

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB640

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Samirah

3. Committee: Agriculture, Chesapeake and Natural Resources

4. Title: Product safety; liquid container containing bisphenol A; fund; civil penalty.

5. Summary: Prohibits the manufacture, sale, or distribution in the Commonwealth, beginning July 1, 2023, of any container intended for the storage of liquid food or beverages that contains the industrial chemical bisphenol A (BPA). The bill imposes certain requirements on any substitute chemical used by a manufacturer in place of BPA. The bill subjects any manufacturer in the Commonwealth that violates any provision of the bill to a civil penalty of \$5,000 for a first offense or \$10,000 for a second or subsequent offense, and it directs the funds collected to the Virginia Product Safety Fund, created by the bill. The bill authorizes the Board of Agriculture and Consumer Services to adopt regulations to carry out its provisions.

6. Budget Amendment Necessary: Yes, to Item 103 of HB30/SB30.

7. Fiscal Impact Estimates: Preliminary.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	\$77,018	1	General Fund
2022	\$77,018	1	General Fund
2023	\$77,018	1	General Fund
2024	\$77,018	1	General Fund
2025	\$77,018	1	General Fund

7b. Revenue Impact: Indeterminate.

8. Fiscal Implications: The Department of Agriculture and Consumer Services (VDACS) anticipates requiring additional resources to implement this bill. Currently, agency's Office of Dairy and Foods, which focuses primarily on the prevention of foodborne illnesses and death from contaminated and adulterated food and milk products, does not regulate food containers and packages unless those packages or containers are misbranded. While the prohibition of the manufacture, sale, or distribution of containers intended for the storage of liquid food or beverages containing BPA will not begin until July 1, 2023, the department anticipates requiring support beginning in FY 2021 to develop and finalize the regulations prior to the prohibition and to begin its responsibilities as outlined below.

In order to implement the provisions of the bill, the department will need to determine which manufacturers exist within or distribute BPA containers to the Commonwealth and whether those containers are used to store “liquid” food products. Ongoing monitoring will need to be conducted as changes occur within the plastic manufacturing industry (e.g., new manufacturing plants, etc.). Regular communication will need to be initiated and maintained with plastic container manufacturers, both in Virginia as well as nationally, to convey to those entities that certain plastic containers storing liquid food products will no longer be allowed in Virginia. Regular scientific related research will be required to stay abreast of BPA and potential related derivatives to determine the impact to the Commonwealth.

In addition to containers that are filled with a food or beverage that are currently under the agency’s jurisdiction, this bill would also apply to empty containers that might be used for liquid storage. These empty containers are manufactured, sold, or distributed at numerous locations that are not currently regulated by the agency. Research will need to be conducted to obtain a viable understanding of plastic container manufacturing industry.

Resources will be required to address the regulatory and enforcement components of this legislation. The bill authorizes the Board of Agriculture and Consumer Services to adopt regulations to carry out its provisions. Entities who violate the provisions of this bill are subject to civil penalties of \$5,000 for a first offense and \$10,000 for each subsequent offense. A regulatory program will need to be established to enforce and ensure compliance with the BPA free requirements. A critical component of these regulations would be the need to develop and include an appropriate, detailed and enforceable civil penalty framework.

There may be complaints from consumers who believe that the containers they have purchased contain BPA. These complaints will need to be investigated and addressed and will require additional staff resources. As a part of those investigations, a BPA testing/sampling program will need to be established to determine whether BPA is present in the subject containers.

As such, VDACS anticipates requiring one FTE along with salary and benefits totaling \$67,018 to support a technical specialist who will carry out the duties, responsibilities and regulatory components necessary to ensure a viable Virginia BPA-free container program, and \$10,000 for equipment and initial and ongoing training requirements. Additional funding may be needed to develop and conduct a testing/sampling program to ensure compliance with the requirements of this legislation.

This bill creates the Virginia Product Safety Fund for collection of penalty revenue. This fund is to be used for the purpose of increasing the safety of consumer products in the Commonwealth. Because the fees from penalties are an indeterminate revenue stream, it is anticipated that general fund support will be needed to fund the technical specialist position.

9. Specific Agency or Political Subdivisions Affected: Department of Agriculture and Consumer Services.

10. Technical Amendment Necessary: No.

11. Other Comments: None.