

6919--A

2009-2010 Regular Sessions

I N A S S E M B L Y

March 17, 2009

Introduced by M. of A. ENGLEBRIGHT, SWEENEY, COLTON, EDDINGTON, CASTRO, LIFTON, JAFFEE, GUNTHER, RUSSELL, GABRYSZAK, MENG, SCHIMEL, BRADLEY, TITONE, PERRY -- Multi-Sponsored by -- M. of A. GORDON, GREENE, WEISENBERG -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 37-0521. PREEMPTION.  
18 37-0523. RULES AND REGULATIONS.  
19 S 37-0501. LEGISLATIVE INTENT.  
20 THE LEGISLATURE HEREBY FINDS THAT BISPHENOL A (BPA), A PRINCIPAL  
21 COMPONENT IN THE PRODUCTION OF POLYCARBONATE RIGID PLASTIC AND EPOXY

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

LBD10403-06-9

1 RESINS, IS USED IN MANY FOOD AND DRINK PACKAGING APPLICATIONS, AS WELL  
2 AS PRODUCTS INTENDED FOR USE BY YOUNG CHILDREN. THE RESINS ARE COMMONLY  
3 USED AS LACQUERS TO COAT METAL PRODUCTS, SUCH AS FOOD CANS, BOTTLE TOPS,  
4 JAR LIDS AND INFANT FORMULA CONTAINERS. THE RESINS ARE ALSO USED TO LINE  
5 ASEPTIC PACKAGES SUCH AS JUICE BOXES. THE CHEMICAL BOND BETWEEN BISPHE-  
6 NOL A MOLECULES IS UNSTABLE AND CAN BE DISRUPTED BY HEAT, ACIDIC  
7 REACTIONS AND OTHER CONDITIONS THAT CAN RELEASE BISPHENOL A INTO THE  
8 FOOD OR BEVERAGES WITHIN THE CONTAINERS.

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

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

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

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

35 S 37-0503. DEFINITIONS.

36 AS USED IN THIS TITLE:

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

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

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

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

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

51 S 37-0507. FOOD AND BEVERAGE CONTAINERS.

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

54 1. ANY BOTTLE, CUP OR OTHER CONTAINER THAT CONTAINS BISPHENOL A, IF  
55 SUCH CONTAINER IS DESIGNED OR INTENDED TO BE FILLED WITH ANY LIQUID,

1 FOOD OR BEVERAGE PRIMARILY FOR CONSUMPTION FROM THAT CONTAINER BY CHIL-  
2 DREN FOURTEEN YEARS OF AGE OR YOUNGER;

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

6 3. ANY SPORTS WATER BOTTLE THAT CONTAINS BISPHENOL A.

7 S 37-0509. APPROVAL OF BISPHENOL A ALTERNATIVES.

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

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

25 S 37-0511. WAIVERS.

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

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

43 S 37-0513. FEES.

44 1. THE DEPARTMENT SHALL:

45 (A) ESTABLISH A FEE FOR ADMINISTRATION OF SUBDIVISION TWO OF SECTION  
46 37-0509 OF THIS TITLE FOR A REQUEST BY A MANUFACTURER TO APPROVE ALTER-  
47 NATIVES TO BISPHENOL A; AND

48 (B) ESTABLISH A FEE FOR ADMINISTRATION OF SUBDIVISION ONE OF SECTION  
49 37-0511 OF THIS TITLE FOR A REQUEST BY A MANUFACTURER FOR A WAIVER FROM  
50 THE REQUIREMENT TO REPLACE BISPHENOL A WITH AN ALTERNATIVE.

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

54 S 37-0515. PRODUCT LABELING.

55 1. THE COMMISSIONER SHALL REQUIRE PRODUCT LABELING OF PRODUCTS THAT  
56 HAVE BEEN DETERMINED TO NOT CONTAIN BISPHENOL A, PURSUANT TO SECTION

1 37-0509 OF THIS TITLE. THE LABEL ON SUCH PRODUCTS WILL PROMINENTLY STATE  
2 "BISPHENOL A FREE" OR "BPA-FREE" TO INFORM CONSUMERS THAT THE PRODUCT  
3 DOES NOT CONTAIN BISPHENOL A.

4 2. THE COMMISSIONER SHALL REQUIRE PRODUCT LABELING OF PRODUCTS THAT  
5 HAVE BEEN GRANTED A WAIVER BECAUSE THEY CONTAIN BISPHENOL A PURSUANT TO  
6 SECTION 37-0511 OF THIS TITLE. THE LABEL ON SUCH PRODUCTS WILL PROMI-  
7 NENTLY STATE "WARNING - CONTAINS BISPHENOL A".

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

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

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

16 S 37-0519. ENFORCEMENT.

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

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

45 S 37-0521. PREEMPTION.

46 JURISDICTION IN ALL MATTERS PERTAINING TO BISPHENOL A WHICH ARE REGU-  
47 LATED PURSUANT TO THE PROVISIONS OF THIS TITLE SHALL BE VESTED EXCLU-  
48 SIVELY IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY  
49 RULE OR REGULATION PROMULGATED PURSUANT THERETO, RELATING TO BISPHENOL A  
50 SHALL BE PREEMPTED.

51 S 37-0523. RULES AND REGULATIONS.

52 THE DEPARTMENT IS AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS  
53 AS IT SHALL DEEM NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

54 S 3. This act shall take effect immediately, except that:

- 1 (a) section 37-0505 of the environmental conservation law, as added by  
2 section two of this act, shall take effect one year after this act shall  
3 have become a law;
- 4 (b) subdivisions 1 and 3 of section 37-0507 of the environmental  
5 conservation law, as added by section two of this act, shall take effect  
6 on the one hundred eightieth day after this act shall have become a law;  
7 and
- 8 (c) subdivision 2 of section 37-0507 of the environmental conservation  
9 law, as added by section two of this act, shall take effect two years  
10 after this act shall have become a law.