

[COMMITTEE PRINT]

MAY 14, 1966

TEXT OF BILL AS APPROVED BY COMMITTEE
MAY 13, 1966

89TH CONGRESS
2D SESSION

S. 985

IN THE SENATE OF THE UNITED STATES

MAY , 1966

Referred to the Committee on Commerce and ordered to be printed

AMENDMENT

(IN THE NATURE OF A SUBSTITUTE)

Intended to be proposed by Mr. MAGNUSON to S. 985, a bill to regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

1 That this Act may be cited as the "Fair Packaging and
2 Labeling Act".

3 DECLARATION OF POLICY

4 SEC. 2. Informed consumers are essential to the fair and
5 efficient functioning of a free market economy. Packages
6 and their labels should enable consumers to obtain accurate

1 information as to the quantity of the contents and should
2 facilitate price comparisons. Therefore, it is hereby declared
3 to be the policy of the Congress to assist consumers and
4 manufacturers in reaching these goals in the marketing of
5 consumer goods.

6 PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND
7 LABELING

8 SEC. 3. (a) It shall be unlawful for any person engaged
9 in the packaging or labeling of any consumer commodity (as
10 defined in this Act) for distribution in commerce, or for any
11 person (other than a common carrier for hire, a contract
12 carrier for hire, or a freight forwarder for hire) engaged in
13 the distribution in commerce of any packaged or labeled con-
14 sumer commodity, to distribute or to cause to be distributed
15 in commerce any such commodity if such commodity is con-
16 tained in a package, or if there is affixed to that commodity
17 a label, which does not conform to the provisions of this Act
18 and of regulations promulgated under the authority of this
19 Act.

20 (b) The prohibition contained in subsection (a) shall
21 not apply to persons engaged in business as wholesale or re-
22 tail distributors of consumer commodities except to the extent
23 that such persons (1) are engaged in the packaging or label-
24 ing of such commodities, or (2) prescribe or specify by any

1 means the manner in which such commodities are packaged
2 or labeled.

3 REQUIREMENTS AND PROHIBITIONS

4 SEC. 4. (a) No person subject to the prohibition con-
5 tained in section 3 shall distribute or cause to be distributed
6 in commerce any packaged or labeled consumer commodity
7 unless in conformity with regulations established by the
8 promulgating authority pursuant to section 6 of this Act
9 which shall provide that:

10 (1) The commodity shall bear a label specifying the
11 identity of the commodity and the name and place of busi-
12 ness of the manufacturer, packer, or distributor; and

13 (2) The net quantity of contents (in terms of weight,
14 measure, or numerical count) shall be separately and accu-
15 rately stated in a uniform location upon the principal display
16 panel of that label if that consumer commodity is enclosed in
17 a package; and

18 (3) The separate label statement of net quantity of
19 contents appearing upon or affixed to any package—

20 (A) if expressed in terms of weight or fluid volume,
21 on any package of a consumer commodity containing
22 less than four pounds or one gallon, shall be expressed
23 in ounces or in whole units of pounds, pints, or quarts
24 (avoirdupois or liquid, whichever may be appropriate) ;

1 (B) shall appear in conspicuous and easily legible
2 type in distinct contrast (by topography, layout, color,
3 embossing, or molding) with other matter on the
4 package;

5 (C) shall contain letters or numerals in a type
6 size which shall be (i) established in relationship to the
7 area of the principal display panel of the package, and
8 (ii) uniform for all packages of substantially the same
9 size; and

10 (D) shall be so placed that the lines of printed
11 matter included in that statement are generally parallel
12 to the base on which the package rests as it is designed
13 to be displayed.

14 (b) No person subject to the prohibition contained in
15 section 3 shall distribute or cause to be distributed in com-
16 merce any packaged consumer commodity if any qualify-
17 ing words or phrases appear in conjunction with the separate
18 statement of the net quantity of contents required by sub-
19 section (a), but nothing in this subsection or in paragraph
20 (2) of subsection (a) shall prohibit supplemental state-
21 ments, at other places on the package, describing in non-
22 deceptive terms the net quantity of contents: *Provided*, That
23 such supplemental statements of net quantity of contents
24 shall not include any term qualifying a unit of weight, meas-

1 ure, or count that tends to exaggerate the amount of the
2 commodity contained in the package.

3 ADDITIONAL REGULATIONS

4 SEC. 5. (a) The authority to promulgate regulations
5 under this Act is vested in (A) the Secretary of Health,
6 Education, and Welfare (referred to hereinafter as the "Sec-
7 retary") with respect to any consumer commodity which is
8 a food, drug, device, or cosmetic, as each such term is defined
9 by section 201 of the Federal Food, Drug, and Cosmetic Act
10 (21 U.S.C. 321); and (B) the Federal Trade Commission
11 (referred to hereinafter as the "Commission") with respect
12 to any other consumer commodity.

13 (b) If the promulgating authority specified in this sec-
14 tion finds that, because of the nature, form, or quantity of a
15 particular consumer commodity, or for other good and suf-
16 ficient reasons, full compliance with all the requirements
17 otherwise applicable under section 4 of this Act is imprac-
18 ticable or is not necessary for the adequate protection of
19 consumers, the Secretary or the Commission (whichever the
20 case may be) shall promulgate regulations exempting such
21 commodity from those requirements to the extent and under
22 such conditions as the promulgating authority determines to
23 be consistent with section 2 of this Act.

24 (c) Whenever the promulgating authority determines

1 that regulations containing prohibitions or requirements other
2 than those prescribed by section 4 are necessary to prevent
3 the deception of consumers or to facilitate price comparisons
4 as to any consumer commodity, such authority shall promul-
5 gate with respect to that commodity regulations effective to—
6 (1) establish and define standards for characteriz-
7 ing the size of a package enclosing any consumer com-
8 modity, which may be used to supplement the label
9 statement of net quantity of contents of packages contain-
10 ing such product, but this paragraph shall not be con-
11 strued as authorizing any limitation on the size, shape,
12 weight, dimensions, or number of packages which may
13 be used to enclose any product or commodity;
14 (2) establish and define the net quantity of any
15 product (in terms of weight, measure, or count) which
16 shall constitute a serving, if that product is distributed
17 to retail purchasers in a package or with a label which
18 bears a representation as to the number of servings pro-
19 vided by the net quantity of contents contained in that
20 package or to which that label is affixed;
21 (3) regulate the placement upon any package con-
22 taining any product, or upon any label affixed to such
23 product, of any printed matter stating or representing
24 by implication that such product is offered for retail sale
25 at a price lower than the ordinary and customary retail

1 sale price or that a retail sale price advantage is ac-
2 corded to purchasers thereof by reason of the size of that
3 package or the quantity of its contents; and

4 (4) require (consistent with requirements imposed
5 by or pursuant to the Federal Food, Drug, and Cosmetic
6 Act, as amended) that information with respect to the
7 ingredients and composition of any consumer commodity
8 (other than information concerning proprietary trade
9 secrets) be placed upon packages containing that com-
10 modity.

11 (d) Whenever the promulgating authority determines,
12 after a hearing conducted in compliance with section 7 of
13 the Administrative Procedure Act, that the weights or quan-
14 tities in which any consumer commodity is being distributed
15 for retail sale are likely to impair the ability of consumers
16 to make price per unit comparisons such authority shall—

17 (1) publish such determination in the Federal
18 Register; and

19 (2) promulgate, subject to the provisions of sub-
20 sections (e), (f), and (g), regulations effective to
21 establish reasonable weights or quantities, or fractions
22 or multiples thereof, in which any such consumer com-
23 modity shall be distributed for retail sale.

24 (e) At any time within sixty days after the publica-

1 tion of any determination pursuant to subsection (d) (1)
2 as to any consumer commodity, any producer or distributor
3 affected may request the Secretary of Commerce to partici-
4 pate in the development of a voluntary product standard
5 for such commodity under the procedures for the develop-
6 ment of voluntary product standards established by the Sec-
7 retary pursuant to section 2 of the Act of March 3, 1901
8 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such pro-
9 cedures shall provide adequate manufacturer, distributor, and
10 consumer representation. Upon the filing of any such re-
11 quest, the Secretary shall transmit notice thereof to the
12 authority which has caused notice of such determination to
13 be published.

14 (f) No regulation promulgated pursuant to subsection
15 (d) (2) with respect to any consumer commodity may—

16 (1) vary from any voluntary product standard in
17 effect with respect to that consumer commodity which
18 was published—

19 (A) before the publication of any determination
20 with respect to that consumer commodity pursuant to
21 subsection (d) (1);

22 (B) within one year after the filing pursuant to
23 this section of a request for the establishment of a volun-
24 tary product standard with respect to that consumer
25 commodity; or

1 (C) within such period of time (not exceeding
2 eighteen months after the filing of such request) as the
3 promulgating authority may deem proper upon a certifi-
4 cation by the Secretary of Commerce that such a volun-
5 tary product standard with respect to that consumer
6 commodity is under active consideration and that there
7 is presently grounds for belief that such a standard for
8 that commodity will be published within a reasonable
9 period of time;

10 (2) establish any weight or measure in any amount
11 less than two ounces;

12 (3) preclude the use of any package of particular
13 dimensions or capacity customarily used for the distribu-
14 tion of related products of varying densities, except to
15 the extent that it is determined that the continued use
16 of such package for such purpose is likely to deceive
17 consumers; or

18 (4) preclude the continued use of particular di-
19 mensions or capacities of returnable or reusable
20 glass containers for beverages in use as of the effective
21 date of the Act.

22 (g) In the promulgation of regulations under subsec-
23 tion (d) (2) of this section, due regard shall be given
24 to the probable effect of such regulations upon—

- 1 (1) the cost of the packaging of the products
- 2 affected;
- 3 (2) the availability of any product in a reasonable
- 4 range of package sizes to serve consumer convenience;
- 5 (3) the materials used for the packaging of the
- 6 affected products;
- 7 (4) the weights and measures customarily used
- 8 in the packaging of the affected products; and
- 9 (5) competition between containers made of dif-
- 10 ferent types of packaging material.

11 PROCEDURE FOR PROMULGATION OF REGULATIONS

12 SEC. 6. (a) Regulations promulgated by the Secretary
13 under section 4 or section 5 of this Act shall be promulgated,
14 and shall be subject to judicial review, pursuant to the pro-
15 visions of subsections (e), (f), and (g) of section 701 of
16 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371
17 (e), (f), and (g)). Hearings authorized or required for
18 the promulgation of any such regulations by the Secretary
19 shall be conducted by the Secretary or by such officer or em-
20 ployee of the Department of Health, Education, and Welfare
21 as he may designate for that purpose.

22 (b) Regulations promulgated by the Commission under
23 section 4 or section 5 of this Act shall be promulgated, and
24 shall be subject to judicial review, by proceedings taken in
25 conformity with the provisions of subsections (e), (f), and

1 (g) of section 701 of the Federal Food, Drug, and Cosmetic
2 Act (21 U.S.C. 371 (e), (f), and (g)) in the same man-
3 ner, and with the same effect, as if such proceedings were
4 taken by the Secretary pursuant to subsection (a) of this
5 section. Hearings authorized or required for the promulga-
6 tion of any such regulations by the Commission shall be con-
7 ducted by the Commission or by such officer or employee
8 of the Commission as the Commission may designate for that
9 purpose.

10 (c) In carrying into effect the provisions of this Act, the
11 Secretary and the Commission are authorized to cooperate
12 with any department or agency of the United States, with
13 any State, Commonwealth, or possession of the United States,
14 and with any department, agency, or political subdivision of
15 any such State, Commonwealth, or possession.

16 (d) No regulation adopted under this Act shall preclude
17 the continued use of returnable or reusable glass containers
18 for beverages in inventory or with the trade as of the effec-
19 tive date of this Act.

20 ENFORCEMENT

21 SEC. 7. (a) Any consumer commodity which is a food,
22 drug, device, or cosmetic, as each such term is defined by sec-
23 tion 201 of the Federal Food, Drug, and Cosmetic Act (21
24 U.S.C. 321), and which is introduced or delivered for intro-
25 duction into commerce in violation of any of the provisions

1 of this Act, or the regulations issued pursuant to this Act,
2 shall be deemed to be misbranded within the meaning of
3 chapter III of the Federal Food, Drug, and Cosmetic Act,
4 but the provisions of section 303 of that Act (21 U.S.C. 333)
5 shall have no application to any violation of section 3 of
6 this Act.

7 (b) Any violation of any of the provisions of this Act,
8 or the regulations issued pursuant to this Act, with respect
9 to any consumer commodity which is not a food, drug, device,
10 or cosmetic, shall constitute an unfair or deceptive act or
11 practice in commerce in violation of section 5 (a) of the Fed-
12 eral Trade Commission Act and shall be subject to enforce-
13 ment under section 5 (b) of the Federal Trade Commission
14 Act.

15 (c) In the case of any imports into the United States
16 of any consumer commodity covered by this Act, the pro-
17 visions of sections 4 and 5 of this Act shall be enforced by
18 the Secretary of the Treasury pursuant to section 801 (a)
19 and (b) of the Federal Food, Drug, and Cosmetic Act (21
20 U.S.C. 381).

21 REPORTS TO THE CONGRESS

22 SEC. 8. Each officer or agency required or authorized
23 by this Act to promulgate regulations for the packaging or
24 labeling of any consumer commodity, or to participate in the
25 development of voluntary product standards with respect

1 to any consumer commodity under procedures referred to in
2 section 5 (e) of this Act, shall transmit to the Congress in
3 January of each year a report containing a full and complete
4 description of the activities of that officer or agency for the
5 administration and enforcement of this Act during the pre-
6 ceding fiscal year.

7 COOPERATION WITH STATE AUTHORITIES

8 SEC. 9. (a) A copy of each regulation promulgated
9 under this Act shall be transmitted promptly to the Secretary
10 of Commerce, who shall (1) transmit copies thereof to all
11 appropriate State officers and agencies, and (2) furnish to
12 such State officers and agencies information and assistance
13 to promote to the greatest practicable extent uniformity in
14 State and Federal regulation of the labeling of consumer
15 commodities.

16 (b) Nothing contained in this section shall be construed
17 to impair or otherwise interfere with any program carried
18 into effect by the Secretary of Health, Education, and Wel-
19 fare under other provisions of law in cooperation with State
20 governments or agencies, instrumentalities, or political sub-
21 divisions thereof.

22 DEFINITIONS

23 SEC. 10. For the purpose of this Act—

24 (a) The term "consumer commodity", except as other-
25 wise specifically provided by this subsection, means any food,

1 drug, device, or cosmetic (as those terms are defined by the
2 Federal Food, Drug, and Cosmetic Act), and any other
3 article, product, or commodity of any kind or class which is
4 customarily produced or distributed for sale through retail
5 sales agencies or instrumentalities for consumption by indi-
6 viduals, or use by individuals for purposes of personal care
7 or in the performance of services ordinarily rendered within
8 the household, and which usually is consumed or expended
9 in the course of such consumption or use. Such term does
10 not include—

11 (1) any meat or meat product, poultry or poultry
12 product, or tobacco or tobacco product;

13 (2) any commodity subject to packaging or label-
14 ing requirements imposed by the Secretary of Agri-
15 culture pursuant to the Federal Insecticide, Fungicide,
16 and Rodenticide Act, or the provisions of the eighth
17 paragraph under the heading "Bureau of Animal Indus-
18 try" of the Act of March 4, 1913 (37 Stat. 832-833;
19 21 U.S.C. 151-157), commonly known as the Virus-
20 Serum-Toxin Act;

21 (3) any drug subject to the provisions of sections
22 503 (b) (1) or 506 of the Federal Food, Drug, and
23 Cosmetic Act (21 U.S.C. 353 (b) (1), 355, 356, 357);

24 (4) any beverage subject to or complying with
25 packaging or labeling requirements imposed under the

1 Federal Alcohol Administration Act (27 U.S.C. 201
2 et seq.) ; or

3 (5) any commodity subject to the provisions of the
4 Federal Seed Act (7 U.S.C. 1551-1610).

5 (b) The term "package" means any container or wrap-
6 ping in which any consumer commodity is enclosed for use
7 in the delivery or display of that consumer commodity to
8 retail purchasers, but does not include—

9 (1) shipping containers or wrappings used solely
10 for the transportation of any consumer commodity in
11 bulk or in quantity to manufacturers, packers, or proces-
12 sors, or to wholesale or retail distributors thereof;

13 (2) shipping containers or outer wrappings used
14 by retailers to ship or deliver any commodity to retail
15 customers if such containers and wrappings bear no
16 printed matter pertaining to any particular commodity;
17 or

18 (3) containers subject to the provisions of the Act
19 of August 3, 1912 (37 Stat. 250, as amended; 15
20 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat.
21 1186, as amended; 15 U.S.C. 234-236), the Act of
22 August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C.
23 251-256), or the Act of May 21, 1928 (45 Stat. 685,
24 as amended; 15 U.S.C. 257-257i) ;

25 (c) The term "label" means any written, printed, or

1 graphic matter affixed to any consumer commodity or affixed
2 to or appearing upon a package containing any consumer
3 commodity;

4 (d) The term "person" includes any firm, corporation,
5 or association;

6 (e) The term "commerce" means (1) commerce be-
7 tween any State, the District of Columbia, the Common-
8 wealth of Puerto Rico, or any territory or possession of the
9 United States, or territory and any place outside thereof,
10 and (2) commerce within the District of Columbia or
11 within any territory or possession of the United States not
12 organized with a legislative body, but shall not include ex-
13 ports to foreign countries; and

14 (f) The term "principal display panel or panels" means
15 that part, or those parts, of a label that is, or are most likely
16 to be, displayed, presented, shown, or examined under normal
17 and customary conditions of display for retail sale.

18 SAVING PROVISION

19 SEC. 11. Nothing contained in this Act shall be con-
20 strued to repeal, invalidate, supersede, or otherwise adversely
21 affect—

22 (a) the Federal Trade Commission Act or any
23 statute defined therein as an antitrust Act;

24 (b) the Federal Food, Drug, and Cosmetic Act; or

25 (c) the Hazardous Substance Labeling Act.

EFFECT UPON STATE LAW

1

2 SEC. 12. It is hereby declared it is the express intent of
3 Congress to supersede any and all laws of the State or politi-
4 cal subdivisions thereof insofar as they may now or hereafter
5 provide for the labeling of the net quantity of contents of the
6 package of any consumer commodity covered by this Act
7 which differ from the requirements of section 4 of this Act
8 or regulations promulgated pursuant thereto.

9

EFFECTIVE DATE

10 SEC. 13. This Act shall take effect on the first day of
11 the sixth month beginning after the date of its enactment:
12 *Provided*, That the Secretary (with respect to any consumer
13 commodity which is a food, drug, device, or cosmetic), and
14 the Commission (with respect to any other consumer com-
15 modity) may by regulation postpone, for an additional
16 twelve-month period, the effective date of this Act with
17 respect to any class or type of consumer commodity on the
18 basis of a finding that such a postponement would be in the
19 public interest.

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