FOURTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
Third Regular Session }

OFFICE OF THE SECRETARY

SENATE

10 FEB -2 P5:25

COMMITTEE REPORT NO. 837

RECEIVED BY

Submitted jointly by the Committees on Youth, Women and Family Relations; and Trade and Commerce on FEB 02 2010

Re: House Bill No. 7022

Recommending its approval without amendment.

Sponsors: Senators Madrigal, and Roxas

MR. PRESIDENT:

The Committees on Youth, Women and Family Relations; and Trade and Commerce to which were referred House Bill No. 7022, introduced by Representatives Bondoc, Silverio, Hontiveros, Hataman, Zialcita, Almario, Javier, Gunigundo, Cayetano, Bello, Cua (G), Prieto-Teodoro, Escudero, Jaafar, Soon-Ruiz, Pingoy, Gonzales (N) and De Guzman entitled :

"AN ACT
TO PROTECT, PROMOTE AND SUPPORT PROPER INFANT AND YOUNG CHILD FEEDING BY REGULATING THE MARKETING OF CERTAIN FOODS FOR INFANTS AND YOUNG CHILDREN"

has considered the same and has the honor to report it back to the Senate with the recommendation that it be approved without amendment.

Respectfully submitted:

Chairs:

MAR A. ROXAS
Committee on Trade & Commerce

M. A. MADRIGAL
Committee on Youth, Women & Family Relations

Members:

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JINGGOY EJERCITO ESTRADA
President Pro-Tempore

JUAN MIGUEL F. ZUBIRI
Majority Leader

AQUILINO Q. PIMENTEL, JR.
Minority Leader

JUAN PONCE ENRILE
President
Senate of the Philippines
Pasay City

CONGRESS OF THE PHILIPPINES
FOURTEENTH CONGRESS
Third Regular Session

HB No. 7022

By Representatives Bondoc, Silverio, Hontiveros, Hataman, Zialcita, Almario, Javier, Gunigundo, Cayetano, Bello, Cua (G.), Prieto-Teodoro, Escudero, Jaafar, Soon-Ruiz, Pingoy, Gonzales (N.), and De Guzman, per Committee Report No. 2520

AN ACT TO PROTECT, PROMOTE AND SUPPORT PROPER INFANT AND YOUNG CHILD FEEDING BY REGULATING THE MARKETING OF CERTAIN FOODS FOR INFANTS AND YOUNG CHILDREN

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

GENERAL PROVISIONS

SECTION 1. *Title.* – This Act shall be known as the "Infant and Young Child Feeding Act of 2009".

SEC. 2. *Objectives.* – This Act shall have the following objectives:

(a) To promote, protect and support breastfeeding as the optimal and unparalleled means of providing safe and adequate nutrition for infants and young children up to two (2) years of age and even beyond. Child malnutrition in the first two (2) years of life are irreversible and affect an individual's intelligence, mental and emotional stability, and physical health;

(b) To promote, protect and support exclusive breastfeeding, as defined herein, as the means of nourishment for the first six (6) months of life;

(c) To promote and support proper and timely complementary feeding, which includes the giving of low-cost yet nutritionally-adequate indigenous food;

(d) To preserve and protect the integrity of the Philippine Healthcare System by regulating the marketing, promotional and sales practices and/or strategies of manufacturers, distributors and marketing personnel;

(e) To properly inform the general public, especially pregnant women, nursing mothers and members of their families, of the hazards of the use and misuse of breastmilk substitutes, including infant formula and other products marketed as infant or baby food, by making readily available adequate, consistent, objective and updated information;

(f) To promote a mother and baby-friendly environment in every healthcare institution, facility, healthcare organization and association, office, school and public place, conducive to the advancement of the breastfeeding culture;

(g) To ensure compliance with pertinent provisions of binding international commitments and covenants entered upon by the Philippines, including specifically, the 2002 Global Strategy for Infant and Young Child Feeding, the International Code on the Marketing of Breastmilk Substitutes and Related Products, and subsequent Resolutions of the World Health Assembly which the Philippines supports;

(h) To widely promote and protect breastfeeding as a simple yet cost-effective means of alleviating poverty and decreasing dependence on imports; and

(i) To encourage the general public to form breastfeeding groups or associations to develop suitable programs and further the growth and empowerment of the country's women and children under an international ethical standard.

SEC. 3. *Statement of Policy.* – It is the policy of the State to promote breastfeeding as the best possible source of food and nutrition for infants and young children, in consonance with its duty to protect the people's right to health under the Constitution and international law.

The State shall regulate the marketing of foods for infants and young children, as well as feeding bottles, teats and pacifiers, as unrestrained marketing practices for these products undermine the ability of Filipino mothers to breastfeed their children thereby compromising each child's right to safe and adequate nutrition and the highest attainable standard of health as provided for in the United Nations' Convention on the Rights of the Child.

In its pursuit of sustainable economic development and the reduction of poverty, the State shall ensure optimal child growth and development for all Filipino children through the promotion of appropriate feeding practices and educating the public on inappropriate feeding practices and their consequences as recommended by international authorities on public health.

SEC. 4. *Aid to Construction.* – All doubts in the implementation and interpretation of the provisions of this Act shall be resolved in favor of and for the promotion and protection of breastfeeding and appropriate infant and young child feeding practices as against the marketing of infant formula, follow-on formula, and other products marketed or otherwise represented as suitable for feeding infants and young children.

SEC. 5. *Definition of Terms.* – For the purposes of this Act, the following definition of terms shall govern:

(a) *Advertise* refers to the making of any representation by any means whatsoever for the primary purpose of promoting the sale or distribution of a Designated product as herein defined, regardless of whether the same is done via written, audio, visual or electronic media or transmission including, but not limited to, the following:

(1) Postal mail, electronic mail, SMS or text messaging, telephone calls and website advertising;

(2) Television, radio, film, video, facsimile, cinematic, theatrical, and other audio-visual presentations, rallies or assemblies, whether as direct advertisements or subliminally as part of the presentation or program;

(3) Signages, billboard displays and notices;

(4) Exhibits featuring pictures, images or actual models;

(5) Promotional activities and events and other gatherings under the guise of educational lectures, seminars and similar activities; and

(6) Newspaper and magazine articles and features, flyers, texts in educational books and teaching materials.

(b) *Complementary food* refers to any food or product, whether manufactured or locally prepared, suitable as a complement to breastmilk, when breastmilk becomes, for any reason, insufficient to satisfy the nutritional requirements of an infant or young child. The use of complementary food as an appropriate component of infant and/or young child nutrition is referred to as "Complementary Feeding".

(c) *Department* refers to the Department of Health.

(d) *DepED* refers to the Department of Education.

(e) *Designated product* refers to:

(1) Infant formula;

(2) Any other product marketed or otherwise represented as suitable for feeding infants up to the age of six (6) months;

(3) Follow-up formula;

(4) Complementary food;

(5) Feeding bottles, teats, pacifiers; and

(6) Such other product as the Department, by proper publication, declares to be a "Designated product" for purposes of this Act.

(f) *Distributor* refers to a person, corporation or any other entity in the public or private

sector engaged in the business, directly or indirectly, of distributing and/or delivering, at the wholesale or retail level, a Designated product. This shall include any corporation or other entity principally engaged in providing marketing services, insofar as it shall act on behalf or in the interest of such distributor.

(g) *DSWD* refers to the Department of Social Welfare and Development.

(h) *Exclusive breastfeeding* refers to the nourishment of infants and young children by means of breastmilk, without adding, diluting, or supplementing the same with water, teas, herbal preparations or other food or liquids.

(i) *FDA* refers to the Food and Drug Administration (FDA) created pursuant to Republic Act No. 9711, formerly known as the Bureau of Food and Drugs (BFAD).

(j) *Follow-up formula or follow-up milk* refers to a milk or milk-like product of animal or vegetable origin formulated industrially in accordance with applicable Codex Alimentarius Standard for Follow-up Formula and marketed or otherwise represented as suitable for feeding infants and young children older than six (6) months of age. It is also known by other descriptive terms such as, but not limited to, "follow-on formula", "growing-up milk", "school-age milk", "milk supplements", etc.

(k) *Gifts* refer to any form of financial, personal or commercial reward, inducement, incentive, including intangible favors provided directly or indirectly by manufacturers, distributors, marketing personnel and their agents or representatives.

(l) *Government* refers to the national government and all local government units, as well as departments, regulatory agencies, instrumentalities and implementing units of the same.

(m) *Healthcare facility* refers to governmental, nongovernmental or private institutions, organizations, hospitals, clinics or other operational venues engaged directly or indirectly in providing healthcare services, including but not limited to those intended to provide care for pregnant women, mothers, infants and young children, as well as nurseries or child care institutions.

(n) *Healthcare system* refers to the aggregation, within the Philippines, of all healthcare facilities, healthcare workers, groups of healthcare professionals in private practice, as well as governmental agencies, instrumentalities and entities whose functions and responsibilities impact on healthcare. For purposes of this Act, the healthcare system shall include pharmacies and other established sales outlets selling or otherwise dealing in Designated products.

(o) *Healthcare worker* refers to a person working, whether formally or informally, on a full-

time or part-time capacity, within a healthcare facility, whether professional or non-professional, including volunteer workers.

(p) *Infant* refers to a person twelve (12) months old or younger.

(q) *Infant formula* refers to a milk or milk-like product of animal or vegetable origin formulated industrially in accordance with applicable Codex Alimentarius Standard for Infant Formula and intended to satisfy, by itself, the nutritional requirements of infants from birth and/or during the first six (6) months and includes products that continue to meet part of an infant's nutritional requirements after the first six (6) months.

(r) *Inter-Agency Committee* (IAC) refers to the Committee set up under Section 28 of this Act.

(s) *IYCF* refers to infant and young child feeding principles and practices, as described under the Global Strategy for Infant and Young Child Feeding jointly developed, recommended and endorsed by the World Health Organization (WHO) and United Nations Children's Fund (UNICEF) to improve, through optimal feeding, the nutritional status, growth and development, health and survival of infants and young children.

(t) *Label* refers to any tag, brand, mark, pictorial or other descriptive matter, including enclosed literature, written, printed, stenciled, marked, embossed or impressed on, or attached to a container of any Designated product.

(u) *Lactation support* refers to the general care directed towards mother and infant during the mother's prenatal, immediate postpartum and postnatal periods. It includes educating and providing information to pregnant women and nursing mothers on the advantages of breastfeeding, the physiology, commencement and maintenance of lactation, proper care of the breasts and nipples, and such other matters that would contribute to successful breastfeeding, emphasizing thereby the hazards of bottle-feeding.

(v) *Manufacturer* refers to a corporation or other entity, whether in the public or private sector, engaged in the business or function (whether directly or through an agent or an entity controlled by or under contract with it) of manufacturing or producing a Designated product. This shall include any corporation or other entity principally engaged in providing marketing services, insofar as it shall act as an agent, or otherwise on behalf or in the interest, of such manufacturer.

(w) *Logo* refers to an emblem, picture or symbol by means of which a company or a product is identified.

(x) *Marketing* refers to the aggregation of all activities and efforts to present a product to the

general public, comprised of elements of promotions, distribution and sales, advertising, public relations, information services, internet promotion and communication and all forms of information dissemination including, but not necessarily limited to, postal mail, electronic mail, SMS or text messaging, communicating via telephone or facsimile, or advertising via website, television, motion picture, theatrical performances, videos, newspapers, magazines, flyers, stage and radio programs, whether live or taped. Any activity deemed a component of marketing herein shall, for purposes of this Act, be deemed as marketing.

(y) *Marketing personnel* refers to any person whose functions involve, directly or indirectly, the marketing of any designated product.

(z) *Milk complement* refers to infant formula, follow-on milk, or other foods given in addition to breastmilk from six (6) months onwards; "Milk Supplement" refers to the same when intended to replace breastmilk.

(aa) *Mother's milk* refers to breastmilk from the newborn's own mother.

(bb) *Non-human milk* refers to breastfeeding substitutes such as infant formula, artificial milk, and any milk other than that sourced from humans, industrially formulated in accordance with applicable Codex Alimentarius standards. It also covers milk prepared at home in which case it is described as "Home-prepared".

(cc) *Nursing mothers* refer to mothers of infants and/or young children, regardless of whether they actually breastfeed such infants and/or young children.

(dd) *Other milk* refers to a milk or milk-like product other than infant formula or follow-on formula that may or may not be marketed or represented as suitable for feeding infants and young children.

(ee) *Prescribed* or *as prescribed* refers to prescribed or as prescribed by rules or written decision made pursuant to this Act.

(ff) *Promotion* refers to the employment of any method of directly or indirectly encouraging a person to purchase or use a designated product.

(gg) *Rooming-in* refers to the practice of placing and maintaining the newborn infant beside his/her mother immediately after delivery up to discharge from the healthcare facility, so as to facilitate mother-infant bonding and to allow prompt initiation of breastfeeding. For such purpose, the infant must share his/her mother's bed.

(hh) *Sample* refers to single units or small quantities of a product provided for free or without cost as a promotional, marketing or sales strategy.

(ii) *Secretary* refers to the Secretary of the Department of Health.

(jj) *Sponsorship* refers to the provision of funds, equipment, materials, awards, or benefits in whatever form, as a form of support for games, sports, activities, charities, dances, cultural events, lectures, conventions, meetings, programs and the like, offered and given by corporations and other entities or their representatives for the purpose, whether or not such is disclosed or manifestly intended, or otherwise having the effect of promoting, directly or indirectly, specified products.

(kk) *WHA* refers to the World Health Assembly.

(ll) *WHO* refers to the World Health Organization.

(mm) *Young child* refers to a person from the age of more than twelve (12) months up to the age of three (3) years.

CHAPTER II

RIGHTS OF BREASTFEEDING WOMEN

SEC. 6. *Breastfeeding Not Indecent Exposure.* – No provision of law or ordinance on indecent exposure shall apply to breastfeeding of 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.

CHAPTER III

INFORMATION AND EDUCATION

SEC. 7. *Responsibility.* – The government, through the Department, shall take measures, including the design, development, and dissemination of information and education materials, to promote, protect, support and monitor appropriate infant and young child feeding (IYCF) practices, in line with UNICEF/WHO international recommendations. It shall be its duty to provide updated, objective and consistent information on IYCF principles and practices to women, families, the general public, and those involved in the fields of infant nutrition and maternal health. It shall educate the public about the consequences and risks that not following such practices may create for infants, young children and mothers as well.

It shall also ensure that information materials produced by all government agencies and private entities and persons are not inconsistent with the provisions of this chapter.

SEC. 8. *Standards.* – Informational or educational materials produced by any person, whether written, audio or visual, which refer to infant and young child feeding shall:

(a) Contain only correct and current information and shall not use any picture or text that

encourage bottle feeding or discourage breastfeeding;

(b) Be written in English and Filipino;

(c) Not give an impression or create a belief that a Designated product is equivalent to, comparable with or superior to breastmilk or to breastfeeding;

(d) Not contain the name or logo of any Designated product nor of any manufacturer or distributor of a Designated product; and Clearly and conspicuously explain each of the following points:

(1) The benefits and superiority of breastfeeding;

(2) The value of exclusive breastfeeding for about six (6) months followed by sustained breastfeeding for two (2) years or beyond;

(3) How to initiate and maintain exclusive and sustained breastfeeding;

(4) Why it is difficult to reverse a decision not to breastfeed;

(5) The importance of introducing complementary foods from the age of about six (6) months;

(6) How and why any introduction of bottle feeding or early introduction of complementary foods negatively affects breastfeeding;

(7) That complementary foods should only be introduced when the infant reaches six (6) months of age and can easily be prepared at home using local ingredients; and

(8) That infant formula is not a sterile product and may contain harmful microorganisms.

SEC. 9. *Information and Education Materials About Infant Formula, Follow-Up Formula or Feeding Bottles.* – If the material referred to in Section 8 includes the topic of feeding infants and young children with infant formula, follow-up formula or any other food or drink by feeding bottle, it must also include the following points:

(a) Instructions for the proper preparation and use of the product including cleaning and sterilization of feeding utensils, and in the case of powdered infant formula and follow-up formula, such instructions should adhere to guidelines formulated by the WHO and the Food and Agriculture Organization of the United Nations;

(b) How to feed infants with a cup;

(c) The health hazards of bottle feeding and improper preparation of the product;

(d) The approximate financial cost of feeding an infant with such a product in the recommended quantities; and

(e) Infant formula is not a sterile product and may contain harmful organisms.

SEC. 10. *Product Information for Health Workers.* – Manufacturers and distributors may give materials about Designated products to health workers if such materials:

(a) Are restricted to scientific and factual matters regarding the technical aspects and methods of use of the product;

(b) Provide references to published studies to support any representation that states or suggests that a relationship exists between the product or constituent thereof and health, growth or development; and

(c) Are otherwise in accordance with this chapter.

SEC. 11. *Submission of Materials to the IAC.* – Any person who produces or distributes any materials referred to in this chapter shall submit copies to and seek the approval of the Inter-Agency Committee created under Section 28 of this Act according to procedures as shall be prescribed.

CHAPTER IV

TRANSPARENCY IN RESEARCH

SEC. 12. *Transparency and Public Disclosure in Cases of Conflict of Interest.* – The government, through the Department, shall ensure that research conducted for public policy purposes, relating to infant and young child feeding should, at all times, be free from any commercial influence or bias; accordingly, the health worker or researcher involved in such must disclose any actual or potential conflict of interest with the company/person funding the research to the Department, or to a responsible committee that it may organize for purposes of this chapter. In any event, such research and its findings shall be subjected to independent peer review.

For purposes of transparency, a disclosure and/or disclaimer of the sponsoring company should be done by the company itself, health worker or researcher involved through verbal declaration during the public presentation of the research and in print upon publication, according to procedures as shall be prescribed.

CHAPTER V

PROHIBITIONS

SEC. 13. *Advertising, Promotion, Marketing, Sales and Sponsorship.* –

(a) No person shall distribute for sale, sell, stock or exhibit for sale any Designated product that:

(1) Is not registered according to rules and regulations of the FDA or is not in accordance with the conditions of its registration; or

(2) Has reached its expiration date; or

(3) Has a container or label which is not in accordance with the requirements contained in this chapter.

(b) No advertising, promotional or marketing materials, sponsorships and/or similar activities for Designated products intended for infants and young children up to two (2) years of age shall be allowed. This includes any of the same which, while not referring directly to designated products, tend to convey subliminal messages or impressions that undermine or compete with breastmilk and breastfeeding, and/or exaggerate the benefits and value of Designated products.

(c) No advertising, promotional or marketing materials, sponsorships and/or activities for milk products primarily intended for pregnant women and nursing mothers shall be allowed. This prohibition seeks to avoid, among others, the common misconception that breastmilk causes allergies in infants and/or young children in cases where such allergies are in fact actually caused by the presence of large protein molecules from non-human milk ingested by the breastfeeding mother.

(d) No allowable promotion, advertising and marketing of Designated products shall in any case undermine or have the effect of undermining breastmilk or breastfeeding as the optimal source of infant and young child nutrition. The total effect of any such promotion should not directly or indirectly suggest that use of the product so promoted would develop better individuals, translates to or is a manifestation of greater love for the infant or young child, or significantly enhances such infant or young child's health and nutrition, intelligence or other abilities, or make any other similar claims.

(e) The following shall, in no event, be included in any advertising, promotional, sponsorship and/or marketing campaign, literature or materials:

(1) Texts, pictures, illustrations or other images, or information which discourage or tend to undermine the benefits or superiority of breastfeeding;

(2) Any message, text or image, whether direct or subtle, which suggests or tends to suggest that non-human milk is required by breastfeeding mothers to produce mother's milk;

(3) Pictures or images of babies, children, mothers (pregnant or otherwise), fathers, siblings, grandparents, other relatives or caregivers (such as *yayas*), when such advertisement pertains to Designated products; and

(4) The terms "humanized", "maternalized", "close to", or "equal to" in conjunction with or with reference to mother's milk, or similar words or phrases, to describe breastmilk substitutes such as non-human milk.

(f) No publication or announcement of health, nutritional or developmental claims or findings

pertaining, whether directly or incidentally, to Designated products shall be allowed except in scientific journals through scientifically proven studies embodied in peer-reviewed papers or professional publications. All health and nutrition claims of whatever tenor for Designated products shall be absolutely prohibited in any allowable advertisement or promotional or marketing activity. For this purpose, any phrase, word or image that connotes or contributes to the notion of increased or more rapid development of emotional, intellectual, physical and other abilities of the infant and young child, and other like impressions, shall be disallowed. Further, false, inaccurate, incomplete or misleading information or claims made by or on behalf of manufacturers, distributors and marketing personnel are prohibited and will be subject to the severest penalty.

(g) All point-of-sale advertising and any other promotional or marketing device intended or tending to induce sales and directed towards consumers at the retail level, such as special displays, discount coupons, premiums, rebates, special sales, bonus, tie-in sales, loss-leaders, raffles, games and contests, prizes or gifts, pertaining directly or indirectly to Designated products intended for zero (0) to twenty-four (24) months, shall be prohibited. However, nothing herein shall restrict efforts to establish and maintain pricing policies and practices intended to make available Designated products at lower prices on a long-term basis.

(h) Importation of any Designated product that has been recalled or withdrawn from any market outside the Philippines due to contamination or for any reason whatsoever, shall be deemed as illegal importation of a prohibited and/or dangerous drug, and the distributor, relevant marketing personnel and importer of the same shall be dealt with accordingly.

(i) No milk product shall carry on its label and/or advertising, the words "This is not a breastmilk substitute" or words to that effect, to remove it from the purview of this Act; only the IAC, not the manufacturer or advertising agency, is authorized to determine whether or not such product is within the purview of this Act.

SEC. 14. *Prohibitions on Marketing Personnel, Manufacturers and Distributors.* – (a) Marketing personnel or any person employed by manufacturers and distributors shall not, as part of their job responsibilities or in any professional capacity, perform educational or other public service functions or duties in relation to pregnant women or nursing mothers or women of reproductive age (WRA) or their families.

(b) Marketing personnel and all persons employed by manufacturers and distributors shall, at all times, and regardless of their designated functions and duties, make only objective, accurate, consistent and updated statements about the pertinent Designated product, maintaining and

upholding at all times and in any event the superiority of mother's milk over any Designated product including, but not limited to, the brand and product which he/she has been employed to sell or promote or market when such marketing and promotion is allowed under this Act.

(c) It shall be prohibited for manufacturers, distributors and marketing personnel to distribute, sell, give, or deliver, or promise to do the same, directly or indirectly, in any manner and at any place, samples and/or units of Designated products or gifts, giveaways, or promotional items of any sort, to any pregnant woman, nursing mother, WRA, members of their respective families, healthcare workers and healthcare facilities.

(d) Manufacturers, distributors and marketing personnel are prohibited from offering, giving, or promising to do the same, in any form whatsoever, travel grants or benefits, subsidies and/or allowances to doctors, healthcare workers and other professionals or employees in healthcare facilities. However, subsidiaries or affiliates of such manufacturers and distributors whose business and operations are in no way connected to Designated products are not prevented from doing so, so long as the brand or company name used does not in any way suggest any connection to the Designated product, and: *Provided,* That the same is not being offered or given in order to indirectly promote or market any Designated product.

(e) No manufacturer, distributor or marketing personnel, nor medical doctors or other professionals hired by any of them, shall be allowed to appear, participate, conduct or be in any manner involved in any activity or event promoting or supporting breastfeeding, or in the production, publication and/or dissemination of literature and other materials on breastfeeding, or in classes or seminars for pregnant women, nursing mothers, or WRA, and members of their families.

(f) A manufacturer or distributor who wishes to contribute to breastfeeding education, awareness and support shall do so through donating funds directly to the Department, the Department's receipt of which shall in any event be on the condition that such donation shall be without any onerous, promotional or marketing implications relating to the use of the company name or other mark identifying a product or range of products in the utilization of the donated funds.

(g) Manufacturers, distributors and marketing personnel are prohibited from employing, requesting the participation of, and using in any manner, healthcare workers, healthcare facilities and the healthcare system in the production, dissemination, distribution and promotion of Designated products.

(h) Manufacturers, distributors and marketing personnel shall be prohibited from offering, delivering or otherwise giving gifts of any kind, regardless of whether the same bear the company name, slogan, logo, or product or brand name, to any member of the general public, hospitals and other healthcare facilities, including their personnel and members of their families. The practice of invoicing product sales, carrying them as accounts receivable, and thereafter taking them off the books as bad debts, shall be deemed as a means employed to circumvent this provision and is absolutely prohibited.

(i) No manufacturer, distributor or marketing personnel shall be allowed to conduct or be involved in any activity or event promoting breastfeeding, in the production and distribution of information and educational materials on breastfeeding, or the holding of or participating as speakers in classes or seminars for women and children's activities, for the purpose of avoiding the use of these venues to market their products, brands or company names.

(j) Manufacturers, distributors and marketing personnel are prohibited from offering, donating, giving, delivering, or promising to do the same, directly or indirectly, samples and supplies of designated products intended for infants and young children zero (0) to twenty-four (24) months of age, to any organization or group of individuals involved in the distribution of goods in disaster, calamity or emergency areas, as this may result in the use of unclean or contaminated water in its use and preparation, and considering further its potential misuse and abuse, and the potential resulting addiction thereto by mothers, infants and young children, all of which undermine breastfeeding and the other purposes of this Act.

(k) In any event, no allowable advertising, promotion, marketing, sponsorship and/or similar activities for complementary food shall:

(1) Take place in a healthcare facility; and

(2) Undermine breastfeeding in any way.

(l) Manufacturer or distributor shall not himself or herself, or by any other person on his or her behalf, unless approved by the Department:

(1) Donate or provide at lower than the published wholesale price where one exists, and in its absence, lower than eighty percent (80%) of the retail price, any quantity of a Designated product to a health worker or a healthcare facility;

(2) Donate to or distribute within a healthcare facility equipment including furniture and appliances, services, or materials such as pens, calendars, posters, notepads, growth charts and toys, which refer to or may promote the use of a Designated product;

(3) Offer or give any gift, contribution or benefit to a health worker or to associations of health workers including, but not limited to, fellowships, research grants or funding for meetings, seminars, continuing education courses or conferences;

(4) Sponsor events, contests, telephone counseling lines or campaigns related to reproductive health, maternal and child health, infant or young child feeding or related topics; or

(5) Include the volume of sales of Designated products when calculating employee remuneration or bonuses, nor set quotas for sales of Designated products.

SEC. 15. *Prohibitions on Healthcare Workers.* – A healthcare worker shall not:

(a) Accept any gift, contribution or benefit, financial or otherwise, of whatever value from a manufacturer or distributor or any person on his or her behalf;

(b) Accept or give samples of Designated products to any person; and

(c) Demonstrate the use of infant formula except to individual mothers or members of their families in very special cases of need, and in such cases, shall give a clear explanation of the risks of the use of infant formula as well as information on appropriate IYCF practices.

SEC. 16. *Prohibitions Related to Labels of Designated Products.* –

(a) A manufacturer or distributor shall not offer for sale or sell a Designated product if the container or label affixed thereto includes a photograph, drawing or other graphic representation other than for illustrating methods of preparation.

(b) A manufacturer or distributor shall not offer for sale or sell a Designated product, other than a feeding bottle, teat or pacifier unless the container or label affixed thereto indicates in a clear, conspicuous and easily readable manner, in English and Filipino, the following particulars:

(1) Instructions for appropriate preparation and use in words and in easily understood graphics;

(2) The age after which the product is recommended in numeric figures and in the case of a complementary food, the recommended age shall not be less than six (6) months;

(3) A warning about the health risks of improper preparation and of introducing the product prior to the recommended age;

(4) The ingredients used;

(5) The composition and nutritional analysis;

(6) The required storage conditions both before and after opening, taking into account climatic conditions;

(7) The batch number, date of manufacture and date before which the product is to be consumed, taking into account climatic and storage conditions;

(8) The name and national address of the manufacturer or distributor; and

(9) Such other particulars as may be prescribed.

(c) All health and nutritional claims for any Designated product are absolutely prohibited in any advertisement, promotion, marketing, sales and sponsorship. A manufacturer or distributor shall not offer for sale or sell a Designated product if the container or label affixed thereto contains any representation that states or suggests that a relationship exists between the product or constituent thereof and health, including the physiological role of a nutrient in the physical, emotional, or intellectual growth and development or normal functions of the body.

SEC. 17. *Prohibitions Related to Labels of Infant Formula and Follow-Up Formula/Non-Human Milk, Milk Complement or Milk Supplement.* – No manufacturer, distributor or marketing personnel shall offer for sale nor sell any infant formula and follow-up formula/non-human milk, milk complement or milk supplement unless the container or its label conforms to all of the following:

(a) Contains the words "IMPORTANT NOTICE" in capital letters and indicated thereunder, the statement "Breastfeeding is best. Breastmilk is the ideal food for the healthy growth and development of infants and young children. It protects against diarrhea and other illnesses" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than two millimeters (2mm) in height, in English and Filipino;

(b) Contains the word "WARNING" and indicated thereunder, the statement "This product may be harmful to your baby's health. Before deciding to supplement or replace breastfeeding with this product, seek the advice of a health professional. It is important for your baby's health that you follow all preparation instructions carefully. If you use a feeding bottle, your baby may refuse to feed from the breast. It is more hygienic to feed from a cup" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than two millimeters (2mm) in height, in English and Filipino;

(c) States in preparation instructions for infant or follow-up formula in powdered form that it is not a sterile product and may be contaminated with microorganisms during the manufacturing process or may become contaminated during preparation;

(d) Includes a feeding chart in the preparation instructions;

(e) Does not use the terms "maternalized", "humanized" or terms similar thereto or any

comparison with breastmilk;

(f) Does not use text that may tend to discourage breastfeeding;

(g) Specifies the source of the protein; and

(h) In the case of follow-up formula, states that the product shall not be used for infants less than six (6) months old.

SEC. 18. *Prohibitions Related to Complementary Food.* – A manufacturer or distributor shall not offer for sale or sell complementary food unless the container or label affixed thereto, in addition to the requirements of Section 17 contains the word "WARNING" and indicated thereunder, the statement "Before deciding to supplement breastfeeding with this product, seek the advice of a health professional. It is important for your baby's health that you follow all preparation instructions carefully" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than two millimeters (2mm) in height, in English and Filipino.

SEC. 19. *Prohibitions Related to Labels of Other Milks.* – A manufacturer or distributor shall not offer for sale or sell any milk, that is not defined as a Designated product, in powder or liquid form, unless the container or label affixed thereto contains the words "NOTICE: This product should not be used to feed infants and young children" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than two millimeters (2mm) in height, in both English and Filipino.

SEC. 20. *Prohibitions Related to Labels of Feeding Bottles and Teats.* – A manufacturer or distributor shall not offer for sale or sell a feeding bottle or teat unless the package or label affixed thereto, in addition to the requirements of Section 11, indicates in a clear, conspicuous and easily readable manner, in English and Filipino, the following particulars:

(a) The words "IMPORTANT NOTICE" in capital letters and indicated thereunder, the statement "Breastfeeding is best. Breastmilk is the ideal food for the healthy growth and development of infants and young children. It protects against diarrhea and other illnesses" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than two millimeters (2mm) in height;

(b) The statement "WARNING: It is important for your baby's health that you follow the cleaning and sterilization instructions very carefully. If you use a feeding bottle, your baby may no longer want to feed from the breast" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than two millimeters (2mm) in height;

(c) Instructions for cleaning and sterilization in words and graphics;

(d) A statement explaining that feeding with a cup is more hygienic than bottle feeding;

(e) A warning that children should not be left to self-feed for long periods of time because extended contact with sweetened liquids, including infant formula, may cause severe tooth decay; and

(f) The name and national address of the manufacturer or the distributor.

SEC. 21. *Prohibitions Related to Labels of Pacifiers.* – A manufacturer or distributor shall not offer for sale or sell a pacifier unless, in addition to the requirements of Section 16(a), it is labeled with the statement "WARNING: Use of a pacifier can interfere with breastfeeding" in characters no less than one-third (1/3) the size of the characters in the product name, and in no case less than one and a half millimeters (1.5mm) in height, in English and Filipino.

CHAPTER VI

QUALITY AND STANDARDS

SEC. 22. *Quality.* – The quality of products is an essential element for the protection of the health of infants and young children and therefore shall be of highly recognized standard.

SEC. 23. *Standards.* – Food products covered by this Act shall, when sold or otherwise distributed, meet applicable standards recommended by the Codex Alimentarius Commission and also the Codex Code of Hygienic Practice for Foods for Infants and Children.

SEC. 24. *Against Adulteration and the Like.* – To prevent quality deterioration, adulteration or contamination of food products within the scope of this Act, distribution outlets shall not be allowed to open cans and boxes for the purpose of retailing them by the cup, bag or in any other form.

CHAPTER VII

HEALTHCARE WORKER RESPONSIBILITIES

SEC. 25. *Healthcare Worker Responsibilities.* – Heads of healthcare facilities and national and local health authorities shall take measures to encourage and protect breastfeeding and to promote this Act. They shall ensure that health workers are familiar with all of the information specified in this Act and give information and advice to health workers regarding their responsibilities under this Act. In this regard, health workers shall:

(a) Encourage, support and protect breastfeeding. They are expected to know the provisions of this Act, particularly the information specified in Chapters III, V and this chapter;

(b) Shall work to eliminate practices that directly or indirectly retard the initiation and continuation of breastfeeding, such as pre-lacteal feeds; and

(c) Shall make in writing a report to the head of his or her workplace, who shall in turn report to the IAC, of any offer he or she receives for a sample or gift or other benefit from a manufacturer or distributor or any other contravention of the provisions of this Act.

CHAPTER VIII

ADMINISTRATION

SEC. 26. *Implementation.* – The Department is principally responsible for the implementation of this Act. The Secretary shall, when necessary, call upon other departments to ensure the implementation and enforcement of this Act.

SEC. 27. *Powers and Functions.* – For the purpose of implementing this Act, the Secretary has the following powers and functions:

(a) To promulgate such rules as are necessary or proper for the implementation of this Act and the accomplishment of its purposes and objectives;

(b) To call for consultations with and request for assistance from government agencies, nongovernment organizations, civil society representatives, concerned international agencies and other interested parties to ensure implementation of this Act, and to monitor and enforce strict compliance thereto and to the rules promulgated hereunder;

(c) Outsource monitoring functions to nongovernment organizations duly accredited by the Department of Health;

(d) Outsource training of internationally recognized lactation experts to man maternity wards of hospitals and other healthcare facilities;

(e) To cause the enforcement of this Act; and

(f) To exercise such other powers and functions that may be necessary for or incidental to the attainment of the purposes and objectives of this Act, including but not limited to:

(1) Advising the President on national policy for the promotion and protection of breastfeeding;

(2) Creating regional committees to carry out the functions of the IAC at the regional level, as may be prescribed;

(3) Advising the President on designing a national strategy for developing communication and public education programs for the promotion of breastfeeding; information and educational materials on the topics of infant and young child feeding; continuing education for health workers on lactation management and the requirements of this Act; curricula for students in the health professions that include lactation management and to ensure widespread distribution of and

publicity concerning this Act, in a method as may be prescribed; and

(4) Reviewing and reporting of violations or other matters concerning this Act and when appropriate, filing the necessary administrative, civil action and/or criminal action.

SEC. 28. *The Inter-Agency Committee (IAC).* – For purposes of Chapters III and V of this Act, an Inter-Agency Committee composed of the following members is hereby created:

(a) Secretary of Health;

(b) Secretary of Trade and Industry;

(c) Secretary of Justice;

(d) Secretary of Social Welfare and Development;

(e) Secretary of Education;

(f) Head of the Food and Drug Administration; and

(g) Representative from one (1) nongovernmental organization, which advocates breastfeeding: *Provided,* That it adheres to the standards of international ethics, does not hold any clearly conflicting interests and does not receive donations or support of any kind from manufacturers, distributors and marketing personnel.

The Secretary of Health shall convene and chair the IAC with the FDA acting as its member/secretariat. The members may designate their duly authorized representative to every meeting of the IAC: *Provided,* That such representative must be familiar with the provisions of this Act and has competence and experience in the field of public health policy-making and/or project implementation. No representative to the IAC shall have direct or indirect material interest in any manufacturer or distributor of any Designated product. SEC. 29. *Powers and Functions of the IAC.* – The IAC shall have the following powers and functions:

(a) To review and examine all advertising, promotion or other marketing materials, whether written, audio or visual, including, but not limited to, those shown in cinemas and theater and those transmitted through mail, email, text messages, telephone calls and websites on covered products which are not included in the absolute advertising ban under Section 13(b) of this Act;

(b) To approve or disapprove, delete objectionable portions from and prohibit the printing, publication, distribution, exhibition and broadcast of, all advertising promotion or other marketing materials, whether written, audio or visual, including, but not limited to, those shown in cinemas and theater and those transmitted through mail, email, text messages, telephone calls and websites on covered products which are not included in the absolute advertising ban under Section 13(b) of this Act;

(c) 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; and

(d) To receive a written complaint lodged by any person relating to a violation of any provision of this Act or its implementing rules and regulations (IRR) and on the basis thereof, immediately order the investigation of the complaint by the BFAD and, within thirty (30) days from receipt of the complaint, recommend actions to be instituted against the offending person or persons.

SEC. 30. *Prior Written Consent and Approval of the IAC.* – No advertising, promotion or other marketing materials whether written, audio, visual, audio-visual, and electronic for covered products intended for children twenty-four (24) months onwards which are marketed as partial or total replacement of breastmilk, including bottle-fed complementary foods and feeding bottles, teats and pacifiers shall be printed, published, distributed, exhibited and broadcasted or in any manner released to the public without the prior written consent and approval of the IAC.

Such written approval must be specific in product and time bound. In no case shall a blanket or general approval be allowed.

SEC. 31. *Authority of the IAC Secretariat (FDA) to Issue Cease and Desist Orders (CDOs).* – The IAC Secretariat (FDA) shall have the authority to determine if any advertising, marketing, promotional, or information and educational material violates this Act and all other pertinent laws and IRR. Immediately upon receipt of the report of violation, the investigating officer shall conduct an *ex parte* examination of the evidence presented. If a *prima facie* case is established, a CDO shall be issued by the FDA, stopping the further release, printing, broadcast, or dissemination of the offending advertising, marketing, promotional, or information and educational material.

Noncompliance with the CDO shall be ground for the imposition of sanctions as stated in Section 37 hereof. The issuance of the CDO shall be without prejudice to the imposition of the appropriate administrative sanction, if so warranted, after due notice and hearing.

CHAPTER IX

ADMINISTRATIVE AND CRIMINAL ACTIONS

SEC. 32. *Role of Food and Drug Administration (FDA).* – The FDA shall investigate and verify reports of violations and shall report its findings to the IAC and to the Department. When appropriate, it shall apply administrative sanctions against the violators; and/or cause the filing of criminal complaints against persons and entities found to have violated, singly or repeatedly, the provisions of this Act or its IRR.

SEC. 33. *Citizen Suits.* – For purposes of enforcing the provisions of this Act or its IRR, any citizen may file an appropriate civil, criminal or administrative action, including one for damages for any harm suffered as a result of a violation of any provision of this Act, in the proper courts against:

(a) Any person who violates or fails to comply with the provisions of this Act or its IRR;

(b) Any person who violates the terms and conditions set forth by the Department or the IAC; and

(c) Any public officer, including any member of or representative to the IAC, who willfully or grossly neglects the performance of an act especially required as a duty by this Act or its IRR; or abuses his/her authority in the performance of his/her duty; or, in any manner, improperly performs his/her duties under this Act or its IRR: *Provided, however,* That no suit can be filed until after thirty (30) days from notice given to the concerned public officer and the alleged violator or violators, and no appropriate action has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimation, and shall, likewise, upon *prima facie* showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days, the court shall make a determination if the complaint filed herein is malicious and baseless and shall accordingly dismiss the action and award attorney's fees and damages, as it may deem appropriate.

SEC. 34. *Independence of Action.* – The filing of an administrative suit against any person or entity under the preceding section does not preclude the right of any other person to file any criminal or civil action. Such criminal and/or civil action shall proceed independently.

SEC. 35. *Suits and Strategic Legal Actions Against Public Participation and the Enforcement of This Act.* – Where a suit is brought against a person who filed an action as provided in Section 33 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days, whether such legal action has been filed to harass, vex, exert undue pressure, or stifle legal resources of the person complaining or of enforcing the provisions of this Act. In case of such determination, the investigating prosecutor or the court shall dismiss the case and award attorney's fees and damages, as it may deem appropriate.

SEC. 36. *Lien Upon Personal and Immovable Properties of Violators.* – Fines and penalties imposed pursuant to this Act shall be liens upon personal and immovable properties of the violator. Such lien shall, in case of insolvency of the respondent violator, enjoy preference subsequent to laborer's wages under Articles 2241 and 2242 of Republic Act No. 386 or the New Civil Code of the Philippines.

SEC. 37. *Liability of Manufacturers/Distributors.* – Manufacturers and distributors of the products covered by this Act shall be directly liable for any violation of the provisions of this Act and its IRR. Should the offense be committed by a juridical person, the chief operating officer, chief executive officer, principal investors, general manager, or the partners and/or the persons directly responsible therefore, shall be made accountable.

Agents/representatives of the manufacturers or distributors of the products covered by this Act, who commit any violation of its provisions or its IRR shall be jointly and solidarily liable with the said manufacturers and distributors.

The separate and/or distinct legal personality of the manufacturer or distributor notwithstanding, the chief operating officer, chief executive officer, and principal investors of the proponent firm shall be jointly and severally liable for any financial liability or award of damages made by the court. The same shall apply to transnational corporations and foreign firms licensed to do business in the Philippines.

CHAPTER X

ADMINISTRATIVE SANCTIONS

SEC. 38. *Administrative Sanctions.* – The following administrative sanctions shall be imposed upon any person, juridical or natural, found to have violated the provisions of this Act and its IRR:

(a) 1st violation – Administrative fine of a minimum of One hundred thousand pesos (P100,000.00) to Two hundred thousand pesos (P200,000.00) depending on the gravity and extent of the violation, including the recall of the offending product;

(b) 2nd violation – Administrative fine of a minimum of Two hundred thousand pesos (P200,000.00) to Three hundred fifty thousand pesos (P350,000.00), depending on the gravity and extent of the violation, and in addition thereto, the recall of the offending product, and suspension of the Certificate of Product Registration (CPR);

(c) 3rd violation – Administrative fine of a minimum of Three hundred fifty thousand pesos (P350,000.00) to One million pesos (P1,000,000.00), depending on the gravity and extent of the

violation, and in addition thereto, the recall of the product, revocation of the CPR, suspension of the license to operate (LTO) for one (1) year;

(d) 4th and succeeding repeated violations – Administrative fine of Two million pesos (P2,000,000.00), the recall of the offending product, cancellation of the CPR, revocation of the LTO of the company concerned, including the blacklisting of the company to be furnished the Department of Budget and Management (DBM) and the DTI; and

(e) An additional penalty of Twenty thousand pesos (P20,000.00) per day shall be made for every day the violation continues after having received the order from the IAC or such other appropriate body, notifying and penalizing the company for the infraction.

For purposes of determining whether or not there is "repeated" violation, each product violation belonging or owned by a company, including those of their subsidiaries, are deemed to be violations of the concerned manufacturer or distributor and shall not be based on the specific violating product alone.

SEC. 39. *Against Public Employees.* – In accordance with the Revised Administrative Code and pertinent civil service rules and regulations, erring government employees found to be liable, and depending on the gravity of said violation, shall be imposed the appropriate penalty by the disciplining authority.

CHAPTER XI

CRIMINAL PENALTIES

SEC. 40. *Penalties.* – Any person who violates the provisions of this Act or its IRR shall, upon conviction, be punished by a penalty of two (2) months to one (1) year imprisonment or a fine of not less than One hundred thousand pesos (P100,000.00) nor more than Two million pesos (P2,000,000.00) or both. Should the offense be committed by a juridical person, the Chairman of the Board of Directors, the president, the general manager, or the partners and/or the persons directly responsible therefore, shall be penalized.

Any importation of a Designated product that has been recalled or withdrawn from the domestic or foreign or international market due to contamination or for any reason whatsoever, or which is past its expiry date as indicated in the label, shall be deemed as illegal importation of a prohibited and/or dangerous drug, and those responsible shall be prosecuted accordingly. In addition, the manufacturer, distributor, marketing personnel and importer of the same shall be subject to fines and possible loss of its license, authority or permit to operate in the Philippines.

CHAPTER XII

MISCELLANEOUS PROVISIONS

SEC. 41. *Donations Covered by This Act.* – Donations of products, materials, defined and covered under this Act and its IRR shall be allowed only upon the approval of the Department.

SEC. 42. *Other Donations by Milk Companies not Covered by This Act.* – Donations of products, equipment, and the like, not otherwise falling within the scope of this Act or its IRR, given by milk companies and their agents, representatives, whether in kind or in cash, may only be coursed through the Department, which shall determine whether such donation can be accepted or otherwise.

SEC. 43. *Continuous Review on Prescription Policy.* – The Department shall evaluate every year, or as necessary, its policy of whether or not to subject the sale of infant formula, to prescription.

SEC. 44. *Brand Names and Corporate Logo Identification.* – Brands, brand names or trademarks of designated products must be used exclusively for the said products. Should brands, brand names or trademarks which are identical or obviously similar to, or variants of said designated products, the prohibition on advertising, marketing, promotions, sales and sponsorships shall likewise apply to those products. A variant of the brand, brand name or trademark refers to a brand, brand name or trademark on which a modifier or any work or term is prefixed or suffixed to the root word. The Department shall periodically review whether or not to allow the use of corporate logos of Designated products which are similar to the logos utilized for products not covered by this Act, including the physical appearance of the container, taking into consideration the possibility of product confusion, the balance between a free market economy as against the decline and fall of breastfeeding rates among mothers and WRA, and public welfare and benefit being its ultimate yardstick. Accordingly, any modification of existing policy should first undergo public consultations with all concerned stakeholders before its actual implementation.

CHAPTER XIII

FINAL PROVISIONS

SEC. 45. *Implementing Rules and Regulations (IRR).* – The Department shall issue the IRR for this Act within one hundred twenty (120) days from its effectivity.

SEC. 46. *Separability Clause.* – If for any reason, any part or provision of this Act be declared invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions which shall remain in full force and effect.

SEC. 47. *Repealing Clause.* – All orders, issuances, and rules and regulations or parts thereof inconsistent with this Act are hereby repealed and modified accordingly.

SEC. 48. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in any newspaper of general circulation.

Approved,

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