

The 2018 Florida Statutes

403.7191 Toxics in packaging.—

(1) FINDINGS AND INTENT.—The Legislature finds that:

- (a) Managing solid waste poses a wide range of hazards to public health and safety and to the environment.
- (b) Packaging comprises a significant percentage of total solid waste.
- (c) Heavy metals used in packaging contribute to solid waste management problems when present in emissions or ash when packaging waste is incinerated, in leachate when packaging waste is placed in landfills, or in compost when packaging waste is composted.
- (d) Based upon available scientific and medical evidence, lead, mercury, cadmium, and hexavalent chromium are of particular concern.
- (e) Eliminating or reducing heavy metals in packaging is a necessary first step in reducing the toxicity of packaging waste.

It is the intent of the Legislature to reduce the toxicity of packaging without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

(2) DEFINITIONS.—As used in this section:

- (a) “Distributor” means any person, firm, or corporation who takes title to goods purchased for resale. The term does not include a person, firm, or corporation that uses packages or packaging components to encase another product.
- (b) “Manufacturer” means any person, firm, or corporation who manufactures packages, packaging, or packaging components.
- (c) “Package” means any container providing a means of marketing, protecting, or handling a product and includes a unit package, an intermediate package, or a shipping container as defined in ASTM D996. The term 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.
- (d) “Packaging component” means any individual assembled part or component of a package, including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets ASTM specification A-263 shall be considered a single packaging component. “Packaging component” does not include an industrial packaging component intended to protect, secure, close, unitize, and provide pilferage protection for any product destined for commercial use.

(3) PROHIBITIONS; SCHEDULE FOR REMOVAL OF INCIDENTAL AMOUNTS.—Except as provided in subsection (4), a manufacturer or distributor may not sell a package or packaging component, and

a manufacturer or distributor of products shall not offer for sale or promotional purposes in this state, any package or any packaging component with a total concentration of lead, cadmium, mercury, and hexavalent chromium that exceeds 100 parts per million by weight (.01 percent).

(4) EXEMPTIONS.—All packages and packaging components shall be subject to the provisions of this section except:

(a) Packages or packaging components manufactured prior to May 12, 1993, with a code indicating the date of manufacture, or a package containing an alcoholic beverage that was bottled before July 1, 1993.

(b) Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium has been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal or state law or for which there is no feasible alternative. The manufacturer of a package or a packaging component must petition the department for any exemption from the provisions of this paragraph for a particular package or packaging component based upon either criterion. The department may grant a 2-year exemption if warranted, and may, upon the package or packaging component meeting either criterion of this paragraph, renew the exemption for an additional 2 years. For the purposes of this paragraph, a use for which there is no feasible alternative is one in which the use of the regulated substance is essential for the protection, safe handling, or function of the contents of the package.

(5) CERTIFICATE OF COMPLIANCE.—Each manufacturer or distributor of a package or packaging component shall provide, if required, to the purchaser of such package or packaging component, a certificate of compliance stating that the package or packaging component is in compliance with the provisions of this section. If compliance is achieved under any of the exemptions provided in paragraph (4)(b), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing or distributing company. The manufacturer or distributor shall retain the certificate of compliance for as long as the package or packaging component is in use. A copy of the certificate of compliance shall be kept on file by the manufacturer or distributor of the package or packaging component for at least 3 years from the date of the last sale or distribution by the manufacturer or distributor. Certificates of compliance, or copies thereof, shall be furnished within 60 days to the department upon the department's request. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, including a reformulation or creation to meet the maximum levels set forth in subsection (3), the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

(6) PUBLIC ACCESS.—Any request by the public for any certificate of compliance from the manufacturer or distributor of a package or packaging component shall:

(a) Be in writing, with a copy provided to the department.

- (b) Specify the package or packaging component information requested.
 - (c) Be responded to by the manufacturer or distributor within 90 days from receipt of the request.
- (7) ENFORCEMENT.—It is unlawful for any person to:
- (a) Violate any provision of this section or any rule adopted or order issued thereunder by the department.
 - (b) Tender for sale to a purchaser any package, packaging component, or packaged product in violation of this section or any rule adopted or order issued thereunder.
 - (c) Furnish a certificate of compliance with respect to any package or packaging component which does not comply with the provisions of subsection (3).
 - (d) Provide a certificate of compliance that contains false information.

Violations shall be punishable by a civil penalty as provided in s. [403.141](#).

History.—s. 28, ch. 93-207; s. 41, ch. 99-5; s. 36, ch. 2000-153; s. 25, ch. 2000-211; s. 45, ch. 2001-62; s. 53, ch. 2013-18.