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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 ASSEMBLY, 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 GENES, 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

1 SECTION 37-0511 OF THIS TITLE. THE LABEL ON SUCH PRODUCTS WILL PROMI-
2 NENTLY STATE "WARNING - CONTAINS BISPHENOL A".

3 S 37-0517. PUBLIC EDUCATION AND MANUFACTURER RECOGNITION.

4 1. THE COMMISSIONER MAY ESTABLISH PARTNERSHIPS WITH PRODUCT MANUFAC-
5 TURERS TO ENHANCE THE MARKET FOR PRODUCTS THAT DO NOT CONTAIN BISPHENOL
6 A AND REDUCE THE USE OF BISPHENOL A IN PRODUCTS.

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

11 S 37-0519. ENFORCEMENT.

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

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

40 S 3. This act shall take effect on the first of January next succeed-
41 ing the date on which it shall have become a law, provided that subdivi-
42 sion 2 of section 37-0507 of the environmental conservation law, as
43 added by section two of this act, shall take effect two years after the
44 effective date of this act.