

JAN 20 2012

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that phthalates are a
2 family of chemicals widely used in a variety of consumer
3 products to soften plastics, such as plastic toys and baby
4 teethers. Researchers report that regular contact with
5 phthalates through chewing on plastic toys may cause hormonal
6 damage in young children and increase the chances of serious
7 illness later in life. In 2006, San Francisco became the first
8 city in the United States to restrict phthalates in consumer
9 products. In 2007, California followed suit and became the
10 first state in the nation to ban children toys containing toxic
11 plastic softeners.

12 The legislature further finds that many states have laws
13 that prohibit the sale or distribution of packaging containing
14 intentionally added cadmium, lead, mercury, and hexavalent
15 chromium. The goal of these laws is to reduce the amount of
16 heavy metals in packaging and packaging components sold and
17 distributed throughout the nation.



1 In addition to state legislation, some companies are
2 limiting their use of products containing certain chemical
3 compounds in an effort to reduce their carbon imprint. For
4 example, Catholic Healthcare West, a large hospital network
5 consisting of forty-one hospitals in the United States,
6 advocates for polyvinyl chloride-free intravenous bag products
7 in its hospital network. Although the chemical components in
8 polyvinyl chloride gives products, such as intravenous bags,
9 flexibility and pliability, the potential harmful effects
10 include leaching into the intravenous medication preparations
11 and into patient blood streams, and absorption of medication
12 into the walls of the bags. Other large national companies,
13 such as Microsoft, Johnson & Johnson, and Wal-Mart have all
14 committed to phase out their use of polyvinyl chloride in
15 packaging and move toward safer and healthier alternatives.

16 The purpose of this Act is to prohibit the sale or
17 distribution of products or packaging containing certain toxic
18 chemicals.

19 **PART I**

20 SECTION 2. The Hawaii Revised Statutes is amended by
21 adding a new chapter to be appropriately designated and to read
22 as follows:



1 "CHAPTER

2 TOXICS IN PACKAGING

3 § -1 **Definitions.** As used in this chapter, unless the
4 context otherwise requires:

5 "ASTM" means the American Society for Testing Materials.

6 "Department" means the department of health.

7 "Director" means the director of health.

8 "Distribution" means the practice of taking title to a
9 package or a packaging component for promotional purposes or
10 resale. A person involved solely in delivering a package or a
11 packaging component on behalf of a third party shall not be
12 deemed to be engaged in distribution.

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

16 "Intentional introduction" means the act of deliberately
17 using a regulated metal in the formation of a package or
18 packaging component where its continued presence is desired in
19 the final package or packaging component to provide a specific
20 characteristic, appearance, or quality. "Intentional
21 introduction" shall not include:



1 (1) The use of a regulated metal as a processing agent or
2 intermediate to impart certain chemical or physical
3 changes during manufacturing, where the incidental
4 retention of a residue of that metal in the final
5 package or packaging component is not desired or
6 deliberate, if the final package or packaging
7 component is in compliance with section -2(c); or

8 (2) The use of recycled materials as feedstock for the
9 manufacture of new packaging materials, where some
10 portion of the recycled materials may contain amounts
11 of regulated metal, if the new package or packaging
12 component is in compliance with section -2(c).

13 "Manufacturer" means any person, firm, association,
14 partnership, or corporation producing a package or packaging
15 component.

16 "Manufacturing" means the physical or chemical modification
17 of a material to produce packaging or a packaging component.

18 "Package" means any container, produced either domestically
19 or in a foreign country, providing a means of marketing,
20 protecting, or handling a product from its point of manufacture
21 to its sale or transfer to a consumer, including a unity
22 package, an intermediate package, or a shipping container, as

1 defined in the ASTM specification D996. "Package" also includes
2 but is not limited to unsealed receptacles, including carrying
3 cases, crates, cups, pails, rigid foil and other trays;
4 wrappers; and wrapping films, bags, and tubs; provided that
5 "package" shall not include reusable bags.

6 "Packaging component" means any individual assembled part
7 of a package that is produced either domestically or in a
8 foreign country, including any interior or exterior blocking,
9 bracing, cushioning, weatherproofing, exterior strapping,
10 coatings, closures, inks, labels, dyes, pigments, adhesives,
11 stabilizers, or any additives. Tin-plated steel that meets the
12 ASTM specifications A623 shall be considered as a single package
13 component. Electrogalvanized coated steel and hot dipped coated
14 galvanized steel that meet the ASTM qualifications A591, A653,
15 A879, and A924 shall be treated in the same manner as tin-plated
16 steel.

17 "Purchaser" means a person who purchases and takes title to
18 a package or a packaging component from a manufacturer or
19 supplier for the purpose of packaging a product manufactured,
20 distributed, or sold by the purchaser.

21 "Recycled material" means a material that has been
22 separated from solid waste for the purpose of recycling the



1 material as a secondary material feedstock. Recycled materials
2 include paper, plastic, wood, glass, ceramics, metals, and other
3 materials. "Recycled materials" shall not include a regulated
4 metal that has been separated from other materials into its
5 elemental or other chemical state for recycling as a secondary
6 material feedstock.

7 "Regulated metal" means lead, mercury, cadmium, or
8 hexavalent chromium.

9 "Supplier" means a person who does or is one or more of the
10 following:

- 11 (1) Sells, offers for sale, or offers for promotional
12 purposes, a package or packaging component that is
13 used by any other person to package a product;
- 14 (2) Takes title to a package or packaging component,
15 produced either domestically or in a foreign country
16 that is purchased for resale or promotional purposes;
- 17 (3) Acts as an intermediary for the purchase of a package
18 or packaging component for resale from a manufacturer
19 located in another country to a purchaser located in
20 this State and who may receive a commission or a fee
21 on that sale; or



1 (4) Listed as the importer of record on a United States
2 Customs Service form for an imported package or
3 packaging component.

4 "Supplier" shall not include a person involved solely in
5 delivering a package or packaging component on behalf of a third
6 party.

7 § -2 **Restriction on manufacture or distribution.** (a)

8 Except as provided under section -3, on or after January 1,
9 2013, a manufacturer or supplier shall not offer for sale or for
10 promotional purposes in this State a package or packaging
11 component that includes a regulated metal in the package itself
12 or in a packaging component if the regulated metal has been
13 intentionally introduced into the package or packaging component
14 during manufacturing or distribution.

15 (b) Except as provided under section -3, on or after
16 January 1, 2013, a person shall not offer for sale or for
17 promotional purposes in this State a product in a package that
18 includes a regulated metal in the package itself or in packaging
19 component if the regulated metal has been intentionally
20 introduced into the package or packaging component during
21 manufacturing or distribution.



1 (c) Except as provided under section -3, on or after
2 January 1, 2013, a person shall not offer for sale or for
3 promotional purposes in this State a package, packaging
4 component, or product in a package if the sum of the incidental
5 total concentration levels of all regulated metals present in a
6 single-component package or in an individual packaging component
7 exceeds one hundred parts per million by weight.

8 § -3 **Exceptions.** (a) A package or a packaging
9 component is exempt from the requirements under section -2,
10 and shall be deemed in compliance with this chapter if the
11 package or packaging component meets any of the following
12 conditions:

13 (1) The package or packaging component is marked with a
14 code indicating a date of manufacture prior to January
15 1, 2013;

16 (2) A regulated metal has been added to the package or
17 packaging component in the manufacturing, forming,
18 printing, or distribution process to comply with the
19 health or safety requirements of a federal or state
20 law;

21 (3) The package or packaging component contains no
22 intentionally introduced regulated metals, but exceeds



1 the applicable maximum concentration level set forth
2 under section -2(c), only because of the addition of
3 a recycled material;

4 (4) A regulated metal was added to the package or
5 packaging component in the manufacturing, forming,
6 printing, or distribution process for a use for which
7 there is no feasible alternative;

8 (5) The package or packaging component is reused and
9 contains no intentionally introduced regulated metals,
10 but exceeds the applicable maximum concentration level
11 set forth under section -2(c), and the following
12 apply:

13 (A) The product conveyed by the package, the package,
14 or packaging component is otherwise regulated
15 under a federal or state health or safety
16 requirement;

17 (B) The transportation of the packaged product is
18 regulated under federal or state transportation
19 requirements; or

20 (C) The disposal of the package is otherwise
21 performed according to the requirements under
22 chapter 342J;



1 (6) The package or packaging component has a controlled
2 distribution and reuse, and contains no intentionally
3 introduced regulated metals, but exceeds the
4 applicable maximum concentration level set forth under
5 section -2(c); or

6 (7) The packaging or packaging component is a glass or
7 ceramic package or packaging component that does not
8 exceed 1.0 parts per million for cadmium, 5.0 parts
9 per million for hexavalent chromium, or 5.0 parts per
10 million for lead; provided that the following shall
11 not be exempt under this paragraph:

12 (A) A glass or ceramic package or packaging component
13 containing mercury; and

14 (B) A glass bottle package with paint or an applied
15 ceramic decoration on the bottle if the paint or
16 applied ceramic decoration contains lead or lead
17 components in excess of 0.06 per cent by weight.

18 (b) For purposes of this section, "no feasible
19 alternative" means a use, other than for purposes of marketing,
20 for which a regulated metal is essential to the protection, safe
21 handling, or function of the package's contents, and technical
22 constraints preclude the substitution of other materials.



1 § -4 **Additional regulated metals.** If the department
2 determines it is necessary to add other packaging substances to
3 the list of regulated metals under section -1 in order to
4 further reduce the toxicity of packaging waste, the department
5 may recommend additions to the governor and legislature.

6 § -5 **Penalties.** (a) A manufacturer or supplier of a
7 package or packaging component who knowingly and intentionally
8 offers for sale or for promotional purposes a package or
9 packaging component in violation of this chapter shall be guilty
10 of a misdemeanor.

11 (b) A person who offers for retail sale or for promotional
12 purposes a product in a package or packaging component that
13 includes a regulated metal shall be subject to administrative
14 penalties, as determined by the department.

15 § -6 **Enforcement.** (a) The department shall administer
16 and enforce this chapter.

17 (b) Upon obtaining consent or an inspection warrant and
18 presenting the proper credentials at a reasonable time, the
19 department may perform the following:

20 (1) Enter a factory, warehouse, or establishment in which
21 a package or packaging component is manufactured,
22 packed, held, or sold in violation or suspected



1 violation of this chapter; enter a vehicle that is
2 being used to transport, hold, or sell a package or
3 packaging component in violation or suspected
4 violation of this chapter; or enter a place where a
5 package or packaging component is in violation or
6 suspected of being held or sold in violation of this
7 chapter; and

8 (2) Inspect a factory, warehouse, establishment, vehicle,
9 or places described under paragraph (1), and all
10 pertinent equipment, raw material, finished and
11 unfinished materials, containers, and labeling in the
12 factory, warehouse, establishment, vehicle, or place.

13 (c) When taking action authorized under this chapter, the
14 department may secure a sample of a package, packaging
15 component, or product in a package. Upon request, the
16 department shall return a sample that is not destroyed during
17 testing when the department no longer has any purpose for
18 retaining the sample.

19 § -7 **Injunctive relief and other relief.** The director
20 may institute a civil action in any court of competent
21 jurisdiction for injunctive and other relief to:



- 1 (1) Address the manufacturing and distribution of a
- 2 package or packaging component containing an
- 3 intentionally introduced regulated metal;
- 4 (2) Prevent any violation of this chapter and any rule
- 5 adopted pursuant to this chapter; or
- 6 (3) Collect administrative penalties and obtain other
- 7 relief.

8 The court shall have power to grant relief in accordance with
 9 the Hawaii rules of civil procedure.

10 § -8 **Appeal.** If any party is aggrieved by the decision
 11 of the director, the party may appeal in a manner provided under
 12 chapter 91 to the circuit court of the circuit in which the
 13 party resides or has the party's principal place of business or
 14 in which the action in question occurred.

15 § -9 **Rules.** The department shall adopt rules pursuant
 16 to chapter 91 necessary for the purpose of this chapter."

17 **PART II**

18 SECTION 3. Chapter 321, Hawaii Revised Statutes, is
 19 amended by adding a new part to be appropriately designated and
 20 to read as follows:

21 "PART . INFANT AND TODDLER SAFETY

1 §321- **Definitions.** As used in this part, unless the
2 context otherwise requires:

3 "Bisphenol-A" means an estrogen-mimicking endocrine
4 disrupter chemical used in the production of epoxy resins and
5 polycarbonate plastics.

6 "Child care article" means all products designed or
7 intended by a manufacturer to facilitate sleep, relaxation, or
8 the feeding of children or to help children with sucking or
9 teething.

10 "Phthalates" and "phthalate esters" means a group of
11 chemical compounds that are used mainly to plasticize food
12 containers, plastic wrap, toys, shampoos, perfumes, and other
13 beauty products.

14 "Toy" means a product designed or intended by a
15 manufacturer to be used by children for recreational purposes.

16 §321- **Manufacture, sale, or distribution prohibited.** On
17 or after January 1, 2013, a person shall not manufacture, sell,
18 or distribute in commerce any toy or child care article that is:

19 (1) Intended for use by a child under three years of age
20 and contains bisphenol-A;



1 (2) Contains di-2-ethyl hexyl phthalates, di-n-butyl
2 phthalate, or butyl benzyl phthalate in concentrations
3 exceeding 0.1 per cent; or

4 (3) Intended for use by a child under three years of age,
5 is small enough to be placed in a child's mouth, and
6 contains diisononyl phthalate, diisodecyl phthalate,
7 or di-n-octyl phthalate in concentrations exceeding
8 0.1 per cent.

9 **§321- Alternatives to bisphenol-A and phthalates.**

10 Manufacturers shall use the least toxic alternative when
11 replacing bisphenol-A and phthalates in accordance with this
12 part. Pursuant to this part, manufacturers shall not replace
13 bisphenol-A and phthalates with either:

14 (1) Carcinogens rated as A, B, or C by the United States
15 Environmental Protection Agency's list of chemicals
16 evaluated for carcinogenic potential; or

17 (2) Reproductive toxicants that cause birth defects,
18 reproductive harm, or developmental harm as identified
19 by the United States Environmental Protection Agency.

20 **§321- Penalty.** Any person who intentionally violates
21 this part shall be guilty of a misdemeanor."

22 **PART III**



1 SECTION 4. Chapter 103D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§103D- Polyvinyl chloride-free intravenous products.

5 (a) To encourage the reduction of products containing chemicals
6 that may pose harmful effects to patients in state health
7 facilities and affiliates, the Hawaii health systems corporation
8 shall award contracts to the lowest responsible and responsive
9 bidders, with preference being given to intravenous products
10 that do not contain polyvinyl chloride. The corporation shall
11 adopt policies governing the preference for polyvinyl chloride-
12 free intravenous products for its regional systems to follow
13 accordingly.

14 (b) This section shall not apply when precluded by federal
15 requirements for competitive bidding or when its application
16 will disqualify the corporation from receiving federal funds or
17 aid."

18 PART IV

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 6. If any provision of this Act, or the
 2 application thereof to any person or circumstance, is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act that can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 7. New statutory material is underscored.

8 SECTION 8. This Act shall take effect upon its approval.
 9

INTRODUCED BY: John G. ...

Suzanne Chun Oakland

Rosely ...

[Handwritten signature]

Michelle

Clarene & Nicholas



S.B. NO. 2413

Report Title:

Toxic Heavy Metals; Polyvinyl Chloride; Phthalates; Packaging;
Toy; Procurement; Hawaii Health Systems Corporation

Description:

Prohibits the sale, distribution, or procurement of products or packaging containing certain toxic chemicals. Establishes a preference for the procurement of polyvinyl chloride-free intravenous products by the Hawaii health systems corporation.

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