

37 d. **Distribution.** “Distribution” means the practice of taking title to (a) package(s) or
38 packaging component(s) for promotional purposes or resale. Persons involved solely in
39 delivering (a) package(s) or packaging component(s) on behalf of third parties are not
40 considered distributors.

41 e. **Distributor.** “Distributor” means any person, firm or corporation who takes title to
42 packages or packaging components, produced either domestically or in a foreign
43 country, purchased for resale or promotional purposes.

44 f. **Incidental Presence.** “Incidental Presence” means the presence of a regulated metal
45 or other regulated chemical as an unintended or undesired ingredient of a package or
46 packaging component.

47 g. **Intentional Introduction of regulated metals.** “Intentional Introduction” means the
48 act of deliberately utilizing a regulated metal in the formation of a package or packaging
49 component where its continued presence is desired in the final package or packaging
50 component to provide a specific characteristic, appearance, or quality.

51 The use of a regulated metal as a processing agent or intermediate to impart certain
52 chemical or physical changes during manufacturing, whereupon the incidental retention
53 of a residue of said metal or chemical in the final package or packaging component is
54 neither desired nor deliberate, is not considered intentional introduction for the purposes
55 of this Act where said final package or packaging component is in compliance with
56 Section 4 of this Act.

57 The use of post-consumer recycled materials as feedstock for the manufacture of new
58 packaging materials, where some portion of the post-consumer package or packaging
59 component may contain amounts of the regulated metals but is neither desired nor
60 deliberate, is not considered intentional introduction for the purposes of this Act where
61 said final package or packaging component is in compliance with Section 4 of this Act.

62 h. **Intentional Introduction of PFAS, Phthalates and other regulated chemicals.**
63 “Intentional Introduction” means the act of deliberately utilizing a regulated chemical in
64 the formation of a package or packaging component where its continued presence is
65 desired in the final package or packaging component to provide a specific characteristic,
66 appearance, or quality.

67 The use of a regulated chemical as a processing agent, mold release agent or
68 intermediate is considered intentional introduction for the purposes of this Act where the
69 regulated chemical is detected in the final package or packaging component.

70 The use of post-consumer recycled materials as feedstock for the manufacture of new
71 packaging materials, where some portion of the post-consumer package or packaging
72 component may contain amounts of the regulated chemicals but is neither desired nor
73 deliberate, is not considered intentional introduction for the purposes of this Act where
74 said final package or packaging component is in compliance with Section 4 of this Act.

75 *[States may choose to sunset the last clause of (h) no more than five years after bill*
76 *passage on the basis that post-consumer materials are expected to be free of any*
77 *intentionally added regulated chemicals.]*

- 78 i. **Manufacturer.** “Manufacturer” means any person, firm, association, partnership, or
79 corporation producing (a) package(s) or packaging component(s) as defined in this Act.
- 80 j. **Manufacturing.** “Manufacturing” means: Physical or chemical modification of (a)
81 material(s) to produce packaging or packaging components.
- 82 k. **Package.** “Package” means any container, produced either domestically or in a
83 foreign country, providing a means of marketing, protecting or handling a product and
84 shall include a unit package, an intermediate package or a shipping container as
85 defined in American Society of Testing and Materials (ASTM) specification D 996.
86 “Package” shall also mean and include such unsealed receptacles as carrying cases,
87 crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and
88 tubs.
- 89 l. **Packaging Component.** “Packaging Component” means any individual assembled
90 part of a package which is produced either domestically or in a foreign country, such as,
91 but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing,
92 exterior strapping, coatings, closures, inks, dyes, pigments, adhesives, stabilizers,
93 labels or any other additives. Tin-plated steel that meets the American Society for
94 Testing and Materials (ASTM) specification A 623 shall be considered as a single
95 package component. Electro-galvanized coated steel and hot dipped coated galvanized
96 steel that meets the American Society for Testing and Materials (ASTM) specifications
97 A653, A924, A879 and A591 shall be treated in the same manner as tin-plated steel.
- 98 m. **Perfluoroalkyl and polyfluoroalkyl substances; PFAS.** "Perfluoroalkyl and
99 polyfluoroalkyl substances" or "PFAS" means all members of the class of fluorinated
100 organic chemicals containing at least one fully fluorinated carbon atom.
- 101 n. **Phthalates.** "Phthalates" or “ortho-phthalates” mean all members of the class of
102 organic chemicals that are esters of phthalic acid and that contain 2 carbon chains
103 located in the ortho position.
- 104 o. **PBT vPvB.** “Persistent, Bioaccumulative, and Toxic (PBT)” substances and “very
105 Persistent and very Bioaccumulative (vPvB)” substances mean substances meeting the
106 criteria established in Section 1 of Annex XIII to the Registration, Evaluation,
107 Authorisation and Restriction of Chemicals (REACH) Regulation of the European Union
108 (EC) No 1907/2006 of the European Parliament and of the Council of 18 December
109 2006, as amended.
- 110 p. **PMT vPvM.** “Persistent, Mobile, and Toxic (PMT)” substances and “very Persistent
111 and very Mobile (vPvM)” substances mean substances meeting the criteria established
112 in “REACH: Improvement of guidance and methods for the identification and
113 assessment of PMT/vPvM substances: Final Report.” TEXTE 126/2019. Environmental
114 Research of the Federal Ministry for the Environment, Nature Conservation and Nuclear
115 Safety. Project No. (FKZ) 3716 67 416 0, Report No. FB000142/ENG. November 2019.

116

117 **q. Post-Consumer Recycled Material:** "Post-Consumer Recycled Material" means a
118 material generated by households or by commercial, industrial and institutional facilities
119 in their role as end-users of the product that can no longer be used for its intended
120 purpose, including returns of material from the distribution chain. Refuse-derived fuel or
121 other material that is destroyed by incineration is not a recycled material.

122 **r. Recycling.** "Recycling" means the process of collecting and preparing recyclable
123 materials and reusing the materials in their original form or using them in manufacturing
124 processes that do not cause the destruction of recyclable materials in a manner that
125 precludes further use.

126 **s. Substitute material.** "Substitute material" means a material used to replace lead,
127 cadmium, mercury, hexavalent chromium, phthalates, PFAS or other regulated
128 chemicals in a package or packaging component.

129 **t. Supplier.** "Supplier" means any person, firm, association, partnership, or corporation
130 who sells, offers for sale, or offers for promotional purposes packages or packaging
131 components which shall be used by any other person, firm, association, partnership, or
132 corporation to package (a) product(s).

133 **u. Toxic Chemical.** "Toxic chemical" is a chemical listed as a packaging chemical of
134 high concern as listed in Section 6.

135 **Section 4. Prohibition/Schedule for Removal of Intentional Amounts; Substitute**
136 **Materials.**

137 **a.** Prohibition of sale or distribution of package or packaging components containing
138 lead, cadmium, mercury or hexavalent chromium. Beginning XXXXXX a manufacturer,
139 supplier or distributor may not offer for sale or for promotional purposes a package or
140 packaging component to which lead, cadmium, mercury or hexavalent chromium has
141 been intentionally introduced during manufacturing or distribution in any amount greater
142 than an incidental presence. The sum of the concentration levels of lead, cadmium,
143 mercury or hexavalent chromium incidentally present in any package or packaging
144 component shall not exceed 100 parts per million by weight (0.01%). [*For states newly*
145 *adopting this legislation, Section 4(a) can be effective immediately as it is already*
146 *enacted in 19 states.*]

147 **b.** Prohibition of sale or distribution of package or packaging components containing
148 phthalates. Beginning XXXXXX, a manufacturer, supplier or distributor may not offer for
149 sale or for promotional purposes a package or packaging component to which
150 phthalates have been intentionally introduced during manufacturing or distribution in any
151 amount. The sum of the concentration levels of phthalates incidentally present in any
152 package or packaging component shall not exceed 100 parts per million by weight
153 (0.01%).

154 **c.** Prohibition of sale or distribution of a package or packaging components containing
155 PFAS. Beginning XXXXXX, a manufacturer, supplier or distributor may not offer for sale
156 or for promotional purposes a package or packaging component to which PFAS has
157 been intentionally introduced during manufacturing or distribution in any amount. There
158 shall be no detectable PFAS in any package or packaging component.

159 d. Substitute materials. No material used to replace a chemical regulated by this Act in a
160 package or packaging component may be used in a quantity or manner that creates a
161 hazard as great as or greater than the hazard created by the chemical regulated by this
162 Act. The Certificate of Compliance will require an assurance to this effect.

163 **Section 5. Exemptions.** All packages and packaging components shall be subject to
164 this Act, unless, an individual state adopts into their law, any or all of the below
165 exemptions, which shall then apply only in that state.

166 a. those packages or packaging components to which lead, cadmium, mercury or
167 hexavalent chromium have been added in the manufacturing, forming, printing or
168 distribution process in order to comply with health or safety requirements of State or
169 Federal law, provided that the manufacturer of a package or packaging component
170 must petition the [state administrative agency] for any exemption from the provisions of
171 this subsection for a particular package or packaging component based upon either
172 criterion; and provided further that the [state administrative agency] may grant an
173 exemption for up to two years if warranted by the circumstances; and provided further
174 that such an exemption may, upon reapplication for exemption and meeting the criteria
175 of this subsection, be renewed at two-year intervals; or

176 b. those packages or packaging components to which lead, cadmium, mercury or
177 hexavalent chromium have been added in the manufacturing, forming, printing or
178 distribution process for which there is no feasible alternative, provided that the
179 manufacturer of a package or packaging component must petition the [state
180 administrative agency] for any exemption from the provisions of this subsection for a
181 particular package or packaging component based upon the criterion and submit such
182 documentation as necessary to support the request for the exemption; and provided
183 further that the [state administrative agency] may grant an exemption for up to two years
184 if warranted by the circumstances; and provided further that such an exemption may,
185 upon reapplication for exemption and meeting the criterion of this subsection, be
186 renewed at two-year intervals. For purposes of this subsection, a use for which there is
187 no feasible alternative is one in which the petitioner conclusively demonstrates that the
188 regulated substance is essential to the protection, safe handling, or function of the
189 package's contents and that technical constraints preclude the use of alternatives. "No
190 feasible alternative" does not include use of any of the regulated metals for the
191 purposes of marketing.

192 **Section 6. Identification and Prohibition of packaging chemicals of high concern:**

193 In accordance with the requirements of this section, the department may periodically
194 revise and publish a list of packaging chemicals of high concern.

195 1. Criteria. A chemical may be included on the list under this section only if:

196 A. The chemical is included on the list of chemicals of concern published by the [state
197 administrative agency] or the chemical has been identified by an authoritative
198 governmental entity on the basis of credible scientific evidence as being:

199

- 200 (1) A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor; or
201 (2) Persistent, bioaccumulative and toxic (**PBT**); or
202 (3) Very persistent and very bioaccumulative (**vPvB**); or
203 (4) Persistent mobile and toxic (**PMT**); or
204 (5) Very persistent and very mobile (**vPvM**); or
205 B. The [state administrative agency] determines that there is strong credible scientific
206 evidence that the chemical is a reproductive or developmental toxicant, endocrine
207 disruptor or human carcinogen; and
208 C. The [state administrative agency] determines that there is strong credible scientific
209 evidence that the chemical meets one or more of the following additional criteria:
210 (1) The chemical has been found through biomonitoring studies to be present in human
211 blood, human breast milk, human urine or other human bodily tissues or fluids; or
212 (2) The chemical has been found through sampling and analysis to be present in
213 packaging; or
214 (3) The chemical has been added to or is present in a package.
215 2. Revisions. The [state administrative agency] may periodically review the list
216 published pursuant to this section and shall remove from the list any packaging
217 chemical of high concern that no longer meets the criteria of subsection 1. The [state
218 administrative agency] may add to the list additional packaging chemicals of high
219 concern that meet the criteria of subsection 1, except that the list under this section may
220 not at any one time include more than 10 packaging chemicals of high concern.
221 3. Toxic Chemical. A packaging chemical of high concern listed pursuant to this section
222 is defined as a toxic chemical. To fulfill this statute's goal of reducing the toxicity of
223 packaging waste, the [state administrative agency] may:
224 A. prohibit by rule the sale of packaging and packaging components to which the toxic
225 chemical has been intentionally introduced, by adding the chemical to Sec. 4 of this
226 statute with an effective date no later than two years after rule promulgation, or;
227 B. recommend to the state legislature that the toxic chemical be added to the prohibited
228 chemicals identified in Section 4 of this statute, with an effective date no later than two
229 years after date of enactment.
230 4. Regulatory efficiency. The [state administrative agency] may, in exercising its
231 discretionary authority under this section, consider the extent to which a chemical
232 known to be used or present in a package or packaging component is adequately
233 regulated by the Federal Government or an agency of this State to reduce or prevent
234 the same public health threats that would be the basis for addressing the chemical
235 under this section.

236

237 **Section 7. Certificate of Compliance:**

238 a) Upon request, a Certificate of Compliance stating that a package or packaging
239 component is in compliance with the requirements of this Act shall be furnished by its
240 manufacturer or supplier to the purchaser of the packaging or packaging component.
241 Where compliance is achieved under any state exemption(s) provided in Section 5, the
242 Certificate of Compliance shall state the specific basis upon which the exemption is
243 claimed. The Certificate of Compliance shall be signed by an authorized official of the
244 manufacturing or supplying company. The purchaser shall retain the Certificate of
245 Compliance for as long as the package or packaging component is in use. A copy of the
246 Certificate of Compliance shall be kept on file by the manufacturer or supplier of the
247 package or packaging component.

248 b) Public Access. Certificates of Compliance, or copies thereof, shall be furnished to the
249 [state administrative agency] and to members of the public upon request. A
250 manufacturer or supplier may make the Certificate of Compliance available on their
251 company website or through an authorized representative of the company such as a
252 packaging clearinghouse.

253 1. Any request from a member of the public for any Certificate of Compliance
254 from the manufacturer or supplier of a package or packaging component shall be:

- 255 • Made in writing with a copy provided to the [state administrative agency];
- 256 • Made specific as to package or packaging component information requested;
- 257 • Responded to by the manufacturer or supplier within 60 days.

258 c) If the manufacturer or supplier of the package or packaging component reformulates
259 or creates a new package or packaging component, the manufacturer or supplier shall
260 provide an amended or new Certificate of Compliance for the reformulated or new
261 package or packaging component to all current purchasers.

262 d) Enforcement: Certificate of compliance. If there are grounds to suspect that a
263 package is being offered for sale in violation of this chapter, the [state administrative
264 agency] may request that the manufacturer or distributor of the package provide a
265 certificate of compliance with the applicable provisions of this chapter. Within 30 days of
266 receipt of a request under this subsection, the manufacturer or distributor shall:

267 1. Provide the [state administrative agency] with the certificate attesting that the
268 package does not contain a chemical regulated under this act; or

269 2. Notify persons who sell the package in this State that the sale of the package
270 is prohibited and provide the [state administrative agency] with a copy of the notice and
271 a list of the names and addresses of those notified.

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273 **Section 8. State Review:**

274 The [state administrative agency] may consult with the Toxics in Packaging
275 Clearinghouse (TPCH) to review the effectiveness of this Act within five years of its
276 adoption and every 5 years thereafter. The [state administrative agency] may provide a
277 report based upon that review to the Governor and Legislature. The report may contain
278 recommendations to add other chemicals contained in packaging to the list set forth in
279 this Act in order to further reduce the toxicity of packaging waste, and a description of
280 the nature of the substitutes used in lieu of lead, mercury, cadmium, hexavalent
281 chromium, PFAS, phthalates and other regulated chemicals.

282 **Section 9. Multi-State Clearinghouse:**

283 The [state administrative agency] is authorized to participate in the Toxics in Packaging
284 Clearinghouse, a multi-state organization, to assist in carrying out the requirements of
285 this [Title/Act/section] and help coordinate joint outreach and education, responses to
286 manufacturer inquiries, review of exemption requests, packaging screening and testing
287 projects, and any other reports, activities or related functions that benefit from the
288 cooperative efforts of multiple states regarding implementation of their toxics in
289 packaging provisions.

290 **Section 10. Implementation, administration and enforcement; rules; violations:**

291 1. The department shall implement, administer and enforce this chapter and may adopt
292 rules as necessary for the implementation, administration and enforcement of this
293 chapter.

294 2. Violations. A person that violates any provision of this chapter is subject to penalties
295 in accordance with (the appropriate state authority). Each state to add its own
296 enforcement provisions as necessary.

297 **Section 11. Severability and Construction.**

298 The provisions of this Act shall be severable, and if any court declares any phase,
299 clause, sentence, or provision of this Act to be invalid, or its applicability to any
300 government, agency, person, or circumstance is declared invalid, the remainder of the
301 Act and its relevant applicability shall not be affected. The provisions of this Act shall be
302 liberally construed to give effect to the purposes thereof.

303 **Section 12. Effective Date.**

304 This Act shall become effective immediately upon adoption.

305 *As revised, December 1998, October 2004, December 2008, July 2012, February 2021.*