

H. B. 3261

(By Delegates Manypenny, Barker, Moye, Hunt, Poore and Brown)

[Introduced February 21, 2011; referred to the Committee on Health and Human Resources then the Judiciary.]

A BILL amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-43-1, §16-43-2, §16-43-3, §16-43-4, §16-43-5 and §16-43-6; and to amend and reenact §46A-6-102 of said code, all relating to creating the "BPA-Free Kids Act"; prohibiting the manufacture, sale, and distribution of infant formula or baby food stored in a plastic container, jar, or can containing bisphenol A; prohibiting the manufacture, sale, and distribution of any reusable food or beverage container containing bisphenol A; enforcement and penalties; and legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-43-1, §16-43-2, §16-43-3, §16-43-4, §16-43-5 and §16-43-6; and that §46A-6-102 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

1 **ARTICLE 43. THE BPA-FREE KIDS ACT.**

2 **§16-43-1. Short title.**

3 This Act may be cited as the "BPA-Free Kids Act."

4 **§16-43-2. Findings.**

5 The Legislature finds that:

6 (1) Bisphenol A (BPA) is a synthetic estrogen that was
7 originally considered for use in managing challenging pregnancies.
8 Low-dose exposure to BPA has been linked to breast cancer, prostate
9 cancer, recurrent miscarriages, early onset puberty, reduced sperm
10 count, delayed development, heart disease, diabetes and obesity.

11 (2) Over ninety percent of the more than one hundred
12 government-funded studies of low-dose exposure to BPA have
13 demonstrated adverse health effects.

14 (3) According to the Centers for Disease Control and
15 Prevention, more than ninety percent of Americans have detectable
16 levels of BPA in their bodies, and children have higher
17 concentrations of BPA in their bodies than do adolescents or
18 adults.

19 (4) Approximately seven billion pounds of BPA is produced
20 globally each year for use in baby bottles, dental sealants,
21 compact discs, water bottles, food cans, and a wide variety of
22 other items.

23 (5) BPA is one of the most frequently detected industrial
24 chemicals in groundwater and is also found in landfill leachate,
25 surface water, sewage, sludge, and treated wastewater discharge.

1 (6) The use of BPA should be limited in order to protect the
2 health of the citizens and environment of West Virginia.

3 (7) Alternatives to BPA exist, including glass, stainless
4 steel, and aluminum bottles; BPA-free plastic containers, some of
5 which are already used by several manufacturers of infant formula;
6 foil packets; and powdered foods stored in cardboard boxes.

7 **§16-43-3. Definitions.**

8 As used in this article:

9 (1) "Baby food" means a prepared solid food consisting of a
10 soft paste or an easily chewed food that is intended for
11 consumption by children two years of age or younger and that is
12 commercially available.

13 (2) "Bisphenol A" means an industrial chemical used primarily
14 in the manufacture of polycarbonate plastic and epoxy resins.

15 (3) "Infant formula" means a milk-based or soy-based powder,
16 concentrated liquid, or ready-to-feed substitute for human breast
17 milk that is intended for infant consumption and that is
18 commercially available.

19 (4) "Reusable food or beverage container" means a receptacle
20 for storing food or beverages, including baby bottles, spill-proof
21 cups, sports bottles, and thermoses. The term does not include food
22 or beverage containers intended for disposal after initial usage.
23 The term shall not include commercial water cooler jugs.

24 **§16-43-4. Prohibitions on containers with BPA; alternatives.**

25 (a) Beginning July 1, 2012, no person or entity shall

1 manufacture, sell, or distribute in commerce in this state any
2 reusable food or beverage container containing bisphenol A.

3 (b) (1) Beginning July 1, 2012, no person or entity shall
4 manufacture, sell, or distribute in commerce in this state any
5 infant formula or baby food stored in a plastic container or jar
6 that contains bisphenol A.

7 (2) Beginning July 1, 2014, no person or entity shall
8 manufacture, sell, or distribute in commerce in this state any
9 infant formula or baby food stored in a can that contains bisphenol
10 A.

11 (c) Manufacturers shall use the least toxic alternative when
12 replacing bisphenol A in accordance with this section.

13 (d) Manufacturers may not replace bisphenol A, pursuant to
14 this article, with carcinogens rated by the U.S. Environmental
15 Protection Agency (EPA) as A, B, or C carcinogens or substances
16 listed on the EPA's "List of Chemicals Evaluated for Carcinogenic
17 Potential" as known or likely carcinogens, known to be human
18 carcinogens, likely to be human carcinogens, or suggestive of being
19 carcinogens.

20 (e) Manufacturers may not replace bisphenol A, pursuant to
21 this article, with reproductive toxicants that the EPA has
22 identified as causing birth defects, reproductive harm, or
23 developmental harm.

24 **§16-43-5. Enforcement; penalties.**

25 This article shall be enforceable by the Attorney General. A

1 violation of any provision of this section is an unfair or
2 deceptive act or practice within the meaning of section one hundred
3 two, article six, chapter forty-six-a of this code and is subject
4 to the enforcement and penalty provisions contained in chapter
5 forty-six-a of this code.

6 **§16-43-6. Legislative rules.**

7 The Commissioner of the Bureau for Public Health shall propose
8 rules for legislative approval in accordance with the provisions of
9 article three, chapter twenty-nine-a of this code to implement the
10 provisions of this article.

11 **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT**

12 **AND PROTECTION ACT.**

13 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

14 **§46A-6-102. Definitions.**

15 When used in this article, the following words, terms and
16 phrases, and any variations thereof required by the context, shall
17 have the meaning ascribed to them in this article, except where the
18 context indicates a different meaning:

19 (1) "Advertisement" means the publication, dissemination or
20 circulation of any matter, oral or written, including labeling,
21 which tends to induce, directly or indirectly, any person to enter
22 into any obligation, sign any contract or acquire any title or
23 interest in any goods or services and includes every word device to
24 disguise any form of business solicitation by using such terms as

1 "renewal", "invoice", "bill", "statement" or "reminder" to create
2 an impression of existing obligation when there is none or other
3 language to mislead any person in relation to any sought-after
4 commercial transaction.

5 (2) "Consumer" means a natural person to whom a sale or lease
6 is made in a consumer transaction and a "consumer transaction"
7 means a sale or lease to a natural person or persons for a
8 personal, family, household or agricultural purpose.

9 (3) "Cure offer" means a written offer of one or more things
10 of value, including, but not limited to, the payment of money, that
11 is made by a merchant or seller and that is delivered by certified
12 mail to a consumer claiming to have suffered a loss as a result of
13 a consumer transaction or to the attorney for such person.

14 (4) "Merchantable" means, in addition to the qualities
15 prescribed in section three hundred fourteen, article two, chapter
16 forty-six of this code, that the goods conform in all material
17 respects to applicable state and federal statutes and regulations
18 establishing standards of quality and safety of goods and, in the
19 case of goods with mechanical, electrical or thermal components,
20 that the goods are in good working order and will operate properly
21 in normal usage for a reasonable period of time.

22 (5) "Sale" includes any sale, offer for sale or attempt to
23 sell any goods for cash or credit or any services or offer for
24 services for cash or credit.

25 (6) "Trade" or "commerce" means the advertising, offering for

1 sale, sale or distribution of any goods or services and shall
2 include any trade or commerce, directly or indirectly, affecting
3 the people of this state.

4 (7) "Unfair methods of competition and unfair or deceptive
5 acts or practices" means and includes, but is not limited to, any
6 one or more of the following:

7 (A) Passing off goods or services as those of another;

8 (B) Causing likelihood of confusion or of misunderstanding as
9 to the source, sponsorship, approval or certification of goods or
10 services;

11 (C) Causing likelihood of confusion or of misunderstanding as
12 to affiliation, connection or association with or certification by
13 another;

14 (D) Using deceptive representations or designations of
15 geographic origin in connection with goods or services;

16 (E) Representing that goods or services have sponsorship,
17 approval, characteristics, ingredients, uses, benefits or
18 quantities that they do not have or that a person has a
19 sponsorship, approval, status, affiliation or connection that he or
20 she does not have;

21 (F) Representing that goods are original or new if they are
22 deteriorated, altered, reconditioned, reclaimed, used or
23 secondhand;

24 (G) Representing that goods or services are of a particular
25 standard, quality or grade, or that goods are of a particular style

1 or model if they are of another;

2 (H) Disparaging the goods, services or business of another by
3 false or misleading representation of fact;

4 (I) Advertising goods or services with intent not to sell them
5 as advertised;

6 (J) Advertising goods or services with intent not to supply
7 reasonably expectable public demand, unless the advertisement
8 discloses a limitation of quantity;

9 (K) Making false or misleading statements of fact concerning
10 the reasons for, existence of or amounts of price reductions;

11 (L) Engaging in any other conduct which similarly creates a
12 likelihood of confusion or of misunderstanding;

13 (M) The act, use or employment by any person of any deception,
14 fraud, false pretense, false promise or misrepresentation, or the
15 concealment, suppression or omission of any material fact with
16 intent that others rely upon such concealment, suppression or
17 omission, in connection with the sale or advertisement of any goods
18 or services, whether or not any person has in fact been misled,
19 deceived or damaged thereby;

20 (N) Advertising, printing, displaying, publishing,
21 distributing or broadcasting, or causing to be advertised, printed,
22 displayed, published, distributed or broadcast in any manner, any
23 statement or representation with regard to the sale of goods or the
24 extension of consumer credit including the rates, terms or
25 conditions for the sale of such goods or the extension of such

1 credit, which is false, misleading or deceptive or which omits to
2 state material information which is necessary to make the
3 statements therein not false, misleading or deceptive;

4 (O) Representing that any person has won a prize, one of a
5 group of prizes or any other thing of value if receipt of the prize
6 or thing of value is contingent upon any payment of a service
7 charge, mailing charge, handling charge or any other similar charge
8 by the person or upon mandatory attendance by the person at a
9 promotion or sales presentation at the seller's place of business
10 or any other location: *Provided*, That a person may be offered one
11 item or the choice of several items conditioned on the person
12 listening to a sales promotion or entering a consumer transaction
13 if the true retail value and an accurate description of the item or
14 items are clearly and conspicuously disclosed along with the
15 person's obligations upon accepting the item or items; such
16 description and disclosure shall be typewritten or printed in at
17 least eight point regular type, in upper or lower case, where
18 appropriate; or

19 (P) Violating any provision or requirement of article six-b of
20 this chapter.

21 (Q) Violating any provision or requirement of article forty-
22 three, chapter sixteen of this code.

23 (8) "Warranty" means express and implied warranties described
24 and defined in sections three hundred thirteen, three hundred
25 fourteen and three hundred fifteen, article two, chapter forty-six

1 of this code and expressions or actions of a merchant which assure
2 the consumer that the goods have described qualities or will
3 perform in a described manner.

NOTE: The purpose of this bill is to create the "BPA-Free Kids Act" to limit exposure to bisphenol A (BPA) by prohibiting the manufacture, sale, and distribution of certain containers which contain BPA.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§§16-43-1 through 6 are new; therefore, they have been completely underscored.