



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2009 Assembly Bill 405

**Assembly Substitute
Amendment 2, as Amended by
Assembly Amendment 1**

Memo published: February 2, 2010

Contact: Don Salm, Senior Staff Attorney (266-8540)

Assembly Substitute Amendment 2, as amended by Assembly Amendment 1, relates to prohibiting the manufacture and sale **at wholesale or retail** of certain baby bottles and cups (“child’s containers”) that contain bisphenol A. The term “child container” is defined to mean an empty baby bottle or spill-proof cup primarily intended by the manufacturer for use by a child three years of age or younger. **Assembly Amendment 1 to the Substitute** changed “by a child 5 years of age or younger” in the Substitute to “by a child 3 years of age or younger.”

Under Substitute Amendment 2, as amended:

1. No person may manufacture or sell, or offer for sale, **at wholesale** in this state, a child’s container that contains bisphenol A.
2. A manufacturer or wholesaler who sells or offers for sale in this state a child’s container that is **intended for retail sale** shall ensure the container is **conspicuously labeled** as not containing bisphenol A.
3. A manufacturer or wholesaler who sells or offers for sale in this state a child’s container that is **not intended for retail sale** shall do **one of the following**:
 - (a) Ensure that the container is conspicuously labeled as not containing bisphenol A; **or**
 - (b) Confirm to the buyer that the container does not contain bisphenol A.
4. **No person** may sell, or offer for sale, **at retail** in this state, a child’s container that contains bisphenol A. A person who sells or offers for sale at retail in this state a child’s container must ensure the container is **conspicuously labeled as not containing bisphenol A**.

5. The Department of Agriculture, Trade and Consumer Protection (DATCP) may commence an action in the name of the state to **restrain by temporary or permanent injunction** a violation of the provisions above.

6. DATCP 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 nor more than \$10,000 **for each violation** of **item 2**, above. In addition, a person who violates item 2, above, may be **fined** not more than \$5,000 **or imprisoned** for not more than one year in the county jail or both.

7. DATCP 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 \$50 nor more than \$200 **for each violation** of **item 3**, above.

8. For purposes of provisions 5 to 7, above, each child's container manufactured, sold, or offered for sale in violation of this section **constitutes a separate violation**.

9. DATCP may, after notice and opportunity for hearing, order a manufacturer or seller of a child's container in violation of this section to **recall** the container or to **repair any defects** in a container that has been sold. No person may refuse to comply with such an order.

10. The provisions above do **not apply to the sale of a used child's container**.

11. If a court imposes a fine or forfeiture for a violation of any of the provisions, above, the court must impose a **bisphenol A surcharge** under ch. 814, Stats., equal to **50%** of the amount of the fine or forfeiture. All moneys received from this surcharge must be used for enforcement and administration of these new bisphenol A provisions.

12. **Effective date.** The bill, if enacted into law, takes effect on the 90th day beginning after publication (enactment).

Legislative History

At an executive session on January 26, 2010, the Assembly Committee on Consumer Protection voted for adoption of Assembly Amendment 1 to Assembly Substitute Amendment 2 on a vote of Ayes, 8; Noes, 1; voted to adopt the substitute amendment, as amended, on a vote of Ayes, 9; Noes, 0; and voted to recommend passage of the bill, as amended, on a vote of Ayes, 9; Noes, 0.

DLS:jal