

HOUSE OF REPRESENTATIVES
H. No. 3693

Introduced by **Representative Teodorico T. Haresco Jr.**

EXPLANATORY NOTE

Article II, Section 15 provides that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." Furthermore, Article XVI, Section 9 mandates that "the State shall protect consumers from trade malpractices and from substandard or hazardous products."

According to a recent study by the Philippine Cancer Society (PCS), "tobacco use is the single most significant lifestyle choice that has increased the incidence of lung cancer." Moreover, lung cancer is the most prevalent cause of cancer-related deaths among male and while breast cancer is the top cause of death among females, mortality rate caused by lung cancer is also significant.

Moreover, Dr. Rachel Rosario, director of PCS stressed that smoking affects not only the smoker but also the people surrounding them. She said that even second-hand smoke is as lethal and that a latest study showed that even third-hand smoke can cause cancer.

Furthermore, it is alarming that according to a study spearheaded by World Health Organization (WHO), 27% of Filipino teenagers aged 13 - 15 smoke which reflects an increase of thirty per centum (30%) over the past two (2) years. However, they also pointed out that 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.

Picture-Based Health Warning Act will be an effective tool to foster awareness among the Filipino smoking population with regard to the effects and hazards brought about by tobacco consumption not only to their health but also to the society, to the environment and even to the economy as well.

In view of the foregoing considerations, the passage of this bill is earnestly sought.


HON. TEODORICO T. HARESCO JR.
Representative

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
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HOUSE OF REPRESENTATIVES
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**"AN ACT TO EFFECTIVELY INSTILL HEALTH CONSCIOUSNESS
THROUGH PICTURE-BASED WARNINGS ON TOBACCO PRODUCTS"**

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

Section 1. Short title. - This Act shall be known as "The Picture-Based Health Warning Law on Tobacco Products."

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 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 & 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 Philippine's duty under Article 11 of the FCTC which is to adopt and implement by September 2008 effective health warnings on tobacco products that should describe the harmful effects of tobacco use.

The State recognizes that based on empirical data, textual or written 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 about the dangers of exposure and consumption of tobacco smoke.

Section 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," "ultra light" or "mild;"
- c. to further promote the right to health and information of the people with respect to tobacco products;
- d. to strengthen the role of the Department of Health in promoting the right to health and instilling health consciousness among Filipinos.

Section 4. Definition of Terms.

- 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 (DOH) in accordance with Section 14 of this Act.
- b. "*Principal Display Surface*," means:
 - 1. in the case of a package and carton that has at least two 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, the areas of each of the 2 largest surfaces;
 - 2. the largest surface of any spherical, cylindrical or conical container of tobacco products and in the case of a package and 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, the total surface area of the package;
 - 3. all surfaces or panels, exterior or interior, of any tobacco product packaging or carton not specified above.

Section 5. Picture-based Health Warning. - Four (4) months after the 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 "Picture-based Health Warnings," as prescribed, as to all particulars, that shall have two components: a photographic 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 of the packaging, as described in Sec. 4;
- 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 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 or when a wrapper on the package is removed;
- 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 at 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;
- h. Picture-based Health Warning specifications –
 1. The text warning accompanying the picture shall be worded in such manner that an ordinary layman will understand what the picture is about and what are the ill-effects of smoking on the health of the smoker and of the people around him;
 2. The text warning shall be placed on areas of the photograph where it will not obscure the picture itself but will be prominently displayed;
 3. The 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 typography, layout and color, without the use of any border, frame or any other design that will effectively lessen the size of the textual warning.
 4. The accompanying text shall be printed in English on the front panel and Filipino on the back panel and alternately, Filipino on the front panel and

English on the back panel. In the case of other containers where there is only one (1) external surface area, the accompanying text will likewise alternately be in English or Filipino.

Section 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, additional information as issued by the DOH according to Section 14 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 typograph, layout and color, without the use of any border or frame or any other design that will effectively lessen the size of the additional health warnings.

Section 7. Descriptors. - Four (4) months after the effectivity of this Act, no cigarette packs or other tobacco product packages shall contain any term, descriptor, trademark, figurative or any other sign, that directly or indirectly creates or is likely to create the false impression that a particular tobacco product is less harmful than any other tobacco product, 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, such as, but not limited to, "low tar", "light", "ultra-light", or "mild".

Section 8. Minimum Principal Display Surface/ Prohibition on Smaller Packages. - To ensure the visibility, prominence, and impact of Picture-based Health Warnings, no person or legal entity shall make, fabricate, import, sell or distribute cigar, cigarette or other tobacco products with packages that have for its Principal Display Surface, a total area of less than 4,950 sq millimeters for each of the two largest sides in the 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 4,950 square millimeters.

Section 9. Prohibition on Sales. - No person or legal entity shall sell or commercially distribute or display any cigarette or tobacco product without ensuring that the labels and packages, as well as any other container used in displaying the cigarette or tobacco products, meet the requirements under this Act.

Section 10. 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 Warnings shall be prominently displayed whenever the said packages are commercially

displayed.

Section 11. Liability of Manufacturers, Importers, and Distributor. - 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 chairperson 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.

Section 12. Liability of Retailers and Sellers. - Retailers and sellers of tobacco products shall be directly liable for violations of Section 9 and 10 of this Act. In the case of a business entity or establishment, the chairperson of the Board of Directors, the owner, president, manager and the corporate officials thereof shall be directly responsible and shall be made accountable.

Section 13. Penalties for Non Compliance.

a. The following penalties shall individually apply to manufacturers, importers, and distributors of tobacco products as well as their agents/representatives for any violation 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, 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 at the discretion of the court. In addition, the business permits and licenses, in the case of a business entity or establishment shall be revoked or cancelled.

If the guilty officer is a foreign national, he shall, in addition to the payment of fine for the second offense, be deported without further deportation proceedings and shall be forever barred from re-entering 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. 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 DOH or other appropriate body, notifying the company of the infraction.

b. The following penalties shall individually apply to retailers/sellers of tobacco products as well as their agents/representatives for any violation 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, a fine of not more than Twenty Thousand Pesos (Php 20,000.00) or imprisonment of not more than one (1) year, or both at the discretion of the court. In addition, the business permits and licenses, in the case of a business entity or establishment shall be revoked or cancelled.

If the guilty officer is a foreign national, he shall, in addition to the payment of fine for the second offense, be deported without further deportation proceedings 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 Five Thousand Pesos (Php 5,000.00) per day shall be made for each day the violation continues after having received the order from the DOH or other appropriate body, notifying the retailers of the infraction.

Section 14. Picture-Based Health Warning Guidelines. - Thirty days (30) days after the effectivity of this Act, and every year thereafter, or as frequently as the need arises, the DOH shall issue a template of Picture-based Health Warnings to be rotated as well as guidelines respecting the printing instructions, specific pictures, 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 DOH 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 tobacco smoke.

Picture-based Health Warning regulations issued by the DOH 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.

Section 15. Administrative Power. - Within one (1) year from the effectivity of this Act, the DOH shall issue Guidelines and Administrative Sanctions to facilitate the implementation of this Act, but this should, in no case, delay the implementation of this Act and the deadline time frames set herein.

The DOH 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 DOH no longer than thirty (30) days from the date of filing;
- b. impose, after notice and hearing and in accordance with the degree of the offense and the nature of the business of the offender, administrative fines of up to Ten Million Pesos (Php 10,000,00.00), the proceeds of which will be used for health promotion campaigns on tobacco control of the DOH, Provided, That manufacturers, importers, and distributors of tobacco products as mentioned in Section 11 of this Act, shall have a higher penalty compared to retailers and sellers, as provided in Section 12 of this Act;
- c. issue other administrative rules and regulations it deems necessary to effectively implement the provisions of this law, such as but not limited to, seizure, forfeiture, and destruction of non-compliant packages as described under this law.

The DOH 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 DOH may also deputize, whenever necessary, local government executives 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 filing of an administrative case for an act constituting a violation of the administrative regulations to be issued by the DOH shall not preclude the simultaneous or subsequent filing of criminal charges for the same act constituting a violation under this Act, through criminal proceedings authorized under Section 13 of this Act.

Section 16. 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 ensuring compliance therewith, the DOH or its authorized representative, upon presenting appropriate credentials to the owner, manager, or agent in charge, is authorized (1) 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 (2) to enter any vehicle being used to transport or hold the tobacco products in question; and (3) 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 to make 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 the owner, manager, or agent-in-charge a receipt describing the samples obtained.

The DOH 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 or employee designated to conduct the inspection, refuses the entry of such officer or employee.

Section 17. Citizen Suits. - For purposes of enforcing the provisions 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 administrative body 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 DOH and other implementing agencies 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 allowed under this section shall be alternative and cumulative and shall not preclude any other person from filing a similar action.

Section 18. 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 in the controversy in which such judgment has been rendered.

Section 19. 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. Section 13c and Section 32c of Republic Act 921 1 is hereby repealed.

Section 20. 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,