112TH CONGRESS
1ST SESSION

# S. 136

To establish requirements with respect to bisphenol A.

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IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. REID (for Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Mr. KERRY, Mr. SANDERS, and Mr. FRANKEN)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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# A BILL

To establish requirements with respect to bisphenol A.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Ban Poisonous Additives Act of 2011''.

**SEC. 2. REQUIREMENTS WITH RESPECT TO BISPHENOL A.**

(a) BAN ON USE OF BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS FOR CHILDREN.—

(1) BABY FOOD; UNFILLED BABY BOTTLES AND CUPS.—Section 402 of the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(j)(1) If it is a food intended for children 3 years of age or younger, the container of which (including the lining of such container) is composed, in whole or in part, of bisphenol A.

''(2) If it is a baby bottle or cup that is composed, in whole or in part, of bisphenol A.''.

(2) DEFINITION.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(rr) BABY BOTTLE OR CUP.—For purposes of section 402(j), the term 'baby bottle or cup' means a bottle or cup that—

''(1) is intended to aid in the feeding or providing of drink to children 3 years of age or younger; and

''(2) does not contain a food when such bottle or cup is sold or distributed at retail.''.

(3) EFFECTIVE DATES.—

(A) BABY FOOD.—Section 402(j)(1) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (1), shall take effect 1 year after the date of enactment of this Act.

(B) UNFILLED BABY BOTTLES AND CUPS.—Section 402(j)(2) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (1), shall take effect 180 days after the date of enactment of this Act.

(b) BAN ON USE OF BISPHENOL A IN INFANT FORMULA CONTAINERS.—

(1) IN GENERAL.—Section 412(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(a)) is amended—

(A) in paragraph (2), by striking ", or" and inserting ",";

(B) in paragraph (3), by striking the period at the end and inserting ", or"; and

(C) by adding at the end the following:

"(4) the container of such infant formula (including the lining of such container and, in the case of infant formula powder, excluding packaging on the outside of the container that does not come into contact with the infant formula powder) is composed, in whole or in part, of bisphenol A.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect 18 months after the date of enactment of this Act.

(c) REGULATION OF OTHER CONTAINERS COMPOSED OF BISPHENOL A.—

(1) SAFETY ASSESSMENT OF PRODUCTS COMPOSED OF BPA.—Not later than December 1, 2012, the Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall issue a revised safety assessment for food containers composed, in whole or in part, of bisphenol A, taking into consideration different types of such food containers and the use of such food containers with respect to different foods, as appropriate.

(2) SAFETY STANDARD.—Through the safety assessment described in paragraph (1), and taking into consideration the requirements of section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) and section 170.3(i) of title 21, Code of Federal Regulations, the Secretary shall determine whether there is a reasonable certainty that no harm will result from aggregate exposure to bisphenol A through food containers or other items composed, in whole or in part, of bisphenol A, taking into consideration potential adverse effects from low dose exposure, and the effects of exposure on vulnerable populations, including pregnant women, infants, children,

the elderly, and populations with high exposure to bisphenol A.

(3) APPLICATION OF SAFETY STANDARD TO ALTERNATIVES.—The Secretary shall use the safety standard described under paragraph (2) to evaluate the proposed uses of alternatives to bisphenol A.

(d) SAVINGS PROVISION.—Nothing in this section shall affect the right of a State, political subdivision of a State, or Indian Tribe to adopt or enforce any regulation, requirement, liability, or standard of performance that is more stringent than a regulation, requirement, liability, or standard of performance under this section or that—

(1) applies to a product category not described in this section; or

(2) requires the provision of a warning of risk, illness, or injury associated with the use of food containers composed, in whole or in part, of bisphenol A.

(e) DEFINITION.—For purposes of this section, the term ''container'' includes the lining of a container.

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