
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1513 Session of
1990

INTRODUCED BY LEWIS, BELAN, REIBMAN, REGOLI, STAPLETON,
AFFLERBACH, MUSTO AND BELL, MARCH 13, 1990

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 13, 1990

AN ACT

1 Regulating toxic materials used in packaging; providing
2 additional duties of the Department of Environmental
3 Resources and the Environmental Quality Board; and providing
4 for enforcement, remedies and penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Toxics in
9 Packaging Act.

10 Section 2. Legislative findings and intent.

11 (a) Findings.--The General Assembly finds and declares as
12 follows:

13 (1) The management of solid waste can pose a wide range
14 of hazards to public health and safety and to the
15 environment.

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

18 (3) The presence of heavy metals in packaging is a part
19 of the total concern in light of their likely presence in

1 emissions or ash when packaging is incinerated, or in
2 leachate when packaging is landfilled.

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

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

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

13 Section 3. Definitions.

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

17 "Board." The Environmental Quality Board.

18 "CONEG." The Coalition of Northeastern Governors.

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

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

23 "Manufacturer." Any person, firm or corporation who
24 manufactures packages or packaging components.

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

1 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 and labels.

6 "Person." An individual, firm, corporation, association,
7 partnership, consortium, joint venture, commercial entity,
8 authority, interstate body or other legal entity which is
9 recognized by law as the subject of rights and duties. The term
10 includes the Federal Government, state governments and political
11 subdivisions.

12 "Postconsumer material." Any product generated by a business
13 or consumer which has served its intended end use and which has
14 been separated or diverted from solid waste for the purposes of
15 collection and recycling. The term does not include internally
16 generated scrap that is commonly returned to industrial or
17 manufacturing processes.

18 "Purchaser." Any person, firm or corporation who purchases
19 packages or packaging components from a manufacturer or
20 distributor for the purposes of marketing, protecting or
21 handling the contents of the package or packaging component,
22 including a product intended for retail sale.

23 Section 4. Powers and duties of department.

24 The department shall:

25 (1) Develop, administer and enforce a program for the
26 reduction and elimination of heavy metals in packaging under
27 the provisions of this act and the regulations adopted
28 hereunder.

29 (2) Issue orders to enforce the provisions of this act
30 and the regulations promulgated hereunder.

1 (3) Institute, in a court of competent jurisdiction,
2 proceedings to compel compliance with this act, the
3 regulations promulgated under this act or an order of the
4 department.

5 (4) Institute prosecutions under this act.

6 Section 5. Powers and duties of board.

7 The board shall adopt any regulations needed by the
8 department to accomplish the purposes and to carry out the
9 provisions of this act.

10 Section 6. Schedule for removal of toxic substances.

11 (a) General rule.--

12 (1) Two years after the effective date of this act, no
13 package or packaging component shall be offered for sale or
14 for promotional purposes by its manufacturer or distributor
15 in this Commonwealth which includes, in the package itself or
16 in any packaging component, inks, dyes, pigments, adhesives,
17 stabilizers or any other additives containing any lead,
18 cadmium, mercury or hexavalent chromium which has been
19 intentionally introduced as an element during manufacturing
20 or distribution as opposed to the incidental presence of any
21 of these elements as permitted in subsection (b).

22 (2) Two years after the effective date of this act, no
23 product shall be offered for sale or for promotional purposes
24 by its manufacturer or distributor in this Commonwealth in a
25 package which includes, in the package itself or in any of
26 its packaging components, inks, dyes, pigments, adhesives,
27 stabilizers or any other additives containing any lead,
28 cadmium, mercury or hexavalent chromium which has been
29 intentionally introduced as an element during manufacturing
30 or distribution as opposed to the incidental presence of any

1 of these elements as permitted in subsection (b).

2 (b) Limits on concentration levels.--The sum of the
3 concentration levels of lead, cadmium, mercury and hexavalent
4 chromium present in any package or packaging component, which
5 shall constitute an incidental presence, shall not exceed the
6 following:

7 (1) 600 parts per million by weight (0.06%) effective
8 two years after the effective date of this act;

9 (2) 250 parts per million by weight (0.025%) effective
10 three years after the effective date of this act; and

11 (3) 100 parts per million by weight (0.01%) effective
12 four years after the effective date of this act.

13 Section 7. Exemptions.

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

16 (1) Those packages or packaging components with a code
17 indicating that the date of manufacture was not later than
18 two years after the effective date of this act.

19 (2) Those packages or packaging components to which
20 lead, cadmium, mercury or hexavalent chromium have been added
21 in the manufacturing, forming, printing or distribution
22 process in order to comply with health or safety requirements
23 of Federal law or for which there is no feasible alternative.
24 The manufacturer of a package or packaging component must
25 petition the department for these exemptions. The department
26 may grant a two-year exemption if warranted which may be
27 renewed for an additional 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 packaging components that would not
3 exceed the maximum contaminant levels set forth in section
4 301(b) but for the additional postconsumer materials' and
5 provided that the exemption for this paragraph shall expire
6 six years after the effective date of this act.

7 Section 8. Certificate of compliance.

8 (a) General rule.--No later than two years after the
9 effective date of this act, a certificate of compliance stating
10 that a package or packaging component is in compliance with the
11 requirements of this act shall be furnished by its manufacturer
12 or supplier to its purchaser provided that, where compliance is
13 achieved under exemption(s) provided in section 7(2) or (3), the
14 certificate of compliance shall state the specific basis upon
15 which the exemption is claimed. The certificate of compliance
16 shall be signed by an authorized official of the manufacturing
17 or supplying company. The purchaser shall retain the certificate
18 of compliance for as long as the package or packaging component
19 is in use. A copy of the certificate of compliance shall be kept
20 on file by the manufacturer or supplier of the package or
21 packaging component. Certificates of compliance, or copies
22 thereof, shall be furnished to the department upon its request
23 and to members of the public in accordance with section 15.

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

30 Section 9. Unlawful conduct.

1 It shall be unlawful for any person to:

2 (1) Violate any provision of this act, any regulations
3 promulgated under this act or any order of the department.

4 (2) Tender for sale to a wholesaler or retailer any
5 package, packaging component or packaged product in violation
6 of this act or any regulation promulgated under this act.

7 (3) Furnish a certificate under section 8 when the
8 package or packaging component does not comply with section 6
9 or 7.

10 (4) Provide a certificate under section 8 that contains
11 false information.

12 Section 10. Enforcement orders.

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

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

27 Section 11. Restraining violations.

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

1 an injunction to restrain a violation of this act, any
2 regulation or any order of the department. The Commonwealth
3 shall not be required to furnish bond or other security in
4 connection with such proceedings. In addition to an injunction,
5 the court, in such equity proceedings, may levy civil penalties
6 as specified in section 12.

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

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

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

23 Section 12. Civil penalties.

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

1 violation, deterrence of future violations and other relevant
2 factors.

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

21 (c) Amount.--The maximum civil penalty which may be assessed
22 pursuant to this section is \$10,000 per violation. Each
23 violation of any provision of this act, regulation or order of
24 the department shall constitute a separate offense under this
25 section.

26 (d) Statute of limitation.--Notwithstanding any other
27 provision of law to the contrary, there shall be a statute of
28 limitations of five years upon actions brought by the
29 Commonwealth under this section.

30 Section 13. Criminal penalties.

1 (a) Summary offense.--A person who violates this act, any
2 regulation or any order of the department shall, upon conviction
3 thereof in a summary proceeding, be sentenced to pay a fine of
4 not less than \$100 and not more than \$1,000 and costs and, in
5 default of the payment of such fine and costs, to undergo
6 imprisonment for not more than 30 days.

7 (b) Misdemeanor offense.--A person who violates any
8 provision of this act, any regulation or any order of the
9 department commits a misdemeanor of the third degree and shall,
10 upon conviction, be sentenced to pay a fine of not less than
11 \$1,000 nor more than \$10,000 per day for each violation or to
12 imprisonment for a period of not more than one year, or both.

13 (c) Subsequent offenses.--A person who, within two years
14 after a conviction of a misdemeanor for any violation of this
15 act, any regulation or order of the department, violates any
16 provision of this act, any regulation or any order of the
17 department commits a misdemeanor of the second degree and shall,
18 upon conviction, be sentenced to pay a fine of not less than
19 \$2,500 nor more than \$25,000 for each violation or to
20 imprisonment for a period of not more than two years, or both.

21 (d) Violations to be separate offense.--Each violation of
22 any provision of this act or any order issued hereunder shall
23 constitute a separate offense under subsection (a), (b) or (c).
24 Section 14. Remedies of citizens.

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

30 (b) Jurisdiction.--The board is hereby given jurisdiction

1 over citizen suit actions brought under this section against the
2 department. Actions against any other persons under this section
3 may be taken in a court of competent jurisdiction. Such
4 jurisdiction is in addition to any rights of action now or
5 hereafter existing in equity or under common law or statutory
6 law.

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

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

23 Section 15. Public access.

24 (a) Certificate of compliance.--Any request from a member of
25 the public for any certificate of compliance from the
26 manufacturer or supplier of a package or packaging component
27 shall be:

28 (1) made in writing with a copy provided to the
29 department;

30 (2) made specific as to package or packaging component

1 information requested; and

2 (3) responded to by the manufacturer or supplier within
3 60 days.

4 (b) Confidential information.--The department may upon
5 request designate records, reports or information as
6 confidential when the person providing the information
7 demonstrates that the information contains the trade secrets,
8 processes, operations, style of work or apparatus of a person or
9 is otherwise confidential business information. When submitting
10 information to the department under this act, a person shall
11 designate the information which the person believes is
12 confidential or shall submit the information separately from
13 other information being submitted.

14 Section 16. Report by department.

15 The department shall, in consultation with the Source
16 Reduction Council of CONEG, review the effectiveness of this act
17 no later than 42 months after its effective date and shall
18 provide a report based upon that review to the Governor and to
19 the General Assembly. The report may contain recommendations to
20 add other toxic substances contained in packaging to the list
21 set forth in this act in order to further reduce the toxicity of
22 packaging waste and shall contain a recommendation whether to
23 continue the recycling exemption as it is provided for in
24 section 7(3), and a description of the nature of the substitutes
25 used in lieu of lead, mercury, cadmium and hexavalent chromium.

26 Section 17. Repeals.

27 All acts and parts of acts are repealed insofar as they are
28 inconsistent with this act.

29 Section 18. Effective date.

30 This act shall take effect in 60 days.