

2009 DRAFTING REQUEST

Bill

Received: **01/28/2009**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Jessica Ford Kelly**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit sale of polycarbonate baby bottles containing bisphenol A

Instructions:

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	csundber 01/29/2009 csundber 06/04/2009	chanaman 01/29/2009 jdyer 06/04/2009	chanaman 01/29/2009 _____ _____	_____	cduerst 01/29/2009		State Crime
/P2	csundber 06/08/2009	jdyer 06/08/2009	jfrantze 06/04/2009	_____	mbarman 06/04/2009		State Crime
/1	csundber	wjackson	phenry	_____	cduerst		State

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/4			jfrantze 08/14/2009	_____	mbarman 08/14/2009	cduerst 08/17/2009	

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*at
intro*

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1/4 wj 8/13

J. 8/13
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Handwritten signatures and initials:
Sph Ph/OT²

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/1			pherry <i>[Handwritten signature]</i>		cduerst <i>[Handwritten signature]</i>		

[Handwritten signatures and dates: 5/15/09, JF 7/17]

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Identical to LRB:

For: Julie Lassa (608) 266-3123

By/Representing: Jessica Ford Kelly

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May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

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Submit via email: YES

Requester's email: Sen.Lassa@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

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FE Sent For:

Jo
6/4
Jo/ph
6/4
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By/Representing: **Jessica Ford Kelly**

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/?	csundber	A 1/29 jld	J Bell	1/29			

FE Sent For:

<END>

Sundberg, Christopher

From: Kelly, Jessica
Sent: Wednesday, January 28, 2009 10:40 AM
To: Sundberg, Christopher
Subject: Drafting Request - please put on a rush

We would like to draft legislation to ban Wisconsin retailers from selling polycarbonate baby bottles containing bisphenol A.

We are looking to implement a staggered penalty system that DATCP can use to enforce the ban...I would like to use the penalty structure set up in 100.26(3)

Thank you!

Jessica Ford Kelly

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882
608-266-3123
1-800-925-7491 toll-free
608-267-6797



LPS-
NO (B) ↓

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X

Gen

1 AN ACT ...; relating to: prohibiting the sale of polycarbonate baby bottles that
2 contain bisphenol A and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits selling at retail, or offering for sale at retail, a polycarbonate baby bottle that contains bisphenol A. A person who violates the prohibition is subject to a fine of \$25 to \$5,000, imprisonment up to one year, or both.

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:

3 SECTION 1. 100.26 (3) of the statutes is amended to read:
4 100.26 (3) Any person who violates s. 100.15 or, 100.19, or 100.335, or who
5 intentionally refuses, neglects or fails to obey any regulation or order made or issued
6 under s. 100.19 or 100.20, shall, for each offense, be fined not less than \$25 nor more
7 than \$5,000, or imprisoned in the county jail for not more than one year or both.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27; 1997 a. 55, 111, 201, 253, 283; 1999 a. 32; 2001 a. 16, 109.

Sundberg, Christopher

From: Kelly, Jessica
Sent: Thursday, May 14, 2009 2:34 PM
To: Sundberg, Christopher
Cc: McWilliams, Emily; 'Bruce Speight'
Subject: Changes to 1837/P1

Chris,

Can you make some modifications to the P draft above? Basically, it will be a completely different bill...can you have a P2 for us please?

- (1) Define a child as a person under the age of three years.
- (2) Define a "children's product" under the definition of this bill as an empty bottle or cup to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child.
- (3) Require that manufacturers and wholesalers label all children's products as BPA free
- (4) Prohibit manufacturers or wholesalers from selling or offering for sale in this state a children's product that contains bisphenol-A with an effective date of 90 days after the passage of the bill.
- (5) Prohibit retailers from selling or offering for sale in this state a children's product that contains bisphenol-A with an effective date of 270 days after the passage of the bill.
- (6) Put the language in 100.37(3) with the penalty structure in 100.37(8)
- (7) Require that all penalties and forfeitures that DATCP collects from manufacturers, wholesalers and retailers to be put into a SEG fund for the purpose of paying for the administration of enforcement.

We are working with Rep. Roys on this legislation and would like as quick of a turn around on the draft as humanly possible. ;-) Thank you!

Jessica Ford Kelly

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882
608-266-3123
1-800-925-7491 toll-free
608-267-6797

6/1/09

Julie/Lessa

BPA draft:

1. Penalty: same as 100.37 (G)
2. Surcharge = $\frac{1}{2}$ Fine imposed



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INS A ✓

✓ bottles and cups for children

Regen

✓ creating labeling requirements, making an appropriation

1 AN ACT to amend 100.26 (3); and to create 100.335 of the statutes; relating to:

2
3

prohibiting the sale of polycarbonate baby bottles that contain bisphenol A and providing a penalty. **manufacture and** ✓

STET

~~and making an appropriation~~
Analysis by the Legislative Reference Bureau

INS 1-3 ✓

This bill prohibits selling at retail, or offering for sale at retail, a polycarbonate baby bottle that contains bisphenol A. A person who violates the prohibition is subject to a fine of \$25 to \$5,000, imprisonment of up to one year, or both.

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

ACRIME ✓

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

4
5
6
7
8

SECTION 1. 100.26 (3) of the statutes is amended to read:
100.26 (3) Any person who violates s. 100.15 or, 100.19, or 100.335, or who intentionally refuses, neglects or fails to obey any regulation or order made or issued under s. 100.19 or 100.20, shall, for each offense, be fined not less than \$25 nor more than \$5,000, or imprisoned in the county jail for not more than one year or both.

- ①
- ②
- ③
- 4

SECTION 2. 100.335[✓] of the statutes is created to read:

100.335 Certain baby bottles prohibited. No person may sell at retail or offer for sale at retail a polycarbonate baby bottle that contains bisphenol A.

(END)

INS 2-1 ✓

1

Insert A:

→ * ^g This bill prohibits manufacturing or selling at wholesale or retail an empty cup ^{child's} or ~~container~~ intended for use by a child (child's container) if the ~~cup~~ container contains bisphenol A. A manufacturer or wholesaler must ensure that a child's container sold or offered for sale in this state is clearly labeled as not containing bisphenol A. 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. ^{bottle} ^{or}

If a court imposes a fine on a person who violates the provisions of the bill, the court must also impose a surcharge equal to 50 percent of the amount of the fine. Under the bill, surcharges are appropriated to the Department of Agriculture, Trade and Consumer Protection for administering and enforcing the provisions of the bill.

2

Insert 1-3:

3

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

4

20.115 (1) (ip) *Bisphenol A enforcement.* All moneys received under s. 100.335

5

(5), for enforcement and administration of s. 100.335.

6

Insert 2-1:

7

100.335^g Child's containers containing bisphenol A. (1) In this section,

8

"child's container" means an empty bottle or cup intended by the manufacturer for use by a child.

9

10

(2) No manufacturer or wholesaler may sell or offer for sale in this state a child's container that contains bisphenol A. A manufacturer or wholesaler who sells or offers for sale in this state a child's container shall ensure the container is clearly labeled as not containing bisphenol A.

11

12

13

14

(3) No retailer may sell or offer for sale in this state a child's container that contains bisphenol A.

15

16

(4) Any person who violates this section may be fined not more than \$5,000 or

17

imprisoned ^{for} not more than one year in the county jail or both.



1 (5) If a court imposes a fine for a violation of this section, the court shall impose
2 a bisphenol A forfeiture ^{surcharge} under ch. 814 equal to 50 percent of the amount of the fine.

3 SECTION 2. 814.75 (1d) of the statutes is created to read:

4 814.75 (1d) The bisphenol A surcharge under s. 100.335.

5 SECTION 3. Effective date.

6 (1) This act takes effect on the 90th day after the day of publication.

(end insert 2-1)

6/8 Jessica/Lessa

LRB-1837/P2 - redraft as /1, no changes



RMNR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2009 BILL

Regen

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 of bottles and cups for children that
3 contain bisphenol A, creating labeling requirements, making an appropriation,
4 and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This bill prohibits manufacturing or selling at wholesale or retail an empty bottle or cup intended for use by a child (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 clearly labeled as not containing bisphenol A. 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.

If a court imposes a fine on a person who violates the provisions of the bill, the court must also impose a surcharge equal to 50 percent of the amount of the fine. Under the bill, surcharges are appropriated to the Department of Agriculture, Trade and Consumer Protection for administering and enforcing the provisions of the bill.

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 (5), 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 bottle or cup intended by the manufacturer for
7 use by a child.

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

12 (3) No retailer may sell or offer for sale in this state a child's container that
13 contains bisphenol A.

14 (4) Any person who violates this section may be fined not more than \$5,000 or
15 imprisoned for not more than one year in the county jail or both.

16 (5) If a court imposes a fine for a violation of this section, the court shall impose
17 a bisphenol A surcharge under ch. 814 equal to 50 percent of the amount of the fine.

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

19 814.75 (1d) The bisphenol A surcharge under s. 100.335.

20 **SECTION 4. Effective date.**

Sundberg, Christopher

From: Kelly, Jessica
Sent: Monday, July 13, 2009 12:49 PM
To: Sundberg, Christopher
Subject: Update on Bisphenol A Legislative Language 1837

Chris,

Can you please make a /2 with the changes below? The changes are the outcome of a meeting we had with DATCP.

- ✓(1) Set the definition of age in the bill to make it three and under.
- ✓(2) Allow DATCP to have recall authority under 100.42 of the statutes.
- 9 (3) Chris, DATCP wants us to change the language to "bottles and sippy cups shall be prohibited from sale in this state" instead of spelling out manufacturers, retailers and wholesalers. Would the effect of this, however, be only to outlaw retailers from selling BPA bottles and not manufacturers and wholesalers? If so, we do NOT want that.
- ✓(4) Instead of having a container that is "clearly labeled as not containing bisphenol A", change it to "conspicuously labeled as not containing bisphenol A"
- ✓(5) We would like to exempt second hand stores and garage sales.
- 2 (6) Specify that the fund for the fines and forfeitures go to a Program Revenue account.

Jessica Ford Kelly

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State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882
608-266-3123
1-800-925-7491 toll-free
608-267-6797

Sundberg, Christopher

From: Kelly, Jessica
Sent: Tuesday, July 14, 2009 9:01 AM
To: Sundberg, Christopher
Subject: RE: Update on Bisphenol A Legislative Language 1837

Creating an exemption for garage and second hand stores sounds fine.

As far as the PR appropriation, that sounds fine too. I guess I forgot what I had in the original draft. Sorry about that!

Do you have a description of what the difference between a fine and a forfeiture is?

From: Sundberg, Christopher
Sent: Monday, July 13, 2009 4:42 PM
To: Kelly, Jessica
Subject: RE: Update on Bisphenol A Legislative Language 1837

A couple questions:

1. Instead of exempting second-hand stores and garage sales, should I instead create an exemption for the sale of a used child's container? I'm not sure everyone would agree about how to define a second-hand store or garage sale, and it seems like you're thinking about sales of already-used containers more than where they are sold, yes?
2. I'm not sure what to do with the comment about sending fines and forfeitures to a PR account. The bill already sends all of the 50% surcharge collected to a PR appropriation (you can tell this by the letters used to designate the appropriation paragraph) for enforcement. The bill doesn't provide for forfeitures, only fines, and I'd thought we'd decided that 100% of the fines collected would be allocated to the school fund.

From: Kelly, Jessica
Sent: Monday, July 13, 2009 12:49 PM
To: Sundberg, Christopher
Subject: Update on Bisphenol A Legislative Language 1837

Chris,

Can you please make a /2 with the changes below? The changes are the outcome of a meeting we had with DATCP.

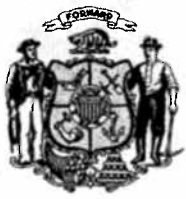
- (1) Set the definition of age in the bill to make it three and under.
- (2) Allow DATCP to have recall authority under 100.42 of the statutes.
- (3) Chris, DATCP wants us to change the language to "bottles and sippy cups shall be prohibited from sale in this state" instead of spelling out manufacturers, retailers and wholesalers. Would the effect of this, however, be only to outlaw retailers from selling BPA bottles and not manufacturers and wholesalers? If so, we do NOT want that.
- (4) Instead of having a container that is "clearly labeled as not containing bisphenol A", change it to "conspicuously labeled as not containing bisphenol A"
- (5) We would like to exempt second hand stores and garage sales.

07/14/2009

(6) Specify that the fund for the fines and forfeitures go to a Program Revenue account.

Jessica Ford Kelly

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882
608-266-3123
1-800-925-7491 toll-free
608-267-6797



+ WLj

2009 BILL

quote

Regen

certain

1 AN ACT ^{Regen} to create 20.115 (1) (ip), 100.335 and 814.75 (1d) of the statutes; relating
 2 to: prohibiting the manufacture and sale of bottles and cups for children that
 3 contain bisphenol A, creating labeling requirements, making an appropriation,
 4 and providing a penalty.

3 years of age or younger

spill-proof

Analysis by the Legislative Reference Bureau

This bill prohibits manufacturing or selling at wholesale or retail an empty bottle or cup intended for use by a child (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 clearly labeled as not containing bisphenol A. 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.

IP If a court imposes a fine on a person who violates the provisions of the bill, the court must also impose a surcharge equal to 50 percent of the amount of the fine. Under the bill, surcharges are appropriated to the Department of Agriculture, Trade and Consumer Protection for administering and enforcing the provisions of the bill.

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.

INS
A

IP

DATCP

BILL

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 (5), 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 bottle or cup intended by the manufacturer for
7 use by a child. *3 years of age or younger* *spill-proof* *manufacture or*

8 (2) No ~~manufacturer or wholesaler~~ *person* may sell or offer for sale in this state a
9 child's container that contains bisphenol A. A ~~manufacturer or wholesaler~~ *person* who sells

10 or offers for sale in this state a child's container shall ensure the container is *clearly*
11 labeled as not containing bisphenol A. *conspicuously*

12 (3) No retailer may sell or offer for sale in this state a child's container that
13 contains bisphenol A.

14 (4) Any person who violates this section may be fined not more than \$5,000 or
15 imprisoned for not more than one year in the county jail or both.

16 (5) If a court imposes a fine for a violation of this section, the court shall impose
17 a bisphenol A surcharge under ch. 814 equal to 50 percent of the amount of the fine.

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

19 814.75 (1d) The bisphenol A surcharge under s. 100.335.

20 **SECTION 4. Effective date.**

INS
2-15

BILL

1

2

beginning

(1) This act takes effect on the 90th day after ~~the day of~~ publication.

(END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1837/2ins
CTS:.....

1 **Insert A:**

* The bill does not apply to the sale of a child's container at a second-hand store or a garage sale. Under the bill, if the Department of Agriculture, Trade and Consumer Protection (DATCP) determines that a child's container that contains bisphenol A presents a substantial hazard or risk of injury, DATCP may, after a hearing, order a manufacturer or seller of the container to recall or repair the container.

2 **Insert 2-15:**

3 (4) If the department determines that a child's container that contains
4 bisphenol A presents a substantial hazard or risk of injury, the department may, after
5 notice and opportunity for hearing under s. 93.18, order the manufacturer or seller
6 of the container to recall the container or to repair any defects in a container that has
7 been sold.

8 (5) This section does not apply to the sale of a child's container at a second-hand
9 store or a garage sale.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1837/2dn

CTS:.....

Wlj

Date

Senator Lassa:

Please review this draft carefully to ensure it is consistent with your intent.

I have included an exemption for second hand stores and garage sales, per the instructions. Rather than focus on the type of seller, you might want to consider an exemption that focuses on the item itself, i.e., a used child's container. Please let me know if you have any questions.

*

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1837/2dn
CTS:wlj:rs

July 17, 2009

Senator Lassa:

Please review this draft carefully to ensure it is consistent with your intent.

I have included an exemption for secondhand stores and garage sales, per the instructions. Rather than focus on the type of seller, you might want to consider an exemption that focuses on the item itself, i.e., a used child's container. Please let me know if you have any questions.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

Sundberg, Christopher

From: Kelly, Jessica
Sent: Monday, August 03, 2009 2:14 PM
To: Sundberg, Christopher
Subject: Change to LRB 1837

Per my warning, we need to increase the age limit to 7 years old and under. Per your drafting note, why don't you go ahead and exempt the sale of a used child's container from the legislation.

Thanks.

P.S. Can you please rush this?

Jessica Ford Kelly

Office of Senator Julie Lassa
State Capitol, Room 323 South
P.O. Box 7882
Madison, WI 53708
1-800-925-7491 tollfree
608-266-3123 local
608-267-6797 fax

Sundberg, Christopher

From: Kelly, Jessica
Sent: Monday, August 03, 2009 4:25 PM
To: Sundberg, Christopher
Subject: 1837

Julie and Kelda spoke. Please change it to age FIVE and under.

I'm exhausted! ;-)

Jessica Ford Kelly

Office of Senator Julie Lassa
State Capitol, Room 323 South
P.O. Box 7882
Madison, WI 53708
1-800-925-7491 tollfree
608-266-3123 local
608-267-6797 fax



In: 8/3/09 wanted: Wednesday, 8/5 PM

State of Wisconsin
2009 - 2010 LEGISLATURE

3

LRB-1837A
CTS:jld&wlj:rs

RWNR

↑↑
Stays

2009 BILL

Regen

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 of certain bottles and cups for children
3 that contain bisphenol A, creating labeling requirements, making an
4 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

→ This bill prohibits manufacturing or selling an empty bottle or spill-proof cup
→ intended for use by a child ~~three~~^{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 child's container
→ ~~at a secondhand store or a garage sale~~. Under the bill, if the Department of
Agriculture, Trade and Consumer Protection (DATCP) determines that a child's
container that contains bisphenol A presents a substantial hazard or risk of injury,
DATCP may, after a hearing, order a manufacturer or seller of the container 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. If a court imposes a fine on
a person who violates the provisions of the bill, the court must also impose a
surcharge equal to 50 percent of the amount of the fine. Under the bill, surcharges
are appropriated to DATCP for administering and enforcing the provisions of the bill.

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

BILL

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 bottle or spill-proof cup intended by the
7 manufacturer for use by a child ³ years of age or younger.

(17)

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

12 (3) Any person who violates this section may be fined not more than \$5,000 or
13 imprisoned for not more than one year in the county jail or both.

14 (4) If the department determines that a child's container that contains
15 bisphenol A presents a substantial hazard or risk of injury, the department may, after
16 notice and opportunity for hearing under s. 93.18, order the manufacturer or seller
17 of the container to recall the container or to repair any defects in a container that has
18 been sold.

(19)

(20)

(5) This section does not apply to the sale of a child's container ~~at a secondhand~~
store or a garage sale ^{used}

Sundberg, Christopher

From: Kelly, Jessica
Sent: Tuesday, August 11, 2009 3:42 PM
To: Sundberg, Christopher
Cc: McWilliams, Emily
Subject: FW: BPA Draft bill language

Attachments: Bottle edit.doc

Chris,

I received these changes below in the word document to LRB 1837/3 from DATCP.

Senator Lassa is fine with the changes, but I was wondering if you could let me know for (2A), (2B) and (4) if DATCP has this type of language anywhere else in the statutes and what exactly this allows them to do. Also, I'm wondering if you could tell me what would happen under (4) in DATCP's changes if the seller refuses to comply with an order. Does it go to the DA?

- ✓ Additionally, Julie and Representative Roys would like to change the language to p.2 line 6 'empty BABY bottle or spill-proof cup PRIMARILY intended by the manufacturer for use by a child 5 years of age or younger.
- ✓ Julie and Kelda would also like it spelled out in the bill language that the entity that is issued the fine if BPA bottles are in Wisconsin is the manufacturer or the wholesaler (we want to protect retailers, store managers, cashiers, etc).

I thought it was also worth mentioning that at one point I know we wanted to be "silent" on if the fine was per bottle sold or per instance and leave it up to DATCP. My coworker told me that while working on another bill with DATCP surrounding fines, the Department stated that if we DO NOT specify in statutes how DATCP issues fines, then the Department could be subject to a lawsuit and the law could be shot down. I will verify this with DATCP and cc you on the email.

Thanks.

From: Reinen, Michelle J - DATCP [<mailto:Michelle.Reinen@Wisconsin.gov>]
Sent: Monday, August 10, 2009 3:51 PM
To: Kelly, Jessica
Cc: Jenkins, Janet A - DATCP
Subject: BPA Draft bill language



Bottle edit.doc (22 KB)

Jessica,

The group here took a look at the latest draft for BPA.

Attached is our preference in language - the underlined sections show our suggested additions in language. We also changed section 4, but I see that the language wasn't lined through, just deleted. What we suggest is to remove the beginning portion of the 1st sentence - no need to determine it is hazardous - the law does that by banning it.

Please let me know if you have questions.

Michelle

Michelle Reinen

Program & Planning Analyst
Division of Trade & Consumer Protection
608-224-5160
michelle.reinen@wi.gov

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

100.335 Child's containers containing bisphenol A. (1) In this section, "child's container" means an empty bottle or spill-proof cup intended by the manufacturer for use by a child 5 years of age or younger.

(2) No manufacturer or person may offer to sell or sell in this state a child's container that contains bisphenol A. A manufacturer or wholesaler who sells or offers for sale in this state a child's container shall ensure the container is conspicuously labeled as not containing bisphenol A.

(2A) The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section.

(2B) The department or a district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$100 and not more than \$10,000 for each violation of this section.

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

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

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

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

(7) For purposes of subs. (2B), (3) and (4), each individual container offered for sale or sold in violation of this section is a separate violation.



In: 8/12/09 wanted: 8/19/09

State of Wisconsin
2009 - 2010 LEGISLATURE

4

LRB-1837/3 FZM/R
CTS:jld&wlj:ph

↑ ↑
stays

2009 BILL

ASAP Friday please

INS
A

at wholesale

Regen

- 1
- 2
- 3
- 4

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

← baby
← penalties

Analysis by the Legislative Reference Bureau

This bill prohibits manufacturing or selling an empty bottle or spill-proof cup 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, if the Department of Agriculture, Trade and Consumer Protection (DATCP) determines that a child's container that contains bisphenol A presents a substantial hazard or risk of injury, DATCP may, after a hearing, order a manufacturer or seller of the container 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. If a court imposes a fine on a person who violates the provisions of the bill, the court must also impose a surcharge equal to 50 percent of the amount of the fine. Under the bill, surcharges are appropriated to DATCP for administering and enforcing the provisions of the bill.

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

BILL

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 intended by the
7 manufacturer for use by a child 5 years of age or younger. ^{primarily} _{at wholesale}

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

12 (3) Any person who violates this section may be fined not more than \$5,000 or
13 imprisoned for not more than one year in the county jail or both.

14 (4) If the department determines that a child's container that contains
15 bisphenol A presents a substantial hazard or risk of injury, the department may, after
16 notice and opportunity for hearing under s. 93.18, order ~~the~~ ^{the} manufacturer or seller
17 of ~~the~~ ^{a child's} container to recall the container or to repair any defects in a container that has
18 been sold. ^{in violation of this section} _{under this subsection}

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

NS
2-11

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

(4) If the department determines that a child's container that contains bisphenol A presents a substantial hazard or risk of injury, the department may, after notice and opportunity for hearing under s. 93.18, order the manufacturer or seller of the container to recall the container or to repair any defects in a container that has been sold.

No person may refuse to comply with an order under this subsection

BILL

or forfeiture

①

(6) If a court imposes a fine for a violation of this section, the court shall impose

②

a bisphenol A surcharge under ch. 814 equal to 50 percent of the amount of the fine

3

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

4

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

or forfeiture

5

SECTION 4. Effective date.

6

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

7

(END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1837/4ins
CTS:.....

1 **Insert A:**

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 ~~(\$1,000)~~ 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.

\$10,000

2 **Insert 2-11:**

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

5 (b) The department or a district attorney may commence an action in the name
6 of the state to recover a forfeiture to the state of not less than \$100 nor more than
7 ~~\$1,000~~ ^{\$10,000} for each violation of this section.

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

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

Basford, Sarah

From: Kelly, Jessica
Sent: Monday, August 17, 2009 10:24 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-1837/4 Topic: Prohibit sale of polycarbonate baby bottles containing bisphenol A

Importance: High

Please Jacket LRB 09-1837/4 for the SENATE.