

103^D CONGRESS
1ST SESSION

H. R. 3614

To prescribe labels for packages and advertising for tobacco products, to restrict the advertising and promotion of tobacco products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. WAXMAN (for himself, Mr. SYNAR, Mr. WYDEN, Mr. DURBIN, and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prescribe labels for packages and advertising for tobacco products, to restrict the advertising and promotion of tobacco products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tobacco Education
5 and Child Protection Act”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to assure that accurate
8 information on the adverse health effects of tobacco use

1 are displayed on tobacco product packaging, advertising,
2 and promotion in an effective means that will assist—

3 (1) adolescents who are tempted to start using
4 tobacco products,

5 (2) adolescents who are experimenting with to-
6 bacco and are not yet addicted to tobacco, and

7 (3) adults and adolescents who are considering
8 quitting,

9 to reduce serious risks to their health.

10 **SEC. 3. FINDINGS.**

11 The Congress finds the following:

12 (1) Tobacco products are the largest prevent-
13 able cause of illness and premature death in the
14 United States.

15 (2) Tobacco is a uniquely harmful product in
16 that it is the only product which kills when used as
17 intended.

18 (3) Cigarettes and smokeless tobacco products
19 are powerfully addictive because they contain nico-
20 tine which is a poisonous, addictive drug.

21 (4) The vast majority of new smokers are teen-
22 agers or younger, and children are beginning to
23 smoke today at a younger age than ever before.

24 (5) In 1990, the Office of Technology Assess-
25 ment estimated that the United States health care

1 system spent an estimated \$21,000,000,000 to treat
2 diseases caused by tobacco use, of which the Federal
3 Government paid about \$6,300,000,000, while lost
4 productivity costs due to smoking related illness and
5 premature death were \$47,000,000,000.

6 (6) In 1993 the tobacco industry will spend
7 over \$4,000,000,000 on advertising and promotion
8 to attract new users, retain current users, increase
9 current consumption, and generate favorable long-
10 term attitudes toward smoking and tobacco use.

11 (7) The Federal Government has a substantial
12 interest in ensuring that those who do not use to-
13 bacco products are not encouraged to use them and
14 those who use tobacco products are discouraged
15 from continuing their use.

16 (8) A failure to provide adequate and complete
17 health warnings and labeling information to fully in-
18 form consumers about the risks and dangers of to-
19 bacco use is misleading.

20 (9) Health warnings on cigarette packages have
21 not been updated since 1984 and do not fully reflect
22 current scientific knowledge on the adverse health
23 effects of tobacco use.

1 (10) The display format of tobacco health
2 warnings can be more effective as a vehicle for pro-
3 moting public knowledge of the health risks.

4 (11) Health warnings are most effective when
5 directed at those people who are tempted to try
6 smoking, who are experimenting with smoking, or
7 who are considering a decision to quit smoking.

8 (12) Health warnings will be most effective
9 when they are present each time the opportunity to
10 use a tobacco product occurs and each time tobacco
11 products are promoted and advertised.

12 (13) Health warnings must be displayed on all
13 materials that bear a tobacco product brand name or
14 logo because a growing percentage of tobacco adver-
15 tising expenses have been shifted to activities that
16 are not presently required to display Federal health
17 warnings.

18 (14) Changes in warning format and revisions
19 in the text of health warnings further the Federal
20 government's commitment to reduce tobacco related
21 disease and are a low cost means of enhancing the
22 effectiveness of other tobacco reduction programs.

23 **SEC. 4. PRODUCT PACKAGE LABELING.**

24 (a) IN GENERAL.—

1 (1) CIGARETTES.—It shall be unlawful for any
2 person to manufacture, package, or distribute for
3 sale within the United States any cigarettes unless
4 the cigarette package bears, in accordance with the
5 requirements of this section, one of the following
6 warning labels:

7 SURGEON GENERAL'S WARNING: Ciga-
8 rettes Can Kill You

9 SURGEON GENERAL'S WARNING: Ciga-
10 rettes Cause Lung Cancer and Emphysema

11 SURGEON GENERAL'S WARNING: Ciga-
12 rettes Are a Leading Cause of Infant Mortality

13 SURGEON GENERAL'S WARNING: Ciga-
14 rettes Cause Heart Disease and Stroke

15 SURGEON GENERAL'S WARNING: This
16 Product Contains Nicotine, an Addicting Drug

17 SURGEON GENERAL'S WARNING: Quit-
18 ting Cigarettes Will Improve Athletic Perform-
19 ance

20 SURGEON GENERAL'S WARNING: Smok-
21 ing During Pregnancy Can Harm Your Baby

22 SURGEON GENERAL'S WARNING: Ciga-
23 rrette Smoke Can Be Harmful to Child Develop-
24 ment

1 SURGEON GENERAL'S WARNING: Smoke
2 From These * Cigarettes Can Cause Cancer in
3 Nonsmokers.

4 For purposes of the last warning in the preceding
5 sentence, * denotes the name of the brand of ciga-
6 rettes required to bear such label.

7 (2) SPIT TOBACCO PRODUCT.—It shall be un-
8 lawful for any person to manufacture, package, or
9 distribute for sale within the United States any spit
10 tobacco product unless the product package bears, in
11 accordance with the requirements of this section, one
12 of the following warning labels:

13 SURGEON GENERAL'S WARNING: Spit
14 Tobacco Can Cause Mouth Cancer

15 SURGEON GENERAL'S WARNING: Spit
16 Tobacco Is Not a Safe Alternative to Cigarettes

17 SURGEON GENERAL'S WARNING: This
18 Product Contains Nicotine, an Addicting Drug.

19 SURGEON GENERAL'S WARNING: Use of
20 * Spit Tobacco Can Cause Gum Disease and
21 Tooth Loss

22 For purposes of the last warning in the preceding
23 sentence, * denotes the name of the brand of spit to-
24 bacco required to bear such label.

25 (b) LABEL FORMAT.—

1 (1) IN GENERAL.—The warning labels required
2 by subsection (a) shall—

3 (A) appear on the top of the 2 most promi-
4 nent sides of the product package on which the
5 label is required,

6 (B) be in a size which is not less than 25
7 percent of the side on which the label is placed,

8 (C) appear in white letters on black back-
9 ing or in black letters on white backing, which-
10 ever is more conspicuous and prominent in con-
11 trast to the color of the package, except that
12 the words “SURGEON GENERAL’S WARN-
13 ING” shall appear in bright red letters,

14 (D) be in a rectangular shape enclosed in
15 a border of color contrasting to the color of the
16 backing prescribed by subparagraph (C) and to
17 the predominant color of the package, and

18 (E) include letters in a height, thickness,
19 and type face which assures that the letters in
20 the space provided for the statement will be no
21 less legible, prominent, and conspicuous than
22 the most legible, prominent, and conspicuous
23 typeface, typography, and size of other matter
24 printed on the side of the package on which the
25 label statement appears.

1 (2) LABEL REQUIREMENT FOR OTHER PROD-
2 UCTS.—Any non-tobacco product—

3 (A) which bears the name of a tobacco
4 product brand or brand family or which uses a
5 color or color combination, logo, or symbol asso-
6 ciated with a tobacco product brand or brand
7 family in its packaging, advertising, or pro-
8 motion, and

9 (B) the production or marketing of which
10 is substantially controlled by the manufacturer
11 of the tobacco product referenced on the non-
12 tobacco product,

13 shall incorporate, in its packaging, advertising, and
14 promotion, any label which is required for the pack-
15 aging of the tobacco product which is referenced.

16 (c) ROTATION.—The warning labels required by sub-
17 section (a) shall be rotated by each manufacturer of ciga-
18 rettes and spit tobacco products on each brand of ciga-
19 rettes and spit tobacco products in accordance with a plan
20 approved for the manufacturer by the Secretary. Each
21 such plan shall provide for an approximately even distribu-
22 tion of the labels among the packages of a brand of the
23 cigarettes and spit tobacco products of each manufacturer
24 each year.

1 **SEC. 5. LABELING IN ADVERTISING.**

2 (a) IN GENERAL.—

3 (1) CIGARETTE ADVERTISING.—It shall be un-
4 lawful for any person to manufacture, package, or
5 distribute for sale within the United States any
6 brand of cigarettes unless the advertising for such
7 brand bears the warning label required for cigarettes
8 by section 4(a)(1).

9 (2) SPIT TOBACCO.—It shall be unlawful for
10 any person to manufacture, package, or distribute
11 for sale within the United States any spit tobacco
12 product unless the advertising for such product
13 bears the warning label required for spit tobacco
14 products by section 4(a)(2)).

15 (b) FORMAT.—

16 (1) WARNING LABELS.—The warning label re-
17 quired by subsection (a) for advertising shall—

18 (A) appear in white letters on black back-
19 ing or in black letters on white backing, which-
20 ever is most prominent relative to the color of
21 the advertisement, except that the words “SUR-
22 GEON GENERAL’S WARNING” shall appear
23 in bright red letters,

24 (B) be in a rectangular shape which occu-
25 pies 25 percent of the space of each advertise-
26 ment and which is located at the top of the ad-

1 advertisement and enclosed in a border of color
2 contrasting to the color of the backing pre-
3 scribed by subparagraph (A) and to the pre-
4 dominant color of the advertisement of the to-
5 bacco product being advertised, and

6 (C) include letters in a type face and size
7 which, within the space limitation prescribed by
8 subparagraph (B), assure that the letters in the
9 statement will be no less legible, prominent, or
10 conspicuous than the most legible, prominent,
11 and conspicuous typeface, typography, and size
12 of other matter printed on the advertisement.

13 (2) BILLBOARDS WITH LIGHTING.—The warn-
14 ing label on billboards which use artificial lighting
15 shall be no less visible than other printed matter on
16 the billboard when the lighting is in use.

17 (c) ROTATION.—

18 (1) NON-BILLBOARD ADVERTISING.—Warning
19 labels on advertising (other than billboard advertis-
20 ing) shall be rotated quarterly in alternating se-
21 quence for each brand of cigarettes or spit tobacco
22 product manufactured by the manufacturer or im-
23 ported by the importer in accordance with a plan
24 submitted by the manufacturer or importer and ap-
25 proved by the Secretary.

1 (2) BILLBOARDS.—Warning labels on advertis-
2 ing displayed on billboards shall be rotated annually
3 or whenever the advertisement is changed, whichever
4 occurs first.

5 **SEC. 6. ADVERTISING AND PROMOTION REQUIREMENTS.**

6 (a) ADVERTISING.—It shall be unlawful for any per-
7 son to manufacture, package, or distribute for sale within
8 the United States any tobacco product unless the advertis-
9 ing for such tobacco product conforms with the following
10 requirements:

11 (1) AUDIO TAPE, AUDIO DISCS, VIDEOTAPE,
12 AND FILM.—No tobacco product may be advertised
13 on any audio tape, audio disc, videotape, video ar-
14 cade game, or film.

15 (2) LOCATION.—No tobacco product advertise-
16 ment shall be located—

17 (A) in or on a sports stadium or other
18 sports facility or any other facility where sport-
19 ing activity is performed, or

20 (B) within 2,000 feet of any school which
21 students under the age of 18 years of age regu-
22 larly attend.

23 (3) CONTENT.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), no tobacco advertisement or

1 package label shall contain any representation
2 with respect to health or safety, including rep-
3 resentations concerning the level of or removal,
4 reduction, or addition of ingredients, tar, nico-
5 tine, carbon monoxide, or filters or any other
6 mechanism, device, or constituent.

7 (B) EXCEPTION.—A tobacco advertisement
8 tobacco product package label may contain a
9 representation described in subparagraph (A)
10 if—

11 (i) the Secretary has determined by
12 regulation that such representation is sig-
13 nificant in terms of affecting health and
14 safety and is based upon significant sci-
15 entific agreement, and

16 (ii) such representation is presented
17 in such form as the Secretary may by reg-
18 ulation prescribe.

19 (b) PROMOTION.—It shall be unlawful for any person
20 to manufacture, package, or distribute for sale within the
21 United States any tobacco product unless the promotion
22 for such tobacco product conforms with the following
23 requirements:

1 (1) DISTRIBUTION.—No tobacco product may
2 be distributed or caused to be distributed as a free
3 sample.

4 (2) VENDING MACHINE.—No tobacco product
5 may be sold or distributed through a vending ma-
6 chine unless the machine is located in a facility
7 which prohibits entry to all individuals under age 18
8 and which displays a health warning pursuant to
9 regulations of the Secretary which assure promi-
10 nence equivalent to that required by section 5(b)(1).

11 (3) SPONSORSHIP.—No athletic, music, artistic,
12 or other event may be sponsored or caused to be
13 sponsored in the name of a tobacco product trade-
14 mark or in a manner so that a tobacco product
15 trademark is publicly identified as a sponsor of, or
16 in any way associated with, such an event unless the
17 Secretary has approved a plan for the simultaneous
18 dissemination of health information at such event in
19 the same proportion or prominence as the sponsor
20 has sponsored such event.

21 (4) APPEARANCE WITH ENTERTAINMENT.—To
22 pay or cause to be paid to have any tobacco product
23 or any tobacco product trademark appear in any
24 movie, music video, television show, play, video ar-
25 cade game, or other form of entertainment.

1 (5) SPORTS EQUIPMENT.—No tobacco product
2 trademark may appear on any vehicle, boat, or other
3 equipment or clothing used in sports unless such
4 equipment or clothing displays a health warning pur-
5 suant to regulations of the Secretary which assure
6 prominence equivalent to that required by section
7 5(b)(1).

8 **SEC. 7. AUTHORITY TO REVISE HEALTH WARNINGS.**

9 The Secretary may by regulation revise any health
10 warning required by section 4 or 5 and the format for
11 the display of such warning if the Secretary finds that
12 such revision would promote greater understanding of the
13 risks of tobacco.

14 **SEC. 8. ENFORCEMENT.**

15 (a) IN GENERAL.—

16 (1) The Secretary shall issue such regulations
17 as may be appropriate for the implementation of this
18 Act. The Secretary shall issue proposed regulations
19 for such implementation within 180 days of the date
20 of the enactment of this Act. Not later than 180
21 days after the date of the publication of such pro-
22 posed regulations, the Secretary shall issue final reg-
23 ulations for such implementation. If the Secretary
24 does not issue such final regulations before the expi-
25 ration of such 180 days, the proposed regulations

1 shall become final and the Secretary shall publish a
2 notice in the Federal Register about the new status
3 of the proposed regulations.

4 (2) In carrying out the Secretary's duties under
5 this Act, the Secretary shall, as appropriate, consult
6 with such experts as may have appropriate training
7 and experience in the matters subject to such duties.

8 (3) The Secretary shall monitor compliance
9 with the requirements of this Act.

10 (4) The Secretary shall recommend to the At-
11 torney General such enforcement actions as may be
12 appropriate.

13 (b) INJUNCTION.—

14 (1) The district courts of the United States
15 shall have jurisdiction over civil actions brought to
16 restrain violations of sections 4, 5, 6, 7, and 8. Such
17 a civil action may be brought in the United States
18 district court for the judicial district in which any
19 substantial portion of the violation occurred or in
20 which the defendant is found or transacts business.
21 In such a civil action, process may be served on a
22 defendant in any judicial district in which the de-
23 fendant resides or may be found and subpoenas re-
24 quiring attendance of witnesses in any such action
25 may be served in any judicial district.

1 (2) Any interested organization may bring a
2 civil action described in paragraph (1). If such an
3 organization substantially prevails in such an action,
4 the court may award it reasonable attorney’s fees
5 and expenses. For purposes of this paragraph, the
6 term “interested organization” means any nonprofit
7 organization one of whose purposes, and a substan-
8 tial part of its activities, include the promotion of
9 public health through reduction in the use of tobacco
10 products.

11 (c) CIVIL PENALTY.—Any person who manufactures,
12 packages, distributes, or advertises a tobacco product in
13 violation of section 4, 5, 6, 7, or 8 shall be subject to a
14 civil penalty of not more than \$100,000 for each violation
15 per day.

16 **SEC. 9. PREEMPTION.**

17 (a) FEDERAL ACTION.—No statement relating to the
18 use of a tobacco product and health effects, other than
19 a statement required by or under this Act, shall be re-
20 quired by any Federal agency to appear on any tobacco
21 product package or in any advertisement of a tobacco
22 product.

23 (b) STATE AND LOCAL ACTION.—No statement relat-
24 ing to the use of a tobacco product and health effects,
25 other than a statement required by or under this Act, shall

1 be required by any State or local statute or regulation to
2 be included on any package of a tobacco product or in
3 any advertisement of a tobacco product.

4 (c) EFFECT ON LIABILITY LAW.—Compliance with
5 any requirement of this Act, the Federal Cigarette Label-
6 ing and Advertising Act (15 U.S.C. 1331 et seq.), or the
7 Comprehensive Smokeless Tobacco Health Education Act
8 of 1986 (15 U.S.C. 4401 et seq.) shall not relieve any per-
9 son from liability to any other person at common law or
10 under State statutory law.

11 **SEC. 10. DEFINITIONS.**

12 As used in this Act:

13 (1) The term “advertisement” means—

14 (A) all newspapers and magazine adver-
15 tisements and advertising inserts, billboards,
16 posters, signs, decals, banners, matchbook ad-
17 vertising, point-of-purchase display material
18 and all other written or other material used for
19 promoting the sale or consumption of tobacco
20 products to consumers,

21 (B) advertising promotion allowances,

22 (C) utilitarian items,

23 (D) any reference to the brand name of a
24 tobacco product, and

1 (E) any other means used to promote the
2 identification or purchase of tobacco products.

3 (2) The term “brand” means a variety of to-
4 bacco products distinguished by the tobacco used,
5 tar and nicotine content, flavoring used, size of the
6 tobacco product, filtration, or packaging.

7 (3) The term “cigarette” means—

8 (A) any roll of tobacco wrapped in paper
9 or in any substance not containing tobacco
10 which is to be burned,

11 (B) any roll of tobacco wrapped in any
12 substance containing tobacco which, because of
13 its appearance, the type of tobacco used in the
14 filler, or its packaging and labeling is likely to
15 be offered to, or purchased by consumers as a
16 cigarette described in subparagraph (A),

17 (C) little cigars which are any roll of to-
18 bacco wrapped in leaf tobacco or any substance
19 containing tobacco (other than any roll of to-
20 bacco which is a cigarette within the meaning
21 of subparagraph (A)) and as to which one thou-
22 sand units weigh not more than 3 pounds, and

23 (D) loose rolling tobacco and papers or
24 tubes used to contain such tobacco.

1 (4) The term “constituent” means any element
2 of tobacco or cigarette mainstream or sidestream
3 smoke, including tar, nicotine, and carbon monoxide.

4 (5) The term “distributor” does not include a
5 retailer and the term “distribute” does not include
6 retail distribution.

7 (6) The term “ingredient” means any substance
8 the intended use of which results, or may reasonably
9 be expected to result, directly or indirectly, in its be-
10 coming a component or otherwise affecting the char-
11 acteristics of any tobacco product.

12 (7) The term “representation” means any
13 statement, reference, or claim which is (A) expressed
14 or implied, (B) direct or indirect, or (C) oral, writ-
15 ten, or printed or in graphic form or in any com-
16 bination of such forms.

17 (8) The term “Secretary” means the Secretary
18 of Health and Human Services.

19 (9) The term “spit tobacco” means any finely
20 cut, ground, powdered, or leaf tobacco that is in-
21 tended to be placed in the oral cavity.

22 (10) The term “tobacco product” means—

23 (A) cigarettes,

24 (B) little cigars,

1 (C) cigars as defined in section 5702 of
2 the Internal Revenue Code of 1954,

3 (D) pipe tobacco,

4 (E) loose rolling tobacco and papers used
5 to contain such tobacco,

6 (F) products referred to as spit tobacco,
7 and

8 (G) any other form of tobacco intended for
9 human consumption.

10 (11) The term “trademark” means any word,
11 name, symbol, logo, or device or any combination
12 thereof used by a person to identify or distinguish
13 such person’s goods from those manufactured or
14 sold by another person and to indicate the source of
15 the goods.

16 (12) The term “United States” includes the
17 States and installations of the Armed Forces of the
18 United States located outside a State.

19 (13) The term “State” includes, in addition to
20 the 50 States, the District of Columbia, Guam, the
21 Commonwealth of Puerto Rico, the Northern Mari-
22 ana Islands, the Virgin Islands, American Samoa,
23 and the Trust Territory of the Pacific Islands.

1 **SEC. 11. EFFECTIVE DATES AND CONFORMING AMEND-**
2 **MENTS.**

3 (a) **EFFECTIVE DATES.**—This Act shall take effect
4 on the date of the enactment of this Act, except that

5 (1) sections 4, 5, and 6 shall take effect one
6 year after the date of the enactment of this Act,

7 (3) section 7 shall take effect 3 years after the
8 date of the enactment of this Act.

9 (b) **CONFORMING AMENDMENTS.**—Effective one year
10 from the date of the enactment of this Act, the Federal
11 Cigarette Labeling and Advertising Act (other than sec-
12 tions 6, 9, 10, and 11) (15 U.S.C. 1331 et seq.) and the
13 Comprehensive Smokeless Tobacco Health Education Act
14 of 1986 (other than sections 1, 2, 3(f), and 8) (15 U.S.C.
15 4401 et seq.) are repealed.

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