

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 848

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

Sponsors: Representatives McGrady, Fulghum, Harrison, and Glazier (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Commerce and Job Development, if favorable, Health and Human Services, if favorable, Judiciary Subcommittee A.

April 15, 2013

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; and

32          Whereas, the United States Food and Drug Administration has prohibited the use of  
33 Bisphenol A in baby bottles and sippy cups; Now, therefore,  
34 The General Assembly of North Carolina enacts:

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

37   "Article 24.

38   "North Carolina Toxic-Free Kids Act.

39           "§ 130A-511. Definitions.

40           The following definitions apply in this Article:

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

- 1 substance or substances that form through decomposition, degradation, or  
2 metabolism.
- 3 (5) Chemical of high concern. – A chemical identified on the basis of credible  
4 scientific evidence by a state, federal, or international agency as being  
5 known or suspected with a high degree of probability to be any of the  
6 following:
- 7 a. Harmful to the normal development of a fetus or child or cause other  
8 developmental toxicity.
- 9 b. A cause of cancer, genetic damage, or reproductive harm.
- 10 c. Disruptive to the endocrine or hormone system.
- 11 d. Damaging to the nervous system, immune system, or organs, or  
12 cause other systemic toxicity.
- 13 e. Persistent, bioaccumulative, and toxic.
- 14 f. Very persistent and very bioaccumulative.
- 15 (6) Child. – A person under 12 years of age.
- 16 (7) Children's product. – A consumer product intended for use by children, such  
17 as baby products, toys, car seats, personal care products, or clothing.  
18 Children's product shall also mean food containers for infant and toddler  
19 foods intended for consumption by children under three years of age, such as  
20 baby food and infant formula.
- 21 (8) Department. – The Department of Environment and Natural Resources.
- 22 (9) Distributor. – A person who sells consumer products to retail establishments  
23 on a wholesale basis.
- 24 (10) Division. – The Division of Public Health of the Department of Health and  
25 Human Services.
- 26 (11) Manufacturer. – Any person who manufactures a final consumer product  
27 sold at retail or whose brand name is affixed to the consumer product. In the  
28 case of a consumer product imported into the United States, manufacturer  
29 includes the importer or domestic distributor of the consumer product if the  
30 person who manufactured or assembled the consumer product or whose  
31 brand name is affixed to the consumer product does not have a presence in  
32 the United States.
- 33 (12) Phthalates. – Di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP),  
34 benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl  
35 phthalate (DIDP), or di-n-octyl phthalate (DnOP).
- 36 (13) Priority chemical. – A chemical identified by the Department of  
37 Environment and Natural Resources as a chemical of high concern that  
38 meets the criteria in G.S. 130A-514.
- 39 (14) Safer alternative. – An alternative whose potential to harm human health is  
40 less than that of the use of a priority chemical that it could replace.
- 41 (15) TRIS. – Either or both of the following chemicals:
- 42 a. TDCPP (tris(1,3-dichloro-2-propyl)phosphate), Chemical Abstracts  
43 Service Registry Number 13674-87-8, as of the effective date of this  
44 section.
- 45 b. TCEP (tris(2-chloroethyl)phosphate), Chemical Abstracts Service  
46 Registry Number 115-96-8, as of the effective date of this section.
- 47 (16) Very bioaccumulative. – Having a bioconcentration factor or  
48 bioaccumulation factor greater than or equal to 5,000 or, if neither factor is  
49 available, having a log  $K_{ow}$  greater than 5.0. For the purposes of this  
50 definition, " $K_{ow}$ " means octanol-water partition coefficient.
- 51 (17) Very persistent. – One of the following:

- 1           a.     A half-life of greater than 180 days in soil or sediment.  
2           b.     A half-life of greater than or equal to 60 days in water or evidence of  
3                 long-range transport.

4     **"§ 130A-512. Prohibition on the manufacture and sale of children's products that contain**  
5           **Bisphenol A, phthalates, or TRIS.**

6     Beginning July 1, 2015, no manufacturer, wholesaler, or retailer may manufacture,  
7     knowingly sell, offer for sale, distribute for sale, or distribute for use in this State, a children's  
8     product containing any of the following:

- 9           (1)    Bisphenol A.  
10          (2)    Phthalates, individually or in combination, greater than 0.10 percent by  
11                 weight (1000 parts per million).  
12          (3)    TRIS in amounts greater than 50 parts per million in any component.

13     **"§ 130A-513. Applicability.**

14     The requirements of this Article shall not apply to:

- 15          (1)    The sale or purchase of any previously owned product containing a  
16                 substance listed in G.S. 130A-512 made in casual or isolated sales and sales  
17                 by nonprofit organizations.  
18          (2)    Priority chemicals used in the manufacturing process, but that are not present  
19                 in the final children's product.  
20          (3)    Priority chemicals used in agriculture production.  
21          (4)    Motor vehicles as defined in G.S. 20-4.01 and personal watercraft as that  
22                 term is defined in G.S. 75A-13.3, except that the use of priority chemicals in  
23                 detachable car seats is not exempt.  
24          (5)    Priority chemicals generated solely as combustion by-products or that are  
25                 present in combustible fuels.  
26          (6)    Pharmaceutical products or biologics.  
27          (7)    A medical device as defined in the Food, Drug, and Cosmetic Act (21 U.S.C.  
28                 § 321).  
29          (8)    Consumer electronics products and electronic components including:  
30                 personal computers; audio and video equipment; calculators; digital  
31                 displays; wireless phones; cameras; game consoles; printers; and handheld  
32                 electronic and electrical devices used to access interactive software or their  
33                 associated peripherals; and products that comply with Directive 2002/95/EC  
34                 of the European Union (Restriction of the Use of Certain Hazardous  
35                 Substances in Electrical and Electronic Equipment).  
36          (9)    Outdoor sport equipment, including all-terrain vehicles and motorcycles as  
37                 those terms are defined in G.S. 20-4.01, and all attachments and repair parts  
38                 for outdoor sport equipment.  
39          (10)   Food and beverage packaging except a container containing infant foods,  
40                 toddler food, or infant formula.

41     **"§ 130A-514. Identification of chemicals of high concern.**

42          (a)    By June 1, 2014, the Department shall, after consultation with the Division, create a  
43                 list of chemicals of high concern.

44          (b)    The Department shall periodically review and revise the list of chemicals of high  
45                 concern at a minimum, once every three years. The Department may add a chemical to the list  
46                 of chemicals of high concern if the chemical meets one or more of the sub-subdivisions in  
47                 subdivision (6) of G.S. 130A-511.

48          (c)    In creating the list of chemicals of high concern, the Department shall consider  
49                 chemicals listed as a suspected carcinogen, reproductive or developmental toxicant, or as being  
50                 persistent, bioaccumulative, and toxic, or very persistent and very bioaccumulative by a state,  
51                 federal, or international agency. These agencies may include: the California Environmental

1 Protection Agency; the Washington Department of Ecology; the United States Department of  
2 Health; the United States Environmental Protection Agency; the United Nations World Health  
3 Organization; and the European Commission.

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

7 **"§ 130A-515. Identification of priority chemicals.**

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

11 (1) The chemical has been found through biomonitoring to be present in human  
12 blood, including umbilical cord blood, breast milk, urine, or other bodily  
13 tissues or fluids.

14 (2) The chemical has been found through sampling and analysis to be present in  
15 household dust, indoor air, drinking water, or elsewhere in the home  
16 environment.

17 (3) The chemical has been identified as a high-production volume chemical by  
18 the United States Environmental Protection Agency.

19 (4) The chemical has been found through monitoring to be present in fish,  
20 wildlife, or the natural environment.

21 (b) By May 1, 2014, the Department shall publish a list of priority chemicals in the  
22 North Carolina Register and on the Department's Internet Web site and shall update the  
23 published list whenever a new priority chemical is designated.

24 **"§ 130A-516. Notice that a children's product contains a priority chemical.**

25 Beginning November 1, 2014, a manufacturer of a children's product, or a trade  
26 organization on behalf of its member manufacturers, shall provide notice to the Department that  
27 the manufacturer's product contains a priority chemical. The notice shall be filed annually with  
28 the Department and shall include all of the following information:

29 (1) The name of the chemical used or produced and its Chemical Abstracts  
30 Service Registry Number.

31 (2) A brief description of the product or product component containing the  
32 substance.

33 (3) A description of the function of the chemical in the product.

34 (4) The amount of the chemical used in each unit of the product or product  
35 component. The amount may be reported in ranges rather than the exact  
36 amount.

37 (5) The name and address of the manufacturer and the name, address, and phone  
38 number of a contact person for the manufacturer.

39 (6) Any other information the manufacturer deems relevant to the appropriate  
40 use of the product.

41 **"§ 130A-517. Alternatives assessment required.**

42 (a) By April 1, 2015, the manufacturer of a children's product whose product contains  
43 TRIS shall submit to the Department an alternatives assessment consistent with G.S. 130A-518.

44 (b) Beginning December 1, 2014, the manufacturer of a children's product that has  
45 provided notice as required under G.S. 130A-516 that their product contains phthalates shall,  
46 within one year of providing notice, submit to the Department an alternatives assessment  
47 consistent with G.S. 130A-518.

48 (c) Beginning December 1, 2014, the manufacturer of a children's product that has  
49 provided notice as required under G.S. 130A-516 that their product contains Bisphenol A shall,  
50 within one year of providing notice, submit to the Department an alternatives assessment  
51 consistent with G.S. 130A-518.

1        (d) Beginning June 1, 2015, the manufacturer of a children's product that has provided  
2 notice as required under G.S. 130A-516 that their product contains a priority chemical, shall,  
3 within one year of providing notice, submit to the Department an alternatives assessment  
4 consistent with G.S. 130A-518.

5        (e) Beginning July 1, 2018, the Department may require a manufacturer of children's  
6 products containing chemicals of high concern for children to conduct an alternatives  
7 assessment consistent with G.S. 130A-518. The Department shall provide a manufacturer at  
8 least one year to submit the alternatives assessment. The Department shall not require  
9 alternatives assessments for more than two chemicals of high concern for children per  
10 manufacturer per fiscal year.

11        (f) A manufacturer required to conduct an alternatives assessment pursuant to this  
12 section may work with a trade association, other manufacturers, or third parties to complete and  
13 submit a single alternatives assessment.

14        (g) The Department shall provide technical assistance to any manufacturer required to  
15 conduct an alternatives assessment that requests the Department's assistance. Technical  
16 assistance may include the provision of:

17            (1) Alternatives assessments previously submitted to the Department.

18            (2) Existing resources and tools for conducting alternatives assessments.

19            (3) Information the Department gathered from literature reviews, manufacturers'  
20 surveys, and the interstate chemicals clearinghouse.

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

24 **"§ 130A-518. Alternatives assessment; contents.**

25        (a) An alternatives assessment shall identify alternatives for consideration that reduce  
26 or eliminate the use of and potential for children's exposure to the chemical of high concern.  
27 For the chemical of high concern and each potential alternative, an alternatives assessment shall  
28 include the following:

29            (1) Chemical names and Chemical Abstracts Service Registry Numbers.

30            (2) An assessment of whether, based on credible scientific evidence, the  
31 alternative demonstrates the potential to do one or more of the following:

32            a. Harm the normal development of a fetus or child or cause other  
33 developmental toxicity.

34            b. Cause cancer or genetic damage.

35            c. Cause reproductive toxicity.

36            d. Disrupt the endocrine system.

37            e. Damage the nervous system, immune system, or organs or cause  
38 other systemic toxicity.

39            f. Cause sensitization and immune system response.

40            g. Cause negative ecological impacts.

41            h. Be persistent, bioaccumulative, and toxic.

42            i. Be very persistent or very bioaccumulative.

43            (3) Available information or data, based on credible scientific evidence  
44 regarding (i) the degree of toxicity, including dose response studies and (ii)  
45 potential routes of exposure to children through which the chemical or  
46 alternative may cause each effect listed in subdivision (2) of this subsection.

47            (4) Information on performance and functionality of the potential alternatives in  
48 products and materials addressed in the alternatives assessment.

49            (5) Opportunities for product reformulation, chemical substitution, product  
50 redesign, or manufacturing process redesign.

51        (b) The alternatives assessment shall also include the following:

1           (1)    A comparison of the alternatives and the chemicals of high concern for the  
2                   elements required in subdivisions (2) through (5) of subsection (a) of this  
3                   section.

4           (2)    A description of the criteria and assumptions used to compare alternatives,  
5                   including identification of data gaps.

6           (3)    An explanation of the findings and conclusions of the data supporting the  
7                   alternatives assessment.

8           (c)    The manufacturer may provide any additional information used in evaluating  
9                   alternatives or deemed by the manufacturer to be relevant to the alternatives assessment, such  
10                  as cost and availability of potential alternatives; purchase price differential between the product  
11                  containing chemicals of high concern and the alternative; conditions of use; chemical  
12                  management; and technical feasibility.

13    **"§ 130A-519. Adoption of rules.**

14           The Department may adopt rules as necessary to implement, administer, and enforce this  
15           Article."

16           **SECTION 2.(a)** The Department of Environment and Natural Resources in  
17           consultation with the Division of Public Health of the Department of Health and Human  
18           Services shall report to the General Assembly no later than January 1, 2016, summarizing and  
19           evaluating manufacturers' notices on chemicals of high concern and alternatives assessments  
20           required under Section 1 of this act. The report shall include recommendations for legislation to  
21           protect children's health and to improve the alternatives assessment process, as well as the  
22           following elements:

23           (1)    A summary of the information provided by manufacturers about the use of  
24                   chemicals of high concern in children's products.

25           (2)    Evidence of children's exposure to chemicals of high concern.

26           (3)    Opportunities for preventing children's exposure to chemicals of high  
27                   concern.

28           (4)    Results from completed alternatives assessments, including whether there  
29                   are safer alternatives to the chemical of high concern.

30           **SECTION 2.(b)** The definitions in G.S. 130A-511, as enacted by Section 1 of this  
31           act, apply to this section unless the context clearly requires otherwise.

32           **SECTION 3.** Section 1 of this act becomes effective December 1, 2013. The  
33           remainder of this act is effective when it becomes law.