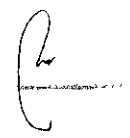


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SENATE
S.B. No. 2340

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INTRODUCED BY SENATOR PIA S. CAYETANO

EXPLANATORY NOTE

34.8% of our population is engaged in tobacco smoking¹. 80% of Filipino households in the poorest quantile have at least one member who smokes². In fact, their tobacco expenditure tops their monthly spending. In 2003, the poor spent roughly Php 92 per month for tobacco which accounts for the 2.5% of their monthly spending compared to clothing, education and health.³ 61.1% of the money they spend on cigarettes can buy an additional kilo of meat or fish, or an additional 22 chicken eggs or 53 pieces of bananas.⁴

In 1994, among 25 leading countries, we ranked 15th on apparent tobacco consumption with some 85.36 billion cigarette or about 1.6% of the world's total consumption.⁵

With these figures, it is not surprising that the result is a 'deadly' one. Indeed, 5 out of the top 10 death-causing diseases in our country can be attributed to tobacco smoking.⁶

The 12th Congress saw the need to protect the Filipinos from the harm brought about by tobacco products by approving Republic Act No. 9211 or "The Tobacco Regulation Act of 2003," which mandated textual health warnings on cigarettes.

However, studies have shown that textual health warnings are not effective. While many smokers know that tobacco use is harmful, studies show that most are unaware of its true risks. As the saying goes, "a picture paints a thousand words." Studies have shown that picture based health warnings are more effective than text warnings alone. In fact, a study revealed that such health warnings are "60 times more

¹ Food and Nutrition Research Institute, Global Youth Tobacco Survey, and World Health Organization
² Family Income and Expenditure Survey, 2003 as cited in the Power Point Presentation of Dr. Jessica de Leon of the Department of Health
³ Family Income and Expenditure Survey, 2003.
⁴ Family Income and Expenditure Survey, 2003.
⁵ World Health Organization, 1997
⁶ Leading causes of mortality: **1. diseases of the heart**; 2. malignant neoplasms; **3. pneumonia**; 4. **cerebrovascular diseases** (is a group of brain dysfunctions related to disease of blood vessels supplying the brain); **5. tuberculosis**; **6. chronic lower respiratory diseases**; 7. diabetes melletius; 8. certain conditions originating in the perinatal period; 9. assault; 10. nephritis syndrome nephrosis (**Nephrotic syndrome** is a nonspecific disorder in which the kidneys are damaged, to leak large amounts of protein (at least 3.5 grams per day per 1.73m² body surface area) from the blood into the urine). (source: Philippines in Figures, NSO)

*effective in terms of encouraging cessation and prevention than text only labels.*⁷ As such, there is need to mandate a Picture-Based Health Warning will require all tobacco products to bear pictures illustrating the ill-effects of smoking.

The use of pictures and graphics will also effectively convey the message to those with literacy problems.

Pictorial health warnings on tobacco products already exist in 15 countries,⁸ both developed and developing, all over the world. In fact, cigarette packages manufactured in the Philippines and sold in neighboring countries, such as Singapore and Thailand, already include picture-based health warnings simply because these two countries require picture-based health warnings. On the other hand, cigarette packages manufactured in Singapore and sold in the Philippines carry only textual health warnings because picture-based health warnings are not required in the Philippines.

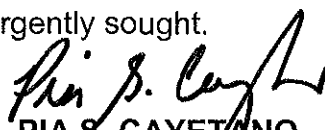
This requirement is based Article 11 of the Framework Convention on Tobacco Control, an international treaty initiated by the World Health Assembly. It is the first global public health agreement devoted entirely to tobacco control and was participated in by 192 countries to which the Philippines is a signatory. The Philippines acceded to the FCTC in 2005 obliging us to comply with certain standards including the implementation of effective measures on packaging and labeling of tobacco products such as the adoption of a picture-based health warning on tobacco packages.

This proposed measure was first introduced in the 14th Congress by Senator Aquilino "Nene" Pimentel, Jr. The bill requires all cigarette packages and other tobacco product packages, found in the market, including cartons or master cases, to bear highly visible full-color "picture-based health warnings" that will have two components: a photographic picture warning and an accompanying textual warning that explains in simple terms what the picture is all about. The bill will also prohibit the use of descriptors, including terms, trademarks, or any sign or feature that creates or is likely to create the false impression that a product or brand is less harmful.

In the same Congress, I filed a Committee Report on the bill as the Chair of the Committee on Health. The report was exhaustively and thoroughly discussed in the Plenary, but unfortunately was not passed on Third Reading. This bill is patterned on the Committee Report acknowledging the work done by the Committee on Health and Demography together with other government agencies and non-government organizations.


Section 15, Article II of the 1987 Philippine Constitution mandates that "The State shall protect and promote the right to health of the people and instill health consciousness among them."

For this reason, approval of this Bill is urgently sought.


PIA S. CAYETANO
Senator

⁷ Applied Economics. *Cost-benefit analysis of proposed new health warnings on tobacco products. Report prepared for Commonwealth Department of Health and Ageing.* [online] 2004. Available from: http://www.treasury.gov.au/documents/794/DOC/Cost_Benefit_Analysis.doc.

⁸ Australia, Belgium, Brazil, Canada, Chile, Hong Kong, India, Jordan, New Zealand, Panama, Singapore, Thailand, Uruguay, Venezuela and Switzerland.

APPROVED BY 

INTRODUCED BY SENATOR PIA S. GAYETANO

**“AN ACT
TO EFFECTIVELY INSTILL HEALTH CONSCIOUSNESS THROUGH PICTURE-
BASED WARNINGS ON TOBACCO PRODUCTS”**

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

1 **Section 1. Short title.** - This Act shall be known as “The Picture-Based Health
2 Warning Law.”

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

5 The State shall protect consumers from trade malpractices and from substandard
6 and hazardous products.

7 The State accepts that, as a State-Party to the World Health Organization’s
8 Framework Convention on Tobacco Control (FCTC), a treaty that reaffirms the right of
9 all people to the highest standards of health, the Philippines is obliged to inform every
10 person of the health consequences of tobacco consumption & exposure to tobacco
11 smoke; to enact effective measures to curb and reduce tobacco use, especially among
12 the youth; and to protect public health policy from the commercial and vested interests
13 of the tobacco industry.

14 The State is cognizant of the Philippine’s duty under Article 11 of the FCTC
15 which is to adopt and implement by September 2008 effective health warnings on
16 tobacco products that should describe the harmful effects of tobacco use.

17 The State recognizes that based on empirical data, text warnings have been
18 shown to be insufficient in conveying the dangers of tobacco products while graphic or
19 picture-based health warnings have been shown to be more effective in conveying the
20 truth about the dangers of exposure and consumption of tobacco smoke.

21

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

- 1 a. to have health warnings that effectively warn of the devastating effects of tobacco
2 use and exposure to second hand smoke;
- 3 b. to remove signs or terms or any other direct or indirect means on or in tobacco
4 product packages that create or are likely to create a false impression about the
5 health effects of tobacco products, including but not limited to misleading or
6 deceptive descriptors like "low tar," "light," "ultra light" or "mild;"
- 7 c. to further promote the right to health and information of the people;
- 8 d. to strengthen the role of the Department of Health in promoting the right to health
9 and instilling health consciousness among Filipinos.
- 10

11 **Section 4. Definition of terms. –**

12 a. "*Picture-based Health Warning*" means warning labels that are composed of a
13 photographic picture warning on health dangers or other problems related to
14 tobacco use or exposure to tobacco smoke, and an accompanying textual
15 warning that is related to the picture, as issued by the Department of Health
16 (DOH) in accordance with Section 14 of this Act.

17 b. "*Principal Display Surface*", means:

- 18 1. in the case of a package and carton that has at least two equal sized
19 sides or surfaces, other than the top and bottom, that may be
20 displayed or visible under normal or customary conditions of sale or
21 use, the areas of each of the 2 largest surfaces;
- 22 2. the largest surface of any spherical, cylindrical or conical container of
23 tobacco products and in the case of a package and carton that does
24 not have a particular side or surface that is predominantly displayed or
25 visible under normal or customary conditions of sale or use, the total
26 surface area of the package;
- 27 3. all surfaces or panels, exterior or interior, of any tobacco product
28 packaging or carton not specified above.
- 29

30 **Section 5. Picture-based Health Warning. –** Six (6) months after the effectivity
31 of this Act, cigarette packages and other tobacco product packages found in the market
32 including cartons or master cases, shall bear highly visible full-color "Picture-based
33 Health Warnings," as prescribed, as to all particulars, that shall have two components: a
34 photographic picture warning and an accompanying textual warning that is related to the
35 picture.

- 36 a. The Picture-based Health Warnings shall be printed on at least 60% of the
37 principal display surfaces of any tobacco package; it shall occupy no less

1 than 60% of the front and 60% of the back panel of the packaging, as
2 described in Sec. 4;

3 b. It shall be located at the upper portions of the said panels or Principal Display
4 Areas;

5 c. Nothing shall be printed or applied on a location where it is likely to obscure
6 or cover, in part or in whole, the Picture-based Health Warnings;

7 d. No part of the warning may be obliterated, obscured, folded, severed or
8 become unreadable when the tobacco package is opened or closed or when
9 a wrapper on the package is removed;

10 e. The Picture-based Health Warning shall be printed in full color, with the
11 minimum resolution of 600 dpi using at least 4-color printing;

12 f. A minimum of eight (8) variations of Picture-based Health Warnings shall be
13 printed simultaneously and these shall be rotated periodically, so that at any
14 time within the twelve (12) month period, when a set of Picture-based Health
15 Warnings are scheduled to be rotated, the variations of the warnings shall
16 appear in the market with proportionate frequency;

17 g. In no case shall the Picture-based Health Warning measure less than 2475
18 square millimeters in size regardless of the type of tobacco package.
19 Furthermore, the shortest side of the health warning shall measure no less
20 than 55 millimeters;

21 h. Picture-based Health Warning specifications –

22 1. *The text warning accompanying the picture shall be worded in such*
23 *manner that an ordinary layman will understand what the picture is*
24 *about and what are the ill-effects of smoking on the health of the*
25 *smoker and of the people around him;*

26 2. *The text warning shall be placed on areas of the photograph where it*
27 *will not obscure the picture itself but will be prominently displayed;*

28 3. *The text shall use up no more than 30% of the entire area of the*
29 *Picture-based Health Warning and shall appear in clearly legible type*
30 *and in contrast by typography, layout and color, without the use of any*
31 *border, frame or any other design that will effectively lessen the size of*
32 *the textual warning.*

33 4. *The accompanying text shall be printed in English on the front panel*
34 *and Filipino on the back panel and alternately, Filipino on the front*
35 *panel and English on the back panel. In the case of other containers*
36 *where there is only one (1) external surface area, the accompanying*
37 *text will likewise alternately be in English or Filipino.*

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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 4950 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 4950 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.

1 **Section 11. Liability of Manufacturers, Importers, and Distributor. -**

2 Manufacturers, importers, and distributors of tobacco products shall be directly liable for
3 any violations of the provisions of this Act. In the case of a business entity or
4 establishment, the chairperson of the Board of Directors, the owner, president, manager
5 and the corporate officials thereof shall be directly responsible therefore and shall be
6 made accountable. Agents/representatives of the aforecited manufacturers, importers,
7 and distributors who commit any violation of the provisions of this Act and its
8 implementing rules shall be jointly and severally liable with the manufacturers,
9 importers, and distributors.

10
11 **Section 12. Liability of Retailers and Sellers. -** Retailers and sellers of tobacco

12 products shall be directly liable for violations of Section 9 and 10 of this Act. In the case
13 of a business entity or establishment, the chair of the Board of Directors, the owner,
14 president, manager and the corporate officials thereof shall be directly responsible and
15 shall be made accountable.

16
17 **Section 13. Penalties for Non Compliance. –**

18
19 a. The following penalties shall individually apply to manufacturers,
20 importers, and distributors of tobacco products as well as their
21 agents/representatives for any violation of this Act:

- 22
- 23 1. On the first offense, a fine of not more than One Million Pesos (Php
24 1,000,000.00) shall be imposed;
 - 25 2. On the second offense, a fine of Five Million Pesos (Php
26 5,000,000.00), shall be imposed;
 - 27 3. On the third offense, in addition to a fine of not more than Twenty
28 Million Pesos (Php 20,000,000.00) or imprisonment of not more than
29 one (1) year, or both at the discretion of the court, the business permits
30 and licenses, in the case of a business entity or establishment shall be
31 revoked or cancelled.

32
33 If the guilty officer is a foreign national, he shall, in addition to the payment of fine
34 for the second offense, be deported without further deportation proceedings and shall
35 be forever barred from re-entering the Philippines.

36 Each batch of non-compliant tobacco packages, regardless of size, that are
37 withdrawn from the manufacturing facility, imported into the Philippines for sale to the
38 market, transferred to other facilities, or delivered to the retail establishments after the
39 compliance date shall constitute one offense. And an additional penalty of One Hundred

1 Thousand Pesos (Php 100,000.00) per day shall be made for each day the violation
2 continues after having received the order from the DOH or other appropriate body,
3 notifying the company of the infraction.

4
5 b. The following penalties shall individually apply to retailers/sellers of tobacco
6 products as well as their agents/representatives for any violation of this Act:

- 7
8 1. On the first offense, a fine of not more than Five Thousand Pesos (Php
9 5,000.00) shall be imposed;
- 10 2. On the second offense, a fine of Ten Thousand Pesos (Php 10,000.00)
11 shall be imposed;
- 12 3. On the third offense, in addition to a fine of not more than Twenty
13 Thousand Pesos (Php 20,000.00) or imprisonment of not more than
14 one (1) year, or both at the discretion of the court, the business permits
15 and licenses, in the case of a business entity or establishment shall be
16 revoked or cancelled.

17
18 If the guilty officer is a foreign national, he shall, in addition to the payment of fine
19 for the second offense, be deported without further deportation proceedings and shall
20 be forever barred from re-entering the Philippines.

21 Each day that non-compliant tobacco packages are found in the retail
22 establishments of the retailers after the compliance date shall constitute one offense. An
23 additional penalty of Five Thousand Pesos (Php 5,000.00) per day shall be made for
24 each day the violation continues after having received the order from the DOH or other
25 appropriate body, notifying the retailers of the infraction.

26
27 **Section 14. Picture-Based Health Warning Guidelines.** - Thirty days (30) days
28 after the effectivity of this Act, and every year thereafter, or as frequently as the need
29 arises, the DOH shall issue a template of Picture-based Health Warnings to be rotated
30 as well as guidelines respecting the printing instructions, specific pictures, design, or
31 content of the information relating to the Picture-based Health Warnings that must
32 appear in the tobacco product packages. The template and the guidelines shall be
33 based on the recommendation of the Philippine Cancer Society (PCS) and the
34 Philippine College of Chest Physicians (PCCP), as approved by the Secretary of Health.
35 In the absence of the two non-government organizations cited above, the DOH shall
36 select other leading organizations that have an established and proven record of
37 dealing with tobacco-related diseases and deaths. All Picture-based Health Warnings

1 issued shall comply with the specifications above and must always present the
2 devastating effects of tobacco use and exposure to tobacco smoke.

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

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

9
10 **Section 15. Administrative Power.** – Within one (1) year from the effectivity of
11 this Act, the DOH shall issue Guidelines and Administrative Sanctions to facilitate the
12 implementation of this Act, but this should, in no case, delay the implementation of this
13 Act and the deadlines/time frames set herein.

14
15 The DOH is hereby authorized to:

- 16
17 a. promulgate rules governing the hearings on alleged violations of this Act. The
18 hearings shall be summary in nature and shall be conducted by means of
19 position papers and affidavits. Any decision must be rendered by the DOH no
20 longer than thirty (30) days from the date of filing;
- 21
22 b. impose, after notice and hearing and in accordance with the degree of the
23 offense and the nature of the business of the offender, administrative fines of
24 up to Ten Million Pesos (Php 10,000,000.00), the proceeds of which will be
25 used for health promotion campaigns on tobacco control of the DOH,
26 *Provided*, That manufacturers, importers, and distributors of tobacco products
27 as mentioned in Section 11 of this Act, shall have a higher penalty compared
28 to retailers and sellers, as provided in Section 12 of this Act;
- 29
30 c. issue other administrative rules and regulations it deems necessary to
31 effectively implement the provisions of this law, such as but not limited to,
32 seizure, forfeiture, and destruction of non-compliant packages as described
33 under this law.

34
35 The DOH shall have the power to call upon law enforcement agencies and the
36 managing authorities in the economic zones for assistance in the implementation and
37 enforcement of its decisions, orders, rules and regulations. In addition, the DOH may
38 also deputize, whenever necessary, local government executives and representatives of
39 the national government agencies, tobacco control organizations and concerned sectors
40 to help monitor compliance with and report any violation of this Act.

1 The filing of an administrative case for an act constituting a violation of the
2 administrative regulations to be issued by the DOH shall not preclude the simultaneous
3 or subsequent filing of criminal charges for the same act constituting a violation under
4 this Act, through criminal proceedings authorized under Section 13 of this Act.

5
6 **Section 16. Strict Compliance and Inspections.** - Absolutely no extensions of
7 time to comply with the provisions of this Act shall be granted to tobacco manufacturers
8 or any other affected party.

9 For purposes of enforcing the law and ensuring compliance therewith, the DOH
10 or its authorized representative, upon presenting appropriate credentials to the owner,
11 manager, or agent in charge, is authorized (1) to enter, at reasonable hours, any
12 factory, warehouse or establishment in which tobacco products are manufactured,
13 processed, packed or held, for introduction into domestic commerce or are held after
14 such introduction, or (2) to enter any vehicle being used to transport or hold the tobacco
15 products in question; and (3) to inspect, in a reasonable manner, such factory,
16 warehouse, or establishment or vehicle and all pertinent equipment, finished and
17 unfinished materials, containers and labeling therein. If the officer, employee, or person
18 designated to make any such inspection of a factory, warehouse or other establishment
19 has obtained any sample in the course of the inspection, upon completion of the
20 inspection and prior to leaving the premises, he shall give the owner, manager, or
21 agent-in-charge a receipt describing the samples obtained.

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

26
27 **Section 17. Citizen Suits.** - For purposes of enforcing the provisions of this Act
28 or its implementing rules and regulations, any citizen may file an appropriate civil,
29 criminal or administrative action in the proper courts or administrative body against:

30 (a) Any person who violates or fails to comply with the provisions of this Act, its
31 implementing rules and regulations, including the template, guidelines, or other
32 regulations; or

33 (b) The DOH and other implementing agencies with respect to rules and
34 regulations issued inconsistent with this Act; and/or

35 (c) Any public officer who willfully or grossly neglects the performance of an act
36 specifically enjoined as a duty by this Act, its implementing rules and regulations,
37 including the template, guidelines, or other regulations; or abuses his authority in
38 the performance of his duty; or, in any manner, improperly performs his duties

1 under this Act or its implementing rules and regulations including the template,
2 guidelines, or other regulations.

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

6
7 **Section 18. Separability Clause.** - If any clause, provision, paragraph or part
8 thereof shall be declared unconstitutional or invalid, such judgment shall not affect,
9 invalidate or impair any other part hereof but such judgment shall be merely confined to
10 the clause, provision, paragraph or part directly involved in the controversy in which
11 such judgment has been rendered.

12
13 **Section 19. Repealing Clause.** — All other laws, decrees, executive order and
14 other administrative issuances and parts thereof which are inconsistent with the
15 provisions of this Act are hereby modified, superseded or repealed accordingly.
16 Section 13c and Section 32c of Republic Act 9211 is hereby repealed.

17
18 **Section 20. Effectivity.** — This Act shall take effect fifteen (15) days following its
19 publication in the Official Gazette or in a major daily newspaper of national circulation in
20 the Philippines.

21
22 *Approved,*
23