An act to add and repeal Chapter 12 (commencing with Section 108940) of Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

**LEGISLATIVE COUNSEL’S DIGEST**

SB 797, as amended, Pavley. Product safety: bisphenol A.

Existing law prohibits the manufacture, sale, or distribution in commerce of certain toys and child care articles, as defined, if those products contain specified types of phthalates in concentrations exceeding $\frac{1}{100}$ of 1%.

Existing law also requires manufacturers to use the least toxic alternative when replacing phthalates in their products and would prohibit manufacturers from replacing phthalates with certain carcinogens and reproductive toxicants.

The bill would enact the Toxin-Free Infants and Toddlers Act, which would, except as specified, prohibit, on and after January 1, 2011, the manufacture, sale, or distribution in commerce of any bottle, cup, or liquid, food, or beverage in a can, jar, or plastic bottle that contains bisphenol A, or that is lined with a material that contains bisphenol A,
at a level above 0.1 parts per billion (ppb). It would also, except as
specified, prohibit, on and after July 1, 2011, the manufacture,
sale, or distribution of liquid infant formula in a can or plastic bottle
containing bisphenol A or lined with a material containing it. The bill
would also require manufacturers to use the least toxic alternative when
replacing bisphenol A in containers in accordance with this bill.

This bill would repeal these provisions if the Department of Toxic
Substances Control adopts a specified regulatory response.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the
Toxin-Free Infants and Toddlers Act.
SEC. 2. The Legislature finds and declares all of the following:
   (a) The purpose of this act is to ensure that children are not
   exposed to harmful toxins.
   (b) Bisphenol A (BPA) was created as a synthetic sex hormone.
   Today it is widely used in certain kinds of plastics and epoxy
   resins, including those commonly found in baby bottles and infant
   formula cans.
   (c) Research by the federal Centers for Disease Control and
   Prevention has found that 93 percent of Americans have BPA in
   their bodies, and children have higher levels than adults.
   (d) According to the National Institutes of Health diet is the
   main way people are exposed to BPA, due to leaching of the
   chemical from containers into food and drink.
   (e) The United States Food and Drug Administration has
   measured BPA in canned infant formula at levels ranging from
   0.1 parts per billion (ppb) to 13.2 ppb.
   (f) BPA would not appear in bottles, cups, cans, or jars as a
   trace contaminant. If BPA is found in any of these articles, it has
   been placed there intentionally.
   (g) The United States Geological Service has measured BPA
   in wastewater dominated at levels up to 12 ppb. The agency’s
detection limit for BPA was 0.09 ppb.
   (h) BPA is a known hormone disruptor. The National Institutes
   of Health is concerned that BPA exposure in children may lead to
   problems with brain development, behavior, early puberty, breast
cancer, and prostate cancer. New research has also suggested that BPA may interfere with metabolism and lead to obesity, heart disease, and diabetes in humans.

(i) Out of concern for children’s safety, Canada has banned the use of BPA in baby bottles and is restricting its use in infant formula cans.

(j) Many companies have phased out BPA from their products or removed BPA-containing products from their store shelves or both.

(k) It is in the best interest of California to significantly reduce infants’ and toddlers’ exposure to BPA as soon as possible, and to ultimately eliminate all exposure.

(l) California’s Green Chemistry Initiative will not come to fruition soon enough to protect the 550,000 babies born in California each year from the unnecessary health risk posed by BPA.

SEC. 3. Chapter 12 (commencing with Section 108940) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

Chapter 12. Bisphenol A

108940. (a) On and after January 1, 2011, and notwithstanding subdivision (c), no person shall manufacture, sell, or distribute in commerce any bottle or cup that contains bisphenol A, at a 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 intended primarily for consumption from that bottle or cup by infants or children three years of age or younger.

(b) On and after January 1, 2011, and notwithstanding subdivision (c), no person or entity shall manufacture, sell, or distribute in commerce any liquid, food, or beverage in a can, jar, or plastic bottle containing bisphenol A, or lined with a material containing bisphenol A, at a level above 0.1 ppb if the liquid, food, or beverage is intended primarily for consumption by infants or children three years of age or younger, unless the can or bottle contains infant formula in a liquid form.

(c) Subdivisions (a) and (b) shall not apply to medical devices, as defined in Section 109920, or to food and beverage containers
designed or intended primarily to contain liquid, food, or beverages
for consumption by the general population.

(d) Notwithstanding subdivisions (a) and (b), if the Department
of Toxic Substances Control adopts a regulatory response described
in Section 25253 regarding the use of bisphenol A in any item that
may be prohibited by this section, this section shall become
inoperative upon the date that the department posts a notice on its
Internet Web site that it has adopted the response, and shall be
repealed on the following January 1.

(e) Notwithstanding subdivisions (b) and (c) of Section 25257.1,
this section shall not be construed to prohibit or restrict the
authority of the Department of Toxic Substances Control to adopt
regulations to limit exposure to or reduce the level of hazard posed
by bisphenol A.

108940.1. (a) On and after July 1, 2012, no person or
entity shall manufacture, sell, or distribute in commerce any infant
formula in a liquid form in a can or plastic bottle containing
bisphenol A or lined with a material containing bisphenol A.

(b) Notwithstanding subdivision (a), if the Department of Toxic
Substances Control adopts a regulatory response described in
Section 25253 regarding the use of bisphenol A in any item that
may be prohibited by this section, this section shall become
inoperative upon the date that the department posts on its Internet
Web site a notice that it has adopted the response, and shall be
repealed on the following January 1.

(c) Notwithstanding subdivisions (b) and (c) of Section 25257.1,
this section shall not be construed to prohibit or restrict the
authority of the Department of Toxic Substances Control to adopt
regulations to limit exposure to or reduce the level of hazard posed
by bisphenol A.

108941. (a) Manufacturers shall use the least toxic alternative
when replacing bisphenol A in containers in accordance with this
chapter.

(b) Manufacturers shall not replace bisphenol A, pursuant to
this chapter, with carcinogens rated by the United States
Environmental Protection Agency as carcinogenic to humans,
likely to be carcinogenic to humans, or suggestive evidence of
carcinogenic potential, or known to the state to cause cancer as
listed in the Safe Drinking Water and Toxic Enforcement Act of
1986 (Chapter 6.6 (commencing with Section 25249.5) of Division
20) list of chemicals known to cause cancer or reproductive toxicity.

(c) Manufacturers shall not replace bisphenol A, pursuant to this chapter, with reproductive toxicants that cause birth defects, reproductive harm, or developmental harm as identified by the United States Environmental Protection Agency or listed in the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of Division 20) list of chemicals known to cause cancer or reproductive toxicity.

108941.5. If both Sections 108940 and 108940.1 become inoperative and are repealed, then this chapter shall be repealed on January 1 of the subsequent calendar year following the repeal date of the last repealed section.