

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

15th Congress
First Regular Session

H. No. **2510**

Introduced by Representative Daza (R.)

EXPLANATORY NOTE

The Constitution provides that the State shall protect and promote the right to health of the people and instill health consciousness among them. The State shall also protect consumers from trade malpractices and from substandard and hazardous products.

The attached bill seeks to effectively instill health consciousness through picture-based health warnings on tobacco products. The use of prominent, colored and graphic picture-based health warnings is a very effective means to convey to the public in general and to smokers in particular, the hazards and ill-effects of tobacco use, including those associated with second hand smoke. These warnings will also dissuade children and teenagers from using tobacco and educate them the hazard effects of smoking. The removal of cigarette description, such as "light", "mild", and "low tar" will prevent smokers from believing that the use of "light" or "mild" cigarettes is an alternative to quitting.

A recent World Health Organization (WHO) Global Youth Tobacco Survey shows that 27% of Filipino teenagers aged 13-15 smoke. This reflects an increase of thirty per centum (30%) over the past two (2) years. Youth are less likely to smoke if they are aware of the real dangers of smoking and if the appeal of glamour associated with the cigarette pack is removed.

By convincing the millions of impoverished Filipinos, who from the bulk of smoking, to stop their use of tobacco, they will be able to channel their meager earnings by purchasing the necessities of life, such as food, clothing, shelter, education and medical care. This pro-poor bill will eventually result in more savings, more productivity, more money for health and education, less sickness and less health costs.

The picture-based warnings will have designs unique in the Philippines which will serve as an effective method by which the government can identify tobacco packages that are smuggled into the country, thus eradicating this illegal activity.

To ensure the effective implementation of this Picture-Based Health Warning Act and to prevent the tobacco industry from utilizing the other arms of the government to frustrate this effort on tobacco control, the Department of Health is given sole authority to administer and enforce the provisions of this law and the concurrent powers to issue the necessary rules and regulations, including the imposition of fines, issuance of subpoenas and confiscation of non-compliant tobacco packages. However, any action by the Department of Health in the exercise of its administrative authority shall not prejudice the State from imposing criminal sanctions on the violators of this proposed Act.

In order for the Philippines to comply in good faith the World Health Organization Framework Convention on Tobacco Control, it should adopt and implement effective health warnings on tobacco product packages by the end of September, 2011.

In view of the foregoing considerations and in order to protect the present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke, approval of this bill is earnestly requested.



RAUL A. DAZA

Republic of the Philippines
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AN ACT
TO EFFECTIVELY INSTILL HEALTH CONSCIOUSNESS THROUGH PICTURE-
BASED HEALTH WARNINGS ON 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 be known as "The Picture-Based Health Warning Act."

SEC. 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 substandard and 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 of tobacco consumption and exposure to tobacco smoke; to enact effective measures to curb and reduce tobacco use, especially among the youth; and to promote 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, by September 2011, effective health warnings on tobacco products, that should describe the harmful effects of tobacco use, be 50% or more of 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 warnings have been shown to be insufficient in conveying the dangers of tobacco products, while graphic or picture-based health warnings have been shown to be more effective in conveying the truth of the dangers of exposure and consumption of tobacco smoke;

The State recognizes that tobacco and poverty form a vicious circle 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.

SEC. 3. **Purpose.** - The purpose of this Act is:

- (a) To have health warnings that effectively warn of the devastating effects of tobacco use and exposure to second hand smoke.
- (b) To remove signs or terms or any other direct or indirect means on or in tobacco product packages that create or are likely to create a false impression about the health effects of tobacco products, including but not limited to misleading or deceptive descriptors, like "low tar", "light", "mild", or similar terms; and
- (c) To strengthen the role of the Department of Health in promoting the right to health and instilling health consciousness among Filipinos.

SEC. 4. **Definitions:**

- (a) "**picture-based health warning**" means warning labels that are composed of a photographic picture warning on health dangers or other problems related to tobacco use or exposure to tobacco smoke, and an accompanying textual warning that is related to the picture as issued by the Department of Health according to Section 15 of this Act;
- (b) "**principal display surfaces**" means
 - (1) In the use of a package and carton that has at least two equal sized sides or surfaces other than the top or bottom that may be displaced or visible under normal or customary conditions of sale or use, the areas of each of the two largest surfaces;
 - (2) The largest surface of spherical, cylindrical or conical container of tobacco products and in the case of a package and carton that does not have particular side or surface that is predominantly displayed or visible under normal customary conditions of sale or use, the total surface of the package; and
 - (3) All surfaces or panels, exterior or interior, of any tobacco product packaging or carton not specified above.

SEC. 5. **Picture-based Health Warnings.** - Beginning July 1, 2011 or within ninety (90) days from the effectivity of this Act, whichever is earlier, cigarette packages and other tobacco product packages found in the market, including cartons or master cases, shall bear highly visible full-color "picture-based health warnings", as prescribed as to all particulars that shall have two components: a photograph picture warning and an accompanying textual warning that is related to the picture:

- a) The picture-based health warnings shall be printed on at least 60% of the principal display surfaces of any tobacco package; it shall occupy no less than 60% of the front and 60% of the back panel in the case of packaging described in Section 3 (a)(b) hereof;
- b) It shall be located at the upper portion of the said panels or principal display areas;
- c) Nothing shall be printed or applied on a location where it is likely to obscure or cover, in part or in whole, the picture-based 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) The picture-based health warning shall be printed in full color, with the minimum resolution of 600 dpi using at least 4-color printing;

- f) A minimum of eight (8) variations of picture-based health warnings shall be printed simultaneously and these shall be rotated periodically, so that any time within the twelve (12) month period, when a set of picture-based health warnings are scheduled to be rotated, the variations of the warnings shall appear in the market with proportionate frequency;
- g) In no case shall the picture-based health warning measure less than 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 55 millimeters; and
- h) Picture-based health warning specifications:
 - 1) The text accompanying the picture for the picture-based health warning shall be placed on areas of the photograph where it will not obscure the picture itself and will be prominently displayed;
 - 2) The accompanying text shall use up no more than 30% of the entire area of the picture-based health warning and shall appear in clearly legible type and in contrast by typograph, layout and color, without the use of any border or frame; and
 - 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.

SEC. 6. **Side Panel.** – In addition to the picture-based health warning, cigarette packages as well as other tobacco product packages found in the market, shall bear, on one side panel, concise information about the picture-based health warning as issued by the Department of Health according to Section 15 of this Act. This information shall be prominently displayed and the text thereto shall appear in clearly legible type and in contrast by typograph, layout and color, without the use of any border or frame.

SEC. 7. **Descriptors.** - Beginning July 1, 2011, or within ninety (90) days from the effectivity of this Act, whichever is earlier, 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 or brand is less harmful than any 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, hazard or emissions. These may include terms such as “low tar”, “light”, “ultra light”, or “mild”.

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

SEC. 9. **Minimum Principal Display Surface/Prohibition on Smaller Packages.** – To ensure that the visibility, prominence, and impact of picture-based health warnings, no person or legal entity shall make, fabricate, or distribute cigarette packages or repack cigarette packages with packages that have for its principal display surface, a total area of less than 4950 square millimeters nor each of the two largest sides in case tobacco packages describe in Section 4(b)(1). For other tobacco products that fall under Sections 4(b)(2) and 4(b)(3) the minimum size for the principal display surface shall also be 4950 square millimeters.

SEC. 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.

SEC. 11. *Prohibition on Display.* - No person or legal entity shall obscure or cover in part or in whole the picture-based health warning in the selling areas. The picture-based health warning shall be prominently displayed whenever the said packages are commercially displayed.

SEC. 12. *Liabilities 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 business entity or establishment, the chair of the Board of Directors, the owner, president, manager, and the corporate officials thereof shall be directly responsible therefore and shall be made accountable. Agents/Representatives of the aforecited manufacturers, importers, and 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.

SEC. 13. *Liability of Retailers and Sellers.* - Retailers and sellers of tobacco products shall be directly liable for violations of Sections 10 and 11 of this Act. In the case of a business entity or establishment, the chair of the Board of Directors, the owner, president, manager, and the corporate officials thereof shall be directly responsible therefore and shall be made accountable.

SEC. 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 to 11 of this Act or any violations of the provisions of this Act:

- (1) On the first offense, a fine of not more than One million pesos (Php 1,000,000.00) shall be imposed;
- (2) On the second offense, a fine of Five million pesos (Php 5,000,000.00) shall be imposed;
- (3) On the third offense, in addition to a fine of not more than Twenty million pesos (Php 20,000,000.00) or imprisonment of not more than one (1) year, or both fine and imprisonment 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;
- (4) 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;
- (5) Each batch of non-compliant tobacco packages, regardless of size, that are withdrawn from the manufacturing facility, imported into the Philippines for sale in the market, transferred to other facilities, or delivered to the retail establishments after the compliance date shall constitute one offense. And an additional penalty of One hundred thousand pesos (Php 100,000.00) per day shall be made for each day; and
- (6) The violation continues after having received the order from the Department of Health or other appropriate body, notifying the company of the infraction.

(c) 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 any violations of the provisions of this Act:

- (1) On the first offense, a fine of not more than Five thousand pesos (Php 5,000.00) shall be imposed;

- (2) On the second offense, a fine of Ten thousand pesos (Php 10,000.00) shall be imposed;
 - (3) On the third offense, in addition to a fine of not more than Twenty thousand pesos (Php 20,000.00), or imprisonment of not more than one (1) year or both fine and imprisonment 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;
 - (4) 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; and
 - (5) Each day that non-compliant tobacco packages are found in the retail establishments of the retailers after the compliance date shall constitute one offense. And an additional penalty of One hundred thousand pesos (Php 100,000.00) 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 the retailers of the infraction.
- (d) Prosecution under this Section may be commenced by the Department of Health, the Philippine National Police, a Prosecutor by himself, or any private citizen.

SEC. 15. *Schedule for Picture-Based Health Warning Guidelines.* – Beginning March 1, 2011, or within thirty (30) days from the effectivity of this Act, whichever is earlier, and every year thereafter, or as frequently as the need arises, the Department of Health shall issue a template of picture-based health warning to be rotated as well as guidelines respecting the printing instructions, specific design or content of the information relating to the picture-based health warnings that must appear in the tobacco product packages. The template and the guidelines shall be based on the recommendation of the Philippine Cancer Society (PCS) and the Philippine College of Chest Physicians (PCCP, as approved by the Secretary of Health. In the absence of the two non-government organizations cited above, the Department of Health shall select other leading organizations that have an established and proven record of dealing with tobacco related diseases and deaths. All picture-based health warnings issued shall comply with the specifications above and must always present the devastating effects of tobacco use and exposure to second hand smoke. Nothing in this Act shall preclude the Department of Health for imposing standards for tobacco product packages and printing that are beyond those provided in this Act.

Picture-based health warning regulations issued by the Department of Health Secretary, upon recommendation of the PCS and PCCP or other duly recognized non-government organizations, shall be presumed compliant with the specifications listed above for purposes of implementation by the tobacco companies.

Tobacco manufacturers and importers shall have no more than two (2) months to comply with any new templates issued.

SEC. 16. *Administrative Agency.* - The Department of Health is hereby charged with implementing and enforcing the provisions of this Act.

Within one (1) year from the effectivity of this Act, the Department of Health shall issue regulations and administrative sanctions to facilitate the implementation of this Act. The Department of Health is hereby authorized without need of approval from Congress:

- (a) To promulgate rules governing the hearing of reported violations of this Act which shall be summary in nature shall be conducted by means of position papers and affidavits and a decision must be rendered by the Department of Health no longer than thirty (30) days from the date of filing;

- (b) To impose, after notice and hearing, administrative fines of up to Ten million (Php 10,000,000.00) the proceeds of which will be used for health promotion campaigns of tobacco control of the Department of Health; and
- (c) 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 zone for assistance in the implementation and enforcement of the decisions, orders, rules and regulations. In addition, the Department of Health may also deputized when 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 of any violations of the provisions of this Act.

For 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.

SEC. 17. *Strict Compliance and Inspection.* – Absolutely, no extension of time to comply with the provisions of this Act shall be granted to tobacco manufacturers, or any affected party, for 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 to: (1) enter, at reasonable hours, any factory, warehouse, or establishment in which tobacco products are manufactured, processed, packed or held, for introduction for domestic commerce or are held after such introduction or to enter any vehicle used to transport or hold such tobacco products; and (2) to inspect, in any 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 the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, manager, or agent in charge a receipt describing the samples obtained.

SEC. 18. *Citizen Suits.* - For purposes of enforcing the provisions of this Act or the 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 templates, guidelines or other regulations;
- (b) The Department of Health, with respect to rules and regulations issued inconsistent with this Act; and
- (c) Any public officer who willfully or grossly neglects the performance of any 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 his 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, 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.

SEC. 19. *Separability Clause.* – If any clause, provision, paragraph, or part thereof 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 to the controversy in which such judgment has been rendered.

SEC. 20. *Repealing Clause.* – All other laws, decrees, executive orders and other administrative issuances and parts thereof which are inconsistent with the provisions of this Act are hereby modified, superseded or repealed accordingly. Sections 13(c) and 32(c) of Republic Act No. 9211 are hereby repealed.

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

Approved,