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SENATE

S. B. No. **3283**

(In substitution of Senate Bill No. 2340)

Prepared Jointly by the Committees on Health and Demography, and Trade and Commerce
With Senator (P.) Cayetano as author

**"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

1 picture-based health warnings have been shown to be more effective in conveying the
2 truth about the dangers of exposure and consumption of tobacco smoke.

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

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

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

- 15 a. **"Insert"** means any communication inside an individual package and/or
16 carton purchased at either wholesale or retail by consumers, such as a leaflet
17 or brochure.
- 18
- 19 b. **"Onsert"** means any communication affixed to the outside of an individual
20 package and/or carton purchased at either wholesale or retail by consumers,
21 such as a brochure beneath the outer cellophane wrapping or glued to the
22 outside of the cigarette package.
- 23
- 24
- 25 c. **"Picture-based Health Warning"** means warning labels that are composed
26 of a photographic picture warning on health dangers or other problems
27 related to tobacco use or exposure to tobacco smoke and an accompanying
28 textual warning that is related to the picture, as issued by the Department of
29 Health (DOH) in accordance with Section 15 of this Act.
- 30 d. **"Principal Display Surface"**, means:

- 1 1. in the case of a package and carton that has at least two equal
2 sized sides or surfaces, other than the top and bottom, that may be
3 displayed or visible under normal or customary conditions of sale or
4 use, the areas of each of the 2 largest surfaces;

- 5 2. the largest surface of any spherical, cylindrical or conical container
6 of tobacco products and in the case of a package and carton that
7 does not have a particular side or surface that is predominantly
8 displayed or visible under normal or customary conditions of sale or
9 use, the total surface area of the package;

- 10 3. all surfaces or panels, exterior or interior, of any tobacco product
11 packaging or carton not specified above.

- 12 e. **"Tobacco Product Package"** means the packet and package of tobacco
13 products and any outside packaging and labelling of tobacco products for
14 sale, distribution, exportation, importation, trade, exchange, or exhibition,
15 such as, but not limited to, packs, tins, boxes, pouches, flip-tops, slide and
16 shell packages, cartons, transparent wrappers, clear packaging, packages
17 containing one product unit, master cases, or other containers of tobacco
18 products.

- 19 f. **"Tobacco Products"** means products entirely or partly made of leaf tobacco
20 as raw material, which are manufactured to be used for smoking, sucking,
21 chewing or snuffing, or by any other means of consumption.

22 **Section 5. Picture-based Health Warning.** - Ninety (90) days after the
23 effectivity of this Act, cigarette packages and other tobacco product packages found in
24 the market including package insert and onserts, and any outside packaging and
25 labelling, shall bear highly visible full-color "Picture-based Health Warnings," as
26 prescribed, as to all particulars, that shall have two components: a photographic picture
27 warning and an accompanying textual warning that is related to the picture.

- 28 a. The Picture-based Health Warnings shall be printed on at least 60% of the
29 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 or
6 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 accordance with
11 guidelines prescribed by the DOH, or in the absence thereof, in full color, with
12 the minimum resolution of 600 dpi using at least 4-color printing;
- 13 f. A minimum of eight (8) variations of Picture-based Health Warnings shall be
14 printed simultaneously and these shall be rotated periodically, not just for
15 each brand family but also for each brand within the family for each package
16 size and type, so that at any time within the twelve (12) month period, when a
17 set of Picture-based Health Warnings are scheduled to be rotated, the
18 variations of the warnings shall appear in the market with proportionate
19 frequency and equal display of health warnings and messages on retail
20 packages;
- 21 g. In no case shall the Picture-based Health Warning measure less than 2475
22 square millimeters in size regardless of the type of tobacco package.
23 Furthermore, the shortest side of the health warning shall measure no less
24 than 55 millimeters;
- 25 h. Picture-based Health Warning specifications-
- 26 1. The text warning accompanying the picture shall be worded in such
27 manner that an ordinary layman will understand what the picture is
28 about and what are the ill-effects of smoking on the health of the
29 smoker and of the people around him;

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

- 3 3. The text shall use up no more than 30% of the entire area of the
4 Picture-based Health Warning and shall appear in clearly legible type
5 and in contrast by typograph, layout and color, without the use of any
6 border, frame or any other design that will effectively lessen the size of
7 the textual warning; and

- 8 4. The accompanying text shall be printed in English on the front panel
9 and Filipino on the back panel and alternately, Filipino on the front
10 panel and English on the back panel. In the case of other containers
11 where there is only one (1) external surface area, the accompanying
12 text will likewise alternately be in English or Filipino.

13 **Section 6. Side Panel.** - In addition to the Picture-based Health Warning,
14 cigarette packages, as well as other tobacco product packages found in the market,
15 shall bear, on one side panel, additional information as issued by the DOH according to
16 Section 15, of this Act, such as, but not limited to, additional health warnings, hotlines or
17 websites for tobacco-related concerns, or tips on how to stop smoking. This information
18 shall be prominently displayed and the text thereto shall appear in clearly legible type
19 and in contrast by typograph, layout and color, without the use of any border or frame or
20 any other design that will effectively lessen the size of the additional health warnings.

21 **Section 7. Descriptors.** - Ninety (90) days after the effectivity of this Act, no
22 cigarette packs or other tobacco product packages shall contain any term, descriptor,
23 trademark, figurative or any other sign including colors, images, or numbers, or any
24 other package or product design or feature, that directly or indirectly create or are likely
25 to create the false impression that a particular tobacco product is less harmful than any
26 other tobacco product or brand, or that promote a tobacco product by any means that
27 are false, misleading, deceptive, or likely to create an erroneous impression about its
28 characteristics, health effects, hazards or emissions, such as, but not limited to, "low
29 tar", "light", "ultra-light", or "mild," "extra," "ultra," and similar terms in any language that
30 *might mislead consumers, or corresponding symbols or colors signifying the same.*

31 No cigarette packs or other tobacco product packages shall contain information
32 that may imply that one variant or brand is safer than the other, such as, but not limited
33 to, statements indicating that the tobacco product contains "reduced levels" of contents,

1 substances, and emissions. Figures for emission yields, such as for tar, nicotine and
2 carbon monoxide, shall be prohibited, including when used as part of a brand name or
3 trademark.

4 **Section 8. Minimum Principal Display Surface/ Prohibition on Smaller**
5 **Packages** - To ensure the visibility, prominence, and impact of Picture-based Health
6 Warnings, no person or legal entity shall make, fabricate, import, sell or distribute cigar,
7 cigarette or other tobacco products with packages that have for its Principal Display
8 Surface, a total area of less than 4950 square millimeters for each of the two largest
9 sides in the case of tobacco packages described in Sec 4 d (1). For other tobacco
10 packages that fall under Section 4 d (2) and 4 d (3), the minimum size for the principal
11 display surface shall also be 4950 square millimeters.

12 **Section 9. Costs.** - All printing costs pertaining to packaging and labelling shall
13 be shouldered by tobacco manufacturers and/or importers.

14 **Section 10. Prohibition on Sales.** - No person or legal entity shall sell or
15 commercially distribute or display any cigarette or tobacco product without ensuring that
16 the labels and packages, as well as any other container used in displaying the cigarette
17 or tobacco products, meet the requirements under this Act. Manufacturers and
18 distributors of tobacco products shall ensure the removal from all displays of non-
19 compliant tobacco products manufactured and distributed by them within 120 days from
20 the effectivity of this Act.

21 **Section 11. Prohibition on Obstruction of Display.** - No person or legal entity
22 shall obscure or cover in part or in whole the Picture-based Health Warning in the
23 selling areas. The Picture-based Health Warnings shall be prominently displayed
24 whenever the said packages are commercially displayed.

25 **Section 12. Liability of Manufacturers, Importers, and Distributor.** -
26 Manufacturers, importers, and distributors of tobacco products shall be directly liable for
27 any violations of the provisions of this Act. In the case of a business entity or
28 establishment, the chairperson of the Board of Directors, the owner, president, manager
29 and the corporate officials thereof shall be directly responsible therefore and shall be
30 made accountable. Agents/representatives of the aforecited manufacturers, importers,
31 and distributors who commit any violation of the provisions of this Act and its
32 implementing rules shall be jointly and severally liable with the manufacturers,
33 importers, and distributors.

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

6 **Section 14. Penalties for Non Compliance.** -

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

10 1. On the first offense, a fine of not more than One Million Pesos (Php
11 1,000,000.00) shall be imposed;

12 2. On the second offense, a fine of Five Million Pesos (Php
13 5,000,000.00), shall be imposed;

14 3. On the third offense, in addition to a fine of not more than Twenty
15 Million Pesos (Php 20,000,000.00) or imprisonment of not more than
16 five (5) years, or both at the discretion of the court, the business
17 permits and licenses, in the case of a business entity *or* establishment
18 shall be revoked or cancelled.

19 If the guilty officer is a foreign national, he shall be deported after service of
20 sentence and/or payment of applicable fines without need of further deportation
21 proceedings and shall be forever barred from re-entering the Philippines. Filing of the
22 appropriate case may be commenced by the DOH; the Philippine National Police
23 (PNP); a Prosecutor by himself; or any private citizen.

24 Each batch of non-compliant tobacco packages, regardless of size, that are
25 withdrawn from the manufacturing facility, imported into the Philippines for sale to the
26 market, transferred to other facilities, or delivered to the retail establishments after the
27 compliance date shall constitute one offense. An additional penalty of One Hundred
28 Thousand Pesos (Php 100,000.00) per day shall be made for each day the violation
29 continues after having received the order from the DOH or other appropriate body,
30 notifying the company of the infraction.

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

4 1. On the first offense, a fine of not more than Five Thousand Pesos (Php
5 5,000.00) shall be imposed;

6 2. On the second offense, a fine of Ten Thousand Pesos (Php 10,000.00)
7 shall be imposed;

8 3. On the third offense, in addition to a fine of not more than Twenty
9 Thousand Pesos (Php 20,000.00) or imprisonment of not more than
10 one (1) year, or both at the discretion of the court, the business permits
11 and licenses, in the case of a business entity or establishment shall be
12 revoked or cancelled.

13 If the guilty officer is a foreign national, he shall be deported after service of
14 sentence and/or payment of applicable fines without need of further deportation
15 proceedings and shall be forever barred from re-entering from the Philippines. Filing of
16 the appropriate case may be commenced by the DOH; the PNP; a Prosecutor by
17 himself; or any private citizen.

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

23 **Section 15. Picture-Based Health Warning Guidelines** - Thirty days (30) days
24 after the effectivity of this Act, and every year thereafter, or as frequently as the need
25 arises, the DOH shall issue a template of Picture-based Health Warnings to be rotated,
26 as well as guidelines respecting the printing instructions, specific pictures, design, or
27 content of the information relating to the Picture-based Health Warnings, and other
28 information that must appear in the tobacco product packages. The DOH shall consider
29 the recommendations of leading non-government organizations that have established
30 and proven records of dealing with tobacco-related diseases and deaths; Provided,
31 however, that the absence of recommendations shall not delay the issuance of the
32 template and guidelines. All Picture-based Health Warnings issued shall comply with

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

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

7 Picture-based Health Warning regulations issued by the DOH Secretary upon
8 recommendation of *non-government organizations shall be presumed compliant with*
9 the specifications listed above for purposes of implementation by the tobacco
10 companies.

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

13 **Section 16. Administrative Power:** - Within one (1) year from the effectivity of
14 this Act, the DOH shall issue Guidelines and Administrative Sanctions to facilitate the
15 implementation of this Act, but this should, in no case, delay the implementation of this
16 Act and the deadlines/time frames set herein.

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

19 a. promulgate rules governing the hearings on alleged violations of this Act. The
20 hearings shall be summary in nature and shall be conducted by means of
21 position papers and affidavits. Any decision must be rendered by the DOH no
22 longer than thirty (30) days from the date of filing;

23 b. impose, after notice and hearing and in accordance with the degree of the
24 offense and the nature of the business of the offender, administrative fines of
25 up to Ten Million Pesos (Php 10,000,000.00), the proceeds of which will be
26 used for health promotion campaigns on tobacco control of the DOH.
27 *Provided,* That manufacturers, importers, and distributors of tobacco products
28 as mentioned in Section 12 of this Act, shall have a higher penalty compared
29 to retailers and sellers, as provided in Section 13 of this Act;

1 c. issue other administrative rules and regulations it deems necessary to
2 effectively implement the provisions of this law, such as but not limited to,
3 seizure, forfeiture, and destruction of non-compliant packages as described
4 under this law.

5 The non-issuance of the Regulations and Administrative Sanctions by the DOH
6 shall not prevent the coming into force of this Act.

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

13 The filing of an administrative case for an act constituting a violation of the
14 administrative regulations to be issued by the DOH shall not preclude the simultaneous
15 or subsequent filing of criminal charges for the same act constituting a violation under
16 this Act, through criminal proceedings authorized under Section 14 of this Act. In the
17 same manner, neither shall the filing of criminal charges preclude the filing of
18 administrative cases.

19 **Section 17. Strict Compliance and Inspections.** - Absolutely no extensions of
20 time to comply with the provisions of this Act shall be granted to tobacco manufacturers
21 and importers or any other affected party.

22 For purposes of enforcing the law and ensuring compliance therewith, the DOH,
23 through FDA or other deputized law enforcement agency, or its authorized
24 representative, upon presenting appropriate credentials to the owner, manager, or
25 agent in charge, is authorized (1) to enter, at reasonable hours, any factory, warehouse
26 or establishment in which tobacco products are manufactured, processed, packed or
27 held, for introduction into domestic commerce or are held after such introduction, or (2)
28 to enter any vehicle being used to transport or hold the tobacco products in question;
29 and (3) to inspect, in a reasonable manner, such factory, warehouse, or establishment
30 or vehicle and all pertinent equipment, finished and unfinished materials, containers
31 and labeling therein. If the officer, employee, or person designated to make any such
32 inspection of a factory, warehouse or other establishment has obtained any sample in
33 the course of the inspection, upon completion of the inspection and prior to leaving the

1 premises, he shall give the owner, manager, or agent-in-charge a receipt describing the
2 samples obtained.

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

7 **Section 18. Citizen Suits.** - For purposes of enforcing the provisions of this Act
8 or its implementing rules and regulations, any citizen may file an appropriate civil,
9 criminal or administrative action in the proper courts or administrative body against:

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

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

15 (c) Any public officer who willfully or grossly neglects the performance of an
16 act specifically enjoined as a duty by this Act, its implementing rules and
17 regulations, including the template, guidelines, or other regulations; or abuses his
18 authority in the performance of his duty; or, in any manner, improperly performs
19 his duties under this Act or its implementing rules and regulations including the
20 template, guidelines, or other regulations.

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

24 **Section 19. Other obligations of the Tobacco Industry.** Compliance with the
25 Act shall not remove or diminish any other obligations of tobacco manufacturers,
26 importers, distributors, retailers, and sellers, including but not limited to, obligations to
27 warn and inform consumers about the health hazards of tobacco use and exposure to
28 tobacco smoke.

29 **Section 20. Separability Clause.** - If any clause, provision, paragraph or part
30 thereof shall be declared unconstitutional or invalid, such judgment shall not affect,

1 invalidate or impair any other part hereof but such judgment shall be merely confined to
2 the clause, provision, paragraph or part directly involved in the controversy in which
3 such judgment has been rendered.

4 **Section 21. Repealing Clause.-** All other laws, decrees, executive order and
5 other administrative issuances and parts thereof which are inconsistent with the
6 provisions of this Act are hereby modified, superseded or repealed accordingly.

7 **Section 22. Effectivity.** - This Act shall take effect fifteen (15) days following its
8 publication in the Official Gazette or in a major daily newspaper of national circulation in
9 the Philippines.

Approved,