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S. 527

To prescribe labels for packages and advertising for tobacco products, to provide for the disclosure of certain information relating to tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 8, 1997

Mr. LAUTENBERG (for himself, Mr. DURBIN, Mr. HARKIN, Mr. WELLSTONE, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prescribe labels for packages and advertising for tobacco products, to provide for the disclosure of certain information relating to 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 Disclosure
5 and Warning Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Tobacco products are the largest prevent-
2 able cause of illness and premature death, respon-
3 sible for one of every 5 deaths in the United States.

4 (2) Tobacco is a uniquely harmful product in
5 that it is the only product which kills when used as
6 intended.

7 (3) Cigarettes and spit tobacco products are
8 powerfully addictive because they contain nicotine
9 which is a poisonous, addictive drug.

10 (4) Tobacco-related addiction is a pediatric dis-
11 ease. The vast majority of new smokers are teen-
12 agers or younger and children are beginning to
13 smoke today at a younger age than ever before.

14 (5) The United States health care system
15 spends an estimated \$50 billion a year to treat dis-
16 eases caused by tobacco use. In addition, the United
17 States economy loses \$50 billion a year from lost
18 productivity due to tobacco-related illnesses and pre-
19 mature death.

20 (6) The nicotine in tobacco products is respon-
21 sible for the addiction of up to one half of all chil-
22 dren who experiment with tobacco.

23 (7) More than 3,000 children begin smoking
24 each day. An estimated 1,000 of them will die from
25 a tobacco-related illness.

1 (8) Tobacco manufacturers manipulate the lev-
2 els and presence of the drug nicotine in their prod-
3 ucts with the intent to cause and sustain addiction
4 in consumers.

5 (9) In 1997 the tobacco industry will spend
6 over \$5 billion on advertising and promotion to at-
7 tract new users, retain current users, increase cur-
8 rent consumption, and generate favorable long-term
9 attitudes toward smoking and tobacco use.

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

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

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

23 (13) The display format of tobacco health
24 warnings can be more effective as a vehicle for pro-
25 moting public knowledge of the health risks.

1 (14) Health warnings are most effective when
 2 directed at those people who are tempted to try
 3 smoking, who are experimenting with smoking, or
 4 who are considering a decision to quit smoking.

5 (15) Health warnings will be most effective
 6 when they are present each time the opportunity to
 7 use a tobacco product occurs and each time tobacco
 8 products are promoted and advertised.

9 (16) Changes in warning format and revisions
 10 in the text of health warnings further the Federal
 11 government's commitment to reduce tobacco-related
 12 disease and are a low cost means of enhancing the
 13 effectiveness of other tobacco reduction programs.

14 **SEC. 3. DEFINITIONS.**

15 As used in this Act:

16 (1) The term “advertisement” means—

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

24 (B) advertising at an internet site,

25 (C) advertising promotion allowances,

1 (D) the appearance on any item (other
2 than cigarettes or other tobacco products) of
3 the brand name (alone or in conjunction with
4 any other word), logo, symbol, motto, selling
5 message, recognizable color or pattern of colors,
6 or any other indicia of product identification
7 identical or similar to, or identifiable with,
8 those used for any brand of cigarettes or other
9 tobacco products,

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

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

16 (3) The term “cigarette” means—

17 (A) any roll of tobacco wrapped in paper
18 or in any substance not containing tobacco
19 which is to be burned,

20 (B) any roll of tobacco wrapped in any
21 substance containing tobacco which, because of
22 its appearance, the type of tobacco used in the
23 filler, or its packaging and labeling is likely to
24 be offered to, or purchased by consumers as a
25 cigarette described in subparagraph (A),

1 (C) little cigars which are any roll of to-
2 bacco wrapped in leaf tobacco or any substance
3 containing tobacco (other than any roll of to-
4 bacco which is a cigarette within the meaning
5 of subparagraph (A)) and as to which one thou-
6 sand units weigh not more than 3 pounds, and

7 (D) loose rolling tobacco and papers or
8 tubes used to contain such tobacco.

9 (4) The term “constituent” means any element
10 of tobacco or cigarette mainstream or sidestream
11 smoke, including tar, the components of the tar, nie-
12 otine, and carbon monoxide or any other component
13 designated by the Secretary.

14 (5) The term “distributor” does not include a
15 retailer and the term “distribute” does not include
16 retail distribution.

17 (6) The term “ingredient” means any substance
18 the use of which results, or may reasonably be ex-
19 pected to result, directly or indirectly, in its becom-
20 ing a component of any tobacco product, including
21 any component of the paper or filter of such prod-
22 uct.

23 (7) The term “package” means a pack, box,
24 carton, or other container of any kind in which ciga-

1 rettes or other tobacco products are offered for sale,
2 sold, or otherwise distributed to customers.

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

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

8 (10) The term “tar” means the particulate
9 matter from tobacco smoke minus water and nico-
10 tine.

11 (11) The term “tobacco product” means—

12 (A) cigarettes,

13 (B) little cigars,

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

16 (D) pipe tobacco,

17 (E) loose rolling tobacco and papers used
18 to contain such tobacco,

19 (F) products referred to as spit tobacco,
20 and

21 (G) any other form of tobacco intended for
22 human consumption.

23 (12) The term “trademark” means any word,
24 name, symbol, logo, or device or any combination
25 thereof used by a person to identify or distinguish

1 such person's goods from those manufactured or
 2 sold by another person and to indicate the source of
 3 the goods.

4 (13) The term "United States" includes the
 5 States and installations of the Armed Forces of the
 6 United States located outside a State.

7 (14) The term "State" includes, in addition to
 8 the 50 States, the District of Columbia, Guam, the
 9 Commonwealth of Puerto Rico, the Northern Mari-
 10 ana Islands, the Virgin Islands, American Samoa,
 11 and the Trust Territory of the Pacific Islands.

12 **SEC. 4. PRODUCT PACKAGE LABELING.**

13 (a) IN GENERAL.—

14 (1) CIGARETTES.—

15 (A) WARNINGS.—It shall be unlawful for
 16 any person to manufacture, import, package, or
 17 distribute for sale within the United States any
 18 cigarettes unless the cigarette package bears, in
 19 accordance with the requirements of this sec-
 20 tion, one of the following warning labels:

21 WARNING: Cigarettes Kill

22 WARNING: Cigarettes Cause Lung Can-
 23 cer and Emphysema

24 WARNING: Cigarettes Cause Infant
 25 Death

1 WARNING: Cigarettes Cause Heart At-
2 tacks and Stroke

3 WARNING: Cigarettes Are Addictive

4 WARNING: Nicotine Is An Addictive
5 Drug

6 WARNING: Cigarette Smoking Harms
7 Athletic Performance

8 WARNING: Smoking During Pregnancy
9 Can Harm Your Baby

10 WARNING: Cigarette Smoke Is Harmful
11 to Children

12 WARNING: Smoke From * Cigarettes
13 Can Cause Cancer in Nonsmokers.

14 For purposes of the last warning in the preced-
15 ing sentence, * denotes the name of the brand
16 of cigarettes required to bear such label.

17 (B) INGREDIENTS AND CONSTITUENTS.—

18 It shall be unlawful for any person to manufac-
19 ture, import, package, or distribute for sale
20 within the United States any cigarettes unless
21 the cigarette package contains a package insert,
22 in accordance with the requirements of this sec-
23 tion, the ingredients and constituents of the
24 cigarettes which were reported to the Secretary

1 under section 7 and which the Secretary deter-
2 mines should be made public.

3 (C) PACKAGE INSERT.—

4 (i) IN GENERAL.—It shall be unlawful
5 for any person to manufacture, import,
6 package, or distribute for sale within the
7 United States any cigarettes unless the
8 cigarette package includes a package in-
9 sert, prepared in accordance with guide-
10 lines established by the Secretary by regu-
11 lation, on the carcinogens and other sub-
12 stances posing a risk to human health con-
13 tained in the ingredients and constituents
14 of the cigarettes in such package.

15 (ii) REGULATIONS.—The Secretary
16 shall issue regulations requiring the pack-
17 age insert required by clause (i) to provide
18 the information required by such clause
19 (including carcinogens and other dan-
20 gerous substances) in a prominent, clear
21 fashion and a detailed list of the ingredi-
22 ents and constituents.

23 (2) SPIT TOBACCO PRODUCT.—

24 (A) WARNINGS.—It shall be unlawful for
25 any person to manufacture, import, package, or

1 distribute for sale within the United States any
 2 spit tobacco product unless the product package
 3 bears, in accordance with the requirements of
 4 this section, one of the following warning labels:

5 WARNING: Spit Tobacco Causes Mouth
 6 Cancer

7 WARNING: Spit Tobacco Is Not a Safe
 8 Alternative to Cigarettes

9 WARNING: Spit Tobacco Is Addictive

10 WARNING: Nicotine Is An Addictive
 11 Drug

12 WARNING: Use of * Spit Tobacco Can
 13 Cause Gum Disease

14 WARNING: Use of * Spit Tobacco Can
 15 Cause Tooth Loss

16 For purposes of the last warning in the preced-
 17 ing sentence, * denotes the name of the brand
 18 of spit tobacco required to bear such label.

19 (B) INGREDIENTS AND CONSTITUENTS.—

20 It shall be unlawful for any person to manufac-
 21 ture, import, package, or distribute for sale
 22 within the United States any spit tobacco un-
 23 less the spit tobacco package bears, in accord-
 24 ance with the requirements of this section, the
 25 ingredients and constituents of the spit tobacco

1 which were reported to the Secretary under sec-
 2 tion 7 and which the Secretary determines
 3 should be made public.

4 (3) OTHER TOBACCO PRODUCTS.—

5 (A) WARNINGS.—It shall be unlawful for
 6 any person to manufacture, import, package, or
 7 distribute for sale within the United States any
 8 tobacco product, other than cigarettes or spit
 9 tobacco, unless the product package bears, in
 10 accordance with the requirements of this sec-
 11 tion, one of the following warning labels:

12 WARNING: Tobacco Kills

13 WARNING: Tobacco Causes Lung Cancer
 14 and Emphysema

15 WARNING: Tobacco Causes Infant Death

16 WARNING: Tobacco Causes Heart At-
 17 tacks and Stroke

18 WARNING: Tobacco Is Addictive

19 WARNING: Nicotine Is An Addictive
 20 Drug

21 WARNING: Tobacco Harms Athletic Per-
 22 formance

23 WARNING: Tobacco Use During Preg-
 24 nancy Can Harm Your Baby

1 WARNING: Tobacco Smoke Is Harmful to
2 Children

3 WARNING: Tobacco Smoke Can Cause
4 Cancer in Nonsmokers

5 (B) INGREDIENTS AND CONSTITUENTS.—

6 It shall be unlawful for any person to manufac-
7 ture, import, package, or distribute for sale
8 within the United States any tobacco product
9 subject to subparagraph (A) unless the tobacco
10 product package bears, in accordance with the
11 requirements of this section, the ingredients
12 and constituents of the tobacco product which
13 were reported to the Secretary under section 7
14 and which the Secretary determines should be
15 made public.

16 (b) LABEL FORMAT.—

17 (1) IN GENERAL.—The warning labels required
18 by paragraphs (1)(A), (2), and (3) of subsection (a)
19 shall—

20 (A) appear on the top of the 2 most promi-
21 nent sides of the product package on which the
22 label is required and 1 label shall be in Spanish,

23 (B) be in a size which is not less than 33
24 percent of the side on which the label is placed,

1 (C) appear in white letters on black back-
2 ing or in black letters on white backing, which-
3 ever is more conspicuous and prominent in con-
4 trast to the color of the package, except that
5 the words “WARNING” shall appear in bright
6 red letters and if the package does not have any
7 color, the words “WARNING” shall be in black
8 or white as prescribed by this subparagraph
9 and shall be boldly underlined with a black or
10 white underlining,

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

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

23 (2) FORMAT FOR OTHER CIGARETTE LABELS.—
24 The label required by paragraph (1)(B) of sub-
25 section (a) shall appear on the package in such style

1 and format as the Secretary may by regulation pre-
2 scribe.

3 (c) ROTATION.—The warning labels required by
4 paragraphs (1)(A) and (2) of subsection (a) shall be ro-
5 tated by each manufacturer of cigarettes and spit tobacco
6 products on each brand of cigarettes and spit tobacco
7 products in accordance with a plan approved for the man-
8 ufacturer by the Secretary. Each such plan shall provide
9 for an approximately even distribution of the labels among
10 the packages of a brand of the cigarettes and spit tobacco
11 products of each manufacturer each year.

12 **SEC. 5. LABELING IN ADVERTISING.**

13 (a) IN GENERAL.—

14 (1) CIGARETTE ADVERTISING.—It shall be un-
15 lawful for any person to manufacture, import, pack-
16 age, or distribute for sale within the United States
17 any brand of cigarettes unless the advertising for
18 such brand bears the warning label required for
19 cigarettes by section 4(a)(1)(A).

20 (2) SPIT TOBACCO.—It shall be unlawful for
21 any person to manufacture, import, package, or dis-
22 tribute for sale within the United States any spit to-
23 bacco product unless the advertising for such prod-
24 uct bears the warning label required for spit tobacco
25 products by section 4(a)(2)).

1 (3) OTHER TOBACCO PRODUCTS.—It shall be
 2 unlawful for any person to manufacture, import,
 3 package, or distribute for sale within the United
 4 States any tobacco product, other than cigarettes or
 5 spit tobacco, unless the advertising for such product
 6 bears the warning label required for such product by
 7 section 4(a)(3)).

8 (b) FORMAT.—

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

11 (A) appear in white letters on black back-
 12 ing or in black letters on white backing, which-
 13 ever is most prominent relative to the color of
 14 the advertisement, except that the word
 15 “WARNING” shall appear in bright red letters
 16 and in a advertisement without color “WARN-
 17 ING” shall be in black or white as prescribed
 18 by this subparagraph and shall be boldly under-
 19 lined with a black or white underlining,

20 (B) be in a rectangular shape which occu-
 21 pies 33 percent of the space of each advertise-
 22 ment and which is located at the top of the ad-
 23 vertisement and enclosed in a border of color
 24 contrasting to the color of the backing pre-
 25 scribed by subparagraph (A) and to the pre-

1 dominant color of the advertisement of the to-
 2 bacco product being advertised,

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

11 (D) be in the same language as the text of
 12 the advertising in which it appears.

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.

(2) BILLBOARDS.—Warning labels on advertising displayed on billboards shall be rotated annually or whenever the advertisement is changed, whichever occurs first.

5 SEC. 6. AUTHORITY TO REVISE HEALTH WARNINGS.

6 The Secretary may by regulation revise any health
7 warning required by section 4(a)(1)(A), 4(a)(2), or 4(a)(3)
8 and the format for the display of such warning if the Sec-
9 retary finds that such revision would promote greater un-
10 derstanding of the risks of tobacco.

11 SEC. 7. TOBACCO PRODUCT INGREDIENTS AND CONSTITU-
12 ENTS.

(a) GENERAL RULE.—Each person which manufactures, packages, or imports into the United States any tobacco product shall annually report, in a form and at a time specified by the Secretary by regulation—

(1) the identity of any added constituent of the tobacco product other than tobacco, water, or reconstituted tobacco sheet made wholly from tobacco, and

(2) the nicotine, tar, and carbon monoxide yield ratings which shall accurately predict the nicotine, tar, and carbon monoxide intake from such tobacco product for average consumers based on standards established by the Secretary by regulation,

1 if such information is not information which the Secretary
2 determines to be trade secret or confidential information
3 subject to section 552(b)(4) of title 5, United States Code,
4 and section 1905 of title 18, United States Code. The con-
5 stituents identified under paragraph (1) shall be listed in
6 descending order according to weight, measure, or numeri-
7 cal count. If any of such constituents is carcinogenic or
8 otherwise poses a risk to human health, as determined by
9 the Secretary, such information shall be included in the
10 report.

11 (b) PUBLIC DISSEMINATION.—The Secretary shall
12 review the information contained in each report submitted
13 under subsection (a) and if the Secretary determines that
14 such information directly affects the public health, the
15 Secretary shall require that such information be included
16 in a label under sections 4(a)(1)(B), 4(a)(2)(B), and
17 4(a)(3)(B).

18 (c) OTHER SOURCES OF INFORMATION.—The Sec-
19 retary shall establish a toll-free telephone number and a
20 site on the Internet which shall make available additional
21 information on the ingredients of tobacco products, except
22 information which the Secretary determines to be trade
23 secret or confidential information subject to section
24 552(b)(4) of title 5, United States Code, and section 1905
25 of title 18, United States Code.

1 **SEC. 8. ENFORCEMENT.**

2 (a) IN GENERAL.—

3 (1) The Secretary shall carry out the Sec-
4 retary's duties under this Act through the Commis-
5 sioner of Food and Drugs.

6 (2) The Secretary shall issue such regulations
7 as may be appropriate for the implementation of this
8 Act. The Secretary shall issue proposed regulations
9 for such implementation within 180 days of the date
10 of the enactment of this Act. Not later than 180
11 days after the date of the publication of such pro-
12 posed regulations, the Secretary shall issue final reg-
13 ulations for such implementation. If the Secretary
14 does not issue such final regulations before the expi-
15 ration of such 180 days, the proposed regulations
16 shall become final and the Secretary shall publish a
17 notice in the Federal Register about the new status
18 of the proposed regulations.

19 (3) In carrying out the Secretary's duties under
20 this Act, the Secretary shall, as appropriate, consult
21 with such experts as may have appropriate training
22 and experience in the matters subject to such duties.

23 (4) The Secretary shall monitor compliance
24 with the requirements of this Act.

1 (5) The Secretary shall recommend to the At-
2 torney General such enforcement actions as may be
3 appropriate.

4 (b) INJUNCTION.—

5 (1) The district courts of the United States
6 shall have jurisdiction over civil actions brought to
7 restrain violations of sections 4 and 5. Such a civil
8 action may be brought in the United States district
9 court for the judicial district in which any substan-
10 tial portion of the violation occurred or in which the
11 defendant is found or transacts business. In such a
12 civil action, process may be served on a defendant in
13 any judicial district in which the defendant resides
14 or may be found and subpoenas requiring attend-
15 ance of witnesses in any such action may be served
16 in any judicial district.

17 (2) Any interested organization may bring a
18 civil action described in paragraph (1). If such an
19 organization substantially prevails in such an action,
20 the court may award it reasonable attorney's fees
21 and expenses. For purposes of this paragraph, the
22 term "interested organization" means any nonprofit
23 organization one of whose purposes, and a substan-
24 tial part of its activities, include the promotion of

1 public health through reduction in the use of tobacco
2 products.

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

7 **SEC. 9. LIABILITY.**

8 Compliance with any requirement of this Act, the
9 Federal Cigarette Labeling and Advertising Act (15
10 U.S.C. 1331 et seq.), or the Comprehensive Smokeless To-
11 bacco Health Education Act of 1986 (15 U.S.C. 4401 et
12 seq.) shall not relieve any person from liability to any
13 other person at common law or under State statutory law.

14 **SEC. 10. EFFECTIVE DATES AND CONFORMING AMEND-**
15 **MENTS.**

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

18 (1) sections 4, 5, and 7 shall take effect one
19 year after the date of the enactment of this Act,

20 (3) section 6 shall take effect 3 years after the
21 date of the enactment of this Act.

22 (b) CONFORMING AMENDMENTS.—Effective one year
23 from the date of the enactment of this Act, the Federal
24 Cigarette Labeling and Advertising Act (other than sec-
25 tions 6, 9, 10, and 11) (15 U.S.C. 1331 et seq.) and the

- 1 Comprehensive Smokeless Tobacco Health Education Act
- 2 of 1986 (other than sections 1, 2, 3(f), and 8) (15 U.S.C.
- 3 4401 et seq.) are repealed.

