

[AS INTRODUCED IN THE SENATE]

A

Bill

further to amend the Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002

WHEREAS it is expedient further to amend the Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), for the purpose of improving public health;

AND WHEREAS it is expedient to discourage people from taking up smoking or using tobacco products, encouraging people to give up smoking, and to stop using tobacco products, encouraging people who have given up smoking, or who have stopped using tobacco products and not to take up tobacco use again, reducing people's exposure to smoke from tobacco products;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Prohibition of Smoking and Protection of Non-smokers Health (Amendment) Act, 2016.

(2) It shall come into force at once.

2. Amendment of section 2, Ordinance LXXIV of 2002.- In the Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), hereinafter referred to as the said Ordinance, in section 2,-

(i) for paragraph (a) the following shall be substituted, namely:-

“(a) "Advertising and promotion" means and includes any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

Explanation I: Interior and exterior display and visibility of tobacco products at points of sale constitutes advertising and promotion.

Explanation II: Cross-border advertising, promotion and sponsorship origination from and entering in the territory of Pakistan shall be considered as "Tobacco advertising and promotion."

- (ii) in paragraph (f), the word "and" occurring at the end, shall be omitted; and
- (iii) in paragraph (g), for the full stop, occurring at the end, a semi-colon and the word "; and", shall be substituted and thereafter, the following new paragraphs (h), (i) and (j), shall be added, namely:-

"(h) "Sponsorship" means and includes any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

Explanation: Tobacco sponsorship covers any form of contribution, financial or otherwise, regardless of how or whether that contribution is acknowledged or publicized.

- (i) "Tobacco Industry" includes tobacco product manufacturers, wholesale distributors and importers of tobacco products, retailers, public relation and marketing firms and the agents or representatives of such to an extent of engaging in authorized tobacco advertising and promotion; and
- (j) "Tobacco Product" products entirely or partly made of leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing or any other means of consumption. E-cigarettes, E-shisha and other similar products shall be included in this definition."

3. Amendment of section 7, Ordinance LXXIV of 2002.- In the said Ordinance, for section 7, the following shall be substituted, namely:-

"7. Prohibition of tobacco advertising, promotion and tobacco sponsorship.- (1) Tobacco advertising, promotion and sponsorship shall be prohibited and tobacco industry or any other person shall not advertise, promotes and sponsor tobacco and tobacco products on any media or in any place and any vehicle.

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(2) The prohibition mentioned in sub-section (1) shall include the following acts, namely:-

- (a) All advertising and promotion, as well as sponsorship, without exemption;
- (b) Direct and indirect advertising, promotion and sponsorship;
- (c) Acts that aim at promotion and act that have or are likely to have a promotional effect;
- (d) Promotion of tobacco products and the use of tobacco;
- (e) Commercial communications and commercial recommendations and actions;
- (f) Contribution of any kind to any event, activity or individual;
- (g) Advertising and promotion of tobacco brand names and all corporate promotion; and
- (h) Traditional media (print, television and radio) and all media platforms, including Internet, mobile telephones and other new technologies as well as films, video games and other information technology based applications.

(3) A non-exhaustive and illustrative list of forms of tobacco advertising, promotion and sponsorship within the meaning of this Section is provided in Schedule-I.

(4) Within ninety days of commencement of this amendment, the Government shall constitute enforcement and monitoring Committee which shall have the powers to revise the Schedule-I any time after giving one month advanced notice. Such Revision shall only be effective after the publication in the Official Gazette.

(5) The enforcement and monitoring Committee constituted under sub-section (4) shall be comprised of ten members from Government, academia, consumer protection organizations and public health professionals. All members of the Committee shall submit a conflict of interest statement in the first meeting of the Committee and any person with a conflicting interest shall not be allowed to become member of the Committee.

4. Amendment of section 11, Ordinance LXXIV of 2002.- In the said Ordinance, in section 11,-

(i) for paragraph (b), the following shall be substituted, namely:-

“(b) Section 8 or 9 shall be punishable with fine which shall not be less than one hundred thousand rupees and in case of second or subsequent offence of the same kind, shall be punishable with simple imprisonment which may extend to six months, and with a fine which shall not be less than five hundred thousand rupees.”

(ii) after paragraph (b), amended as aforesaid, the following new paragraphs (c) and (d) shall be added, namely:-

“(c) Any person who contravenes the provisions of Section 7 shall be punishable with fine which shall not be less than one hundred thousand rupees and in case of second or subsequent offence of the same kind, shall be punishable with imprisonment which may extend to six months, and with a fine which shall not be less than five hundred thousand rupees.

“(d) A second or subsequent contravention of this section by the tobacco industry shall be punishable with imprisonment which may extend to one year, and with a fine which shall not be less than one million rupees.”

SCHEDULE I

See section 7 (3)

- i. Communication through audio, visual or audiovisual, print material including newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs, television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (computer games, video games or online games), other digital communication platforms (including the Internet and mobile phones) and theatre or other live performance;
- ii. Brand-marking, including in entertainment venues and retail outlets and on vehicles and equipment (e.g. by use of brand colours or schemes of colors, logos or trademarks);

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- iii. Display of tobacco products at points of sale;
- iv. Tobacco product vending machines;
- v. Internet sales of tobacco products;
- vi. Brand stretching and brand sharing (product diversification);
- vii. Product placement (i.e. the inclusion of, or reference to, a tobacco product, service or trademark in the context of communication (see above), in return for payment or other consideration);
- viii. Provision of gifts or discounted products with the purchase of tobacco products (e.g. key rings, T-shirts, baseball hats, cigarette lighters);
- ix. Supply of free samples of tobacco products, including in conjunction with marketing surveys and taste testing;
- x. Incentive promotions or loyalty schemes, e.g. redeemable coupons provided with purchase of tobacco products;
- xi. Competitions, associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- xii. Direct targeting of individuals with promotional (including informational) material, such as direct mail, telemarketing, "consumer surveys" or "research";
- xiii. Promotion of discounted products;
- xiv. Sale or supply of toys or sweets that resemble tobacco products;
- xv. Payments or other contributions to retailers to encourage or induce them to sell products, including retailer incentive programmes (e.g. rewards to retailers for achieving certain sales volumes);
- xvi. Packaging and product design features;

- xvii. Payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer's product in a retail outlet, at a venue or at an event;
- xviii. Sale, supply, placement and display of products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events;
- xix. Provision of financial or other support to events, activities, individuals or groups (Such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare organizations, politicians, political candidates or political parties), whether or not in exchange for publicity, including corporate social responsibility activities;
- xx. Provision of financial or other support by the tobacco industry to venue operators (Such as pubs, clubs or other recreational venues) in exchange for building or renovating premises to promote tobacco products or the use or provision of awnings and sunshades; and
- xxi. Point of sale advertising and promotion of products that resemble cigarettes or other tobacco products such as E-cigarette and E-shisha etc.

STATEMENT OF OBJECTS AND REASONS

To regulate and Prohibit Tobacco Advertising, Promotion and Sponsorship as provided by Article 38 of the Constitution of Islamic Republic of Pakistan that the state shall provide promotion of social well being and medical relief, therefore, it is important to discourage people from taking up smoking, or using tobacco products, encouraging people to give up smoking and to stop using tobacco products, encouraging people who have given up smoking or who have stopped using tobacco products and not to take up tobacco use again, reducing people's exposure to smoke from tobacco products and to give effect to certain obligations that Pakistan has as a party under Article 5.3 and Article 13 of the WHO Framework Convention on Tobacco Control.

SENATOR MUSHAHID HUSSAIN SYED
Member-in-Charge