

Public Law 99-252
99th Congress

An Act

Feb. 27, 1986
[S. 1574]

To provide for public education concerning the health consequences of using smokeless tobacco products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Comprehensive
Smokeless
Tobacco Health
Education Act of
1986.
15 USC 4401
note.
15 USC 4401.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Smokeless Tobacco Health Education Act of 1986".

SEC. 2. PUBLIC EDUCATION.

(a) DEVELOPMENT.—(1) The Secretary of Health and Human Services shall establish and carry out a program to inform the public of any dangers to human health resulting from the use of smokeless tobacco products. In carrying out such program the Secretary shall—

(A) develop educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

(B) make such programs, materials, and announcements available to States, local governments, school systems, the media, and such other entities as the Secretary determines appropriate to further the purposes of this Act;

(C) conduct and support research on the effect of smokeless tobacco on human health; and

(D) collect, analyze, and disseminate information and studies on smokeless tobacco and health.

(2) In developing programs, materials, and announcements under paragraph (1) the Secretary shall consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of manufacturers of smokeless tobacco products, and other appropriate entities.

(b) ASSISTANCE.—The Secretary of Health and Human Services may provide technical assistance and may make grants to States—

(1) to assist in the development of educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco,

(2) to assist in the distribution of such programs, materials, and announcements throughout the States, and

(3) to establish 18 as the minimum age for the purchase of smokeless tobacco.

SEC. 3. SMOKELESS TOBACCO WARNING.

(a) GENERAL RULE.—

(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

Research and
development.
Public
information.

Grants.
State and local
governments.

Labeling.
15 USC 4402.

“WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

“WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

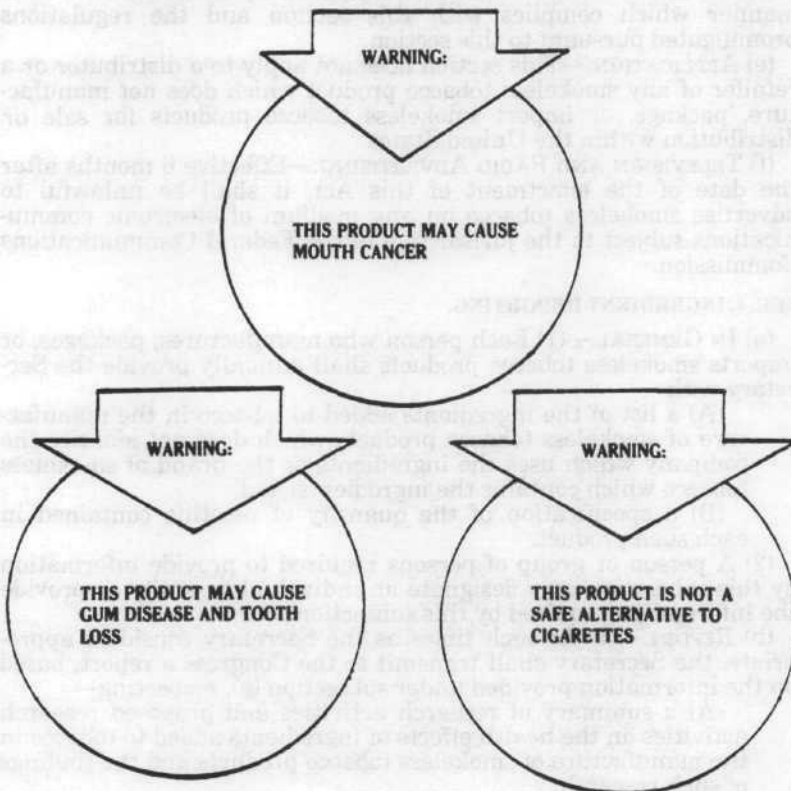
“WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES”.

(2) It shall be unlawful for any manufacturer, packager, or importer of smokeless tobacco products to advertise or cause to be advertised (other than through the use of outdoor billboard advertising) within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this Act, one of the labels required by paragraph (1).

(b) **LABEL FORMAT.**—The Federal Trade Commission shall issue regulations requiring the label statement required by subsection (a) to appear—

Regulations.

- (1) in the case of the smokeless tobacco product package—
 - (A) in a conspicuous and prominent place on the package, and
 - (B) in a conspicuous format and in conspicuous and legible type in contrast with all other printed material on the package, and
- (2) in the case of advertising subject to subsection (a)(2)—
 - (A) in a conspicuous and prominent location in the advertisement and in conspicuous and legible type in contrast with all other printed material in the advertisement,
 - (B) in the following format:



(C) the label statement shall appear in capital letters and the area of the circle and arrow shall be determined by the Federal Trade Commission.

Regulations.

(c) LABEL DISPLAY.—The Federal Trade Commission shall issue regulations requiring each label statement required by subsection (a) to—

(1) in the case of a smokeless tobacco product package, be randomly displayed by each manufacturer, packager, or importer of a smokeless tobacco product in each 12-month period in as equal a number of times as is possible on each brand of the product and be randomly distributed in all parts of the United States in which such product is marketed, and

(2) in the case of any advertisement of a smokeless tobacco product, be rotated every 4 months by each manufacturer, packager, or importer of a smokeless tobacco product in an alternating sequence in the advertisement for each brand of the product.

(d) PLAN.—(1) Each manufacturer, packager, or importer of a smokeless tobacco product shall submit a plan to the Federal Trade Commission which specifies the method such manufacturer, packager, or importer will use to rotate, display, and distribute the statements required by subsection (a) in accordance with the requirements of subsections (b) and (c).

(2) The Federal Trade Commission shall approve a plan submitted by a manufacturer, packager, or importer of a smokeless tobacco product under paragraph (1) if such plan provides for the rotation, display, and distribution on smokeless tobacco product packages and advertisements of the statements required by subsection (a) in a manner which complies with this section and the regulations promulgated pursuant to this section.

(e) APPLICATION.—This section does not apply to a distributor or a retailer of any smokeless tobacco product which does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

Effective date.

(f) TELEVISION AND RADIO ADVERTISING.—Effective 6 months after the date of the enactment of this Act, it shall be unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

15 USC 4403.

SEC. 4. INGREDIENT REPORTING.

(a) IN GENERAL.—(1) Each person who manufactures, packages, or imports smokeless tobacco products shall annually provide the Secretary with—

(A) a list of the ingredients added to tobacco in the manufacture of smokeless tobacco products which does not identify the company which uses the ingredients or the brand of smokeless tobacco which contains the ingredients; and

(B) a specification of the quantity of nicotine contained in each such product.

(2) A person or group of persons required to provide information by this subsection may designate an individual or entity to provide the information required by this subsection.

(b) REPORT.—(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a), respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of smokeless tobacco products and the findings of such research;

Research and development.

(B) information pertaining to any such ingredient which in the judgment of the Secretary poses a health risk to users of smokeless tobacco; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) shall be treated as a trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

Classified information.

(B) Subparagraph (A) does not authorize the withholding of information provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such information, the Secretary shall make the information available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the information of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by any person authorized to have access to such information, shall store it in a locked cabinet or file; and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Records.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

SEC. 5. ENFORCEMENT, REGULATIONS, AND CONSTRUCTION.

15 USC 4404.

(a) ENFORCEMENT.—(1) A violation of section 3 or the regulations promulgated pursuant to this Act shall be considered a violation of section 5 of the Federal Trade Commission Act.

15 USC 45.

(2) Any person who is found to violate any provision of section 3 or 4(a) shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$10,000.

(b) REGULATIONS UNDER SECTION 3.—(1) Regulations issued by the Federal Trade Commission under section 3 shall be issued in accordance with section 553 of title 5, United States Code.

(2) Not later than 180 days after the date of the enactment of this Act, the Federal Trade Commission shall promulgate such regulations as it may require to implement section 3.

(c) CONSTRUCTION.—Nothing in this Act (other than the requirements of sections 3 and 4) shall be construed to limit, restrict, or expand the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of smokeless tobacco products.

SEC. 6. INJUNCTIONS.

15 USC 4405.

The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of sections 3 and 4 upon application of the Federal Trade Commission

in the case of a violation of section 3 or upon application of the Attorney General of the United States acting through the several United States attorneys in their several districts in the case of a violation of section 3 or 4.

15 USC 4406.

SEC. 7. PREEMPTION.

(a) **FEDERAL ACTION.**—No statement relating to the use of smokeless tobacco products and health, other than the statements required by section 3, shall be required by any Federal agency to appear on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

(b) **STATE AND LOCAL ACTION.**—No statement relating to the use of smokeless tobacco products and health, other than the statements required by section 3, shall be required by any State or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

(c) **EFFECT ON LIABILITY LAW.**—Nothing in this Act shall relieve any person from liability at common law or under State statutory law to any other person.

15 USC 4407.

SEC. 8. REPORTS.

(a) **SECRETARY'S REPORT.**—The Secretary of Health and Human Services shall transmit a report to the Congress not later than January 11, 1987, and biennially thereafter, containing—

(1) a description of the effects of health education efforts on the use of smokeless tobacco products,

(2) a description of the use by the public of smokeless tobacco products,

(3) an evaluation of the health effects of smokeless tobacco products and the identification of areas appropriate for further research, and

(4) such recommendations for legislation and administrative action as the Secretary considers appropriate.

(b) **FTC REPORT.**—The Federal Trade Commission shall transmit a report to the Congress not later than January 11, 1987, and biennially thereafter, containing (1) a description of the current sales, advertising, and marketing practices associated with smokeless tobacco products, and (2) such recommendations for legislation and administrative action as it deems appropriate.

15 USC 4408.

SEC. 9. DEFINITIONS.

For purposes of this Act:

(1) The term "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands,

American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and installations of the Armed Forces.

(4) The term "package" means a pack, box, carton, pouch, or container of any kind in which smokeless tobacco products are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "sale or distribution" includes sampling or any other distribution not for sale.

(6) The term "Secretary" means the Secretary of Health and Human Services.

SEC. 10. TECHNICAL AMENDMENT.

Section 402(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(d)(2)) is amended by inserting before the semicolon a comma and the following: "except that this clause shall not apply to confectionery which is introduced or delivered for introduction into, or received or held for sale in, interstate commerce if the sale of such confectionery is permitted under the laws of the State in which such confectionery is intended to be offered for sale".

SEC. 11. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in sections 3(f) and 5(b) and subsection (b), this Act shall take effect one year after the date of enactment of this Act.

15 USC 4401
note.

(b) **EXCEPTION.**—Sections 2, 3(b), 3(c), 3(d), 3(e), 4(b), 7, 8, 9, and 10 shall take effect on the date of the enactment of this Act.

Approved February 27, 1986.

LEGISLATIVE HISTORY—S. 1574:

SENATE REPORT No. 99-209 (Comm. on Labor and Human Resources).
CONGRESSIONAL RECORD:

Vol. 131 (1985): Dec. 16, considered and passed Senate.

Vol. 132 (1986): Feb. 3, considered and passed House, amended.

Feb. 6, Senate concurred in House amendments.