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Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Senate

### Record of Committee Proceedings

#### **Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection**

##### **Senate Bill 271**

Relating to: prohibiting the manufacture and sale at wholesale of certain baby bottles and cups for children that contain bisphenol A, creating labeling requirements, making an appropriation, and providing penalties.

By Senators Lassa, Carpenter, Kapanke, Hansen, Wirch, Lehman, Robson, Risser and Taylor; cosponsored by Representatives Roys, Molepske Jr., Mason, Benedict, Brooks, Berceau, Hubler, Cullen, Milroy, Pasch, Turner, Black, Jorgensen, Parisi, Steinbrink, Vruwink, Danou, Soletski, Richards, Spanbauer and Clark.

August 21, 2009      Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

November 10, 2009    **PUBLIC HEARING HELD**

Present:    (5)      Senators Wirch, Plale, Holperin, Hopper and Lazich.

Absent:    (0)      None.

##### Appearances For

- Julie Lassa — Senator, 24th Senate District
- Gail Prins, Chicago — Self
- Robert Moore, Madison — Dr., Self
- Jim Connors, Madison — Sierra Club John Muir Chapter
- Tyrone Bell, Madison — Self
- Becky Bains, Deerfield — Self
- Jennifer Gregerich, Madison — WI League of Conservation Voters
- Bruce Speight, Madison — WISPIRG
- Warren Porter, Fitchburg — Dr., Self

##### Appearances Against

- Karyn Schmidt, Arlington — American Chemistry Council
- John Rost, Washington DC — NAMPA
- Nick George, Madison — Midwest Food Processors Association
- Scott Manley, Madison — WMC

##### Appearances for Information Only

- Ellen Connor, Oregon — Dr., Self

Registrations For

- Sabrina Gentile, Madison — WI Council on Children and Families
- Barry Timms, Vermillion — Dr., Sanford School of Medicine
- John Gabel, Madison — AFSCME
- Michael Welsh — WI Public Health Association
- John Greene, Edgerton — AARP
- Brian King, Madison — AARP
- Jeanne Benink, Madison — AARP
- Debra Heidenreich, Madison — Self
- Carol Greene, Edgerton — AARP
- Gina Dennik-Champion, Madison — WI Nurses Association
- Shahla Werner, Madison — Self
- Amber Meyer-Smith, Madison — Clean Wisconsin

Registrations Against

- Tony Driessen, Madison — American Chemistry Council
- Susie Schooff, Madison — Can Manufacturers Institute
- David Storey, Madison — Wisconsin Retail Council
- Brandon Scholz, Madison — Wisconsin Grocers Association
- Pete Christianson, Madison — Kraft Foods Global

Registrations for Information Only

- None.

January 20, 2010

**EXECUTIVE SESSION HELD**

Present: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Absent: (0) None.

Moved by Senator Plale, seconded by Senator Holperin that **Senate Amendment LRBA1324 to Senate Substitute Amendment 1** be recommended for introduction and adoption.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Noes: (0) None.

INTRODUCTION AND ADOPTION OF SENATE AMENDMENT LRBA1324 TO SENATE SUBSTITUTE AMENDMENT 1 RECOMMENDED, Ayes 5, Noes 0

Moved by Senator Holperin, seconded by Senator Plale that  
**Senate Substitute Amendment 1** be recommended for adoption.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and  
Lazich.

Noes: (0) None.

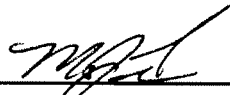
ADOPTION OF SENATE SUBSTITUTE AMENDMENT 1  
RECOMMENDED, Ayes 5, Noes 0

Moved by Senator Plale, seconded by Senator Holperin that  
**Senate Bill 271** be recommended for passage as amended.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and  
Lazich.

Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 0

  
\_\_\_\_\_  
Michael Tierney  
Committee Clerk

WISCONSIN  
BREAST  
CANCER  
COALITION

[www.wisconsinbreastcancercoalition.org](http://www.wisconsinbreastcancercoalition.org) / 414-963-2103 / P.O. Box 170031 / Milwaukee, Wisconsin 53217-0031

June 10, 2009

SB 271?

To: Members of the Wisconsin Legislature  
From: Dawn Anderson, Executive Director, Wisconsin Breast Cancer Coalition (WBCC)  
Re: Support for BPA Free Kids Act

On behalf of the Board of Directors of WBCC, I am writing to express our organization's support for the BPA Free Kids Act, which will prohibit the manufacture and sale of bottles and cups for children that contain bisphenol-A (BPA) and create labeling requirements.

Since the publication of Rachel Carson's "Silent Spring" in 1962, the health hazards of exposure to chemicals have been questioned and studied extensively.

What we have learned is that many chemicals used in consumer products appear to mimic the natural hormone, estrogen, in the body. This interaction can damage DNA, signal tumor cells to grow unchecked, and/or alter mammary gland development early in life, increasing a child's risk for developing cancer later in life. Chemicals that mimic estrogen can be found in ordinary household products such as plastics, detergents or pesticides and herbicides.

One of the known risk factors for breast cancer is lifetime exposure to estrogen. The more estrogen a woman is exposed to over the course of her life, the higher risk she is at for developing the disease later in life. A chemical, therefore, that mimics the effects of estrogen is of particular concern to us.

We know that exposure to endocrine disrupting compounds like these are cumulative over one's lifetime—perhaps even beginning in utero. Every effort must be made to eliminate these compounds from children's products and reduce their exposure to toxins that clearly cause damage to DNA.

The Wisconsin Breast Cancer Coalition believes that where public health is concerned, policy makers, advocates and the research community need to work together to protect citizens, especially children, from exposure to chemicals that current evidence suggests will have an adverse affect on them later in life.

We urge the Wisconsin legislature to join other states that have banned BPA and protect the health and well being of our children.

**Vote Record**  
**Committee on Small Business, Emergency Preparedness,**  
**Technical Colleges, and Consumer Protection**

Date: 1-22-10

SB 271?

Moved by: Plale

Seconded by: Holp

AB \_\_\_\_\_ SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt 1 to A/S Sub Amdt 1  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Robert Wirch, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Jeffrey Plale</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Jim Holperin</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Randy Hopper</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Mary Lazich</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	_____	_____	_____	_____

Motion Carried

Motion Failed





August 20, 2009

Senator Julie Lassa  
Room 323 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Representative Kelda Helen Roys  
Room 7 North  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

**Re: BPA Legislation**

Dear Senator Lassa and Representative Roys:

Thank you for the opportunity to meet with you and your staff on Tuesday, August 11, 2009, to discuss the Wisconsin food processing industry's concerns with your BPA bill draft, LRB-1837/3.

SB 271

We appreciate the fact that you intend to make changes to baby bottles and sippy cups only, but since this is such a big issue to our members we feel it is important to clarify our concerns in writing. Our hope is that by doing so, we can continue a constructive dialogue.

First, we would ask you not to advance this legislation. The issue is under active review by the Obama Administration's FDA agency, and a decision on their part is expected within the next few months. A national approach is preferred over a state by state approach. During these especially challenging economic times, we need help to keep the jobs we have and not create new impediments to the sales of Wisconsin grown and processed foods.

However, we understand you are intent on addressing your concerns with baby bottles and sippy cups and therefore respectfully request you apply this legislation only to children under the age of three. We appreciate that infants and babies derive their nutrition almost exclusively from liquids served in baby bottles. As you know, under age three is the provision in the law in Minnesota and it is the same in the City of Chicago ordinance that is in effect. Age three and under is also specified in the pending California and New York legislation as well as the Schumer and Feingold bill at the federal level.



Please reconsider the age five provision that is in your bill draft, as this is a critical provision to our members. After all, nothing will be gained by using a higher age threshold. All baby bottles and sippy cups of concern to you will be covered under the bill if it is set at age three.

In addition, we believe that the labeling requirements should be removed from the bill. As written the requirements give the public the impression that BPA is bad for everyone and should be avoided even in minute, trace amounts. Today, BPA is a critical element in food packaging that provides important and valuable food safety benefits. Until an alternative substance is found that can provide better safety benefits and has been thoroughly and rigorously tested, we should not act punitively.

Also we believe that the labeling enforcement provisions in the bill draft are punitive and unnecessary. We urge you to remove these provisions and would like to continue the discussion in this area.

Again, thank you for allowing us to comment on this important piece of legislation. Wisconsin has a great tradition in food processing and is a bright spot in the current economy. We believe our suggestions will make this a better bill and protect the industry from any potential misconceptions. Please give me a call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick George". The signature is fluid and cursive, with the first name "Nick" being more prominent than the last name "George".

Nick George  
President

*MWFPA, 4600 American Parkway, #110, Madison, WI 53718; 608-255-9946;  
[nick.george@mwfpa.org](mailto:nick.george@mwfpa.org); [www.mwfpa.org](http://www.mwfpa.org)*





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8/26/09

Wisconsin Ban on BPA in Baby Bottles and "Sippy" Cups  
(SB-271)

What the Bill Does.

Senate Bill 271 would:

- Prohibit the manufacture and sale of baby bottles and spill-proof cups for children 5 years and under, that contain bisphenol A ("BPA").
- Provide for product labeling requirements.
- Make an appropriation to DATCP.
- Provide penalties of up to \$5000 or one year in jail, or both.

Clarification Needed.

The legislation defines a "child's container" as an empty baby bottle or spill-proof cup that is primarily intended for use by a child 5 years of age or younger. Laws and legislation on this subject in other states and jurisdictions typically specify that the prohibition applies to children under age three. This tends to be the point at which baby products are distinguished from other items.

Other States and Jurisdictions.

The under the age 3 provision is included in:

- Minnesota's new BPA law.
- The City of Chicago ordinance that is now in effect.
- The California bill that has passed the State Senate (age 3 and under).
- The Suffolk County, New York state ordinance that is now in effect.
- The pending legislation in New York (age 3 and under).

In Canada, their pending regulatory initiative applies only to baby bottles.

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Rationale

The stated rationale for defining "child" as a person under three years of age is that babies derive virtually all of their nutrition from liquids. Hence the bottles and "sippy" cups that babies and young children use are considered unique.

Conclusion

The Wisconsin legislation to ban BPA in baby products is of significant concern to the American Chemistry Council. The issue is best addressed nationwide by the U.S. Food and Drug Administration.

At a minimum, the Wisconsin legislation should be amended to clarify that it applies to children under three years of age.

Tony Driessen  
for the American Chemistry Council  
DeWitt Ross & Stevens S.C.  
ahd@dewittross.com  
office 608-252-9387  
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2 E. Mifflin St. Suite 600  
Madison, WI 53703





## WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: SENATOR JULIE LASSA

FROM: Mary Matthias, Senior Staff Attorney

RE: 2009 Senate Bill 271, Relating to the Manufacture and Sale of Certain Baby Bottles and Cups That Contain Bisphenol A

DATE: September 16, 2009

This memorandum responds to your request for an analysis of the applicability of 2009 Senate Bill 271, relating to the manufacture and sale of certain baby bottles and cups that contain bisphenol A, to the manufacture, packaging, and sale of bottled water and processed food.

Senate Bill 271 prohibits manufacturing or selling, or offering to sell, at wholesale, an empty baby bottle or spill-proof cup (sippy cup) primarily intended for use by a child five years of age or younger if the bottle or cup contains bisphenol A. The bill requires any manufacturer or wholesaler who sells or offers to sell an empty baby bottle or sippy cup in Wisconsin to label the bottle or cup as not containing bisphenol A.

Your request for this analysis was prompted by comments contained in a letter to Senator Robert Wirsch dated September 10, 2009, from several members of the International Bottled Water Association (IBWA). The letter suggests that the labeling requirements be removed from the bill for the following reason:

There is bottled water product in the marketplace intended for children that does not contain BPA, and has never contained BPA. Requiring a bottler to label their product as not containing BPA would be very costly for that bottler, and furthermore, could easily and unnecessarily call the safety of all bottled water products into question.

The IBWA letter also implies that the bill would impose "costly and unnecessary requirements" on food processors. Likewise, in a letter to you dated August 20, 2009, Nick George, president of the Midwest Food Processors Association, Inc., requests that the labeling requirements be removed from the bill, stating that "BPA is a critical element in food packaging that provides important and valuable food

safety benefits.” (The August 20 letter refers to LRB-1873/3, a draft version of the bill. The relevant language of that draft is identical to the language of the bill as introduced.)

The statements regarding the imposition of labeling and other requirements on the bottled water and food processing industries are based on incorrect interpretations of the bill. None of the provisions of the bill apply to the manufacturing, packaging, or sale of bottled water or processed foods. The bill does not require any container of bottled water or any processed food packaging to be labeled. This is true regardless of the age of the intended consumer of the water or food. The bill regulates the sale and labeling of only two types of products: (a) an empty baby bottle; or (b) a spill-proof cup intended for use by a child five years of age or younger.

Please contact me at the Legislative Council offices if you have any questions or would like more information. I can be reached at 266-0932.

MM:ksm







November 4, 2009

The Honorable Robert Wirch  
Committee on Small Business,  
Emergency Preparedness, Technical Colleges,  
and Consumer Protection  
Room 316 South Capitol  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

**RE: SF 271 Opposition**

Dear Chairman Wirch:

On behalf of the Grocery Manufacturers Association, I am writing to urge you and the members of the Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection to oppose Senate Bill 271 sponsored by Senator Lassa, which would ban the use of bisphenol A (BPA) in a variety of products and their packaging that are designed or intended primarily for consumption by children, as defined.

GMA represents the world's leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. The GMA board of directors is comprised of fifty-two chief executive officers from the Association's member companies. In Wisconsin, the food and beverage industry contributes at least \$18,556,089,000 per annum in value added to the economy, employs at least 120,257 people, and operates 973 facilities.

BPA has been used in combination with other substances in the production of certain plastics and resins for more than 40 years. Some examples are polycarbonate, a clear, rigid, lightweight plastic used for beverage bottles, and protective epoxy coatings that line the inside of food and drink cans and the tops of jar lids. These protective coatings help maintain the safety and quality of canned foods and beverages by preventing the contents from reacting with the metal that forms the can.

The U.S. Food & Drug Administration (FDA), the European Food Safety Authority (EFSA) and the World Health Organization (WHO) have all evaluated and approved the safety of BPA. FDA approves BPA for use in food contact applications, and for more

**GROCERY MANUFACTURERS ASSOCIATION**

than 40 years, it has played an essential part in food preservation. In addition to the WHO and the EFSA, several other prominent international bodies have also agreed with FDA regarding the safety of BPA. These include the Health and Consumer Protection Directorate of the European Commission; the European Chemical Bureau of the European Union; the European Scientific Panel on Food Additives, Flavorings, Processing Aids, and Materials in Contact with Food; and the Japanese National Institute of Advanced Industrial Science and Technology. GMA is confident that the risk-analysis approach utilized by national and international regulatory agencies around the world to evaluate the risk associated with BPA exposure is scientifically sound and appropriate. Extensive studies have also looked at the potential for BPA to migrate from can coatings and food containers into various kinds of foods under various conditions. After careful review of available data, and using conservative estimates of dietary exposures based on migration into food under intentionally exaggerated test conditions, experts have concluded that human exposure to these substances from food packaging is minimal and poses no risk.

In February of 2007, the European Food Safety Authority completed its review of new studies published since 2002 and finalized a Tolerable Daily Intake (TDI), or safe daily exposure level, for BPA. The new data included a reproduction study in mice that followed offspring for 2 generations. The EFSA TDI is 0.05 mg/kg bodyweight/day. EFSA found that exposure to BPA in the diet is well below the TDI. This is true for all population groups including infants and children, who have the highest potential dietary exposure relative to body weight of any population group. EFSA found that a 3-month old baby weighing 6 kg (13.2 lb) would have to consume more than 4 times the normal number of bottles of formula per day to reach the TDI.

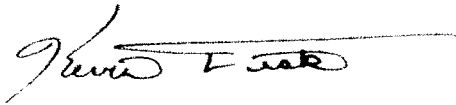
Additionally, in July and October of 2008, the EFSA's panel that examines food contact substances concluded, in response to two requests to re-examine BPA's safety and to a recent report in the Journal of the American Medical Association, that there is no need to reestablish new TDI levels. EFSA concluded a causal link between the diseases addressed in the JAMA report and low exposures of adults to BPA cannot be established. EFSA reported that there are significant metabolic differences between humans and rodents, and the fact that people metabolize and excrete BPA far more quickly than rodents reduces the relevance of low-dose studies when considering human TDI for BPA. The EFSA also looked at the U.S. National Toxicology Program's draft brief on BPA and Canada's action on BPA when making their conclusions. Highlighting the scientific inconsistencies with Canada's recent decision on BPA, EFSA's former AFC panel (the panel on additives, flavorings, processing aids and materials in contact with food) reported, "The Canadian risk assessment takes a precautionary approach for these sensitive life stages, taking into account the findings in the low-dose studies, although commenting that these are limited in rigor, consistency and biological plausibility."

The U.S. Centers for Disease Control and Prevention (CDC) recently published biomonitoring data from a large-scale study that represents the entire U.S. population aged 2 months and older. The data show that typical human daily intake of BPA is one million times less than the levels that showed no adverse effects in multi-generation animal studies, and one thousand times less than the very conservative regulatory limits set by the U.S. and European governments.

Based on the entire body of scientific evidence, and the findings of numerous health authorities and researchers, consumers can continue to enjoy foods and beverages in the many forms of packaging provided, including those that contain BPA, without changing their purchasing or eating patterns.

For these reasons, GMA strongly opposes Senate Bill 271 that proposes to ban BPA in certain products intended for children and asks that you veto this legislation. Thank you for considering GMA's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Fisk", with a long horizontal line extending to the right from the end of the signature.

Kevin Fisk  
Director, State Affairs

Cc: Members, Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection



Friday, November 06, 2009

Written Testimony of Dr. Barry Timms for the Consumer Protection Committee Public Hearing in support of:

Senate Bill 271; LRB-1837, the BPA Free Kids Act.

Barry G. Timms, Ph.D.,

Professor, Division of Basic Biomedical Sciences,  
Sanford School of Medicine, University of South Dakota,  
414 East Clark St., Vermillion, SD 57069

Tel/Fax: 605.677.5144

[btimms@usd.edu](mailto:btimms@usd.edu)

As a member of an ad hoc expert review panel, I was involved in the peer review of the Draft NTP Brief on Bisphenol A (Federal Register, Vol 73, April 15, 2008).

This review was part of a multistep process to assess the potential for chemicals to adversely affect human reproduction and development. The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) conducted a scientifically based assessment and prepared the draft NTP brief on bisphenol A, a high production volume chemical used primarily in the manufacture of polycarbonate plastics and epoxy resins. These compounds have many applications, including food and drink packaging, compact discs and medical devices, while epoxy resins are used as lacquers to coat metal products such as food cans, bottle tops and water supply pipes. Animal studies have linked the chemical bisphenol A, an endocrine disruptor, to cancer, early-onset puberty, obesity and type-2 diabetes, at doses within the range of human exposure.

NTP invited written public comments on the draft brief and/or oral comments at the review meeting. The brief was made available on the CERHR web site (<http://cerhr.niehs.nih.gov/chemicals/bisphenol/bisphenol.html> )

**Based upon the reviews, the NTP concurred with the conclusion from the CERHR that there is some concern for effects on the brain, behavior, and prostate gland in fetuses, infants, and children at current human exposures to bisphenol A.**

#### HISTORICAL ASPECTS OF BISPHENOL A:

- Bisphenol A (BPA) was first synthesized over a hundred years ago in Russia (1891).
- In 1936, BPA was shown to have estrogenic activity, but diethylstilbestrol (DES) was found to be more potent and was subsequently used to prevent miscarriages.
- Chemists in the US and in Germany discovered that polycarbonate plastic could be synthesized from BPA in 1953.

- The only way humans blood levels are as high as they are is if the presumed FDA/EPA safe daily exposure dose is already being exceeded.
- Studies of molecular mechanisms of BPA action provide the basis for effects at very low dose in both animals and human cells, with some effects occurring at extremely low doses, even below 1 part per trillion.
- At the mechanistic level, there is no reason to think that effects in animals would not also occur in humans, since similar very low dose effects occur in both human and animal cells.
- A central concern was the life stage during which exposure to BPA occurs, with particular concern for exposure of fetuses and newborn babies. The reasons for this concern are that fetuses and newborn babies have immature liver enzyme systems and cannot metabolize BPA or other drugs and chemicals as rapidly as an adult.
- A phenomenon called epigenetic programming occurs during very brief periods in development when organs are forming – and once abnormal programming of genes occurs in an organ, the organ will never function properly again, and diseases often occur in these organs much later in life.
- There was consensus that studies that only focus on adults (which is common for the great majority of toxicological studies on most chemicals) cannot be used to predict effects that will be caused when exposure occurs during development.

There is now a consensus within the scientific community that at current levels of exposure to BPA, due to the use of products directed at infants, there is concern that BPA is causing a wide range of harm. Specifically, three government science advisory panels have recently issued reports: these include the US National Toxicology Program, the science advisory agency to the US FDA on issues of health effects of chemicals, a panel of 38 internationally recognized scientists invited to a NIH sponsored conference on BPA, as well as the Canadian Ministry of Health. This concern is based on evidence from many published studies with experimental animals that report adverse effects,

100% the studies of the over 200 experimental animal studies that report harm due to exposure to low doses of BPA were published by academic and government scientists with no connection to chemical corporations.

100% of studies funded by chemical corporations conclude that low doses of BPA are “safe”.  
 [References and abstracts for all of these studies are online at:  
<http://rcp.missouri.edu/endocrinedisruptors/vomsaal/vomsaal.html>].

### **Why focus on protecting infants?**

We are most concerned about exposure to BPA during early life because BPA causes permanent adverse effects due to exposure at very low levels occurs during what are called “critical periods” in development, which includes fetal life through the first 2 years after birth.

I urge the legislature to pass this legislation, because there are alternatives to BPA already on the market for all products directed at babies in the USA.

References:

- Ho SM, Tang WY, Belmonte de Frausto J, Prins GS (2006) *Cancer Res.* Developmental exposure to estradiol and bisphenol A increases susceptibility to prostate carcinogenesis and epigenetically regulates phosphodiesterase type 4 variant 4. 66(11): 5624-5632.
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- Taylor JA, Welshons WV, Vom Saal FS (2008) *Reprod Toxicol.* No effect of route of exposure (oral; subcutaneous injection) on plasma bisphenol A throughout 24h after administration in neonatal female mice. 25(2): 169-176.
- Vandenberg LN, Hauser R, Marcus M, Olea N, Welshons WV (2007) *Reprod Toxicol.* Human exposure to bisphenol A (BPA). 24(2): 139-177.
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## John Muir Chapter

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### **Support SB 271 to ban BPA in baby bottles and children's cups**

Before the committee on Small Business, Emergency Preparedness, Technical Colleges,  
and Consumer Protection

Tuesday, November 10, 2009, 11:05 AM, 201 SE

Jim Connors, Volunteer Lobbyist, Sierra Club- John Muir Chapter

**Thank you for the opportunity to testify on this important legislation to help protect the families of Wisconsin. The Sierra Club – John Muir Chapter urges you to support SB 271, The BPA-Free Kids Act.** This bill would require labeling and prohibit making or selling bottles or cups containing bisphenol A (BPA) in Wisconsin. Over the past week, more than 90 of our Sierra Club members and supporters have contacted their state legislators in support of this important bill. Many are busy, working parents and grandparents who care for young family members. They don't want to have to worry about whether the bottles or cups they use contain a toxic chemical that interferes with brain development and is linked to other serious health conditions.

**BPA exposure has become disturbingly universal – it has been detected in over 90% of Americans tested.** BPA, an industrial chemical first formulated in 1891 and widely used since the 1950's, is now commonly found in many clear plastic, polycarbonate containers and other such household products. Peer reviewed scientific studies and an investigative report by the *Milwaukee Journal Sentinel* have confirmed that BPA leaches out of plastics and into the foods and drinks in contact with them, especially when heated. As a result, BPA ends up in us after we ingest BPA-tainted items.

**The hazards of BPA are well-documented and pose a special danger to infants and young children.** BPA is an endocrine disrupter that can negatively impact brain and thyroid gland development. A recent study published in the *Journal of the American Medical Association* found that BPA might be harmful at **extremely low doses**, as adults with higher urinary concentrations of the chemical had higher rates of heart disease, diabetes and liver enzyme concentrations.

**Wisconsin needs to regulate BPA and other toxic chemicals to protect our health.** The United States has approved over 100,000 synthetic chemicals for industrial and consumer uses. Most lack even basic information on health effects and toxicity. Over 1,400 of these have known or probable links to cancer, birth defects, reproductive impacts, and other health problems such as learning disabilities. In the case of BPA, the Food and Drug Administration has made decisions that put mothers and children at risk. They continue to waste millions in taxpayer dollars on poorly designed, redundant studies, and they have previously relied on studies sponsored by the American Plastics Council over peer-reviewed research that shows that the chemical is not safe. Wisconsin must protect our own citizens if the federal government is unwilling or unable to take action to ban BPA, just as Canada, Minnesota and other states have done.

**Wisconsin businesses will not be negatively impacted by the passage of SB 271, as BPA-free alternatives are readily available.** Companies such as Nalgene, Playtex, and Eden foods have all started using BPA-free alternatives, and other companies have pledged to phase the chemical out of their products.

In closing, we hope you will support SB 271. This legislation will ensure that children's bottles or cups made or sold in Wisconsin are BPA-free, and that products are clearly labeled as such. Let's give working families one less thing to worry about this year.





State of Wisconsin  
Jim Doyle, Governor

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Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

November 10, 2009

The Honorable Robert Wirch, Chair  
Committee on Small Business, Emergency Preparedness,  
Technical Colleges, and Consumer Protection

**Re: SB 271 relating to prohibiting the manufacture and sale at wholesale of certain baby bottles and cups for children that contain bisphenol A.**

Dear Senator Wirch:

Thank you for permitting the Department of Agriculture, Trade & Consumer Protection the opportunity to submit information regarding SB 271.

This bill, if passed, would prohibit the manufacture, sale or offer to sell at wholesale, in Wisconsin, of baby bottles or spill-proof cups, primarily intended for use by children 5 years or younger, that contain bisphenol A (BPA). The bill also provides that the department may enforce the statute either as a civil forfeiture or as a request for injunctive relief.

The department has no position on whether BPA should be prohibited since it does not have the scientific knowledge on which to base such an opinion. However, the department does have other concerns about the legislation.

SB 271 does not prohibit the sale of BPA products by retailers. The department believes that such an omission leaves a significant loophole in the legislation. The department has communicated this concern to the author and is under the impression an amendment is being drafted to close the loophole. Nonetheless, we believe that this issue is sufficiently important to bring it to the committee's attention.

The loophole is significant, particularly for large retailers that have retail outlets in Wisconsin, but distribution centers in other states. Under the proposed legislation, the Wisconsin retailer could purchase products containing BPA from a manufacturer in China and have them shipped to the retailer's distribution center in Illinois (for example). That distribution center can then truck the product to Wisconsin stores. There is no violation of the law since the product was neither manufactured nor sold at wholesale in Wisconsin.

Since one cannot see BPA, one has to test for it. After contacting several laboratories, we have learned that is no national standard for testing and that different laboratories use their own testing protocols. The lack of a national standard could leave the evidentiary value of test results in question. Moreover, the department would need to pay private laboratories for testing.

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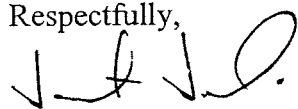
Preliminary inquiries indicate that each test could cost approximately \$500. DATCP has no funds to pay the costs of testing.

The legislation does provide that if a court imposes a fine or forfeiture, a BPA surcharge shall be imposed equal to 50% of the amount of the fine or forfeiture, which money will come to the department. While the department appreciates the creation of this surcharge, it could be years and many \$500 tests down the road before the department would be able to cover the costs of testing. Moreover, given the lack of standard testing, it may be that the Department of Justice and/or District Attorneys will not even bring prosecutions.

Regardless, should the bill become law, the department does support the range of forfeitures. The range is necessary so that courts have the ability to fit the penalty to the violation. Forfeitures are also necessary because District Attorneys cannot put a corporation in jail. Furthermore, District Attorneys typically focus on crimes that involve violence, abuse of children, controlled substances, etc., rather than on product safety regulations. The existence of a forfeiture provides the department with the flexibility it would need should the resources become available to enforce the law.

Thank you for this opportunity to comment on Senate Bill 271.

Respectfully,



Janet Jenkins, Administrator  
Division of Trade and Consumer Protection





**STATEMENT OF  
NICKOLAS C. GEORGE, JR.  
EXECUTIVE DIRECTOR  
MIDWEST FOOD PROCESSORS ASSOCIATION**

**BEFORE THE  
WISCONSIN STATE SENATE COMMITTEE ON SMALL BUSINESS, EMERGENCY  
PREPAREDNESS, TECHNICAL COLLEGES AND CONSUMER PROTECTION  
NOVEMBER 10, 2009**

Chairperson Wirch and members of the Committee, I am Nick George, President of the Midwest Food Processors Association. Thank you for the opportunity to testify on Senate Bill 271, legislation that bans the use of BPA in some products used by children.

The Midwest Food Processors Association represents over 100 food processing facilities in Wisconsin, Illinois, and Minnesota and over 250 related industries, some of which manufacture can and plastic products. On behalf of our membership, I would respectfully encourage members of the Committee to not recommend passage of this legislation. Though SB 271 applies only to sippy cups and baby bottles, we fear it sets a bad precedent by restricting utilization of a product that has been determined to be safe by a number of regulatory bodies from around the world.

More importantly for our members, legislation like SB 271 could result in the introduction of state and federal measures banning BPA in *all* food and beverage containers. BPA is a valuable and necessary product used by some of our members in the manufacturing and maintenance of can and plastic products. A general ban will only create new impediments to the sale of Wisconsin grown and processed foods, endangering jobs and the economic vitality of one of the state's more stable employment sectors.

Even a specific, limited ban, as envisioned by SB 271, could create problems within the food manufacturing and distribution chain. Companies may become reluctant to distribute in Wisconsin any metal packaged food or beverage product containing BPA that could have even a remote potential of being consumed by children under the age of five.

The food, plastic, and can industry recognizes that regardless of scientific review, some consumers will not purchase a product that uses BPA. That is why the industry has been working to find an acceptable alternative. However, there are cases where no viable alternative exists.

For example cans containing high acidic products such as tomatoes and snap beans will not last much longer than one year without the use of BPA enamel coating the insides. Should our members be unable to rely on the acknowledged safety of BPA, they may be forced to utilize a replacement that could create new hazards beyond those alleged to be associated to BPA.

Wisconsin is home to a diverse and strong food processing industry. Food safety is the industry's number one goal. We fear that if passed, SB 271 could have a detrimental impact on an industry that

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uses metals and plastics to ensure a safe, healthy food supply is available to infants, children, and adults throughout Wisconsin and the world.

Thank you again for the opportunity to address our concerns and I would be happy to answer any questions the Committee may have at this time.







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TO: Senator Robert Wirth, Chairperson and Members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

FROM: Gina Dennik-Champion, RN, MSN, MSHA  
WNA Executive Director

DATE: November 10, 2009

RE: Support for SB 271 - prohibiting the manufacture and sale at wholesale of certain baby bottles and cups for children that contain bisphenol A, creating labeling requirements, making an appropriation, and providing penalties.

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Good morning Senator Wirth and members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection. Thank you for allowing the Wisconsin Nurses Association (WNA) to submit testimony on SB 271. WNA serves as the voice for professional registered nurses in Wisconsin. Thank you for conducting this public hearing on SB 271 – which will prohibit the manufacture and sale at wholesale of certain baby bottles and cups for children that contain bisphenol A. One of WNA’s public policy agenda items is to collectively and collaboratively advocate for comprehensive quality health care services for all people. Our advocacy supports provisions that maintain health and sustain a life of quality. WNA supports public health efforts that promote health and prevent disease. WNA’s advocacy and involvement in environmental health policy has at its roots in our Code of Ethics for Nurses of which the primary dictum is *First, do no harm*. In this increasingly complex environment in which health care is delivered today, registered nurses find themselves as the premier advocates for promoting safe environmental health policies.

Bisphenol A (BPA) is a chemical produced in large quantities for use primarily in the production of polycarbonate plastics and epoxy resins. Polycarbonate plastics have many applications including use in some food and drink packaging, e.g., water and infant bottles, compact discs, impact-resistant safety equipment, and medical devices. Epoxy resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes. Some dental sealants and composites may also contribute to BPA exposure. Bisphenol A can leach into food from the protective internal epoxy resin coatings of canned foods and from consumer products such as polycarbonate tableware, food storage containers, water bottles, and baby bottles. The degree to which BPA leaches from polycarbonate bottles into liquid may depend more on the temperature of the liquid or bottle, than the age of the container. BPA can also be found in breast milk.

WNA is concerned about the leaching capabilities of BPA because the increase in human exposure to this toxic chemical is now widespread. The 2003-2004 National Health and Nutrition Examination Survey (NHANES III) conducted by the Centers for Disease Control and Prevention (CDC) found detectable levels of BPA in 93% of 2517 urine samples from people six years and older. The CDC NHANES data are considered representative of exposures in the United States. Another reason for concern, especially for informed parents and nurses caring for infants and children, is the result of some animal studies reporting harmful effects in fetuses and newborns exposed to BPA. Some animal studies suggest that infants and children may be the most vulnerable to the effects of BPA. According to the National Institute of Environmental Health Sciences (NIEHS), which is funded from the National Institutes of Health, animal studies link BPA with infertility, weight gain, behavioral changes, early onset puberty, prostate and breast cancer and diabetes. Based on the research and results of biomonitoring activities, NIEHS recommends that parents can make the decision to reduce exposures of their infants and children and patients to BPA. For the caregivers of infants and children, i.e. nurses working on hospital neonatal and pediatric units, outpatient pediatric surgical and primary care settings; it is not as easy to make the decision to reduce exposures of their very young patients, it takes hospital policy. (NIEHS) recommends reducing infant and child exposure to BPA by: Ceasing to microwave polycarbonate plastic food containers. Polycarbonate is strong and durable, but over time it may break down from over use at high temperatures; Avoiding the use of polycarbonate containers that contain BPA these are usually marked with a #7 on the bottom of the container; when possible, opt for glass, porcelain or stainless steel containers, particularly for hot food or liquids; and use baby bottles that are BPA free.

SB 271 implements the recommendations of NIEHS by prohibiting the manufacturing and sale at wholesale of baby bottles and cups used for infants and children containing BPA. WNA supports SB 271 because it gets BPA products off the shelf and out of those infant and pediatric care delivery settings therefore maximizing minimal exposure.

It is for these important reasons that WNA requests the members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection support SB 271.





WISCONSIN'S BUSINESS VOICE SINCE 1911

**TO:** Members, Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

**FROM:** Scott Manley, Environmental Policy Director

**DATE:** November 10, 2009

**RE:** Senate Bill 271 – Bisphenol A Regulation

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Wisconsin Manufacturers & Commerce (WMC) has serious concerns with the regulation proposed in Senate Bill 271, which would prohibit the manufacture and sale of certain drinking containers that have bisphenol A (BPA). For the reasons cited below, we respectfully urge the Committee to consider postponing further legislative action on this proposal.

WMC is the state's largest business trade association, with nearly 4,000 members in the manufacturing, health care, retail, energy, banking, insurance and other service sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business, and toward that goal, we support consistent, cost-effective and market-driven regulatory approaches that recognize a balance between environmental protection and the competitiveness of Wisconsin's jobs and economy.

We believe regulations that prohibit consumer goods should be based upon sound science and peer-reviewed research, and must respond to a compelling need to protect public health. We also believe that prohibitions on consumer products are more appropriately addressed at the federal level of government to ensure consistent regulation, consistent enforcement and fair treatment among the fifty states.

Senate Bill 271 proposes to ban the manufacture and sale of drinking containers with BPA that are intended for children who are five years of age or younger. Although the authors of this legislation have put forth a very well-intended proposal, we do not believe that current scientific research supports the need for this regulation.

The health effects of exposure to BPA at levels associated with food and beverage containers has been studied extensively within the United States and abroad. These studies have consistently found that exposure to BPA at the minimal levels associated with beverage containers and other consumer products do not pose a health risk. Examples of these studies include the following:

- **U.S. Food & Drug Administration (FDA):** In 2008, the FDA released a draft assessment of BPA in food-contact products that concluded *“an adequate margin of safety exists for BPA at current levels of exposure from food contact uses, for infants and adults.”* The FDA continues to gather data with respect to this assessment, but specifically noted *“consumers should know that, based on all available evidence, the present consensus among regulatory agencies in the United States, Canada, Europe, and Japan is that current levels of exposure to BPA through food packaging do not pose an immediate risk to the general population, including infants and babies.”*
- **U.S. National Toxicology Program (NTP):** A final report issued by the NTP in September of 2008 on the potential for BPA to affect human reproduction or development found no direct evidence for health effects in people and confirmed that human exposure to bisphenol A is very low.





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November 10, 2009

TO: Senate Committee on Small Business, Emergency Preparedness,  
Technical Colleges and Consumer Protection

FROM: Lisa Lamkins, AARP Wisconsin Advocacy Director

RE: Support for SB 271 BPA Free Kids Act

AARP Wisconsin supports SB 271, the BPA Free Kids Act.

SB 271 would prohibit the manufacture and sale at wholesale of certain baby bottles and cups for children that contain bisphenol A (BPA), as well as create labeling requirements and provide for penalties.

AARP Wisconsin cares about this issue because we have over 46,000 young children in this state who are living in households headed by grandparents. As primary caregivers, these grandparents care deeply about the health and well-being of their grandchildren. Grandparents raising grandchildren already face many challenges and they shouldn't have to worry about hazardous and unsafe products.

There is a growing consensus within the scientific community that current levels of exposure to BPA are causing a wide range of harm. Studies link it to cancer, early onset diabetes, obesity and hyperactivity.

We are most concerned about exposure to BPA during early life because BPA causes permanent adverse effects during critical periods of development.

Although there are safer BPA-free alternatives available, too many children are still exposed to the harmful chemical via baby bottles and sippy cups that are made with BPA. The only appropriate response is to protect the long-term health of infants and young children by banning the manufacture and sale of these dangerous products in Wisconsin.

AARP Wisconsin joins in support with Wisconsin's leading health, consumer, and children's advocacy groups in support of SB 271. We urge Committee members and the full legislature to do the same.

Friday, November 06, 2009

Written Testimony of Dr. Barry Timms for the Consumer Protection Committee Public Hearing in support of:

Senate Bill 271; LRB-1837, the BPA Free Kids Act.

Barry G. Timms, Ph.D.,  
Professor, Division of Basic Biomedical Sciences,  
Sanford School of Medicine, University of South Dakota,  
414 East Clark St., Vermillion, SD 57069  
Tel/Fax: 605.677.5144  
[btimms@usd.edu](mailto:btimms@usd.edu)

As a member of an ad hoc expert review panel, I was involved in the peer review of the Draft NTP Brief on Bisphenol A (Federal Register, Vol 73, April 15, 2008).

This review was part of a multistep process to assess the potential for chemicals to adversely affect human reproduction and development. The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) conducted a scientifically based assessment and prepared the draft NTP brief on bisphenol A, a high production volume chemical used primarily in the manufacture of polycarbonate plastics and epoxy resins. These compounds have many applications, including food and drink packaging, compact discs and medical devices, while epoxy resins are used as lacquers to coat metal products such as food cans, bottle tops and water supply pipes. Animal studies have linked the chemical bisphenol A, an endocrine disruptor, to cancer, early-onset puberty, obesity and type-2 diabetes, at doses within the range of human exposure.

NTP invited written public comments on the draft brief and/or oral comments at the review meeting. The brief was made available on the CERHR web site (<http://cerhr.niehs.nih.gov/chemicals/bisphenol/bisphenol.html> )

**Based upon the reviews, the NTP concurred with the conclusion from the CERHR that there is some concern for effects on the brain, behavior, and prostate gland in fetuses, infants, and children at current human exposures to bisphenol A.**

#### **HISTORICAL ASPECTS OF BISPHENOL A:**

- Bisphenol A (BPA) was first synthesized over a hundred years ago in Russia (1891).
- In 1936, BPA was shown to have estrogenic activity, but diethylstilbestrol (DES) was found to be more potent and was subsequently used to prevent miscarriages.
- Chemists in the US and in Germany discovered that polycarbonate plastic could be synthesized from BPA in 1953.

- The only way humans blood levels are as high as they are is if the presumed FDA/EPA safe daily exposure dose is already being exceeded.
- Studies of molecular mechanisms of BPA action provide the basis for effects at very low dose in both animals and human cells, with some effects occurring at extremely low doses, even below 1 part per trillion.
- At the mechanistic level, there is no reason to think that effects in animals would not also occur in humans, since similar very low dose effects occur in both human and animal cells.
- A central concern was the life stage during which exposure to BPA occurs, with particular concern for exposure of fetuses and newborn babies. The reasons for this concern are that fetuses and newborn babies have immature liver enzyme systems and cannot metabolize BPA or other drugs and chemicals as rapidly as an adult.
- A phenomenon called epigenetic programming occurs during very brief periods in development when organs are forming – and once abnormal programming of genes occurs in an organ, the organ will never function properly again, and diseases often occur in these organs much later in life.
- There was consensus that studies that only focus on adults (which is common for the great majority of toxicological studies on most chemicals) cannot be used to predict effects that will be caused when exposure occurs during development.

There is now a consensus within the scientific community that at current levels of exposure to BPA, due to the use of products directed at infants, there is concern that BPA is causing a wide range of harm. Specifically, three government science advisory panels have recently issued reports: these include the US National Toxicology Program, the science advisory agency to the US FDA on issues of health effects of chemicals, a panel of 38 internationally recognized scientists invited to a NIH sponsored conference on BPA, as well as the Canadian Ministry of Health. This concern is based on evidence from many published studies with experimental animals that report adverse effects,

100% the studies of the over 200 experimental animal studies that report harm due to exposure to low doses of BPA were published by academic and government scientists with no connection to chemical corporations.

100% of studies funded by chemical corporations conclude that low doses of BPA are “safe”.  
 [References and abstracts for all of these studies are online at:  
<http://rcp.missouri.edu/endocrinedisruptors/vomsaal/vomsaal.html>].

### **Why focus on protecting infants?**

We are most concerned about exposure to BPA during early life because BPA causes permanent adverse effects due to exposure at very low levels occurs during what are called “critical periods” in development, which includes fetal life through the first 2 years after birth.



I urge the legislature to pass this legislation, because there are alternatives to BPA already on the market for all products directed at babies in the USA.

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WISCONSIN PUBLIC HEALTH ASSOCIATION



WISCONSIN ASSOCIATION OF LOCAL  
HEALTH DEPARTMENTS & BOARDS

**TO:** Chairman Wirch and members of the Senate Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection Committee

**FROM:** Eric Ostermann, WPHA & WALHDAB Executive Director

**DATE:** November 10, 2009

**RE:** Please support Senate Bill 271 – *The BPA Free Kids Act*

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The Wisconsin Public Health Association and the Wisconsin Association of Local Health Departments and Boards would respectfully request your **support for Senate Bill 271**, the BPA Free Kids Act.

As you know, SB 271 would prohibit the manufacture or wholesale sale of baby bottles and child drinking cups that contain Bisphenol-A, better known as BPA. The legislation also includes the following consumer protection provisions to help safeguard the public health of Wisconsin: 1.) It would require children's bottles and cups sold in this state to be labeled as BPA-free; and 2.) It would provide strong, but fair penalties for those who violate the provisions of the bill.

While there has been debate over the actual health risks associated with BPA – a chemical used in many polycarbonate plastics and epoxy resins – WALHDAB and WPHA believes there is adequate evidence to view the chemical as a probable health risk to the children of Wisconsin. For example, according to a report issued by the National Toxicology Program under the National Institutes of Health, "there is 'some concern' for effects on development of the prostate gland and brain and for behavioral effects in fetuses, infants and children."

Many baby bottle manufacturers and retailers are voluntarily moving away from the use of BPA in their products. However, the state of Wisconsin should be proactive on this issue and pass SB 271 immediately to prohibit the use of BPA in child drinking cups and bottles. The children of Wisconsin deserve sure-fire protection from what several scientific studies have found to be a toxic chemical.

Just as your constituents expect access to clean drinking water, a safe food supply and clean air, they also expect reasonable consumer protection laws to help keep their families safe.

Both WPHA and WALHDAB believe Senate Bill 271 is necessary public health policy and would urge you to support this important legislation.

*Together, WPHA and WALHDAB represent over 1,100 members statewide, from state and local public health officials to public health professionals in academia and the private sector. We are dedicated to promoting and protecting public health in Wisconsin, which is vital to a healthy population, lower health care costs and a thriving economy.*



## **Wisconsin Should Ban Bisphenol A in Baby Bottles and Sippy Cups**

Testimony of WISPIRG State Director Bruce Speight  
November 10, 2009

Good afternoon. My name is Bruce Speight and I am the State Director of the Wisconsin Public Interest Research Group. WISPIRG is a statewide non-profit, non-partisan consumer advocacy organization, representing thousands of members across the state.

I am here today in support of SB271, the BPA Free Kids Act, and we would like to thank the bill sponsors, Senator Julie Lassa and Representative Kelda Helen Roys, for their leadership on this issue.

Toxic chemicals have no place being in children's products. Bisphenol-A (BPA), an industrial chemical found commonly in baby bottles and sippy cups, leaches from these products and puts our children's development at risk.

The hazards of Bisphenol A are well documented and pose a special danger to children. More than 200 scientific studies have linked very low doses of bisphenol-A to cancers, impaired immune function, early onset of puberty, obesity, diabetes, and hyperactivity, among other problems. Our children are receiving repeated low doses of this endocrine disrupting chemical at a very vulnerable age along with the milk, formula and juice in their baby bottles and sippy cups.

Despite numerous independent, peer-reviewed studies that have linked BPA to serious health effects, the plastics and chemical industry have worked hard to influence government studies and reports and to halt government action. A Milwaukee Journal Sentinel investigation has found that the plastics industry, the chemical industry and others with a financial stake in BPA have been heavily involved in writing FDA reports that claim BPA is safe, and downplaying concerns about the chemical.

Powerful special interests such as the chemical and plastics industries should not be drafting government reports about their own products and undermining efforts to reduce the exposure of our children to toxic chemicals.

As a result of industry meddling, the FDA has failed to act to protect consumers. In the absence of federal action, states, manufacturers and retailers are leading the way in taking action on bisphenol A. Companies such as Nalgene, Playtex, and Eden foods have all started using BPA-free alternatives. Wal-Mart and Toys "R" Us have pledged to stop selling baby bottles containing BPA. There are alternatives to bisphenol A and the industry is using them; at the same time, bottles and cups containing BPA are still prevalent on the market.

As such, government action is necessary, and governments have taken action. The Canadian Government declared Bisphenol A "toxic" under Canadian Law, triggering a ban on baby bottles with that chemical. And this year, both Connecticut and Minnesota have passed legislation banning BPA in children's products. Wisconsin should take action to protect kids from BPA too.

Parents should not have to be chemists to know what products are safe for their kids. We urge you to take action to ban Bisphenol A in baby bottles and sippy cups and support SB271.

Thank you.





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**Testimony of Jennifer Giegerich**  
**Capitol Liaison, Wisconsin League of Conservation Voters**  
**In support of Banning BPA in Children's Bottles and Cups (SB 271)**  
**November 10, 2009**

Good Morning. I am Jennifer Giegerich, Capitol Liaison for the Wisconsin League of Conservation Voters. I want to thank Chairman Wirth and members of the Committee for this opportunity to testify before you today about protecting our children from toxins in baby products.

We applaud Senator Lassa and Rep. Roys for introducing this legislation.

Conservationists have long fought to protect our rivers and lakes, our air, and our unique Wisconsin landscapes from pollution. When we see a pipe discharging pollution into a local river, or when the air becomes hazy from soot, we know there is an impact on our public health. More and more, we are learning that there are toxins in some of the products in our homes and businesses where the threat may be less obvious to us but just as real.

In general, we know that because children are smaller and still developing, they are especially susceptible to the impact of toxins on their health. We should be doing everything we reasonably can to limit their overall exposure to toxins.

But when a toxin is known to be in products especially marketed to children, it seems like it should be a no-brainer that we should eliminate that threat altogether. Bisphenol-A (BPA) is a toxic chemical commonly found in children's bottle and sippy cups. It is suspected to cause cancer, heart disease, neurological defects, diabetes, hyperactivity and sex hormone problems in fetuses and young children.

Given what we know about BPA, Wisconsin should protect children's health by banning the manufacture and sale of children's bottles and cups containing BPA.

SB 271 is a very common sense bill that would protect our children. Wisconsin should join a growing number of states that are eliminating BPA from products used by children. We ask that you support this important public health bill.

Thank you for the opportunity to address you today.

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10 November 2000

2009?

SB 271?

Good morning. My name is Dr. Warren Porter. I am a Professor of Zoology and a Professor of Environmental Toxicology at the University of Wisconsin, Madison. I am also an Invited Affiliate Faculty Member in Engineering Physics on the UW Madison campus. I have been publishing research in the area of low-level environmental contaminants in their subtle biological effects on living systems for 27 years. I lecture on environmental toxicology subjects in multiple courses across the colleges at University of Wisconsin, Madison each year.

My purpose in coming is to provide data from the open scientific literature on what we know about the subtle biological effects of Bisphenol A as it relates to a bill that has recently been introduced proposing a ban on Bisphenol A.

In 2003 an important paper appeared in Environmental Health Perspectives, the world's premier journal regarding environmental toxicology issues. This paper by Wade Welshons, who was the first author and colleagues including Dr. Fred vom Saal, one of the world's preeminent reproductive endocrinologists. This paper is Exhibit 1. On page 1002 Table 2 is a summary of their experimental data and a comparison with EPA projections of the biological effects of bisphenol a very low doses. *What they showed was that the EPA method of assessing biological impacts at low concentrations of chemicals was in error and underestimates the biological effects by up to 10,000 times at low doses.*

In 2005 two key papers appeared in the scientific literature. The first of these, labeled "Exhibit 2" on page 10607, figure 3, shows that the DNA methylation patterns of identical twins as they age change from being nearly identical at the age of three to appear to be two entirely unrelated individuals at age 50. The explanation for this is that environmental variables are changing genetic patterns of methylation, which controls genetic expression commonly referred to as epigenetic changes. *It revealed that environmental differences are capable of changing the way our genes function.*

Also in 2005 a second paper appeared in Science magazine, one of the world's premier scientific journals. This paper is labeled Exhibit 3. What was reported here was that a common fungicide used on grapes for making wine was capable of methylating DNA (altering genetic expression) but even more importantly, *it made these methylation pattern changes in genetic expression heritable through at least four generations of rats that were exposed in utero to this pesticide.*

The possibility that modifications in the methylation patterns of DNA could become heritable is a very serious issue. In human terms, if something like this were happening, we would be looking at at least 100 year hit on our genome.

In 2007 a paper appeared in the proceedings of the National Academy of Sciences indicating that Bisphenol A was capable of altering DNA methylation patterns. Although the title indicates that maternal nutrient supplementation can counteract this effect, the doses required to do this are extremely high and well beyond normal therapeutic doses administered to pregnant women. This

evidence that Bisphenol A is capable of epigenetic patterning in early stem cell development of a fetus is highly significant. Most women would not be aware of such potential.

It is important to note that Bisphenol A "looks like" estrogen in the body, which means that it may be associated with increases in breast cancer and decreases in sperm counts with *in utero* exposure of male fetuses, which tends to feminize them. I have presented only a small segment of the scientific literature on this chemical and allied xenoestrogens that can adversely affect health and development in animals. In my judgment, there is ample evidence to suggest there is great wisdom in passing this proposed bill.

I certify that I have no conflicts of interest in presenting this information and that I reserve the right to alter my opinion if additional evidence should be forthcoming that refutes these eminent scientists publishing in peer reviewed world-class journals.



**Tierney, Michael**

**From:** Matthias, Mary  
**Sent:** Tuesday, November 10, 2009 4:00 PM  
**To:** Tierney, Michael  
**Cc:** Shannon, Pam  
**Subject:** MN BPA law

SB 271?

Mike-

Senator Wirsch asked what penalties the Minnesota BPA law imposed for violations.

Minnesota law, which takes effect on January 1, 2010, prohibits the wholesale and retail sale of any empty bottle or cup that contains BPA that is designed or intended for use by a child under three years of age.

Any person who violates the law is subject to imprisonment for not more than 90 days, or a fine of not more than \$1000, or both.

Let us know if you have any further questions!

*Mary Matthias*

Senior Staff Attorney

Wisconsin Legislative Council Staff

Ph.(608)266-0932;Fax (608)266-3830



**Tierney, Michael**

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**From:** McGuire, Paula  
**Sent:** Tuesday, November 17, 2009 9:43 AM  
**To:** Tierney, Michael  
**Subject:** FW: BPA Legislation - MN Penalties

Please share with Bob

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**From:** Scott Manley [mailto:[smanley@wmc.org](mailto:smanley@wmc.org)]  
**Sent:** Tuesday, November 17, 2009 9:09 AM  
**To:** Sen.Wirch; Sen.Plale; Sen.Holperin; Sen.Hopper; Sen.Lazich  
**Subject:** BPA Legislation - MN Penalties

Dear Members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection,

During the hearing on Senate Bill 271 last week, Chairman Wirch asked a question about the nature of the fines imposed under the Minnesota BPA law. The information below is a follow-up to Senator Wirch's question, based upon information received from Minnesota.

The Minnesota regulations related to the manufacture and sale of bottles and cups intended for children aged 3 or younger carry a fine of up to \$1,000. This penalty is significantly less than the state forfeiture of up to \$10,000 and the fine of up to \$5,000 (plus up to one year in county jail) proposed in Senate Bill 271. It is also worth noting that the Minnesota statute does not specify that each individual cup or bottle represents a separate violation, as Senate Bill 271 does.

Finally, because there are no labeling regulations in the Minnesota law, there is no fine with which to compare to those proposed in Senate Bill 271.

Thank you for the opportunity to provide you with this additional information as you consider Senate Bill 271. Please feel free to call me at (608) 258-3400 if you have any questions, or if I can provide you with further information.

**Scott Manley**  
Environmental Policy Director  
Wisconsin Manufacturers & Commerce  
501 East Washington Avenue  
Madison, WI 53703  
(608) 258-3400  
[smanley@wmc.org](mailto:smanley@wmc.org)





Date: January 15, 2010  
To: Members of the Senate Small Business, Emergency Preparedness,  
Technical Colleges, and Consumer Protection Committee  
Fr: Scott Stenger for the Alliance of Wisconsin Retailers  
Re: Opposition to SB271

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The Alliance of Wisconsin Retailers is opposed to SB271 and we would urge you to make changes to the bill to be consistent with other states which have passed similar legislation.

SB271 defines “child’s container” as a baby bottle or spill-proof cup primarily intended by the manufacturer for use by a child *5 years of age or younger*. Other states and municipalities that have passed similar laws have made the age limit 3 years of age or younger. As retailers who do business across the nation, it becomes difficult when states pass different standards for popular products that we sell. We would encourage members to make SB271 consistent with other states’ standards and change the age to 3 years of age or younger.

We are also opposed to the fine structure for retailers in the bill. In the retail chain, it is the manufacturer’s responsibility for labeling items as BPA-free. Retailers purchase these products from manufacturers and wholesalers with the understanding that the products are correctly and truthfully labeled. Under this bill, if the sippy cups or bottles are incorrectly labeled, **the retailer** is liable to pay fines between \$50 and \$200 for each product on the shelf. A retailer could face a minimum fine of \$50,000 if they have 1000 sippy cups on their shelves, even though the retailer purchased cups that they believed complied with the law.

In addition, a person who violates this section may be fined not more than \$5,000, imprisoned for not more than one year in the county jail, or both. Retailers may also be required to pay for a costly recall of the product under this bill. This is a rather extreme penalty for a retailer who was unaware that a product contained BPA and we strongly urge you to fix this provision of the bill.





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SB 271?

January 15, 2010

The BPA Issue in Other Jurisdictions:  
The Children Under Age 3 Provision

As of January 13, 2010, six jurisdictions in the United States have enacted BPA bans:

- Three Counties.
  - Suffolk County, N.Y. – Res. No. 1270-2009.
    - Applies to children under the age of three (3).
  - Albany County, N.Y. – Local Law No. “C” for 2009
    - Applies to children under the age of three (3).
  - Schenectady County, N.Y. – Local Law No. 02-2009
    - Applies to children under the age of three (3).
- One City.
  - Chicago IL – Chapter 7-28-637 Municipal Code of Chicago
    - Applies to a child under the age of three (3).
- Two States.
  - **Minnesota – SF 247**
    - **Applies to a child under three years of age.**
  - Connecticut – Public Act No. 09-103 (HB 6572)
    - It has two components:
      - Applies to infant formula or baby food containers intended for children two (2) years of age and younger.
      - Applies to baby bottles, spill-proof cups and other multiple use containers.. No age is specified.

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Agenda for the exec on 1-20-10

Call to order –

I would like to call the executive session of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection to order.

The Clerk will call the roll.

The bill on today's agenda is SB 271 related to BPA.

We have a substitute amendment that has been introduced by the author of the bill.

In addition, we have a simple amendment to the substitute to change the age in the bill from 5 to 3 years.

I would ask the Legislative Council staff to briefly explain the amendments and respond to questions members may have.

I want to thank the author of the bill, Senator Lassa, for working with members on these amendments.

Is there a motion to introduce and adopt LRB amendment 1324 to Senate Substitute Amendment 1?

The clerk will take the roll.

Is there a motion to adopt Senate Substitute Amendment 1 as amended?

The clerk will take the roll.

Is there a motion to recommend SB 271 for passage as amended?

The clerk will take the roll.

The meeting is adjourned.

Date?

- **European Food Safety Authority (EFSA)**: An October 2008 update to a report released the previous year reaffirmed the safety of common consumer products such as baby bottles, water bottles and food containers. Overall, the EFSA state that the previously established safe intake level *“provides a sufficient margin of safety for the protection of the consumer, including fetuses and newborns.”*
- **European Union (EU)**: In June of 2008, the European Commission published a comprehensive update of its risk assessment on bisphenol A, which took into account the latest scientific studies available. The assessment, undertaken over a 10-year period, confirmed that products made from polycarbonate plastic and epoxy resins are safe for consumers and the environment in current applications.

Many other comprehensive risk assessments in countries like Germany, France, Japan and New Zealand have resulted in similar findings which support the safety of BPA in consumer products. Based upon this extensive research, we do not believe there is a scientific justification for the product bans proposed in Senate Bill 271. As such, we respectfully urge the Committee to not move the bill forward at this time.

If the Committee decides to proceed with this legislation, WMC asks that you consider amending the definition of “child’s container” in the bill to apply the regulation to bottles and cups intended to be used by children three years of age or younger, rather than children aged five or younger. This change would align the regulation with legislation adopted in Minnesota and the City of Chicago, and would be consistent with pending legislation in California and New York. Again, while we believe this type of regulation is more appropriately enacted at the federal level of government, any state-by-state regulations should strive for uniformity.

Finally, we would ask the Committee to consider changing the excessive and overly punitive fines and forfeitures proposed in this bill. A person who violates the manufacturing or sales restriction (including selling an otherwise compliant container that is simply mislabeled) is subject to a state forfeiture of up to \$10,000 per cup or baby bottle. In addition, a violation is also subject to a fine of up to \$5,000 or imprisonment in a county jail up to one year, or both. These fines and forfeitures, which could apply to someone who merely sells a mislabeled baby bottle, are more severe than the fines applied to repeat drunken drivers. We ask that the Committee consider changing these penalties to make them more commensurate with the nature of the violation.

Thank you for your thoughtful consideration of our concerns with respect to Senate Bill 271. Please feel free to contact me if you have any questions, or if I can provide you with additional information, at (608) 258-3400 or smanley@wmc.org.





NORTH AMERICAN METAL PACKAGING ALLIANCE, INC.  
1203 19th Street NW, Suite 300 - Washington, DC 20036-2401 - 866-522-0950 - www.metal-pack.org

**Testimony of Dr. John M. Rost  
on Behalf of the  
North American Metal Packaging Alliance, Inc.  
on  
Senate Bill 271**

Date?

I am Dr. John Rost. I am here today representing the North American Metal Packaging Alliance, Inc. (NAMPA). I am pleased to be able to testify here today.

NAMPA is a not-for-profit corporation committed to protecting health through the safety of metal packaging and metal packaged foods.

Although this legislation may be focused on limited uses for bisphenol A (BPA), the reality is that it calls into question the safety of BPA in any food contact application. This ignores the scientific evaluations conducted by food safety agencies around the world, which all have concluded that BPA is safe for use in food packaging applications. Although the U.S. Food and Drug Administration (FDA) has been the focus of recent attention, it is not the only regulatory agency engaged in a review of BPA and food contact applications. As recently as July 2009, a California government review Panel carefully reviewed all the available data on BPA and concluded that it should NOT be listed as a toxicant under California's Proposition 65 program. Last month, the German Federal Institute for Risk Assessment determined that BPA is safe for normal use in baby bottles and should not be banned. Indeed, all of the major food safety agencies worldwide -- the European Food Safety Authority, Australia, New Zealand, Canada, Japan, and Germany -- are in agreement that there is no significant health risk associated with BPA from food containers. It should be noted that these conclusions are not decades old as some media have reported. In fact, these agencies have reaffirmed their safety conclusions for BPA within the last two years and as recently as two months ago, as noted above.

BPA is an essential component in the epoxy resin coating used in metal packaging. The metal can technology and the epoxy coating are connected directly to protecting the integrity of the food product, because their use enables the high temperature sterilization that eliminates the dangers of food poisoning from microbial contaminants. With recent incidences of food contamination resulting in very tragic consequences, the real risks to food safety must not be taken for granted.

In addition to the benefits of food safety, canned food products play a critical role in feeding those in need; a role that cannot be easily or effectively replaced by fresh, refrigerated, or frozen alternatives. Metal packaged products offer a significantly longer shelf-life for foods, making them the best option to provide nutritious foods at the lowest possible cost to people around the world. Conversely, fresh foods are only viable for a few weeks while refrigerated or frozen foods are too costly to maintain in storage. Metal packaged products offered through local food

The North American Metal Packaging Alliance, Inc. is an organization whose objectives are to support risk-based regulations in North America; influence regulation in other geographies, provide customers with needed information regarding well-founded technologies, and advocate risk-based decision-making in technology decisions.



Testimony of Dr. John M. Rost

Page 2

pantries or Women, Infant and Children (WIC) programs provide invaluable assistance to your citizens in need.

The U.S. FDA is at this time reviewing, again, the safety of BPA in food applications. The scientists at FDA are thoroughly evaluating all the available information on BPA, including those studies that supporters of this bill point to as demonstrating concern, as well as studies such as the recently issued study from the U.S. Environmental Protection Agency (EPA) that indicates there is no risk from BPA at the levels approved for use. The EPA study provides strong new scientific evidence that exposure to BPA at extremely low doses has no effect on female development and fertility in test animals. This study is very important in the overall assessment of BPA because it specifically addresses those areas of "some concern" identified by the National Toxicology Program (NTP). This study settles those concerns, providing comprehensive answers to questions raised by NTP. Well-conducted, peer-reviewed studies such as this are critical to informing the ongoing process of evaluating BPA and should be considered a crucial part of the pending review and assessment of BPA by FDA.

Pursuant to President Obama's directive, FDA is keeping the politics out of science and will be issuing its decision in the near future. NAMPA urges you to assess the merits of any concern with BPA in food contact applications with the judgment issued by FDA. Your citizens should not be subject to a less protective standard of care with respect to food safety than others in the U.S.

Metal packaging of foods continues to be one of the safest and most sustainable ways to deliver food to the world and we encourage the members of this Committee to reject this proposed legislation.

Thank you for this opportunity.