

6919--C

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I N A S S E M B L Y

March 17, 2009

Introduced by M. of A. ENGLEBRIGHT, SWEENEY, COLTON, CASTRO, LIFTON, JAFFEE, GUNTHER, RUSSELL, GABRYSZAK, MENG, SCHIMEL, TITONE, PERRY, SPANO, FIELDS, GALEF, MAISEL, ROSENTHAL, KOON, KAVANAGH -- Multi-Sponsored by -- M. of A. BALL, BOYLAND, BRENNAN, CONTE, GLICK, GORDON, HOOPER, McENENY, REILICH, SALADINO, WEISENBERG -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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. Legislative intent. The legislature hereby finds that
2 bisphenol A (BPA), a principal component in the production of polycarbo-
3 nate rigid plastic, is used in many products intended for use by young
4 children.
5 According to the U.S. Centers for Disease Control, ninety-three
6 percent of Americans have detectable levels of bisphenol A in their
7 bodies. Research studies have found that babies and toddlers have high-
8 er levels of bisphenol A in their bodies than do adults because of
9 greater exposure and reduced capacity to metabolize bisphenol A.
10 Bisphenol A is a known estrogen-mimicking endocrine disruptor chemi-
11 cal. Endocrine disruption has been linked to a greater number of common
12 ailments, including heart disease, immune system disruption, brain dete-
13 rioration, type-2 diabetes, cancer and obesity.
14 The state of New York must act to significantly reduce the harm from
15 bisphenol A, particularly for infants and children, the most vulnerable
16 within our population.

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

LBD10403-23-0

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

3 TITLE 5
4 BISPHENOL A

- 5 SECTION 37-0501. SHORT TITLE.
- 6 37-0503. DEFINITIONS.
- 7 37-0505. TOYS AND CHILD CARE PRODUCTS.
- 8 37-0507. WAIVERS.
- 9 37-0509. PRODUCT LABELING.
- 10 37-0511. PREEMPTION.
- 11 37-0513. RULES AND REGULATIONS.

12 S 37-0501. SHORT TITLE.
13 THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "BISPHENOL A-FREE
14 CHILDREN AND BABIES ACT".

15 S 37-0503. DEFINITIONS.
16 AS USED IN THIS TITLE:
17 1. "CHILD CARE PRODUCT" MEANS ALL PRODUCTS DESIGNED OR INTENDED BY THE
18 MANUFACTURER FOR CHILD CARE, INCLUDING, BABY BOTTLES, BABY BOTTLE LINERS
19 AND CUPS, INCLUDING BUT NOT LIMITED TO SIPPY CUPS, PACIFIERS AND OTHER
20 PRODUCTS TO HELP WITH SUCKING OR TEETHING, TO FACILITATE SLEEP OR RELAX-
21 ATION, OR THE FEEDING OF CHILDREN.

22 2. "TOY" MEANS ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER
23 TO BE USED FOR PLAY BY CHILDREN THREE YEARS OF AGE AND YOUNGER.

24 S 37-0505. TOYS AND CHILD CARE PRODUCTS.
25 1. BEGINNING JUNE FIRST, TWO THOUSAND ELEVEN, NO PERSON, FIRM, PART-
26 NERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR CORPORATION SHALL
27 SELL OR OFFER FOR SALE ANY CHILD CARE PRODUCT INTENDED FOR USE BY A
28 CHILD THREE YEARS OF AGE OR YOUNGER CONTAINING BISPHENOL A.

29 2. BEGINNING JUNE FIRST, TWO THOUSAND TWELVE, NO PERSON, FIRM, PART-
30 NERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR CORPORATION SHALL
31 SELL OR OFFER FOR SALE ANY TOY CONTAINING BISPHENOL A.

32 3. BEGINNING JUNE FIRST, TWO THOUSAND THIRTEEN, NO PERSON, FIRM, PART-
33 NERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR CORPORATION SHALL
34 SELL OR OFFER FOR SALE ANY LIQUID, FOOD OR BEVERAGE IN A CAN, JAR OR
35 OTHER CONTAINER CONTAINING BISPHENOL A IF THE LIQUID, FOOD OR BEVERAGE
36 IS DESIGNED OR INTENDED PRIMARILY FOR CONSUMPTION BY INFANTS OR CHILDREN
37 THREE YEARS OF AGE OR YOUNGER.

38 4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE SALE OR
39 DISTRIBUTION OF TOYS OR CHILD CARE PRODUCTS RESOLD OR OFFERED FOR
40 RESALE, OR DISTRIBUTED BY CONSUMERS FOR CONSUMER USE.

41 S 37-0507. WAIVERS.
42 A MANUFACTURER OF LIQUID, FOOD OR BEVERAGE PRODUCTS REGULATED BY THIS
43 TITLE, MAY APPLY TO THE DEPARTMENT FOR A WAIVER FOR ONE YEAR FROM THE
44 REQUIREMENTS OF THIS TITLE IF THE MANUFACTURER CAN DEMONSTRATE THAT
45 THERE ARE NO AVAILABLE ALTERNATIVES TO BISPHENOL A. AFTER SUCH WAIVER
46 PERIOD, THE MANUFACTURER MAY AGAIN APPLY FOR A WAIVER.

47 S 37-0509. PRODUCT LABELING.
48 THE COMMISSIONER MAY AUTHORIZE PRODUCT LABELING OF PRODUCTS THAT DO
49 NOT CONTAIN BISPHENOL A. THE LABEL ON SUCH PRODUCTS MAY PROMINENTLY
50 STATE "BISPHENOL A FREE" OR "BPA-FREE" TO INFORM CONSUMERS THAT THE
51 PRODUCT DOES NOT CONTAIN THE CHEMICAL BISPHENOL A.

52 S 37-0511. PREEMPTION.
53 JURISDICTION IN ALL MATTERS PERTAINING TO BISPHENOL A WHICH ARE REGU-
54 LATED PURSUANT TO THE PROVISIONS OF THIS TITLE SHALL BE VESTED EXCLU-
55 SIVELY IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY

1 RULE OR REGULATION PROMULGATED PURSUANT THERETO, RELATING TO BISPHENOL A
2 SHALL BE PREEMPTED.

3 S 37-0513. RULES AND REGULATIONS.

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

6 S 3. Section 71-3703 of the environmental conservation law, as amended
7 by chapter 671 of the laws of 1986, is amended to read as follows:

8 S 71-3703. Enforcement of article 37.

9 1. Any person who violates any of the provisions of, or who fails to
10 perform any duty imposed by section 37-0107 or any rule or regulation
11 promulgated pursuant hereto, shall be liable for a civil penalty not to
12 exceed two thousand five hundred dollars for each such violation and an
13 additional penalty of not more than five hundred dollars for each day
14 during which such violation continues, and, in addition thereto, such
15 person may be enjoined from continuing such violation.

16 2. ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF, OR WHO FAILS TO
17 PERFORM ANY DUTY IMPOSED BY SECTION 37-0505 OR ANY RULE OR REGULATION
18 PROMULGATED PURSUANT HERETO, SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO
19 EXCEED ONE THOUSAND DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION
20 CONTINUES, AND IN ADDITION THERETO, SUCH PERSON MAY BE ENJOINED FROM
21 CONTINUING SUCH VIOLATION. SUCH PERSON SHALL FOR A SECOND VIOLATION BE
22 LIABLE TO THE PEOPLE OF THE STATE FOR A CIVIL PENALTY NOT TO EXCEED TWO
23 THOUSAND FIVE HUNDRED DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION
24 CONTINUES.

25 S 4. This act shall take effect immediately.