

HOUSE BILL REPORT

HB 1180

As Reported by House Committee On:
Environmental Health
General Government Appropriations

Title: An act relating to the use of bisphenol A.

Brief Description: Regarding the use of bisphenol A.

Sponsors: Representatives Dickerson, Hudgins, Campbell, Dunshee, Pedersen, Hunt, Rolfes, Appleton, Moeller, Kagi, Van De Wege, Hunter, Cody, Chase, Green, Morrell, Pettigrew, White, Williams, Simpson and Kenney.

Brief History:

Committee Activity:

Environmental Health: 1/28/09, 2/4/09 [DPS];

General Government Appropriations: 2/17/09, 2/25/09 [DP2S(w/o sub ENVH)].

Brief Summary of Second Substitute Bill

- Bans the manufacture and sale of containers made with bisphenol A designed to hold food and beverages used by children under the age of 3 and sports water bottles made with bisphenol A.

HOUSE COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Campbell, Chair; Chase, Vice Chair; Dickerson, Dunshee, Finn, Hudgins and Rolfes.

Staff: Pam Madson (786-7111)

Background:

Bisphenol A (BPA) is a chemical that is used to harden plastic. It is found in a wide variety of products, including baby bottles, reusable water bottles, tableware, and storage containers. It is used in the thin coating on the interior of food and beverage cans to prevent corrosion and food contamination from the metals.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Potential health effects from exposure to BPA are reproductive effects and developmental effects, particularly in newborns and infants. The U.S. Food and Drug Administration (FDA) is continuing its review of current research and studies and is researching the potentially low dose effects of BPA. The government of Canada is taking steps to restrict the use of BPA in baby bottles. Some manufacturers have discontinued the use of BPA in food and beverage products used by young children.

The Department of Ecology (DOE), in consultation with the Department of Health (DOH), has the responsibility of identifying high priority chemicals that are of concern to children.

Summary of Substitute Bill:

The following products may not be manufactured, sold, or distributed in Washington, beginning July 1, 2010:

- containers designed to hold food and beverages primarily for children under 3 years of age and made using BPA. These are empty containers that are filled by consumers such as baby bottles; and
- sports water bottles containing BPA.

By July 1, 2012, the DOE must do assessments for alternatives to the use of BPA for all containers designed for food and beverages for human consumption. The DOE must prioritize assessments of containers used to hold food and beverage products intended for use by children under 3 years of age. Information for the alternatives assessment for products not banned but using BPA must be provided by the manufacturer of the product.

If the DOE finds there is a safer alternative, it must submit a report to the Legislature prior to the next legislative session. Prior to submitting the report, the DOE must publish its findings so that those most interested will be aware of the findings and can submit comment. After the legislative session, if no action is taken by the Legislature, the DOE may proceed with rule-making to ban the products containing BPA that have an available alternative. A product banned by rule must have an available alternative that is approved by the FDA.

In making its findings, the DOE may make and utilize certain assumptions regarding available alternatives.

Manufacturers must notify retailers of banned products and recall the product reimbursing the retailer or consumer who purchased the product.

Manufacturers, retailers, or distributors who knowingly distribute products containing BPA in violation of the chapter are subject to a civil penalty of \$5,000 for the first offense and \$10,000 for subsequent offenses. Manufacturers who fail to provide information for the alternatives assessments are subject to a civil penalty not to exceed \$5,000. Retailers who unknowingly sell products containing BPA are not subject to the civil penalties under this chapter.

All penalties are deposited in the State Toxics Control Account (Account) and expenses for this program are paid from the Account.

Substitute Bill Compared to Original Bill:

The substitute bill:

- corrects the reference to sports water bottles to include only those bottles made using BPA;
- directs the DOE to give priority to containers made with BPA that hold products intended for consumption by children under 3 years old (such as liquid infant formula in a can) when conducting its alternative assessments, rather than prohibiting the sale and distribution of these products as of July 1, 2010;
- requires that before a product is banned by rule, there must be a product using an alternative to BPA that is approved by the FDA;
- changes the penalty for manufacturers who fail to provide information required under the act to a civil penalty not to exceed \$5,000 from an amount representing the cost to the DOE of obtaining the information;
- provides that alternatives to BPA are determined by the DOE's alternative assessment process and removes the directive that manufacturers not use chemicals on the list of high priority chemicals of concern for children as alternatives;
- removes the section that amends the State Toxics Control Account (Account) but continues to direct payment of expenses necessary to administer the act from the Account; and
- provides rule-making authority to the DOE.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill presents a reasonable approach to protecting those most vulnerable from the effects of exposure to BPA. It targets products that pose the greatest risk to children and pregnant women. Children aged 3 years old and under are at highest risk for negative effects from this chemical. One-hundred-and-fifty studies have linked BPA to a variety of health impacts. Ninety-three percent of study populations have found BPA in urine samples. Data from Japan and the United States indicate it is present in people at a level that is known to cause harm in laboratory animals. Animal studies have shown that health effects are seen at levels that we see in infants and young children. Low dose health effects include a variety of organ systems where developmental exposure has caused abnormalities in the brain, prostate, and breast, and associations with obesity and diabetes.

Canada is moving to ban BPA in products for children. Walmart, Safeway, Playtex, and Toys"R"Us are eliminating products containing BPA. Products are being advertised as BPA free. There are alternatives on the market for these banned products. The FDA has declared BPA safe at current levels of exposure. However, a panel of independent scientists challenged this conclusion. The FDA is going to review their conclusion that BPA is safe.

Bisphenol A is present in water sources based on ground and surface water testing and is found in sediment as well.

Supporters of the bill have listened to stakeholders and have made changes that are reflected in the proposed substitute bill. The bill bans products we already know have alternatives. With other products the process will be slower using the DOE's work on assessing alternatives and the list of chemicals of high concern for children. It sets out a solid method of testing other containers. This state has taken the lead in passing a bill on toxic toys. This was a major consideration that moved federal legislation along. This legislation may push further action.

(With concerns) There is no definition of manufacturer so it might include vertically integrated retailers and subject them to penalties. Some issues are addressed in the substitute bill. With respect to information required of a producer, producers may not be the ones to supply the information required under the bill.

(Neutral) Changes in the substitute bill reflect comments from the DOE and others. There is still a fiscal impact to the DOE. The DOE supports efforts to restrict use of toxic chemicals. Human health risk assessment has shifted to focus more on young children who are most vulnerable. The list of chemicals of high concern to children will not be ready until 2010. If a chemical is banned there must be a safer alternative available. The limited ban is appropriate. It looks at kids and baby bottles. The basic principle is that we prevent the problem before it happens.

(Opposed) This is an old material. It is one of the best tested of all chemicals. Science that has been reviewed worldwide concludes that BPA is not a risk to human health, including youth or children, especially at the low doses to which humans are exposed. Many studies support the safety of the chemical. There are no alternatives that have been tested nearly as well as BPA. Laboratory animal studies are limited and inconclusive. The cause for concern is based on effects found in animals.

This bill puts a ban in place before an alternatives assessment is completed. The DOH is a more appropriate agency to deal with this issue.

Some products that will be subject to alternative assessments can show that BPA does not migrate into the food or beverage product. There are few alternatives that are economically available for large water containers. Businesses will be adversely affected. The FDA regulates the food industry. The United States has one of the safest food chains in the world in a large part due to the FDA. No country has declared BPA unsafe.

Persons Testifying: (In support) Representative Dickerson, prime sponsor; Dr. Ted Schettler, Science and Environmental Health Network; Erika Schreder and Nick Federici,

Washington Toxics Coalition; Karen Bowman, Washington State Nurses; Elizabeth Davis, League of Women Voters of Washington; Ruth Shearer; Blair Anundson, Washington State Public Interest Research Group; Heather Trim, People for Puget Sound; and Joellen Wilhelm.

(With concerns) Melanie Stewart, Can Manufacturers Institute.

(Neutral) Rob Duff, Department of Ecology.

(Opposed) Brad Tower, Northwest Grocery Association; Jim Connelly, Lodiwater Company and Northwest Bottled Water Association; Bruce Tornquist, Northwest Bottled Water Association; Dr. Steven Hentges, Polycarbonate/BPA Global Group and American Chemistry Council; Grant Nelson, Association of Washington Business; and Randy Ray, Pacific Seafood Processors Association.

Persons Signed In To Testify But Not Testifying: Mark Johnson, Washington Retail Association.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environmental Health. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong and Short.

Staff: Owen Rowe (786-7391)

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Environmental Health:

The second substitute bill removes the requirement that the Department of Ecology (DOE) conduct alternatives assessments on containers made with bisphenol A (BPA) that are used for food and beverages intended for human consumption, and removes provisions that support the process for identifying products that are safer alternatives to those containing BPA.

Additionally, the second substitute bill clarifies the definition of “metal can” to a single walled container that is manufactured from metal substrate designed to hold or pack food or beverages and sealed by can ends manufactured from metal substrate. The metal substrate for the can and the can ends must be equal to or thinner than 0.0149 inch.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are many alternatives available to manufacturers for materials that are free of BPA, so that a ban by 2010 should not be a burden. This bill bans BPA only if the DOE determines that there are alternatives available. The negative health impacts shown in animal laboratory studies from exposure to BPA support the effort to ban this substance in Washington. A ban on the use of BPA will reduce health care costs. This substance has been found in Puget Sound and Columbia River sediments and there is concern about its impact on wildlife.

(With concerns) We market 135 billion cans per year and all are designed with a rigid liner that contains BPA. Make sure that cans are exempt from this bill so that there is no disruption to the food industry, there are no other alternatives to BPA available. The DOE is not responsible for food safety, the Department of Health is better suited to enforce food safety. There needs to be more clarification on how enforcement would work. Food product safety is better dealt with at the federal level.

(Opposed) The state should rely on the federal government to manage exposure to BPA. The state program created under this bill is unworkable. The DOE is not the right agency to manage exposure to BPA. A report by the federal Food and Drug Administration, released on February 9 of this year, reports that BPA is safe for young children. Bisphenol A protects people from food borne illnesses by keeping food fresh. Banned products will have a negative fiscal impact on hospitals, schools, and institutions.

Persons Testifying: (In support) Representative Dickerson, prime sponsor; Nick Federici, Washington Toxics Coalition; Sophia Aragon, Washington State Nurses Association; and Heather Trim, People for Puget Sound.

(With concerns) Melanie Stewart, Can Manufacturers Institute; and Carolyn Logue, Washington Food Industry.

(Opposed) Randy Ray, Pacific Seafood Processors Association; Dan Coyne, Northwest Food Processors Association; Brad Tower, Northwest Grocery Association; and Grant Nelson, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.