SENATE, No. 1428

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MARCH 6, 2008

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator M. TERESA RUIZ
District 29 (Essex and Union)

Co-Sponsored by:
Senators Allen, Ciesla, Codey, Cunningham, Singer, Lance, Turner,
Gordon, Sacco, Adler, Lesniak, Gill, S.Kean, Madden, Sarlo and Cardinale

SYNOPSIS
The “Toxic-free Children’s Products Act.”

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/14/2009)
AN ACT concerning the sale, distribution, and manufacture of toys and child care articles containing bisphenol A and phthalates and supplementing Title 56 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “Toxic-free Children’s Products Act.”

2. The Legislature finds and declares that high levels of bisphenol A and phthalates can have adverse effects on people and there is substantial evidence that virtually everyone carries some level of phthalates in their body; that bisphenol A has been shown to have hormone disrupting effects; and that high levels of exposure to phthalates may pose a hazard to reproduction and to the health and welfare of children.

   The Legislature further finds and declares that bisphenol A and phthalates are used in many plastics; that reusable plastic storage containers and baby bottles can leach bisphenol A into food and beverages; and that phthalates are found in many plastic toys for children and other child care articles, such as teething rings and rattles.

   The Legislature also finds and declares that bis (2-ethylhexyl) phthalate, also known as diethylhexyl phthalate or DEHP, is classified by the United States Environmental Protection Agency as a Group B2 probable human carcinogen; that in 2005 the Environmental Protection Agency added diisononyl phthalate (DINP) to the list of toxic chemicals subject to reporting requirements of section 313 of the federal “Emergency Planning and Community Right-to-Know Act of 1986,” 42 U.S.C. s.11023, and section 6607 of the federal “Pollution Prevention Act of 1990,” 42 U.S.C. s.13106, based upon the carcinogenicity of DINP and liver, kidney, and developmental toxicity; and that further research indicates some phthalates may cause harmful reproductive effects.

   The Legislature therefore determines that bisphenol A and phthalates are hazardous substances and it is in the public interest to prohibit the sale, distribution, and manufacturing of toys and child care articles containing bisphenol A and phthalates.

3. As used in this act:

   “Child care article” means a product designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of a child or to help a child with sucking or teething, including baby bottles, and shall include the packaging for any such article.

   “Phthalates” includes diethylhexyl phthalate (DEHP), dibutyl phthalate (DBP), butyl benzyl phthalate (BBP), diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), di-n-octyl phthalate (DNOP
or DnOP), and any other phthalate, as determined by the Division of Consumer Affairs in the Department of Law and Public Safety in consultation with the Department of Environmental Protection and the Department of Health and Senior Services.

“Toy” means a product designed or intended by the manufacturer to be used by a child when the child plays, and shall include the packaging for any such toy.

4. a. On or after January 1, 2010, it shall be an unlawful practice for a person to sell, distribute, or manufacture any toy or child care article, intended for use by a child of any age, containing a total level of phthalates in a concentration exceeding 0.1% or made with or containing bisphenol A.

b. A person shall use the least toxic alternative when replacing bisphenol A and phthalates in toys and child care articles for the purposes of subsection a. of this section and shall not replace bisphenol A or phthalates with (1) carcinogens rated by the United States Environmental Protection Agency as Group A, B, or C carcinogens, or (2) reproductive toxicants that cause birth defects, reproductive harm, or developmental harm, as identified by the United States Environmental Protection Agency.

5. The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection and the Department of Health and Senior Services, shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as are necessary to effectuate the purposes of this act.

6. This act shall take effect immediately.

STATEMENT

This bill would enact the “Toxic-free Children’s Products Act” and would make the sale, distribution, or manufacturing of any toy or child care article, intended for use by a child of any age, an unlawful practice under the consumer fraud act if it contains a total level of phthalates in a concentration exceeding 0.1% or contains bisphenol A (BPA).

Under this bill, toys and child care articles sold in the State must be made with the least toxic alternative in place of phthalates and BPA, and phthalates and BPA could not be replaced with (1) carcinogens rated by the United States Environmental Protection Agency (EPA) as Group A, B, or C carcinogens, or (2) reproductive toxicants that cause birth defects, reproductive harm, or developmental harm as identified by the EPA.
A person violating this bill would be subject to the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), and liable for a penalty of up $10,000 for the first offense and up to $20,000 for the second offense and each subsequent offense.

Similar legislation banning the sale, distribution, and manufacturing of toys and child care articles containing phthalates and BPA is being considered in a number of other states. Since 1999, the European Union (EU) has banned toys containing certain phthalates and in 2005 extended the ban permanently to include child care articles placed in the mouth of babies and young children because the EU found the amount of phthalates absorbed exceeded the maximum daily dose and would impact long-term health.

The Center for the Evaluation of Risks to Human Reproduction, in the National Institute of Environmental Health Sciences in the United States Department of Health and Human Services, evaluated seven phthalate esters and expressed “serious concern” about diethylhexyl phthalate (DEHP), especially with regard to uses in medical devices for feeding and medicating critically ill newborn infants and assisting in their breathing. The EPA currently classifies bis (2-ethylhexyl) phthalate, also known as diethylhexyl phthalate or DEHP, as a Group B2 probable human carcinogen.