

105TH CONGRESS
1ST SESSION

S. 201

To provide for the establishment of certain limitations on advertisements relating to, and the sale of, tobacco products, and to provide for the increased enforcement of laws relating to underage tobacco use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 1997

Mr. FORD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the establishment of certain limitations on advertisements relating to, and the sale of, tobacco products, and to provide for the increased enforcement of laws relating to underage tobacco use, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tobacco Products Con-
5 trol Act of 1997”.

1 **SEC. 2. AMENDMENT TO FEDERAL CIGARETTE LABELING**
2 **AND ADVERTISING ACT.**

3 The Federal Cigarette Labeling and Advertising Act
4 is amended by inserting after section 7 (15 U.S.C. 1335)
5 the following:

6 “ADDITIONAL ADVERTISING RESTRICTIONS

7 “SEC. 7A. (a) BILLBOARDS.—

8 “(1) IN GENERAL.—It shall be unlawful to ad-
9 vertise cigarettes on any outdoor billboard that is lo-
10 cated within 500 feet of any public or private ele-
11 mentary or secondary school.

12 “(2) EXCEPTION.—Paragraph (1) shall not
13 apply to any advertisement that is non-brand name
14 specific if such advertisement is erected or main-
15 tained at street level and affixed to business estab-
16 lishments selling tobacco products at retail.

17 “(b) PERIODICALS.—It shall be unlawful to advertise
18 cigarettes in a newspaper, magazine, periodical or other
19 publication if the subscribers of such publication who are
20 under the age of 18 years constitute more than 15 percent
21 of the total subscribership of such publication as certified
22 by the publisher. The Federal Trade Commission shall an-
23 nually publish a list of the publications that are subject
24 to this subsection.

25 “(c) STADIA AND ARENAS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), it shall be unlawful to advertise cigarettes
3 in any arena or stadium where amateur or profes-
4 sional sporting events or activities occur.

5 “(2) EXCEPTIONS.—Paragraph (1) shall not
6 apply to any advertisement that—

7 “(A) is contained in a program distributed
8 at a sporting event;

9 “(B) is displayed at a concession stand
10 that sells cigarettes; or

11 “(C) is displayed during a sporting event
12 where the sponsor of the event involved has,
13 prior to the event, provided the Federal Trade
14 Commission with a certification that at least 75
15 percent of the attendees of such event are age
16 18 or older.

17 “(d) LICENSING PAYMENTS.—

18 “(1) IN GENERAL.—No payment shall be made
19 for the use of a trade or brand name of a non-
20 tobacco product as the trade or brand name for a
21 cigarette.

22 “(2) EXCEPTION.—Paragraph (1) shall not
23 apply to a cigarette that uses a trade or brand name

1 if such trade or brand name was used both for a cig-
2 arette and a nontobacco product sold in the United
3 States on January 1, 1995.

4 “(e) TRANSPORTATION ADVERTISEMENTS.—It shall
5 be unlawful to advertise cigarettes in or on taxis, buses,
6 trains, or in subway, bus, or train stations, terminals, or
7 platforms unless the advertisement is displayed at a site
8 where cigarettes are sold.

9 “(f) MOTION PICTURES.—No payment shall be made
10 by any cigarette manufacturer or any agent thereof for
11 the placement of any cigarette, cigarette package, or ciga-
12 rette advertisement as a prop in any motion picture pro-
13 duced for viewing by the general public.

14 “(g) VIDEO GAMES.—No cigarette brand name or
15 logo shall be placed in a video or on a video game machine,
16 and no brand name or logo may be placed on or within
17 the premises of family amusement centers.

18 “(h) DEFINITIONS.—As used in this section—

19 “(1) AMUSEMENT RIDE OR ATTRACTION.—The
20 term ‘amusement ride or attraction’ means—

21 “(A) any mechanized device or combina-
22 tion of devices that carry passengers along,
23 around, or over a fixed or restricted course for
24 the purpose of giving its passengers amuse-
25 ment, pleasure, thrills, or excitement; or

1 “(B) any building or structure around,
2 over, or through which individuals may walk,
3 climb, slide, jump or move that provides such
4 individuals with amusement, pleasure, thrills, or
5 excitement;

6 except that such term does not include coin-operated
7 amusement devices that carry no more than 2 indi-
8 viduals, devices regulated by the Federal Aviation
9 Administration, the Federal Railroad Administration
10 (or State railroad administrations), or vessels under
11 the jurisdiction of the Coast Guard (or State divi-
12 sion of the water patrol), tractor pulls, auto or mo-
13 torcycle events, horse shows, rodeos, or other animal
14 shows, games and concessions, nonmechanical play-
15 ground equipment, or any other devices or struc-
16 tures designated by the Federal Trade Commission.

17 “(2) FAMILY AMUSEMENT CENTER.—The term
18 ‘family amusement center’ means an enterprise of-
19 fering amusement or entertainment to the public
20 through the use of one or more amusement rides or
21 attractions.

22 “(3) VIDEO GAME.—The term ‘video game’
23 means any electronic amusement device that utilizes
24 a computer, microprocessor, or similar electronic cir-
25 cuitry and its own cathode ray tube, or is designed

1 to be used with a television set or a monitor, that
 2 interacts with the user of the device.”.

3 **SEC. 3. AMENDMENT TO COMPREHENSIVE SMOKELESS TO-**
 4 **BACCO HEALTH EDUCATION ACT OF 1986.**

5 The Comprehensive Smokeless Tobacco Health Edu-
 6 cation Act of 1986 is amended by inserting after section
 7 3 (15 U.S.C. 4402) the following:

8 “ADVERTISING RESTRICTIONS

9 “SEC. 3A. (a) BILLBOARDS.—

10 “(1) IN GENERAL.—It shall be unlawful to ad-
 11 vertise a smokeless tobacco product on any outdoor
 12 billboard that is located within 500 feet of any pub-
 13 lic or private elementary or secondary school.

14 “(2) EXCEPTION.—Paragraph (1) shall not
 15 apply to any advertisement that is non-brand name
 16 specific if such advertisement is erected or main-
 17 tained at street level and affixed to business estab-
 18 lishments selling tobacco products at retail.

19 “(b) PERIODICALS.—It shall be unlawful to advertise
 20 any smokeless tobacco product in a newspaper, magazine,
 21 periodical or other publication if the subscribers of such
 22 publication who are under the age of 18 years constitute
 23 more than 15 percent of the total subscribership of such
 24 publication as certified by the publisher. The Federal
 25 Trade Commission shall annually publish a list of the pub-
 26 lications that are subject to this subsection.

1 “(c) STADIA AND ARENAS.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), it shall be unlawful to advertise smokeless
4 tobacco product in any arena or stadium where ama-
5 teur or professional sporting events or activities
6 occur.

7 “(2) EXCEPTIONS.—Paragraph (1) shall not
8 apply to any advertisement that—

9 “(A) is contained in a program distributed
10 at a sporting event;

11 “(B) is displayed at a concession stand
12 that sells smokeless tobacco product; or

13 “(C) is displayed during a sporting event
14 where the sponsor of the event involved has,
15 prior to the event, provided the Federal Trade
16 Commission with a certification that at least 75
17 percent of the attendees of such event are age
18 18 or older.

19 “(d) LICENSING PAYMENTS.—

20 “(1) IN GENERAL.—No payment shall be made
21 for the use of a trade or brand name of a non-
22 tobacco product as the trade or brand name for a
23 smokeless tobacco product.

24 “(2) EXCEPTION.—Paragraph (1) shall not
25 apply to a smokeless tobacco product that uses a

1 trade or brand name if such trade or brand name
2 was used both for a smokeless tobacco product and
3 a nontobacco product sold in the United States on
4 January 1, 1995.

5 “(e) TRANSPORTATION ADVERTISEMENTS.—It shall
6 be unlawful to advertise smokeless tobacco product in or
7 on taxis, buses, trains, or in subway, bus, or train stations,
8 terminals, or platforms unless the advertisement is dis-
9 played at a site where smokeless tobacco products are sold.

10 “(f) MOTION PICTURES.—No payment shall be made
11 by any smokeless tobacco manufacturer or any agent
12 thereof for the placement of any smokeless tobacco prod-
13 uct, smokeless tobacco package, or smokeless tobacco ad-
14 vertisement as a prop in any motion picture produced for
15 viewing by the general public.

16 “(g) VIDEO GAMES.—No smokeless tobacco product
17 brand name or logo shall be placed in a video or on a
18 video game machine, and no brand name or logo may be
19 placed on or within the premises of a family amusement
20 center.

21 “(h) DEFINITIONS.—As used in this section:

22 “(1) AMUSEMENT RIDE OR ATTRACTION.—The
23 term ‘amusement ride or attraction’ means—

24 “(A) any mechanized device or combina-
25 tion of devices that carry passengers along,

1 around, or over a fixed or restricted course for
2 the purpose of giving its passengers amuse-
3 ment, pleasure, thrills, or excitement; or

4 “(B) any building or structure around,
5 over, or through which individuals may walk,
6 climb, slide, jump or move that provides such
7 individuals with amusement, pleasure, thrills, or
8 excitement;

9 except that such term does not include coin-operated
10 amusement devices that carry no more than 2 indi-
11 viduals, devices regulated by the Federal Aviation
12 Administration, the Federal Railroad Administration
13 (or State railroad administrations), or vessels under
14 the jurisdiction of the Coast Guard (or State divi-
15 sion of the water patrol), tractor pulls, auto or mo-
16 torcycle events, horse shows, rodeos, or other animal
17 shows, games and concessions, nonmechanical play-
18 ground equipment, or any other devices or struc-
19 tures designated by the Federal Trade Commission.

20 “(2) FAMILY AMUSEMENT CENTER.—The term
21 ‘family amusement center’ means an enterprise of-
22 fering amusement or entertainment to the public
23 through the use of one or more amusement rides or
24 attractions.

1 “(3) VIDEO GAME.—The term ‘video game’
2 means any electronic amusement device that utilizes
3 a computer, microprocessor, or similar electronic cir-
4 cuitry and its own cathode ray tube, or is designed
5 to be used with a television set or a monitor, that
6 interacts with the user of the device.”.

7 **SEC. 4. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.**

8 Section 1926 of the Public Health Service Act (42
9 U.S.C. sec. 300x-26) is amended—

10 (1) in subsection (a), by striking paragraph (1)
11 and inserting the following:

12 “(1) IN GENERAL.—Subject to paragraph (2),
13 for fiscal year 1998 and subsequent fiscal years, the
14 Secretary may make a grant under section 1921
15 only if the State involved has in effect a law provid-
16 ing that—

17 “(A) it is unlawful for any manufacturer,
18 retailer, or distributor of cigarettes or smoke-
19 less tobacco products to sell or distribute any
20 such product to any individual under the age of
21 18, and such manufacturer, retailer, or dis-
22 tributor shall, in all face to face transactions in-
23 volving an individual who appears to be under
24 the age of 26, verify such age by means of an

1 official (issued by the Federal or State govern-
2 ment) photographic identification containing
3 the date of birth of the bearer;

4 “(B) no person, firm, partnership, com-
5 pany, or corporation shall operate a vending
6 machine which dispenses cigarettes or smoke-
7 less tobacco products unless such vending ma-
8 chine is in a location that is in plain view and
9 under the direct supervision and control of the
10 individual in charge of the location or his or her
11 designated agent or employee;

12 “(C) the restrictions described in subpara-
13 graph (B) shall not apply in the case of a vend-
14 ing machine that is located—

15 “(i) at a private club;

16 “(ii) at a bar or bar area of a food
17 service establishment;

18 “(iii) at a factory, warehouse, tobacco
19 business, or any other place of employment
20 which has an insignificant portion of its
21 regular workforce comprised of individuals
22 under the age of 18 years and only if such
23 machines are located in an area that is not
24 accessible to the general public; or

1 “(iv) in such other location or made
2 available in another manner that is ex-
3 pressly permitted under applicable State
4 law;

5 “(D) it is unlawful for any person engaged
6 in the selling or distribution of cigarettes or
7 smokeless tobacco products for commercial pur-
8 poses to distribute without charge any ciga-
9 rettes or smokeless tobacco products, or to dis-
10 tribute coupons which are redeemable for ciga-
11 rettes or smokeless tobacco products, except
12 that this subparagraph shall not apply in the
13 case of distribution—

14 “(i) through coupons contained in
15 publications for which advertising is not
16 restricted under section 7A of the Federal
17 Cigarette Labeling and Advertising Act or
18 section 3A of the Comprehensive Smoke-
19 less Tobacco Health Education Act of
20 1986, coupons obtained through the pur-
21 chase of cigarettes or smokeless tobacco
22 products, or coupons sent through the
23 mail;

1 “(ii) where individuals can dem-
2 onstrate, through a photographic identi-
3 fication card, that the individual is at least
4 18 years of age;

5 “(iii) in locations that are separately
6 segregated to deny access to individuals
7 under the age of 18; or

8 “(iv) through such other manners or
9 at other locations that are expressly per-
10 mitted under applicable State law;

11 “(E) it is unlawful to for any manufac-
12 turer, retailer, or distributor of cigarettes or
13 smokeless tobacco products to sell or distribute
14 non-tobacco merchandise related to such ciga-
15 rettes or smokeless tobacco products unless—

16 “(i) with respect to a face-to-face
17 transaction, the individual is 18 years of
18 age or older as verified, in the case of an
19 individual who appears to be under the age
20 of 26, by means of an official (issued by
21 the Federal or State government) photo-
22 graphic identification containing the date
23 of birth of the bearer;

24 “(ii) with respect to other trans-
25 actions, the individual involved provides a

1 signed certification together with a copy of
2 an official (issued by the Federal or State
3 government) photographic identification
4 containing the date of birth of the individ-
5 ual that such individual is 18 years of age
6 or older; and

7 “(iii) with respect to items of clothing
8 or hats, such clothing or hat is made avail-
9 able in only adult sizes;

10 “(F) it is unlawful for any manufacturer,
11 retailer, or distributor of cigarettes or smoke-
12 less tobacco products to display those products
13 in a manner that causes those products to be
14 accessible to anyone other than an employee of
15 the manufacturer, retailer, or distributor, ex-
16 cept that such prohibition shall not apply to a
17 display—

18 “(i) if the display is located within the
19 physical reach of an employee of the manu-
20 facturer, retailer, or distributor working at
21 the normal work station of the employee;
22 or

23 “(ii) if an employee of the manufac-
24 turer, retailer, or distributor is able to
25 monitor the display through the use of in-

1 store mirrors, video cameras, or by other
2 means;

3 “(G) it is unlawful for any retailer to
4 break or otherwise open any cigarette package
5 to sell or distribute individual cigarettes or a
6 number of unpackaged cigarettes that is smaller
7 than the quantity in the minimum cigarette
8 package size of 20 cigarettes, or any quantity
9 of cigarette tobacco that is smaller than the
10 smallest package distributed by the manufac-
11 turer for individual consumer use; and

12 “(H) it is unlawful for any retailer to
13 break or otherwise open any smokeless tobacco
14 package to sell or distribute any quantity of
15 smokeless tobacco that is smaller than the
16 smallest package distributed by the manufac-
17 turer for individual consumer use.”;

18 (2) in subsection (a)(2)—

19 (A) by striking “1993” and inserting
20 “1997”;

21 (B) by striking “1994” and inserting
22 “1998”; and

23 (C) by striking “1995” and inserting
24 “1999”;

25 (3) in subsection (c)—

1 (A) in paragraph (1), by striking “10 per-
2 cent” and inserting “20 percent”;

3 (B) in paragraph (2), by striking “20 per-
4 cent” and inserting “40 percent”;

5 (C) in paragraph (3), by striking “30 per-
6 cent” and inserting “60 percent”; and

7 (D) in paragraph (4), by striking “40 per-
8 cent” and inserting “80 percent”;

9 (4) in subsection (d)—

10 (A) in paragraph (1), by striking “1995”
11 and inserting “1999”; and

12 (B) in paragraph (2), by striking “1994”
13 and inserting “1998”; and

14 (5) by adding at the end the following:

15 “(e) ENFORCEMENT.—Any amounts made available
16 to a State through a grant under section 1921 may be
17 used to enforce the laws described in subsection (a).

18 “(f) DEFINITIONS.—As used in subsection (a)(1), the
19 term ‘private club’ means an organization with no more
20 than an insignificant portion of its membership comprised
21 of individuals under the age of 18 years that regularly
22 receives dues or payments from its members for the use
23 of space, facilities and services.”.

1 **SEC. 5. AMENDMENT TO FEDERAL FOOD, DRUG, AND COS-**
2 **METIC ACT.**

3 Chapter IX of the Federal Food, Drug, and Cosmetic
4 Act (21 U.S.C. 391 et seq.) is amended by adding at the
5 end the following:

6 **“SEC. 906. PROHIBITION ON REGULATION OF TOBACCO**
7 **PRODUCTS.**

8 “Nothing in this Act or any other Act shall provide
9 the Food and Drug Administration with any authority to
10 regulate in any manner tobacco or tobacco products (as
11 such terms are defined for purposes of section 5702(c) of
12 the Internal Revenue Code of 1986.”.

○