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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. MARKEY of Massachusetts introduced the following bill; which was referred to the Committee on _____

A BILL

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

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 2009''.

SEC. 2. BAN ON USE OF BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS.

(a) TREATMENT OF BISPHENOL A AS ADULTERATING THE FOOD OR BEVERAGE.—For purposes of apply-

ing section 402(a)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(6)), a food container (which for purposes of this Act includes a beverage container) that is composed, in whole or in part, of bisphenol A, or that can release bisphenol A into food (as defined for purposes of the Federal Food, Drug, and Cosmetic Act), shall be treated as a container described in such section (relating to containers composed, in whole or in part, of a poisonous or deleterious substance which may render the contents injurious to health).

(b) EFFECTIVE DATES.—

(1) REUSABLE FOOD CONTAINERS.—

(A) DEFINITION.—In this Act, the term ''reusable food container'' means a reusable food container that does not contain a food item when it is introduced or delivered for introduction into interstate commerce.

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

(2) OTHER FOOD CONTAINERS.—Subsection (a) shall apply to food containers that are packed with a food and introduced or delivered for introduction

into interstate commerce on or after the date that is 180 days after the date of enactment of this Act.

(c) WAIVER.—

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

(A) demonstrates that it is not technologically feasible to replace Bisphenol A in such type of container for such particular food product; and

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

(2) APPLICABILITY.—A waiver granted under paragraph (1) shall constitute a waiver of the treatment described in subsection (a) for any facility that manufactures, processes, packs, holds, or sells the particular food product for which the waiver was granted.

(3) LABELING.—Any product for which the Secretary grants such a waiver shall display a 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 of title 21, Code of Federal Regulations (or any successor regulations); and

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

(2) PUBLIC COMMENT.—In conducting the review described in paragraph (1), the Secretary shall provide public notice and opportunity for comment.

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

(A) banning a substance;

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

(C) imposing restrictions on the types of products for which the substance may be used,

the Secretary shall remove such substance from the list of substances, direct food substances, or indirect food substances generally recognized as safe, as appropriate, and shall take other remedial action, as necessary.

(4) DEFINITION.—In this Act, the term ''reproductive or developmental toxicity'' has the meaning given such term in section 409(h)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by section 3.

(e) SAVINGS PROVISION.—Nothing in this Act 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 Act or that—

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

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

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

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

(1) in paragraph (1)—

(A) by striking ''manufacturer or supplier for a food contact substance may'' and inserting ''manufacturer or supplier for a food contact substance shall'';

(B) by inserting ''(A)'' after ''notify the Secretary of'';

(C) by striking '', and of'' and inserting ''; (B)''; and

(D) by striking the period after ''subsection (c)(3)(A)'' and inserting ''; (C) the determination of the manufacturer or supplier that no adverse health effects result from low dose exposures to the food contact substance; and (D) the determination of the manufacturer or supplier that the substance has not been shown, after tests which are appropriate for the evaluation of the safety of food contact substances, to cause reproductive or developmental toxicity in humans or animals.''; and

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

''(6) In this section—

''(A) the term 'food contact substance' means any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food; and

''(B) the term 'reproductive or developmental toxicity' means biologically-adverse effects on the reproductive systems of female or male humans or animals, including alterations to the female or male reproductive system development, the related endocrine system, fertility, pregnancy, pregnancy outcomes, or modifications in other functions that are dependent on the integrity of the reproductive system.''.