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FILED FEB 22 1996

SENATE FILE 2287

BY COMMITTEE ON NATURAL RESOURCES,
ENVIRONMENT AND ENERGY

(SUCCESSOR TO SSB 2045)

Passed Senate, Date ^(p. 609) 3/5/96 Passed House, Date ^(p. 911) 3/21/96
 Vote: Ayes 50 Nays 0 Vote: Ayes 97 Nays 0
 Approved April 15, 1996

A BILL FOR

1 An Act relating to the limitations on the use of toxic materials
 2 in packaging and providing additional exemptions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 2287

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S-5182

10

1 Amend Senate File 2287 as follows:

11

2 1. Page 2, line 35, by striking the words "or
 3 labels" and inserting the following: "or labels, tin-
 4 plated steel, electro-galvanized steel, or hot-dipped-
 5 coated galvanized steel".

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By BILL FINK

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S-5182 FILED MARCH 5, 1996

ADOPTED ^(p. 609)

S.F. 2287

REPRINTED

1 Section 1. Section 455D.19, Code 1995, is amended to read
2 as follows:

3 455D.19 PACKAGING -- HEAVY METAL CONTENT.

4 1. The general assembly finds and declares all of the
5 following:

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

8 b. Packaging comprises a significant percentage of the
9 overall solid waste stream.

10 c. The presence of heavy metals in packaging is a concern
11 in light of the likely presence of heavy metals in emissions
12 or ash when packaging is incinerated or in leachate when
13 packaging is landfilled.

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

17 e. It is desirable as a first step in reducing the
18 toxicity of packaging waste to eliminate the addition of heavy
19 metals to packaging.

20 f. The intent of the general assembly is to achieve
21 reduction in toxicity without impeding or discouraging the
22 expanded use of postconsumer materials in the production of
23 packaging and its components.

24 2. As used in this section unless the context otherwise
25 requires:

26 a. "Distributor" means a person who takes title to
27 products-or-packaging one or more packages or packaging
28 components purchased for promotional purposes or resale. A
29 person involved solely in delivering packages or packaging
30 components on behalf of third parties is not a distributor.

31 b. "Incidental presence" means the presence of a regulated
32 metal as an unintended or undesired ingredient of a package or
33 packaging component.

34 c. "Intentional introduction" means an act of deliberately
35 utilizing a regulated metal in the formulation of a package or

1 packaging component where its combined continued presence is
2 desired in the final package or packaging component to provide
3 a specific characteristic, appearance, or quality.
4 Intentional introduction does not include the use of a
5 regulated metal as a processing agent or intermediate to
6 impart certain chemical or physical changes during
7 manufacturing, if the incidental presence of a residue of the
8 metal in the final package or packaging component is neither
9 desired nor deliberate, and if the final package or packaging
10 component is in compliance with subsection 5 4, paragraph "c".
11 Intentional introduction also does not include the use of
12 postconsumer recycled materials as feedstock for the
13 manufacture of new packaging materials, if the recycled
14 materials contain amounts of a regulated metal and if the new
15 package or packaging component is in compliance with
16 subsection 5 4, paragraph "c".

17 "Regulated metal" means any metal regulated under this
18 section.

19 d. "Manufacturer" means a person who ~~offers-for-sale-or~~
20 ~~sells-products-or-packaging-to-a-distributor~~ produces one or
21 more packages or packing components.

22 e. "Manufacturing" means physical or chemical modification
23 of one or more materials to produce packaging or packaging
24 components.

25 e- f. "Package" means a container which provides a means
26 of marketing, protecting, or handling a product including a
27 unit package, intermediate package, or a shipping container.

28 "Package" also includes but is not limited to unsealed
29 receptacles such as carrying cases, crates, cups, pails, rigid
30 foil and other trays, wrappers and wrapping films, bags, and
31 tubs.

32 f- g. "Packaging component" means any individual assembled
33 part of a package including but not limited to interior and
34 exterior blocking, bracing, cushioning, weatherproofing,
35 exterior strapping, coatings, closures, inks, or labels.

1 h. "Reusable entities" means packaging or packaging
2 components having a controlled distribution and reuse subject
3 to the exemption provided in subsection 5, paragraph "e".

4 ~~3. No-later-than-July-1, 1992, a~~ A manufacturer or
5 distributor shall not offer for sale or sell, or offer for
6 promotional purposes a package or packaging component, in this
7 state, which includes, in the package itself, or in any
8 packaging component, inks, dyes, pigments, adhesives,
9 stabilizers, or any other additives, any lead, cadmium,
10 mercury, or hexavalent chromium which has been intentionally
11 introduced as an element during manufacturing or distribution
12 as opposed to the incidental presence of any of these elements
13 and which exceed the concentration level established by the
14 department.

15 ~~4. --No-later-than-July-1, 1992, a manufacturer or~~
16 ~~distributor shall not offer for sale or sell, or offer for~~
17 ~~promotional purposes, in this state, a product in a package~~
18 ~~which includes in the package itself or in any of the~~
19 ~~packaging components, inks, dyes, pigments, adhesives,~~
20 ~~stabilizers, or any other additives, 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 ~~and which exceed the concentration level established by the~~
25 ~~department.~~

26 ~~5.~~ 4. The concentration levels of lead, cadmium, mercury,
27 and hexavalent chromium present in a package or packaging
28 component shall not exceed the following:

29 a. Six hundred parts per million by weight by July 1,
30 1992.

31 b. Two hundred fifty parts per million by weight by July
32 1, 1993.

33 c. One hundred parts per million by weight by July 1,
34 1994.

35 Concentration levels of lead, cadmium, mercury, and

1 hexavalent chromium shall be determined using American
2 standard of testing materials test methods, as revised, or
3 United States environmental protection agency test methods for
4 evaluating solid waste, S-W 846, as revised.

5 ~~6-~~ 5. The following packaging and packaging components are
6 exempt from the requirements of this section:

7 a. Packaging or packaging components with a code
8 indicating a date of manufacture prior to July 1, 1990, and
9 packaging or packaging components used by the alcoholic
10 beverage industry or the wine industry prior to July 1, 1992.

11 b. Packages or packaging components to which lead,
12 cadmium, mercury, or hexavalent chromium have been added in
13 the manufacturing, forming, printing, or distribution process
14 in order to comply with health or safety requirements of
15 federal law or for which there is no feasible alternative if
16 the manufacturer of a package or packaging component petitions
17 the department for an exemption from the provisions of this
18 paragraph for a particular package or packaging component.
19 The department may grant a two year exemption, if warranted,
20 by the circumstances, and an exemption may, upon meeting
21 either criterion of this paragraph be renewed for two years.
22 For purposes of this paragraph, a use for which there is no
23 feasible alternative is one in which the regulated substance
24 is essential to the protection, safe handling, or function of
25 the package's contents.

26 c. Packages and packaging components that would not exceed
27 the maximum contaminant levels established but for the
28 addition of ~~postconsumer~~ recycled materials.

29 d. Packages or packaging components that are reused, but
30 exceed contaminant levels set forth in subsection 4, paragraph
31 "c", if all of the following criteria are met:

32 (1) The product being conveyed by the package, including
33 any packaging component, is regulated under federal or state
34 health or safety requirements.

35 (2) Transportation of the packaged product is regulated

1 under federal or state transportation requirements.

2 (3) The disposal of the packages or packaging components
3 is performed according to federal or state radioactive or
4 hazardous waste disposal requirements.

5 The department may grant a two-year exemption if warranted
6 by the circumstances and an exemption may, upon meeting the
7 criteria of this paragraph, be renewed for additional two-year
8 periods.

9 e. Packages or packaging components which qualify as
10 reusable entities that exceed the contaminant levels set forth
11 in subsection 4, paragraph "c", if the manufacturers or
12 distributors of such packages or packaging components petition
13 the department for an exemption and receive approval from the
14 department according to the following standards based upon a
15 satisfactory demonstration that the environmental benefit of
16 the controlled distribution and reuse is significantly greater
17 than if the same package is manufactured in compliance with
18 the contaminant levels set forth in subsection 4, paragraph
19 "c". The department may grant a two-year exemption, if
20 warranted by the circumstances, and an exemption may, upon
21 meeting the four criteria listed in subparagraphs (1) through
22 (4), be renewed for additional two-year periods.

23 In order to receive an exemption, the application must
24 ensure that reusable entities are used, transported, and
25 disposed of in a manner consistent with the following
26 criteria:

27 (1) A means of identifying in a permanent and visible
28 manner those reusable entities containing regulated metals for
29 which an exemption is sought.

30 (2) A method of regulatory and financial accountability so
31 that a specified percentage of the reusable entities
32 manufactured and distributed to another person are not
33 discarded by that person after use, but are returned to the
34 manufacturer or the manufacturer's designee.

35 (3) A system of inventory and record maintenance to

1 account for the reusable entities placed in, and removed from,
2 service.

3 (4) A means of transforming returned entities, that are no
4 longer reusable, into recycled materials for manufacturing or
5 into manufacturing wastes which are subject to existing
6 federal or state laws or regulations governing manufacturing
7 wastes to ensure that these wastes do not enter the commercial
8 or municipal waste stream.

9 The application for an exemption must document the measures
10 to be taken by the applicant as set out in subparagraphs (1)
11 through (4).

12 7- 6. By July 1, 1992, a manufacturer or distributor of
13 packaging or packaging components shall make available to
14 purchasers, to the department, and to the general public upon
15 request, certificates of compliance which state that the
16 manufacturer's or distributor's packaging or packaging
17 components comply with, or are exempt from, the requirements
18 of this section.

19 If the manufacturer or distributor of the package or
20 packaging component reformulates or creates a new package or
21 packaging component, the manufacturer or distributor shall
22 provide an amended or new certificate of compliance for the
23 reformulated or new package or packaging component.

24 8- 7. The commission shall adopt rules to implement
25 ~~administer~~ this section ~~and report to the general assembly on~~
26 ~~the effectiveness of this section no later than forty-two~~
27 ~~months following July 1, 1990,~~ and recommend any other toxic
28 substances contained in packaging to be added to the list in
29 order to further reduce the toxicity of packaging waste.

30 9- 8. A manufacturer or distributor who does not comply
31 with the requirements of this section is guilty of a simple
32 misdemeanor.

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EXPLANATION

34 The bill amends existing section 455D.19 of the Code
35 relating to the regulation of toxic metals in packaging.

1 The bill changes the definition of a "distributor" by
2 excluding a person who delivers packages on behalf of a third
3 person. A distributor is subject to the regulations on toxic
4 metals in packaging.

5 The bill deletes provisions regarding prohibitions against
6 the sale of products in packaging. These prohibitions are
7 already contained in the existing section twice and are
8 deleted to prevent duplication.

9 The bill expands the conditions upon which an exemption
10 from the regulations on toxic metals in packaging is granted.
11 An exemption is granted for a container that is recycled or
12 reused, has limited risk of public exposure, and whose
13 disposal is closely controlled.

14 The bill contains provisions requiring an application for
15 an exemption to document specified measures to ensure that
16 packaging is used, transported, and disposed of in a manner
17 consistent with federal and state health and safety
18 requirements.

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

8 b. Packaging comprises a significant percentage of the
9 overall solid waste stream.

10 c. The presence of heavy metals in packaging is a concern
11 in light of the likely presence of heavy metals in emissions
12 or ash when packaging is incinerated or in leachate when
13 packaging is landfilled.

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

17 e. It is desirable as a first step in reducing the
18 toxicity of packaging waste to eliminate the addition of heavy
19 metals to packaging.

20 f. The intent of the general assembly is to achieve
21 reduction in toxicity without impeding or discouraging the
22 expanded use of postconsumer materials in the production of
23 packaging and its components.

24 2. As used in this section unless the context otherwise
25 requires:

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27 products-or-packaging one or more packages or packaging
28 components purchased for promotional purposes or resale. A
29 person involved solely in delivering packages or packaging
30 components on behalf of third parties is not a distributor.

31 b. "Incidental presence" means the presence of a regulated
32 metal as an unintended or undesired ingredient of a package or
33 packaging component.

34 c. "Intentional introduction" means an act of deliberately
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5 regulated metal as a processing agent or intermediate to
6 impart certain chemical or physical changes during
7 manufacturing, if the incidental presence of a residue of the
8 metal in the final package or packaging component is neither
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10 component is in compliance with subsection 5 4, paragraph "c".
11 Intentional introduction also does not include the use of
12 postconsumer recycled materials as feedstock for the
13 manufacture of new packaging materials, if the recycled
14 materials contain amounts of a regulated metal and if the new
15 package or packaging component is in compliance with
16 subsection 5 4, paragraph "c".

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18 section.

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21 more packages or packing components.

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23 of one or more materials to produce packaging or packaging
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25 e- f. "Package" means a container which provides a means
26 of marketing, protecting, or handling a product including a
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28 "Package" also includes but is not limited to unsealed
29 receptacles such as carrying cases, crates, cups, pails, rigid
30 foil and other trays, wrappers and wrapping films, bags, and
31 tubs.

32 f- g. "Packaging component" means any individual assembled
33 part of a package including but not limited to interior and
34 exterior blocking, bracing, cushioning, weatherproofing,
35 exterior strapping, coatings, closures, inks, or labels, tin-

1 plated steel, electro-galvanized steel, or hot-dipped-coated
2 galvanized steel.

3 h. "Reusable entities" means packaging or packaging
4 components having a controlled distribution and reuse subject
5 to the exemption provided in subsection 5, paragraph "e".

6 3. ~~No-later-than-July-17-1992~~-a A manufacturer or
7 distributor shall not offer for sale or sell, or offer for
8 promotional purposes a package or packaging component, in this
9 state, which includes, in the package itself, or in any
10 packaging component, inks, dyes, pigments, adhesives,
11 stabilizers, or any other additives, any lead, cadmium,
12 mercury, or hexavalent chromium which has been intentionally
13 introduced as an element during manufacturing or distribution
14 as opposed to the incidental presence of any of these elements
15 and which exceed the concentration level established by the
16 department.

17 ~~4--No-later-than-July-17-1992-a-manufacturer-or~~
18 ~~distributor-shall-not-offer-for-sale-or-sell-or-offer-for~~
19 ~~promotional-purposes-in-this-state-a-product-in-a-package~~
20 ~~which-includes-in-the-package-itself-or-in-any-of-the~~
21 ~~packaging-components-inks-dyes-pigments-adhesives~~
22 ~~stabilizers-or-any-other-additives-any-lead-cadmium~~
23 ~~mercury-or-hexavalent-chromium-which-has-been-intentionally~~
24 ~~introduced-as-an-element-during-manufacturing-or-distribution~~
25 ~~as-opposed-to-the-incidental-presence-of-any-of-these-elements~~
26 ~~and-which-exceed-the-concentration-level-established-by-the~~
27 ~~department.~~

28 5- 4. The concentration levels of lead, cadmium, mercury,
29 and hexavalent chromium present in a package or packaging
30 component shall not exceed the following:

31 a. Six hundred parts per million by weight by July 1,
32 1992.

33 b. Two hundred fifty parts per million by weight by July
34 1, 1993.

35 c. One hundred parts per million by weight by July 1,

1 1994.

2 Concentration levels of lead, cadmium, mercury, and
3 hexavalent chromium shall be determined using American
4 standard of testing materials test methods, as revised, or
5 United States environmental protection agency test methods for
6 evaluating solid waste, S-W 846, as revised.

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8 exempt from the requirements of this section:

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12 beverage industry or the wine industry prior to July 1, 1992.

13 b. Packages or packaging components to which lead,
14 cadmium, mercury, or hexavalent chromium have been added in
15 the manufacturing, forming, printing, or distribution process
16 in order to comply with health or safety requirements of
17 federal law or for which there is no feasible alternative if
18 the manufacturer of a package or packaging component petitions
19 the department for an exemption from the provisions of this
20 paragraph for a particular package or packaging component.
21 The department may grant a two year exemption, if warranted,
22 by the circumstances, and an exemption may, upon meeting
23 either criterion of this paragraph be renewed for two years.
24 For purposes of this paragraph, a use for which there is no
25 feasible alternative is one in which the regulated substance
26 is essential to the protection, safe handling, or function of
27 the package's contents.

28 c. Packages and packaging components that would not exceed
29 the maximum contaminant levels established but for the
30 addition of postconsumer recycled materials.

31 d. Packages or packaging components that are reused, but
32 exceed contaminant levels set forth in subsection 4, paragraph
33 "c", if all of the following criteria are met:

34 (1) The product being conveyed by the package, including
35 any packaging component, is regulated under federal or state

1 health or safety requirements.

2 (2) Transportation of the packaged product is regulated
3 under federal or state transportation requirements.

4 (3) The disposal of the packages or packaging components
5 is performed according to federal or state radioactive or
6 hazardous waste disposal requirements.

7 The department may grant a two-year exemption if warranted
8 by the circumstances and an exemption may, upon meeting the
9 criteria of this paragraph, be renewed for additional two-year
10 periods.

11 e. Packages or packaging components which qualify as
12 reusable entities that exceed the contaminant levels set forth
13 in subsection 4, paragraph "c", if the manufacturers or
14 distributors of such packages or packaging components petition
15 the department for an exemption and receive approval from the
16 department according to the following standards based upon a
17 satisfactory demonstration that the environmental benefit of
18 the controlled distribution and reuse is significantly greater
19 than if the same package is manufactured in compliance with
20 the contaminant levels set forth in subsection 4, paragraph
21 "c". The department may grant a two-year exemption, if
22 warranted by the circumstances, and an exemption may, upon
23 meeting the four criteria listed in subparagraphs (1) through
24 (4), be renewed for additional two-year periods.

25 In order to receive an exemption, the application must
26 ensure that reusable entities are used, transported, and
27 disposed of in a manner consistent with the following
28 criteria:

29 (1) A means of identifying in a permanent and visible
30 manner those reusable entities containing regulated metals for
31 which an exemption is sought.

32 (2) A method of regulatory and financial accountability so
33 that a specified percentage of the reusable entities
34 manufactured and distributed to another person are not
35 discarded by that person after use, but are returned to the

1 manufacturer or the manufacturer's designee.

2 (3) A system of inventory and record maintenance to
3 account for the reusable entities placed in, and removed from,
4 service.

5 (4) A means of transforming returned entities, that are no
6 longer reusable, into recycled materials for manufacturing or
7 into manufacturing wastes which are subject to existing
8 federal or state laws or regulations governing manufacturing
9 wastes to ensure that these wastes do not enter the commercial
10 or municipal waste stream.

11 The application for an exemption must document the measures
12 to be taken by the applicant as set out in subparagraphs (1)
13 through (4).

14 7- 6. By July 1, 1992, a manufacturer or distributor of
15 packaging or packaging components shall make available to
16 purchasers, to the department, and to the general public upon
17 request, certificates of compliance which state that the
18 manufacturer's or distributor's packaging or packaging
19 components comply with, or are exempt from, the requirements
20 of this section.

21 If the manufacturer or distributor of the package or
22 packaging component reformulates or creates a new package or
23 packaging component, the manufacturer or distributor shall
24 provide an amended or new certificate of compliance for the
25 reformulated or new package or packaging component.

26 8- 7. The commission shall adopt rules to ~~implement~~
27 ~~administer~~ this section ~~and report to the general assembly on~~
28 ~~the effectiveness of this section no later than forty-two~~
29 ~~months following July 1, 1990,~~ and recommend any other toxic
30 substances contained in packaging to be added to the list in
31 order to further reduce the toxicity of packaging waste.

32 9- 8. A manufacturer or distributor who does not comply
33 with the requirements of this section is guilty of a simple
34 misdemeanor.

35

SENATE FILE 2287

H-5401

1 Amend Senate File 2287, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 2, line 35, through page 3,
4 line 2, and inserting the following: "exterior
5 strapping, coatings, closures, inks, ~~or~~ labels, tin-
6 plated steel that meets the American society for
7 testing and materials specification A-623, electro-
8 galvanized coated steel, or hot-dipped-coated
9 galvanized steel that meets the American society for
10 testing and materials specifications A-525 or A-879."

By VAN FOSSEN of Scott

H-5401 FILED MARCH 14, 1996

adopted 3-21-96

(p.911)

HOUSE AMENDMENT TO
SENATE FILE 2287

S-5480

1 Amend Senate File 2287, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 2, line 35, through page 3,
4 line 2, and inserting the following: "exterior
5 strapping, coatings, closures, inks, ~~or~~ labels, tin-
6 plated steel that meets the American society for
7 testing and materials specification A-623, electro-
8 galvanized coated steel, or hot-dipped-coated
9 galvanized steel that meets the American society for
10 testing and materials specifications A-525 or A-879."

RECEIVED FROM THE HOUSE

S-5480 FILED MARCH 21, 1996

Senate concurred 4/4/96 (p.1212)

Fink
Black
Lundby

11/11/76

SSB 2045

Natural Resources
Environment & Energy

SENATE/HOUSE FILE SF/HF 2287
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the limitations on the use of toxic materials
2 in packaging and providing additional exemptions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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9 overall solid waste stream.

10 c. The presence of heavy metals in packaging is a concern
11 in light of the likely presence of heavy metals in emissions
12 or ash when packaging is incinerated or in leachate when
13 packaging is landfilled.

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

17 e. It is desirable as a first step in reducing the
18 toxicity of packaging waste to eliminate the addition of heavy
19 metals to packaging.

20 f. The intent of the general assembly is to achieve
21 reduction in toxicity without impeding or discouraging the
22 expanded use of postconsumer materials in the production of
23 packaging and its components.

24 2. As used in this section unless the context otherwise
25 requires:

26 a. "Distributor" means a person who takes title to
27 products-or-packaging one or more packages or packaging
28 components purchased for promotional purposes or resale. A
29 person involved solely in delivering packages or packaging
30 components on behalf of third parties is not a distributor.

31 b. "Incidental presence" means the presence of a regulated
32 metal as an unintended or undesired ingredient of a package or
33 packaging component.

34 c. "Intentional introduction" means an act of deliberately
35 utilizing a regulated metal in the formulation of a package or

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2 desired in the final package or packaging component to provide
3 a specific characteristic, appearance, or quality.

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29 receptacles such as carrying cases, crates, cups, pails, rigid
30 foil and other trays, wrappers and wrapping films, bags, and
31 tubs.

32 f- g. "Packaging component" means any individual assembled
33 part of a package including but not limited to interior and
34 exterior blocking, bracing, cushioning, weatherproofing,
35 exterior strapping, coatings, closures, inks, or labels.

1 h. "Reusable entitles" means packaging or packaging
2 components having a controlled distribution and reuse subject
3 to the exemption provided in subsection 5, paragraph "e".

4 3. ~~No-later-than-July-17-1992~~, a A manufacturer or
5 distributor shall not offer for sale or sell, or offer for
6 promotional purposes a package or packaging component, in this
7 state, which includes, in the package itself, or in any
8 packaging component, inks, dyes, pigments, adhesives,
9 stabilizers, or any other additives, any lead, cadmium,
10 mercury, or hexavalent chromium which has been intentionally
11 introduced as an element during manufacturing or distribution
12 as opposed to the incidental presence of any of these elements
13 and which exceed the concentration level established by the
14 department.

15 ~~4. No-later-than-July-17-1992~~, a manufacturer or
16 distributor shall not offer for sale or sell, or offer for
17 promotional purposes, in this state, a product in a package
18 which includes in the package itself or in any of the
19 packaging components, inks, dyes, pigments, adhesives,
20 stabilizers, or any other additives, 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 and which exceed the concentration level established by the
25 department.

26 5. 4. The concentration levels of lead, cadmium, mercury,
27 and hexavalent chromium present in a package or packaging
28 component shall not exceed the following:

29 a. Six hundred parts per million by weight by July 1,
30 1992.

31 b. Two hundred fifty parts per million by weight by July
32 1, 1993.

33 c. One hundred parts per million by weight by July 1,
34 1994.

35 Concentration levels of lead, cadmium, mercury, and

1 hexavalent chromium shall be determined using American
2 standard of testing materials test methods, as revised, or
3 United States environmental protection agency test methods for
4 evaluating solid waste, S-W 846, as revised.

5 ~~6-~~ 5. The following packaging and packaging components are
6 exempt from the requirements of this section:

7 a. Packaging or packaging components with a code
8 indicating a date of manufacture prior to July 1, 1990, and
9 packaging or packaging components used by the alcoholic
10 beverage industry or the wine industry prior to July 1, 1992.

11 b. Packages or packaging components to which lead,
12 cadmium, mercury, or hexavalent chromium have been added in
13 the manufacturing, forming, printing, or distribution process
14 in order to comply with health or safety requirements of
15 federal law or for which there is no feasible alternative if
16 the manufacturer of a package or packaging component petitions
17 the department for an exemption from the provisions of this
18 paragraph for a particular package or packaging component.
19 The department may grant a two year exemption, if warranted,
20 by the circumstances, and an exemption may, upon meeting
21 either criterion of this paragraph be renewed for two years.
22 For purposes of this paragraph, a use for which there is no
23 feasible alternative is one in which the regulated substance
24 is essential to the protection, safe handling, or function of
25 the package's contents.

26 c. Packages and packaging components that would not exceed
27 the maximum contaminant levels established but for the
28 addition of postconsumer recycled materials.

29 d. Packages or packaging components that are reused, but
30 exceed contaminant levels set forth in subsection 4, paragraph
31 "c", if all of the following criteria are met:

32 (1) The product being conveyed by the package, including
33 any packaging component, is regulated under federal or state
34 health or safety requirements.

35 (2) Transportation of the packaged product is regulated

1 under federal or state transportation requirements.

2 (3) The disposal of the packages or packaging components
3 is performed according to federal or state radioactive or
4 hazardous waste disposal requirements.

5 The department may grant a two-year exemption if warranted
6 by the circumstances and an exemption may, upon meeting the
7 criteria of this paragraph, be renewed for additional two-year
8 periods.

9 e. Packages or packaging components which qualify as
10 reusable entities that exceed the contaminant levels set forth
11 in subsection 4, paragraph "c", if the manufacturers or
12 distributors of such packages or packaging components petition
13 the department for an exemption and receive approval from the
14 department according to the following standards based upon a
15 satisfactory demonstration that the environmental benefit of
16 the controlled distribution and reuse is significantly greater
17 than if the same package is manufactured in compliance with
18 the contaminant levels set forth in subsection 4, paragraph
19 "c". The department may grant a two-year exemption, if
20 warranted by the circumstances, and an exemption may, upon
21 meeting the five criteria listed in subparagraphs (1) through
22 (5), be renewed for additional two-year periods.

23 In order to receive an exemption, the application must
24 ensure that reusable entities are used, transported, and
25 disposed of in a manner consistent with the following
26 criteria:

27 (1) A means of identifying in a permanent and visible
28 manner those reusable entities containing regulated metals for
29 which an exemption is sought.

30 (2) A method of regulatory and financial accountability so
31 that a specified percentage of the reusable entities
32 manufactured and distributed to another person are not
33 discarded by that person after use, but are returned to the
34 manufacturer or the manufacturer's designee.

35 (3) A system of inventory and record maintenance to

1 account for the reusable entities placed in, and removed from,
2 service.

3 (4) A means of transforming returned entities, that are no
4 longer reusable, into recycled materials for manufacturing or
5 into manufacturing wastes which are subject to existing
6 federal or state laws or regulations governing manufacturing
7 wastes to ensure that these wastes do not enter the commercial
8 or municipal waste stream.

9 The application for an exemption must document the measures
10 to be taken by the applicant as set out in subparagraphs (1)
11 through (4).

12 ~~7-~~ 6. By July 1, 1992, a manufacturer or distributor of
13 packaging or packaging components shall make available to
14 purchasers, to the department, and to the general public upon
15 request, certificates of compliance which state that the
16 manufacturer's or distributor's packaging or packaging
17 components comply with, or are exempt from, the requirements
18 of this section.

19 If the manufacturer or distributor of the package or
20 packaging component reformulates or creates a new package or
21 packaging component, the manufacturer or distributor shall
22 provide an amended or new certificate of compliance for the
23 reformulated or new package or packaging component.

24 ~~8-~~ 7. The commission shall adopt rules to ~~implement~~
25 ~~administer~~ this section and report to the general assembly on
26 ~~the effectiveness of this section no later than forty-two~~
27 ~~months following July 1, 1990,~~ and recommend any other toxic
28 substances contained in packaging to be added to the list in
29 order to further reduce the toxicity of packaging waste.

30 ~~9-~~ 8. A manufacturer or distributor who does not comply
31 with the requirements of this section is guilty of a simple
32 misdemeanor.

33

EXPLANATION

34 The bill amends existing section 455D.19 of the Code
35 relating to the regulation of toxic metals in packaging.

1 The bill changes the definition of a "distributor" by
2 excluding a person who delivers packages on behalf of a third
3 person. A distributor is subject to the regulations on toxic
4 metals in packaging.

5 The bill deletes provisions regarding prohibitions against
6 the sale of products in packaging. These prohibitions are
7 already contained in the existing section twice and are
8 deleted to prevent duplication.

9 The bill expands the conditions upon which an exemption
10 from the regulations on toxic metals in packaging is granted.
11 An exemption is granted for a container that is recycled or
12 reused, has limited risk of public exposure, and whose
13 disposal is closely controlled.

14 The bill contains provisions requiring an application for
15 an exemption to document specified measures to ensure that
16 packaging is used, transported, and disposed of in a manner
17 consistent with federal and state health and safety
18 requirements.

19 BACKGROUND STATEMENT
20 SUBMITTED BY THE AGENCY

21 The existing section 455D.19 was drafted from model
22 legislation developed by the coalition of northeast governors.
23 The date specific provisions of the existing section have
24 passed and the regulations of toxic metals in packaging are
25 now in place. Since the adoption of the existing section,
26 there have been questions about how the provisions apply to
27 particular packaging situations. Industries that deal with
28 materials in reusable containers point out that while a toxic
29 material is well-suited for a packaging task, it is not a
30 hazard to the general public. With reuse and limited exposure
31 to the general public, the benefits may outweigh the potential
32 problems. Changes in definitions and other elements of the
33 section provide clarification of the intent of this section.
34 Enacting these changes will ensure that Iowa law is consistent
35 with the provisions in other states that have adopted

1 legislation on toxics in packaging. Adoption of similar
2 language will make it easier for manufacturers to comply with
3 the provisions.

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SENATE FILE 2287

AN ACT

RELATING TO THE LIMITATIONS ON THE USE OF TOXIC MATERIALS
IN PACKAGING AND PROVIDING ADDITIONAL EXEMPTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 455D.19, Code 1995, is amended to read as follows:

455D.19 PACKAGING -- HEAVY METAL CONTENT.

1. The general assembly finds and declares all of the following:

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

b. Packaging comprises a significant percentage of the overall solid waste stream.

c. The presence of heavy metals in packaging is a concern in light of the likely presence of heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is landfilled.

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

e. It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of heavy metals to packaging.

f. The intent of the general assembly is to achieve reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components.

2. As used in this section unless the context otherwise requires:

a. "Distributor" means a person who takes title to products-or-packaging one or more packages or packaging

components purchased for promotional purposes or resale. A person involved solely in delivering packages or packaging components on behalf of third parties is not a distributor.

b. "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

c. "Intentional introduction" means an act of deliberately utilizing a regulated metal in the formulation of a package or packaging component where its combined continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality. Intentional introduction does not include the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, if the incidental presence of a residue of the metal in the final package or packaging component is neither desired nor deliberate, and if the final package or packaging component is in compliance with subsection 5 4, paragraph "c". Intentional introduction also does not include the use of postconsumer recycled materials as feedstock for the manufacture of new packaging materials, if the recycled materials contain amounts of a regulated metal and if the new package or packaging component is in compliance with subsection 5 4, paragraph "c".

"Regulated metal" means any metal regulated under this section.

d. "Manufacturer" means a person who offers-for-sale-or sells-products-or-packaging-to-a-distributor produces one or more packages or packing components.

e. "Manufacturing" means physical or chemical modification of one or more materials to produce packaging or packaging components.

e- f. "Package" means a container which provides a means of marketing, protecting, or handling a product including a unit package, intermediate package, or a shipping container.

"Package" also includes but is not limited to unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

f- g. "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, or labels, tin-plated steel that meets the American society for testing and materials specification A-623, electro-galvanized coated steel, or hot-dipped-coated galvanized steel that meets the American society for testing and materials specifications A-525 or A-879.

h. "Reusable entities" means packaging or packaging components having a controlled distribution and reuse subject to the exemption provided in subsection 5, paragraph "e".

3. ~~No-later-than-July-17-1992~~-a A manufacturer or distributor shall not offer for sale or sell, or offer for promotional purposes a package or packaging component, in this state, which includes, in the package itself, or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceed the concentration level established by the department.

~~4--No-later-than-July-17-1992--a-manufacturer-or distributor-shall-not-offer-for-sale-or-sell--or-offer-for promotional-purposes--in-this-state--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--any-lead--cadmium-- mercury--or-hexavalent-chromium-which-has-been-intentionally introduced-as-an-element-during-manufacturing-or-distribution~~

~~as-opposed-to-the-incidental-presence-of-any-of-these-elements and-which-exceed-the-concentration-level-established-by-the department-~~

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

- a. Six hundred parts per million by weight by July 1, 1992.
- b. Two hundred fifty parts per million by weight by July 1, 1993.
- c. One hundred parts per million by weight by July 1, 1994.

Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American standard of testing materials test methods, as revised, or United States environmental protection agency test methods for evaluating solid waste, S-W 846, as revised.

6- 5. The following packaging and packaging components are exempt from the requirements of this section:

a. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

b. Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative if the manufacturer of a package or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular package or packaging component. The department may grant a two year exemption, if warranted, by the circumstances, and an 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.

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

d. Packages or packaging components that are reused, but exceed contaminant levels set forth in subsection 4, paragraph "c", if all of the following criteria are met:

(1) The product being conveyed by the package, including any packaging component, is regulated under federal or state health or safety requirements.

(2) Transportation of the packaged product is regulated under federal or state transportation requirements.

(3) The disposal of the packages or packaging components is performed according to federal or state radioactive or hazardous waste disposal requirements.

The department may grant a two-year exemption if warranted by the circumstances and an exemption may, upon meeting the criteria of this paragraph, be renewed for additional two-year periods.

e. Packages or packaging components which qualify as reusable entities that exceed the contaminant levels set forth in subsection 4, paragraph "c", if the manufacturers or distributors of such packages or packaging components petition the department for an exemption and receive approval from the department according to the following standards based upon a satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater than if the same package is manufactured in compliance with the contaminant levels set forth in subsection 4, paragraph "c". The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting the four criteria listed in subparagraphs (1) through (4), be renewed for additional two-year periods.

In order to receive an exemption, the application must ensure that reusable entities are used, transported, and disposed of in a manner consistent with the following criteria:

(1) A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.

(2) A method of regulatory and financial accountability so that a specified percentage of the reusable entities manufactured and distributed to another person are not discarded by that person after use, but are returned to the manufacturer or the manufacturer's designee.

(3) A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service.

(4) A means of transforming returned entities, that are no longer reusable, into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream.

The application for an exemption must document the measures to be taken by the applicant as set out in subparagraphs (1) through (4).

7- 6. By July 1, 1992, a manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general 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 section.

If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

8- 7. The commission shall adopt rules to ~~implement~~
~~administer~~ this section and ~~report to the general assembly on~~
~~the effectiveness of this section no later than forty-two~~
~~months following July 17, 1990,~~ and recommend any other toxic
substances contained in packaging to be added to the list in
order to further reduce the toxicity of packaging waste.

9- 8. A manufacturer or distributor who does not comply
with the requirements of this section is guilty of a simple
misdemeanor.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 2287, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 15, 1996

TERRY E. BRANSTAD
Governor