the penalty in full or, if the person wishes to contest either
9 the amount of the penalty or the fact of the violation, either
10 to forward the proposed amount to the department for placement
11 in an escrow account with the State Treasurer or with a bank in
12 this Commonwealth or to post an appeal bond in the amount of the
13 penalty. The bond must be executed by a surety licensed to do
14 business in this Commonwealth and must be satisfactory to the
15 department. If, through administrative or judicial review of the
16 proposed penalty, it is determined that no violation occurred or
17 that the amount of the penalty shall be reduced, the department
18 shall, within 30 days, remit the appropriate amount to the
19 person, with an interest accumulated by the escrow deposit.
20 Failure to forward money or the appeal bond to the department
21 within 30 days shall result in a waiver of all legal rights to
22 contest the violation or the amount of the penalty.

23 (c) Amount.--The maximum civil penalty which may be assessed
24 under this section shall be \$10,000 per violation. Each
25 violation of any provision of this act or any order issued under
26 this act shall constitute a separate offense under this section.

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

29 Section 705. Criminal penalties.

30 (a) Summary offense.--Any person who violates any provision

1 of this act or any order issued hereunder shall, upon conviction
2 thereof in a summary proceeding, be sentenced to pay a fine of
3 not less than \$100 and not more than \$1,000 and costs and, in
4 default of the payment of such fine and costs, to undergo
5 imprisonment for not more than 30 days.

6 (b) Misdemeanor.--Any person who violates any provision of
7 this act or any order issued under this act commits a
8 misdemeanor of the third degree and shall, upon conviction, be
9 sentenced to pay a fine of not less than \$1,000 but not more
10 than \$10,000 per day for each violation or to imprisonment for a
11 period of not more than one year, or both.

12 (c) Second or subsequent offense.--Any person who, within
13 two years after a conviction of a misdemeanor for any violation
14 of this act, violates any provision of this act or any order
15 issued under this act commits a misdemeanor of the second degree
16 and shall, upon conviction, be sentenced to pay a fine of not
17 less than \$2,500 nor more than \$25,000 for each violation or to
18 imprisonment for a period of not more than two years, or both.

19 (d) Violations to be separate offense.--Each violation of
20 any provision of this act or any order issued under this act
21 shall constitute a separate offense under subsections (a), (b)
22 and (c).

23 Section 706. Remedies of citizens.

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

28 (b) Jurisdiction.--The Environmental Hearing Board is given
29 jurisdiction over citizen suit actions brought under this
30 section against the department. Actions against any other

1 persons under this section may be taken in a court of competent
2 jurisdiction. The jurisdiction is in addition to any rights of
3 action now or hereafter existing in equity or under the common
4 law or statutory law.

5 (c) Notice.--No action may be commenced under this section
6 prior to 60 days after the plaintiff has given notice of the
7 violation to the secretary and to any alleged violator of this
8 act or of a regulation or order of the department under this act
9 which has allegedly been violated, nor shall any action be
10 commenced under this section if the secretary has commenced and
11 is diligently prosecuting an administrative action against an
12 alleged violator before the Environmental Hearing Board or a
13 civil or criminal action in a court of the United States or a
14 state to require compliance with this act.

15 (d) Award of costs.--The Environmental Hearing Board or a
16 court of competent jurisdiction, in issuing any final order in
17 any action brought under subsection (a), may award costs of
18 litigation, including reasonable attorney and expert witness
19 fees, to any party, whenever the board or court determines the
20 award is appropriate.

21 Section 707. Concurrent remedies.

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

26 CHAPTER 9

27 MISCELLANEOUS PROVISIONS

28 Section 901. Removal of additional toxic substances.

29 (a) Regulations.--The department may propose to the
30 Environmental Quality Board a regulation to remove additional

1 toxic substances contained in packages or packaging components
2 that it determines will pose a significant threat to public
3 health or environment based on scientific and medical evidence
4 and a risk assessment it performs. These additional substances
5 may include, but need not be limited to, substances that are
6 found to be carcinogenic or mutagenic.

7 (b) Risk assessment.--The risk assessment developed by the
8 department must include a determination of whether the substance
9 presents or will present an unreasonable risk to public health
10 or the environment, utilizing a nationally recognized risk
11 assessment protocol. This protocol should take into account the
12 magnitude and severity of the harm as weighed against the
13 benefits of the substance or mixture to society as well as the
14 availability of substitutes for the substance or mixture and
15 other adverse effects which such proposed action may have on
16 society.

17 (c) Consultations and hearings.--Prior to recommending any
18 additional toxic substances, the department shall consult with
19 CONEG, the American Society for Testing and Materials, the
20 United States Environmental Protection Agency and the Northeast
21 Recycling Council of the Council of State Governments on the
22 recommendation. The department shall also hold at least one
23 public hearing on its recommendation prior to proposing a
24 regulation to the Environmental Quality Board.

25 Section 902. State review.

26 The department shall, in consultation with the Source
27 Reduction Council of the Council of Northeastern Governors,
28 review the effectiveness of this act no later than ~~24~~ 36 months <—
29 after its adoption and shall provide a report based upon that
30 review to the Governor and the General Assembly. The report may

1 contain recommendations to add other toxic substances contained
2 in packaging to the list set forth in this act in order to
3 further reduce the toxicity of packaging waste and shall contain
4 a recommendation whether to continue the recycling exemption as
5 it is provided for in section 302(3) AND THE EXEMPTION UNDER <—
6 SECTION 302(2) and a description of the nature of the
7 substitutes used in lieu of lead, mercury, cadmium and
8 hexavalent chromium.

9 Section 903. Public access.

10 (a) Certificate of compliance.--Any request from a member of
11 the public for any certificate of compliance from the
12 manufacturer or supplier of a package or packaging component
13 shall be:

14 (1) Made in writing with a copy provided to the
15 department.

16 (2) Made specific as to package or packaging component
17 information requested.

18 (3) Responded to by the manufacturer or supplier within
19 60 days.

20 (b) Confidential information.--The department may, upon
21 request, designate records, reports or information as
22 confidential when the person providing the information
23 demonstrates that the information containing the trade secrets,
24 processes, operations, style of work or apparatus of a person is
25 confidential business information. When submitting information
26 to the department under this act, a person shall designate the
27 information which the person believes is confidential or shall
28 submit the information separately from other information being
29 submitted.

30 Section 904. Repeals.

1 All acts and parts of acts are repealed insofar as they are
2 inconsistent with this act.
3 Section 905. Effective date.
4 This act shall take effect in 60 days.