

111TH CONGRESS
1ST SESSION

S. 753

To prohibit the manufacture, sale, or distribution in commerce of children's food and beverage containers composed of bisphenol A, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 31, 2009

Mr. SCHUMER (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the manufacture, sale, or distribution in commerce of children's food and beverage containers composed of bisphenol A, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "BPA-Free Kids Act
5 of 2009".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) BISPHENOL A.—The term “bisphenol A”
2 means the chemical compound phenol, 4,4-(1-
3 methylethylidene)bis, propane (CAS No. 80-05-7).

4 (2) CHILDREN’S FOOD OR BEVERAGE CON-
5 TAINER.—

6 (A) IN GENERAL.—The term “children’s
7 food or beverage container” means any bottle
8 (including a baby bottle), cup, bowl, plate,
9 straw, utensil, or other container, except a
10 metal can, that is designed or intended to be
11 filled with any liquid, food, or beverage pri-
12 marily for consumption from that container by
13 children 3 years of age or younger and is sold
14 or distributed at retail without containing any
15 liquid, food, or beverage.

16 (B) DETERMINATION OF INTENTION FOR
17 USE BY CHILDREN.—In determining under sub-
18 paragraph (A) whether a product is designed or
19 intended for use by children 3 years of age or
20 younger, the following factors shall be consid-
21 ered:

22 (i) A statement by a manufacturer
23 about the intended use of the product, in-
24 cluding a label on the product, if such
25 statement is reasonable.

1 (ii) Whether the product is rep-
2 resented in its packaging, display, pro-
3 motion, or advertising as appropriate for
4 children 3 years of age or younger.

5 (iii) Whether the product is commonly
6 recognized by consumers as being intended
7 for use by children 3 years of age or
8 younger.

9 (iv) The Age Determination Guide-
10 lines issued by the Commission in Sep-
11 tember 2002 and any successor to such
12 guidelines.

13 (3) COMMISSION.—The term “Commission”
14 means the Consumer Product Safety Commission.

15 (4) METAL CAN.—The term “metal can” means
16 a single-walled container that is manufactured from
17 metal substrate designed to hold or pack food or
18 beverages and sealed by can ends manufactured
19 from metal substrate.

20 (5) PLASTIC RESIN.—The term “plastic resin”
21 means a polymer, usually in the form of pellets or
22 beads, that is not yet molded, extruded, or cast into
23 its final shape.

24 (6) SOLD OR DISTRIBUTED AT RETAIL.—The
25 term “sold or distributed at retail” means sold or

1 distributed to a consumer, but does not include sell-
2 ing activity that is intermittent.

3 (7) SUPPLIER.—The term “supplier” means
4 any person who supplies plastic resin to a manufac-
5 turer of children’s food or beverage containers and
6 may include a manufacturer of plastic resins.

7 **SEC. 3. BAN ON CERTAIN PRODUCTS MADE WITH**
8 **BISPHENOL A.**

9 (a) TREATMENT AS BANNED HAZARDOUS SUB-
10 STANCE.—Any children’s food or beverage container that
11 is composed in whole or in part of bisphenol A shall be
12 treated as a banned hazardous substance under the Fed-
13 eral Hazardous Substances Act (15 U.S.C. 1261 et seq.).

14 (b) TREATMENT AS A REGULATION UNDER THE
15 FEDERAL HAZARDOUS SUBSTANCES ACT.—The ban im-
16 posed under subsection (a) and the requirements pre-
17 scribed under section 4(a)(1) shall be treated as regula-
18 tions of the Commission promulgated under or for the en-
19 forcement of section 2(q) of the Federal Hazardous Sub-
20 stances Act (15 U.S.C. 1261(q)), notwithstanding the ex-
21 ception for foods subject to the Federal Food, Drug, and
22 Cosmetic Act (21 U.S.C. 301 et seq.) set forth in section
23 2(f)(2) of the Federal Hazardous Substances Act (15
24 U.S.C. 1261(f)(2)).

1 (c) CLARIFICATION OF AGENCY JURISDICTION.—The
2 Consumer Product Safety Commission shall have jurisdic-
3 tion over and authority to enforce the provisions of this
4 Act notwithstanding—

5 (1) the exclusion of food from the definition of
6 “consumer product” in section 3(a)(5)(I) of the
7 Consumer Product Safety Act (15 U.S.C.
8 2052(a)(5)(I));

9 (2) section 2(f)(2) of the Federal Hazardous
10 Substances Act (15 U.S.C. 1261(f)(2));

11 (3) sections 201(s) and 409 of the Federal
12 Food, Drug, and Cosmetic Act (21 U.S.C. 321(s)
13 and 348) (regarding the Food and Drug Administra-
14 tion’s authority to regulate food contact surfaces as
15 a food additive);

16 (4) sections 402 and 403 of the Federal Food,
17 Drug, and Cosmetic Act (21 U.S.C. 342 and 343)
18 (prohibiting the introduction into interstate com-
19 merce of articles of food that are adulterated or mis-
20 branded); and

21 (5) the Memorandum of Understanding between
22 the U.S. Consumer Product Safety Commission and
23 the U.S. Food and Drug Administration (MOU
24 number 225–76–2003, signed July 1976), or any
25 successor Memorandum (delineating the areas of ju-

1 jurisdiction for administration of the Consumer Prod-
2 uct Safety Act and the Federal Food, Drug, and
3 Cosmetic Act with respect to food, food containers,
4 and food-related articles and equipment).

5 **SEC. 4. CERTIFICATION AND TESTING REQUIREMENTS.**

6 (a) TESTING REQUIREMENTS FOR PLASTIC RES-
7 INS.—

8 (1) IN GENERAL.—Not later than 150 days
9 after the date of the enactment of this Act, the
10 Commission shall prescribe requirements for the
11 testing of plastic resins by suppliers of plastic resin
12 and by manufacturers of children’s food or beverage
13 containers to ensure that the plastic resins that are
14 to be sold, distributed for use, or used in the manu-
15 facture of children’s food or beverage containers do
16 not contain bisphenol A.

17 (2) REQUIREMENTS.—The testing requirements
18 prescribed under paragraph (1) shall include the fol-
19 lowing:

20 (A) A schedule for periodic and random
21 testing of plastic resins, including consideration
22 of whether it is reasonable to phase out testing
23 requirements after a period of years.

24 (B) Methodologies for—

25 (i) testing plastic resins; and

1 (ii) determining appropriate sample
2 sizes for testing plastic resins.

3 (C) Standards for record keeping and sub-
4 mittal of test data and results to the Commis-
5 sion.

6 (D) Requirements for public access to test
7 data and test results.

8 (E) Such other requirements as the Com-
9 mission considers appropriate for testing plastic
10 resins.

11 (b) CERTIFICATION REQUIREMENTS FOR SUPPLIERS
12 OF CERTAIN PLASTIC RESINS.—Not later than 30 days
13 after the date the Commission prescribes the testing re-
14 quirements under subsection (a)(1), if a supplier of plastic
15 resins provides plastic resin to a manufacturer that the
16 supplier has reason to believe will use such plastic resin
17 in the manufacture of children’s food or beverage con-
18 tainers, the supplier shall provide the manufacturer a cer-
19 tification that—

20 (1) the plastic resin has been tested in accord-
21 ance with the requirements prescribed under sub-
22 section (a)(1); and

23 (2) the plastic resin does not contain bisphenol

24 A.

1 (c) TESTING REQUIREMENTS FOR MANUFACTURERS
2 OF CHILDREN'S FOOD OR BEVERAGE CONTAINERS.—Not
3 later than 30 days after the date the Commission pre-
4 scribes requirements under subsection (a)(1), each manu-
5 facturer of children's food or beverage containers shall im-
6 plement a testing program that meets the requirements
7 prescribed under subsection (a)(1) to ensure that the plas-
8 tic resins used by such manufacturer do not contain
9 bisphenol A.

10 (d) EXCLUSION FROM PRODUCT CERTIFICATION
11 AND LABELING REQUIREMENTS OF CONSUMER PRODUCT
12 SAFETY ACT.—Section 14 of the Consumer Product Safe-
13 ty Act (15 U.S.C. 2063) shall not apply with respect to
14 the presence of bisphenol A in children's food or beverage
15 containers.

16 **SEC. 5. LABELING AND ADVERTISING REQUIREMENTS.**

17 (a) LABELING.—Not later than 180 days after the
18 date of the enactment of this Act, each children's food or
19 beverage container shall bear or contain the compliance
20 statement described in subsection (b), on or attached to
21 its packaging or the container itself, when sold or distrib-
22 uted at retail, if—

23 (1) such children's food or beverage container is
24 composed in whole or in part of plastic resin;

1 (2) such plastic resin was certified under sub-
2 section (b) of section 4;

3 (3) such plastic resin was tested under sub-
4 section (c) of such section; and

5 (4) such children’s food or beverage container is
6 not composed in whole or in part of bisphenol A.

7 (b) COMPLIANCE STATEMENT.—The compliance
8 statement described in this subsection is the following:
9 “BPA-Free Product”.

10 (c) ADVERTISING.—Not later than the date that is
11 180 days after the date of the enactment of this Act, any
12 advertisement by a retailer, manufacturer, importer, dis-
13 tributor, or private labeler (including advertisements on
14 Internet websites or in catalogues or other printed mate-
15 rials) that provides a direct means for the purchase or
16 order of a children’s food or beverage container that bears
17 or contains, pursuant to subsection (a), the compliance
18 statement described in subsection (b) shall—

19 (1) display the compliance statement described
20 in subsection (b); or

21 (2) be accompanied by such compliance state-
22 ment immediately adjacent to the advertisement.

23 **SEC. 6. ENFORCEMENT.**

24 (a) AUDITS OF SUPPLIERS AND MANUFACTURERS.—
25 The Commission shall carry out random audits of the test

1 data submitted to the Commission by suppliers of plastic
2 resins used in the manufacture of children's food or bev-
3 erage containers and by manufacturers of children's food
4 or beverage containers to ensure that such suppliers and
5 manufacturers are complying with the requirements of
6 subsections (b) and (c) of section 4, respectively.

7 (b) COMMISSION TESTING OF CHILDREN'S FOOD
8 AND BEVERAGE CONTAINERS.—The Commission shall
9 carry out a program of random testing of children's food
10 and beverage containers to ensure that children's food and
11 beverage containers that are treated as banned hazardous
12 substances under section 3(a) are not introduced into com-
13 merce.

14 (c) REGULATIONS.—Not later than 150 days after
15 the date of the enactment of this Act, the Commission
16 shall prescribe regulations to carry out the provisions of
17 subsections (a) and (b).

18 (d) PENALTIES.—Any failure of a person subject to
19 a requirement of section 3, 4, or 5 to comply with such
20 requirement shall be treated as a violation of section 4
21 of the Federal Hazardous Substances Act (15 U.S.C.
22 1263) and subject to the penalties set forth in section 5
23 of such Act (15 U.S.C. 1264).

24 (e) REPORTS.—Not later than one year after the date
25 of the enactment of this Act and annually thereafter, the

1 Commission shall submit to Congress a report on the ac-
2 tions taken by the Commission to enforce the provisions
3 of this Act, including summaries of the following:

4 (1) The audits carried out under subsection (a).

5 (2) The results of the testing program carried
6 out under subsection (b).

7 (3) The criminal and civil penalties imposed
8 under subsection (d).

9 **SEC. 7. EFFECT ON FEDERAL AND STATE LAW.**

10 (a) IN GENERAL.—Nothing in this Act or section
11 18(b)(1)(B) of the Federal Hazardous Substances Act (15
12 U.S.C. 1261 note) shall affect the authority of any State
13 or political subdivision of a State to establish or continue
14 in effect a provision of the law of a State or political sub-
15 division of a State relating to regulation of products con-
16 taining bisphenol A, except to the extent that compliance
17 with both State and Federal law is impossible. Nothing
18 in this section shall be construed to modify or affect any
19 enforcement action or liability of any person under the law
20 of any State.

21 (b) PRESERVATION OF CERTAIN STATE LAW.—Noth-
22 ing in this Act shall be construed to preempt or otherwise
23 affect any warning requirement relating to consumer prod-
24 ucts or substances that is established pursuant to State
25 law that was in effect on August 31, 2003.

1 **SEC. 8. RESEARCH ON HEALTH EFFECTS OF EXPOSURE TO**
2 **BISPHENOL A.**

3 (a) RESEARCH PLAN REQUIRED.—Not later than
4 180 days after the date of the enactment of this Act, the
5 Secretary of Health and Human Services shall, acting
6 through the Director of the National Institute of Environ-
7 mental Health Sciences, submit to Congress a plan for a
8 five-year research initiative to increase understanding on
9 the health effects of exposure to bisphenol A in all age
10 groups and in pregnant women.

11 (b) RESEARCH REQUIRED.—Not later than 1 year
12 after the date of the enactment of this Act, the Secretary
13 of Health and Human Services shall, acting through the
14 Director of the National Institute of Environmental
15 Health Sciences, commence the research initiative set
16 forth in the plan required by subsection (a).

17 (c) MANNER OF RESEARCH.—The research initiative
18 required by subsection (b) may be conducted through in-
19 tramural research, contracts, grants, and cooperative
20 agreements.

21 (d) REPORTS TO CONGRESS.—

22 (1) INTERIM REPORT.—Not later than 2 years
23 after the date of the enactment of this Act, the Sec-
24 retary of Health and Human Services shall, acting
25 through the Director of the National Institute of
26 Environmental Health Sciences, submit to Congress

1 an interim report on the current status of the re-
2 search carried out under subsection (b), including a
3 description of the results of such research.

4 (2) FINAL REPORT.—Not later than 6 years
5 after the date of the enactment of this Act, the Sec-
6 retary of Health and Human Services shall, acting
7 through the Director of the National Institute of
8 Environmental Health Sciences, submit to Congress
9 a final report on the results of this initiative and the
10 current state of science with respect to bisphenol A.

11 (e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary of
13 Health and Human Services to carry out this section
14 \$5,000,000 for each of fiscal years 2010 through 2014.

15 **SEC. 9. EFFECTIVE DATE.**

16 This Act shall take effect on the date of the enact-
17 ment of this Act and apply with respect to children's food
18 or beverage containers manufactured on or after the date
19 that is 180 days after such date of enactment.

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