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# THE PRODUCT PACKAGING PROTECTION ACT OF 2001

DECEMBER 4, 2001.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary, submitted the following

# R E P O R T

[To accompany S. 1233]

The Committee on the Judiciary, to which was referred the bill (S. 1233) to provide penalties for certain unauthorized writing with respect to consumer products, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Product Packaging Protection Act of 2001".

**SEC. 2. TAMPERING WITH CONSUMER PRODUCTS.**

Section 1365 of title 18, United States Code, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

"(f)(1) Whoever, without the consent of the manufacturer, retailer, or distributor, intentionally tampers with a consumer product that is sold in interstate or foreign commerce by knowingly placing or inserting any writing in the consumer product, or in the container for the consumer product, before the sale of the consumer prod-

uct to any consumer shall be fined under this title, imprisoned not more than 3 years, or both.

"(2) In this subsection, the term 'writing' means any form of representation or communication, including handbills, notices, or advertising, that contain letters, words, or pictorial representations.".

## I. PURPOSE

The Product Packaging Protection Act of 2001, S. 1233, will criminalize the unauthorized insertion of literature in a consumer product package. Food manufacturers and distributors report that hate-filled, pornographic, or political leaflets are being folded and inserted into certain boxed groceries, like frozen pizza, cereal, and macaroni and cheese packages. Current Federal product tampering law is inadequate to address this activity because it only applies to the actual product contained inside the package but not the physical package itself. The Product Packaging Protection Act of 2001 extends the scope of 18 U.S.C. 1365 to acts involving the tampering of the product package. The penalty for a violation of this measure would be a fine of up to $250,000 per offense, imprisonment of up to 3 years, or both. It would not be an offense if the pamphlet insertion was authorized by the food manufacturer.

## II. LEGISLATIVE HISTORY

Senate bill 1233 was introduced as the Product Packaging Protection Act of 2001 by Senator Herb Kohl (D-Wisconsin) on July 24, 2001. Original cosponsors included Senators Hatch (R-Utah), Leahy (D-Vermont), DeWine (R-Ohio), and Durbin (D-Illinois). The legislation as introduced would amend 18 U.S.C. 1365 to extend product tampering law to acts involving the insertion of literature into the actual product package.

On August 1, 2001, the Antitrust, Business Rights, and Competition Subcommittee of the Senate Judiciary Committee held a hearing on S. 1233. Witnesses included Alice Fisher, Deputy Assistant Attorney General, Department of Justice, Criminal Division; Leslie Sarasin, president, American Frozen Food Institute; Paul Petrucelli, chief counsel, Kraft North American, Inc.; and David Burris, a victim of product package tampering. The testimony received by the panel identified the inability of current Federal law to address the problem of product package tampering. By amending current Federal product tampering law as prescribed by the Product Packaging Protection Act of 2001, incidents where unauthorized literature is inserted into boxed food products can be prosecuted.

On September 6, 2001, the full Judiciary Committee met in executive session to consider S. 1233. The bill in the form of a substitute was ordered favorably reported to the full Senate by unanimous consent. The substitute removed the word "authorized" from section 2 of the bill in order to address gray, or parallel, market concerns. The gray market was concerned that the bill would affect distributors' ability to repackage and sell consumer products. The Product Packaging Protection Act is not intended to affect those engaging in the legal repackaging and selling of consumer products when they are acting in the due course of business.

## III. DISCUSSION

In the past 3 to 4 years, manufacturers of food products regularly found that grocery stores have received complaints from consumers about hate-filled, pornographic, or political literature being found in groceries. It appears that the literature is being folded and inserted into certain groceries that are packaged in boxes. Cereal boxes, frozen pizza boxes, macaroni and cheese boxes are among the more frequently tampered product packages. Kraft has reported 80 incidents in the past 4 years. General Mills documents 25 per year, and Kellog's many more each year. It is likely that many more cases go unreported by consumers who simply throw away the offending material and do not report the event.

The incidents involve pamphlets espousing racist, anti-Semitic, and white supremacist sentiments. Other examples include extremist anti-abortion literature. Leaflets have been found that attack African-Americans, praise the Holocaust and encourage the killing of immigrants. For example, one leaflet showed an illustration of a man being shot at point blank range with an automatic weapon and the caption, "If it ain't white, waste it!" Suffice it to say, this literature is vitriolic, shocking, and hate-filled.

Manufacturers have responded as best they can to these incidents. They have undertaken internal reviews to ensure that these leaflets are not getting into the products either at the manufacturing plant or during distribution. It is not until products reach the shelves of the grocery store that these handbills are inserted—too late for the manufacturer or the distributor to do anything about it.

Unfortunately, when consumers or companies turn to the authorities for help, they cannot be assisted. According to the Federal Bureau of Investigations and the Food and Drug Administration's Office of Criminal Investigation, these actions are not covered by Federal product tampering statutes. Those laws only cover the actual product themselves, but not the packaging. In response to incidents in the respective States, both New Jersey and California passed laws to criminalize this behavior. These States should be commended, but more should be done. Federal law needs to be amended accordingly.

The Product Packaging Protection Act of 2001 would prohibit the placement of any writing or other material inside a consumer product without the permission of the manufacturer, distributor, or retailer. The criminal act must involve placing the literature in a product package, not on. So, any number of reasons that people might have to write on a product package or attach literature to it will not be criminalized. Further, the bill does not apply when a manufacturer, retailer, or distributor consents to the placement of promotional literature in the product package.

The penalty for violation of this measure would be a fine of up to $250,000 per offense and/or imprisonment of up to 3 years. Closing this gap in Federal law would appropriately punish people whose actions violate the integrity of the food product, compromise consumer's faith in the food they purchase in the grocery store, and damage the good name and reputation of the food manufacturer.

This legislation does not offend the first amendment. The criminal act is the insertion of material into product packaging without

the permission of the manufacturer. The fact that most of the incidents involve racist or anti-Semitic literature brought the problem to our attention, but the criminal act described in the bill has nothing to do with what is written on the literature inserted into the package.

Many food manufacturers and distributors experience this type of product tampering. Together, they recognize the need for this legislation and have signed a letter supporting the introduction and passage of this bill. The supporters of this bill include: the American Bakers Association, the American Frozen Food Institute, Food Distributors International, General Mills, the Grocery Manufacturers of America, the Independent Bakers Association, Kellog's, Kraft Foods, the National Food Processors Association, and the National Frozen Food Institute.

## IV. VOTE OF THE COMMITTEE

The Product Packaging Act of 2001, S. 1233, passed by unanimous consent on September 6, 2001.

## V. SECTION-BY-SECTION ANALYSIS

*Section 1.—Short Title*

The title of the bill is the "Product Packaging Act of 2001."

*Section 2.—Tampering Consumer Products*

Section 2 creates a new subsection (f) of section 1365 of title 18, United States Code, Previous subsections (f) and (g) are redesignated as subsections (g) and (h), respectively.

Subsection (f)(1) creates a Federal offense to place written material into a consumer product package, like a cereal box. It is not a Federal offense to do so if one has permission from the manufacturer, retailer, or distributor. The penalty for a violation of subsection (f)(1) is a fine, imprisonment not more than 3 years, or both.

Sebsection (f)(2) defines the term "writing" as used in subsection (f)(1). "Writing" means any form of representation or communication. Forms include, but are not limited to, handbills, notices, or advertisements that contain letter, words, or pictorial representations.

## VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 26, 2001.*

Hon. PATRICK J. LEAHY,
*Chairman, Committee on the Judiciary,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1233, the Product Packaging Protection Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226–2860.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

*S. 1233—Product Packaging Protection Act of 2001*

CBO estimates that implementing S. 1233 would have no significant impact on the federal budget. Enacting S. 1233 could affect direct spending and receipts, so pay-as-you-go procedures would apply to the bill; however, CBO estimates that any impact on direct spending and receipts would not be significant. S. 1233 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no impact on state, local, or tribal governments.

S. 1233 would make it a federal crime to intentionally tamper with a consumer product by placing writing on or inside the packaging of the product. Violators would be subject to imprisonment and fines. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any additional costs to implement the bill would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under the provisions of S. 1233 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would be negligible.

The CBO staff contact for this estimate is Lanette J. Walker, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## VII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 1233 will not have significant regulatory impact.

## VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1233, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

# UNITED STATES CODE

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# TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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## PART I—CRIMES

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### CHAPTER 65—MALICIOUS MISCHIEF

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### § 1365. Tampering with consumer products

(a) Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall—

* * * * * * *

(e) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense, shall be fined under this title or imprisoned not more than ten years, or both.

*(f)(1) Whoever, without the consent of the manufacturer, retailer, or distributor, intentionally tampers with a consumer product that is sold in interstate or foreign commerce by knowingly placing or inserting any writing in the consumer product, or in the container for the consumer product, before the sale of the consumer product to any consumer shall be fined under this title, imprisoned not more than 3 years, or both.*

*(2) In this subsection, the term "writing" means any form of representation or communication, including handbills, notices, or advertising, that contain letters, words, or pictorial representations.*

**[**(f)**]** *(g)* In addition to any other agency which has authority to investigate violations of this section, the Food and Drug Administration and the Department of Agriculture, respectively, have authority to investigate violations of this section involving a consumer product that is regulated by a provision of law such Administration or Department, as the case may be, administers.

**[**(g)**]** *(h)* As used in this section—

(1) the term "consumer product" means—

(A) any "food", "drug", "device", or "cosmetic", as those terms are respectively defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(B) any article, product, or commodity which is customarily produced or distributed for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is designed to be consumed or expended in the course of such consumption or use;

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