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

7123--A

I N S E N A T E

March 15, 2010

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

Section 1. Legislative intent. The legislature hereby finds that bisphenol A (BPA), a principal component in the production of polycarbonate rigid plastic, is used in many products intended for use by young children.

According to the U.S. Centers for Disease Control, ninety-three percent of Americans have detectable levels of bisphenol A in their bodies. Research studies have found that babies and toddlers have 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.

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 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. SHORT TITLE.
37-0503. DEFINITIONS.
37-0505. TOYS AND CHILD CARE PRODUCTS.
37-0507. WAIVERS.
37-0509. PRODUCT LABELING.
37-0511. PREEMPTION.

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

LBD10403-25-0

37-0513. RULES AND REGULATIONS.

S 37-0501. SHORT TITLE.

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

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, BABY BOTTLES, BABY BOTTLE LINERS AND CUPS, INCLUDING BUT NOT LIMITED TO SIPPY CUPS, PACIFIERS AND OTHER PRODUCTS 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 FOR PLAY BY CHILDREN THREE YEARS OF AGE AND YOUNGER.

S 37-0505. TOYS AND CHILD CARE PRODUCTS.

1. BEGINNING JUNE FIRST, TWO THOUSAND ELEVEN, NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR CORPORATION SHALL SELL OR OFFER FOR SALE ANY CHILD CARE PRODUCT INTENDED FOR USE BY A CHILD THREE YEARS OF AGE OR YOUNGER CONTAINING BISPHENOL A.

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

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

4. 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. WAIVERS.

A MANUFACTURER OF LIQUID, FOOD OR BEVERAGE PRODUCTS REGULATED BY THIS TITLE, MAY APPLY TO THE DEPARTMENT FOR A WAIVER FOR ONE YEAR FROM THE REQUIREMENTS OF THIS TITLE IF THE MANUFACTURER CAN DEMONSTRATE THAT THERE ARE NO AVAILABLE ALTERNATIVES TO BISPHENOL A. AFTER SUCH WAIVER PERIOD, THE MANUFACTURER MAY AGAIN APPLY FOR A WAIVER.

S 37-0509. PRODUCT LABELING.

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

S 37-0511. PREEMPTION.

JURISDICTION IN ALL MATTERS PERTAINING TO BISPHENOL A WHICH ARE REGULATED PURSUANT TO THE PROVISIONS OF THIS TITLE SHALL BE VESTED EXCLUSIVELY IN THE STATE. ANY PROVISION OF ANY LOCAL LAW OR ORDINANCE, OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO, RELATING TO BISPHENOL A SHALL BE PREEMPTED.

S 37-0513. RULES AND REGULATIONS.

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

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

S 71-3703. Enforcement of article 37.

1. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0107 or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to

exceed two thousand five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation.

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

S 4. This act shall take effect immediately.