Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 175 (Senator Manno, *et al.*)
Finance

Public Health - Sales Receipts Containing Bisphenol-A - Prohibition

This bill expands the existing prohibition on the use of bisphenol-A (BPA) in child care articles. Specifically, on or after January 1, 2017, an individual may not manufacture, knowingly sell, or distribute in commerce any sales receipt containing BPA. An individual must use a safe and legal alternative when replacing BPA. A person who violates this prohibition is guilty of a misdemeanor and subject to a fine of up to $10,000 per violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues beginning in FY 2017 due to the bill's penalty provision. Enforcement can likely be handled with existing resources.

Local Effect: Potential minimal increase in revenues beginning in FY 2017 due to the bill's penalty provision. Enforcement can likely be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Current Law: Chapters 46 and 47 of 2010 established prohibitions against manufacturing, distributing, or knowingly selling child care articles that contain BPA. A "child care article" means an empty bottle or cup to be filled with food or liquid that is designated or intended by the manufacturer to be used by a child younger than age four. (However, if a federal law regulating the use of BPA in child care articles is enacted, "child care article" will be defined as specified in federal law.) A manufacturer must instead use the least toxic alternative and may not replace BPA with specified carcinogens or reproductive toxicants.

An individual who violates this Act is guilty of a misdemeanor and is subject to fines of up to $10,000 per violation.

Chapter 189 of 2011 expanded these provisions by prohibiting the State from purchasing, and an individual from manufacturing, knowingly selling, or distributing in commerce, infant formula in a container that contains BPA at a level of more than 0.5 parts per billion. Chapter 189 also retroactively extended the date by which Department of Health and Mental Hygiene (DHMH) was required to adopt regulations to carry out the statutory provisions relating to BPA in child care articles. DHMH subsequently promulgated these regulations (COMAR 10.10.01.01-.05), which went into effect November 28, 2011.

Background: BPA is a compound found in many plastics. According to the U.S. Centers for Disease Control and Prevention, BPA can leach from the linings of canned foods and polycarbonate water and baby bottles. Products containing BPA are regulated by both the U.S. Environmental Protection Agency (EPA) and the U.S. Food and Drug Administration (FDA). EPA is in charge of regulating thermal paper, among other products. FDA generally regulates BPA products related to food and medical devices.

Under the Toxic Substances Control Act (TSCA) of 1976, EPA ensures that chemicals manufactured, imported, processed, or distributed in commerce, or used or disposed of in the United States, do not pose any unreasonable risks to human health or the environment. There are roughly 82,000 chemicals in EPA's chemical inventory, including BPA. Since the passage of TSCA, EPA has regulated five chemicals within its chemical inventory.

Every two years the U.S. Government Accountability Office (GAO) provides the U.S. Congress with an update on its High-Risk Program, which highlights major problems at the federal level. GAO has designated EPA's process for assessing and controlling toxic chemicals as a high-risk area since 2009 because EPA has failed to assess the toxicity of many chemicals used commercially in the United States. According to GAO's most recent update, as of March 2013, EPA had identified 83 chemicals which were prioritized for risk assessment and had begun the risk assessment on 7 of the 83. However, GAO advised that, at its current pace, it would take EPA over a decade to complete all 83 risk assessments.

EPA's most recent review of BPA occurred in 1988, but the agency launched a major investigation into the risks of BPA in March 2010. Although EPA published an advance notice of proposed rulemaking (ANPRM) in 2011, EPA does not intend to initiate regulatory action under TSCA at this time. Even so, EPA issued an action plan for BPA under its enhanced chemical safety program and is asking for comment on requiring toxicity testing and is also considering requiring environmental testing to resolve existing scientific uncertainties regarding BPA.

Another planned step under the ANPRM is an alternatives assessment on BPA in thermal papers, including cash register receipts, which began in July 2010 through EPA's Design for the Environment (DfE) program. DfE is convening stakeholders to identify and develop information on alternatives to BPA in thermal paper.

Since the 1960s, FDA generally had considered exposure to BPA through food packaging to be safe. However, in January 2010, FDA released new findings stating it has some concern about the effects of BPA on the brain, behavior, and prostate gland in fetuses, infants, and young children. Since that time, FDA has continued to review additional studies as they became available, including those addressing possible low-dose effects. The 2014 hazard assessment by FDA's BPA Joint Emerging Science Working Group reconfirmed the previously identified no observed adverse effect level (NOAEL) as the most appropriate NOAEL for a safety assessment of oral or dietary exposures.

FDA amended its food additive regulations in 2012 to no longer provide for use of BPA-based materials in baby bottles, sippy cups, and infant formula packaging. Then, in 2013, FDA amended its regulations again to no longer provide for the use of BPA-based epoxy resins as coatings in packaging for infant formulas. FDA made these regulatory changes based on the fact that the regulatory authorization was no longer necessary for the specific use of the food additive because that use had been permanently and completely abandoned by manufacturers. FDA notes, though, that the safety of a food additive is not relevant to FDA's determination regarding whether a certain use of that food additive has been abandoned.

State Revenues: Potential minimal increase in general fund revenues beginning in fiscal 2017 under the bill's monetary penalty provision for those cases heard in District Court.

State Expenditures: The bill's requirements can likely be handled with existing resources. EPA is working to identify and develop alternatives to using BPA in thermal papers; therefore, it is assumed that, by the time the bill's requirement is in place, viable alternatives will be available and complaints will be minimal. However, if complaint volume is high, DHMH may require additional staff to enforce the bill's provisions, resulting in an increase in expenditures beginning in fiscal 2017.

Local Fiscal Effect: Potential minimal increase in revenues beginning in fiscal 2017 due to the bill's penalty provision for those cases heard in circuit court. Enforcement can likely be handled with existing resources. However, if complaint volume is high, local health department workloads may increase.

Small Business Effect: Potential increase in expenditures beginning in fiscal 2017 for small business manufacturers that use BPA to make sales receipts. Additionally, costs may

increase depending on the costs of alternative sales receipt paper for those small businesses that currently rely on the use of sales receipts containing BPA. While some manufacturers and businesses in Maryland may be affected by the bill, it cannot be reliably determined at this time how many, if any, have 50 or fewer employees and are considered small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, U.S. Centers for Disease Control and Prevention, U.S. Environmental Protection Agency, U.S. Food and Drug Administration, U.S. Government Accountability Office, Department of Legislative Services

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