

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 833 (Delegate Hubbard)
Health and Government Operations

Public Health - Phthalates and Bisphenol-A - Prohibitions - Toys, Child Care Articles, and Cosmetics

This bill prohibits the manufacture, sale, or distribution of a toy, child care article, or cosmetic containing specified chemicals, beginning January 1, 2009. Violators are subject to fines.

Fiscal Summary

State Effect: No effect in FY 2008. Potential minimal increase in general fund revenues beginning in FY 2009 due to the bill's penalty provision. No effect on expenditures.

Local Effect: No effect in FY 2008. Potential minimal increase in revenues beginning in FY 2009 due to the bill's penalty provision. No effect on expenditures.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A person may not manufacture, sell, or distribute any toy or child care article that • contains bisphenol-a and is intended for use by a child under age three; • contains diethylhexyl phthalate (DEHP), dibutyl phthalate (DBP), or butyl benzyl phthalate (BBP) in concentrations greater than 0.1%; or • is intended for use by a child under age three if it can be placed in the child's mouth and contains diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DNOP) in concentrations greater than 0.1%. A person must use the least toxic alternative when replacing the chemicals mentioned above and may not replace them with carcinogens rated by the

U.S. Environmental Protection Agency (EPA) as A, B, or C carcinogens or with EPA identified reproductive toxicants that cause birth defects, reproductive harm, or developmental harm.

A person may not manufacture, sell, or distribute any cosmetic containing DBP or DEHP. Violating any provision of this bill is a misdemeanor offense with a maximum penalty of \$10,000 per violation upon conviction.

Current Law: The Health-General statute limits the manufacture or sale of certain items to protect the public's health. For example, statute prohibits a person from knowingly manufacturing, selling, renting, or offering for sale any toy depicting torture or resembling a torture device. This restriction does not apply to a toy gun or a model of an aircraft, ship, car, spacecraft, or other vehicle.

Background: Phthalates are industrial chemicals used in the production of plastics to make them flexible and durable. More than a billion pounds of phthalates are produced in the world each year, and everyone is exposed to phthalates on a daily basis.

Phthalates occur in small amounts as contaminants in food, indoor air, soils, and sediments and are often used in many everyday items. Specific examples of products containing phthalates include food wrapping, vinyl shower curtains, vinyl flooring adhesives, detergents, soap, shampoo, hair spray, and nail polish. Children's toys such as teething rings and rattles also contain phthalates. Two specific types of phthalates, DEHP and DINP, are more likely to affect children than adults because these phthalates are used to make toys.

In 2005, the European Union placed a permanent ban on certain phthalates in toys and child care articles. In 2004, the European Union prohibited the manufacture or sale of cosmetics containing DBP and DEHP, based on their reproductive toxicity. In 2003, Japan imposed a ban on the use of phthalates in objects intended for the mouths of young children, such as pacifiers, bite rings, and teethers.

The U.S. Census Bureau's County Business Patterns (2004) data shows that the cosmetics industry in Maryland consists of seven establishments and between 500 and 999 employees. An annual payroll for these establishments was not available. The toys and games industry in the State has 13 establishments, an annual payroll of \$10.0 million, and 353 employees. The toys' and games' wholesale industry in the State consists of 27 establishments, 460 employees, and an annual payroll of \$15.3 million. Cosmetics distribution is part of a much larger category of "drugs and druggists' sundries" which has 123 establishments in the State, 4,172 employees, and a \$218.2 million annual payroll. There are 312 cosmetics, beauty supply, and perfume stores in Maryland with

2,107 employees and an annual payroll of \$23.3 million. Hobby, toy, and game stores total 194 in the State with 3,006 employees and an annual payroll of \$45.8 million.

State Revenues: No effect in fiscal 2008. General fund revenues could increase minimally beginning in fiscal 2009 under the bill's monetary penalty provision for those cases heard in the District Court.

Local Revenues: No effect in fiscal 2008. Revenues could increase minimally beginning in fiscal 2009 under the bill's monetary penalty provision for those cases heard in the circuit courts.

Small Business Effect: Expenditures could potentially increase significantly beginning in fiscal 2008 for small business manufacturers that use the chemicals prohibited by the bill to make a toy or child care article intended for use by a child under age three or to make a cosmetic. While there are manufacturers in Maryland that would be affected by the bill, it cannot be reliably determined at this time how many, if any, have 50 or fewer employees and would be considered small businesses.

Small business retailers' revenues could potentially decrease significantly in fiscal 2009 for retailers that would not be allowed to sell any products in their existing stock on or after January 1, 2009 that contain these prohibited chemicals.

Additional Information

Prior Introductions: A similar bill, HB 52 of 2006, had a hearing in the House Health and Government Operations Committee but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Business and Economic Development, Department of Health and Mental Hygiene, Juvenile Products Manufacturers Association, American Chemistry Council, Department of Legislative Services

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