

1723

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to mercury in products and toxicity in packaging

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Subdivisions 7 and 8 of section 27-2101 of the environ-
2 mental conservation law, as amended by chapter 676 of the laws of 2005,
3 are amended to read as follows:
4 7. "Mercury-added consumer product" means any device or material into
5 which elemental mercury or mercury compounds are intentionally added
6 during such device's or material's formulation or manufacture, and in
7 which the continued presence of mercury is required to provide a specif-
8 ic characteristic, appearance or quality, or to perform a specific func-
9 tion. Such term shall include, but not be limited to mercury-containing:
10 (a) thermostats;
11 (b) thermometers;
12 (c) switches, whether individually or as part of another product;
13 (d) medical or scientific instruments;
14 (e) electrical relays and other electrical devices;
15 (f) lamps; and
16 (g) batteries sold to consumers[, not including button batteries].
17 8. "Mercury-added novelty consumer product" means a mercury-added
18 consumer product intended mainly for personal or household enjoyment or
19 adornment. Mercury-added novelty consumer products include, but are not
20 limited to, items intended for use as practical jokes, figurines, adorn-
21 ments, toys, games, cards, ornaments, yard statues and figures, candles,
22 jewelry, holiday decorations, items of apparel (including footwear), or
23 similar products. [A product is not a mercury-added novelty consumer
24 product solely on the basis that it is a game with a light screen

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 display containing mercury, or includes a removable battery containing
2 mercury.]

3 S 2. Section 37-0201 of the environmental conservation law, as added
4 by chapter 286 of the laws of 1990, is amended to read as follows:

5 S 37-0201. Legislative findings and intent.

6 The legislature finds and declares that:

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

9 2. Packaging comprises a significant percentage of the overall solid
10 waste stream; [and]

11 3. The presence of heavy metals in packaging is a part of the total
12 concern in light of their likely presence in emissions or ash when pack-
13 aging is incinerated, or in leachate when packaging is landfilled; [and]

14 4. Lead, mercury, cadmium and hexavalent chromium, on the basis of
15 available scientific and medical evidence, are of particular concern;
16 [and]

17 5. It is desirable as a first step in reducing the toxicity of packag-
18 ing waste to eliminate the addition of these heavy metals to packaging;
19 and

20 6. The intent of this title is to achieve this reduction in toxicity
21 without impeding or discouraging the expanded use of [post-consumer]
22 RECYCLED materials in the production of packaging and its components.

23 S 3. Section 37-0203 of the environmental conservation law, as added
24 by chapter 286 of the laws of 1990, is amended to read as follows:

25 S 37-0203. Definitions.

26 For the purposes of this title, the term:

27 1. "Distributor" shall mean any person, firm, association, partnership
28 or corporation, who [or which imports or causes to be imported into the
29 state, any container, whether filled or unfilled, used to package
30 products] TAKES TITLE TO OR POSSESSION OF GOODS OR PURCHASES FOR RESALE
31 OR PROMOTIONAL PURPOSES. "DISTRIBUTION" SHALL MEAN THE PRACTICE OF
32 TAKING TITLE TO OR POSSESSION OF PACKAGES OR PACKAGING COMPONENTS FOR
33 PROMOTIONAL PURPOSES OR RESALE. PERSONS INVOLVED SOLELY IN DELIVERING
34 PACKAGES OR PACKAGING COMPONENTS ON BEHALF OF THIRD PARTIES ARE NOT
35 CONSIDERED DISTRIBUTORS.

36 2. "INCIDENTAL PRESENCE" SHALL MEAN THE PRESENCE OF LEAD, MERCURY,
37 CADMIUM OR HEXAVALENT CHROMIUM AS AN UNINTENDED OR UNDESIRE INGREDIENT
38 OF A PACKAGE OR PACKAGING COMPONENT.

39 3. "INTENTIONAL INTRODUCTION" OR "INTENTIONALLY INTRODUCED" SHALL MEAN
40 THE ACT OF DELIBERATELY UTILIZING LEAD, MERCURY, CADMIUM OR HEXAVALENT
41 CHROMIUM IN THE FORMATION OF A PACKAGE OR PACKAGING COMPONENT WHERE ITS
42 CONTINUED PRESENCE IS DESIRED IN THE FINAL PACKAGE OR PACKAGING COMPO-
43 NENT TO PROVIDE A SPECIFIC CHARACTERISTIC, APPEARANCE, OR QUALITY. THE
44 USE OF LEAD, MERCURY, CADMIUM OR HEXAVALENT CHROMIUM AS A PROCESSING
45 AGENT OR INTERMEDIATE TO IMPART CERTAIN CHEMICAL OR PHYSICAL CHANGES
46 DURING MANUFACTURING, WHEREUPON THE INCIDENTAL RETENTION OF A RESIDUE OF
47 ANY SUCH METAL IN THE FINAL PACKAGE OR PACKAGING COMPONENT IS NEITHER
48 DESIRED NOR DELIBERATE, IS NOT CONSIDERED INTENTIONAL INTRODUCTION FOR
49 THE PURPOSES OF THIS TITLE WHERE THE FINAL PACKAGE OR PACKAGING COMPO-
50 NENT IS IN COMPLIANCE WITH SUBDIVISION THREE OF SECTION 37-0205 OF THIS
51 TITLE. THE USE OF RECYCLED MATERIALS AS FEED STOCK FOR THE MANUFACTURE
52 OF A NEW PACKAGE OR PACKAGING COMPONENT, WHERE SOME PORTION OF THE RECY-
53 CLED MATERIALS MAY CONTAIN AMOUNTS OF LEAD, MERCURY, CADMIUM OR HEXA-
54 VALENT CHROMIUM, IS NOT CONSIDERED INTENTIONAL INTRODUCTION FOR THE
55 PURPOSES OF THIS TITLE WHERE THE NEW PACKAGE OR PACKAGING COMPONENT IS
56 IN COMPLIANCE WITH SUBDIVISION THREE OF SECTION 37-0205 OF THIS TITLE.

1 4. "Manufacturer" shall mean [a] ANY person, firm, association, part-
2 nership or corporation, who [or which makes containers to be used to
3 package products] PRODUCES PACKAGES OR PACKAGING COMPONENTS AS DEFINED
4 IN THIS TITLE.

5 5. "MANUFACTURING" SHALL MEAN PHYSICAL OR CHEMICAL MODIFICATION OF
6 MATERIALS TO PRODUCE PACKAGES OR PACKAGING COMPONENTS.

7 [3.] 6. "Package" [means a] SHALL MEAN ANY container providing a means
8 of marketing, protecting or handling a product and shall include a unit
9 package, an intermediate package [and] OR a shipping container. "Pack-
10 age" shall also mean and include, but not be limited to, such unsealed
11 receptacles as carrying cases, crates, cups, pails, rigid foil and other
12 trays, wrappers and wrapping films, bags and tubs.

13 [4.] 7. "Packaging component" [means] SHALL MEAN any individual assem-
14 bled part of a package such as, but not limited to, any interior or
15 exterior blocking, bracing, cushioning, weatherproofing, exterior strap-
16 ping, coatings, closures, inks and labels. TIN-PLATED STEEL THAT MEETS
17 THE AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) SPECIFICATION A623
18 SHALL BE CONSIDERED AS A SINGLE PACKAGE COMPONENT. ELECTRO-GALVANIZED
19 COATED STEEL AND HOT-DIPPED GALVANIZED STEEL THAT MEETS THE ASTM SPEC-
20 IFICATIONS A653, A924, A879 AND A591 SHALL BE TREATED IN THE SAME MANNER
21 AS TIN-PLATED STEEL.

22 8. "PURCHASER" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP
23 OR CORPORATION, WHO PURCHASES ANY PACKAGES OR PACKAGING COMPONENTS TO
24 PACK PRODUCTS. THIS TERM SHALL NOT MEAN ANY RETAIL STORE OR INDIVIDUAL
25 MAKING RETAIL PURCHASES.

26 9. "SUPPLIER" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP OR
27 CORPORATION, WHO SELLS, OFFERS FOR SALE, OR OFFERS FOR PROMOTIONAL
28 PURPOSES PACKAGES OR PACKAGING COMPONENTS FOR USE BY ANY OTHER PERSON,
29 FIRM, ASSOCIATION, PARTNERSHIP, OR CORPORATION TO PACK PRODUCTS.

30 S 4. Section 37-0205 of the environmental conservation law, as added
31 by chapter 286 of the laws of 1990, is amended to read as follows:
32 S 37-0205. Prohibitions.

33 1. No package or packaging component shall be SOLD, OR offered for
34 sale or for promotional purposes by a manufacturer [or], distributor OR
35 SUPPLIER which includes (in the package itself, or in any packaging
36 component, inks, dyes, pigments, adhesives, stabilizers or any other
37 additives [to which]) ANY lead, cadmium, mercury or hexavalent chromium
38 WHICH has been [included] INTENTIONALLY INTRODUCED as an element during
39 [manufacture] MANUFACTURING or distribution [in excess of the concen-
40 tration levels set forth in subdivision three of this section].

41 2. No product shall be SOLD, OR offered for sale or for promotional
42 purposes by a manufacturer [or], distributor OR SUPPLIER in a package
43 which includes, in the package itself or in any of its packaging compo-
44 nents, inks, dyes, pigments, adhesives, stabilizers or any other addi-
45 tives [to which], ANY lead, cadmium, mercury or hexavalent chromium
46 WHICH has been [included] INTENTIONALLY INTRODUCED as an element during
47 [manufacture] MANUFACTURING or distribution in excess of the concen-
48 tration levels set forth in subdivision three of this section.

49 3. The sum of the concentration levels of lead, cadmium, mercury or
50 hexavalent chromium present in any package or packaging component shall
51 not exceed [the following prior to incineration:

52 600 parts per million by weight (0.06%), effective January 1, 1992

53 250 parts per million by weight (0.025%), effective January 1, 1993]

54 100 parts per million by weight (0.01%)[, effective January 1, 1994].

55 S 5. Section 37-0207 of the environmental conservation law, as added
56 by chapter 286 of the laws of 1990, is amended to read as follows:

1 S 37-0207. Exemptions.

2 All [packaging] PACKAGES and packaging components shall be subject to
3 this title except the following:

4 1. Those packages or packaging components which have been delivered to
5 a distributor, SUPPLIER or manufacturer prior to January 1, [1992] 1994;
6 or those packages or packaging components with a code indicating date of
7 manufacture [that were manufactured] prior to [January 1, 1992] 1994; or

8 2. Those packages or packaging components to which lead, cadmium,
9 mercury or hexavalent chromium have been added in the manufacturing,
10 forming, printing or distribution process in order to comply with health
11 or safety requirements of federal law or for which there is no practica-
12 ble alternative, as determined by the commissioner, provided that the
13 manufacturer of a package or packaging component must petition the
14 department for any exemption from the provisions of this title for a
15 particular package or packaging component based on [either criterion]
16 THE CRITERIA OF THIS SUBDIVISION; AND provided further that the depart-
17 ment may grant [a two year] AN exemption FOR UP TO TWO YEARS if
18 warranted by the circumstances; and provided further that such an
19 exemption may, upon REAPPLICATION FOR EXEMPTION AND meeting [either
20 criterion] THE CRITERIA of this subdivision, be renewed [for two years]
21 AT TWO-YEAR INTERVALS; or

22 3. Packages and packaging components that WOULD NOT exceed the maximum
23 [levels] CONCENTRATION LEVELS set forth in subdivision three of section
24 37-0205 of this title [only because of] BUT FOR the addition of [post-
25 consumer] RECYCLED materials, provided that the exemption for this
26 subdivision shall expire on January 1, [1996.] 2010 AND SHALL NOT APPLY
27 TO ANY CADMIUM, LEAD, MERCURY OR HEXAVALENT CHROMIUM THAT HAS BEEN
28 RECOVERED AND/OR SEPARATED FROM OTHER MATERIALS FOR USE AS A METAL OR
29 METALLIC COMPOUND; OR

30 4. [Until January first, nineteen hundred ninety-four, any glass
31 container that is intended for reuse or refilling that uses pigments in
32 or on the container that exceed the maximum levels set forth in subdivi-
33 sion three of section 37-0205 of this title.] A GLASS OR CERAMIC PACKAGE
34 OR PACKAGING COMPONENT WHICH HAS A VITRIFIED LABEL AND WHEN A SAMPLE IS
35 PREPARED ACCORDING TO ASTM C1606-04 AND TESTED IN ACCORDANCE WITH THE
36 TOXICITY CHARACTERISTICS LEACHING PROCEDURES OF THE U.S. ENVIRONMENTAL
37 PROTECTION AGENCY'S TEST METHOD AND PUBLICATION SW-846 "TEST METHODS FOR
38 EVALUATING SOLID WASTE, PHYSICAL/CHEMICAL METHODS," DOES NOT EXCEED 1.0
39 PARTS PER MILLION FOR CADMIUM, 5.0 PARTS PER MILLION FOR HEXAVALENT
40 CHROMIUM AND 5.0 PARTS PER MILLION FOR LEAD. MERCURY SHALL NOT BE
41 EXEMPTED BY THIS PROVISION.

42 S 6. The environmental conservation law is amended by adding a new
43 section 37-0208 to read as follows:

44 S 37-0208. CERTIFICATE OF COMPLIANCE.

45 ANY MANUFACTURER, DISTRIBUTOR OR SUPPLIER MUST FURNISH TO ANY PURCHAS-
46 ER OF A PACKAGE OR PACKAGING COMPONENT A CERTIFICATE OF COMPLIANCE STAT-
47 ING THAT A PACKAGE OR PACKAGING COMPONENT IS IN COMPLIANCE WITH THE
48 REQUIREMENTS OF THIS TITLE, EXCEPT WHERE AN EXEMPTION IS PROVIDED IN
49 SECTION 37-0207 OF THIS TITLE THE CERTIFICATE SHALL STATE THE SPECIFIC
50 BASIS UPON WHICH THE EXEMPTION IS CLAIMED. THE CERTIFICATE OF COMPLIANCE
51 SHALL BE SIGNED BY AN AUTHORIZED OFFICIAL OF THE MANUFACTURER, DISTRIBUTOR
52 OR SUPPLIER. THE PURCHASER SHALL RETAIN THE CERTIFICATE OF COMPLI-
53 ANCE FOR AS LONG AS SUCH PURCHASER IS USING THE PACKAGE OR PACKAGING
54 COMPONENT. A COPY OF THE CERTIFICATE OF COMPLIANCE SHALL BE KEPT ON FILE
55 BY THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER FOR EACH PACKAGE OR PACKAG-
56 ING COMPONENT. IF A MANUFACTURER, DISTRIBUTOR OR SUPPLIER REFORMULATES

1 OR CREATES A NEW PACKAGE OR PACKAGING COMPONENT, IT SHALL FURNISH TO THE
2 PURCHASER AN AMENDED OR NEW CERTIFICATE OF COMPLIANCE FOR THE REFORMU-
3 LATED OR NEW PACKAGE OR PACKAGING COMPONENT. CERTIFICATES OF COMPLI-
4 ANCE, OR COPIES THEREOF, SHALL BE FURNISHED TO THE DEPARTMENT UPON ITS
5 REQUEST AND TO MEMBERS OF THE PUBLIC IN ACCORDANCE WITH SECTION 37-0210
6 OF THIS TITLE.

7 S 7. Subdivision 2 of section 37-0209 of the environmental conserva-
8 tion law, as added by chapter 286 of the laws of 1990, is amended to
9 read as follows:

10 2. No manufacturer [or], distributor OR SUPPLIER of a product shall be
11 held in violation of this title who can show that, in the purchase of a
12 package or packaging component, [he or she] IT relied in good faith on
13 [the written assurance of the manufacturer of such packaging or packag-
14 ing component that such packaging or packaging component met the
15 requirements of this title. Such written assurance shall take the form
16 of a certificate of compliance stating that a package or packaging
17 component is in compliance with the requirements of this title, provided
18 however, where compliance is achieved under an exemption provided in
19 subdivision two or three of section 37-0207 of this title, the certif-
20 icate shall state the specific basis upon which the exemption is
21 claimed. The certificate of compliance shall be signed by an authorized
22 official of the manufacturing or distributing company] A CERTIFICATE OF
23 COMPLIANCE MEETING THE REQUIREMENTS OF SECTION 37-0208 OF THIS TITLE.

24 S 8. The environmental conservation law is amended by adding a new
25 section 37-0210 to read as follows:

26 S 37-0210. PUBLIC ACCESS.

27 1. ANY MEMBER OF THE PUBLIC MAY REQUEST ANY CERTIFICATE OF COMPLIANCE
28 FROM THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER OF A PACKAGE OR PACKAGING
29 COMPONENT. SUCH REQUEST SHALL BE:

30 A. IN WRITING; AND

31 B. SPECIFIC AS TO THE PACKAGE OR PACKAGING COMPONENT FOR WHICH INFOR-
32 MATION IS REQUESTED.

33 2. THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER MUST RESPOND TO SUCH
34 REQUEST WITHIN SIXTY DAYS OF RECEIPT OF THE REQUEST.

35 S 9. Section 37-0211 of the environmental conservation law, as added
36 by chapter 286 of the laws of 1990, is amended to read as follows:

37 S 37-0211. [Reports] REVIEW OF EFFECTIVENESS OF TITLE.

38 The department shall [include a report on] PERIODICALLY REVIEW the
39 effectiveness of this title [as part of its annual solid waste manage-
40 ment plan as required by section 27-0103 of this chapter]. [The report
41 shall] SUCH REVIEW MAY contain [a review] AN ANALYSIS of other toxic
42 substances contained in PACKAGES AND packaging and recommend [additions
43 to the list of hazardous ingredients set forth in this title] ADDITIONAL
44 SUBSTANCES WHICH SHOULD BE PROHIBITED FROM USE IN PACKAGING in order to
45 further reduce the toxicity of packaging waste, [and shall contain a
46 recommendation whether to continue the recycling exemption as it is
47 provided for in subdivision three of section 37-0207 of this title,] and
48 a description of the nature of the substitutes used in lieu of [the]
49 lead, mercury, cadmium, or hexavalent chromium. The department [may
50 include recommendations of the source reduction council of the confer-
51 ence of North-Eastern governors in the report. Recommendations made by
52 the department to eliminate toxic substances contained in packaging
53 shall include a determination of whether the ingredient presents or will
54 present an unreasonable risk to health or the environment, based upon a
55 recognized risk assessment protocol and taking into account the magni-
56 tude and severity of the harm against the benefits of the substance or

1 mixture to society as well as the availability of substitutes for the
2 substance or mixture and other adverse effects which such proposed
3 action to eliminate such ingredient may have on society] SHALL REVIEW
4 THE ADVISABILITY OF EXTENDING THE EXEMPTIONS PROVIDED FOR IN SUBDIVISION
5 THREE OF SECTION 37-0207 OF THIS TITLE. THIS REVIEW SHALL COMMENCE NO
6 LATER THAN JANUARY FIRST, TWO YEARS PRIOR TO THE EXPIRATION OF SUCH
7 EXEMPTIONS. IN REVIEWING THE EFFECTIVENESS OF THIS TITLE AND THE ADVIS-
8 ABILITY OF EXTENDING THE EXEMPTIONS PROVIDED FOR IN SUBDIVISION THREE OF
9 SECTION 37-0207 OF THIS TITLE, THE DEPARTMENT MAY CONSULT WITH THE
10 TOXICS IN PACKAGING CLEARINGHOUSE.

11 S 10. The environmental conservation law is amended by adding a new
12 section 37-0215 to read as follows:

13 S 37-0215. SEVERABILITY.

14 THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE, AND IF ANY COURT
15 DECLARES ANY PHRASE, CLAUSE, SENTENCE, OR PROVISION OF THIS TITLE TO BE
16 INVALID, OR ITS APPLICABILITY TO ANY GOVERNMENT, AGENCY, PERSON, OR
17 CIRCUMSTANCE IS DECLARED INVALID, THE REMAINDER OF THIS TITLE AND ITS
18 RELEVANT APPLICABILITY SHALL NOT BE AFFECTED. THE PROVISIONS OF THIS
19 TITLE SHALL BE LIBERALLY CONSTRUED TO GIVE EFFECT TO THE PURPOSES THERE-
20 OF.

21 S 11. This act shall take effect on the ninetieth day after it shall
22 have become a law.