Date of Hearing: April 22, 2025

# ASSEMBLY COMMITTEE ON JUDICIARY Ash Kalra, Chair AB 1148 (Sharp-Collins) – As Amended March 28, 2025

As Proposed to be Amended

### SUBJECT: FOOD PACKAGING: HAZARDOUS CHEMICALS

### **KEY ISSUES:**

- 1) SHOULD THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL BE REQUIRED TO ESTABLISH LEVELS ABOVE WHICH THE INTENTIONAL ADDITION OF BISPHENOLS OR ORTHO-PALATES TO FOOD PACKAGING WOULD BE PROHIBITED?
- 2) SHOULD CIVIL PENALTIES RANGING FROM \$5,000 TO \$10,000 PER VIOLATION BE IMPOSED ON FOOD PACKAGING MANUFACTURERS WHO EXCEED THE LEVEL OF INTENTIONALLY ADDED BISPHENOLS OR ORTHO-PALATES AS SPECIFIED BY THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL?

### **SYNOPSIS**

A growing number of chemical compounds used in packaging for consumer products are demonstrating potential impacts to human health. The impact of these chemicals can be particularly acute when the chemical is ingested by humans through foods or beverages. Two potentially hazardous chemicals are frequently used in food packaging: bisphenols and orthophtalates. Evidence suggests that when these chemicals leech into food from the plastic designed to protect the food, they lead to an increased risk of cancer, reproductive harms, and other developmental health issues.

Recognizing the potential risk posed by these chemicals, this bill tasks the Department of Toxic Substances Control with establishing a threshold for the intentional addition of these chemicals to food packaging manufactured, distributed, or sold in this state. The bill would provide that any product containing chemicals above the threshold determined by the Department would subject the product's manufacturer, seller, or distributor to civil penalties ranging from \$5,000 to \$10,000. The bill would authorize cost recovery by state enforcement authorities. Proposed amendments to this bill remove references to antimony trioxide and clarify the scope of the bill.

This measure is supported by a coalition of environmental advocates, green chemistry organizations, and healthcare groups who highlight the danger of intentionally added chemicals in consumer products. The bill is opposed by chemical manufacturers and food packagers. While the proposed amendments appear to address some of the opposition's concerns, the opponents still contend that existing federal regulations render this measure unnecessary. This bill was previously heard and approved by the Committee on Environmental Safety and Toxic Materials by a vote of 5-2.

**SUMMARY**: Prohibits the intentional addition of bisphenols or ortho-phtalates to food packaging sold in California, as specified. Specifically, **this bill**:

- 1) Prohibits, on or after January 1, 2027, the manufacturing, distribution, sales, or offer for sale in the state any food packaging that contains intentionally added bisphenols, or orthophtalates at or above a limit determined by the Department of Toxic Substances Control in regulation.
- 2) Authorizes the Department of Toxic Substances Control, by regulation, to establish standards for use of, bisphenols, and ortho-phtalates in food packaging that are more protective of public health, sensitive populations, or the environment than the standards established pursuant 1).
- 3) Authorizes the Department of Toxic Substances Control, if the Department determines that tetramethyl bisphenol F (TMBPF, CAS 5384-21-4) poses a significant risk to human health, to limit or prohibit the distribution, sale, or offering for sale in the state any food packaging that contains tetramethyl bisphenol F (TMBPF, CAS 5384-21-4).
- 4) Provides that if the Department of Toxic Substances Control adopts a regulatory response under the green chemistry initiative, as provide in 9) of existing law, regarding the use of any form of bisphenol, or ortho-phthalate, in a product that is prohibited by this bill and the Department has posted a notice on its internet website that it has adopted the regulatory response, then the chemical in question is exempt from this bill.
- 5) Provides that this bill is not to be construed to prohibit or restrict the authority of the Department of Toxic Substances Control to prioritize or take action on a product containing any form of bisphenol or ortho-phthalate, in order to limit exposure to or reduce the level of hazard posed by any form of bisphenol or ortho-phthalates.
- 6) Authorizes the Attorney General and the Department of Toxic Substances Control to enforce the bill.
- 7) Provides that a violation of the bill may result in a civil or administrative penalty not to exceed five thousand dollars (\$5,000) for the first violation and not to exceed ten thousand dollars (\$10,000) for each subsequent violation, as specified.
- 8) Authorizes a prevailing plaintiff to recover reasonable attorney's fees and costs.
- 9) Defines the following terms:
  - a) "Bisphenol" means a chemical with two phenol rings connected by a single linker atom in which the linker atom and phenol rings may have additional substituents
  - b) "Food packaging" means a nondurable package, packaging component, or food service ware that is intended to contain, serve, store, handle, protect, or market food, foodstuffs, or beverages, including food or beverage containers, take-out food containers, unit product boxes, liners, wrappers, serving vessels, eating utensils, straws, food boxes, and disposable plates, bowls, or trays;
  - c) "Intentionally added" means any bisphenol or ortho-phthalate that a manufacturer has added to a product and that has a functional or technical effect in the product, including if the bisphenol or ortho-phthalate is a component of an intentionally added chemical or is

the intentional breakdown product of an added chemical that also have functional effect in the product; and

d) "Ortho-phthalates" means a class of chemicals that are esters of ortho-phthalic acid, as specified.

# **EXISTING LAW:**

- Defines "bisphenol," as it relates to a juvenile's feeding product or juvenile's sucking or teething product, as a chemical with two phenol rings connected by a single linker atom, even if the linker atom and phenol rings may have additional substituents. (Health and Safety Code Section 108942.)
- 2) Defines "ortho-phthalates" as a class of chemicals that are esters of ortho-phthalic acid, including specified chemicals. (Health and Safety Code Section 109051.)
- Prohibits a person from manufacturing, processing, importing, selling, delivering, holding for sale, supplying, or offering for sale in this state any tableware that releases a level of lead or cadmium in violation of the standards contained in specified Compliance Policy Guides. (Health and Safety Code Section 108860.)
- 4) Prohibits a person from manufacturing, selling, or distributing in commerce any juvenile's feeding product or juvenile's sucking or teething product that contains any form of bisphenol above the practical quantitation limit, to be determined by the Department of Toxic Substances Control. (Health and Safety Code Section 108940.)
- 5) Prohibits a person from manufacturing, processing, or distributing in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE, except for products containing small quantities of PBDEs that are produced or used for scientific research on the health or environmental effects of PBDEs. (Health and Safety Code Section 108922.)
- 6) Requires a manufacturer of cookware sold in the state that contains one or more intentionally added listed chemicals, as specified, present in the handle of the product or in any product surface that comes into contact with food, foodstuffs, or beverages to list the presence of those chemicals on the product label. (Health and Safety Code Section 109011 (a).)
- 7) Establishes the Department of Toxic Substances Control and mandates that the Department prepare a state hazardous waste management plan and present it to the Board of Environmental Safety for approval. (Health and Safety Code Section 25135.)
- 8) Establishes the Board of Environmental Safety within the Department of Toxic Substances Control. (Health and Safety Code Section 25125.)
- 9) Requires, as a part of the green chemistry initiative, the Department of Toxic Substances Control to adopt regulations that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. (Health and Safety Code Section 25253.)

# FISCAL EFFECT: As currently in print this bill is keyed fiscal.

**COMMENTS**: For well over a decade, a growing body of scientific evidence demonstrates the potential harms to human health that emanate from exposure to certain chemicals frequently found in plastics and other forms of packaging. Specific to this measure, bisphenols and orthophtalates are plastic resins frequently used in food packaging that have been associated with endocrine disruptions in humans and other mammals. (Rudel et al, *Food Packaging and Bisphenol A and Bis(2-Ethyhexyl) Phthalate Exposure: Findings from a Dietary Intervention* (Jul. 2011) 119 Enviro. Health Prospective 7, available at:

https://drive.google.com/file/d/1ZNwH5x4EzjPbi0u4n9GzILWsRpjY3csi/view?usp=sharing.) This risk of exposure to these chemicals increases when heat is applied to the chemical, a regular occurrence in food packaging. Seeking to limit human exposure to these chemicals, this measure would prohibit the intentional additional of these chemicals to food packaging in quantities in excess of levels specified by the Department of Toxic Substances Control. In support of this bill, the author states:

Thousands of chemicals are used to make the materials that come into contact with our food and beverages. Chemicals from these materials can migrate into the food and our bodies, and some of these chemicals have been linked to negative health impacts ranging from allergic reactions to asthma, obesity, diabetes, male and female reproductive problems including infertility and decreased testosterone, learning disabilities, cardiovascular disease and increased risk of breast cancer. AB 1148 will allow California to act to reduce exposures through food to the same harmful chemicals that our state has already banned in other product categories: Phthalates and Bisphenols.

**Bisphenols, ortho-phtalates, and the risk to human health.** Bisphenol A, or BPA, is a widely produced chemical that is utilized in the production of polycarbonate plastics and epoxy resins. (Banadekakshan et al, *Bisphenol A and its alternatives in Austrian thermal paper receipts, and the migration from reusable plastic drinking bottles into water and artificial saliva using UHPLC-MS/MS* (Jan. 2022) 286 Chemosphere 3, available at:

https://www.sciencedirect.com/science/article/pii/S0045653521023146?dgcid=rss\_sd\_all.) As the health impacts of BPA became more widely understood, many environmental regulators began to restrict the chemical's use in consumer products. Indeed, scientific studies noted that BPA impacted the endocrine system and threatened reproductive, developmental, neurological, immune, metabolic and cardiovascular toxicity, mammary gland changes, carcinogenicity, genotoxicity and epigenetic changes. (Dong et.al, *Parental exposure to bisphenol A and its analogs influences zebrafish offspring immunity* (2018) 610 Sci. Total Environ. 291, 297, available at: https://doi.org/10.1016/j.scitotenv.2017.08.057.)

Seeking alternatives, to BPA, many plastic manufacturers moved toward using other classes of bisphenols. However, recent European studies are beginning to suggest other categories of bisphenols posed risks to human health similar to BPA. Indeed, one study noted that 14 bisphenols migrated from plastic beverage containers into the beverages themselves. (Banadekakshan et al, *Bisphenol A and its alternatives in Austrian thermal paper receipts, and the migration from reusable plastic drinking bottles into water and artificial saliva using UHPLC-MS/MS, supra.*) Given that evidence suggests the BPA replacements continue to leech into food and drink products and that these chemicals pose similar risks to BPA, a growing scientific consensus suggests that bisphenols as a class of chemicals needs further regulation. (*Ibid.*)

Similar health concerns are growing surrounding the use of non-ortho-phthalate plasticizers in food packaging. While non-ortho-phthalates are frequently used in plastic pipes, including PVC piping, this form of the chemical lacks plasticizers and thus is less likely to leech into water. (Harmon & Otter, *A review of common non-ortho-phthalate plasticizers for use in food contact materials* (2022) 164 Food & Chemical Toxicology 112984, available at: https://www.sciencedirect.com/science/article/pii/S027869152200182X.) However, when plasticizer chemicals are added to non-ortho-phthalates to provide flexibility, the products are widely used in food packaging. Much like bisphenols, research now suggests that non-ortho-phthalate with plasticizers are leeching into food products when used in packaging. (*Ibid.*) Given that these chemicals have also been linked to occurrences of carcinogenic, mutagenic, and reproductive and developmental health issues, the use of these products must be closely regulated to protect human health. (*Ibid.*)

*This measure would limit the exposure to bisphenols and ortho-phtalates.* Recognizing the growing body of scientific research that links exposure to bisphenols and ortho-phtalates with reproductive harm and other human health concerns, this bills seeks to limit the intentional addition of these chemicals to food packaging utilized in California. The bill directs the scientific experts at the Department of Toxic Substances Control to establish standards for the concentration of intentionally added bisphenols and ortho-phtalates in food packaging. The bill would then vest the Department of Toxic Substances Control and the Attorney General with civil enforcement authority to seek civil penalties ranging between \$5,000 and \$10,000 per violation against any food-packaging providers found to be adding these chemicals to packaging in an amount exceeding the Department's prescribed limits. The bill provides that the Department of Toxic Substances Control and the Attorney feereral of Toxic Substances Control and the Attorney General are entitled to cost and fee recovery should they prevail in a suit to enforce this bill. Finally, this measure authorizes the Department of Toxic Substances Control to adopt any regulations necessary to enact this bill.

This bill is modeled after other chemical enforcement statutes vesting authority with the Department of Toxic Substances Control. This bill is the latest in a series of bills heard by this Committee in recent years seeking to provide the Department of Toxic Substances Control with the authority to regulate the concentration of harmful chemicals in consumer products. Last year, this Committee heard and approved AB 2515 (Papan) Chap. 1008, Stats. 2024, which tasked the Department with regulating the use of PFAS chemicals in menstrual products. Last year the Legislature also approved SB 1266 (Limon) Chap. 790, Stats. 2024, which regulated the use of bisphenols in baby products. Both AB 2515 and SB 1266 adopted a regulatory framework whereby the Department of Toxic Substances was tasked with determining safe chemical exposure levels and then prohibiting products with chemical concentrations about the Department's established limits. This bill, prudently, adopts a similar approach. All three measures are moving away from prior Legislative approaches to chemical regulation where standards were set in statute. The new regulatory-driven approach provides the Department the flexibility to update standards as scientific consensus evolves without forcing the Legislature to update the codes every time new scientific data updates society's understanding of the risk of various chemicals.

### Proposed amendments reflect changes to the bill the author agreed to in a prior Committee.

This measure was previously heard and approved by the Committee on Environmental Safety and Toxic Materials. During the bill's hearing before that Committee, the author made several commitments to take amendments in this Committee to address some concerns raised by stakeholders. First, the author committed to removing the chemical antimony trioxide from the regulatory scheme contemplated by the bill. Accordingly, the author's amendments to be adopted in this Committee will delete all reference to antimony trioxide in the bill. The author is also proposing to link the definitions of both bisphenol and ortho-phtalates with definitions of those terms found in existing law. Accordingly the two definitions in this bill will now read:

(1) (A) "Bisphenol" has the same meaning as the term is defined in subdivision (a) of Section 108942.means a chemical with two phenol rings connected by a single linker atom. The linker atom and phenol rings may have additional substituents.

(3)"Ortho-phthalates" has the same meaning as the term is defined in subdivision (e) of Section 109051. means a class of chemicals that are esters of ortho-phthalic acid.

Additionally, the author is amending the measure to focus on chemicals that are "intentionally added" to plastics in the manufacturing process. Accordingly, a definition of "intentionally added" will be adopted to read:

(4) "Intentionally added" means any bisphenol or ortho-phthalate that a manufacturer has added to a product and that has a functional or technical effect in the product, including if the bisphenol or ortho-phthalate is a component of an intentionally added chemical or is the intentional breakdown product of an added chemical that also have functional effect in the product.

Finally, the bill in print only applies to products that are sold or distributed in the state. The existing framework adopted in similar statutes authorizing the Department of Toxic Substances Control to regulate chemicals also applies to products manufactured in California. The author, therefore, is proposing to amend this measure to include manufacturing in the prohibitions contained in the bill. The prohibition section of this measure, subdivision (c) of the proposed Health and Safety Code Section 109015, will now read:

(c) On and after January 1, 2027, a person shall not <u>manufacture</u>, distribute, sell, or offer for sale in the state any food packaging that contains intentionally added <del>antimony trioxide</del>, bisphenols, or ortho-phtalates at or above a limit determined by the department in regulation.

**ARGUMENTS IN SUPPORT**: This bill is supported by a coalition of environmental advocates, green chemistry groups, and healthcare advocates. A coalition letter in support of the bill states:

Studies have shown that many of the chemicals used to make the many different forms of food and beverage packaging migrate into the food and our bodies.

A number of these chemicals have been linked to negative health impacts. The chemicals addressed in this bill have been linked to health impacts ranging from immune disorders (allergies and asthma) to metabolic disorders (obesity, diabetes), male and female reproductive problems including low fertility, pregnancy and birth complications, birth defects of male genitalia, decreased testosterone, learning disabilities (ADHD, autism), cardiovascular disease, kidney disease and increased risk of breast and other cancers 1,2,3.

While the FDA is prohibited from approving a chemical for food or beverage packaging if it is causing cancer to either humans or animals by federal law, the current situation is that a number of chemicals linked to cancer, including those addressed by AB 1148, are currently approved for use in food and beverage production and packaging.

AB 1148 will reduce exposures through food to the same harmful chemicals that our state has already banned in other product categories. For example, phthalates were banned from IV bags and tubing in 2024, cosmetics in 2020, and from toys and children's products in 2006. Soluble antimony was banned federally from children's toys in 20184 and last year this legislature expanded the ban on bisphenol A in baby bottles to include all bisphenols in children's feeding products and sucking or teething products (SB 1266 – Limon). Despite these actions, these same chemicals can still be found in some food packaging, including the lining of canned food and beverage bottles and caps.

AB 1148 bans the sale of food packaging that contains bisphenols, ortho-phthalates, or antimony trioxide, effective January 1, 2027, and allows for civil enforcement by the Attorney General.

**ARGUMENTS IN OPPOSITION**: This bill is opposed by a coalition of food packaging providers, chemical companies, and other business interests. A coalition letter in opposition to the bill writes:

Product and process safety is our top priority, and we support appropriate regulatory oversight of ingredients and materials used in packaging that is grounded in sound science and includes a rigorous discussion among stakeholders of the available scientific information and data.

To that end, the regulatory framework and authority that rests with both the United States Food & Drug Administration (FDA) and California's own Department of Toxic Substances Control (DTSC) provide the appropriate forum to assess the safety of food packaging materials, establish appropriate threshold levels for intentionally added ingredients, and if necessary, impose any regulatory requirements.

The FDA states on its website that it "protects consumers from harmful exposure to chemicals that are in foods through a comprehensive, science-driven, and modernized approach. The work of the agency is coordinated by the Human Foods Program's Office of Food Chemical Safety, Dietary Supplements & Innovation.

The FDA helps to safeguard the food supply through pre-market and post-market safety evaluations of chemicals as food ingredients and in substances that come into contact with food, such as through food packaging, storage or other handling to ensure these uses are safe."

With respect to the group of phthalates listed in AB 1148, FDA has conducted extensive research and concluded in 2022 "based on the information currently available to FDA, we do not have a basis to conclude that dietary exposure levels from approved ortho-phthalates exceed a safe level." As a result, four ortho-phthalates remain authorized for food additive use by FDA – DINP, DIDP, DCHP, and DEHP.

DTSC included "food contact articles" in its most recent SCP three-year workplan.6 DTSC notes that as part of its stakeholder engagement process "we revised and expanded this category to include all products that are (1) intended to be used with food and (2) come in contact with a food product at any stage of its life cycle, including processing, packaging, preparation, cooking, serving, and transportation. This definition is more broad than the U.S. Food and Drug Administration's (FDA's) definition of food contact substances as it includes

products in contact with food at any stage of a food product's life cycle and applies to the entire product."

Finally, the SCP provides a process for anyone to petition DTSC to add to or remove from the Priority Products list a product-chemical combination. In fact, the SCP regulations require DTSC to "give high priority to reviewing petitions by federal and other California State agencies that relate to the petitioning agency's statutory and/or regulatory authorities."7

Given the existing regulatory authority at both the state and federal level and for the reasons stated above, we must regretfully oppose AB 1148.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

7th Generation Advisors A Voice for Choice Advocacy Active San Gabriel Valley Alliance of Nurses for Healthy Environments American Academy of Pediatrics, California American College of Obstetricians & Gynecologists - District IX Black Women for Wellness Action Project Breast Cancer Over Time **Breast Cancer Prevention Partners** CA League of United Latin American Citizens California Black Health Network California Nurses for Environmental Health and Justice Californians Against Waste **CALPIRG Students** California Public Interest Research Group Center for Environmental Health Clean Earth 4 Kids Clean Water Action Cleanearth4kids.org Climate Action California **Consumer Reports** Defend Our Health **Environmental Working Group** Facts Families Advocating for Chemical and Toxics Safety Friends of the Earth Green Science Policy Institute Just Transition Alliance Latino Coalition for a Healthy California National Stewardship Action Council Natural Resources Defense Council Non-toxic Neighborhoods Salinas Valley Solid Waste Authority San Francisco Bay Physicians for Social Responsibility San Francisco Baykeeper

Save the Bay Sierra Club California Stopwaste Sustainable Rossmoor The Last Beach Cleanup The Salvador E. Alvarez Institute for Non-Violence

### **Opposition**

American Beverage Association (unless amended) American Chemistry Council California Food Producers California Manufacturers and Technology Association Can Manufacturers Institute Consumer Brands Association Foodservice Packaging Institute International Bottled Water Association PET Recycling Corp of California (unless amended) PET Resin Association Vinyl Institute

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