

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 944

An Act to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.4, consisting of sections numbered 10.1-1425.19 through 10.1-1425.24, relating to reduction of heavy metals in packaging.

[H 1202]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.4, consisting of sections numbered 10.1-1425.19 through 10.1-1425.24, as follows:

Article 3.4.

Reduction of Heavy Metals in Packaging Act.

§ 10.1-1425.19. Findings and intent.

A. The General Assembly finds that:

1. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

2. Packaging comprises a significant percentage of the overall waste stream;

3. The presence of heavy metals in packaging is a concern because of the potential presence of heavy metals in residue from manufacturers' recycling processes, in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled; and

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

B. It is the intent of the General Assembly to:

1. Reduce the toxicity of packaging;

2. Eliminate the addition of heavy metals to packaging; and

3. Achieve reductions in toxicity without impeding or discouraging the expanded use of recovered material in the production of products, packaging, and its components.

§ 10.1-1425.20. Definitions.

As used in this article, unless the context requires a different meaning:

"Distributor" means any person who takes title to products or packaging purchased for resale.

"Intentional introduction" means the act of deliberately using a regulated heavy metal in the formulation of a package or packaging component where its continued presence in the final package or packaging component is to provide a specific characteristic or quality. The use of a regulated heavy metal as a processing agent or intermediate to impact certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of the metal in the final package or packaging component is neither desired nor deliberate is not considered to be "intentional introduction" where the final package or packaging component is in compliance with subsection C of § 10.1-1425.21.

"Manufacturer" means any person that produces products, packages, packaging, or components of products or packaging.

"Package" means any container which provides a means of marketing, protecting, or handling a product, including a unit package, intermediate package, or a shipping container, as defined in the American Society for Testing and Materials (ASTM) specification D996. The term includes, but is not limited to, unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrapping and wrapping film, bags, and tubs.

"Packaging component" means any individual assembled part of a package, including but not limited to interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets ASTM specification A-623 shall be considered as a single package component. Electro-galvanized coated steel that meets ASTM specification A-525 and hot-dipped coated galvanized steel that meets ASTM specification A-879 shall be treated in the same manner as tin-plated steel.

§ 10.1-1425.21. Schedule for removal of incidental amounts of heavy metals.

A. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

B. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for

promotional purposes in the Commonwealth a product in a package which includes, in the package itself or in any of the packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

C. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

- 1. Six hundred parts per million by weight on and after July 1, 1995;*
- 2. Two hundred fifty parts per million by weight on and after July 1, 1996; and*
- 3. One hundred parts per million by weight on and after July 1, 1997.*

D. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM test methods, as revised, or U.S. Environmental Protection Agency Test Methods for Evaluating Solid Waste, S-W 846, as revised.

§ 10.1-1425.22. Exemptions.

The following packaging and packaging components shall be exempt from the requirements of this Act:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1995;

2. Packages or packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals;

3. Packages and packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process for which there is no feasible alternative, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals. For purposes of this subdivision, 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; and

4. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recovered or recycled materials.

§ 10.1-1425.23. Certificate of compliance.

A. On and after July 1, 1995, each manufacturer or distributor of packaging or packaging components shall make available to purchasers, the Department, and the public, upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this article.

B. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component that results in an increase in the level of heavy metals higher than the original certificate of compliance, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated package or packaging component.

§ 10.1-1425.24. Promulgation of regulations.

The Board may promulgate regulations if regulations are necessary to implement and manage the provisions of this article. The Director is authorized to name qualified persons to an advisory panel of affected interests and the public to assist the Department in implementing the provisions of this article.