



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2009 Senate Bill 271</b>	<b>Senate Substitute Amendment 1 and Senate Amendment 1 to Senate Substitute Amendment 1</b>
<i>Memo published:</i> January 26, 2010	<i>Contact:</i> Mary Matthias, Senior Staff Attorney (266-0932) Pam Shannon, Senior Staff Attorney (266-2680)

### **BACKGROUND**

2009 Senate Bill 271 (the bill) and Senate Substitute Amendment 1 (SSA 1) regulate the manufacture, sale, and labeling of child's containers that contain bisphenol A (BPA). A "child's container" is an empty baby bottle or spill-proof cup primarily intended by the manufacturer for use by a child five years of age or younger.

The provisions of the bill and SSA 1 do not apply to a used child's container.

In both the bill and SSA 1, each child's container manufactured, sold, or offered for sale in violation of a provision is considered a separate violation.

### **2009 SENATE BILL 271**

#### **Manufacture and Labeling of Children's Containers**

The bill specifies that no person may manufacture a child's container that contains BPA. A manufacturer who sells, or offers for sale, a child's container must ensure that the container is conspicuously labeled as not containing BPA.

#### **Wholesale Sale and Labeling of Children's Containers**

The bill specifies that no person may sell, or offer for sale, at wholesale, a child's container that contains BPA. A wholesaler who sells, or offers for sale, a child's container must ensure that the container is conspicuously labeled as not containing BPA.

### **Retail Sale of Children's Containers**

The bill does not address retail sales.

### **Penalties and Enforcement**

The Department of Agriculture, Trade and Consumer Protection (DATCP) may seek an injunction to restrain a violation of the bill.

DATCP or a district attorney may commence an action to recover a forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation.

A person who violates the bill may be fined not more than \$5,000, imprisoned for not more than one year in the county jail, or both.

DATCP may order a manufacturer or seller of a child's container in violation of the bill to recall the container or to repair any defects in a container that has been sold. No person may refuse to comply with such an order.

If a court imposes a fine or forfeiture for a violation of any of the provisions of the bill, the court must also impose a BPA surcharge that is equal to 50% of the amount of the fine or forfeiture. The surcharge is appropriated to DATCP for administering and enforcing the provisions of the bill.

### **SENATE SUBSTITUTE AMENDMENT 1**

SSA 1 differs from the bill in the following ways:

#### **Retail Sales and Labeling**

SSA 1 prohibits the retail sale of a child's container that contains BPA. A person who sells, or offers for sale, at retail, a child's container must ensure the container is conspicuously labeled as not containing BPA.

SSA 1 specifies that a person who sells, or offers for sale, at retail, a child's container that contains BPA, or that is not appropriately labeled, is subject to a forfeiture of \$50 to \$200. In addition, DATCP may seek an injunction to restrain retail sales that are in violation of the prohibition or may order a recall of containers sold in violation of the prohibition.

#### **Labeling of Containers Sold at Wholesale**

SSA 1 specifies that containers sold at wholesale that are *intended for retail sale* must be conspicuously labeled as not containing BPA. A wholesaler or manufacturer who sells, or offers for sale, a child's container that is *not intended for retail sale* must do one of the following:

- Ensure that the container is conspicuously labeled as not containing BPA.
- Confirm to the buyer that the container does not contain BPA.

**SENATE AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1**

Senate Amendment 1 (SA 1) to SSA 1 changes the age limit used in the definition of “child’s container” from five years of age to three years of age. Under the amendment, the definition of “child’s container” is “an empty baby bottle or spill-proof cup primarily intended by the manufacturer for use by a child three years of age or younger.”

**Legislative History**

Senate Bill 271 was introduced on August 21, 2009, by Senator Lassa, cosponsored by Representative Roys. It was referred to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection, which held a hearing in the bill on November 10, 2009. Senate Substitute Amendment 1 was offered by Senator Lassa on January 14, 2010.

On January 20, 2010, the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection introduced and adopted SA 1 to SSA 1, as amended, and passage of the bill, as amended, on successive votes of Ayes, 5; Noes, 0; and recommended adoption of SSA 1, as amended, and passage of the bill, as amended, on successive votes of Ayes, 5; Noes, 0.

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