



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1269

Introduced 02/08/11, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.786 new

Creates the BPA-Free Kids Act. Beginning June 1, 2012, prohibits the sale or distribution of reusable children's food or beverage containers that contain bisphenol-A. Beginning June 1, 2016, prohibits the sale or distribution of infant formula or baby food that is stored in a can, jar, or plastic container that contains bisphenol-A. 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".

LRB097 06598 PJG 46683 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 Section 15. Bisphenol-A ban.

6 (a) Beginning June 1, 2012, no person shall sell, offer to
7 sell, distribute, or offer to distribute any reusable
8 children's food or beverage container, including any baby
9 bottle or sippy cup, that contains bisphenol-A if that
10 container (i) is designed, intended, or marketed to be filled
11 with any food or beverage primarily for consumption by children
12 3 years of age or younger and (ii) is sold or distributed at
13 retail without containing any liquid, food, or beverage.

14 (b) Beginning June 1, 2016, no person shall sell, offer to
15 sell, distribute, or offer to distribute any infant formula or
16 baby food that is stored in a can, jar, or plastic container
17 that contains bisphenol-A.

18 Section 20. Interstate clearinghouse. The Agency and the
19 Department are authorized to participate, along with other
20 states and governmental entities, in an interstate
21 clearinghouse to promote safer chemicals in consumer products.
22 The Agency and Department may cooperate with the interstate
23 clearinghouse to (i) organize and manage available data on
24 chemicals, including information on uses, hazards,

1 environmental concerns, safer alternatives, and model policies
2 and programs, (ii) provide technical assistance regarding
3 chemical safety to businesses, consumers, and policy makers,
4 and (iii) undertake other activities in support of State
5 programs to promote chemical safety.

6 Section 25. Implementation and exemption.

7 (a) Manufacturers and wholesalers of products restricted
8 under Section 15 of this Act must, no less than 90 days before
9 the effective date of such a restriction, notify persons to
10 whom they sell a restricted product about the provisions of
11 this Act.

12 (b) A retailer who unknowingly sells a product that is
13 restricted from sale under this Act is not liable under this
14 Act.

15 Section 30. Enforcement and penalties.

16 (a) The Attorney General is responsible for administering
17 and ensuring compliance with this Act, including the
18 development and adoption of any rules, if necessary, for the
19 implementation and enforcement of this Act.

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

23 (c) The Attorney General may conduct any investigation
24 deemed necessary regarding possible violations of this Act

1 including, without limitation, the issuance of subpoenas to:
2 (i) require the filing of a statement or report or answer
3 interrogatories in writing as to all information relevant to
4 the alleged violations; (ii) examine under oath any person who
5 possesses knowledge or information directly related to the
6 alleged violations; and (iii) examine any record, book,
7 document, account, or paper necessary to investigate the
8 alleged violation.

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

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

16 (2) by mailing by certified mail a duly executed copy
17 thereof to the person to be served at his or her last known
18 abode or principal place of business within this State.

19 (e) In lieu of a civil action, the individual or entity
20 alleged to have engaged in a pattern or practice deemed
21 violative of this Act may enter into an Assurance of Voluntary
22 Compliance with respect to the alleged pattern or practice
23 violation.

24 (f) If the Attorney General determines that there is a
25 reason to believe that a violation of the Act has occurred, the
26 Attorney General may bring an action in the name of the People

1 of the State to obtain temporary, preliminary, or permanent
2 injunctive relief for any act, policy, or practice that
3 violates this Act.

4 (g) If any person fails or refuses to file any statement or
5 report, or obey any subpoena, issued pursuant to subsection (c)
6 of this Section, the Attorney General may proceed to initiate a
7 civil action pursuant to subsection (f) of this Section, or
8 file a complaint in the circuit court for the granting of
9 injunctive relief, including restraining the conduct that is
10 alleged to violate this Act until the person files the
11 statement or report, or obeys the subpoena.

12 (h) Relief that may be granted.

13 (1) In any civil action brought pursuant to subsection
14 (f) of this Section, the Attorney General may obtain as a
15 remedy, equitable relief (including any permanent or
16 preliminary injunction, temporary restraining order, or
17 other order, including an order enjoining the defendant
18 from engaging in a violation or ordering any action as may
19 be appropriate). In addition, the Attorney General may
20 request and the Court may impose a civil penalty in an
21 amount not to exceed \$50,000 for each violation. For
22 purposes of this subsection, each item and each standard
23 constitutes a separate violation.

24 (2) A civil penalty imposed or a settlement or other
25 payment made pursuant to this Act shall be made payable to
26 the Attorney General's State Projects and Court Ordered

1 Distribution Fund, which is created as a special fund in
2 the State treasury. Moneys in the Fund shall be used,
3 subject to appropriation, for the performance of any
4 function pertaining to the exercise of the duties of the
5 Attorney General including but not limited to enforcement
6 of any law of this State, product testing, and conducting
7 public education programs.

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

11 (i) The penalties and injunctions provided in this Act are
12 in addition to any penalties, injunctions, or other relief
13 provided under any other law. Nothing in this Act shall bar a
14 cause of action by the State for any other penalty, injunction,
15 or relief provided by any other law.

16 Section 90. The State Finance Act is amended by adding
17 Section 5.786 as follows:

18 (30 ILCS 105/5.786 new)

19 Sec. 5.786. The Attorney General's State Projects and Court
20 Ordered Distribution Fund.