



## KNOW THE LAW

# GROCERS' GUIDE TO THE TOXICS IN PACKAGING PREVENTION ACT

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## DESPITE ITS FOCUS ON PACKAGING MANUFACTURERS, A LAW TO REDUCE PACKAGE TOXICITY MAY IMPACT RETAILERS AS WELL.

The Toxics in Packaging Act Can Impact Retailers Prevention Act (TPPA), passed by the California Legislature in 2003, and amended in 2004, 2007 and 2008, was intended to reduce the toxicity in packaging that ends up in solid waste landfills.

The TPPA's primary focus is on packaging manufacturers; it bans manufacturers from selling or promoting packaging that contains one or more specified heavy metals if the metals have been intentionally introduced during manufacture or distribution of the packaging.

In addition, it restricts the total concentration of the regulated metals present in a package component to less than 100 parts per million by weight. And, it requires manufacturers to provide a certificate of compliance stating that the packaging they sell is compliant with the TPPA to each purchaser.

The heavy metals covered by the TPPA are lead, cadmium, mercury or hexavalent chromium. The TPPA is enforced by the California Department of Toxic Substances Control (DTSC).

Despite its focus on packaging manufacturers, retail grocers can get into trouble under the TPPA. Where a grocer

purchases packaging from a manufacturer to package a product manufactured or sold by the grocer, the grocer would be considered a "purchaser" under the TPPA.

A "purchaser" under the TPPA is someone who purchases and takes title to a package or packaging component from a manufacturer or supplier for the purpose of packaging a product manufactured, distributed or sold by the purchaser.



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Purchasers are required to retain the certificates of compliance received from manufacturers for as long as the packaging component is in use by the purchaser. This requirement would apply to the carry-out bags grocers give to customers as well as to

packaging used in the bakery, deli, meat, and prepared foods departments among others.

Where grocers purchase products already packaged from suppliers, the grocer would not be considered to be the manufacturer or purchaser but should request and retain certificates of compliance for the packaging from its supplier. There are two reasons for this.

First, DTSC may request copies of your certificates of compliance via an information request. Under the TPPA, DTSC can inspect packages in your store, purchase and sample those packages, and

request that you provide them with information regarding the packages, including the identity of your supplier and copies of the certificates of compliance.

Second, when a grocer sells a product in non-compliant packaging, but has a certificate of compliance from the manufacturer and relies on that certificate for compliance, the grocer will not be subject to any

administrative or civil penalties for the alleged sale of non-compliant packaging if the grocer takes prompt corrective action upon notice of violation from DTSC.

**“THE TPPA’S PRIMARY FOCUS IS ON PACKAGING MANUFACTURERS; IT BANS MANUFACTURERS FROM SELLING OR PROMOTING PACKAGING THAT CONTAINS ONE OR MORE SPECIFIED HEAVY METALS.”**

It is recommended as a best practice that grocers request certificates of compliance from all suppliers of packaging components and all suppliers of packaged products and maintain those certificates of compliance while they are still using the packaging or selling the products. Since the TPPA’s adoption, DTSC has only pursued a few enforcement actions focused on the manufacturer or purchaser of packaging.

It is unclear whether DTSC would pursue enforcement against a grocer for its sale of products packaged in non-compliant packaging, but requiring suppliers to provide you with certificates of compliance for their packaging will ensure that DTSC never gets that opportunity. ■



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