

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1266 (Limón)  
Version: August 22, 2024  
Hearing Date: August 29, 2024  
Fiscal: Yes  
Urgency: No  
AM

**PURSUANT TO SENATE RULE 29.10(d)**

**SUBJECT**

Product safety: bisphenol

**DIGEST**

This bill expands the existing prohibition against children's bottles and cups containing Bisphenol A (BPA) to instead prohibit any Bisphenols (BPs) in a juvenile's feeding product or sucking or teething products above the practical quantitation limit (PQL), to be determined by the Department of Toxic Substances Control (DTSC). The bill provides that these provisions may be enforced by DTSC or the Attorney General (AG) and that a violation is subject to an administrative or civil penalty of \$5,000 for a first violation and not to exceed \$10,000 for each subsequent violation.

**EXECUTIVE SUMMARY**

This bill seeks to build upon the exiting ban on BPA in children's bottles and cups by expanding the ban to any BPs in a juvenile's feeding product or sucking or teething products above the practical quantitation limit (PQL), which is to be determined by DTSC. The bill also seeks to add a specific enforcement authority to DTSC or the AG and provides for administrative or civil penalties for any violation. The bill is author sponsored and supported by various environmental and health advocacy organizations. No timely opposition was received by the Committee. The bill passed the Senate Environmental Quality Committee on a vote of 7 to 0 and the Senate Health Committee on a vote of 11 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Prohibits a person from manufacturing, selling, or distributing in commerce in this state any bottle or cup intended to be filled with any liquid, food, or beverage intended primarily for consumption by children three years of age or younger that contains any bisphenol A at a detectable level above 0.1 parts per billion (ppb). (Health and Saf. Code § 108940.)
- 2) Prohibits a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product, as defined, that contains intentionally added PFAS or PFAS at or above 100 parts per million (ppm), as measured in total organic fluorine. (Health and Saf. Code § 108946.)
- 3) Requires, under the Safer Consumer Products (Green Chemistry) statutes, that DTSC adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified. (Health and Saf. Code § 25252 et seq.)
  - a) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified.
  - b) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products, and their potential alternatives, to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern.
  - c) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product.

This bill:

- 1) Revises the existing prohibition on BPA in a bottle or cup to instead prohibit the sale of any juvenile's feeding product or juvenile's sucking or teething product that contains any form of BP above the practical quantitation limit (PQL), to be determined by the DTSC.
- 2) Authorizes DTSC to establish standards that are more protective of public health, sensitive populations, or the environment than the standards in 1) above.
- 3) Prohibits a manufacturer from replacing any form of BP in a product under 1) above with any chemical identified by DTSC as a Candidate Chemical under the Green Chemistry program.

- 4) Defines various terms for these purposes.
  - a) “Bisphenol” means a chemical with two phenol rings connected by a single linker atom. The linker atom and phenol rings may have additional substituents.
  - b) “Juvenile” means an individual or individuals younger than 12 years of age.
  - c) “Juvenile’s feeding product” means any consumer product, marketed for use by, marketed to, sold, offered for sale, or distributed to juveniles in the State of California that is designed or intended by the manufacturer to be filled with any liquid, food, or beverage intended primarily for consumption from that bottle or cup by a juvenile.
  - d) “Juvenile’s sucking or teething product” means any consumer product, marketed for use by, marketed to, sold, offered for sale, or distributed to juveniles in the State of California that is designed or intended by the manufacturer to help a juvenile with sucking or teething in order to facilitate sleep or relaxation.
- 5) Authorizes DTSC and the AG to enforce these provisions and makes a violation punishable by an administrative or civil penalty not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for each subsequent violation. Specifies that penalties may be assessed for each violation or, for continuing violations, for each day that violation continues.
- 6) Authorizes DTSC to enforce these provisions and adopt regulations to implement, enforce, interpret, or make specific these provisions.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

Bisphenols, commonly referenced as BPA or BPS, is a chemical compound that is used in a variety of industrial and consumer products – ranging from automobile parts to food containers.

BPA is considered an endocrine disruptor, which means it can interfere with the hormone system in the body and is associated with harmful health outcomes such as asthma, cardiovascular disease, and obesity.

Children, in particular infants, are even more susceptible to the harms of BPA and can have adverse health impacts upon exposure. Recognizing this harm, in 2012, the U.S. Food and Drug Administration (FDA) banned BPA from baby bottles and sippy cups.

Although manufacturers have eliminated BPA from these products, they have shifted to using alternative chemicals to replace it – such as BPS and BPF – which have been found to be even more harmful than BPA. This poses a serious health concern amongst children and parents that must be addressed.

SB 1266 prohibits the manufacture, sale, or distribution of any juvenile feeding, sucking, or teething product that contains any form of bisphenol. Additionally, it requires the Department of Toxic Substances Control to enforce and establish health and environmental standards on juvenile products.

## 2. Background

AB 1319 (Butler, Ch. 467, Stats. 2011) enacted the original prohibition on the manufacture, sale, or distribution of any bottle or cup containing BPA at a detectable level above 0.1 parts per billion (ppb) if the bottle or cup was designed or intended to be filled with any liquid, food, or beverage that is intended primarily for consumption by children 3 years of age or younger. This bill seeks to update existing law by expanding the ban to include not only bottles or cups but any product designed to feed a juvenile or any sucking or teething product. Additionally, the bill seeks to extend the ban to all BPs, not just BPA. Recent amendments to the bill changed the standard from 0.1 parts ppb to the practical quantitation limit (PQL), to be determined by the Department of Toxic Substances Control. The PQL is defined in regulations as the lowest concentration of a chemical that can be reliably measured within specified limits of precision and accuracy using routine laboratory operating procedures. (22 Cal. Code. Regs. § 69501.1(a)(52).)

BPs represent a large class of phenolic organic chemical compounds. BPA is generally used in the production of polycarbonate plastics. The Senate Health Committee analysis of this bill provides detailed information on the harms of BPs:

BPA leaches into food and beverages, which can have negative impacts on human health. As a result of these health concerns, BPA has been banned in certain products, including an FDA and California ban for baby bottles and sippy cups. Following these and other regulations on the production and usage of BPA, structurally similar substitutes such as Bisphenol-S (BPS) and Bisphenol-F (BPF) have been used as a replacement for BPA. [...]

Environmental Research and Public Health, BPS and BPF are structurally and chemically similar to BPA; and they are expected to promote adverse effects by acting as endocrine disrupters. Over the last decade, BPS and BPF have been widely used by manufacturers as a substitute for BPA; they are present in a wide range of products such as food products, cleaning agents, thermal papers, dental sealants, and personal care products. High concentrations of BPF were found in different vegetable and seafood products in China. In thermal paper receipt samples, BPS was

detected in 62% of samples from Italy and all samples from the U.S., Japan, Korea, and Vietnam. Furthermore, BPS and BPF were detected in 89.4% and 66.5% of urinary samples from U.S. adults and children, respectively. The review stated that as a large population is exposed to BPA substitutes at a relatively high level, the safety of BP substitutes has been questioned over the last few years.<sup>1</sup>

The bill, in order to avoid, BPs being replaced in covered juvenile products with other potentially harmful chemicals prevents a manufacturer from replacing any form of BP in a covered product with any chemical identified by DTSC as a Candidate Chemical under the Green Chemistry program. A Candidate Chemical is one that has a “hazard trait and/or an environmental or toxicological endpoint.”<sup>2</sup> “Hazard traits are intrinsic properties of a chemical that may contribute to adverse effects in humans, animals, or in ecological communities.”<sup>3</sup>

### 3. Enforcement

Many existing chemical bans in certain products do not contain specific enforcement provisions, such as the various statutes that ban perfluoroalkyl and polyfluoroalkyl substances (PFAS) in specified consumer products<sup>4</sup> and the statutes banning BPA in children’s cups or bottles that this bill is amending. In light of this, these statutes have sometimes been referred to as the orphan codes. Enforcement of these orphan codes would have to be through other existing statutory frameworks, such as the Unfair Competition Law (UCL). (Bus. & Prof. Code § 17200 et seq.) Last year, Governor Newsom vetoed three single-product chemical ban bills noting the lack of regulatory enforcement. In his veto message of AB 246 (Papan, 2023) he wrote:

This is one of three single-product chemical bans passed by the Legislature this year that attempt to address serious concerns with the presence of PFAS in consumer products. These bills do not identify or require any regulatory agency to determine compliance with, or enforce, the proposed statute.

While I strongly support the author's intent and have signed similar legislation in the past, I am concerned that this bill falls short of providing enhanced protection to California consumers due to lack of regulatory oversight. Previously enacted single-product chemical bans, which also lack oversight, are proving challenging to implement, with inconsistent interpretations and confusion among manufacturers about how to comply with the restrictions.

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<sup>1</sup> Sen. Health Comm. analysis SB 1266 (2023-24 reg. sess.) as amended April 8, 2024 at pp. 3-4.

<sup>2</sup> DTSC, *Candidate Chemicals* (2024), available at <https://dtsc.ca.gov/scp/candidate-chemicals-list/>.

<sup>3</sup> *Ibid.*

<sup>4</sup> See e.g. AB 1817 (Ting, Ch. 762, Stats. of 2022), AB 1200 (Ting, Ch. 503, Stats. 2021), and AB 652 (Freidman, Ch. 500, Stats. 2021).

In order to instill consumer confidence and effectively address public health and environmental concerns, I am directing the Department of Toxic Substances Control to engage with the author and the Legislature and consider alternative approaches to regulating the use of these harmful chemicals in consumer products.

Seeking to be responsive to the Governor's veto message, AB 347 (Ting, 2023) would provide a regulatory framework for the various existing PFAS ban statutes by placing oversight within DTSC and providing specific enforcement provisions. Similarly, the most recent amendments to this bill provide specific regulatory enforcement by DTSC and additionally authorize enforcement by the AG. Lastly, the amendments provide for the imposition of civil or administrative penalties not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for each subsequent violation. Penalties may be assessed for each day that a violation continues.

### **SUPPORT**

A Voice for Choice Advocacy  
American College of Obstetricians and Gynecologists District IX  
Arts District Community Council LA  
Breast Cancer Prevention Partners  
Californians Against Waste  
California Health Coalition Advocacy  
California Water Association  
Cleaneearth4kids.org  
Clean Water Action  
Educate. Advocate.  
Environmental Working Group  
Natural Resources Defense Council

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

AB 2244 (Ting, 2024) prohibits a proof of purchase provided to a consumer from containing BPA on or after January 1, 2025, or any BP on and after January 1, 2026. AB 2244 was held in the Senate Appropriations Committee.

AB 2515 (Papan, 2024) prohibits a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined.

AB 347 (Ting, 2023), among other things, requires DTSC to enforce and ensure compliance with PFAS prohibitions under existing law, requires manufacturers to register with the DTSC, and authorizes DTSC to assess administrative penalties against manufacturers in violation of existing PFAS prohibitions. AB 347 is pending on the Senate Floor.

Prior Legislation:

AB 246 (Papan, 2023) would have prohibited, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any menstrual products that contain intentionally added PFAS, or, commencing January 1, 2027, concentrations of PFAS above 10 parts per million. This bill was vetoed by the Governor. (*See* Comment 3 for Governor’s veto message).

AB 1347 (Ting, 2023) would have, among other things, prohibited a proof of purchase provided to a consumer from containing BPA on or after January 1, 2024, or any BP on and after January 1, 2025. AB 1347 was held in the Senate Appropriations Committee.

AB 161 (Ting, 2019) would have, among other things, prohibited a proof of purchase provided to a consumer from containing BPA of bisphenol S on or after January 1, 2022. AB 161 was held in the Senate Appropriations Committee.

AB 1319 (Butler, Ch. 467, Stats. 2011) prohibited the manufacture, sale, or distribution in commerce of any bottle or cup that contains BPA at a detectable level above 0.1 parts per billion (ppb) if the bottle or cup is designed or intended to be filled with any liquid, food, or beverage that is intended primarily for consumption by children 3 years of age or younger.

**PRIOR VOTES**

Assembly Appropriations Committee (Ayes 14, Noes 0)  
Assembly Environmental Safety and Toxic Materials Committee (Ayes 7, Noes 0)  
Assembly Health Committee (Ayes 16, Noes 0)  
Senate Floor (Ayes 39, Noes 0)  
Senate Health Committee (Ayes 11, Noes 0)  
Senate Environmental Quality Committee (Ayes 7, Noes 0)

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