

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2416

Introduced by HON. NIEL "JUNJUN" C. TUPAS, JR.
5th District, Iloilo

EXPLANATORY NOTE

The 1987 Philippine Constitution has adopted the right to health of the people as a state policy. Article II, Section 15 of the Philippine Constitution provides that the State shall protect and promote the right to health of the people and instill health consciousness among them. To aid this policy, the Constitution further provides that the State shall protect consumers from trade malpractices and from substandard and hazardous products. The interest of the State in protecting the health of the citizenry is based on the undisputable fact that the strength of a nation, and more fundamentally the very survival of the human race, primarily lies in the health of its members. Arguments in favor of economic or commercial considerations as against protecting the health of the citizens must therefore fall; the health of the people must be paramount at all times.

This bill seeks to implement Article II, Section 15 of the Philippine Constitution by promoting increased awareness of the hazardous effects of tobacco use and of exposure to second hand smoke on one's health through the effective packaging and labeling of tobacco products. This may be done through graphic health warnings that have proven to be effective in discouraging tobacco use, especially among the youth, and by removing any misleading sign that some tobacco products are less threatening to one's health.

While Republic Act No. 9211 was passed into law to regulate the packaging, use, sale, distribution, and advertisements of tobacco products, it failed to effectively curb the use of tobacco products. The 2009 Philippines' Global Adult Tobacco Survey ("GATS") on tobacco use in the Philippines shows that among adults 15 years or older, 28.3% representing 17.3 million Filipinos are current tobacco smokers, and 22.5% or approximately 13.8 million Filipinos smoke everyday consuming an average of 10.6 cigarettes a day. The same survey shows that more people are exposed to second hand smoke in their homes, workplaces and public places. According to the Philippine Department of Health, there are about 5,000,000 deaths a year worldwide directly related to tobacco. The World Health Organization estimates this to double by 2020 if present trends continue unchecked, with 70% of mortality taking place in developing countries. In the Philippines, 240 Filipinos die everyday or over 87,000 a year from diseases caused by tobacco.¹ Such figures are alarming and make the need to curb tobacco use extremely urgent.

The right to health of the people must be coupled with their right to adequate information. Increasing the awareness of people on the harmful effects of cigarette smoking enables them to make an informed and intelligent choice. Studies show that the use of graphic images on cigarette packages, in addition to text warnings, greatly increases the effectiveness of health warnings because the information is presented

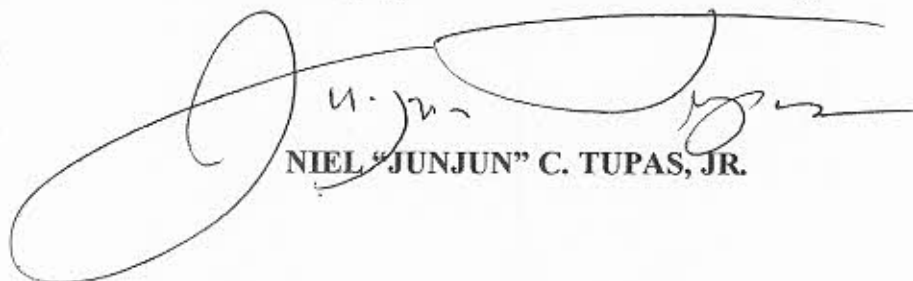
¹ Administrative Order No. 2010-0013 dated 12 May 2010 issued by the Office of the Secretary, Philippine Department of Health.

vividly, honestly and meaningfully, especially among the youth. Graphic warnings are also able to engage audiences on an emotional level more effectively than text-only warnings and are therefore more likely to motivate behavioral change.² Picture warnings are associated with greater health knowledge, perceptions of risk, motivation to quit, and cessation behavior.³ In addition, picture warnings are effective because they are able to reach less literate populations and transcend language barriers.

Another aspect that needs to be addressed is the use of false descriptors such as "light", "mild" or "low tar" which mislead people to think that some tobacco products are less harmful than those which do not carry such descriptors. The use of such deceptive terms is deadly and misinforms consumers.

The Philippines is a party to the Framework Convention on Tobacco Control (FCTC) initiated by the World Health Organization. For the Philippines to comply in good faith to the FCTC, it should have adopted and implemented effective health warnings on tobacco product packages in September 2008. A bill similar to this proposed measure was filed in the Fourteenth Congress by Representatives Paul R. Daza, Anna York P. Bondoc, Arthur Pingoy, Jr., Lorenzo R. Tanada III, Emmanuel Joel J. Villanueva, and Ana Theresia Hontiveros-Baraquel, but the authors did not succeed in having it enacted into a law. Some amendments to the said bill have been introduced in this present bill. The passage of this proposed measure into law is therefore long overdue.

In view of the foregoing considerations, and for the sake of protecting the health of present and future generations from the devastating health consequences of tobacco consumption and exposure to second hand smoke, approval of this bill is earnestly sought.



NIEL "JUNJUN" C. TUPAS, JR.

² "Showing the truth, saving lives: the case for pictorial health warnings", World Health Organization.

³ Framework Convention on Tobacco Control (FCTC) Article 11 Fact Sheet

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**AN ACT TO ENSURE HEALTH PROTECTION THROUGH EFFECTIVE
PACKAGING AND LABELING OF TOBACCO PRODUCTS**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Short title. This Act shall also be known as "The Health Protection on Tobacco Packaging and Labeling Act".

Section 2. Declaration of Principles. The State shall protect and promote the right to health of the people and instill health consciousness among them;

The State shall protect consumers from trade malpractices and from hazardous products;

The State accepts that, as a State-Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), a treaty that reaffirms the right of all people to the highest standards of health, the Philippines is obliged to inform every person of the health consequences, addictive nature and mortal threat posed by tobacco consumption & exposure to tobacco smoke; to enact effective measures to curb and reduce tobacco use, especially among the youth; and to protect public health policy from the commercial and vested interests of the tobacco industry;

The State is cognizant of the Philippines' duty under Article 11 of the FCTC, which is to adopt and implement effective health warnings on tobacco products that should describe the harmful effects of tobacco use occupying fifty percent (50%) or more of the principal display areas and not contain any term, descriptor, trademark, figurative or any other sign that creates the false impression that a particular tobacco product is less harmful (e.g. "low tar", "light", "ultra light", or "mild");

The State concedes that text health warnings have been shown to be ineffective in reducing tobacco consumption among Filipinos, the youth in particular, based from the Global Youth Tobacco Survey showing increased prevalence of tobacco use in children¹ and increased tobacco sales².

The State recognizes that tobacco and poverty form a vicious cycle of debt and disease, and with the majority of the smoking population in the Philippines belonging to the most impoverished and least educated sectors of society.

Section 3. Purpose. The purpose of this Act is to ensure that:

- a. health warnings on tobacco packages effectively inform the people of the devastating effects of tobacco use and exposure to second-hand smoke;
- b. tobacco product packaging and labeling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous

- impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any sign that directly or indirectly creates the false impression that a particular product is less harmful than other tobacco products, including but not limited to misleading or deceptive terms like "low tar", "light", "ultra light", "mild", or similar terms; and
- c. the role of the Department of health in promoting the right to health and instill health consciousness among Filipinos is strengthened.

Section 4. Definition of Terms

- a. "graphic health warning" means warning labels that are composed of pictures or graphics that **warn on health dangers or other problems related to tobacco use and exposure to tobacco smoke** with an accompanying textual warning that is related to the picture, as issued by the Department of Health according to Section 12 of this Act.
- b. "principal display surfaces" means:
 - (1) in the case of a package or carton that has at least two (2) equal sized sides or surfaces, other than the top and bottom, that may be displayed or visible under normal or customary conditions of sale or use, it shall be the areas of each of the two (2) largest surfaces;
 - (2) the largest surface of any spherical, cylindrical or conical container of tobacco products and in the case of a package or carton that does not have a particular side or surface that is predominantly displayed or visible under normal or customary conditions of sale or use, it shall be the total surface area of the package; and
 - (3) all surfaces or panels, exterior or interior, of any tobacco product packaging or carton not specified above.

Section 5. Graphic Health Warning. Within ninety (90) days from effectivity of this Act, cigarette packages and other tobacco product packages, found in the market, including cartons or master cases, shall bear highly visible, full-color "graphic health warnings" as defined under Section 4 (a), and as prescribed herein:

- a. The graphic health warnings shall be printed on at least sixty percent (60%) of the principal display surfaces of any tobacco package; it shall occupy no less than sixty percent (60%) of the front and sixty percent (60%) of the back panel in the case of packaging described in Sec. 4 (b) (1) and Sec. 4 (b) (2).
- b. It shall be located at the upper portions of the said panels or principal display areas.
- c. Nothing shall be printed or applied on the location prescribed where it is likely to obscure or cover, in part or in whole, the graphic health warnings.
- d. No part of the warning may be obliterated, obscured, folded, severed or become unreadable when the tobacco package is opened or closed.
- e. No cigarette package shall be placed inside a container or case that may obliterate, cover or obscure the graphic health warning.
- f. The graphic health warning shall be printed in full color, with the minimum resolution of six hundred (600) dpi using at least four (4)-color printing.
- g. A minimum of eight (8) variations of graphic health warnings shall be printed simultaneously and these shall be rotated periodically, so that at any time within the twelve (12) month period, when a set of graphic health warnings is scheduled to be rotated, the variations of the warnings shall appear in the market with proportionate frequency.
- h. In no case shall the graphic health warning measure less than two thousand four hundred seventy-five (2475) square millimeters in size regardless of the type of tobacco package. Furthermore, the shortest side of the health warning shall measure no less than fifty-five (55) millimeters.

i. **Graphic health warning specifications –**

1. The text accompanying the picture or graphic health warning shall be placed on areas of the principal display surfaces in a manner that will not obscure the picture or graphics.
2. The accompanying text shall use up no more than thirty percent (30%) of the entire area of the graphic health warning and shall appear in clearly legible type and in contrast by typography, layout and color, without the use of any border or frame.
3. The accompanying text shall be printed in English on the front panel and Filipino on the back panel. In the case of other containers where there is only one (1) external surface area, the accompanying text will be in English only.

Section 6. Side Panel. In addition to the graphic health warning, cigarette packages as well as other tobacco product packages found in the market, shall bear, on one side panel, additional information as issued by the Department of Health according to Section 15 of this Act, such as, but not limited to, additional health warnings, hotlines or websites for tobacco-related concerns, or tips on how to stop smoking. This information shall be prominently displayed and the text thereto shall appear in clearly legible type and in contrast by typography, layout and color, without the use of any border or frame or any design that will effectively lessen the size of the additional health warnings.

Section 7. Descriptors. Within ninety (90) days from the effectivity of this Act, no cigarette packs or other tobacco product packages shall contain any term, descriptor, trademark, figurative or any other sign (including colors, images, or numbers) or any package or product design feature, that directly or indirectly creates or is likely to create the false impression that a particular tobacco product is less harmful than other tobacco product or brand, or that promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions. These may include terms such as “low tar”, “light”, “ultra-light”, or “mild”.

Section 8. Costs. All printing costs pertaining to packaging and labeling shall be shouldered by the tobacco companies.

Section 9. Minimum Principal Display Surface/ Prohibition on Smaller Packages. To ensure the visibility, prominence, and impact of graphic health warnings, no person or legal entity shall make, fabricate, or distribute cigarette packages or repackage cigarettes with packages that have for its principal display surface, a total area of less than four thousand nine hundred fifty (4950) square millimeters for each of the two largest sides, in case of tobacco packages described in Sec 4 (b) (1). For other tobacco packages that fall under Section 4 (b) (2) and 4 (b) (3), the minimum size for the principal display surface shall also be four thousand nine hundred fifty (4950) square millimeters.

Section 10. Prohibition on Sales. No person or legal entity shall sell or commercially distribute or display any cigarette or tobacco product without ensuring that labels and packages meet the requirements under this Act.

Section 11. Prohibition on Display. No person or legal entity shall obscure or cover in part or in whole the graphic health warning in the selling areas. The graphic health warnings shall be prominently displayed whenever the said packages are commercially displayed.

Section 12. Liability of Manufacturers, Importers and Distributors. Manufacturers, importers and distributors of tobacco products shall be directly liable for any violations of

the provisions of this Act. In the case of a business entity or establishment, the chairman of the Board of Directors, the owner/s, president, manager, and the corporate officials thereof shall be directly responsible therefore and shall be made accountable. Agents/representatives of the said manufacturers, importers, & distributors who commit any violation of the provisions of this Act and its implementing rules shall be jointly and severally liable with the manufacturers, importers, and distributors.

Section 13. Liability of Retailers and Sellers. Retailers and Sellers of tobacco products shall be directly liable for violations of Section 10 & 11 of this Act. In the case of a business entity or establishment, the chairman of the Board of Directors, the owner/s, president, manager, and the corporate officials thereof shall be directly responsible therefore and shall be made accountable.

Section 14. Penalties for Non Compliance

- a. The following penalties shall apply to manufacturers, importers, exporters, and distributors of tobacco products as well as their agents/representatives for failure to comply with Sections 5-11 of this Act or for any violations of this Act:

On the first offense, a fine of not more than Two Hundred Thousand Pesos (Php200,000.00) shall be imposed;

On the second offense, a fine of Two Million Pesos (Php2,000,000.00) shall be imposed.

On the third offense, in addition to a fine of not more than Ten Million Pesos (Php10,000,000.00) but not less than Two Million Pesos (Php2,000,000.00) or imprisonment of not more than one (1) year, or both at the discretion of the court, the business permits and licenses, in the case of a business entity or establishment shall be revoked or cancelled.

If the guilty officer is an alien, he shall be summarily deported after the finding of probable cause on the second offense and shall be forever barred from re-entering from the Philippines.

Each batch of non-compliant tobacco packages, regardless of size, that are withdrawn from the manufacturing facility, imported into the Philippines for sale to the market, transferred to other facilities, or delivered to the retail establishments after the compliance date shall constitute one offense. An additional penalty of Fifty Thousand Pesos (Php50,000.00) per day shall be made for each day the violation continues after having received the order from the Department of Health or other appropriate body, notifying and penalizing the offender for the infraction.

- b. The following penalties shall apply to retailers/sellers of tobacco products as well as their agents/representatives for failure to comply with Sections 10 and 11 of this Act or for any violations of this Act:

On the first offense, a fine of not more than Two Thousand Pesos (Php2,000.00) shall be imposed.

On the second offense, a fine of Five Thousand Pesos (Php5,000.00), shall be imposed.

On the third offense, in addition to a fine of not more than Ten Thousand Pesos (Php10,000.00) but not less than Five Thousand Pesos (Php5,000.00) or imprisonment of not more than one (1) year, or both at the discretion of the

court, the business permits and licenses, in the case of a business entity or establishment shall be revoked or cancelled.

If the guilty officer is an alien, he shall summarily be deported after the finding of probable cause on the second offense and shall be forever barred from re-entering the Philippines.

Each day that non-compliant tobacco packages are found in the retail establishments of the retailers after the compliance date shall constitute one offense. An additional penalty of Two Thousand Pesos (Php2,000.00) per day shall be made for each day the violation continues after having received the order from the Department of Health or other appropriate body, notifying and penalizing the offender for the infraction.

Section 15. Schedule for Graphic Health Warning Guidelines. Within thirty (30) days from effectivity of this Act, and every year thereafter, the Department of Health shall issue a template of graphic health warnings to be rotated as well as guidelines respecting the printing instructions, specific pictures, design, or content of the information relating to the graphic health warnings that must appear on tobacco product packages. All graphic health warnings issued shall comply with the specifications stated above and must always present the devastating health effects of tobacco use and exposure to second-hand smoke.

Section 16. Administrative Power. The Department of Health is hereby charged with implementing and enforcing the provisions of this Act.

Within six (6) months from the effectivity of this Act, the Department of Health shall formulate guidelines and administrative sanctions to facilitate the implementation of this Act. The Department of Health, through the Philippine Food and Drug Administration (FDA), is hereby authorized to:

- a. promulgate rules governing the hearings on alleged violations of this Act. The hearings shall be summary in nature and shall be conducted by means of position papers and affidavits. Any decision must be rendered by the Department of Health no longer than thirty (30) days from the date of filing;
- b. impose, after notice and hearing, administrative fines of up to Five Million Pesos (Php5,000,000.00), the proceeds of which will be used for health promotion campaigns on tobacco control of the Department of Health;
- c. issue other administrative rules and regulations it deems necessary to effectively implement the provisions of this Act, such as but not limited to seizure, forfeiture and destruction of non-compliant packages as described under this Act.

The Department of Health shall have the power to call upon law enforcement agencies and the managing authorities in the economic zones for assistance in the implementation and enforcement of its decisions, orders, rules and regulations. In addition, the Department of Health may also deputize, whenever necessary, provincial governors, city and municipal mayors, and representatives of the national government agencies, tobacco control organizations and concerned sectors to help monitor compliance with and report any violation of this Act.

The administrative case for an act constituting a violation of the administrative regulations to be issued by the Department of Health shall not preclude the simultaneous criminal prosecution for the same act constituting a violation under this Act, through criminal proceedings authorized under Section 14 of this Act.

Section 17. Strict Compliance and Inspections. Absolutely no extensions of time to comply with the provisions of this Act shall be granted to tobacco manufacturers or any other affected party.

For purposes of enforcing the law and for ensuring compliance therewith, the Department of Health, upon presenting appropriate credentials to the owner, manager or agent in charge, are authorized (i) to enter, at reasonable hours, any factory, warehouse or establishment in which tobacco products are manufactured, processed, packed or held, for introduction into domestic commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such tobacco products; and, (ii) to inspect, in a reasonable manner, such factory, warehouse, or establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein. If the officer, employee or person designated making any such inspection of a factory, warehouse or other establishment has obtained any sample in the course of inspection, upon completion of the inspection and prior to leaving the premises, he shall give the owner, manager or agent-in-charge a receipt describing the samples obtained.

The Department of Health shall have the power to punish the refusal of the owner, manager, agent-in-charge or employee of the factory, warehouse, establishment, or vehicle who, despite the presentation of appropriate credentials by the officer, employee or person designated to conduct the inspection, refuses the entry of such officer, employee or person.

Section 18. Citizens Suits – For purposes of enforcing the provision of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts or bodies against:

- (a) Any person who violates or fails to comply with the provisions of this Act, its implementing rules and regulations, including the template, guidelines, or other regulations; or
- (b) The Department of Health with respect to rules and regulations issued inconsistent with this Act; and/or
- (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act, its implementing rules and regulations, including the template, guidelines or other regulations, or abuses his authority in the performance of his duty; or in any manner, improperly performs his duties under this Act or its implementing rules and regulations including the template, guidelines or other regulations.

The administrative, civil and criminal actions begun under this section shall be alternative and cumulative and shall not preclude any other person from filing a similar action.

In civil suits brought under this Act, the court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Section 19. Separability Clause: If any clause, provision, paragraph or part hereof shall be declared unconstitutional or invalid, such judgment shall not affect, invalidate or impair any other part hereof but such judgment shall be merely confined to the clause, provision, paragraph or part directly involved in the controversy in which such judgment has been rendered.

Section 20. Repealing Clause. — All other laws, decrees, executive order and other administrative issuances and parts thereof which are inconsistent with the provisions of this Act are hereby modified, superseded or repealed accordingly including Section 25 of RA 9711. Sections 13-c, 13-g, and Section 32-c of Republic Act 9211 are hereby repealed.

Section 21. Effectivity. — This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in a major daily newspaper of national circulation in the Philippines.

Approved,