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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, ZEBROWSKI -- Multi-Sponsored by -- M. of A. BALL, BOYLAND, BRENNAN, CONTE, GLICK, GORDON, HOOPER, LATIMER, 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 -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the environmental conservation law, in relation to prohibiting the manufacture, distribution and sale of child pacifiers and beverage containers containing bisphenol A

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

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

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1 ailments, including heart disease, immune system disruption, brain dete-  
2 rioration, type-2 diabetes, cancer and obesity.

3 The state of New York must act to significantly reduce the harm from  
4 bisphenol A, particularly for infants and children, the most vulnerable  
5 within our population.

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

8 TITLE 5  
9 BISPHENOL A

10 SECTION 37-0501. SHORT TITLE.  
11 37-0503. DEFINITIONS.  
12 37-0505. CHILD CARE PRODUCTS.  
13 37-0507. PRODUCT LABELING.  
14 37-0509. PREEMPTION.  
15 37-0511. RULES AND REGULATIONS.

16 S 37-0501. SHORT TITLE.

17 THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "BISPHENOL A-FREE  
18 CHILDREN AND BABIES ACT".

19 S 37-0503. DEFINITIONS.

20 AS USED IN THIS TITLE, "CHILD CARE PRODUCT" MEANS ALL PACIFIERS AND  
21 UNFILLED BEVERAGE CONTAINERS TO BE USED BY CHILDREN UNDER THREE YEARS  
22 OLD FOR THE CONSUMPTION OF LIQUIDS INCLUDING PACIFIERS, BABY BOTTLES,  
23 BABY BOTTLE LINERS AND CUPS, CUP LIDS, STRAWS AND SIPPY CUPS.

24 S 37-0505. CHILD CARE PRODUCTS.

25 1. BEGINNING DECEMBER FIRST, TWO THOUSAND TEN, 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. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE SALE OR  
30 DISTRIBUTION OF CHILD CARE PRODUCTS RESOLD OR OFFERED FOR RESALE, OR  
31 DISTRIBUTED BY CONSUMERS FOR CONSUMER USE.

32 S 37-0507. PRODUCT LABELING.

33 THE COMMISSIONER MAY AUTHORIZE PRODUCT LABELING OF PRODUCTS THAT DO  
34 NOT CONTAIN BISPHENOL A. THE LABEL ON SUCH PRODUCTS MAY PROMINENTLY  
35 STATE "BISPHENOL A FREE" OR "BPA-FREE" TO INFORM CONSUMERS THAT THE  
36 PRODUCT DOES NOT CONTAIN THE CHEMICAL BISPHENOL A.

37 S 37-0509. PREEMPTION.

38 JURISDICTION IN ALL MATTERS PERTAINING TO BISPHENOL A WHICH ARE REGU-  
39 LATED PURSUANT TO THE PROVISIONS OF THIS TITLE SHALL BE VESTED EXCLU-  
40 SIVELY IN THE STATE.

41 S 37-0511. RULES AND REGULATIONS.

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

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

46 S 71-3703. Enforcement of article 37.

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

54 2. ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF, OR WHO FAILS TO  
55 PERFORM ANY DUTY IMPOSED BY SECTION 37-0505 OR ANY RULE OR REGULATION  
56 PROMULGATED PURSUANT HERETO, SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO

1 EXCEED ONE THOUSAND DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION  
2 CONTINUES, AND IN ADDITION THERETO, SUCH PERSON MAY BE ENJOINED FROM  
3 CONTINUING SUCH VIOLATION. SUCH PERSON SHALL FOR A SECOND VIOLATION BE  
4 LIABLE TO THE PEOPLE OF THE STATE FOR A CIVIL PENALTY NOT TO EXCEED TWO  
5 THOUSAND FIVE HUNDRED DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION  
6 CONTINUES.

7 S 4. This act shall take effect immediately.