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.

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 “BPA-Free Kids Act of 2009”.

SEC. 2. DEFINITIONS.

In this Act:
(1) **BISPHENOL A**.—The term “bisphenol A” means the chemical compound phenol, 4,4-(1-methylethylidine)bis, propane (CAS No. 80–05–7).

(2) **CHILDREN’S FOOD OR BEVERAGE CONTAINER.**—

(A) **IN GENERAL.**—The term “children’s food or beverage container” means any bottle (including a baby bottle), cup, bowl, plate, straw, utensil, or other container, except a metal can, that is designed or intended to be filled with any liquid, food, or beverage primarily for consumption from that container by children 3 years of age or younger and is sold or distributed at retail without containing any liquid, food, or beverage.

(B) **DETERMINATION OF INTENTION FOR USE BY CHILDREN.**—In determining under subparagraph (A) whether a product is designed or intended for use by children 3 years of age or younger, the following factors shall be considered:

(i) A statement by a manufacturer about the intended use of the product, including a label on the product, if such statement is reasonable.
(ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for children 3 years of age or younger.

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

(iv) The Age Determination Guidelines issued by the Commission in September 2002 and any successor to such guidelines.

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

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

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

(6) SOLD OR DISTRIBUTED AT RETAIL.—The term “sold or distributed at retail” means sold or
distributed to a consumer, but does not include selling activity that is intermittent.

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

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

(a) **TREATMENT AS BANNED HAZARDOUS SUBSTANCE.**—Any children’s food or beverage container that is composed in whole or in part of bisphenol A shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(b) **TREATMENT AS A REGULATION UNDER THE FEDERAL HAZARDOUS SUBSTANCES ACT.**—The ban imposed under subsection (a) and the requirements prescribed under section 4(a)(1) shall be treated as regulations of the Commission promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)), notwithstanding the exception for foods subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) set forth in section 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)).
(c) CLARIFICATION OF AGENCY JURISDICTION.—The Consumer Product Safety Commission shall have jurisdiction over and authority to enforce the provisions of this Act notwithstanding—

1. the exclusion of food from the definition of “consumer product” in section 3(a)(5)(I) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(5)(I));
3. sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s) and 348) (regarding the Food and Drug Administration’s authority to regulate food contact surfaces as a food additive);
4. sections 402 and 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342 and 343) (prohibiting the introduction into interstate commerce of articles of food that are adulterated or misbranded); and
5. the Memorandum of Understanding between the U.S. Consumer Product Safety Commission and the U.S. Food and Drug Administration (MOU number 225–76–2003, signed July 1976), or any successor Memorandum (delineating the areas of ju-

SEC. 4. CERTIFICATION AND TESTING REQUIREMENTS.

(a) Testing Requirements for Plastic Resins.—

(1) In general.—Not later than 150 days after the date of the enactment of this Act, the Commission shall prescribe requirements for the testing of plastic resins by suppliers of plastic resin and by manufacturers of children’s food or beverage containers to ensure that the plastic resins that are to be sold, distributed for use, or used in the manufacture of children’s food or beverage containers do not contain bisphenol A.

(2) Requirements.—The testing requirements prescribed under paragraph (1) shall include the following:

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

(B) Methodologies for—

(i) testing plastic resins; and
(ii) determining appropriate sample sizes for testing plastic resins.

(C) Standards for record keeping and submittal of test data and results to the Commission.

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

(E) Such other requirements as the Commission considers appropriate for testing plastic resins.

(b) Certification Requirements for Suppliers of Certain Plastic Resins.—Not later than 30 days after the date the Commission prescribes the testing requirements under subsection (a)(1), if a supplier of plastic resins provides plastic resin to a manufacturer that the supplier has reason to believe will use such plastic resin in the manufacture of children’s food or beverage containers, the supplier shall provide the manufacturer a certification that—

(1) the plastic resin has been tested in accordance with the requirements prescribed under subsection (a)(1); and

(2) the plastic resin does not contain bisphenol A.
(c) Testing Requirements for Manufacturers of Children’s Food or Beverage Containers.—Not later than 30 days after the date the Commission prescribes requirements under subsection (a)(1), each manufacturer of children’s food or beverage containers shall implement a testing program that meets the requirements prescribed under subsection (a)(1) to ensure that the plastic resins used by such manufacturer do not contain bisphenol A.


SEC. 5. LABELING AND ADVERTISING REQUIREMENTS.

(a) Labeling.—Not later than 180 days after the date of the enactment of this Act, each children’s food or beverage container shall bear or contain the compliance statement described in subsection (b), on or attached to its packaging or the container itself, when sold or distributed at retail, if—

(1) such children’s food or beverage container is composed in whole or in part of plastic resin;
(2) such plastic resin was certified under subsection (b) of section 4;

(3) such plastic resin was tested under subsection (c) of such section; and

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

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

(c) ADVERTISING.—Not later than the date that is 180 days after the date of the enactment of this Act, any advertisement by a retailer, manufacturer, importer, distributor, or private labeler (including advertisements on Internet websites or in catalogues or other printed materials) that provides a direct means for the purchase or order of a children’s food or beverage container that bears or contains, pursuant to subsection (a), the compliance statement described in subsection (b) shall—

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

(2) be accompanied by such compliance statement immediately adjacent to the advertisement.

SEC. 6. ENFORCEMENT.

(a) AUDITS OF SUPPLIERS AND MANUFACTURERS.—The Commission shall carry out random audits of the test
data submitted to the Commission by suppliers of plastic resins used in the manufacture of children’s food or beverage containers and by manufacturers of children’s food or beverage containers to ensure that such suppliers and manufacturers are complying with the requirements of subsections (b) and (c) of section 4, respectively.

(b) COMMISSION TESTING OF CHILDREN’S FOOD AND BEVERAGE CONTAINERS.—The Commission shall carry out a program of random testing of children’s food and beverage containers to ensure that children’s food and beverage containers that are treated as banned hazardous substances under section 3(a) are not introduced into commerce.

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

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

(e) REPORTS.—Not later than one year after the date of the enactment of this Act and annually thereafter, the
Commission shall submit to Congress a report on the actions taken by the Commission to enforce the provisions of this Act, including summaries of the following:

1. The audits carried out under subsection (a).
2. The results of the testing program carried out under subsection (b).
3. The criminal and civil penalties imposed under subsection (d).

SEC. 7. EFFECT ON FEDERAL AND STATE LAW.

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

(b) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act shall be construed to preempt or otherwise affect any warning requirement relating to consumer products or substances that is established pursuant to State law that was in effect on August 31, 2003.
SEC. 8. RESEARCH ON HEALTH EFFECTS OF EXPOSURE TO
BISPHENOL A.

(a) Research Plan Required.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall, acting through the Director of the National Institute of Environmental Health Sciences, submit to Congress a plan for a five-year research initiative to increase understanding on the health effects of exposure to bisphenol A in all age groups and in pregnant women.

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

(c) Manner of Research.—The research initiative required by subsection (b) may be conducted through intramural research, contracts, grants, and cooperative agreements.

(d) Reports to Congress.—

(1) Interim Report.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall, acting through the Director of the National Institute of Environmental Health Sciences, submit to Congress
an interim report on the current status of the re-
search carried out under subsection (b), including a
description of the results of such research.

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

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

SEC. 9. EFFECTIVE DATE.

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