

107TH CONGRESS
1ST SESSION

H. R. 3456

To prohibit the sale of tobacco products through the Internet or other indirect means to individuals under the age of 18, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2001

Mr. MEEHAN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the sale of tobacco products through the Internet or other indirect means to individuals under the age of 18, 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 Free Internet
5 for Kids Act”.

6 **SEC. 2. UNLAWFUL ACTS REGARDING SALE OF TOBACCO**
7 **PRODUCTS TO INDIVIDUALS UNDER AGE OF**
8 **18.**

9 (a) IN GENERAL.—It shall be unlawful for any per-
10 son who is in the business of selling tobacco products, and

1 who advertises such products through the Internet or any
2 other means, to sell such a product to an individual under
3 the age of 18 if pursuant to the sale the person mails the
4 product, or ships the product by carrier in or affecting
5 interstate commerce.

6 (b) PROCEDURES FOR CERTAIN PURCHASE OR-
7 DERS.—It shall be unlawful for any person in the business
8 of selling tobacco products to take a covered purchase
9 order for such a product through the mail, or through any
10 telecommunications means (including by telephone, fac-
11 simile, or the Internet), if in providing for the sale or deliv-
12 ery of the product pursuant to such purchase order the
13 person mails the product, or ships the product by carrier
14 in or affecting interstate commerce, and the person fails
15 to comply with any of the following procedures:

16 (1) Before mailing or shipping the product, the
17 person received from the individual who placed the
18 order the following:

19 (A) A copy of a government-issued docu-
20 ment (license or otherwise) that provides the
21 name of the individual, the address of the indi-
22 vidual, and the date of birth of the individual.

23 (B) An e-mail address and social security
24 number for the individual.

1 (C) A signed statement in writing from the
2 individual providing that the individual certifies
3 that such document and information correctly
4 identifies the individual and correctly states the
5 address, date of birth, e-mail address, and so-
6 cial security number of the individual, that the
7 individual understands that forging another
8 person's signature is illegal, and that the indi-
9 vidual understands that tobacco sales to minors
10 are illegal and that tobacco purchases by mi-
11 nors may be illegal under applicable state law.

12 (2) Before mailing or shipping the product, the
13 person—

14 (A) verified the information submitted by
15 the individual against a database of govern-
16 ment-issued identification;

17 (B) verified the e-mail address submitted
18 by the individual against e-mail databases;

19 (C) sends an e-mail to the e-mail address
20 provided by the individual, requesting return e-
21 mail confirmation of the specific purchase
22 order;

23 (D) receives return e-mail confirmation for
24 the specific purchase order by the individual;
25 and

1 (E) sends a letter to the individual re-
2 questing confirmation of the specific purchase
3 order and requesting that the individual reply
4 immediately (to a specified toll-free phone num-
5 ber or e-mail address) if the individual did not
6 submit the purchase order.

7 (3) Before mailing or shipping a tobacco prod-
8 uct advertised on the Internet to an individual, the
9 person receives payment by credit card.

10 (4) The person provides for the mailing or ship-
11 ping of the product to the same name and address
12 as is provided on such government-issued document.

13 (5) The person provides for the mailing or ship-
14 ping of the product in a package that bears a clear
15 and conspicuous label providing as follows: “TO-
16 BACCO PRODUCT: FEDERAL LAW PRO-
17 HIBITS SHIPPING TO INDIVIDUAL UNDER
18 THE AGE OF 18; STATE LAW MAY PROVIDE
19 HIGHER MINIMUM AGE”.

20 (6) The person employs a method of mailing or
21 shipping that requires that the addressee personally
22 sign for delivery of the package.

23 (7) The person notifies the carrier for the mail-
24 ing or shipping, in writing, of the age of the ad-

1 dressee as indicated by the government-issued docu-
2 ment provided pursuant to paragraph (1)(A).

3 (8) The person employs a method of mailing or
4 shipping under which the individual who signs for
5 the package pursuant to paragraph (6) takes deliv-
6 ery of the package only after producing a form of
7 identification that bears a photograph and the same
8 name as the addressee on the package, and that in-
9 dicates that the individual is not younger than the
10 age indicated on the government-issued document
11 provided pursuant to paragraph (1)(A).

12 (c) COVERED PURCHASE ORDER.—It shall be unlaw-
13 ful for any person in the business of selling tobacco prod-
14 ucts to advertise such products for sale through an Inter-
15 net website unless such website contains, on the part of
16 each website page relating to sale of such products that
17 is immediately visible when accessed, a prominent and
18 clearly legible warning label stating that tobacco-product
19 sales to persons under 18 are illegal in all States.

20 (d) ADVERTISING THROUGH INTERNET; WARNING
21 LABEL.—It shall be unlawful for any person in the busi-
22 ness of selling tobacco products to advertise such products
23 for sale through an Internet website unless such website
24 contains, on the part of each website page relating to sale
25 of such products that is immediately visible when accessed,

1 a prominent and clearly legible warning label described in
2 sections 4(a)(1) and 4(b)(2) of the Federal Cigarette La-
3 beling and Advertising Act (15 U.S.C. 1333(a)(1) and
4 1333(b)(2)).

5 (e) ADVERTISING THROUGH INTERNET; ACCESS.—It
6 shall be unlawful for any person in the business of selling
7 tobacco products to advertise such products for sale
8 through an Internet website unless access to the website
9 (other than a non-selling website home page) is provided
10 only to individuals who provide to the person the informa-
11 tion described in subsections (b)(1)(A) and (b)(1)(B) and
12 whose information is verified according to the procedures
13 described in subsections (b)(2)(A) and (b)(2)(B).

14 (f) RULE OF CONSTRUCTION REGARDING CAR-
15 RIERS.—This Act may not be construed as imposing liabil-
16 ity upon the Postal Service or any other carrier, or officers
17 or employees thereof, when acting within the scope of busi-
18 ness of the Postal Service or other carrier, respectively.

19 **SEC. 3. FEDERAL TRADE COMMISSION.**

20 (a) CIVIL ENFORCEMENT.—For purposes of the en-
21 forcement of section 2 by the Federal Trade Commission,
22 a violation of a provision of subsection (a) or (b) of such
23 section shall be deemed to be an unfair or deceptive act
24 or practice in or affecting commerce within the meaning
25 of the Federal Trade Commission Act, and the procedures

1 under section 5(b) of such Act shall apply with respect
2 to such a violation.

3 (b) REGULATIONS.—Not later than 90 days after the
4 date of the enactment of this Act, the Commission shall
5 promulgate a final rule for carrying out this Act.

6 (c) INFORMATION REGARDING STATE LAWS ON MIN-
7 IMUM PURCHASE-AGE.—The Commission shall post on
8 the Internet site of the Commission information that, by
9 State, provides the minimum age at which it is legal under
10 State law to purchase tobacco products in the State.

11 **SEC. 4. CRIMINAL PENALTIES.**

12 (a) IN GENERAL.—

13 (1) FIRST VIOLATION.—Except as provided in
14 paragraph (2), any person who violates a provision
15 of subsection (a) or (b) of section 2 shall be fined
16 not more than \$1,000.

17 (2) SUBSEQUENT VIOLATIONS.—In the case of
18 a second or subsequent violation by a person of a
19 provision of subsection (a) or (b) of section 2, the
20 person shall be fined not less than \$1,000 and not
21 more than \$5,000.

22 (3) RULE OF CONSTRUCTION.—This subsection
23 does not apply to a violation of a provision of sub-
24 section (a) or (b) of section 2 if any provision of

1 subsection (b) of this section applies to such viola-
2 tion.

3 (b) KNOWING VIOLATIONS.—

4 (1) FIRST VIOLATION.—Except as provided in
5 paragraph (2), any person who knowingly violates a
6 provision of subsection (a) or (b) of section 2 shall
7 be fined in accordance with title 18, United States
8 Code, or imprisoned not more than two years, or
9 both.

10 (2) SUBSEQUENT VIOLATIONS.—In the case of
11 a second or subsequent knowing violation by a per-
12 son of a provision of subsection (a) or (b) of section
13 2, the person shall be fined in accordance with title
14 18, United States Code, or imprisoned not more
15 than five years, or both.

16 **SEC. 5. FEDERAL CIVIL ACTIONS BY STATE ATTORNEYS**

17 **GENERAL.**

18 (a) INJUNCTIVE RELIEF.—A State, through its State
19 attorney general, may on behalf of residents of the State
20 bring in its own name, and in an appropriate district court
21 of the United States, a civil action to restrain violations
22 by a person of any provision of subsection (a) or (b) of
23 section 2, including obtaining a preliminary or permanent
24 injunction or other order against the person.

1 (b) COORDINATION WITH COMMISSION.—Before
2 bringing a civil action under subsection (a), a State attor-
3 ney general shall provide to the Commission written notice
4 of the intent of the State attorney general to bring the
5 action.

6 (c) FEDERAL JURISDICTION.—

7 (1) IN GENERAL.—The district courts of the
8 United States shall have jurisdiction over any civil
9 action under subsection (a).

10 (2) VENUE.—A civil action under subsection (a)
11 may be brought only in accordance with section
12 1391 of title 28, United States Code, or in the dis-
13 trict in which the recipient of the tobacco products
14 resides or is found.

15 (d) REQUIREMENTS FOR INJUNCTIONS AND OR-
16 DERS.—

17 (1) IN GENERAL.—In any civil action under
18 subsection (a), upon a proper showing by the State
19 attorney general involved, the court may issue a pre-
20 liminary or permanent injunction or other order to
21 restrain a violation of this section.

22 (2) NOTICE.—No preliminary injunction or per-
23 manent injunction or other order may be issued
24 under paragraph (1) without notice to the adverse
25 party and an opportunity for a hearing.

1 (3) FORM AND SCOPE OF ORDER.—Any prelimi-
2 nary or permanent injunction or other order entered
3 in a civil action under subsection (a) shall—

4 (A) set forth the reasons for the issuance
5 of the order;

6 (B) be specific in its terms;

7 (C) describe in reasonable detail, and not
8 by reference to the complaint or other docu-
9 ment, the act or acts sought to be restrained;

10 (D) be binding upon—

11 (i) the parties to the action and the
12 officers, agents, employees, and attorneys
13 of those parties; and

14 (ii) persons in active concert or par-
15 ticipation with the parties to the action
16 who receive actual notice of the order by
17 personal service or otherwise.

18 (e) ADDITIONAL REMEDIES.—

19 (1) IN GENERAL.—A remedy under subsection
20 (a) is in addition to any other remedies provided by
21 law.

22 (2) STATE COURT PROCEEDINGS.—Nothing in
23 this section may be construed to prohibit an author-
24 ized State official from proceeding in State court on
25 the basis of an alleged violation of any State law.

1 **SEC. 6. DEFINITIONS.**

2 For purposes of this Act:

3 (1) The term “Commission” means the Federal
4 Trade Commission.

5 (2) The term “covered purchase order”, with
6 respect to a tobacco product, has the meaning given
7 such term in section 2(c).

8 (3) The term “State” means each of the several
9 States, the District of Columbia, the Commonwealth
10 of Puerto Rico, American Samoa, Guam, the Com-
11 monwealth of the Northern Mariana Islands, and
12 the Virgin Islands.

13 (4) The term “State attorney general” means
14 the attorney general or other chief law enforcement
15 officer of a State, or the designee thereof.

16 (5) The term “tobacco product” means any
17 product made or derived from tobacco that is in-
18 tended for human consumption, including cigarettes,
19 cigars, smokeless tobacco, pipe tobacco, and the
20 product known as a bidi.

21 **SEC. 7. EFFECTIVE DATE.**

22 This Act takes effect upon the expiration of the 90-
23 day period beginning on the date of the enactment of this
24 Act, except that the authority of the Commission under
25 section 3(b) to commence the process of rulemaking is ef-
26 fective on such date of enactment. Section 2 applies with

1 respect to sales of tobacco products occurring on or after
2 the expiration of such 90-day period, without regard to
3 whether a final rule has been promulgated under section
4 3(b).

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