

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3525

Introduced by ATTY. MAGTANGGOL T. GUNIGUNDO I

EXPLANATORY NOTE

This bill seeks to ban on advertisements and promotions of breastmilk substitute, infant formula and complementary food products that are intended for children from 0-6 months old and promote breastfeeding for the first six (6) months of an infant.

This re-filed bill is originally HB 3179 that we filed in the Fourteenth Congress that was consolidated with other bills with same import by the Committees on Health and Trade and Industry.

It is no secret to us that breastmilk is the best food for infants for a variety of reasons, among them its natural content of all the nutrients and antibodies a newborn baby needs for its full growth and development; the purity and cleanliness of breastmilk; and the natural bond that develops between mother and child during breastfeeding.

It is also common knowledge to us that the two leading causes of infant mortality – diarrheal diseases and malnutrition — are often rooted in improper and artificial feeding practices.

Despite this knowledge, however, there is evidence to show that the practice of breastfeeding has been declining in our country.

Hence, there is expediency to ban advertisements and promotions of breastmilk substitute, infant formula and complementary food products that are intended for infants from birth until 6 months old. Corollary to this, the promotion of breastfeeding for the first six months of infants is imperative.

In view of the foregoing, the passage of this bill is earnestly sought.


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AN ACT
TO REGULATE THE TRADE, MARKETING, ADVERTISING AND
PROMOTIONS OF INFANT FORMULA, AND FOR OTHER
PURPOSES

Section 1. *Title.* – This Act shall be known as “*An Act to Regulate the Trade, Marketing, Advertising and Promotions of Infant Formula of 2010*”.

Section 2. *Declaration of State Policy and Principles.* – It is hereby declared the policy of the State to consider breastfeeding as an important and basic act of nature that must be encouraged in the interest of maternal and child health. Women shall be encouraged to exclusively breastfeed infants from birth to six months of age. Moreover, every effort to use locally available foods to complement breastmilk must be encouraged.

Section 3. *Definition of Terms.* – For purposes of this Act, the following definitions are adopted:

- a) “*Advertising*” means the business of conceptualizing, presenting, or making available to the public, through any form of mass media as defined in the Consumer Act, fact, data or information about the attributes, features, quality or availability of consumer products, services or credit.
- b) “*Bottle-feeding*” is the method of feeding an infant using a bottle with artificial nipples, the contents of which can be any type of fluid.
- c) “*Brand or Brand name*” is a distinctive name identifying a product or a particular make of goods.
- d) “*Breastfeeding*” is the method of feeding an infant directly from the human breast.
- e) “*Breastmilk*” refers to the human milk from a mother.

- f) "*Breastmilk Substitute*" means any food intended for infants being marketed or otherwise represented as a partial or total replacement for breastmilk, whether or not suitable for that purpose.
- g) "*Committee*" or "*IAC*" shall refer to the Inter-Agency Committee composed of members specified herein.
- h) "*Container*" refers to the packaging of a product for sale at retail.
- i) "*DOH*" refers to the Department of Health.
- j) "*Expressed Breastmilk*" refers to the human milk which was extracted from the breast by hand or by pump. It can be fed to an infant using the dropper, a nasogastric tube, a cup and spoon, or a bottle.
- k) "*Formula Feeding*" is the feeding of an infant with an infant formula usually by bottle-feeding. It is also called *artificial feeding*.
- l) "*Follow-on formula*" milk or milk-like product formulated industrially in accordance with *Codex Alimentarius* standards represented as suitable for infants from 6 months or older.
- m) "*Infant*" means a person falling within the age bracket of 0-12 months.
- n) "*Infant Formula*" means a breastmilk substitute formulated industrially in accordance with applicable *Codex Alimentarius* standards, to satisfy the normal nutritional requirements of infants up to six months of age, and adapted to their physiological characteristics. Infant formula may also be prepared at home in which case it is described as "*home-prepared*."
- o) "*Marketing*" means product promotion, distribution, selling, advertising, product public relations, and information services.
- p) "*Mother's milk*" refers the breastmilk from the newborn's own mother.
- q) "*Promotion*" means the practice of giving temporary additional value to a product or service to achieve specific marketing objectives.
- r) "*Sales Promotions*" refers to techniques or schemes intended for broad consumer participation which contains promises of gain such as prizes in cash or in kind, as reward for the purchase of a product in a contest, game, tournament and other similar competitions which involve determination of winners and which utilize mass media or other forms of communication to disseminate information of the same.
- s) "*Sample*" means single or small quantities of a product provided without cost.
- t) "*Trademark*" means any distinctive word, name, symbol, emblem, sign or device, or any combination thereof adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold or dealt in by others. Trademark shall also be known as *brand name*.
- u) "*Weaning*" means discontinuing the breastfeeding of an infant with substitution of other feeding habits.

v) "*Wet-nursing*" is the feeding of a newborn from another mother's breast when his/her own mother cannot breast-feed.

Section 4. *Formulation of the Program.* - There shall be a comprehensive program to promote breastfeeding to be formulated by the Department of Health (DOH) and the Department of Social Welfare and Development (DSWD) in coordination with other government agencies and private sector concerned within one (1) year from the effectivity of this Act.

Section 5. *Not indecent exposure.* - No provision of law or ordinance on indecent exposure shall apply to breastfeeding an infant. A mother may breastfeed her baby in any location public or private, where the mother is otherwise authorized to be, even if not done discreetly, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

Section 6. *Breastfeeding and the workplace.* - In consonance with RA 10028 (*Expanded Breastfeeding Act of 2010*), employers of women who continue to breastfeed upon returning to work shall have the following obligations:

- (a) Preserve and respect the right of women to breastfeed babies in the workplace;
- (b) Facilitate the continuation of breastfeeding when women return to work by setting-up lactation facilities and providing educational programs on the benefits of breastfeeding;
- (c) Develop written policies supporting breastfeeding practices for the workplace that addresses issues that include flexibility in work schedules and break-times so nursing mothers may express their breastmilk; and
- (d) Employers shall provide mothers with reasonable unpaid break time to express milk or breastfeed.

Section 7. *Lactation facilities.* - Employers shall provide a clean and private location in the workplace where mothers can express milk or breastfeed in privacy. Such location shall have access to clean, safe water source and sink for washing hands and rinsing out any needed breast-pumping equipment; and access to hygienic storage facilities for the mother's breastmilk.

Section 8. *Information Dissemination to Pregnant Women.* - During the prenatal, prenatal and postnatal consultations and/or confinements of the mothers or pregnant women in a health institutions, it shall be the obligation of the health institution and the health personnel to immediately and continuously teach, train, and support the women on current and updated lactation management and infant care, through participatory strategies such as organization of mother's clubs and breastfeeding support groups and to distribute written information materials on such matters free of charge.

Section 9. *Breastfeeding as part of the curriculum.* - In coordination with the DOH, the Department of Education shall formulate a comprehensive education program on breastfeeding to be incorporated in the elementary and secondary curriculum. The Commission on Higher Education (CHED) shall likewise ensure that breastfeeding and its importance are emphasized in the appropriate subjects in the medical and health related collegiate and post-graduate courses.

Section 10. *Advertising and Promotions. – when prohibited*

For products that are covered under this Act that are intended for infants from 0-6 months, no advertising or promotions directed to mothers and the public shall be allowed.

Section 11. *Advertising and Promotions - when allowed*

Advertising and promotions of follow-on formula, growing-up milk or milk supplements, and other related products, intended for children over six (6) months of age shall be allowed. Permit requirements from the DOH or BFAD shall be required only for the conduct of sales promotion as defined under Section 3 of this Act, in accordance with the procedure provided for under Articles 116 – 124 of the Consumers Act of the Philippines.

A decision or order from the DOH or BFAD denying an application to conduct a sales promotion under *Art. 116* of the Consumers Act of the Philippines shall be appealable as provided for in section 12 of this Act.

False, misleading, or deceptive advertisements of products under this Act, follow-on formula, and growing-up milk or milk supplements are prohibited. These shall be dealt with in accordance with Article 122 of the Consumer Act of the Philippines.

Section 12. *Review of Orders or Decisions.* - Notwithstanding the provisions of the Consumers Act of the Philippines, The Food and Drug Cosmetics Act, or any other provision of law, any party aggrieved by any order or decision of the Secretary of Health relating to this Act may appeal said order or decision to the regular courts on questions of fact and law within 15 days from receipt of decision or order.

Section 13. *Contents of Materials.* – The following texts, pictures, illustrations, or information are deemed to undermine breastfeeding and are hereby prohibited from being used in all advertising and promotional materials :

- a) Pictures of infants, person holding a feeding bottle, feeding bottles, and infant with product shots;
- b) A picture of a woman breastfeeding because this creates an impression that breastmilk substitutes is equivalent to breastfeeding or because it appropriates the image of breastfeeding;
- c) Pictures or graphics of toys and animals being fed, whether by breast or bottle, nor should materials depict animal or toy as mothers; or
- d) The term “humanized”, “maternalized”, “close to mother’s milk” or similar words describing breastmilk substitutes or milk supplements.

Section 14. *Prohibition on Samples and Supplies.* - Manufacturers and distributors of products intended for infants 0-6 months shall not give samples and supplies thereof to any member of the general public, mothers, pregnant women, health workers, hospitals and other health institutions, as well as personnel within the healthcare system, including members of their families except when necessary for the purpose of professional evaluation or research.

Section 15. *Prohibition on Gifts.* - Gifts of products covered under this Act for the purpose of promoting these products given by the manufacturers, distributors, and their representatives, shall not be allowed to be given to any member of the general public, mothers, pregnant women, health workers, hospitals and other health institutions, as well as personnel within the healthcare system, including members of their families.

Section 16. **Prohibition on Point-of-Sale.** - There shall be no point-of-sale advertising, giving of samples or any promotion devices to induce sales directly to the consumers at the retail level, such as special displays, discount coupons, premiums, rebates, special sales, bonus and tie-in sales, loss-leaders, prizes or gifts, for products intended for infants 0-6 months under this Act.

This provision shall not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis, either at the wholesale or retail level, in pharmacies, drugstores, or general merchandise stores, where products covered by this Act, follow-on formula, and growing-up milk or milk supplements, may be purchased without a physician's prescription.

Section 17. **Quality.** - The quality of products is an essential element for the protection of the health of infants and this shall be prioritized. Food products under this Act, follow-on formula, or growing-up milk or milk supplements, shall meet the applicable standards under the Codex Act of Hygienic Practice for Foods for Infants and Children, provided the latter is consistent with the provisions of this Act.

To prevent quality deterioration, adulteration or contamination of products under this Act, follow-on formula, or growing-up milk or milk supplements, distribution outlets including the smallest sari-sari store, shall not be allowed to open cans and boxes for the purpose of retailing them by the cup, bag, or in any other form.

Section 18. **Prohibition on Donations.** - Donations from manufacturers and distributors of products under this Act intended for infants 0-6 months shall not be allowed.

Section 19. **Inter-Agency Committee (IAC).**- The Inter-Agency Committee (IAC) composed of the following members is hereby created:

Secretary of Health	-----	Co-chair
Secretary of Trade & Industry	-----	Co-chair
Secretary of Justice	-----	Member
Secretary of Finance	-----	Member
Secretary of Social Welfare and Development	-----	Member
Secretary of the Department of Science and Technology	-----	Member
Director General (National Economic Development Authority)	-----	Member
President of the Philippine Medical Association	-----	Member
Representative from among manufacturers	-----	Member
or primary distributors of products under this Act intended for infants from 0-6 months, chosen by a majority vote in an election supervised by the DTL.		

The members may designate their duly authorized representative to every meeting of the Committee, who shall at least be Directors from their respective offices, except for the Secretaries of Trade and Health who may only be represented by their authorized Undersecretaries.

The Committee shall be principally responsible for the implementation and enforcement of the provisions of this Act.

For this purpose, the Committee shall have the following powers and functions:

(1) Upon a majority vote of the members of the IAC, to promulgate such rules

and regulations as are necessary or proper for the implementation of this Act and the accomplishment of its purposes and objectives. Upon motion filed by any party or *motu proprio*, the IAC shall review, revise and approve all other rules and regulations issued by the DOH or BFAD, relating to products covered under this Act, follow-on milk, growing-up milk or milk supplements. This applies notwithstanding the provisions of the Consumer Act of the Philippines, the Food and Drugs Cosmetics Act, or any other provision of law;

(2) To call the assistance of government agencies and the private sector to ensure the implementation and enforcement of, and strict compliance with, the provisions of this Act and the rules and regulations promulgated in accordance herewith;

(3) To cause the prosecution of the violators of this Act and other pertinent laws on products covered by this Act;

(4) To exercise such other powers and functions as may be necessary for or incidental to the attainment of the purposes and objectives of this Act; *and*

(5) To prescribe the internal and operational procedure for the exercise of its powers and functions as well as the performance of its duties and responsibilities.

Section 20. *Sanctions.* –

(a) Any person who violates the provisions of this Act or the rules and regulations issued pursuant to this Act shall, upon conviction, be punished by a penalty of two (2) months to one (1) year imprisonment or a fine of not less than Fifty Thousand Pesos (*Php 50,000.00*) nor more than One Hundred Thousand (*Php100,000.00*) or both, with the discretion of the court. Should the offense be committed by a juridical person, the Chairman of the Board of Directors, the president, general manager, or the partners and/ or the persons directly responsible therefore, shall be penalized; and

(b) Any license, permit or authority issued by any government agency to any health worker, distributor, manufacturer, or marketing firm or personnel for the practice of their professional or occupation, or for the pursuit of their business, may, upon recommendation of the Department of Health, be suspended or revoked in the event of repeated violations of this Act, or of the rules and regulations issued pursuant to this Act.

Section 21. *Repealing Clause.* - All laws, orders, issuances, and rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Section 22. *Separability Clause.* - The provisions of this Act are hereby deemed separable. If any provision thereof be declared invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions which shall remain in full force and effect.

Section 23. *Effectivity.* - This Act shall take effect thirty (30) days following its publication in the Official Gazette or in a newspaper of general circulation.

Approved,