

# Model State Sensible Advertising and Family Education Act



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# Model State Sensible Advertising and Family Education Act

## Policy Statement

Alcohol consumption may lead to many serious problems for individuals and society. The litany of these alcohol-related problems is well-established: personal health problems, alcohol dependencies, increased crime, higher insurance rates, fetal alcohol syndrome and other alcohol-related birth defects, and accidents. Society must bear the full costs of these alcohol-related problems, including the costs of prevention and education efforts to reduce the onset of such problems and treatment efforts to restore the health and well-being of individuals debilitated by alcohol problems.

This legislation, modeled after the Sensible Advertising and Family Education Act proposed in the United State Congress by Senator Strom Thurmond and Representative Joseph Kennedy, establishes a sensible advertising standard for alcoholic beverages. This standard would require all alcohol advertising to reflect the reality of the potential dangers of alcohol consumption by requiring health and safety warning messages to be included in all alcohol advertising. Such advertising standards would also provide toll-free phone numbers to enable the public to acquire further information about alcohol-related problems and assistance. By doing so, this legislation serves to educate the public about the potential dangers of alcohol consumption and inform individuals about ways in which those with alcohol-related problems can receive help.

This Act does not seek to ban or limit alcohol advertising. It merely serves to inform viewers of the potential problems related to alcohol consumption. The expense of this warning and information dissemination shall be borne by alcohol manufacturers.

The provisions of this Act mandate that all print advertising carry specific, rotating health and safety messages within the advertisement. For broadcast advertisements (excluding cable broadcasting, which is regulated by the FCC), the health and safety messages required would be read as part of the radio advertisement or would appear at the end of television advertisement.



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# Highlights of the Model State Sensible Advertising and Family Education Act

## **ASSUMPTIONS AND REMEDIAL GOALS**

- Recognizes the prevalence of alcohol consumption among Americans, particularly the high rate of consumption among underage youths.
- Recognizes the impact of alcohol in terms of economic costs to society, health care utilization, alcoholism and alcohol dependencies, fetal alcohol syndrome and other alcohol-related birth defects, motor vehicle accidents, fatal intentional injuries, homicides, drownings, boating accidents, chronic liver disease, hypertension, and certain types of cancer.
- Recognizes the substantial impact of alcohol advertising.
- Recognizes the findings of a number of national commissions, panels, and polls that recommend the inclusion of health warning messages in alcohol advertising.
- Provides for health and safety warnings to be included and read as part of all alcohol advertising through radio or television broadcasting, excluding cable broadcasting and paid-per-view or subscription television.
- Provides that the [secretary of health] shall establish and maintain the toll free numbers that will appear in all health and safety warnings required by this Act.
- Provides requirements for the presentation of all health and safety warnings required for alcohol advertising by this Act.

## **SPECIFIC RECOMMENDATIONS**

- Provides for written health and safety warnings to be attached to all alcohol advertising in or on magazines, newspapers, brochures, billboards, and promotional displays.



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# Model State Sensible Advertising and Family Education Act

## **Section 1. Short Title.**

The provisions of this [Act] shall be known and may be cited as the "Model State Sensible Advertising and Family Education Act."

## **Section 2. Legislative Findings.**

(a) Alcohol is by far the drug most widely used and abused by young people in the United States today, even though it is illegal for youths under age 21 to purchase alcohol in all 50 states.

(b) According to the 1992 National Institute on Drug Abuse survey of high school students and young adults, 89.5 percent of high school seniors in the class of 1990 had used alcohol at least once, and 30 percent had experienced a "binge" of five or more drinks in a row within the past two weeks. Among college students, 43 percent reported occasions of "binge" drinking, including 35 percent of females and 52 percent of males.

(c) The average age at which young people begin drinking is 13. By age 13, approximately 30 percent of boys and 33 percent of girls classify themselves as drinkers. According to the 1988 National High School Senior Survey, 17 percent of high school seniors reported having been drunk at least once by the eighth grade, 37 percent by the ninth grade, 54 percent by the tenth grade, and 71 percent by twelfth grade. Studies demonstrate that the use of alcohol by individuals before the age of 15 appears to be one of the predictors of later heavy alcohol and other drug use by the individuals.

(d) Young people are not well informed about the hazards of alcohol use. Only 43 percent of high school seniors believe there is a great risk of harm from drinking activities such as "binge" drinking once or twice each weekend. More than one quarter of high school seniors do not view heavy, regular daily ("binge") drinking as entailing great risk. More than 40 percent of eighth graders, 45 percent of tenth graders, and 51

percent of twelfth graders do not perceive having five or more drinks once or twice a weekend as entailing a great risk.

(e) According to the Inspector General of the Department of Health and Human Services, the average binge drinker is a 16 year old male in the 10th grade who was 12 years old when he took his first drink.

(f) Employee assistance professionals have estimated that 30 to 40 percent of inpatient hospital admissions are alcohol-related. Also, a Center for Alcohol Studies at Rutgers University study indicates that untreated alcoholics on the average incur general health care costs that are at least 100 percent higher than those of nonalcoholics over pretreatment levels. Also, in the 12 months preceding treatment, the Rutgers study, "Socioeconomic Evaluations of Addictions Treatment," found that alcoholic's costs are close to 300 percent higher than costs of comparable nonalcoholics.

(g) Alcohol in combination with other drugs is the leading cause of emergency room drug abuse episodes.

(h) According to the National Institute on Alcohol Abuse and Alcoholism, an estimated 18 million persons in the United States who are 18 or older currently experience problems as a result of alcohol use. An estimated four and a half million young people are dependent on alcohol or are problem drinkers.

(i) Treatment costs for fetal alcohol syndrome (referred to in this section as "FAS") and other alcohol-related birth defects in the United States are estimated at nearly a third of a billion dollars. FAS is one of the top three known causes of birth defects with accompanying mental retardation and the only one that is preventable among the top three. Among children born to women who drink heavily, the incidence of FAS may be as high as 25 per 1,000 live births, compared to one to three infants per 1,000 live births among children born to other women who drink infrequently or abstain. The incidence of other alcohol-related birth defects is estimated to be three times greater than that of FAS.

(j) According to Healthy People 2000, the National Health Promotion and Disease Prevention Objectives:

- (1) Nearly one-half of all deaths from motor vehicle crashes are alcohol-related;
- (2) Alcohol is implicated in nearly one-half of all fatal intentional injuries, such as suicides and homicides; and
- (3) Victims are intoxicated in approximately one-third of all homicides, drownings, and boating deaths.

(k) In 1989, chronic liver disease, including cirrhosis, was the ninth leading cause of death in the United States. Of the 41,000 deaths attributed to liver disease in the United States, 46 percent diagnostically were associated with alcohol. Heavy alcohol use is considered the most important risk factor for chronic liver disease. Even among liver disease deaths not coded as alcohol-related, approximately 50 percent are thought to be due to alcohol use.

(l) Between five and 24 percent of hypertension cases are associated with alcohol. Many cases diagnosed as essential hypertension (high blood pressure having no known causes) may actually have chronic alcohol ingestion as their cause.

(m) Alcohol abuse is strongly associated with increased risk of certain kinds of cancer, especially cancer of the liver, esophagus, nasopharynx, and larynx. Alcohol is also associated with dietary deficiency that may increase cancer risk.

(n) The alcoholic beverage industry spends approximately \$2 billion each year on advertising and promotions in the United States.

(o) Alcohol advertising, especially in the broadcast media, may represent the single greatest source of alcohol education for persons in the United States. According to a 1990 study of 10- to 13-year-olds, funded by the American Automobile Association Foundation for Traffic Safety, there is a relationship between exposure and attention by an individual to beer advertising, and expectations that the individual drink as an adult.

(p) A major 1981 federally funded study found a significant relationship between:

- (1) Exposure of individuals to alcohol beverage advertising as youth; and
- (2) Drinking behaviors and attitudes of the individuals that can lead to certain forms of problem drinking.

(q) According to the Department of Health and Human Services, sponsorships and promotions on college campuses by alcohol producers and the use of celebrities and youth-oriented musical groups in advertising create a pro-drinking environment.

(r) Over 80 percent of 2,000 adults surveyed in 1988 for the Bureau of Alcohol, Tobacco, and Firearms by the Opinion Research Corporation believe that alcohol advertising influences underage youth to drink alcoholic beverages. The survey also found that the general public feels that the young people of the United States constitute the group that is most at risk from drinking alcoholic beverages.

(s) Both the 1988 Surgeon General's Workshop on Drunk Driving and the 1992 Join Together Public Policy Panel on Underage Access to Alcohol have recommended:

- (1) The level of alcoholic beverage advertising be matched with an equal number of pro-health and pro-safety messages; and
- (2) The inclusion of health warning messages in all alcohol advertising.

(t) Over two-thirds of persons surveyed in a 1989 Wall Street Journal poll favor requiring warnings about the dangers of drinking both on alcoholic beverage containers and in alcohol advertisements. Nearly three-fourths of persons surveyed in a 1990 Gallup Poll favor requiring health warning messages in alcohol advertising.

(u) The National Commission on Drug-Free Schools' 1990 Final Report, "Toward a Drug-Free Generation: A Nation's Responsibility," recommends that states "prohibit alcohol and tobacco advertising and promotion at all state colleges and universities, including sporting events. The same report called for schools and colleges to "prohibit all alcohol and tobacco advertising in school newspapers, at stadiums, and at all school events."

#### COMMENT

**The legislative findings cite unequivocal evidence that inappropriate alcohol consumption leads to a number of serious problems for individuals and society. It also identifies alcohol advertising as an important contributor to such problems. Currently, society must bear the costs of the many alcohol-related problems identified by the state legislature through increased health care costs, increased insurance rates, and personal injuries**

and deaths. This legislation intends to shift some of the personal and societal costs of reducing these problems through consumer education back to the industry that profits from alcohol consumption: alcohol manufacturers. By requiring alcohol manufacturers that advertise their products in print, radio, and television advertisements to bear some of the responsibility for health and safety warnings, this legislation requires a sensible advertising standard that reflects the reality of alcohol abuse and educates the public about the potential dangers of such abuse.

### **Section 3. Purpose.**

This [Act] serves to inform viewers of potential health and safety hazards associated with alcohol consumption and abuse. This [Act] requires print, radio, and television advertising to display or be read as part of the advertisement health and safety warning messages.

### **Section 4. Definitions.**

As used in this [Act]:

- (a) "Alcoholic beverage" means any beverage in liquid form that contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.
- (b) "Person" means an individual, a partnership, a joint stock company, a business trust, an association, a corporation, any business or legal entity not described in this subsection, including a receiver, trustee, or liquidating agent, and a state, state agency, or an officer or employee of a state or state agency.
- (c) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.

### **Section 5. Health Warnings.**

(a) On and after the expiration of the six-month period following the date of enactment of this [Act], it shall be an unfair or deceptive act or practice under [cite relevant state trade act] for any person to:

- (1) Advertise, or cause to be advertised, within this state through magazines, newspapers, brochures, billboards, and promotional displays originating in this state any alcoholic beverage unless the adver-

tising bears, in accordance with requirements of Section 6(a), one of the following health warnings:

(A) STATE HEALTH WARNING: If you are pregnant, consult your physician before drinking alcohol. Drinking alcohol during pregnancy may cause mental retardation and other birth defects. Avoid alcohol during pregnancy. If you are pregnant and cannot stop drinking, call [insert appropriate toll free number];

(B) STATE HEALTH WARNING: If you are under the age of 21, [it is against the law to buy or consume alcoholic beverages] [you could lose your driver's license for attempting to purchase, purchasing, or consuming alcohol]. For information about teenagers and young adults and drinking, call [insert appropriate toll free number];

(C) STATE HEALTH WARNING: Alcohol is a drug and may be addictive. If you know someone who has an alcohol or other drug problem or has trouble controlling their drinking, or if you have an alcohol or other drug problem or cannot control your drinking, call [insert appropriate toll free number];

(D) STATE HEALTH WARNING: Drive sober. If you don't, you could lose your driver's license. Alcohol impairs your ability to drive a car or operate machinery. If you or people you love drink and drive, call [insert appropriate toll free number];

(E) STATE HEALTH WARNING: Consult your physician before mixing alcohol with over-the-counter, prescription, or illicit drugs. For more information, call [insert appropriate toll free number];

(F) STATE HEALTH WARNING: If you drink too much alcohol too fast, you can die. To find out more about alcohol poisoning, call [insert appropriate toll free number];

(G) STATE HEALTH WARNING: Drinking increases your risks of high blood pressure, liver disease, and cancer. The more you drink, the more likely it is that you will have such health problems. To find out how to prevent such health problems, call [insert appropriate toll free number];

(2) Advertise, or cause to be advertised, through radio or television broadcasting, excluding cable broadcasting and paid-per-view or subscription television, any alcoholic beverage unless the advertising includes, in accordance with Section 6(b), one of the following health warnings:

(A) STATE HEALTH WARNING: If you are pregnant, consult your physician before drinking alcohol. Alcohol may cause mental retardation and other birth defects;

(B) STATE HEALTH WARNING: If you are under the age of 21, [it is illegal to buy or consume alcoholic beverages] [you could lose your driver's license if you attempt to purchase, purchase, or consume alcoholic beverages];

(C) STATE HEALTH WARNING: Alcohol is a drug and may be addictive.

(D) STATE HEALTH WARNING: Drive sober. If you do not, you could lose your driver's license;

(E) STATE HEALTH WARNING: Consult your physician before mixing alcohol with over-the-counter, prescription, or illicit drugs;

(F) STATE HEALTH WARNING: If you drink too much alcohol too fast, you can die of alcohol poisoning;

(G) STATE HEALTH WARNING: Drinking increases your risk of high blood pressure, liver disease, and cancer.

(b) The [secretary of health], in consultation with the [single state authority on alcohol and other drugs], shall be responsible for establishing and maintaining the toll free numbers referred to in the health warnings required by subsection (a)(1). The [secretary of health] shall submit a report to the state legislature annually on the number of calls received from persons using those numbers and the types of referrals made as a result of the calls.

#### COMMENT

This [Act] is modeled after the Sensible Advertising and Family Education Act proposed in the United States Congress (S. 674 (Thurmond), H.R. 1823 (Kennedy), 103rd Congress, First Session). The purpose of the [Act] is to require alcohol advertisers to attach warning messages to alcohol advertisements appearing within a state through magazines, newspapers, brochures, billboards,

promotional displays, and radio and television broadcasting. Alcohol beverage producers currently must include warnings on the labeling of their containers, but not in their advertising.

Subsection (a)(1) establishes the health and safety warning requirements for print advertising. Subsection (a)(2) establishes the health and safety warning requirements for radio and television broadcasting advertisements, excluding cable broadcasting and paid-per-view or subscription television. See, *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 104 S.Ct. 2694 (1984).

Opponents of this legislation at the federal level have argued that such health warning requirements on advertising are unconstitutional, violating First Amendment rights. However, a careful analysis of legal precedents indicates that such arguments are false.

As constitutional law expert Professor Steven H. Shiffrin of Cornell University noted in testimony before the U.S. Senate Committee on Commerce, Science, and Transportation, "Tobacco advertisers are currently forced to carry warnings in their messages; alcoholic beverage manufacturers are currently required to carry the Surgeon General's warnings on their products. Nothing in the Constitution prevents Congress from requiring the manufacturers of drugs (including alcohol) to disclose the risks of their products in their advertising." (See Appendix for a transcript of Shiffrin's full remarks before the Senate Committee.) A number of cases requiring disclosures or warnings in commercial speech point to the right of Congress or state legislatures to require such warnings. See, e.g., *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

This [Act] serves to inform viewers of potential health and safety hazards associated with alcohol consumption or abuse. This legislation does not ban advertising in any manner, even though such actions would be constitutional and within the rights of governments. See, *United States and Federal Communications Commission v. Edge Broadcasting Company*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2696, 125 L. Ed. 2d 345 (1993); *Posadas De Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328 (1986).

In paragraphs (1)(B) and (2)(B), bracketed alternatives allow those states that adopt the [Model Underage Alcohol Consumption Reduction Act] found in this volume or similar state provisions suspending or revoking driver's licenses for underage alcohol violations to reflect such laws in the health and safety warning messages.

**Section 6. Requirements.**

(a) The health warnings required for alcoholic beverage advertisements by Section 5(a)(1) shall:

(1) Comply with requirements, determined by the [secretary of health] in regulations to take effect no later than six months after the date of the enactment of this [Act], that:

(A) One such health warning be located in a conspicuous and prominent place in each such advertisement;

(B) All letters in such health warning appear in conspicuous and legible type that is not script or italic; and

(C) Such health warning be in contrast by typography, layout, and color with all other printed material in the advertisement, be surrounded by typographic lines that form a box, and, on an appropriate visual medium, appear on the front of an advertisement as indicated by labeling of the manufacturer or importer; and

(2) Be rotated in an alternating sequence on each advertisement of a brand style in accordance with a plan submitted by such manufacturer or importer to the [secretary of health].

(b) The [secretary of health] shall approve a plan submitted under subsection (a)(2) by a manufacturer or importer assuring that an equal distribution of each of the health warnings is displayed on each sequence of the same or a substantially similar advertisement for a brand style at the same time. If the plan is approved by the [secretary of health], the rotation described in subsection (a)(2) shall apply with respect to the applicant submitting the plan during the one-year period beginning on the date of the approval.

(c) The health warnings required for alcoholic beverage advertisements by Section 5(a)(2) shall:

(1) Comply with requirements, determined by the [secretary of health] in regulations to take effect not later than six months after the date of the enactment of this [Act], that:

(A) One such health warning be included in a conspicuous and prominent manner in each such advertisement;

(B) The health warning be read as part of the advertisement in an audible and deliberate manner and in a length of time that allows for a clear

understanding of the health warning message by the intended audience; and

(C) With respect to each advertisement for television:

(i) a graphic representation of such health warning be included after each such advertisement;

(ii) all letters in such graphic representation appear in conspicuous and legible type that is not script or italic;

(iii) such health warning be surrounded by typographic lines that form a box in the graphic representation; and

(iv) such graphic representation appear in the same length of time as is required for the reading of the message required by clause (ii); and

(2) Be rotated in an alternating sequence on each advertisement of a brand style in accordance with a plan submitted by such manufacturer or importer to the [secretary of health].

(d) The [secretary of health] shall approve a plan submitted under paragraph (c)(2) by a manufacturer or importer that assures that an equal distribution of each of the health warnings is displayed on each sequence of the same or a substantially similar advertisement for a brand style at the same time. If the plan is approved by the [secretary of health], the rotation described in paragraph (1)(B) shall apply with respect to the applicant submitting the plan during the one-year period beginning on the date of the approval.

COMMENT

**This section establishes the requirements necessary for all health and safety warning messages to be placed on all print alcohol advertisements. This section also establishes the requirements necessary for all health and safety warning messages to be read as part of any radio or television alcohol advertisement. Alcohol manufacturers or importers seeking to advertise their products must submit plans to the [secretary of health] assuring an equal distribution of each of the health and safety warning messages in all of their advertisements.**

**Section 7. Report to the Legislature.**

(a) Not earlier than two years after the date of the enactment of this [Act], the [secretary of health] shall conduct an appropriate investigation and consult with the [single state authority on alcohol and other drugs] to determine whether available scientific information would justify a change in, an addition to, or deletion of, a health warning set forth in Section 5.

(b) If the [secretary of health] finds that available scientific information would justify the change, addition, or deletion described in subsection (a), the [secretary of health] shall promptly submit a report to the appropriate committees of the legislature containing:

- (1) The information; and
- (2) Specific recommendations for such amendments to this [Act] as the [secretary of health] determines to be appropriate and in the public interest.

**Section 8. Severability.**

If any provision of this [Act] or any application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end, the provisions of this [Act] are severable.

**Section 9. Effective Date.**

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].