

106TH CONGRESS  
2D SESSION

# H. R. 4982

To prohibit the unauthorized destruction, modification, or alteration of product batch codes to protect consumer health and safety and assist with law enforcement efforts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2000

Mr. STEARNS introduced the following bill; which was referred to the  
Committee on Commerce

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## A BILL

To prohibit the unauthorized destruction, modification, or alteration of product batch codes to protect consumer health and safety and assist with law enforcement efforts, 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 “Consumer Labeling  
5       Protection Act of 2000”.

6       **SEC. 2. PROHIBITION AGAINST UNAUTHORIZED MODIFICA-**  
7                               **TIONS OF PRODUCT BATCH CODES.**

8       (a) IN GENERAL.—

1           (1) PROHIBITED ACTS.—Except as otherwise  
2 authorized by this Act or other Federal law, it shall  
3 be unlawful for any person, other than the consumer  
4 or the manufacturer of a good, knowingly and with-  
5 out authorization of the manufacturer—

6           (A) to alter, conceal, remove, obliterate,  
7 deface, strip, or peel any product batch code af-  
8 fixed to or embedded in a good and visible to  
9 the consumer, except that it is not a violation  
10 of this section for a person to alter, conceal, re-  
11 move, obliterate, deface, strip, or peel any prod-  
12 uct batch code in the course of removing any  
13 other codes or markings that are placed on or  
14 embedded in the product batch code;

15           (B) to affix or imbed a batch code to or in  
16 a good which is intended by the manufacturer  
17 for a different good such that the batch code no  
18 longer accurately identifies the actual date of  
19 manufacture, place of manufacture, or expira-  
20 tion date of the good; and

21           (C) to place into foreign or domestic com-  
22 merce a good, in a case in which the person  
23 knows that the product batch code, which oth-  
24 erwise would be visible to the consumer, has  
25 been altered, concealed, removed, obliterated,

1 defaced, stripped, peeled, affixed, or embedded  
2 in violation of subparagraph (A), or in a case  
3 in which the person has knowledge that the  
4 good bears a number, letter, symbol, marking,  
5 date, or code which is incorrect.

6 (2) FEDERAL TRADE COMMISSION ACT.—A vio-  
7 lation described in paragraph (1) shall be deemed to  
8 be an unlawful deceptive act or practice in violation  
9 of section 5 of the Federal Trade Commission Act  
10 and such a violation shall be treated in accordance  
11 with that Act.

12 (b) APPLICABILITY.—The prohibitions set forth in  
13 subparagraphs (A), (B), and (C) of subsection (b)(1) shall  
14 apply to visible product batch codes (or simulated product  
15 batch codes in a case to which subsection (b)(1)(C) ap-  
16 plies) affixed to, or embedded in, any good held for sale  
17 or distribution in interstate or foreign commerce or after  
18 shipment therein.

19 (c) EXCLUSIONS.—

20 (1) UPC CODES.—Nothing in this section pro-  
21 hibits a person from affixing a Universal Product  
22 Code, security tag, or other legitimate pricing or in-  
23 ventory code or other information required by State  
24 or Federal law if such code or information does not  
25 (or can be removed so as not to) alter, conceal, re-

1 move, obliterate, deface, strip, or peel any product  
2 batch code.

3 (2) REPACKAGING, REPACKING, OR TEMPO-  
4 RARILY JOINING PRODUCTS FOR RESALE.—(A)  
5 Nothing in this section prohibits a person from re-  
6 moving a good from a package and repackaging the  
7 good in another package, from repacking a good in  
8 its original package within a new package, or from  
9 temporarily joining products together such that the  
10 product batch code is temporarily obscured, if—

11 (i) the good retains its original product  
12 batch code, which has not been altered, con-  
13 cealed, or removed;

14 (ii) the repackaging, repacking, or tem-  
15 porary joining of products is in full compliance  
16 with all applicable Federal laws and regula-  
17 tions, including section 301 of the Federal  
18 Food, Drug, and Cosmetic Act; and

19 (iii) the new package, in the case of a good  
20 that has been repackaged, includes a label that  
21 clearly states—

22 (I) that the good has been repack-  
23 aged; and

24 (II) the name of the repackager.

25 (B) Nothing in this section shall—

1 (i) prohibit the repackaging of pre-  
2 scription drugs in accordance with all ap-  
3 plicable Federal and State laws;

4 (ii) prohibit a registered pharmacist  
5 or other authorized health care provider  
6 from dispensing prescription drugs as au-  
7 thorized under Federal and State law to  
8 consumers pursuant to a valid prescription;

9 (iii) prohibit the repackaging of food  
10 products and perishable commodities that  
11 are transferred from their original package  
12 for purposes of immediate availability,  
13 preparation, and purchase or consumption  
14 by the consumer; or

15 (iv) annul, limit, impair, or otherwise  
16 affect conduct that is prohibited or per-  
17 mitted by section 526 of the Tariff Act of  
18 1930 (relating to the importation of arti-  
19 cles bearing trademarks) or regulations  
20 issued under that section.

21 (d) CIVIL REMEDIES.—

22 (1) IN GENERAL.—Any manufacturer who is in-  
23 jured by a violation of this section, or demonstrates  
24 the likelihood of such injury, may bring a civil action  
25 in an appropriate United States district court

1 against the alleged violator. The complaint shall set  
2 forth in detail the manner and form of the alleged  
3 violation.

4 (2) INJUNCTIONS AND IMPOUNDING AND DIS-  
5 POSITION OF GOODS.—In any action under para-  
6 graph (1), the court may—

7 (A) grant one or more temporary, prelimi-  
8 nary, or permanent injunctions upon the post-  
9 ing of a bond at least equal to the value of the  
10 goods affected and on such terms as the court  
11 determines to be reasonable to prevent or re-  
12 strain the violation;

13 (B) at any time while the action is pend-  
14 ing, order the impounding upon the posting of  
15 a bond at least equal to the value of the goods  
16 affected and, on such terms as the court deter-  
17 mines to be reasonable, if the court has reason-  
18 able cause to believe the goods were involved in  
19 the violation; and

20 (C) as part of a final judgment or decree,  
21 in the court's discretion—

22 (i) grant one or more temporary, pre-  
23 liminary, or permanent injunctions on such  
24 terms as the court determines to be rea-

1           sonable to prevent or restrain the alleged  
2           violation; and

3           (ii) at any time during the pro-  
4           ceedings, order the impounding, on such  
5           terms as the court determines is reason-  
6           able, of any good that is in the custody or  
7           control of the defendant and that the court  
8           has reasonable cause to believe was in-  
9           volved in the violation.

10           (D) upon conviction of any person in viola-  
11           tion of this section, order the forfeiture and de-  
12           struction of any good involved in the violation.

13           (3) DAMAGES.—

14           (A) IN GENERAL.—Subject to subpara-  
15           graph (B), in any action under paragraph (1),  
16           the plaintiff shall be entitled to recover the ac-  
17           tual damages suffered by the plaintiff as a re-  
18           sult of the violation, and any profits of the vio-  
19           lator that are attributable to the violation and  
20           are not taken into account in computing the ac-  
21           tual damages. In establishing the violator's  
22           profits, the plaintiff shall be required to present  
23           proof only of the violator's sales, and the viola-  
24           tor shall be required to prove all elements of  
25           cost or deduction claimed.

1           (B) STATUTORY DAMAGES.—In any action  
2           under paragraph (1), the plaintiff may elect, at  
3           any time before final judgment is rendered, to  
4           recover, instead of actual damages and profits  
5           described in subparagraph (A), an award of  
6           statutory damages for any violation under this  
7           section in an amount equal to not less than  
8           \$5,000 and not more than \$1,000,000, with re-  
9           spect to each type of goods involved in the vio-  
10          lation.

11          (4) ATTORNEYS' FEES.—In any action under  
12          paragraph (1), in addition to damages covered under  
13          paragraph (3), the court in its discretion may award  
14          the prevailing party its costs in the action and its  
15          reasonable attorneys' fees.

16          (5) REPEAT VIOLATIONS.—

17                (A) TREBLE DAMAGES.—In any case in  
18                which a person violates this section within 3  
19                years after the date on which a final judgment  
20                was entered against that person for a previous  
21                violation of this section, the court may, in its  
22                discretion, in an action brought under this sub-  
23                section, increase the award of damages for the  
24                later violation to not more than 3 times the  
25                amount that would otherwise be awarded under

1 paragraph (3), as the court considers appro-  
2 priate.

3 (B) BURDEN OF PROOF.—A plaintiff that  
4 seeks damages described in subparagraph (A)  
5 shall bear the burden of proving the existence  
6 of the earlier violation.

7 (6) LIMITATIONS ON CIVIL ACTIONS.—No civil  
8 action may be commenced under this section later  
9 than 18 months after the date on which the claimant  
10 discovers the violation.

11 (7) INNOCENT VIOLATIONS.—In any action  
12 under paragraph (1), the court in its discretion may  
13 reduce or remit the total award of damages or award  
14 no damages in any case in which the violator sus-  
15 tains the burden of proving, and the court finds,  
16 that the violator was not aware and had no reason  
17 to believe that the acts of the violator constituted a  
18 violation.

19 (e) DEFINITIONS.—In this section:

20 (1) BATCH CODE.—The term “batch code”  
21 means a single visible code which specifically and  
22 only includes the batch number, the date of product  
23 manufacture, the place of manufacture, and an expi-  
24 ration date, if applicable, and which is clearly identi-  
25 fied as a batch code by affixing the letters “BC” be-

1 fore the batch code or by some other visual and con-  
2 spicuous indication that it is a batch code and does  
3 not include copyright management information con-  
4 veyed in connection with copies of a copyrighted  
5 work or any performance or display of a copyrighted  
6 work, other codes or markings by which a manufac-  
7 turer may attempt to monitor, control, or trace the  
8 identity of a distributor or location of resell, or a  
9 universal product code.

10 (2) CONSUMER.—The term “consumer”—

11 (A) means—

12 (i) the ultimate user or purchaser of  
13 a good; or

14 (ii) any hotel, restaurant, or other  
15 provider of services that must remove or  
16 alter the container, label, or packaging of  
17 a good in order to make the good available  
18 to the ultimate user or purchaser; and

19 (B) does not include any retailer or other  
20 distributor who acquires a good for resale.

21 (3) GOOD.—The term “good” means—

22 (A) any food, drug, device, or product (in-  
23 cluding any crib, vehicle safety seat, or toy) in-  
24 tended for use by children under the age of 3;

1           (B) any container, packaging, label, or  
2           component of any item described in subpara-  
3           graph (A);

4           (C) any firearm, ammunition, or mechan-  
5           ical component principally used for explosive de-  
6           vices;

7           (D) any additional product or separately  
8           manufactured product components which have  
9           been the subject of a Federal recall within 3  
10          years from the date of enactment of this Act or  
11          at any time after the effective date of this Act  
12          if the recall was conducted by the Consumer  
13          Product Safety Commission; or

14          (E) any additional product which the Fed-  
15          eral Trade Commission may recommend to be  
16          protected under this Act.

17          (4) PACKAGE.—The term “package” means any  
18          container or wrapping in which any consumer com-  
19          modity is enclosed for use in the delivery or display  
20          of that consumer commodity to retail purchasers,  
21          but does not include—

22                 (A) shipping containers or wrappings used  
23                 solely for the transportation of any consumer  
24                 commodity in bulk or in quantity to manufac-

1           turers, packers, or processors, or to wholesale  
2           or retail distributors thereof;

3           (B) shipping containers or outer wrappings  
4           used by retailers to ship or deliver any com-  
5           modity to retail customers if such containers  
6           and wrappings do not include product batch  
7           codes, and if other information is not required  
8           by Federal law to be included on such con-  
9           tainers or wrappings;

10          (C) transparent wrappers or containers  
11          which do not bear written, printed, or graphic  
12          matter obscuring label information required by  
13          Federal law; or

14          (D) containers used for tray pack displays  
15          in retail establishments (within the meaning set  
16          forth in regulations issued by the Secretary of  
17          Health and Human Services under sections 3  
18          and 4 of the Fair Packaging and Labeling Act  
19          (15 U.S.C. 1452, 1453); 21 C.F.R. 1.20).

20          (5) MANUFACTURER.—The term “manufac-  
21          turer” means the original manufacturer of a good  
22          and any duly appointed agent or representative of  
23          that manufacturer acting within the scope of its  
24          agency or representation.

1           (6) UNIVERSAL PRODUCT CODE.—The term  
2           “Universal Product Code” means a fixed length  
3           identification number and associated bar code  
4           symbol—

5                   (A) established by the Uniform Code  
6           Council accredited by the American National  
7           Standards Institute; and

8                   (B) used to identify companies and their  
9           products.

10           (7) VALUE.—The term “value”, with respect to  
11           a good, means the face, par, or market value of the  
12           good, whichever is the greatest.

13 **SEC. 2. EFFECTIVE DATE.**

14           The amendments made by this Act shall take effect  
15           6 months after the date of the enactment of this Act.

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