

Difference between your bill and S. 985 is primarily section marked on p 7 which is not in S. 985

[COMMITTEE PRINT]

JULY 21, 1966

89TH CONGRESS
2D SESSION

H. R. 15440

IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 1966

Mr. STAGGERS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Fair Packaging and Short Title
4 Labeling Act".

5 **DECLARATION OF POLICY**

6 **SEC. 2.** Informed consumers are essential to the fair and Purpose of
7 efficient functioning of a free market economy. Packages Bill
8 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

Persons
Covered

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.

Persons
Exempted

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- Mandatory
5 tained in section 3 shall distribute or cause to be distributed Labeling
6 in commerce any packaged or labeled consumer commodity Require-
7 unless in conformity with regulations established by the ments.
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 Identity of
11 identity of the commodity and the name and place of busi- Commodity
12 ness of the manufacturer, packer, or distributor; and and Person
Responsible

13 (2) The net quantity of contents (in terms of weight Net
14 measure, or numerical count) shall be separately and accu- Quantity
15 rately stated in a uniform location upon the principal display of Contents
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 Net
19 contents appearing upon or affixed to any package— Quantity
Statement

20 (A) if expressed in terms of weight or fluid volume Units of
21 on any package of a consumer commodity containing Measure
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) ;

Contrast
With
Background

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;

Type Size

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

Parallel to
Base

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.

No Qualifi-
cations
of Net
Quantity
Statement

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 Division of
Authority
Between
HEW and
FTC
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- Exemption
From
Labeling
Require
ments
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 Regulations

Necessary
To Facilitate
Price Per
Unit
Comparisons:

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—

Standards
for Size
Character-
ization

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;

Definition
of "Serv-
ing"

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;

Regulation
of "Cents-
off" Sales

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 Ingredients
 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; and

11 (5) prevent the distribution of that commodity for Deceptive
 12 retail sale in packages of sizes, shapes, or dimensional Packages
 13 proportions which are likely to deceive retail purchasers
 14 in any material respect as to the net quantity of the
 15 contents thereof (in terms of weight, measure, or
 16 count).

17 (d) Whenever the promulgating authority determines, Prolifera-
 18 after a hearing conducted in compliance with section 7 of tion of
 19 the Administrative Procedure Act, that the weights or quan- Package
 20 tities in which any consumer commodity is being distributed Sizes
 21 for retail sale are likely to impair the ability of consumers
 22 to make price per unit comparisons such authority shall—

23 (1) publish such determination in the Federal
 24 Register; and

25 (2) promulgate, subject to the provisions of sub-

1 sections (e), (f), and (g), regulations effective to
 2 establish reasonable weights or quantities, or fractions
 3 or multiples thereof, in which any such consumer com-
 4 modity shall be distributed for retail sale.

Voluntary
 Product
 Standards

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

Limitation
 on Weight
 or Quantity
 Regulations

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

In Terms of
 Voluntary
 Product
 Standards

21 (1) vary from any voluntary product standard in
 22 effect with respect to that consumer commodity which
 23 was published—

24 (A) before the publication of any determination

1 with respect to that consumer commodity pursuant to
2 subsection (d) (1) ;

3 (B) within one year after the filing pursuant to
4 this section of a request for the establishment of a volun-
5 tary product standard with respect to that consumer
6 commodity; or

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

16 (2) establish any weight or measure in any amount Not Less
Than 2 oz.
17 less than two ounces;

18 (3) preclude the use of any package of particular Multiple-
Use
Packages
19 dimensions or capacity customarily used for the distribu-
20 tion of related products of varying densities, except to
21 the extent that it is determined that the continued use
22 of such package for such purpose is likely to deceive
23 consumers; or

Reusable
Bottles

1 (4) preclude the continued use of particular di-
2 mensions or capacities of returnable or reusable
3 glass containers for beverages in use as of the effective
4 date of the Act.

Factors To
Be
Considered

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

8 (1) the cost of the packaging of the products
9 affected;

10 (2) the availability of any product in a reasonable
11 range of package sizes to serve consumer convenience;

12 (3) the materials used for the packaging of the
13 affected products;

14 (4) the weights and measures customarily used
15 in the packaging of the affected products; and

16 (5) competition between containers made of dif-
17 ferent types of packaging material.

18 PROCEDURE FOR PROMULGATION OF REGULATIONS

HEW

19 SEC. 6. (a) Regulations promulgated by the Secretary
20 under section 4 or section 5 of this Act shall be promulgated,
21 and shall be subject to judicial review, pursuant to the pro-
22 visions of subsections (e), (f), and (g) of section 701 of
23 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371
24 (e), (f), and (g)). Hearings authorized or required for
25 the promulgation of any such regulations by the Secretary

1 shall be conducted by the Secretary or by such officer or em-
 2 ployee of the Department of Health, Education, and Welfare
 3 as he may designate for that purpose.

4 (b) Regulations promulgated by the Commission under ^{FTC}
 5 section 4 or section 5 of this Act shall be promulgated, and
 6 shall be subject to judicial review, by proceedings taken in
 7 conformity with the provisions of subsections (e), (f), and
 8 (g) of section 701 of the Federal Food, Drug, and Cosmetic
 9 Act (21 U.S.C. 371 (e), (f), and (g)) in the same man-
 10 ner, and with the same effect, as if such proceedings were
 11 taken by the Secretary pursuant to subsection (a) of this
 12 section. Hearings authorized or required for the promulga-
 13 tion of any such regulations by the Commission shall be con-
 14 ducted by the Commission or by such officer or employee
 15 of the Commission as the Commission may designate for that
 16 purpose.

17 (c) In carrying into effect the provisions of this Act, the ^{Coopera-}
 18 Secretary and the Commission are authorized to cooperate ^{tion in}
 19 with any department or agency of the United States, with ^{Administra-}
 20 any State, Commonwealth, or possession of the United States, ^{tion with}
 21 and with any department, agency, or political subdivision of ^{State and}
 22 any such State, Commonwealth, or possession. ^{Local Gov-}
 23 ^{ernments}

23 (d) No regulation adopted under this Act shall preclude ^{Reusable}
 24 the continued use of returnable or reusable glass containers ^{Bottles}

1 for beverages in inventory or with the trade as of the effec-
2 tive date of this Act.

3 ENFORCEMENT

Foods,
Drugs,
Devices—
Injunctions,
Seizures

4 SEC. 7. (a) Any consumer commodity which is a food,
5 drug, device, or cosmetic, as each such term is defined by sec-
6 tion 201 of the Federal Food, Drug, and Cosmetic Act (21
7 U.S.C. 321), and which is introduced or delivered for intro-
8 duction into commerce in violation of any of the provisions
9 of this Act, or the regulations issued pursuant to this Act,
10 shall be deemed to be misbranded within the meaning of
11 chapter III of the Federal Food, Drug, and Cosmetic Act,
12 but the provisions of section 303 of that Act (21 U.S.C. 333)
13 shall have no application to any violation of section 3 of
14 this Act.

Other
Commodi-
ties—
Cease and
Desist
Orders

15 (b) Any violation of any of the provisions of this Act,
16 or the regulations issued pursuant to this Act, with respect
17 to any consumer commodity which is not a food, drug, device,
18 or cosmetic, shall constitute an unfair or deceptive act or
19 practice in commerce in violation of section 5 (a) of the Fed-
20 eral Trade Commission Act and shall be subject to enforce-
21 ment under section 5 (b) of the Federal Trade Commission
22 Act.

Imports—
Secretary
of the
Treasury

23 (c) In the case of any imports into the United States
24 of any consumer commodity covered by this Act, the pro-
25 visions of sections 4 and 5 of this Act shall be enforced by

1 the Secretary of the Treasury pursuant to section 801 (a)
 2 and (b) of the Federal Food, Drug, and Cosmetic Act (21
 3 U.S.C. 381).

4 REPORTS TO THE CONGRESS

5 SEC. 8. Each officer or agency required or authorized Reports
 6 by this Act to promulgate regulations for the packaging or
 7 labeling of any consumer commodity, or to participate in the
 8 development of voluntary product standards with respect
 9 to any consumer commodity under procedures referred to in
 10 section 5 (e) of this Act, shall transmit to the Congress in
 11 January of each year a report containing a full and complete
 12 description of the activities of that officer or agency for the
 13 administration and enforcement of this Act during the pre-
 14 ceding fiscal year.

15 COOPERATION WITH STATE AUTHORITIES

16 SEC. 9. (a) A copy of each regulation promulgated Transmittal
of Regula-
tions and
Furnishing
Information
and
Assistance
to States
 17 under this Act shall be transmitted promptly to the Secretary
 18 of Commerce, who shall (1) transmit copies thereof to all
 19 appropriate State officers and agencies, and (2) furnish to
 20 such State officers and agencies information and assistance
 21 to promote to the greatest practicable extent uniformity in
 22 State and Federal regulation of the labeling of consumer
 23 commodities.

24 (b) Nothing contained in this section shall be construed Effect on
Other
State-HEW
Cooperative
Programs
 25 to impair or otherwise interfere with any program carried

1 into effect by the Secretary of Health, Education, and Wel-
 2 fare under other provisions of law in cooperation with State
 3 governments or agencies, instrumentalities, or political sub-
 4 divisions thereof.

5 DEFINITIONS

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

“Consumer
Commodity”

7 (a) The term “consumer commodity”, except as other-
 8 wise specifically provided by this subsection, means any food,
 9 drug, device, or cosmetic (as those terms are defined by the
 10 Federal Food, Drug, and Cosmetic Act), and any other
 11 article, product, or commodity of any kind or class which is
 12 customarily produced or distributed for sale through retail
 13 sales agencies or instrumentalities for consumption by indi-
 14 viduals, or use by individuals for purposes of personal care
 15 or in the performance of services ordinarily rendered within
 16 the household, and which usually is consumed or expended
 17 in the course of such consumption or use. Such term does
 18 not include—

Excluded
Commodi-
ties

19 (1) any meat or meat product, poultry or poultry
 20 product, or tobacco or tobacco product;

21 (2) any commodity subject to packaging or label-
 22 ing requirements imposed by the Secretary of Agri-
 23 culture pursuant to the Federal Insecticide, Fungicide,
 24 and Rodenticide Act, or the provisions of the eighth
 25 paragraph under the heading “Bureau of Animal Indus-

1 try" of the Act of March 4, 1913 (37 Stat. 832-833;
2 21 U.S.C. 151-157), commonly known as the Virus-
3 Serum-Toxin Act;

4 (3) any drug subject to the provisions of sections
5 503 (b) (1) or 506 of the Federal Food, Drug, and
6 Cosmetic Act (21 U.S.C. 353 (b) (1), 355, 356, 357) ;

7 (4) any beverage subject to or complying with
8 packaging or labeling requirements imposed under the
9 Federal Alcohol Administration Act (27 U.S.C. 201
10 et seq.) ; or

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

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

17 (1) shipping containers or wrappings used solely
18 for the transportation of any consumer commodity in
19 bulk or in quantity to manufacturers, packers, or proces-
20 sors, or to wholesale or retail distributors thereof;

21 (2) shipping containers or outer wrappings used
22 by retailers to ship or deliver any commodity to retail
23 customers if such containers and wrappings bear no
24 printed matter pertaining to any particular commodity;
25 or

1 (3) containers subject to the provisions of the Act
2 of August 3, 1912 (37 Stat. 250, as amended; 15
3 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat.
4 1186, as amended; 15 U.S.C. 234-236), the Act of
5 August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C.
6 251-256), or the Act of May 21, 1928 (45 Stat. 685,
7 as amended; 15 U.S.C. 257-257i);

“Label” 8 (c) The term “label” means any written, printed, or
9 graphic matter affixed to any consumer commodity or affixed
10 to or appearing upon a package containing any consumer
11 commodity;

“Person” 12 (d) The term “person” includes any firm, corporation,
13 or association;

“Com-
merce” 14 (e) The term “commerce” means (1) commerce be-
15 tween any State, the District of Columbia, the Common-
16 wealth of Puerto Rico, or any territory or possession of the
17 United States, or territory and any place outside thereof,
18 and (2) commerce within the District of Columbia or
19 within any territory or possession of the United States not
20 organized with a legislative body, but shall not include ex-
21 ports to foreign countries; and

“Principal
Display
Panel or
Panels” 22 (f) The term “principal display panel or panels” means
23 that part, or those parts, of a label that is, or are most likely

1 to be, displayed, presented, shown, or examined under normal
 2 and customary conditions of display for retail sale.

3 SAVING PROVISION

4 SEC. 11. Nothing contained in this Act shall be con- Effect on
Certain
Other
Laws
 5 strued to repeal, invalidate, supersede, or otherwise adversely
 6 affect—

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

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

10 (c) the Hazardous Substance Labeling Act.

11 EFFECT UPON STATE LAW

12 SEC. 12. It is hereby declared it is the express intent of Federal
Pre-emption
 13 Congress to supersede any and all laws of the State or politi-
 14 cal subdivisions thereof insofar as they may now or hereafter
 15 provide for the labeling of the net quantity of contents of the
 16 package of any consumer commodity covered by this Act
 17 which differ from the requirements of section 4 of this Act
 18 or regulations promulgated pursuant thereto.

19 EFFECTIVE DATE

20 SEC. 13. This Act shall take effect on the first day of Effective
Date
 21 the sixth month beginning after the date of its enactment:
 22 *Provided*, That the Secretary (with respect to any consumer
 23 commodity which is a food, drug, device, or cosmetic), and

1 the Commission (with respect to any other consumer com-
2 modity) may by regulation postpone, for an additional
3 twelve-month period, the effective date of this Act with
4 respect to any class or type of consumer commodity on the
5 basis of a finding that such a postponement would be in the
6 public interest.

[COMMITTEE PRINT]

JULY 21, 1966

89TH CONGRESS
2^D SESSION

H. R. 15440

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.

By Mr. STAGGERS

JUNE 2, 1966

Referred to the Committee on Interstate and Foreign
Commerce