

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> 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.

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## 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

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## 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 rette 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.

○

HR 3614 IH—2