

# SB3750



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3750

Introduced 2/11/2010, by Sen. Dan Kotowski

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.756 new

Creates the BPA-Free Kids Act. Beginning June 1, 2011, prohibits the sale or distribution of certain products containing bisphenol-A. Requires a label to be affixed to the exterior of certain food products. Beginning June 1, 2011, prohibits the sale of products that must be, but are not, labelled. Authorizes the Illinois Environmental Protection Agency and the Illinois Department of Public Health to participate in an interstate chemical safety clearinghouse. Requires certain notifications and imposes penalties. Provides for enforcement by the Attorney General. Defines "Agency", "baby food", "Department", "infant formula", "manufacturer", "person", and "reusable food or beverage container".

LRB096 20860 JDS 36631 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 BPA-Free Kids Act.

6 Section 5. Legislative findings. The General Assembly  
7 finds that:

8 (a) The incidence of some diseases and disorders that have  
9 been linked to chemical exposures is on the rise.

10 (b) The metabolism, physiology, and exposure patterns of  
11 developing fetuses, infants, and children to toxic chemicals  
12 differ from those of adults, which makes children more  
13 vulnerable than adults to the harmful effects of exposure to  
14 some synthetic chemicals.

15 (c) Unlike pharmaceuticals and pesticides, manufacturers  
16 of most chemical substances are not required under current law  
17 to supply human or environmental toxicity information before  
18 selling their products to the public. Consequently, the vast  
19 majority of chemicals used in consumer products have never had  
20 any federal or state government review to evaluate potential  
21 toxicity to the environment, infants, children, developing  
22 fetuses, or adults.

23 (d) To protect children's health, it is important to reduce

1 or eliminate exposures to certain chemicals that are present in  
2 children's products or that may be reasonably anticipated to  
3 result in children's exposure or be placed in the mouths of  
4 children.

5 Section 10. Definitions.

6 "Agency" means the Illinois Environmental Protection  
7 Agency.

8 "Baby food" means a prepared solid food consisting of a  
9 soft paste or an easily chewed food that is intended for  
10 consumption by children 2 years of age or younger and is  
11 commercially available.

12 "Department" means the Illinois Department of Public  
13 Health.

14 "Infant formula" means a milk-based or soy-based powder,  
15 concentrated liquid, or ready-to-feed substitute for human  
16 breast milk, which is intended for infant consumption and is  
17 commercially available.

18 "Manufacturer" means a person who manufactured a final  
19 product or whose brand name is affixed to a product. In the  
20 case of a product that was imported into the United States,  
21 "manufacturer" includes the importer or domestic distributor  
22 of the product if the person who manufactured or assembled the  
23 product or whose brand name is affixed to it does not have a  
24 presence in the United States.

25 "Person" means any individual, partnership,

1 co-partnership, firm, company, limited liability company,  
2 corporation, association, joint stock company, trust, estate,  
3 political subdivision, state agency, or any other legal entity,  
4 or his, her, or its legal representative, agent, or assigns.

5 "Reusable food or beverage container" means a receptacle  
6 for storing food or beverages, including, but not limited to,  
7 baby bottles, spill-proof cups, sports bottles, and thermoses,  
8 and excluding food or beverage containers intended for disposal  
9 after initial use.

10 Section 15. Bisphenol-A ban; labels.

11 (a) Beginning June 1, 2011, no person shall sell, offer to  
12 sell, distribute, or offer to distribute any of the following:

13 (1) Any reusable food or beverage container containing  
14 bisphenol-A.

15 (2) Any infant formula or baby food that is stored in a  
16 can, jar, or plastic container that contains bisphenol-A.

17 (b) Beginning June 1, 2011, any food product, other than  
18 infant formula or baby food, that is contained in a can, jar,  
19 or plastic container shall bear a conspicuous label stating,  
20 "This container is made with bisphenol-A (BPA)". On and after  
21 that date, no person shall sell or offer for sale, in the  
22 State, such a food product without a warning label affixed to  
23 the can, jar, or plastic container.

24 Section 20. Interstate clearinghouse. The Agency and the

1 Department are authorized to participate, along with other  
2 states and governmental entities, in an interstate  
3 clearinghouse to promote safer chemicals in consumer products.  
4 The Agency and Department may cooperate with the interstate  
5 clearinghouse to (i) organize and manage available data on  
6 chemicals, including information on uses, hazards,  
7 environmental concerns, safer alternatives, and model policies  
8 and programs, (ii) provide technical assistance regarding  
9 chemical safety to businesses, consumers, and policy makers,  
10 and (iii) undertake other activities in support of State  
11 programs to promote chemical safety.

12 Section 25. Implementation and exemption.

13 (a) A manufacturer of products restricted under this Act  
14 must notify persons that sell the manufacturer's products in  
15 this State about the provisions of this Act no less than 90  
16 days before the effective date of the restrictions. A  
17 manufacturer that sells or distributes a product prohibited  
18 from sale or distribution under this Act shall recall the  
19 product and reimburse the retailer or any other purchaser for  
20 the product.

21 (b) A retailer who unknowingly sells a product that is  
22 restricted from sale under this Act is not liable under this  
23 Act.

24 Section 30. Enforcement and penalties.

1           (a) The Attorney General is responsible for administering  
2 and ensuring compliance with this Act, including the  
3 development and adoption of any rules, if necessary, for the  
4 implementation and enforcement of this Act.

5           (b) The Attorney General shall develop and implement a  
6 process for receiving and handling complaints from individuals  
7 regarding possible violations of this Act.

8           (c) The Attorney General may conduct any investigation  
9 deemed necessary regarding possible violations of this Act  
10 including, without limitation, the issuance of subpoenas to:

11           (i) require the filing of a statement or report or answer  
12 interrogatories in writing as to all information relevant to  
13 the alleged violations; (ii) examine under oath any person who  
14 possesses knowledge or information directly related to the  
15 alleged violations; and (iii) examine any record, book,  
16 document, account, or paper necessary to investigate the  
17 alleged violation.

18           (d) Service by the Attorney General of any notice requiring  
19 a person to file a statement or report, or of a subpoena upon  
20 any person, shall be made:

21           (1) personally by delivery of a duly executed copy  
22 thereof to the person to be served or, if a person is not a  
23 natural person, in the manner provided in the Code of Civil  
24 Procedure when a complaint is filed; or

25           (2) by mailing by certified mail a duly executed copy  
26 thereof to the person to be served at his or her last known

1           abode or principal place of business within this State.

2           (e) In lieu of a civil action, the individual or entity  
3           alleged to have engaged in a pattern or practice deemed  
4           violative of this Act may enter into an Assurance of Voluntary  
5           Compliance with respect to the alleged pattern or practice  
6           violation.

7           (f) If the Attorney General determines that there is a  
8           reason to believe that a violation of the Act has occurred, the  
9           Attorney General may bring an action in the name of the People  
10          of the State to obtain temporary, preliminary, or permanent  
11          injunctive relief for any act, policy, or practice that  
12          violates this Act.

13          (g) If any person fails or refuses to file any statement or  
14          report, or obey any subpoena, issued pursuant to subsection (c)  
15          of this Section, the Attorney General may proceed to initiate a  
16          civil action pursuant to subsection (f) of this Section, or  
17          file a complaint in the circuit court for the granting of  
18          injunctive relief, including restraining the conduct that is  
19          alleged to violate this Act until the person files the  
20          statement or report, or obeys the subpoena.

21          (h) Relief that may be granted.

22                 (1) In any civil action brought pursuant to subsection  
23                 (f) of this Section, the Attorney General may obtain as a  
24                 remedy, equitable relief (including any permanent or  
25                 preliminary injunction, temporary restraining order, or  
26                 other order, including an order enjoining the defendant

1 from engaging in a violation or ordering any action as may  
2 be appropriate). In addition, the Attorney General may  
3 request and the Court may impose a civil penalty in an  
4 amount not to exceed \$50,000 for each violation. For  
5 purposes of this subsection, each item and each standard  
6 constitutes a separate violation.

7 (2) A civil penalty imposed or a settlement or other  
8 payment made pursuant to this Act shall be made payable to  
9 the Attorney General's State Projects and Court Ordered  
10 Distribution Fund, which is created as a special fund in  
11 the State Treasury. Moneys in the Fund shall be used,  
12 subject to appropriation, for the performance of any  
13 function pertaining to the exercise of the duties of the  
14 Attorney General including but not limited to enforcement  
15 of any law of this State, product testing, and conducting  
16 public education programs.

17 (3) Any funds collected under this Section in an action  
18 in which the State's Attorney has prevailed shall be  
19 retained by the county in which he or she serves.

20 (i) The penalties and injunctions provided in this Act are  
21 in addition to any penalties, injunctions, or other relief  
22 provided under any other law. Nothing in this Act shall bar a  
23 cause of action by the State for any other penalty, injunction,  
24 or relief provided by any other law.

25 Section 90. The State Finance Act is amended by adding



1 Section 5.756 as follows:

2 (30 ILCS 105/5.756 new)

3 Sec. 5.756. The Attorney General's State Projects and Court

4 Ordered Distribution Fund.