

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 33

(Delegate Hubbard, *et al.*)

Health and Government Operations

Finance

Child Care Articles Containing Bisphenol-A - Prohibition

This bill prohibits a person from manufacturing, distributing, or knowingly selling child care articles that contain bisphenol-A (BPA) on or after January 10, 2012. Manufacturers must instead use the least toxic alternative, and may not replace BPA with specific carcinogens or reproductive toxicants. Violators are guilty of a misdemeanor and subject to fines of up to \$10,000 per violation. The Department of Health and Mental Hygiene must adopt regulations to carry out the bill's provisions by January 1, 2011.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues beginning in FY 2012 due to the bill's penalty provision. Enforcement can be handled with existing resources, assuming it is complaint based.

Local Effect: Potential minimal increase in revenues beginning in FY 2012 due to the bill's penalty provision. Enforcement can be handled with existing resources, assuming it is complaint based.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A "child care article" means an empty bottle or cup to be filled with food or liquid that is designated or intended by the manufacturer to be used by a child younger than age 4. However, if a federal law regulating the use of BPA in child care articles is enacted, "child care article" will be defined as specified in federal law.

Current Law: There are no laws in Maryland that address BPA.

Background: BPA is a compound found in many plastics. According to the federal Centers for Disease Control and Prevention (CDC), BPA can leach from the linings of canned foods and polycarbonate water and baby bottles. Since the 1960s, the U.S. Food and Drug Administration (FDA) generally has considered exposure to BPA through food packaging to be safe. However, in January 2010 FDA released new findings stating it has some concern about the effects of BPA on the brain, behavior, and prostate gland in fetuses, infants, and young children. The Environmental Working Group notes that recent studies show that babies are exposed to BPA at levels above those that cause adverse effects in laboratory studies, including birth defects of the male and female reproductive systems. BPA has been found in breast milk, amniotic fluid, and cord blood, indicating that there is exposure to the developing fetus and newborn.

Under the Toxic Substances Control Act of 1976, the U.S. Environmental Protection Agency (EPA) ensures that chemicals manufactured, imported, processed, or distributed in commerce, or used or disposed of in the United States, do not pose any unreasonable risks to human health or the environment. There are roughly 82,000 chemicals in EPA's chemical inventory, including BPA. Over the past 34 years, EPA has regulated five chemicals within its chemical inventory.

Every two years the U.S. Government Accountability Office (GAO) provides the U.S. Congress with an update on its High-Risk Program, which highlights major problems at the federal level. GAO has designated EPA's process for assessing and controlling toxic chemicals as a high-risk area in 2009 because EPA has failed to assess the toxicity of many chemicals used commercially in the United States. Currently EPA has a backlog of over 70 ongoing toxic assessments. EPA's most recent review of BPA occurred in 1988, although the agency recently stated it was going to begin developing an action plan summarizing the risks of BPA. Studies over the past 20 years have indicated BPA is toxic at doses far below EPA's safety standards.

FDA is taking a number of steps to reduce human exposure to BPA by supporting actions to stop producing baby bottles and infant feeding cups containing BPA for the U.S. market, facilitating the development of BPA alternatives for the linings of infant formula cans, supporting efforts to replace BPA in other food can linings, supporting a shift to a more robust oversight of BPA, and seeking further external scientific input regarding BPA. However, FDA is not recommending families change the use of infant formula or foods as it believes that the benefits of good nutrition outweigh the potential risk from BPA exposure.

According to the National Conference of State Legislatures, 18 states considered legislation in 2009 to curtail the use of BPA. Connecticut and Minnesota were the first states to ban the use of BPA in certain children's products.

Due to consumer demand, a number of manufacturers have voluntarily stopped producing child care articles containing BPA, including the six main baby bottle manufacturers. Wal-Mart, Toys "R" Us, and Babies "R" Us have all begun phasing out certain child care articles containing BPA.

State Revenues: Potential increase in general fund revenues beginning in fiscal 2012 under the bill's monetary penalty provision for those cases heard in District Court.

State Expenditures: The bill's requirements can be handled with existing resources, assuming enforcement is based on complaints. Many producers are phasing BPA out of their products; therefore, it is assumed that complaints will be minimal. However, if a large number of complaints are filed, the Department of Health and Mental Hygiene may require additional staff to enforce the bill's provisions, resulting in an increase in expenditures.

Local Fiscal Effect: Potential minimal increase in revenues beginning in fiscal 2012 due to the bill's penalty provision for those cases heard in circuit court. Enforcement can be handled with existing resources, assuming it is complaint based. If a large number of complaints are filed, local health department workloads may increase.

Small Business Effect: Potential increase in expenditures beginning in fiscal 2012 for small business manufacturers that use BPA to make child care articles intended for use by children. While some manufacturers in Maryland may be affected by the bill, it cannot be reliably determined at this time how many, if any, have 50 or fewer employees and are considered small businesses.

Potential decrease in small retailer revenue in fiscal 2012 for retailers that will not be allowed to sell products in their existing stock that contain BPA on or after January 1, 2012.

Additional Information

Prior Introductions: HB 15 of 2009, as amended, was similar to this bill. The amended version passed in the House but received an unfavorable report from the Senate Finance Committee.

Cross File: SB 213 (Senator Frosh, *et al.*) - Finance.

Information Source(s): U.S. Environmental Protection Agency, Environmental Working Group, U.S. Food and Drug Administration, U.S. Government Accountability Office, U.S. Department of Health and Human Services, National Conference of State Legislatures, Office of the Attorney General (Consumer Protection Division), Department of Health and Mental Hygiene, Department of Legislative Services

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