

111TH CONGRESS  
1ST SESSION

# H. R. 1523

To ban the use of bisphenol A in food containers, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2009

Mr. MARKEY of Massachusetts (for himself and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To ban the use of bisphenol A in food containers, 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 “Ban Poisonous Addi-  
5 tives Act of 2009”.

6 **SEC. 2. BAN ON USE OF BISPHENOL A IN FOOD AND BEV-**  
7 **ERAGE CONTAINERS.**

8 (a) TREATMENT OF BISPHENOL A AS ADULTER-  
9 ATING THE FOOD OR BEVERAGE.—For purposes of apply-  
10 ing section 402(a)(6) of the Federal Food, Drug, and Cos-  
11 metic Act (21 U.S.C. 342(a)(6)), a food container (which

1 for purposes of this Act includes a beverage container)  
2 that is composed, in whole or in part, of bisphenol A, or  
3 that can release bisphenol A into food (as defined for pur-  
4 poses of the Federal Food, Drug, and Cosmetic Act), shall  
5 be treated as a container described in such section (relat-  
6 ing to containers composed, in whole or in part, of a poi-  
7 sonous or deleterious substance which may render the con-  
8 tents injurious to health).

9 (b) EFFECTIVE DATES.—

10 (1) REUSABLE FOOD CONTAINERS.—

11 (A) DEFINITION.—In this Act, the term  
12 “reusable food container” means a reusable  
13 food container that does not contain a food  
14 item when it is introduced or delivered for in-  
15 troduction into interstate commerce.

16 (B) APPLICABILITY.—Subsection (a) shall  
17 apply to reusable food containers on the date  
18 that is 180 days after the date of enactment of  
19 this Act.

20 (2) OTHER FOOD CONTAINERS.—Subsection (a)  
21 shall apply to food containers that are packed with  
22 a food and introduced or delivered for introduction  
23 into interstate commerce on or after the date that  
24 is 180 days after the date of enactment of this Act.

25 (c) WAIVER.—

1           (1) IN GENERAL.—The Secretary of Health and  
2           Human Services (referred to in this Act as the “Sec-  
3           retary”), after public notice and opportunity for  
4           comment, may grant to any facility (as that term is  
5           defined in section 415 of the Federal Food, Drug,  
6           and Cosmetic Act (21 U.S.C. 350d)) a waiver of the  
7           treatment described in subsection (a) for a certain  
8           type of food container, as used for a particular food  
9           product, if such facility—

10                 (A) demonstrates that it is not techno-  
11                 logically feasible to replace bisphenol A in such  
12                 type of container for such particular food prod-  
13                 uct; and

14                 (B) submits to the Secretary a plan and  
15                 timeline for removing bisphenol A from such  
16                 type of container for that food product.

17           (2) APPLICABILITY.—A waiver granted under  
18           paragraph (1) shall constitute a waiver of the treat-  
19           ment described in subsection (a) for any facility that  
20           manufactures, processes, packs, holds, or sells the  
21           particular food product for which the waiver was  
22           granted.

23           (3) LABELING.—Any product for which the  
24           Secretary grants such a waiver shall display a  
25           prominent warning on the label that the container

contains bisphenol A, in a manner that the Secretary shall require, which manner shall ensure adequate public awareness of potential health effects associated with bisphenol A.

(4) DURATION.—

(A) INITIAL WAIVER.—Any waiver granted under paragraph (1) shall be valid for not longer than 1 year after the applicable effective date in subsection (b).

(B) RENEWAL OF WAIVER.—The Secretary may renew any waiver granted under subparagraph (A) for a period of not more than 1 year.

(d) LIST OF SUBSTANCES THAT ARE GENERALLY RECOGNIZED AS SAFE.—

(1) REVIEW.—The Secretary, acting through the Commissioner of Food and Drugs, shall, not later than 1 year after enactment of this Act and not less than once every 5 years thereafter, review—

(A) the substances that are generally recognized as safe, listed in part 182 of title 21, Code of Federal Regulations (or any successor regulations);

(B) the direct food substances affirmed as generally recognized as safe, listed in part 184

1 of title 21, Code of Federal Regulations (or any  
2 successor regulations); and

3 (C) the indirect food substances affirmed  
4 as generally recognized as safe, listed in part  
5 186 of title 21, Code of Federal Regulations (or  
6 any successor regulations).

7 (2) PUBLIC COMMENT.—In conducting the re-  
8 view described in paragraph (1), the Secretary shall  
9 provide public notice and opportunity for comment.

10 (3) REMEDIAL ACTION.—If, after conducting  
11 the review described in paragraph (1), the Secretary  
12 determines that, with regard to a substance listed in  
13 such part 182, 184, or 186, new scientific evidence,  
14 including scientific evidence showing that the sub-  
15 stance causes reproductive or developmental toxicity  
16 in humans or animals, supports—

17 (A) banning a substance;

18 (B) altering the conditions under which a  
19 substance may be introduced into interstate  
20 commerce; or

21 (C) imposing restrictions on the types of  
22 products for which the substance may be used,  
23 the Secretary shall remove such substance from the  
24 list of substances, direct food substances, or indirect  
25 food substances generally recognized as safe, as ap-

1       appropriate, and shall take other remedial action, as  
2       necessary.

3               (4) DEFINITION.—In this Act, the term “repro-  
4       ductive or developmental toxicity” has the meaning  
5       given such term in section 409(h)(6) of the Federal  
6       Food, Drug, and Cosmetic Act, as amended by sec-  
7       tion 3.

8               (e) SAVINGS PROVISION.—Nothing in this Act shall  
9       affect the right of a State, political subdivision of a State,  
10      or Indian tribe to adopt or enforce any regulation, require-  
11      ment, liability, or standard of performance that is more  
12      stringent than a regulation, requirement, liability, or  
13      standard of performance under this Act or that—

14              (1) applies to a product category not described  
15      in this Act; or

16              (2) requires the provision of a warning of risk,  
17      illness, or injury associated with the use of food con-  
18      tainers composed of bisphenol A.

19   **SEC. 3. AMENDMENTS TO SECTION 409 OF THE FEDERAL**  
20                           **FOOD, DRUG, AND COSMETIC ACT.**

21       Subsection (h) of section 409 of the Federal Food,  
22      Drug, and Cosmetic Act (21 U.S.C. 348(h)(1)) is amend-  
23      ed—

24              (1) in paragraph (1)—

1 (A) by striking “manufacturer or supplier  
2 for a food contact substance may” and insert-  
3 ing “manufacturer or supplier for a food con-  
4 tact substance shall”;

5 (B) by inserting “(A)” after “notify the  
6 Secretary of”;

7 (C) by striking “, and of” and inserting “;  
8 (B)”;

9 (D) by striking the period after “sub-  
10 section (c)(3)(A)” and inserting “; (C) the de-  
11 termination of the manufacturer or supplier  
12 that no adverse health effects result from low  
13 dose exposures to the food contact substance;  
14 and (D) the determination of the manufacturer  
15 or supplier that the substance has not been  
16 shown, after tests which are appropriate for the  
17 evaluation of the safety of food contact sub-  
18 stances, to cause reproductive or developmental  
19 toxicity in humans or animals.”;

20 (2) by striking paragraph (6) and inserting the  
21 following:

22 “(6) In this section—

23 “(A) the term ‘food contact substance’  
24 means any substance intended for use as a  
25 component of materials used in manufacturing,

1           packing, packaging, transporting, or holding  
2           food if such use is not intended to have any  
3           technical effect in such food; and

4           “(B) the term ‘reproductive or develop-  
5           mental toxicity’ means biologically adverse ef-  
6           fects on the reproductive systems of female or  
7           male humans or animals, including alterations  
8           to the female or male reproductive system de-  
9           velopment, the related endocrine system, fer-  
10          tility, pregnancy, pregnancy outcomes, or modi-  
11          fications in other functions that are dependent  
12          on the integrity of the reproductive system.”.

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