

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 862

Short Title: Reduce Toxicity of Packaging.

(Public)

Sponsors: Representatives Gray; and Warner.

Referred to: Environment.

April 17, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE TOXICITY OF PACKAGING WASTE.
3 The General Assembly of North Carolina enacts:

4 Section 1. Article 9 of Chapter 130A of the General Statutes is amended by
5 adding a new Part as follows:

6 **"PART 2C. TOXINS IN PACKAGING.**

7 **"§ 130A-309.70. Findings; intent.**

- 8 (1) The management of solid waste can pose a wide range of hazards to
9 public health and safety and to the environment;
10 (2) Packaging comprises a significant percentage of the overall solid waste
11 stream;
12 (3) The presence of heavy metals in packaging is a part of the total
13 concern in light of their likely presence in emissions or ash when
14 packaging is incinerated, or in leachate when packaging is landfilled;
15 (4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of
16 available scientific and medical evidence, are of particular concern;
17 (5) It is desirable as a first step in reducing the toxicity of packaging waste
18 to eliminate the addition of these heavy metals to packaging; and
19 (6) The intent of this Part is to achieve this reduction in toxicity without
20 impeding or discouraging the expanded use of post-consumer
21 materials in the production of packaging and its components.

22 **"§ 130A-309.71. Definitions.**

23 Unless the context requires otherwise, the following definitions shall apply
24 throughout this Part:

- 1 (1) 'Container' means a receptacle capable of closure.
2 (2) 'Distributor' means any person, firm, or corporation which takes title to
3 goods purchased for resale.
4 (3) 'Intermediate package' means a wrap, box, or bundle which contains
5 two or more unit packages of identical items.
6 (4) 'Package' means a container providing a means of marketing,
7 protecting, or handling a product and shall include a unit package, an
8 intermediate package, a shipping container, and such unsealed
9 receptacles as carrying cases, crates, cups, pails, rigid foil and other
10 trays, wrappers and wrapping films, bags, and tubs.
11 (5) 'Packaging component' means any individual assembled part of a
12 package such as, but not limited to, any interior or exterior blocking,
13 bracing, cushioning, weatherproofing, exterior strapping, coatings,
14 closures, inks, and labels.
15 (6) 'Shipping container' means a container which is sufficiently strong to
16 be used in commerce for packing, storing, and shipping commodities.
17 (7) 'Unit package' means the first tie, wrap, or container applied to a single
18 item, a quantity of the same item, a set, or an item with all its
19 component parts, which constitutes a complete and identifiable
20 package containing the unit of issue of a product for ultimate use.

21 **"§ 130A-309.72. Prohibited packaging; schedule for removal of incidental**
22 **amounts.**

23 (a) As soon as feasible but no later than October 1, 1993, no package or
24 packaging component shall be offered for sale or for promotional purposes by its
25 manufacturer or distributor in this State, which includes, in the package itself or in any
26 packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other
27 additives, any lead, cadmium, mercury, or hexavalent chromium which has been
28 intentionally introduced as an element during manufacturing or distribution as opposed
29 to the incidental presence of any of these elements.

30 (b) As soon as feasible but no later than October 1, 1993, no product shall be
31 offered for sale or for promotional purposes by its manufacturer or distributor in this
32 State in a package which includes, in the package itself or in any of its packaging
33 components, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any
34 lead, cadmium, mercury, or hexavalent chromium which has been intentionally
35 introduced as an element during manufacturing or distribution as opposed to the
36 incidental presence of any of these elements.

37 (c) No package or packaging component shall be offered for sale or promotional
38 purposes in this State by its manufacturer or distributor if the sum of the incidental
39 concentration levels of lead, cadmium, mercury, and hexavalent chromium present in
40 any package or packaging component exceeds the following:

- 41 (1) 600 parts per million by weight (six-hundredths percent (0.06%)) after
42 October 1, 1993;
43 (2) 250 parts per million by weight (twenty-five thousandths percent
44 (0.025%)) after October 1, 1994; and

1 (3) 100 parts per million by weight (one-hundredth percent (0.01%)) after
2 October 1, 1995.

3 **"§ 130A-309.73. Exemptions.**

4 (a) All packages and packaging components shall be subject to this Part except
5 the following:

6 (1) A package or packaging component which was manufactured prior to
7 October 1, 1991, and displays a code indicating the date it was
8 manufactured;

9 (2) A package or packaging component:

10 a. To which lead, cadmium, mercury, or hexavalent chromium
11 have been added in the manufacturing or distribution process in
12 order to comply with health or safety requirements of federal
13 law; or

14 b. With respect to which there is no feasible alternative to the use
15 of lead, cadmium, mercury, or hexavalent chromium.

16 The manufacturer of such a package or packaging component must
17 apply to the Secretary for an exemption pursuant to this subdivision for
18 a particular package or packaging component based on either criterion
19 a. or b. If the Secretary grants such exemption, the exemption shall be
20 effective for no more than two years and may be extended once if
21 circumstances warrant an extension. An extension may be granted for
22 no more than two years; and

23 (3) A package or packaging component that would not exceed any
24 maximum concentration set forth in G.S. 130A-309.72(c) but for the
25 addition or use of recycled materials. The exemption pursuant to this
26 subdivision shall expire on and after October 1, 1997.

27 (b) For purposes of this section, a use for which there is no feasible alternative is
28 one which is essential to the protection, safe handling, or function of the package's
29 contents and for which there is no substitute.

30 **"§ 130A-309.74. Certificate of compliance.**

31 (a) As soon as feasible but no later than October 1, 1993, the manufacturer or
32 distributor shall furnish the purchaser with a certificate of compliance, which states that
33 a package or packaging component is in compliance with the requirements of this Part.
34 Where compliance is achieved under the exemption provided in G.S. 130A-309.73(a)(2)
35 or G.S. 130A-309.73(a)(3), the certificate shall state the specific basis upon which the
36 exemption is claimed. The certificate of compliance shall be signed by an authorized
37 official of the manufacturer or distributor.

38 (b) The purchaser shall retain the certificate of compliance for as long as the
39 package or packaging component is in use. A copy of the certificate of compliance
40 shall be kept on file by the manufacturer or distributor of the package or packaging
41 component. Certificates of compliance, or copies thereof, shall be furnished to the
42 Department upon its request.

43 (c) If the manufacturer or distributor of the package or packaging component
44 reformulates or creates a new package or packaging component, the manufacturer or

1 distributor shall provide an amended or new certificate of compliance for the
2 reformulated or new package or packaging component.

3 **"§ 130A-309.75*. Penalties.**

4 (a) Any person who violates any provision of this Part or who makes a false
5 statement in a certificate of compliance prepared pursuant to G.S. 130A-309.74 shall
6 pay a civil penalty not to exceed ten thousand dollars (\$10,000) for each offense. Each
7 violation shall be a separate offense and, in the case of a continuing violation, each day's
8 continuance thereof shall be deemed to be a separate offense.

9 (b) Any person who knowingly violates any provision of this Part or who
10 knowingly makes a false statement in a certificate of compliance prepared pursuant to
11 G.S. 130A-309.74 shall be fined not more than fifty thousand dollars (\$50,000) for each
12 offense or imprisoned not more than one year or both.

13 (c) If any person violates any provision of this Part, the Secretary may institute
14 an action for injunctive relief in the superior court of the county in which the violation
15 occurred or where a defendant resides.

16 (d) No manufacturer or distributor of a product shall be held in violation of this
17 Part who can show that, in the purchase of a package or packaging component, he relied
18 in good faith on the written assurance of the manufacturer of the packaging or
19 packaging component that the packaging or packaging component met the requirements
20 of this Part when such written assurance is in the form of a certificate of compliance:

21 (1) Stating that a package or packaging component is in compliance with
22 the requirements of this Part; and

23 (2) Signed by an authorized official of that manufacturing or distribution
24 company.

25 **"§ 130A-309.76. State review and report.**

26 (a) The Department may, in consultation with the Source Reduction Council of
27 the Coalition of Northeastern Governors, review the effectiveness of this Part and
28 provide a report based on such review to the Governor and the General Assembly. The
29 report may contain recommendations to add other toxic substances contained in
30 packaging to the list set forth in this Part in order to further reduce the toxicity of
31 packaging waste. The report shall contain a recommendation as to whether to continue
32 the recycling exemption as provided in G.S. 130-309.73(a)(3) and a description of the
33 nature of the substitutes used in lieu of lead, mercury, cadmium, and hexavalent
34 chromium.

35 (b) For the purpose of gathering information for the review and report in
36 accordance with subsection (a) of this section, the Secretary may inspect and copy the
37 records of any person:

38 (1) Who is engaged in the manufacture or distribution of packages or
39 packaging components, if such records pertain to the processes by
40 which such packages or packaging components are manufactured,
41 including the nature and amounts of substances used; and

42 (2) Who produces or supplies materials for the manufacture of packages
43 or packaging components, if such records pertain to the nature and

1 amount of substances in such materials or the identities or locations of
2 purchasers or recipients of such materials.

3 Upon request of the Secretary, any such person shall allow the Secretary to inspect and
4 copy such records or shall provide copies of such records to the Secretary.

5 **"§ 130A-309.77. Information available to public.**

6 A certificate of compliance, or a copy thereof, shall be furnished to members of the
7 public upon request. Any request from a member of the public for any certificate of
8 compliance from the manufacturer or distributor of a package or packaging component
9 shall be:

- 10 (1) Made in writing with a copy provided to the Department;
11 (2) Made specific as to package or packaging component information
12 requested; and
13 (3) Responded to by the manufacturer or distributor within 60 days."
14 Sec. 2. This act becomes effective October 1, 1991.