



2009 SENATE BILL 271

August 21, 2009 – Introduced by Senators LASSA, CARPENTER, KAPANKE, HANSEN, WIRCH, LEHMAN, ROBSON, RISSER and TAYLOR, cosponsored by Representatives ROYS, MOLEPSKE JR., MASON, BENEDICT, BROOKS, BERCEAU, HUBLER, CULLEN, MILROY, PASCH, TURNER, BLACK, JORGENSEN, PARISI, STEINBRINK, VRUWINK, DANOU, SOLETSKI, RICHARDS, SPANBAUER and CLARK. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

1 **AN ACT to create** 20.115 (1) (ip), 100.335 and 814.75 (1d) of the statutes; **relating**
2 **to:** prohibiting the manufacture and sale at wholesale of certain baby bottles
3 and cups for children that contain bisphenol A, creating labeling requirements,
4 making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill prohibits manufacturing or selling, or offering to sell, at wholesale an empty baby bottle or spill-proof cup primarily intended for use by a child five years of age or younger (child's container) if the child's container contains bisphenol A. A manufacturer or wholesaler must ensure that a child's container sold or offered for sale in this state is conspicuously labeled as not containing bisphenol A. The bill does not apply to the sale of a used child's container. Under the bill, the Department of Agriculture, Trade and Consumer Protection (DATCP) may, after a hearing, order a manufacturer or wholesaler of a container that violates the provisions of the bill to recall or repair the container.

A person who violates the provisions of the bill may be fined up to \$5,000, imprisoned in the county jail for up to one year, or both, and may also be required to forfeit \$100 to \$10,000 for each violation. Each container manufactured, sold, or offered for sale in violation of the provisions of the bill constitutes a separate violation. If a court imposes a fine or forfeiture, the court must also impose a surcharge equal to 50 percent of the amount of the fine or forfeiture. Under the bill, surcharges are appropriated to DATCP for administering and enforcing the provisions of the bill.

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Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (1) (ip) of the statutes is created to read:

2 20.115 (1) (ip) *Bisphenol A enforcement*. All moneys received under s. 100.335
3 (6), for enforcement and administration of s. 100.335.

4 **SECTION 2.** 100.335 of the statutes is created to read:

5 **100.335 Child’s containers containing bisphenol A.** (1) In this section,
6 “child’s container” means an empty baby bottle or spill-proof cup primarily intended
7 by the manufacturer for use by a child 5 years of age or younger.

8 (2) No person may manufacture or sell, or offer for sale, at wholesale in this
9 state a child’s container that contains bisphenol A. A manufacturer or wholesaler
10 who sells or offers for sale in this state a child’s container shall ensure the container
11 is conspicuously labeled as not containing bisphenol A.

12 (3) (a) The department may commence an action in the name of the state to
13 restrain by temporary or permanent injunction a violation of this section.

14 (b) The department or a district attorney may commence an action in the name
15 of the state to recover a forfeiture to the state of not less than \$100 nor more than
16 \$10,000 for each violation of this section.

17 (c) A person who violates this section may be fined not more than \$5,000,
18 imprisoned for not more than one year in the county jail, or both.

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1 (d) For purposes of this subsection, each child's container manufactured, sold,
2 or offered for sale in violation of this section constitutes a separate violation.

3 (4) The department may, after notice and opportunity for hearing under s.
4 93.18, order a manufacturer or seller of a child's container in violation of this section
5 to recall the container or to repair any defects in a container that has been sold. No
6 person may refuse to comply with an order under this subsection.

7 (5) This section does not apply to the sale of a used child's container.

8 (6) If a court imposes a fine or forfeiture for a violation of this section, the court
9 shall impose a bisphenol A surcharge under ch. 814 equal to 50 percent of the amount
10 of the fine or forfeiture.

11 **SECTION 3.** 814.75 (1d) of the statutes is created to read:

12 814.75 (1d) The bisphenol A surcharge under s. 100.335.

13 **SECTION 4. Effective date.**

14 (1) This act takes effect on the 90th day beginning after publication.

15 (END)