

105TH CONGRESS  
1ST SESSION

# S. 201

To provide for the establishment of certain limitations on advertisements relating to, and the sale of, tobacco products, and to provide for the increased enforcement of laws relating to underage tobacco use, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 23, 1997

Mr. FORD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To provide for the establishment of certain limitations on advertisements relating to, and the sale of, tobacco products, and to provide for the increased enforcement of laws relating to underage tobacco use, 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 Products Con-  
5 trol Act of 1997”.

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1 **SEC. 2. AMENDMENT TO FEDERAL CIGARETTE LABELING**  
2 **AND ADVERTISING ACT.**

3 The Federal Cigarette Labeling and Advertising Act  
4 is amended by inserting after section 7 (15 U.S.C. 1335)  
5 the following:

6 “ADDITIONAL ADVERTISING RESTRICTIONS

7 “SEC. 7A. (a) BILLBOARDS.—

8 “(1) IN GENERAL.—It shall be unlawful to ad-  
9 vertise cigarettes on any outdoor billboard that is lo-  
10 cated within 500 feet of any public or private ele-  
11 mentary or secondary school.

12 “(2) EXCEPTION.—Paragraph (1) shall not  
13 apply to any advertisement that is non-brand name  
14 specific if such advertisement is erected or main-  
15 tained at street level and affixed to business estab-  
16 lishments selling tobacco products at retail.

17 “(b) PERIODICALS.—It shall be unlawful to advertise  
18 cigarettes in a newspaper, magazine, periodical or other  
19 publication if the subscribers of such publication who are  
20 under the age of 18 years constitute more than 15 percent  
21 of the total subscribership of such publication as certified  
22 by the publisher. The Federal Trade Commission shall an-  
23 nually publish a list of the publications that are subject  
24 to this subsection.

25 “(c) STADIA AND ARENAS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (2), it shall be unlawful to advertise cigarettes  
3           in any arena or stadium where amateur or profes-  
4           sional sporting events or activities occur.

5           “(2) EXCEPTIONS.—Paragraph (1) shall not  
6           apply to any advertisement that—

7                   “(A) is contained in a program distributed  
8                   at a sporting event;

9                   “(B) is displayed at a concession stand  
10                  that sells cigarettes; or

11                  “(C) is displayed during a sporting event  
12                  where the sponsor of the event involved has,  
13                  prior to the event, provided the Federal Trade  
14                  Commission with a certification that at least 75  
15                  percent of the attendees of such event are age  
16                  18 or older.

17          “(d) LICENSING PAYMENTS.—

18                  “(1) IN GENERAL.—No payment shall be made  
19                  for the use of a trade or brand name of a non-  
20                  tobacco product as the trade or brand name for a  
21                  cigarette.

22                  “(2) EXCEPTION.—Paragraph (1) shall not  
23                  apply to a cigarette that uses a trade or brand name

1 if such trade or brand name was used both for a cig-  
 2 arette and a nontobacco product sold in the United  
 3 States on January 1, 1995.

4 “(e) TRANSPORTATION ADVERTISEMENTS.—It shall  
 5 be unlawful to advertise cigarettes in or on taxis, buses,  
 6 trains, or in subway, bus, or train stations, terminals, or  
 7 platforms unless the advertisement is displayed at a site  
 8 where cigarettes are sold.

9 “(f) MOTION PICTURES.—No payment shall be made  
 10 by any cigarette manufacturer or any agent thereof for  
 11 the placement of any cigarette, cigarette package, or ciga-  
 12 rette advertisement as a prop in any motion picture pro-  
 13 duced for viewing by the general public.

14 “(g) VIDEO GAMES.—No cigarette brand name or  
 15 logo shall be placed in a video or on a video game machine,  
 16 and no brand name or logo may be placed on or within  
 17 the premises of family amusement centers.

18 “(h) DEFINITIONS.—As used in this section—

19 “(1) AMUSEMENT RIDE OR ATTRACTION.—The  
 20 term ‘amusement ride or attraction’ means—

21 “(A) any mechanized device or combina-  
 22 tion of devices that carry passengers along,  
 23 around, or over a fixed or restricted course for  
 24 the purpose of giving its passengers amuse-  
 25 ment, pleasure, thrills, or excitement; or

1           “(B) any building or structure around,  
2           over, or through which individuals may walk,  
3           climb, slide, jump or move that provides such  
4           individuals with amusement, pleasure, thrills, or  
5           excitement;

6           except that such term does not include coin-operated  
7           amusement devices that carry no more than 2 indi-  
8           viduals, devices regulated by the Federal Aviation  
9           Administration, the Federal Railroad Administration  
10          (or State railroad administrations), or vessels under  
11          the jurisdiction of the Coast Guard (or State divi-  
12          sion of the water patrol), tractor pulls, auto or mo-  
13          torcycle events, horse shows, rodeos, or other animal  
14          shows, games and concessions, nonmechanical play-  
15          ground equipment, or any other devices or struc-  
16          tures designated by the Federal Trade Commission.

17          “(2) FAMILY AMUSEMENT CENTER.—The term  
18          ‘family amusement center’ means an enterprise of-  
19          fering amusement or entertainment to the public  
20          through the use of one or more amusement rides or  
21          attractions.

22          “(3) VIDEO GAME.—The term ‘video game’  
23          means any electronic amusement device that utilizes  
24          a computer, microprocessor, or similar electronic cir-  
25          cuitry and its own cathode ray tube, or is designed

1 to be used with a television set or a monitor, that  
 2 interacts with the user of the device.”.

3 **SEC. 3. AMENDMENT TO COMPREHENSIVE SMOKELESS TO-**  
 4 **BACCO HEALTH EDUCATION ACT OF 1986.**

5 The Comprehensive Smokeless Tobacco Health Edu-  
 6 cation Act of 1986 is amended by inserting after section  
 7 3 (15 U.S.C. 4402) the following:

8 “ADVERTISING RESTRICTIONS

9 “SEC. 3A. (a) BILLBOARDS.—

10 “(1) IN GENERAL.—It shall be unlawful to ad-  
 11 vertise a smokeless tobacco product on any outdoor  
 12 billboard that is located within 500 feet of any pub-  
 13 lic or private elementary or secondary school.

14 “(2) EXCEPTION.—Paragraph (1) shall not  
 15 apply to any advertisement that is non-brand name  
 16 specific if such advertisement is erected or main-  
 17 tained at street level and affixed to business estab-  
 18 lishments selling tobacco products at retail.

19 “(b) PERIODICALS.—It shall be unlawful to advertise  
 20 any smokeless tobacco product in a newspaper, magazine,  
 21 periodical or other publication if the subscribers of such  
 22 publication who are under the age of 18 years constitute  
 23 more than 15 percent of the total subscribership of such  
 24 publication as certified by the publisher. The Federal  
 25 Trade Commission shall annually publish a list of the pub-  
 26 lications that are subject to this subsection.

1 “(c) STADIA AND ARENAS.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graph (2), it shall be unlawful to advertise smokeless  
4 tobacco product in any arena or stadium where ama-  
5 teur or professional sporting events or activities  
6 occur.

7 “(2) EXCEPTIONS.—Paragraph (1) shall not  
8 apply to any advertisement that—

9 “(A) is contained in a program distributed  
10 at a sporting event;

11 “(B) is displayed at a concession stand  
12 that sells smokeless tobacco product; or

13 “(C) is displayed during a sporting event  
14 where the sponsor of the event involved has,  
15 prior to the event, provided the Federal Trade  
16 Commission with a certification that at least 75  
17 percent of the attendees of such event are age  
18 18 or older.

19 “(d) LICENSING PAYMENTS.—

20 “(1) IN GENERAL.—No payment shall be made  
21 for the use of a trade or brand name of a non-  
22 tobacco product as the trade or brand name for a  
23 smokeless tobacco product.

24 “(2) EXCEPTION.—Paragraph (1) shall not  
25 apply to a smokeless tobacco product that uses a

1 trade or brand name if such trade or brand name  
 2 was used both for a smokeless tobacco product and  
 3 a nontobacco product sold in the United States on  
 4 January 1, 1995.

5 “(e) TRANSPORTATION ADVERTISEMENTS.—It shall  
 6 be unlawful to advertise smokeless tobacco product in or  
 7 on taxis, buses, trains, or in subway, bus, or train stations,  
 8 terminals, or platforms unless the advertisement is dis-  
 9 played at a site where smokeless tobacco products are sold.

10 “(f) MOTION PICTURES.—No payment shall be made  
 11 by any smokeless tobacco manufacturer or any agent  
 12 thereof for the placement of any smokeless tobacco prod-  
 13 uct, smokeless tobacco package, or smokeless tobacco ad-  
 14 vertisement as a prop in any motion picture produced for  
 15 viewing by the general public.

16 “(g) VIDEO GAMES.—No smokeless tobacco product  
 17 brand name or logo shall be placed in a video or on a  
 18 video game machine, and no brand name or logo may be  
 19 placed on or within the premises of a family amusement  
 20 center.

21 “(h) DEFINITIONS.—As used in this section:

22 “(1) AMUSEMENT RIDE OR ATTRACTION.—The  
 23 term ‘amusement ride or attraction’ means—

24 “(A) any mechanized device or combina-  
 25 tion of devices that carry passengers along,



1           around, or over a fixed or restricted course for  
2           the purpose of giving its passengers amuse-  
3           ment, pleasure, thrills, or excitement; or

4           “(B) any building or structure around,  
5           over, or through which individuals may walk,  
6           climb, slide, jump or move that provides such  
7           individuals with amusement, pleasure, thrills, or  
8           excitement;

9           except that such term does not include coin-operated  
10          amusement devices that carry no more than 2 indi-  
11          viduals, devices regulated by the Federal Aviation  
12          Administration, the Federal Railroad Administration  
13          (or State railroad administrations), or vessels under  
14          the jurisdiction of the Coast Guard (or State divi-  
15          sion of the water patrol), tractor pulls, auto or mo-  
16          torcycle events, horse shows, rodeos, or other animal  
17          shows, games and concessions, nonmechanical play-  
18          ground equipment, or any other devices or struc-  
19          tures designated by the Federal Trade Commission.

20          “(2) FAMILY AMUSEMENT CENTER.—The term  
21          ‘family amusement center’ means an enterprise of-  
22          fering amusement or entertainment to the public  
23          through the use of one or more amusement rides or  
24          attractions.

1           “(3) VIDEO GAME.—The term ‘video game’  
 2       means any electronic amusement device that utilizes  
 3       a computer, microprocessor, or similar electronic cir-  
 4       cuitry and its own cathode ray tube, or is designed  
 5       to be used with a television set or a monitor, that  
 6       interacts with the user of the device.”.

7   **SEC. 4. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.**

8       Section 1926 of the Public Health Service Act (42  
 9   U.S.C. sec. 300x-26) is amended—

10           (1) in subsection (a), by striking paragraph (1)  
 11       and inserting the following:

12           “(1) IN GENERAL.—Subject to paragraph (2),  
 13       for fiscal year 1998 and subsequent fiscal years, the  
 14       Secretary may make a grant under section 1921  
 15       only if the State involved has in effect a law provid-  
 16       ing that—

17           “(A) it is unlawful for any manufacturer,  
 18       retailer, or distributor of cigarettes or smoke-  
 19       less tobacco products to sell or distribute any  
 20       such product to any individual under the age of  
 21       18, and such manufacturer, retailer, or dis-  
 22       tributor shall, in all face to face transactions in-  
 23       volving an individual who appears to be under  
 24       the age of 26, verify such age by means of an

1 official (issued by the Federal or State govern-  
2 ment) photographic identification containing  
3 the date of birth of the bearer;

4 “(B) no person, firm, partnership, com-  
5 pany, or corporation shall operate a vending  
6 machine which dispenses cigarettes or smoke-  
7 less tobacco products unless such vending ma-  
8 chine is in a location that is in plain view and  
9 under the direct supervision and control of the  
10 individual in charge of the location or his or her  
11 designated agent or employee;

12 “(C) the restrictions described in subpara-  
13 graph (B) shall not apply in the case of a vend-  
14 ing machine that is located—

15 “(i) at a private club;

16 “(ii) at a bar or bar area of a food  
17 service establishment;

18 “(iii) at a factory, warehouse, tobacco  
19 business, or any other place of employment  
20 which has an insignificant portion of its  
21 regular workforce comprised of individuals  
22 under the age of 18 years and only if such  
23 machines are located in an area that is not  
24 accessible to the general public; or

1                   “(iv) in such other location or made  
2                   available in another manner that is ex-  
3                   pressly permitted under applicable State  
4                   law;

5                   “(D) it is unlawful for any person engaged  
6                   in the selling or distribution of cigarettes or  
7                   smokeless tobacco products for commercial pur-  
8                   poses to distribute without charge any ciga-  
9                   rettes or smokeless tobacco products, or to dis-  
10                  tribute coupons which are redeemable for ciga-  
11                  rettes or smokeless tobacco products, except  
12                  that this subparagraph shall not apply in the  
13                  case of distribution—

14                  “(i) through coupons contained in  
15                  publications for which advertising is not  
16                  restricted under section 7A of the Federal  
17                  Cigarette Labeling and Advertising Act or  
18                  section 3A of the Comprehensive Smoke-  
19                  less Tobacco Health Education Act of  
20                  1986, coupons obtained through the pur-  
21                  chase of cigarettes or smokeless tobacco  
22                  products, or coupons sent through the  
23                  mail;

1           “(ii) where individuals can dem-  
2           onstrate, through a photographic identi-  
3           fication card, that the individual is at least  
4           18 years of age;

5           “(iii) in locations that are separately  
6           segregated to deny access to individuals  
7           under the age of 18; or

8           “(iv) through such other manners or  
9           at other locations that are expressly per-  
10          mitted under applicable State law;

11          “(E) it is unlawful to for any manufac-  
12          turer, retailer, or distributor of cigarettes or  
13          smokeless tobacco products to sell or distribute  
14          non-tobacco merchandise related to such ciga-  
15          rettes or smokeless tobacco products unless—

16               “(i) with respect to a face-to-face  
17               transaction, the individual is 18 years of  
18               age or older as verified, in the case of an  
19               individual who appears to be under the age  
20               of 26, by means of an official (issued by  
21               the Federal or State government) photo-  
22               graphic identification containing the date  
23               of birth of the bearer;

24               “(ii) with respect to other trans-  
25               actions, the individual involved provides a

1 signed certification together with a copy of  
2 an official (issued by the Federal or State  
3 government) photographic identification  
4 containing the date of birth of the individ-  
5 ual that such individual is 18 years of age  
6 or older; and

7 “(iii) with respect to items of clothing  
8 or hats, such clothing or hat is made avail-  
9 able in only adult sizes;

10 “(F) it is unlawful for any manufacturer,  
11 retailer, or distributor of cigarettes or smoke-  
12 less tobacco products to display those products  
13 in a manner that causes those products to be  
14 accessible to anyone other than an employee of  
15 the manufacturer, retailer, or distributor, ex-  
16 cept that such prohibition shall not apply to a  
17 display—

18 “(i) if the display is located within the  
19 physical reach of an employee of the manu-  
20 facturer, retailer, or distributor working at  
21 the normal work station of the employee;  
22 or

23 “(ii) if an employee of the manufac-  
24 turer, retailer, or distributor is able to  
25 monitor the display through the use of in-

1 store mirrors, video cameras, or by other  
 2 means;

3 “(G) it is unlawful for any retailer to  
 4 break or otherwise open any cigarette package  
 5 to sell or distribute individual cigarettes or a  
 6 number of unpackaged cigarettes that is smaller  
 7 than the quantity in the minimum cigarette  
 8 package size of 20 cigarettes, or any quantity  
 9 of cigarette tobacco that is smaller than the  
 10 smallest package distributed by the manufac-  
 11 turer for individual consumer use; and

12 “(H) it is unlawful for any retailer to  
 13 break or otherwise open any smokeless tobacco  
 14 package to sell or distribute any quantity of  
 15 smokeless tobacco that is smaller than the  
 16 smallest package distributed by the manufac-  
 17 turer for individual consumer use.”;

18 (2) in subsection (a)(2)—

19 (A) by striking “1993” and inserting  
 20 “1997”;

21 (B) by striking “1994” and inserting  
 22 “1998”; and

23 (C) by striking “1995” and inserting  
 24 “1999”;

25 (3) in subsection (c)—

1 (A) in paragraph (1), by striking “10 per-  
2 cent” and inserting “20 percent”;

3 (B) in paragraph (2), by striking “20 per-  
4 cent” and inserting “40 percent”;

5 (C) in paragraph (3), by striking “30 per-  
6 cent” and inserting “60 percent”; and

7 (D) in paragraph (4), by striking “40 per-  
8 cent” and inserting “80 percent”;

9 (4) in subsection (d)—

10 (A) in paragraph (1), by striking “1995”  
11 and inserting “1999”; and

12 (B) in paragraph (2), by striking “1994”  
13 and inserting “1998”; and

14 (5) by adding at the end the following:

15 “(e) ENFORCEMENT.—Any amounts made available  
16 to a State through a grant under section 1921 may be  
17 used to enforce the laws described in subsection (a).

18 “(f) DEFINITIONS.—As used in subsection (a)(1), the  
19 term ‘private club’ means an organization with no more  
20 than an insignificant portion of its membership comprised  
21 of individuals under the age of 18 years that regularly  
22 receives dues or payments from its members for the use  
23 of space, facilities and services.”.



1 **SEC. 5. AMENDMENT TO FEDERAL FOOD, DRUG, AND COS-**  
2 **METIC ACT.**

3 Chapter IX of the Federal Food, Drug, and Cosmetic  
4 Act (21 U.S.C. 391 et seq.) is amended by adding at the  
5 end the following:

6 **“SEC. 906. PROHIBITION ON REGULATION OF TOBACCO**  
7 **PRODUCTS.**

8 “Nothing in this Act or any other Act shall provide  
9 the Food and Drug Administration with any authority to  
10 regulate in any manner tobacco or tobacco products (as  
11 such terms are defined for purposes of section 5702(c) of  
12 the Internal Revenue Code of 1986.”.

○