

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1187

Short Title: NC Toxic-Free Kids Act. (Public)

Sponsors: Representatives Harrison, Glazier, McGrady, and Fisher (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Environment, if favorable, Judiciary Subcommittee C, if favorable,
Appropriations.

May 30, 2012

A BILL TO BE ENTITLED

1 AN ACT TO PROTECT CHILDREN FROM THE HEALTH IMPACTS OF TOXIC
2 CHEMICALS IN CHILDREN'S PRODUCTS BY PROHIBITING THE
3 MANUFACTURE AND SALE OF CHILDREN'S PRODUCTS CONTAINING
4 BISPHENOL A, TRIS, OR PHTHALATES; AND BY REQUIRING THE
5 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, IN
6 CONSULTATION WITH THE DIVISION OF PUBLIC HEALTH OF THE
7 DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO IDENTIFY AND
8 DESIGNATE CHEMICALS OF HIGH CONCERN AND PRIORITY CHEMICALS;
9 AND BY REQUIRING NOTICE AND AN ALTERNATIVES ASSESSMENT BY
10 MANUFACTURERS OF CHILDREN'S PRODUCTS CONTAINING CERTAIN
11 PRIORITY CHEMICALS.
12

13 Whereas, rates of chronic diseases among children, including childhood cancers,
14 autism spectrum disorders, certain birth defects, reproductive disorders, allergies, and
15 developmental disorders are increasing and are associated with children's exposures to
16 environmental agents; and

17 Whereas, infants and children are sensitive to toxic chemical exposure because their
18 neurological and endocrine systems are not fully developed and their ability to detoxify and
19 eliminate toxic residues is immature; and

20 Whereas, the Toxic Substances Control Act (TSCA), enacted in 1976, has allowed
21 more than 82,000 chemicals into commerce in the United States with only about 200 of those
22 chemicals subjected to limited health and safety testing; and

23 Whereas, four other states also have passed legislation regarding chemicals of
24 concern in children's products; and

25 Whereas, the chemicals known collectively as TRIS are added to plastics, foams,
26 and textiles as flame retardants used in children's products such as car seats, baby changing
27 pads, and baby carriers in order to comply with fire retardant standards in the state of
28 California; and

29 Whereas, TRIS is used as a replacement for certain PBDE (Polybrominated
30 Diphenyl Ether) flame retardants that have been banned or voluntarily phased out of use; and

31 Whereas, the U.S. Consumer Product Safety Commission banned TRIS from
32 children's clothing and sleepwear in 1977 because it was determined to cause cancer in test
33 animals; and



1 Whereas, phthalates are a group of chemical additives used as thickeners, softeners,
2 or controlled release agents in plastics like polyvinyl chloride or PVC and are readily absorbed
3 through the skin; and

4 Whereas, the U.S. Centers for Disease Control has found that phthalates are
5 ubiquitous in the bodies of Americans, that levels are increasing, and that the highest levels are
6 found in children and women of reproductive age; and

7 Whereas, in August 2008, U.S. President George W. Bush signed the Consumer
8 Product Safety Improvement Act of 2008 banning three types of phthalates in children's
9 products, and at least three other states have enacted further bans; and

10 Whereas, several phthalates are listed as "probable" or "possible" human
11 carcinogens by the U.S. Environmental Protection Agency; and

12 Whereas, exposure to phthalates has been associated with birth defects, shortened
13 pregnancy, behavioral problems, liver and kidney damage; and

14 Whereas, industry leaders have already begun removing phthalates from cosmetics
15 and children's products; and

16 Whereas, Bisphenol A, commonly known as BPA, is an industrial chemical
17 regularly used in the plastics industry for the production of items such as baby bottles, water
18 bottles, food storage containers, and metal can liners; and

19 Whereas, more than two million pounds of Bisphenol A are produced in the United
20 States each year; and

21 Whereas, the United States Food and Drug Administration has cited concerns about
22 the potential effects of Bisphenol A on the brain, behavior, and the endocrine glands of infants
23 and children; and

24 Whereas, hundreds of scientific studies have linked Bisphenol A to health effects
25 such as miscarriage for pregnant women, as well as diabetes, obesity, and cancer; and

26 Whereas, the United States Centers for Disease Control and Prevention has found
27 that 93% of Americans have detectable levels of Bisphenol A in their bodies; and

28 Whereas, at least 10 other states have passed legislation to limit the use of
29 Bisphenol A, and additional states have had legislation introduced; and

30 Whereas, industry leaders have elected to begin phasing out the use of Bisphenol A
31 in the production of baby bottles, sippy cups, and food containers; Now, therefore,
32 The General Assembly of North Carolina enacts:

33 **SECTION 1.** Chapter 130A of the General Statutes is amended by adding a new
34 Article to read:

35 "Article 24.

36 "North Carolina Toxic-Free Kids Act.

37 "§ 130A-511. Definitions.

38 The following definitions apply in this Article:

- 39 (1) Alternative. – A substitute process, product, material, chemical, strategy, or
40 combination of these that is technically feasible and serves a functionally
41 equivalent purpose to a chemical in a children's product.
- 42 (2) Bisphenol A. – The bicyclic phenol more particularly identified as
43 4,4'-isopropylidenediphenol and assigned Chemical Abstracts Service
44 Registry Number 80-05-7.
- 45 (3) Casual or isolated sale. – A sale made by a person who is not engaged in the
46 business of selling the product involved.
- 47 (4) Chemical. – A substance with a distinct molecular composition or a group of
48 structurally related substances, including the breakdown products of the
49 substance or substances that form through decomposition, degradation, or
50 metabolism.

- 1 (5) Chemical of high concern. – A chemical identified on the basis of credible
2 scientific evidence by a state, federal, or international agency as being
3 known or suspected with a high degree of probability to be any of the
4 following:
5 a. Harmful to the normal development of a fetus or child or cause other
6 developmental toxicity.
7 b. A cause of cancer, genetic damage, or reproductive harm.
8 c. Disruptive to the endocrine or hormone system.
9 d. Damaging to the nervous system, immune system, or organs, or
10 cause other systemic toxicity.
11 e. Persistent, bioaccumulative, and toxic.
12 f. Very persistent and very bioaccumulative.
13 (6) Child. – A person under 12 years of age.
14 (7) Children's product. – A consumer product intended for use by children, such
15 as baby products, toys, car seats, personal care products, or clothing.
16 (8) Department. – The Department of Environment and Natural Resources.
17 (9) Distributor. – A person who sells consumer products to retail establishments
18 on a wholesale basis.
19 (10) Division. – The Division of Public Health of the Department of Health and
20 Human Services.
21 (11) Green chemistry. – An approach to designing and manufacturing products
22 that minimizes the use and generation of toxic substances.
23 (12) Manufacturer. – Any person who manufactures a final consumer product
24 sold at retail or whose brand name is affixed to the consumer product. In the
25 case of a consumer product imported into the United States, manufacturer
26 includes the importer or domestic distributor of the consumer product if the
27 person who manufactured or assembled the consumer product or whose
28 brand name is affixed to the consumer product does not have a presence in
29 the United States.
30 (13) Phthalates. – Di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP),
31 benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl
32 phthalate (DIDP), or di-n-octyl phthalate (DnOP).
33 (14) Priority chemical. – A chemical identified by the Department of
34 Environment and Natural Resources as a chemical of high concern that
35 meets the criteria in G.S. 130A-513.
36 (15) Safer alternative. – An alternative whose potential to harm human health is
37 less than that of the use of a priority chemical that it could replace.
38 (16) Secretary. – The Secretary of the Department of Environment and Natural
39 Resources.
40 (17) TRIS. – Either or both of the following chemicals:
41 a. TDCPP (tris(1,3-dichloro-2-propyl)phosphate), chemical abstracts
42 service registry number 13674-87-8, as of the effective date of this
43 section.
44 b. TCEP (tris(2-chloroethyl)phosphate), chemical abstracts service
45 registry number 115-96-8, as of the effective date of this section.
46 (18) Very bioaccumulative. – Having a bioconcentration factor or
47 bioaccumulation factor greater than or equal to 5,000 or, if neither factor is
48 available, having a log K_{ow} greater than 5.0.
49 (19) Very persistent. – One of the following:
50 a. A half-life of greater than 180 days in soil or sediment.

- b. A half-life of greater than or equal to 60 days in water or evidence of long-range transport.

"§ 130A-512. Prohibition on the manufacturing and sale of children's products containing Bisphenol A, phthalates, or TRIS.

(a) Beginning July 1, 2014, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this State, a children's product containing any of the following:

- (1) Bisphenol A.
- (2) Phthalates, individually or in combination, at more than 0.10 percent by weight (one thousand parts per million).
- (3) TRIS in amounts greater than 50 parts per million in any component.

(b) The sale or purchase of any previously owned product containing a substance listed in subsection (a) of this section made in casual or isolated sales and sales by nonprofit organizations are exempt from subsection (a) of this section.

"§ 130A-513. Identification of chemicals of high concern.

(a) By October 1, 2012, the Department shall, after consultation with the Division, generate a list of chemicals of high concern.

(b) The Department must periodically review and revise the list of chemicals of high concern at least every three years. The department may add chemicals to the list if the chemical meets one or more of the criteria in subdivision (4) of G.S. 130A-511.

(c) The Department shall consider chemicals listed as a suspected carcinogen, reproductive or developmental toxicant, or as being persistent, bioaccumulative, and toxic, or very persistent and very bioaccumulative by a state, federal, or international agency. These agencies may include, but are not limited to, the California Environmental Protection Agency, the Washington Department of Ecology, the United States Department of Health, the United States Environmental Protection Agency, the United Nations World Health Organization, and European Parliament Annex XIV concerning the Registration, Evaluation, Authorization, and Restriction of Chemicals.

(d) The Department may consider chemicals listed by another state as harmful to human health or the environment for possible inclusion in the list of chemicals of high concern.

"§ 130A-514. Identification of priority chemicals.

(a) The Department, after consultation with the Division, may designate a chemical of high concern as a priority chemical if the department finds that the chemical meets any of the following criteria:

- (1) The chemical has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine, or other bodily tissues or fluids.
- (2) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment.
- (3) The chemical has been identified as a high-production volume chemical by the United States Environmental Protection Agency.
- (4) The chemical has been found through monitoring to be present in fish, wildlife, or the natural environment.

(b) By May 1, 2013, the Department shall publish a list of priority chemicals in the North Carolina Register and on the Department's Internet Web site and shall update the published list whenever a new priority chemical is designated.

"§ 130A-515. Notice that a children's product contains a priority chemical.

Beginning November 1, 2013, a manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, shall provide notice to the Department that

1 the manufacturer's product contains a priority chemical. The notice must be filed annually with
2 the department and must include all of the following information:

- 3 (1) The name of the chemical used or produced and its chemical abstracts
4 service registry number.
- 5 (2) A brief description of the product or product component containing the
6 substance.
- 7 (3) A description of the function of the chemical in the product.
- 8 (4) The amount of the chemical used in each unit of the product or product
9 component. The amount may be reported in ranges, rather than the exact
10 amount.
- 11 (5) The name and address of the manufacturer and the name, address, and phone
12 number of a contact person for the manufacturer.
- 13 (6) Any other information the manufacturer deems relevant to the appropriate
14 use of the product.

15 **"§ 130A-516. Alternatives assessment required.**

16 (a) By April 1, 2014, the manufacturer of a children's product whose product contains
17 TRIS shall submit to the Department an alternatives assessment consistent with G.S. 130A-517.

18 (b) After November 30, 2013, the manufacturer of a children's product that has
19 provided notice as required under G.S. 130A-515 that their product contains formaldehyde
20 must, within one year of providing notice, submit to the Department an alternatives assessment
21 consistent with G.S. 130A-517.

22 (c) After November 30, 2013, the manufacturer of a children's product that has
23 provided notice as required under G.S. 130A-515 that their product contains antimony or
24 antimony compounds or Bisphenol A must, within one year of providing notice, submit to the
25 Department an alternatives assessment consistent with G.S. 130A-517.

26 (d) Beginning July 1, 2017, the Department may require a manufacturer of children's
27 products containing chemicals of high concern for children to conduct an alternatives
28 assessment consistent with G.S. 130A-517. The Department shall provide a manufacturer at
29 least one year to submit the alternatives assessment. The Department may require alternatives
30 assessments for no more than two chemicals of high concern for children per fiscal year.

31 (e) A manufacturer required to conduct an alternatives assessment under this section
32 may work with a trade association, other manufacturers, or third parties to complete and submit
33 a single alternatives assessment.

34 (f) A manufacturer of children's products with annual gross sales, both within and
35 outside of North Carolina, of less than five million dollars (\$5,000,000), based on the
36 manufacturer's most recent tax year filing, is exempt from the requirements of this section.

37 (g) The Department shall provide technical assistance to any manufacturer required to
38 conduct an alternatives assessment that requests assistance. Technical assistance includes, but
39 is not limited to, providing the following:

- 40 (1) Alternatives assessments previously submitted to the department.
- 41 (2) Existing resources and tools for conducting alternatives assessments.
- 42 (3) Information existing within the Department gathered from literature
43 reviews, manufacturers' surveys, and information from the interstate
44 chemicals clearinghouse.

45 **"§ 130A-517. Alternatives assessment; contents.**

46 (a) An alternatives assessment must identify alternatives for consideration that reduce
47 or eliminate the use of and potential for children's exposure to the chemical of high concern.
48 For the chemical of high concern and each potential alternative, an alternatives assessment
49 must include each of the following elements:

- 50 (1) Chemical names and chemical abstracts service registry numbers.

- 1 (2) An assessment of whether, based on credible scientific evidence, the
2 alternative demonstrates the potential to do one or more of the following:
3 a. Harm the normal development of a fetus or child or cause other
4 developmental toxicity.
5 b. Cause cancer or genetic damage.
6 c. Cause reproductive toxicity.
7 d. Disrupt the endocrine system.
8 e. Damage the nervous system, immune system, or organs or cause
9 other systemic toxicity.
10 f. Cause sensitization and immune system response.
11 g. Cause negative ecological impacts.
12 h. Be persistent, bioaccumulative, and toxic.
13 i. Be very persistent or very bioaccumulative.
14 (3) Available information or data, based on credible scientific evidence
15 regarding (i) the degree of toxicity, including dose response studies; and (ii)
16 potential routes of exposure to children through which the chemical or
17 alternative may cause each effect identified in sub-subdivisions (2)a. through
18 (2)f. of this subsection.
19 (4) Information on performance and functionality of the potential alternatives in
20 product and materials addressed in the alternatives assessment.
21 (5) Opportunities for product reformulation, chemical substitution, product
22 redesign, or manufacturing process redesign.
23 (b) The alternatives assessment shall also include the following:
24 (1) A comparison among alternatives and chemicals of high concern for the
25 elements required in subdivisions (2) through (5) of subsection (a) of this
26 section.
27 (2) A description of the criteria and assumptions used to compare alternatives,
28 including identification of data gaps.
29 (3) An explanation of the findings and conclusions of the supporting data for the
30 alternatives assessment.
31 (c) The manufacturer may provide any additional information that assisted in evaluating
32 alternatives or deemed by the manufacturer relevant to the alternatives assessment, such as cost
33 and availability of potential alternatives; purchase price differential between the product
34 containing chemicals of high concern and the alternative; conditions of use; chemical
35 management; and technical feasibility.

36 **"§ 130A-518. Adoption of rules.**

37 The Department may adopt rules as necessary for the purpose of implementing,
38 administering, and enforcing this Article."

39 **SECTION 2.(a)** The Department of Environment and Natural Resources in
40 consultation with the Division of Public Health of the Department of Health and Human
41 Services shall report to the General Assembly no later than January 1, 2015, summarizing and
42 evaluating manufacturers' notices on chemicals of high concern and alternatives assessments
43 required under Section 1 of this act. The report shall include recommendations for legislation
44 to protect children's health and to improve the alternatives assessment process, as well as the
45 following elements:

- 46 (1) A summary of the information provided by manufacturers about the use of
47 chemicals of high concern in children's products.
48 (2) Evidence of children's exposure to chemicals of high concern.
49 (3) Opportunities for preventing children's exposure to chemicals of high
50 concern.

- 1 (4) Results from completed alternatives assessments, including whether there
2 are safer alternatives to the chemical of high concern.
- 3 **SECTION 2.(b)** The definitions in G.S. 130A-511, as enacted by Section 1 of this
4 act, apply throughout this section unless the context clearly requires otherwise.
- 5 **SECTION 3.** There is appropriated to the Department of Natural Resources the
6 sum of one hundred thousand dollars (\$100,000) for the 2012-2013 fiscal year to fund the
7 Department's duties established by this act.
- 8 **SECTION 4.** Section 1 of this act becomes effective December 1, 2012. The
9 remainder of this act is effective when it becomes law.