## S. 593

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

## IN THE SENATE OF THE UNITED STATES

March 12, 2009

Mrs. Feinstein (for herself and Mr. Schumer) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

## 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-

1	metic Act (21 U.S.C. 342(a)(6)), a food container (which
2	for purposes of this Act includes a beverage container)
3	that is composed, in whole or in part, of bisphenol A, or
4	that can release bisphenol A into food (as defined for pur-
5	poses of the Federal Food, Drug, and Cosmetic Act), shall
6	be treated as a container described in such section (relat-
7	ing to containers composed, in whole or in part, of a poi-
8	sonous or deleterious substance which may render the con-
9	tents injurious to health).
10	(b) Effective Dates.—
11	(1) Reusable food containers.—
12	(A) Definition.—In this Act, the term
13	"reusable food container" means a reusable
14	food container that does not contain a food
15	item when it is introduced or delivered for in-
16	troduction into interstate commerce.
17	(B) Applicability.—Subsection (a) shall
18	apply to reusable food containers on the date
19	that is 180 days after the date of enactment of
20	this Act.
21	(2) Other food containers.—Subsection (a)
22	shall apply to food containers that are packed with
23	a food and introduced or delivered for introduction
24	into interstate commerce on or after the date that

is 180 days after the date of enactment of this Act.

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## (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.
- 24 (3) Labeling.—Any product for which the 25 Secretary grants such a waiver shall display a

1	prominent warning on the label that the container
2	contains Bisphenol A, in a manner that the Sec-
3	retary shall require, which manner shall ensure ade-
4	quate public awareness of potential health effects as-
5	sociated with bisphenol A.
6	(4) Duration.—
7	(A) Initial waiver.—Any waiver granted
8	under paragraph (1) shall be valid for not
9	longer than 1 year after the applicable effective
10	date in subsection (b).
11	(B) Renewal of Waiver.—The Secretary
12	may renew any waiver granted under subpara-
13	graph (A) for a period of not more than 1 year.
14	(d) List of Substances That Are Generally
15	Recognized as Safe.—
16	(1) Review.—The Secretary, acting through
17	the Commissioner of Food and Drugs, shall, not
18	later than 1 year after enactment of this Act and
19	not less than once every 5 years thereafter, review—
20	(A) the substances that are generally rec-
21	ognized as safe, listed in part 182 of title 21,
22	Code of Federal Regulations (or any successor
23	regulations);
24	(B) the direct food substances affirmed as
25	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	propriate, 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, re-
11	quirement, liability, or standard of performance that is
12	more 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)"; and
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 man or animal."; and
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

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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.".

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