



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3851/1
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2011 ASSEMBLY BILL 727

March 15, 2012 – Introduced by Representatives C. TAYLOR, ROYS, STEINEKE, BERCEAU, BERNARD SCHABER, CLARK and POPE-ROBERTS, cosponsored by Senators RISSER, C. LARSON, TAYLOR and S. COGGS. Referred to Committee on Natural Resources.

1 **AN ACT to renumber** 100.335 (2) and 100.335 (3); **to renumber and amend**
2 100.335 (1); **to amend** 100.335 (title), 100.335 (4) (b), 100.335 (4) (c), 100.335
3 (4) (d), 100.335 (5) and 100.335 (6); and **to create** 100.335 (1) (b), 100.335 (2)
4 (title), 100.335 (3m), 100.335 (4) (title) and 100.335 (7) (title) of the statutes;
5 **relating to:** manufacture and sale of food and beverage containers that contain
6 bisphenol A and providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing or selling at wholesale a “child’s container,” which is defined as an empty baby bottle or spill-proof cup for use by a child who is three years or younger, that contains bisphenol A (BPA). In addition, a manufacturer or wholesaler of a child’s container must ensure that the container is conspicuously labeled as not containing BPA. Current law also requires a retail seller to ensure that a child’s container is so labelled, and prohibits a retail seller from selling a child’s container that contains BPA. The foregoing requirements do not apply to the sale of a used child’s container. Current law allows the Department of Agriculture, Trade and Consumer Protection (DATCP) to commence actions to restrain violations of the foregoing requirements. In addition, DATCP is authorized to order manufacturers, wholesalers, and retail sellers to recall child containers sold in violation of the requirements. A manufacturer or wholesaler who violates the requirements is subject to a forfeiture of not less than \$100 and not more

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than \$10,000 for each violation, and is also subject to a fine of not more than \$5,000, imprisonment for not more than one year in the county jail, or both. A retail seller who violates the requirements is subject to a forfeiture of not less than \$50 and not more than \$200 for each violation. If a court imposes a forfeiture or fine, current law requires the court to also impose a surcharge equal to 50 percent of the forfeiture or fine, which is appropriated to DATCP for enforcing and administering the foregoing requirements.

This bill creates additional requirements for food containers that contain BPA. The bill defines "food container" as any container in which any food or beverage is intended to be enclosed for retail sale of the food or beverage. The bill prohibits the manufacture or wholesale of food containers that contain BPA unless the manufacturer or wholesaler ensures that the food container is conspicuously labeled as containing BPA. The bill also prohibits a person from selling food or beverage at retail in a container that contains BPA unless the container is conspicuously labeled as containing BPA. The bill's requirements do not apply to sales of used food containers.

As with violations of child container requirements under current law, the bill authorizes DATCP to commence actions to restrain violations of the bill and to issue recall orders. Manufacturers, wholesalers, and retailers who violate the bill are subject to the forfeitures under current law that apply to violations of the child container requirements. However, the bill does not subject manufacturers or wholesalers to fines or imprisonment. If a court imposes a forfeiture under the bill, the court must also impose a 50 percent surcharge, which is appropriated to DATCP for enforcing and administering both the child container requirements under current law and the food container requirements under the 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.** 100.335 (title) of the statutes is amended to read:

2 **100.335** (title) ~~Child's containers containing~~ **Containers and bisphenol**

3 **A.**

4 **SECTION 2.** 100.335 (1) of the statutes is renumbered 100.335 (1) (intro.) and
5 amended to read:

6 **100.335 (1) DEFINITIONS.** (intro.) In this section, "~~child's~~:"

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1 (a) “Child’s container” means an empty baby bottle or spill-proof cup primarily
2 intended by the manufacturer for use by a child 3 years of age or younger.

3 **SECTION 3.** 100.335 (1) (b) of the statutes is created to read:

4 100.335 (1) (b) “Food container” means any container in which any food or
5 beverage is intended to be enclosed for retail sale of the food or beverage.

6 **SECTION 4.** 100.335 (2) (title) of the statutes is created to read:

7 100.335 (2) (title) CHILD’S CONTAINER.

8 **SECTION 5.** 100.335 (2) of the statutes is renumbered 100.335 (2) (am).

9 **SECTION 6.** 100.335 (3) of the statutes is renumbered 100.335 (2) (bm).

10 **SECTION 7.** 100.335 (3m) of the statutes is created to read:

11 100.335 (3m) FOOD CONTAINERS. (a) No person may manufacture or sell, or offer
12 for sale, at wholesale in this state a food container that contains bisphenol A unless
13 the person ensures that the food container is conspicuously labeled as containing
14 bisphenol A.

15 (b) No person may sell, or offer for sale, food or beverage at retail in a food
16 container that contains bisphenol A unless the food container is conspicuously
17 labeled as containing bisphenol A.

18 **SECTION 8.** 100.335 (4) (title) of the statutes is created to read:

19 100.335 (4) (title) ENFORCEMENT.

20 **SECTION 9.** 100.335 (4) (b) of the statutes is amended to read:

21 100.335 (4) (b) The department or a district attorney may commence an action
22 in the name of the state to recover a forfeiture to the state of not less than \$100 nor
23 more than \$10,000 for each violation of sub. (2) (am) or (3m) (a). A person who
24 violates sub. (2) (am) may be fined not more than \$5,000 or imprisoned for not more
25 than one year in the county jail or both.

