

ASSEMBLY BILL NO. 354—ASSEMBLYMEN DIAZ,  
BOBZIEN; PIERCE AND SWANK

MARCH 18, 2013

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits the use of certain chemicals in various consumer products. (BDR 52-789)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to consumer protection; prohibiting the use of Bisphenol A (BPA) in certain products; prohibiting the use of toxic flame retardants in any children's product or residential furniture; requiring the Health Division of the Department of Health and Human Services to identify a list of harmful chemicals; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 10** of this bill prohibits the manufacturing of certain products which contain Bisphenol A (BPA). **Section 11** of this bill prohibits a manufacturer from replacing BPA with certain other substances. **Section 12** of this bill requires the Commissioner of Food and Drugs to create a process whereby residents of this State can petition for the addition of a chemical to the list of prohibited replacement substances. **Section 13** of this bill requires that food packaging containing BPA be labeled as such. **Section 14** of this bill requires a manufacturer to identify on its Internet website the chemical identity of certain substances used in canned food.

**Sections 23 and 24** of this bill prohibit a manufacturer, wholesaler or retailer from selling any children's product or residential furniture containing certain prohibited substances. **Section 25** of this bill requires manufacturers of products containing such prohibited substances to notify sellers of the products not less than 90 days before the effective date of the restriction of the chemical. **Section 26** of this bill provides a civil penalty for a violation of **sections 23 and 24**.

**Section 36** of this bill requires the Health Division of the Department of Health and Human Services to create a list of not less than 50 and not more than 100 chemicals of high concern which are chemicals that have been identified as toxic, carcinogenic or harmful to the human body. **Section 37** of this bill authorizes the Health Division to participate in an interstate clearinghouse to promote the use of safer chemicals in consumer products.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 37, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Canned food” means food sterilized by heat and stored in a closed, durable container, including, without limitation, tin and aluminum cans, flexible aluminum foil, thermoplastic containers and squeeze tubes.*

**Sec. 4.** *“Child” means a person who is less than 12 years of age.*

**Sec. 5.** *“Food contact substance” means any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting or holding food, if such use is not intended to have any technical effect on such food.*

**Sec. 6.** *“Food packaging” means a container or wrapper intended for direct contact with food and which is used to store food and foodstuffs for sale.*

**Sec. 7.** *“Indirect food additive” means an article used in contact with food and substances used to manufacture them, including, without limitation, processing equipment, if the article or its components inadvertently become a component of the food through direct contact with the food.*

**Sec. 8.** *“Infant formula” means a milk or soy-based powder, concentrated liquid or ready-to-feed substitute for human breast milk which is intended for infant consumption and which is commercially available.*

**Sec. 9.** *“Reusable food or beverage container” means a receptacle for storing food or beverages, including, without limitation, baby bottles, spill-proof cups, sports bottles and thermoses. The term does not include food or beverage containers intended for disposal after initial usage.*

**Sec. 10.** *No person or entity shall manufacture, sell or distribute in commerce in this State:*

*1. Any reusable food or beverage container containing Bisphenol A.*

*2. Food intended for or marketed to children, including, without limitation, infant formula, that is stored in food packaging which contains Bisphenol A.*



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1     **Sec. 11.** *A manufacturer shall not replace Bisphenol A with:*  
2     1. *A carcinogen categorized as a Group A, Group B or Group*  
3     *C carcinogen by the United States Environmental Protection*  
4     *Agency;*

5     2. *A substance identified in the document "Office of Pesticide*  
6     *Programs List of Chemicals Evaluated for Carcinogenic*  
7     *Potential," published by the Office of Pesticide Programs of the*  
8     *United States Environmental Protection Agency, as a known or*  
9     *likely carcinogen, known to be a human carcinogen, likely to be a*  
10    *human carcinogen or suggestive of being a carcinogen;*

11    3. *A reproductive toxicant that the United States*  
12    *Environmental Protection Agency has identified as causing birth*  
13    *defects, reproductive harm or developmental harm; or*

14    4. *An endocrine disruptor as identified by the Directorate-*  
15    *General for the Environment of the European Commission.*

16    **Sec. 12.** *The Commissioner of Food and Drugs shall create a*  
17    *process whereby a resident of this State can petition for the*  
18    *addition of a chemical to the list of prohibited Bisphenol A*  
19    *replacements in reusable food and beverage containers based on*  
20    *scientific evidence which demonstrates harm or potential for*  
21    *harm.*

22    **Sec. 13.** *The words "This package contains Bisphenol A"*  
23    *must be printed on the front of the label of all food packaging*  
24    *manufactured in this State that contains Bisphenol A.*

25    **Sec. 14.** *A manufacturer in this State shall identify, in a*  
26    *prominent location on the Internet website of the manufacturer,*  
27    *the chemical identity of any food contact substance or indirect*  
28    *food additive that is used in canned food manufactured by the*  
29    *manufacturer.*

30    **Sec. 15.** *Sections 15 to 26, inclusive, of this act may be*  
31    *referred to as the Act to Protect Children and Families from*  
32    *Harmful Flame Retardants.*

33    **Sec. 16.** *As used in sections 15 to 26, inclusive, of this act,*  
34    *unless the context otherwise requires, the words and terms defined*  
35    *in sections 17 to 22, inclusive, of this act have the meanings*  
36    *ascribed to them in those sections.*

37    **Sec. 17.** *"Chemical of high concern" means a chemical*  
38    *identified by any authoritative agency as known to do one or more*  
39    *of the following:*

40    1. *Harm the normal development of a fetus or child or cause*  
41    *other developmental toxicity;*

42    2. *Cause cancer, genetic damage or reproductive harm;*

43    3. *Disrupt the endocrine or hormone system;*

44    4. *Damage the nervous system, the immune system or any*  
45    *organs or cause other systemic toxicity;*



5. *Be persistent, bioaccumulative and toxic; or*

6. *Be very persistent and very bioaccumulative.*

**Sec. 18.** 1. *“Children’s product” means a consumer product that is designed or intended:*

(a) *For the care or use by a child who is less than 12 years of age; or*

(b) *To come into physical contact with a child who is less than 12 years of age at the time the product is used.*

2. *The term does not include soap or any medication, drug, food or other product which is intended to be ingested or which is regulated by the Food and Drug Administration of the United States Department of Health and Human Services.*

**Sec. 19.** *“Manufacturer” means any person, firm, association, partnership, corporation, governmental entity, organization or joint venture that manufactures any children’s products or residential upholstered furniture.*

**Sec. 20.** *“Residential upholstered furniture” means residential seating products intended for indoor use in a home or other dwelling intended for residential occupancy and which consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials.*

**Sec. 21.** *“Retailer” means a person who offers any children’s product or residential upholstered furniture for sale at retail in this State through any means, including, without limitation, remote offerings such as sales outlets, catalogs or the Internet, but does not include a sale that is a wholesale transaction with a distributor or retailer. The term does not include a person, firm, association, partnership, corporation, governmental entity, organization or joint venture that both manufactures and sells in this State any children’s product or residential upholstered furniture at retail.*

**Sec. 22.** *“TRIS” means:*

1. *TDCPP (tris(1,3-dichloro-2-propyl) phosphate);*

2. *TCEP (tris(2-chloroethyl) phosphate); or*

3. *TCPP (tris(2-chloro-1-methylethyl) phosphate (TCPP)).*

**Sec. 23.** 1. *Except as otherwise provided in subsection 2, a manufacturer, wholesaler or retailer shall not knowingly sell, offer for sale, distribute for sale or otherwise distribute for use in this State, any children’s product or residential upholstered furniture which contains TRIS in an amount greater than 50 parts per million in any component of the product or furniture.*

2. *The sale or purchase of any previously owned children’s product or residential upholstered furniture made in a casual or*



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1 *isolated sale or by a nonprofit organization is exempt from this*  
2 *section.*

3 **Sec. 24.** 1. *Except as otherwise provided in subsection 2, a*  
4 *manufacturer, wholesaler or retailer shall not knowingly sell or*  
5 *offer for sale, distribute for sale or otherwise distribute for use in*  
6 *this State any children's product or residential upholstered*  
7 *furniture which contains a flame retardant that is a chemical of*  
8 *high concern.*

9 2. *The sale or purchase of any previously owned product*  
10 *made in a casual or isolated sale or by a nonprofit organization is*  
11 *exempt from this section.*

12 **Sec. 25.** *A manufacturer of any children's product or*  
13 *residential upholstered furniture which contains a chemical that is*  
14 *restricted pursuant to the provisions of sections 14 to 26, inclusive,*  
15 *of this act shall notify any person that sells the manufacturer's*  
16 *products in this State about the provisions of sections 14 to 26,*  
17 *inclusive, of this act not less than 90 days before the effective date*  
18 *of the restriction of the chemical.*

19 **Sec. 26.** *A manufacturer, wholesaler or retailer who willfully*  
20 *and knowingly sells, offers for sale, distributes for sale or*  
21 *otherwise distributes for use in this State any children's product or*  
22 *residential upholstered furniture in violation of sections 14 to 26,*  
23 *inclusive, of this act commits an offense punishable by:*

24 1. *For a first offense, a fine of not more than \$1,000 for each*  
25 *violation.*

26 2. *For a second and any subsequent offense, a fine of not*  
27 *more than \$5,000.*

28 **Sec. 27.** *Sections 27 to 37, inclusive of this act may be*  
29 *referred to as the Act to Identify Chemicals of High Concern to*  
30 *Children and Pregnant Women in Consumer Products.*

31 **Sec. 28.** *The Legislature hereby declares that it is the policy*  
32 *of this State to reduce the exposure of children, pregnant women*  
33 *and other vulnerable populations in this State to chemicals of high*  
34 *concern by publicly identifying such chemicals and encouraging*  
35 *substitution of those chemicals with safer alternatives whenever*  
36 *feasible.*

37 **Sec. 29.** *As used in sections 27 to 37, inclusive, of this act,*  
38 *unless the context otherwise requires, the words and terms defined*  
39 *in sections 30 to 35, inclusive, of this act have the meanings*  
40 *ascribed to them in those sections.*

41 **Sec. 30.** *"Chemical" means a substance with a distinct*  
42 *molecular composition or a group of structurally related*  
43 *substances. The term also includes the breakdown of products of*  
44 *the substance or substances that form through decomposition,*  
45 *degradation or metabolism and the precursor compounds that*



1 *decompose, degrade or are metabolized to form the substance or*  
2 *substances.*

3 **Sec. 31.** *“Chemical of high concern” means a chemical*  
4 *identified by the Division pursuant to section 36 of this act.*

5 **Sec. 32.** *“Child” means a person who is less than 18 years of*  
6 *age.*

7 **Sec. 33.** *“Consumer product” means any item sold for*  
8 *residential or commercial use, including, without limitation, the*  
9 *component parts or packaging, which is sold for:*

10 1. *Indoor use in a residence, childcare facility or school; or*  
11 2. *Outdoor use if a child or pregnant woman may have direct*  
12 *contact with the item.*

13 **Sec. 34.** *“Credible scientific evidence” means the results of a*  
14 *study, the experimental design and conduct of which have*  
15 *undergone independent scientific peer review, that are published*  
16 *in a peer-reviewed journal or in a publication of an authoritative*  
17 *governmental agency, including, without limitation:*

18 1. *The Centers for Disease Control and Prevention, the Food*  
19 *and Drug Administration, the National Institute of Governmental*  
20 *Health Sciences and the National Toxicology Program of the*  
21 *United States Department of Health and Human Services;*

22 2. *The United States Environmental Protection Agency;*

23 3. *The World Health Organization; and*

24 4. *The European Chemicals Agency of the European Union.*

25 **Sec. 35.** *“Division” means the Health Division of the*  
26 *Department of Health and Human Services.*

27 **Sec. 36.** 1. *The Division shall publish and maintain on its*  
28 *official Internet website a list of not less than 50 and not more*  
29 *than 100 chemicals of high concern.*

30 2. *The Division may identify a chemical as a chemical of high*  
31 *concern pursuant to subsection 1 if the Division determines that:*

32 (a) *The chemical has been identified by an authoritative*  
33 *governmental agency on the basis of credible scientific evidence as*  
34 *being known or likely to:*

35 (1) *Harm the normal development of a fetus or child or*  
36 *cause other developmental toxicity;*

37 (2) *Cause cancer, genetic damage or reproductive harm;*

38 (3) *Disrupt the endocrine or hormone system;*

39 (4) *Be persistent, bioaccumulative and toxic; or*

40 (5) *Be very persistent and very bioaccumulative; and*

41 (b) *There is credible scientific evidence that one or more of the*  
42 *following criteria have been met:*

43 (1) *The chemical has been found, through biomonitoring,*  
44 *to be present in human blood, breast milk, urine or other bodily*  
45 *tissues or fluids;*



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1       (2) *The chemical has been found, through sampling and*  
2 *analysis, to be present in household dust, indoor air or drinking*  
3 *water, or elsewhere in the home environment; or*

4       (3) *The chemical has been added to or is present in a*  
5 *consumer product used or present in or around the residence,*  
6 *childcare facility or school.*

7       3. *The Division may identify a chemical as a chemical of high*  
8 *concern pursuant to subsection 1 if the Division determines that:*

9       (a) *The chemical has been formally identified by another state*  
10 *as a priority chemical or a chemical of high concern based on*  
11 *criteria that are substantially equivalent to those established in*  
12 *subsection 2; or*

13       (b) *The chemical has been formally identified by another state*  
14 *as being known to cause cancer, birth defects or other*  
15 *reproductive harm and one or more of the criteria listed in*  
16 *paragraph (b) of subsection 1 is met.*

17       4. *The Division shall review and revise the list of chemicals of*  
18 *high concern at least once every 3 years. The Division may add a*  
19 *chemical to the list if the chemical meets the requirements of*  
20 *subsection 2 or 3.*

21       5. *Within a reasonable amount of time after the list of*  
22 *chemicals of high concern is revised pursuant to subsection 4, the*  
23 *Division shall update the list on its official Internet website.*

24       **Sec. 37.** 1. *The Division may participate in an interstate*  
25 *clearinghouse to promote the use of safer chemicals in consumer*  
26 *products in cooperation with other states and governmental*  
27 *entities.*

28       2. *The Division may cooperate with the interstate*  
29 *clearinghouse to:*

30       (a) *Organize and manage available data on chemicals of high*  
31 *concern, including, without limitation, information on uses,*  
32 *hazards and environmental concerns;*

33       (b) *Produce and inventory information on safer alternatives to*  
34 *specific uses of chemicals of high concern and on model policies*  
35 *and programs;*

36       (c) *Provide technical assistance to businesses and consumers*  
37 *related to the use of safer chemicals; and*

38       (d) *Undertake other activities in support of state programs to*  
39 *promote the use of safer chemicals in consumer products.*

40       **Sec. 38.** On or before January 1, 2014, the Health Division of  
41 the Department of Health and Human Services shall publish on its  
42 official Internet website the list of chemicals of high concern  
43 identified pursuant to section 36 of this act.



- 1       **Sec. 39.** 1. This section and sections 1 to 9, inclusive, 11 to  
2 22, inclusive, 25 and 27 to 38, inclusive, of this act become effective  
3 on October 1, 2013.  
4       2. Section 10 of this act becomes effective on January 1, 2014.  
5       3. Sections 23 and 26 of this act become effective on July 1,  
6 2014.  
7       4. Section 24 of this act becomes effective on July 1, 2015.

