

CONSUMER PRODUCT PROTECTION ACT OF 2002

MAY 23, 2002.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2621]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 2621) to amend title 18, United States Code, with respect to
consumer product protection, having considered the same, reports
favorably thereon with an amendment and recommends that the
bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer Product Protection Act of 2002”.

SEC. 2. UNAUTHORIZED PLACEMENT OF WRITING WITH A CONSUMER PRODUCT.

- (a) IN GENERAL.—Section 1365 of title 18, United States Code, is amended—
(1) by redesignating subsections (f) and (g) as (g) and (h) respectively;

- (2) by inserting after subsection (e) the following new subsection:
- “(f)(1) Whoever knowingly stamps, prints, places, or inserts any writing in or on any consumer product that affects interstate or foreign commerce, or the box, package, or other container of any such product, prior to its sale to any consumer, shall be fined under this title or imprisoned not more than one year, or both.
- “(2) This subsection shall not apply in any case in which the manufacturer, retailer, or distributor of the product in the due course of business consents to the stamping, printing, placing, or inserting of a writing.”; and
- (3) in subsection (h) (as redesignated by paragraph (1))—
- (A) in paragraph (3)(D), by striking “and”;
- (B) in paragraph (4), by striking the period and inserting “; and”; and
- (C) by adding after paragraph (4) the following:
- “(5) the term ‘writing’ means any form of representation or communication (including handbills, notices, or advertising) that contains letters, words, graphic, or pictorial representations.”.
- (b) CONFORMING AMENDMENT.—Section 2332b(g)(3) of title 18, United States Code, is amended by striking “1365(g)(3)” and inserting “1365”.

PURPOSE AND SUMMARY

H.R. 2621, the “Consumer Product Protection Act of 2002,” would criminalize the unauthorized placement of any writing in consumer product packages before their sale to customers. Both adults and children throughout the country have been subjected to violent, racist, gory, and/or otherwise disturbing materials hidden in tampered products. This legislation would prohibit the unscrupulous from inserting into commercial products, such as cereal boxes, this type of improper material. Moreover, by fixing this gap in Federal law, H.R. 2621 would appropriately punish, and likely prevent, individuals whose current activities damage the value of manufacturers’ brand names, tarnish companies’ well-deserved reputation for safe, high quality products, and violate the integrity of the food that reaches consumers’ homes and families.

BACKGROUND AND NEED FOR THE LEGISLATION

In the past 5 years, manufacturers of food products regularly found that grocery stores have received complaints from consumers about hate-filled, pornographic, or political literature 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, and macaroni and cheese boxes are among the more frequently tampered product packages. Kraft Foods has reported over 100 incidents in the past 5 years. 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. Also, leaflets have been found that attack African-Americans, praise the Holocaust and encourage the killing of immigrants. For example, one leaflet showed a “coupon” with racial slurs thereon and a demand for African-Americans to go back to Africa.

Under current Federal law, tampering with a product’s *packaging* is not illegal, so long as the actor does not cause the labeling to become false or misleading. Current consumer protection legislation, under 18 U.S.C. § 1365, governs this area. It focuses on tampering which endangers the health or safety of consumers or renders the labeling of a product false or misleading, but leaves unregulated conduct which neither adulterates the actual product nor alters the labeling.

This type of conduct harms both businesses and consumers. Businesses should be able to control the messages associated with their products and persons who interfere with their products and the image of their company should be prosecuted.

Such conduct also harms consumers. The insertion of materials into a box does not render the labeling misleading or false; however, it does serve as a vehicle to sneak messages into homes. Parents can monitor their children's television shows, the music they listen to, the books they read, but they cannot anticipate that harmful messages may be in a cereal box. Nor can they be expected to open all packages before they are brought home to ensure that they do not contain more than the box claims. Very few would guess that such activity is not already illegal. The Consumer Product Protection Act of 2002 would prohibit the placement of any writing or other material inside a consumer product without the permission of the manufacturer, retailer, or distributor.

HEARINGS

The Committee's Subcommittee on Crime held a legislative hearing on H.R. 2621 on July 26, 2001. Testimony was received from four witnesses. The witnesses were: Tracey Weaver, a public citizen; David Zlotnick, Professor, Roger Williams University, School of Law; Honorable Melissa Hart, Representative of Pennsylvania, fourth congressional district; and William Macleod, an industry representative testifying on behalf of the Grocery Manufacturers of America.

COMMITTEE CONSIDERATION

On July 26, 2001, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 2621 with amendment, by a voice vote, a quorum being present. On May 8, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 2621, with an amendment in the nature of a substitute, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on H.R. 2621.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 2621 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2621, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2621, the Consumer Product Protection Act of 2002.

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,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2621—Consumer Product Protection Act of 2002.

CBO estimates that implementing H.R. 2621 would have no significant impact on the Federal budget. Enacting H.R. 2621 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. H.R. 2621 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 2621 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 H.R. 2621 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.

On September 26, 2001, CBO transmitted a cost estimate for S. 1233, the Product Packaging Protection Act of 2001, as ordered reported by the Senate Committee on the Judiciary on September 6, 2001. The bills are similar and the cost estimates are identical.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

The short title of the bill is the “Consumer Product Protection Act of 2002.”

Section 2. Unauthorized Placement of Writing with a Consumer Product

Section 2 of the bill amends 18 U.S.C. § 1365 to make knowingly stamping, printing, placing, or inserting any writing (including graphic and pictorial representations) in or on a consumer product prior to its sale to any consumer a crime. This section shall not apply in any case in which the manufacturer, retailer, or distributor consents to the writing. A person who violates this section would be subject to a fine, imprisonment of up to 1 year, or both. This section also makes the necessary and conforming amendments to Title 18 of the United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 65—MALICIOUS MISCHIEF

* * * * *

§ 1365. Tampering with consumer products

(a) * * *

* * * * *

(f)(1) Whoever knowingly stamps, prints, places, or inserts any writing in or on any consumer product that affects interstate or foreign commerce, or the box, package, or other container of any such product, prior to its sale to any consumer, shall be fined under this title or imprisoned not more than one year, or both.

(2) This subsection shall not apply in any case in which the manufacturer, retailer, or distributor of the product in the due course of business consents to the stamping, printing, placing, or inserting of a writing.

[(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) * * *

* * * * *

(3) the term “serious bodily injury” means bodily injury which involves—

(A) * * *

* * * * *

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; **[and]**

(4) the term “bodily injury” means—

(A) * * *

* * * * *

(E) any other injury to the body, no matter how temporary**[(.]]; and**

(5) the term “writing” means any form of representation or communication (including handbills, notices, or advertising) that contains letters, words, graphic, or pictorial representations.

* * * * *

CHAPTER 113B—TERRORISM

* * * * *

§ 2332b. Acts of terrorism transcending national boundaries

(a) * * *

* * * * *

(g) DEFINITIONS.—As used in this section—

(1) * * *

* * * * *

(3) the term “serious bodily injury” has the meaning given that term in section **[(1365(g)(3))] 1365;**

* * * * *

MARKUP TRANSCRIPT
BUSINESS MEETING
WEDNESDAY, MAY 8, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order.

[Intervening business.]

The next item on the agenda is H.R. 2621, the "Consumer Product Protection Act of 2001." The Chair recognizes the gentleman from Texas, Mr. Smith, Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. SMITH. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 2621 with a single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. And the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read and open for amendment at any point and be considered as the original text for purposes of amendment.

[The amendment follows:]

**SUBCOMMITTEE AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO H.R. 2621**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Consumer Product
3 Protection Act of 2002”.

**4 SEC. 2. UNAUTHORIZED PLACEMENT OF WRITING WITH A
5 CONSUMER PRODUCT.**

6 (a) Section 1365 of title 18, United States Code, is
7 amended—

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

10 (2) by inserting after subsection (e) the fol-
11 lowing new subsection:

12 “(f)(1) Whoever knowingly stamps, prints, places, or
13 inserts any writing in or on any consumer product that
14 affects interstate or foreign commerce, or the box, pack-
15 age, or other container of any such product, prior to its
16 sale to any consumer, shall be fined under this title or
17 imprisoned not more than one year, or both.

18 “(2) This subsection shall not apply in any case in
19 which the manufacturer, retailer, or distributor of the
20 product in the due course of business consents to the

1 stamping, printing, placing, or inserting of a writing.”;

2 and

3 (3) in subsection (h) (as redesignated by para-
4 graph (1))—

5 (A) in paragraph (3)(D), by striking
6 “and”;

7 (B) in paragraph (4), by striking the pe-
8 riod and inserting “; and”; and

9 (C) by adding after paragraph (4) the fol-
10 lowing:

11 “(5) the term ‘writing’ means any form of rep-
12 resentation or communication (including handbills,
13 notices, or advertising) that contains letters, words,
14 graphic, or pictorial representations.”.

15 (b) CONFORMING AMENDMENTS.—Sections 2261A
16 and 2332b(g)(3) of title 18, United States Code, are each
17 amended by striking “1365(g)(3)” and inserting “1365”.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas to strike the last word.

Mr. SMITH. Thank you, Mr. Chairman.

I want to say that I appreciate the gentlewoman from Pennsylvania offering this bill, which I support, and I will yield the balance of my time to her.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS

H.R. 2621, the "Consumer Product Protection Act of 2001", introduced by Rep. Melissa Hart, would prohibit anyone from knowingly stamping, printing, placing, or inserting any writing in or on any consumer product prior to its sale without the consent of the manufacturer, distributor, or retailer of such product.

Under current law, tampering with a product's packaging is not illegal, as long as it does not cause the labeling to be false or misleading or endanger the health or safety of consumers. Yet product tampering can be harmful both to businesses and consumers.

Product tampering cases that the Subcommittee on Crime, reviewed have shown that adults and children across the country have been subjected to violent, racist, gory, or otherwise offensive materials placed between layers of packaging. Tampering transforms businesses' desirable products into vehicles for undesirable messages. This legislation will deter those who would wrongfully insert these materials into product containers by making it a criminal act.

Just one company, Kraft Foods, estimates that they receive nearly twenty complaints a year, but they also believe that many more cases go unreported. The manufacturers have determined that many of these materials are placed in the packaging once the products have left their control. Often, the products are tampered with while in the retail stores or are bought, tampered with, and later returned.

Parents can monitor their children's television shows, the music they listen to, the books they read, but they cannot anticipate offensive messages that may be in a cereal box.

I would like to thank Ms. Hart for sponsoring this legislation, and I urge my colleagues to support the bill.

Ms. HART. Thank you. Mr. Chairman, I want to thank you for bringing this legislation before this Committee, and also Mr. Smith for his work on the amendment to the bill. I also want to thank my colleague Representative Baldwin, with whom I am sponsoring the legislation.

Protecting consumers from unsafe products is an issue that I worked on as a State Senator and one that I am pleased that I can continue to work here in Washington.

The issue that the Consumer Product Protection Act addresses is the result of an omission in the Federal Anti-Tampering Act. Under that act, it is a crime for an individual to alter the label of a product or harm the safety of a consumer. It is not, however, a crime to place an unwanted item in or on a product or its package.

Imagine opening a box of your favorite cereal and finding a hate-filled message or pornographic material. Even worse, imagine if you children opened the box and found this material. This is just the story that we heard from Tracey Weaver, when her son opened a box of cake mix to find a message filled with racial slurs.

In fact, this happens all too often. For example, Kraft Foods records show that there have been more than 100 reported incidents in the past 5 years.

Most unfortunate is that when consumers like Mrs. Weaver contact the manufacturer to complain, the manufacturer is left unable to help their consumer, as the authorities cannot trace the source of the problem, noting a lack of authority under the Federal Anti-Tampering Act.

Basically, it is currently not a crime to place an unwanted message in a packaged food product. This bill will fix the gap in the law by clearly stating that placing unauthorized material in or on a product is a crime under the Anti-Tampering Act. This legislation protects consumers by reassuring them that the products they purchase for themselves and their families are safe. In addition, if they complain about such an incident, this legislation ensures that authorities have the ability to find and prosecute the perpetrator.

Manufacturers are also helped by this legislation as they will be able to address the complaints and the concerns of their customers. This legislation will ensure that manufacturers are able to maintain the consumer confidence that is important to them, so that they can do their business. It also assures their customers that the products that they purchase and have grown to enjoy and rely upon are actually safe.

Again, I'd like to thank you, Mr. Chairman, for bringing this bill before us; Ms. Baldwin, for co-sponsoring the bill; and Mr. Smith, obviously, for the amendment and for dealing with it in the Subcommittee on Crime.

I yield back to Mr. Smith.

Mr. SMITH. Mr. Chairman, I will yield back the balance of my time as well.

Ms. BALDWIN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I'll yield to the gentlelady from Wisconsin.

Chairman SENSENBRENNER. The gentleman from Virginia moves to strike the last word and yields to the gentlelady from Wisconsin.

Ms. BALDWIN. Thank you, Mr. Chairman.

I am pleased to be the lead Democrat on H.R. 2621, the Consumer Product Protection Act of 2001, and I also wanted to thank the work of—recognize the work of Congresswoman Hart and her efforts in introducing this bill.

I urge my colleagues to report this bill favorably to the House.

Over the last several years, consumers have been finding offensive materials attached to or inserted inside the packaging of a variety of products. Most of these inserts are material that are offensive in nature. Many are racist, anti-Semitic, or anti-gay.

Finding offensive material can be shocking, and it is especially objectionable when a child opens a box and finds offensive and even pornographic material inside.

Responding to customer complaints, manufacturers have sought law enforcement help to address this situation. However, it has become increasingly clear that law enforcement officials lack the authority to prosecute these crimes under State or Federal law. Both the FBI and the FDA's Office of Criminal Investigations do not believe that they have the authority to prosecute these crimes.

The Consumer Product Protection Act would address this gap in Federal law and give authorities the tools they need to investigate and prosecute these acts.

Only two States, California and New Jersey, currently have laws prohibiting this practice. This bill would amend the Federal Anti-Tampering Act by making it a crime for a person to place any writing either on the outside of the package or on the inside prior to its sale to a consumer. There are appropriate exceptions in the bill

for promotional and sales purposes, if approved by the manufacturer, distributor, or retailer.

To address some concerns about the appropriate level of punishment, the Crime Subcommittee amended the legislation to make the crime a misdemeanor instead of a felony.

I am pleased to be an original co-sponsor of this bill and strongly urge the Committee to report the bill favorably to the House.

Thank you, Mr. Chairman. And I yield back to Mr. Scott.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. Reclaiming my time, I want to thank Ms. Baldwin and Ms. Hart and Chairman Smith for working on this bill.

The activity we're speaking of is not illegal under Federal law and may not be illegal under State law. Ordinarily, I would prefer to see States develop the necessary criminal law provisions for activities occurring within their States. However, given the nature of this problem, where placing writings in or on products in one State could end up in a number of different States, to the extent that any criminal provision is needed, it is appropriate that we consider Federal action.

I believe we've structured the bill in such a way that it allows law enforcement to deal effectively with this issue, and provide for proportional penalties.

I support the legislation, thank the leaders of the legislation, and ask my colleagues to support it. Thank you, Mr. Chairman.

Mr. WATT. Would the gentleman yield for a question?

Mr. SCOTT. I yield to the gentleman from North Carolina.

Mr. WATT. There's been some reference to an amendment in the nature of a substitute, which I don't seem to have. What changes were made to the legislation?

Mr. SCOTT. I would ask the Chairman, has the amendment in the nature of a substitute been offered?

Chairman SENSENBRENNER. The answer is yes.

Mr. WATT. I apparently didn't get a copy of it, Mr. Chairman.

Chairman SENSENBRENNER. It's the Subcommittee amendment in the nature of a substitute. We're bringing the gentleman from North Carolina a copy of it.

Mr. WATT. Thank you, Mr. Chairman. I yield back to the gentleman from Virginia.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements may be included in the record at this point.

Are there amendments?

If there are no amendments, the question occurs on the amendment in the nature of a substitute.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

The question now occurs on the motion to report the bill H.R. 2621 favorably as amended by the amendment in the nature of a substitute. The Chair notes the presence of a reporting quorum.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days, as provided by House rules, in which to submit additional, dissenting, supplemental, or minority views.

