

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

16TH CONGRESS
First Regular Session

HOUSE BILL NO. 3821



Introduced by **REP. EVELINA G. ESCUDERO**

EXPLANATORY NOTE

This bill is principally anchored on two (2) State policies enshrined in the Constitution: 1) to protect and promote the right to health of the people and instill health consciousness among them; and 2) to promote and protect the youth's physical, moral, intellectual and social well being. Consequently, it seeks to institutionalize picture-based health warnings on tobacco products with corresponding criminal, civil and administrative liabilities for violations thereof.

The issues surrounding tobacco control or regulation have long been debated upon and discussed. Congress had enacted Republic Act (RA) Nos. 9211, or the Tobacco Regulation Act of 2003, and 10351, or the Sin Tax Law of 2012 with the hope of addressing tobacco consumption as a health hazard.

However, reports would show that the laws already in place may not be enough, especially so that smoking among the youth is considerably on the rise. Per data from a Global Youth Tobacco Survey in 2003 and 2007, there is an increasing trend among the country's youth to smoke. The survey indicates that the number of teenagers, 13 to 15, smoking may increase to 38.2%, or 2 out of every 5 Filipino youth, by 2011.¹

Albeit the sin tax law post dates the above cited survey, it would appear that the initial law on Tobacco Regulation proves to be insufficient. Hence, this proposal.


EVELINA G. ESCUDERO

¹ Alave, Kristine. Philippine Daily Inquirer. 17 March 2012.

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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 Law.”

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 (WHO) 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; 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 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, 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 about the dangers of consumption of tobacco and of exposure to 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; and
- 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. **“DOH”** refers to the Department of Health.
- b. **“Insert”** means any communication inside an individual package and/or carton purchased at either wholesale or retail by consumers, such as a leaflet or brochure.
- c. **“Onsert”** means any communication affixed to the outside of an individual package and/or carton purchased at either wholesale or retail by consumers, such as a brochure beneath the outer cellophane wrapping or glued to the outside of the cigarette package.
- d. **“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 DOH in accordance with Section 15 of this Act.
- e. **“Principal Display Area”** 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 two 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.
- f. **“Tobacco Product Package”** means the packet and package of tobacco products and any outside packaging and labeling of tobacco products for sale, distribution, exportation, importation, trade, exchange, or exhibition, such as, but not limited to, packs, tins, boxes, pouches, flip-tops, slide and shell packages, cartons, transparent wrappers, clear packaging, packages containing one product unit, master cases, or other containers of tobacco products.
- g. **“Tobacco Products”** means products entirely or partly made of leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing, or by any other means of consumption. The term also refers to any product, device or delivery system which contains tobacco or any substance derived from tobacco, and is intended for smoking or oral or nasal use. It includes any product, device or delivery system that is designed, intended or otherwise used as a substitute for any tobacco product or any product, device or delivery system that resembles the outward appearance of any tobacco product, whether or not it delivers nicotine or any other substance derived from tobacco to the user, such as electronic cigarettes, shisha, waterpipe, and similar products, devices or delivery systems.

Section 5. Picture-Based Health Warning. – Ninety (90) days after the effectivity of this Act, cigarette packages and other tobacco product packages found in the market including

package insert and onsets, and any outside packaging and labeling, 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 eighty-five percent (85%) of the principal display areas of any tobacco package; it shall occupy no less than eighty-five percent (85%) of the front and eighty-five percent (85%) of the back panel of the packaging, as described in Section 4;
- b. In addition to and separately from the requirement for tobacco packages, the Picture-Based Health Warnings shall also be printed on at least eighty-five percent (85%) of all principal display areas of any outside packaging and labeling of tobacco products, as well as any insert or onset inserted, attached, or affixed to the tobacco package;
- c. It shall be located on the top or upper portions of the said panels or Principal Display Areas;
- d. 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;
- e. 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 or by any other legally required markings or by commercial inserts or onsets;
- f. The Picture-Based Health Warning shall be printed in accordance with guidelines prescribed by the DOH, or in the absence thereof, in full color, with the minimum resolution of 600 dpi using at least 4-color printing;
- g. A minimum of eight (8) variations of Picture-Based Health Warnings shall be printed simultaneously and these shall be rotated periodically, not just for each brand family but also for each brand within the family for each package size and type, 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 and equal display of health warnings and messages on retail packages;
- h. 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;
- i. 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 to 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, frame or any design that will effectively lessen the size of the textual warning; and

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 designed to promote healthy behavior or to reduce tobacco use, as issued by the DOH 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 constitute no less than eighty-five percent (85%) of the side panel, 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. – Ninety (90) days 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 including colors, images, or numbers, or any other package or product design or feature, that directly or indirectly create or are likely to create the false impression that a particular tobacco product 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 and erroneous impression about its characteristics, health effects, hazards or emissions, such as, but not limited to, “low tar,” “light,” “ultra-light,” or “mild,” “extra,” “ultra,” and similar terms in any language that might mislead consumers, or corresponding symbols or colors signifying the same.

No cigarette packs or other tobacco product packages shall contain information that may imply that one variant or brand is safer than the other, such as, but not limited to, statements indicating that the tobacco product contains “reduced levels” of contents, substances, and emissions. Figures for emission yields, such as for tar, nicotine and carbon monoxide, shall be prohibited, including when used as part of a brand name or trademark.

Section 8. Minimum Principal Display Area / 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 Area, a total area of less than 4950 square millimeters for each of the two largest sides in the case of tobacco packages described in Section 4(e)(1). For other tobacco packages that fall under Section 4(e)(2) and 4(e)(3), the minimum size for the principal display area shall also be 4950 square millimeters.

Section 9. Costs. – All printing costs pertaining to packaging and labeling shall be shouldered by tobacco manufacturers and/or importers.

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 the labels and packages, as well as any other container used in displaying the cigarette or tobacco products, meet the requirements under this Act. Manufacturers, importers, distributors, and retailers of tobacco products shall ensure the removal from all displays of non-compliant tobacco products manufactured, imported, distributed, or sold by them within ninety (90) days from the effectivity of this Act. Non-compliant packages thereafter found in the market, on display, or for sale or distribution, shall be subject to removal, confiscation, and/or destruction.

Section 11. Prohibition on Obstruction of 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.

Design features that tend to obscure or cover, in part or in whole, the Picture-Based Health Warning, such as, but not limited to, any features of the tobacco product package that are designed to change after retail sale, are likewise prohibited, including, but not limited to:

- a. Heat activated inks;
- b. Inks or embellishments designed to appear or disappear gradually over time, including on the product itself;
- c. Inks that appear fluorescent in certain light, including on the product itself;
- d. Panels designed to be scratched or rubbed to reveal an image or text;
- e. Removable or hidden tabs or panels;
- f. Fold-out tables or panels; and
- g. Any other misleading or promotional features or design of the packaging, labeling, or product.

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 chairperson of the Board of Directors, the owner, president, manager and the corporate officials thereof shall be directly responsible therefor and shall be made accountable and jointly and severally liable with the offending entity or establishment. Agents or representatives of the aforementioned 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 13. Liability of Retailers and Sellers. – Retailers and sellers of tobacco products shall be directly liable for violations of Section 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 and shall be made accountable and jointly and severally liable with the offending entity or establishment.

Section 14. Penalties for Non Compliance. –

- a. The following penalties shall 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 less than One Million Pesos (PhP 1,000,000.00) shall be imposed;
 2. On the second offense, a fine of not less than Five Million Pesos (PhP 5,000,000.00) shall be imposed;
 3. On the third offense, in addition to a fine of not less than Twenty Million Pesos (PhP 20,000,000.00) or imprisonment of not less than one (1) year but not more than five (5) years, 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 a foreign national, he shall be deported after service of sentence and/or payment of applicable fines without need of further deportation proceedings and shall be forever barred from entering the Philippines. Filing of the appropriate case may be commenced by the DOH; the Philippine National Police (PNP); a Prosecutor by himself *motu proprio*; or any private citizen.

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 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 less than Five Thousand Pesos (PhP 5,000.00) but not more than Ten Thousand Pesos (PhP 10,000.00) shall be imposed;
 2. On the second offense, a fine of not less than Ten Thousand Pesos (PhP 10,000.00) but not more than Twenty Thousand Pesos (PhP 20,000.00) shall be imposed;
 3. On the third offense, in addition to a fine of not less than Twenty Thousand Pesos (PhP 20,000.00) or imprisonment of not less than two (2) months, 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 a foreign national, he shall be deported after service of sentence and/or payment of applicable fines without need of further deportation proceedings and shall be forever barred from entering the Philippines. Filing of the appropriate case may be commenced by the DOH; the Philippine National Police (PNP); a Prosecutor by himself *motu proprio*; or any private citizen.

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 15. Picture-Based Health Warning Guidelines. – Thirty (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, and other information that must appear in the tobacco product packages. The DOH shall consider the recommendations of leading non-government organizations that have established and proven records of dealing with tobacco-related diseases and deaths; Provided, however, that the absence of recommendations shall not delay the issuance of the template and guidelines. 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.

In light of technological developments in printing quality and package design, the DOH shall have the authority to provide additional printing guidelines beyond those specified in Section 5(e), to ensure that picture warnings remain effective and with impact.

Picture-Based Health Warning regulations issued by the Secretary of Health upon recommendation of non-government organizations shall be presumed compliant with the specifications listed above for purposes of implementation by the tobacco companies. Picture-Based Health Warnings duly approved by the WHO from other countries, for as long as they meet the specifications provided for under this Act, may likewise be used.

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

Section 16. Administrative Power. – Within thirty (30) days 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 deadlines/time frames set herein.

The DOH, in coordination with the Food and Drug Administration, is hereby charged with implementing and enforcing the provisions of this Act and shall:

- 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 Twenty Million Pesos (PhP 20,000,00.00), 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 12 of this Act, shall have a higher penalty compared to retailers and sellers, as provided in Section 13 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 non-issuance of the Regulations and Administrative Sanctions by the DOH shall not prevent the coming into force of this Act.

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 the 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 14 of this Act. In the same manner, neither shall the filing of criminal charges preclude the filing of administrative cases.

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 and importers or any other affected party.

For purposes of enforcing the law and ensuring compliance therewith, the DOH, through FDA or other deputized law enforcement agency, or its authorized representative, upon presenting appropriate credentials to the owner, manager, or agent in charge, is authorized:

- a. 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
- b. to enter any vehicle being used to transport or hold the tobacco products in question; and
- c. 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 18. 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 or entity who violates or fails to comply with the provisions of this Act, its implementing rules and regulations, including the template, guidelines, or other regulations;
- 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 19. Other Obligations of the Tobacco Industry. – Compliance with the Act shall not remove or diminish any other obligations of tobacco manufacturers, importers, distributors, retailers, and sellers, including, but not limited to, obligations to warn and inform consumers about the health hazards of tobacco use and exposure to tobacco smoke.

Section 20. Appropriations. – The appropriations for the DOH under the General Appropriations Act shall be used to carry out the implementation of this Act. The appropriation shall be augmented by the income which the agency is authorized to use, under this Act and from the proceeds of the excise taxes on tobacco. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

Section 21. 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 22. Repealing Clause. – All other laws, degrees, executive order and other administrative issuances and parts hereof which are inconsistent with the provisions of this Act are hereby modified, superseded or repealed accordingly.

Section 23. 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,