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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/09

SPONSOR Egolf LAST UPDATED _____ HB 225

SHORT TITLE Dangerous Toys Act SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 225 imposes felony penalties upon merchants who sell dangerous toys in New Mexico. "Merchant" is defined as a manufacturer, wholesaler, or retailer. Dangerous toys are products designed for or intended to be used by children under age twelve that contain more than one-tenth of a percent of either BPA or phthalate. BPA is bisphenol-A, a chemical used in polycarbonate plastics. Phthalates are a class of chemicals used to soften plastics and are prohibited for use in children's toys pursuant to the federal Consumer Product Safety Modernization Act.

SIGNIFICANT ISSUES

The Department of Health provides the following information. Phthalates are man-made chemicals used in soft, flexible plastics, polyvinyl chloride (PVC) products, and in a variety of personal care products (e.g. shampoos, lotions, etc.). These chemicals are anti-androgenic and can adversely impact androgen-sensitive tissues during specific stages of development. With the passing of two federal laws in 2008, the Consumer Product Safety Improvement Act and the Consumer Product Safety Modernization Act, phthalates limits have already been set for children's consumer products such as toys.

The Consumer Product Safety Modernization Act establishes consumer product safety standards and other safety requirements for children's products and reauthorizes and modernizes the Consumer Product Safety Commission (CPSC). Further, Section 40 of this act states a ban on certain products containing specified phthalates. It includes restrictions on phthalates in children's products and child care articles, mandatory testing by CPSC accredited laboratories, certification of testing laboratories, warnings in advertising including catalogs and websites, increased civil and criminal penalties, and adoption of toy safety standards as federal regulations. The full impact of the legislation cannot be anticipated because it requires the CPSC to adopt regulations and conduct tests for scientific and economic feasibility before some of the proposed standards and requirements become effective.

The Consumer Product Safety Improvement Act (hereafter referred to as “Act”) overhauled the Consumer Product Safety Commission (CPSC) by imposing restrictions regarding the use of phthalates in children's products, including toys and jewelry. The Act amended four existing laws: (1) The Consumer Product Safety Act (CPSA); (2) The Federal Hazardous Substances Act (FHSA); (3) The Poison Prevention Packaging Act (PPPA); and (4) The Flammable Fabrics Act (FFA).

To date, many products containing phthalates and Bisphenol A have been removed voluntarily by manufacturers. However the federal laws mentioned above or for that matter no other federal legislation bans Bisphenol A (BPA). BPA is a chemical produced in large quantities for use primarily in the production of polycarbonate plastics and epoxy resins. The primary source of exposure to Bisphenol A for most people is through the diet. While air, dust, and water (including skin contact during bathing and swimming) are other possible sources of exposure, Bisphenol A in food and beverages accounts for the majority of daily human exposure. Bisphenol A can migrate into food from food and beverage containers with internal epoxy resin coatings and from consumer products made of polycarbonate plastic such as baby bottles, tableware, food containers, and water bottles.

The National Toxicology Program’s (Center for the Evaluation of Risks to Human Reproduction, National Institute for Environmental Health Sciences) brief on BPA is intended to be an environmental health resource for the public and regulatory and health agencies. CERHR selected BPA for evaluation because it has received considerable attention in recent years due to widespread human exposures and concern for reproductive and developmental effects reported in laboratory animal studies. Bisphenol A is most commonly described as being “weakly” estrogenic; however, an emerging body of molecular and cellular studies indicate the potential for a number of additional biological activities. These range from interactions with cellular components that have unknown biological function to others that help mediate the actions of non-estrogenic hormones, such as androgens and thyroid hormones.

The 2003-2004 National Health and Nutrition Examination Survey (NHANES) conducted by the Centers for Disease Control and Prevention (CDC) found detectable levels of BPA in 93% of 2517 urine samples from people six years and older. The CDC NHANES data are considered representative of exposures in the United States. Another reason for concern, especially for parents, may be because some animal studies report effects in fetuses and newborns exposed to BPA.

PERFORMANCE IMPLICATIONS

The Administrative Office of the District Attorneys is concerned that this could significantly impact the justice system imposing on law enforcement a requirement of testing toys to determine their chemical makeup and could fiscally impact both the crime lab and time spent in investigations and prosecution of such an offense.

OTHER SUBSTANTIVE ISSUES

Although this bill was likely intended to protect the public safety concerning children under the age of 12, the bill, according to the Administrative Office of the District Attorneys, actually would hold merchants liable for felony criminal charges even if the danger was not known at the time. This could create an obligation on the merchant for specific testing of any toy before sale to avoid such criminal responsibility since the act does not differentiate between intentional and unintentional or negligent acts.

ALTERNATIVES

Under Section 3 A., it could be altered to read “A merchant shall not intentionally sell a dangerous toy in New Mexico.

EO/svb