

SENATE AMENDMENTS TO SENATE BILL 695

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 4

1 On page 1 of the printed bill, delete lines 5 through 20 and delete pages 2 through 9 and insert:

2 **“SECTION 1. As used in sections 2 to 4 of this 2011 Act:**

3 **“(1) ‘Bisphenol A’ means an industrial chemical used in the manufacture of**
4 **polycarbonate plastic and epoxy resins.**

5 **“(2) ‘Child’s beverage container’ means any empty baby bottle or spill-proof cup that is:**

6 **“(a) Distributed or sold at retail without containing any liquid, food, beverage or other**
7 **contents;**

8 **“(b) Designed to be filled with liquid; and**

9 **“(c) Primarily intended by the manufacturer for use by a child three years of age or**
10 **younger.**

11 **“(3) ‘Container’ means an individual bottle or can designed to contain food or liquid for**
12 **human consumption that is commercially available but does not include a container intended**
13 **for disposal after initial use.**

14 **“(4) ‘Food’ means any substance that is intended to be used for human consumption and**
15 **that is commercially available.**

16 **“(5) ‘Liquid or beverage’ means water and flavored water, mineral water, soda water, soft**
17 **drinks, juices, drinks and any other liquid or beverage intended for human consumption.**

18 **“(6) ‘Person’ has the meaning given that term in ORS 646.605.**

19 **“(7) ‘Reusable bottle’ means a resealable, reusable container, 64 ounces or less in size,**
20 **that is designed and intended primarily to be filled with a liquid or beverage for consumption**
21 **from the container, and that is sold, offered for sale or distributed at retail without con-**
22 **taining any liquid or beverage.**

23 **“SECTION 2. A person may not willfully or knowingly manufacture, distribute, sell or**
24 **offer for sale at retail in this state any child’s beverage container or reusable bottle that is**
25 **made or lined with:**

26 **“(1) Bisphenol A; or**

27 **“(2) Any material or substance that is designed and intended by the manufacturer to**
28 **replace bisphenol A if the material or substance has been determined by the United States**
29 **Environmental Protection Agency to be:**

30 **“(a) Carcinogenic or likely to be carcinogenic to humans or for which there is suggestive**
31 **evidence of carcinogenic potential; or**

32 **“(b) A reproductive toxicant that causes birth defects, reproductive harm or develop-**
33 **mental harm.**

34 **“SECTION 3. A person who manufactures any child’s beverage container or reusable**
35 **bottle that is made or lined with bisphenol A for distribution, sale or offer for sale in this**

1 state shall make a reasonable effort to notify any person who distributes, sells or offers for
2 sale in this state the manufacturer's containers or reusable bottles that are made or lined
3 with bisphenol A of the prohibition of section 2 of this 2011 Act at least 90 days before the
4 operative date specified in section 10 of this 2011 Act.

5 **"SECTION 4.** A person who manufactures any child's beverage container or reusable
6 bottle made or lined with bisphenol A for distribution, sale or offer for sale in this state shall
7 recall any child's beverage container or reusable bottle made or lined with bisphenol A and
8 adequately reimburse the retailer or consumer for the cost of the container and the cost to
9 comply with the recall.

10 **"SECTION 5.** (1) For purposes of this section:

11 **"(a)** 'Container' has the meaning given that term in section 1 of this 2011 Act.

12 **"(b)** 'Infant formula' means a milk-based or soy-based powder, concentrated liquid or
13 ready-to-feed substitute for human breast milk that is intended for infant consumption and
14 that is commercially available.

15 **"(2)** The Oregon Health Authority shall approve and obtain for the Women, Infants and
16 Children Program only infant formula contained in containers that:

17 **"(a)** Do not leach into the infant formula levels of bisphenol A detectable above 0.1 parts
18 per billion; or

19 **"(b)** Are not made with or lined with any material or substance that is designed and in-
20 tended by the manufacturer to replace bisphenol A if the material or substance has been
21 determined by the United States Environmental Protection Agency to be:

22 **"(A)** Carcinogenic or likely to be carcinogenic to humans or for which there is suggestive
23 evidence of carcinogenic potential; or

24 **"(B)** A reproductive toxicant that causes birth defects, reproductive harm or develop-
25 mental harm.

26 **"(3)** Subsection (2) of this section does not apply to containers of medically indicated in-
27 fant formula, as defined by the authority by rule, for purposes of the Women, Infants and
28 Children Program.

29 **"SECTION 6.** (1) For purposes of this section:

30 **"(a)** 'Contact surface' means the surface of a container that comes into contact with
31 foods, infant formula, liquids or beverages.

32 **"(b)** 'Container,' 'food' and 'liquid or beverage' have the meanings given those terms in
33 section 1 of this 2011 Act.

34 **"(c)** 'Infant formula' means a milk-based or soy-based powder, concentrated liquid or
35 ready-to-feed substitute for human breast milk that is intended for infant consumption and
36 that is commercially available.

37 **"(2)** The Oregon BPA-Free Advisory Group is established for the purpose of providing
38 advice and making recommendations on a process to certify that the containers used for
39 foods, infant formula, liquids or beverages manufactured, distributed, sold or offered for sale
40 in this state are not intentionally made with bisphenol A or lined with bisphenol A on the
41 contact surface that is detectable at levels above 0.1 parts per billion.

42 **"(3)** The advisory group shall consist of 11 members appointed as follows:

43 **"(a)** One member, appointed by the President of the Senate, who is a member of the
44 Senate serving as the chair of a committee or interim committee relating to the environ-
45 ment, water or natural resources, to serve as a nonvoting member in an advisory capacity

1 only.

2 “(b) One member, appointed by the Speaker of the House of Representatives, who is a
3 member of the House of Representatives serving either as the chair or a member of a com-
4 mittee or interim committee relating to the environment, water or natural resources, to
5 serve as a nonvoting member in an advisory capacity only.

6 “(c) Nine members appointed jointly by the members appointed under paragraphs (a) and
7 (b) of this subsection as follows:

8 “(A) One member who is an Oregon food retailer.

9 “(B) One member who is an Oregon food processor.

10 “(C) One member who represents an Oregon-based certification organization for con-
11 tainers made with bisphenol A or lined with bisphenol A on the contact surface.

12 “(D) One member who is a representative of an Oregon-based commodity organization.

13 “(E) One member who is a manufacturer of foods, infant formula, liquids or beverages
14 contained in containers that are not intentionally made with bisphenol A or lined with
15 bisphenol A on the contact surface at levels of bisphenol A detectable above 0.1 parts per
16 billion.

17 “(F) One member who represents a public health organization.

18 “(G) One member who represents a nonprofit environmental organization in Oregon.

19 “(H) Two members of the public with interest or expertise in containers made with
20 bisphenol A or lined with bisphenol A on the contact surface.

21 “(4) Members of the advisory group are volunteers and not entitled to compensation or
22 reimbursement for expenses.

23 “(5) The advisory group may:

24 “(a) Provide advice and make recommendations on a process to certify that the con-
25 tainers used for foods, infant formula, liquids or beverages manufactured, distributed, sold
26 or offered for sale in this state are not intentionally made with bisphenol A or lined with
27 bisphenol A on the contact surface that is detectable at levels above 0.1 parts per billion.

28 “(b) Provide recommendations to promote and facilitate:

29 “(A) The manufacture, distribution and sale of containers used for foods, infant formula,
30 liquids or beverages that are not intentionally made with bisphenol A or lined with bisphenol
31 A on the contact surface that is detectable at levels of bisphenol A above 0.1 parts per billion;
32 and

33 “(B) The development of a program, logo, label and public education campaign regarding
34 containers used for foods, infant formula, liquids or beverages manufactured, distributed,
35 sold or offered for sale in this state that are not intentionally made with bisphenol A or lined
36 with bisphenol A on the contact surface that is detectable at levels above 0.1 parts per
37 billion.

38 “(c) Identify independent, third-party entities that could verify the bisphenol A levels of
39 containers used for foods, infant formula, liquids or beverages that are manufactured, dis-
40 tributed, sold or offered for sale in this state and certify containers that are not intentionally
41 made with bisphenol A or lined with bisphenol A on the contact surface that is detectable
42 at levels above 0.1 parts per billion.

43 “(d) Identify grants and other forms of financial assistance to persons seeking to manu-
44 facture, distribute, sell or offer for sale in this state containers of food, infant formula, liq-
45 uids or beverages that are not intentionally made with bisphenol A or lined with bisphenol

1 **A on the contact surface that is detectable at levels above 0.1 parts per billion.**

2 **“(6) The advisory group shall report to the Seventy-sixth Legislative Assembly on or be-**
3 **fore February 1, 2012, regarding the recommendations made under this section.**

4 **“SECTION 7.** ORS 646.608 is amended to read:

5 “646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
6 ness, vocation or occupation the person does any of the following:

7 “(a) Passes off real estate, goods or services as those of another.

8 “(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
9 proval, or certification of real estate, goods or services.

10 “(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
11 ciation with, or certification by, another.

12 “(d) Uses deceptive representations or designations of geographic origin in connection with real
13 estate, goods or services.

14 “(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
15 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
16 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

17 “(f) Represents that real estate or goods are original or new if they are deteriorated, altered,
18 reconditioned, reclaimed, used or secondhand.

19 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
20 or that real estate or goods are of a particular style or model, if they are of another.

21 “(h) Disparages the real estate, goods, services, property or business of a customer or another
22 by false or misleading representations of fact.

23 “(i) Advertises real estate, goods or services with intent not to provide them as advertised, or
24 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
25 a limitation of quantity.

26 “(j) Makes false or misleading representations of fact concerning the reasons for, existence of,
27 or amounts of price reductions.

28 “(k) Makes false or misleading representations concerning credit availability or the nature of
29 the transaction or obligation incurred.

30 “(L) Makes false or misleading representations relating to commissions or other compensation
31 to be paid in exchange for permitting real estate, goods or services to be used for model or demon-
32 stration purposes or in exchange for submitting names of potential customers.

33 “(m) Performs service on or dismantles any goods or real estate when not authorized by the
34 owner or apparent owner thereof.

35 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
36 provides the information required under ORS 646.611.

37 “(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
38 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
39 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
40 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
41 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
42 tomer enters into the transaction.

43 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
44 licize a product, business or service.

45 “(q) Promises to deliver real estate, goods or services within a certain period of time with intent

- 1 not to deliver them as promised.
- 2 “(r) Organizes or induces or attempts to induce membership in a pyramid club.
- 3 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
4 person’s cost for real estate, goods or services.
- 5 “(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
6 known material defect or material nonconformity.
- 7 “(u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 8 “(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
9 ORS 698.640, whether in a commercial or noncommercial situation.
- 10 “(w) Manufactures mercury fever thermometers.
- 11 “(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
12 law, or is:
- 13 “(A) Prescribed by a person licensed under ORS chapter 677; and
- 14 “(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage
15 and on the proper cleanup of mercury should breakage occur.
- 16 “(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
17 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
18 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
19 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
20 graph, ‘thermostat’ means a device commonly used to sense and, through electrical communication
21 with heating, cooling or ventilation equipment, control room temperature.
- 22 “(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
23 mercury light switches.
- 24 “(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 25 “(bb) Violates ORS 646A.070 (1).
- 26 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 27 “(dd) Violates the provisions of ORS 128.801 to 128.898.
- 28 “(ee) Violates ORS 646.883 or 646.885.
- 29 “(ff) Violates ORS 646.569.
- 30 “(gg) Violates the provisions of ORS 646A.142.
- 31 “(hh) Violates ORS 646A.360.
- 32 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 33 “(jj) Violates ORS 646.563.
- 34 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 35 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
36 thereto.
- 37 “(mm) Violates ORS 646A.210 or 646A.214.
- 38 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 39 “(oo) Violates ORS 646A.095.
- 40 “(pp) Violates ORS 822.046.
- 41 “(qq) Violates ORS 128.001.
- 42 “(rr) Violates ORS 646.649 (2) to (4).
- 43 “(ss) Violates ORS 646A.090 (2) to (4).
- 44 “(tt) Violates ORS 87.686.
- 45 “(uu) Violates ORS 646.651.

1 “(vv) Violates ORS 646A.362.
2 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
3 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
4 “(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
5 “(zz) Violates ORS 87.007 (2) or (3).
6 “(aaa) Violates ORS 92.405 (1), (2) or (3).
7 “(bbb) Engages in an unlawful practice under ORS 646.648.
8 “(ccc) Violates ORS 646A.365.
9 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
10 “(eee) Sells a gift card in violation of ORS 646A.276.
11 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
12 “(ggg) Violates ORS 646A.430 to 646A.450.
13 “(hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
14 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
15 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
16 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
17 subject of the violation.
18 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
19 “(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
20 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
21 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
22 “(nnn) Violates ORS 646A.082.
23 “(ooo) Violates ORS 646.647.
24 “(ppp) Violates ORS 646A.115.
25 “(qqq) Violates a provision of ORS 646A.405.
26 “(rrr) **Violates a provision of section 2 or 4 of this 2011 Act.**
27 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
28 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
29 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
30 need not prove competition between the parties or actual confusion or misunderstanding.
31 “(4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
32 torney General has first established a rule in accordance with the provisions of ORS chapter 183
33 declaring the conduct to be unfair or deceptive in trade or commerce.
34 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
35 brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief
36 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
37 “**SECTION 8. The Oregon Health Authority shall report to the appropriate committees**
38 **or interim committees of the Legislative Assembly regarding the availability of infant for-**
39 **mula contained in containers that are approved by the authority for the Women, Infants and**
40 **Children Program under section 5 of this 2011 Act on or before January 15, 2012.**
41 “**SECTION 9. Sections 2 and 4 of this 2011 Act and the amendments to ORS 646.608 by**
42 **section 7 of this 2011 Act apply to a person that operates as a manufacturer, distributor or**
43 **retailer of any child’s beverage container or reusable bottle on or after the operative date**
44 **specified in section 10 of this 2011 Act.**
45 “**SECTION 10. Sections 2 and 4 of this 2011 Act and the amendments to ORS 646.608 by**

1 section 7 of this 2011 Act become operative on January 1, 2012.

2 SECTION 11. Section 5 of this 2011 Act becomes operative on January 1, 2013.

3 SECTION 12. This 2011 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
5 on its passage.”

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