

6919

2009-2010 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. ENGLEBRIGHT, SWEENEY, COLTON, EDDINGTON, CASTRO,  
LIFTON, JAFFEE, GUNTHER, RUSSELL, GABRYSZAK -- Multi-Sponsored by --  
M. of A. GREENE, WEISENBERG -- read once and referred to the Committee  
on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to  
enacting the "bisphenol A-free children and babies act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "bisphenol A-free children and babies act".

3     S 2. Article 37 of the environmental conservation law is amended by  
4     adding a new title 5 to read as follows:

5                                    TITLE 5

6                                    BISPHENOL A

7     SECTION 37-0501. LEGISLATIVE INTENT.

8                    37-0503. DEFINITIONS.

9                    37-0505. TOYS AND CHILD CARE PRODUCTS.

10                   37-0507. FOOD AND BEVERAGE CONTAINERS.

11                   37-0509. APPROVAL OF BISPHENOL A ALTERNATIVES.

12                   37-0511. WAIVERS.

13                   37-0513. FEES.

14                   37-0515. PRODUCT LABELING.

15                   37-0517. PUBLIC EDUCATION AND MANUFACTURER RECOGNITION.

16                   37-0519. ENFORCEMENT.

17     S 37-0501. LEGISLATIVE INTENT.

18     THE LEGISLATURE HEREBY FINDS THAT BISPHENOL A (BPA), A PRINCIPLE  
19     COMPONENT IN THE PRODUCTION OF POLYCARBONATE RIGID PLASTIC AND EPOXY  
20     RESINS, IS USED IN MANY FOOD AND DRINK PACKAGING APPLICATIONS, AS WELL  
21     AS PRODUCTS INTENDED FOR USE BY YOUNG CHILDREN. THE RESINS ARE COMMONLY  
22     USED AS LACQUERS TO COAT METAL PRODUCTS, SUCH AS FOOD CANS, BOTTLE TOPS,  
23     JAR LIDS AND INFANT FORMULA CONTAINERS. THE RESINS ARE ALSO USED TO LINE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 ASEPTIC PACKAGES SUCH AS JUICE BOXES. THE CHEMICAL BOND BETWEEN BISPHE-  
2 NOL A MOLECULES IS UNSTABLE AND CAN BE DISRUPTED BY HEAT, ACIDIC  
3 REACTIONS AND OTHER CONDITIONS THAT CAN RELEASE BISPHENOL A INTO THE  
4 FOOD OR BEVERAGES WITHIN THE CONTAINERS.

5 BISPHENOL A IS UBIQUITOUS. ACCORDING TO THE U.S. CENTERS FOR DISEASE  
6 CONTROL, NINETY-FIVE PERCENT OF AMERICANS HAVE DETECTABLE LEVELS OF  
7 BISPHENOL A IN THEIR BODIES, AND MOST ARE AT OR ABOVE THE CONCENTRATIONS  
8 KNOWN TO CAUSE ADVERSE EFFECTS IN LABORATORY STUDIES. RESEARCH STUDIES  
9 HAVE FOUND THAT BABIES HAVE UP TO ELEVEN TIMES HIGHER LEVELS OF BISPHE-  
10 NOL A IN THEIR BODIES THAN DO ADULTS BECAUSE OF GREATER EXPOSURE AND  
11 REDUCED CAPACITY TO METABOLIZE BISPHENOL A.

12 BISPHENOL A IS A KNOWN ESTROGEN-MIMICKING ENDOCRINE DISRUPTOR CHEMI-  
13 CAL. ENDOCRINE DISRUPTION HAS BEEN LINKED TO A GREATER NUMBER OF COMMON  
14 AILMENTS, INCLUDING HEART DISEASE, IMMUNE SYSTEM DISRUPTION, BRAIN DETE-  
15 RIORATION, TYPE-2 DIABETES, CANCER AND OBESITY. RESEARCH HAS SHOWN THAT  
16 BISPHENOL A CAN ALTER THE EXPRESSION OF SEVERAL HUNDRED GENES, WITH  
17 EFFECTS VARYING AMONG SPECIFIC TISSUES AND TIMING OF EXPOSURE. PRE-NATAL  
18 AND NEONATAL EXPOSURE TO BISPHENOL A HAS BEEN LINKED TO ALTERED DNA  
19 FUNCTION AND GENETIC EXPRESSION, MALE REPRODUCTIVE DISORDERS AND LOWERED  
20 SPERM COUNTS, INSULIN RESISTANCE, EARLY PUBERTY, AND CHANGES IN PROSTATE  
21 AND MAMMARY GLAND DEVELOPMENT, LEADING TO POTENTIAL GREATER SUSCEPTIBIL-  
22 ITY TO BREAST CANCER AND OTHER CANCER LATER IN LIFE.

23 IN 2008, THIRTY-EIGHT OF THE WORLD'S LEADING SCIENTIFIC EXPERTS ON  
24 BISPHENOL A, WHO REVIEWED OVER 700 PUBLISHED STUDIES, RELEASED A CONSEN-  
25 SUS STATEMENT WARNING OF THE ADVERSE HEALTH EFFECTS OF BISPHENOL A EXPO-  
26 SURE, CONCLUDING THAT THE AVERAGE LEVELS OF BISPHENOL A IN PEOPLE ARE  
27 ABOVE THOSE THAT CAUSE HARM IN ANIMALS IN LABORATORY EXPERIMENTS.

28 THE STATE OF NEW YORK MUST ACT TO SIGNIFICANTLY REDUCE THE HARM FROM  
29 BISPHENOL A, PARTICULARLY FOR INFANTS AND CHILDREN, THE MOST VULNERABLE  
30 WITHIN OUR POPULATION.

31 S 37-0503. DEFINITIONS.

32 AS USED IN THIS TITLE:

33 1. "CHILD CARE PRODUCT" MEANS ALL PRODUCTS DESIGNED OR INTENDED BY THE  
34 MANUFACTURER FOR CHILD CARE, INCLUDING, BUT NOT LIMITED TO, THOSE TO  
35 HELP WITH SUCKING OR TEETHING, TO FACILITATE SLEEP OR RELAXATION, OR THE  
36 FEEDING OF CHILDREN.

37 2. "TOY" MEANS ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER  
38 TO BE USED BY CHILDREN WHEN THEY PLAY.

39 S 37-0505. TOYS AND CHILD CARE PRODUCTS.

40 1. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPA-  
41 NY OR CORPORATION SHALL MANUFACTURE, DISTRIBUTE, SELL OR OFFER FOR SALE  
42 ANY TOY OR CHILD CARE PRODUCT INTENDED FOR USE BY A CHILD THREE YEARS OF  
43 AGE OR YOUNGER CONTAINING BISPHENOL A.

44 2. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE SALE OR  
45 DISTRIBUTION OF TOYS OR CHILD CARE PRODUCTS RESOLD OR OFFERED FOR  
46 RESALE, OR DISTRIBUTED BY CONSUMERS FOR CONSUMER USE.

47 S 37-0507. FOOD AND BEVERAGE CONTAINERS.

48 NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY  
49 OR CORPORATION SHALL MANUFACTURE, DISTRIBUTE, SELL OR OFFER FOR SALE:

50 1. ANY BOTTLE, CUP OR OTHER CONTAINER THAT CONTAINS BISPHENOL A, IF  
51 SUCH CONTAINER IS DESIGNED OR INTENDED TO BE FILLED WITH ANY LIQUID,  
52 FOOD OR BEVERAGE PRIMARILY FOR CONSUMPTION FROM THAT CONTAINER BY CHIL-  
53 DREN FOURTEEN YEARS OF AGE OR YOUNGER;

54 2. ANY JAR, CAN, BOX OR OTHER CONTAINER THAT CONTAINS BISPHENOL A, IF  
55 SUCH CONTAINER IS FILLED WITH ANY LIQUID, FOOD OR BEVERAGE PRIMARILY FOR  
56 CONSUMPTION BY CHILDREN FOURTEEN YEARS OF AGE OR YOUNGER; OR

1 3. ANY SPORTS WATER BOTTLE THAT CONTAINS BISPHENOL A.  
2 S 37-0509. APPROVAL OF BISPHENOL A ALTERNATIVES.

3 1. EVERY MANUFACTURER OF A CHILD CARE PRODUCT OR TOY PROHIBITED BY  
4 THIS TITLE SHALL USE THE LEAST TOXIC ALTERNATIVE TO THE BISPHENOL A IN  
5 THE TOY OR CHILD CARE PRODUCT. SUCH ALTERNATIVE SHALL NOT BE (A) A  
6 CARCINOGEN RATED BY THE UNITED STATE ENVIRONMENTAL PROTECTION AGENCY AS  
7 A, B OR C CARCINOGENS, OR SUBSTANCES LISTED AS KNOWN OR LIKELY CARCINO-  
8 GENS, KNOWN TO BE HUMAN CARCINOGENS, LIKELY TO BE HUMAN CARCINOGENS OR  
9 SUGGESTIVE OF BEING HUMAN CARCINOGENS, AS DESCRIBED IN THE "LIST OF  
10 CHEMICALS EVALUATED FOR CARCINOGEN POTENTIAL"; OR (B) REPRODUCTIVE TOXI-  
11 CANTS THAT CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM OR DEVELOPMENTAL HARM  
12 AS IDENTIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

13 2. THE MANUFACTURER SHALL APPLY TO THE DEPARTMENT FOR APPROVAL OF AN  
14 ALTERNATIVE TO BISPHENOL A. THE DEPARTMENT, IN CONSULTATION WITH THE  
15 POLLUTION PREVENTION INSTITUTE AND THE INTERSTATE CHEMICALS CLEARING-  
16 HOUSE, SHALL REVIEW AVAILABLE SCIENTIFIC EVIDENCE ON THE ALTERNATIVE,  
17 AND APPROVE OR DISAPPROVE THE ALTERNATIVE. THE ALTERNATIVE SHALL BE  
18 APPROVED IF IT MEETS THE CONDITIONS ESTABLISHED IN SUBDIVISION ONE OF  
19 THIS SECTION.

20 S 37-0511. WAIVERS.

21 1. WITHIN THREE MONTHS OF THE EFFECTIVE DATE OF THIS TITLE, A MANUFAC-  
22 TURER OF CHILD CARE PRODUCTS OR TOYS, REGULATED BY THIS TITLE, MAY APPLY  
23 TO THE DEPARTMENT FOR A WAIVER FROM THE REQUIREMENTS OF THIS TITLE IF  
24 THE MANUFACTURER CAN DEMONSTRATE THAT THERE ARE NO AVAILABLE ALTERNA-  
25 TIVES TO BISPHENOL A, AS SPECIFIED IN SUBDIVISION ONE OR DETERMINED IN  
26 SUBDIVISION TWO OF SECTION 37-0509 OF THIS TITLE, FOR THEIR PRODUCT. THE  
27 WAIVER SHALL BE IN FORCE FOR NO MORE THAN A YEAR, DURING WHICH TIME THE  
28 MANUFACTURER MUST PROMINENTLY LABEL THE PRODUCT OR TOY AS CONTAINING  
29 BISPHENOL A, AS SPECIFIED IN SECTION 37-0515 OF THIS TITLE. AFTER THE  
30 ONE-YEAR WAIVER PERIOD, THE MANUFACTURER SHALL AGAIN APPLY FOR A WAIVER.

31 2. IF AN ALTERNATIVE BECOMES AVAILABLE AT ANY TIME DURING THE PERIOD  
32 OF THE WAIVER, THE MANUFACTURER HAS A PERIOD OF SIX MONTHS IN WHICH TO  
33 REPLACE BISPHENOL A WITH SUCH ALTERNATIVE IN THE MANUFACTURE OF THEIR  
34 CHILD CARE PRODUCTS AND TOYS AND TO CHANGE THE PRODUCT LABELING PURSUANT  
35 TO SECTION 37-0515 OF THIS TITLE. DURING THIS PERIOD OF TIME, ALL  
36 PRODUCTS CONTAINING BISPHENOL A SHALL EITHER BE SOLD OR REMOVED FROM  
37 COMMERCE BY THE MANUFACTURER.

38 S 37-0513. FEES.

39 1. THE DEPARTMENT SHALL:

40 (A) ESTABLISH A FEE FOR ADMINISTRATION OF SUBDIVISION TWO OF SECTION  
41 37-0509 OF THIS TITLE FOR A REQUEST BY A MANUFACTURER TO APPROVE ALTER-  
42 NATIVES TO BISPHENOL A; AND

43 (B) ESTABLISH A FEE FOR ADMINISTRATION OF SUBDIVISION ONE OF SECTION  
44 37-0511 OF THIS TITLE FOR A REQUEST BY A MANUFACTURER FOR A WAIVER FROM  
45 THE REQUIREMENT TO REPLACE BISPHENOL A WITH AN ALTERNATIVE.

46 2. ALL REVENUE DERIVED FROM THE FEES IMPOSED PURSUANT TO THIS SECTION  
47 SHALL BE EXPENDED BY THE DEPARTMENT TO IMPLEMENT AND ENFORCE THE  
48 PROVISIONS OF THIS TITLE.

49 S 37-0515. PRODUCT LABELING.

50 1. THE COMMISSIONER SHALL REQUIRE PRODUCT LABELING OF PRODUCTS THAT  
51 HAVE BEEN DETERMINED TO NOT CONTAIN BISPHENOL A, PURSUANT TO SECTION  
52 37-0509 OF THIS TITLE. THE LABEL ON SUCH PRODUCTS WILL PROMINENTLY STATE  
53 "BISPHENOL A FREE" OR "BPA-FREE" TO INFORM CONSUMERS THAT THE PRODUCT  
54 DOES NOT CONTAIN BISPHENOL A.

55 2. THE COMMISSIONER SHALL REQUIRE PRODUCT LABELING OF PRODUCTS THAT  
56 HAVE BEEN GRANTED A WAIVER BECAUSE THEY CONTAIN BISPHENOL A PURSUANT TO

SECTION 37-0511 OF THIS TITLE. THE LABEL ON SUCH PRODUCTS WILL PROMINENTLY STATE "WARNING - CONTAINS BISPHEENOL A".

S 37-0517. PUBLIC EDUCATION AND MANUFACTURER RECOGNITION.

1. THE COMMISSIONER MAY ESTABLISH PARTNERSHIPS WITH PRODUCT MANUFACTURERS TO ENHANCE THE MARKET FOR PRODUCTS THAT DO NOT CONTAIN BISPHEENOL A AND REDUCE THE USE OF BISPHEENOL A IN PRODUCTS.

2. THE COMMISSIONER MAY DEVELOP AN AWARDS PROGRAM TO RECOGNIZE THE ACCOMPLISHMENTS OF MANUFACTURERS WHICH EXCEED THE REQUIREMENTS OF THIS TITLE AND WHICH EXCEL AT REDUCING OR ELIMINATING BISPHEENOL A IN PRODUCTS AND THE ENVIRONMENT.

S 37-0519. ENFORCEMENT.

1. WHENEVER THERE SHALL BE A VIOLATION OF THIS TITLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS TITLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE ENJOINING OR RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT OR JUSTICE SHALL DETERMINE THAT A VIOLATION OF THIS TITLE HAS OCCURRED, THE COURT OR JUSTICE MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, EXCEPT THAT THE COURT OR JUSTICE MAY IMPOSE A PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS IF THE VIOLATION IS KNOWING AND WILLFUL. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

2. BEFORE ANY VIOLATION OF THIS TITLE IS SOUGHT TO BE ENJOINED, THE ATTORNEY GENERAL SHALL BE REQUIRED TO GIVE THE PERSON AGAINST WHOM SUCH PROCEEDING IS CONTEMPLATED NOTICE BY CERTIFIED MAIL AND AN OPPORTUNITY TO SHOW IN WRITING WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF NOTICE WHY PROCEEDINGS SHOULD NOT BE INSTITUTED AGAINST HIM OR HER, UNLESS THE ATTORNEY GENERAL SHALL FIND, IN ANY CASE IN WHICH HE OR SHE SEEKS PRELIMINARY RELIEF, THAT TO GIVE SUCH NOTICE AND OPPORTUNITY IS NOT IN THE PUBLIC INTEREST.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided that subdivision 2 of section 37-0507 of the environmental conservation law, as added by section two of this act, shall take effect two years after the effective date of this act.