S T A T E  O F  N E W  Y O R K

3296

2009-2010 Regular Sessions

I N  S E N A T E

March 13, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed 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:

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

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

TITLE 5

BISPHENOL A

SECTION 37-0501. LEGISLATIVE INTENT.
37-0503. DEFINITIONS.
37-0505. TOYS AND CHILD CARE PRODUCTS.
37-0507. FOOD AND BEVERAGE CONTAINERS.
37-0509. APPROVAL OF BISPHENOL A ALTERNATIVES.
37-0511. WAIVERS.
37-0513. FEES.
37-0515. PRODUCT LABELING.
37-0517. PUBLIC EDUCATION AND MANUFACTURER RECOGNITION.
37-0519. ENFORCEMENT.

S 37-0501. LEGISLATIVE INTENT.

THE LEGISLATURE HEREBY FINDS THAT BISPHENOL A (BPA), A PRINCIPLE COMPONENT IN THE PRODUCTION OF POLYCARBONATE RIGID PLASTIC AND EPOXY RESINS, IS USED IN MANY FOOD AND DRINK PACKAGING APPLICATIONS, AS WELL AS PRODUCTS INTENDED FOR USE BY YOUNG CHILDREN. THE RESINS ARE COMMONLY USED AS LACQUERS TO COAT METAL PRODUCTS, SUCH AS FOOD CANS, BOTTLE TOPS, JAR LIDS AND INFANT FORMULA CONTAINERS. THE RESINS ARE ALSO USED TO LINE ASEPTIC PACKAGES SUCH AS JUICE BOXES. THE CHEMICAL BOND BETWEEN BISPHENOL A MOLECULES IS UNSTABLE AND CAN BE DISRUPTED BY HEAT, ACIDIC

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

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REACTIONS AND OTHER CONDITIONS THAT CAN RELEASE BISPHENOL A INTO THE FOOD OR BEVERAGES WITHIN THE CONTAINERS.

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

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

IN 2008, THIRTY-EIGHT OF THE WORLD'S LEADING SCIENTIFIC EXPERTS ON BISPHENOL A, WHO REVIEWED OVER 700 PUBLISHED STUDIES, RELEASED A CONSENSUS STATEMENT WARNING OF THE ADVERSE HEALTH EFFECTS OF BISPHENOL A EXPOSURE, CONCLUDING THAT THE AVERAGE LEVELS OF BISPHENOL A IN PEOPLE ARE ABOVE THOSE THAT CAUSE HARM IN ANIMALS IN LABORATORY EXPERIMENTS.

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

S 37-0503. DEFINITIONS.

AS USED IN THIS TITLE:

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

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

S 37-0505. TOYS AND CHILD CARE PRODUCTS.

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

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

S 37-0507. FOOD AND BEVERAGE CONTAINERS.

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

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

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

3. ANY SPORTS WATER BOTTLE THAT CONTAINS BISPHENOL A.

S 37-0509. APPROVAL OF BISPHENOL A ALTERNATIVES.

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

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

S 37-0511. WAIVERS.

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

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

S 37-0513. FEES.

1. THE DEPARTMENT SHALL:

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

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

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

S 37-0515. PRODUCT LABELING.

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

2. THE COMMISSIONER SHALL REQUIRE PRODUCT LABELING OF PRODUCTS THAT 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 BISPHENOL 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 BISPHENOL A AND REDUCE THE USE OF BISPHENOL 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 BISPHENOL 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.