

State Legislatures Continue Their Attack on Banning the Use of Bisphenol A (BPA) in Baby Bottles and Containers

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A handful of states, counties and even a major city have already passed laws banning the use of Bisphenol A (BPA) in children's baby bottles and beverage containers. State legislatures across the country are pursuing similar efforts. The existing and proposed legislation banning BPA certainly has the potential for inviting litigation against the chemical and bottler makers, as well as against the bottle distributors and retailers.

BPA is a chemical used to strengthen and harden plastic. It also serves to prevent corrosion and food contamination on the inside of metal containers. One of the most common uses of BPA is found in the manufacture of baby bottles and baby formula cans. Although the potential health effects from exposure to BPA are still in dispute from a scientific standpoint, proponents of the ban argue that the BPA chemical can have adverse reproductive and developmental effects, especially in newborns and infants, and even at low doses. It is suggested that BPA exposure occurs when the baby bottle is heated in the microwave, hot liquids are poured into the bottle, or when the bottle or container becomes aged, scratched or damaged.

We will continue to monitor any significant developments on this issue as they may occur. To date, the following jurisdictions have banned BPA in children's bottles and beverage containers:

Jurisdiction	Regulation	Scope	Requirement	Effective Date
Albany County, NY	BPA – County Law	Beverage containers for children under 3-years-old	Prohibited	2009
Schenectady County, NY	BPA – County Law	Beverage containers for children under 3-years-old	Prohibited	Jan. 1, 2010
Suffolk County, NY	BPA – Toxin Free Toddler & Babies	Beverage containers for	Prohibited	2009

	Act	children under 3-years-old		
Chicago, IL	BPA-Free Kids Ordinance Section 7-28-637 Ch. 7-8, Municipal Code of Chicago	Containers- Empty bottle or cup to be filled with food or liquid for children under 3-years-old	Prohibited	Jan. 31, 2010
Minnesota	BPA - Ch. 40 (SF 247, Session 2009-2010)	Empty bottle or cup to be filled with food or liquid for children under 3-years-old	Prohibited (Manufacturer & Wholesaler)	Jan. 1, 2010
			Prohibited (Retailer)	Jan. 1, 2011
Connecticut	BPA – Public Act 09-103 (HB 6527)	Reusable food or beverage container	Prohibited	Oct. 1, 2011
		Plastic container, jar or can that contains infant formula or baby food	Prohibited	Oct. 1, 2011
		Sell or distribute existing inventory of infant formula of baby food containers, jars or cans as of Oct. 1, 2011, provided such items were purchased or acquired prior to Oct. 1, 2011	Prohibited	Oct. 1, 2012

In addition, in the past year, legislation has been introduced in 21 states attempting to ban the manufacture, sale and use of BPA in baby bottles and children's beverage containers.

The following states have seen the most recent legislative activity on BPA:

Jurisdiction	Regulation	Scope	Requirement	Status
Oregon	Senate Bill 1032	Empty bottle or cup to be filled with food or liquid for children under 3-years-old	Prohibited	On Feb. 19, 2010, Senate rejected bill by a 15 to 15 vote
Wisconsin	Senate Bill 271 (attached)*	Empty bottle or cup to be filled with food or liquid for children 5-years-old and younger	Prohibited	On Jan. 26, 2010, Senate unanimously approved bill; effective date if passed: 90 th day after publication
Washington	SSB 6248 (attached)*	Empty bottle or cup to be filled with food or liquid for children under 3-years-old	Prohibited	Bill is expected to be signed by Gov. Christine Gregoire – effective date if passed: July 1, 2011
Vermont	H. 551 & S. 247 (An Act Relating to Bisphenol A) (attached)*	Empty bottle or cup to be filled with food or liquid for children 2-years-old and younger	Prohibited	House bill introduced on Jan. 22, 2010; Senate bill introduced on Jan. 5, 2010 – effective date if passed: July 1, 2012

*(To view the attached bills from Washington, Wisconsin and Vermont, click on [Download PDF](#))

We anticipate that more states across the country will continue to pass legislation banning the use of BPA in children's beverage bottles and containers. We also predict the possibility that lawsuits will follow in the future against the chemical and bottle companies involved in BPA production and distribution, especially if the science on the potential health effects becomes more developed and undisputed.

For further information, please contact your regular Hinshaw attorney.

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