

June 23, 2010
TESTIMONY OF LAWRENCE A. MANDELKER for
THE NEW YORK METROPOLITAN RETAIL ASSOCIATION (NYMRA)
COMMITTEE ON HEALTH
Chair: Hon. Maria del Carmen Arroyo

NYC COUNCIL INT. NO. 175 of 2010

Chairwoman Arroyo and members of the Committee: I am offering testimony on behalf of NYMRA, the New York Metropolitan Retail Association. NYMRA is an organization consisting primarily of national chain retailers operating in the City of New York.

My comments relate solely to § 20-631. It would ban the manufacture, sale, offer for sale or distribution in commerce of any child care product, child feeding product or children's toy that contains bisphenol A.

§ 20-630 (b) would define a *child care product* as "a consumer product designed or intended by the manufacturer to facilitate sleep of children age 3 and younger, or to help such children with sucking or teething."

§ 20-630 (c) would define a *child feeding product* as "a consumer product designed or intended to facilitate feeding or nourishing a child. Such term shall not include medicinal devices."

§ 20-630 (d) would define a children's toy as "a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays."

For the reasons stated below, we believe the proposed local law is too broad. It goes far beyond the concerns of the federal government and the other jurisdictions that have legislated on this issue.

As the report by the Council's Human Services Division makes clear, although some studies posit the potential for ingestion of BPA to adversely affect human health, other equally authoritative studies have either attacked the methodology employed or the conclusions reached. In 2008, the FDA determined that BPA remains safe in food contact materials. However, on January 15 of this year the FDA issued an interim update on BPA recommending reasonable steps to limit human exposure to PBA in the food supply. Among them are halting production of BPA-containing baby bottles and infant feeding cups, development of alternatives to BPA for the linings of infant formula cans, and supporting efforts to replace or reduce BPA levels in food can linings. Nothing is mentioned about: a) products designed to facilitate sleep of children age three or younger, or to help such children with sucking or teething; or b) children's toys intended for a child 12 years of age or younger.

Other jurisdictions that have legislated on the issue of BPA appear to have followed a similar approach.

Minnesota

Effective January 1, 2010, bans manufacture and wholesale sale of a children's product containing bisphenol A. "Children's product" is defined as "an empty bottle or cup to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child under the age of 3." (emphasis added) ¹

Wisconsin

Effective June 15, 2010, no sales of a child's container that contains bisphenol A. A "child's container" is defined as "an empty baby bottle or spill-proof cup primarily intended by the manufacturer for use by a child 3 years of age or younger." (emphasis added)

Connecticut

Effective October 1, 2011, would ban manufacturing, selling, distributing of any reusable food or beverage container containing bisphenol A. A "reusable food or beverage container" is defined as "a receptacle for storing food or beverages including but not limited to baby bottles, slip-proof cups, sports bottles and thermoses, and excluding food or beverage containers intended for disposable after use."

The Connecticut statute would also prohibit the manufacture, sale or distribution of infant formula or baby food that is stored in a plastic container, jar or can that contains bisphenol A.

Suffolk County, New York

Effective July 22, 2009, prohibits the sale of children's beverage containers containing bisphenol A. A "children's beverage container" is defined as "any unfilled bottle, cup, cup lid, straw or other container intended to be used by children under the age of 3 for the consumption of liquids." (emphasis added)

Chicago

Effective January 31, 2010, prohibits sale of any container that is composed of bisphenol A that is sold or distributed without containing any liquid, food or beverage. A "container" is defined as "an empty bottle or cup that is specifically designed to be filled with food or liquid to be used primarily by a child under the age of 3." (emphasis added) ²

NYMRA would prefer a federal approach to this problem. It is very difficult for national chain retailers to offer products for sale that have to comply with different regulatory requirements in different states. Our members have regional warehouses from which inventory is shipped to various states and localities. A uniform federal standard concerning use of BPA in products offered for sale would allow them to meet a single regulatory standard. Ordering products that have to be customized for different

¹ The ban on retail sales is to become effective on January 1, 2011.

² Although the Legislature is considering a ban on BPA in children's and baby products, it appears to be aimed at the sale of beverage and food containers that contain BPA.

markets – even a market as large as New York City – imposes an undue expense on retailers at a time when the retail market is still precarious.

Nevertheless, since a number of jurisdictions have already separately legislated in this area, we urge, if the City decides to pass its own local law rather than wait for the federal government, that it pass a local law consistent with the local laws passed by other jurisdictions. In other words, pending the passage of federal standards, Intro 175 should be amended to only apply to any product designed or intended to contain liquid, food or beverage primarily for consumption from that container by a child three (3) years old or younger that is sold without liquid, food or beverage, that contains bisphenol A.

If Intro 175 is adopted, my members will need time to sell off inventory. In this regard, the provision of Section 3 providing that the law would not take effect for an additional 180 days after enactment should be maintained to give our members time to sell off or transfer inventory.

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