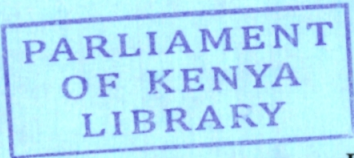


SPECIAL ISSUE

Kenya Gazette Supplement No. 127 (Senate Bills No. 35)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 1st July, 2024

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**THE TOBACCO CONTROL (AMENDMENT) BILL,
2024**

A Bill for

AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes and related products, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Tobacco Control (Amendment) Act, 2024.

Short title.

2. The Tobacco Control Act, in this Act referred to as “the principal Act”, is amended in section 2 by—

Amendment of section 2 of Cap. 245A.

(a) deleting the definition of the word “smoking” and substituting therefor the following new definition—

“smoking” means inhaling or exhaling the smoke or vapor of any tobacco product or any other substance delivered through electronic means, and includes the holding of, or control over, any ignited or activated tobacco product, device containing an ignited or activated tobacco product, or electronic nicotine delivery device or other substances via vaporising;

(b) deleting the definition of the word “tobacco product” and substituting therefor the following new definition—

“tobacco product” means any product whether composed in whole or in part of—

(a) tobacco, including tobacco leaves and any extract of tobacco leaves; or

(b) synthetic nicotine formulations

intended for use by smoking, inhalation, chewing, sniffing, vaping or sucking and includes cigarette papers, tubes, filters, any electronic nicotine delivery devices and the solutions or liquids intended for use in such devices.

(c) by inserting the following new definitions in their proper alphabetical sequence—

“additive” means a substance, other than tobacco, that is added to a tobacco product, unit pack or container pack;

“characterising flavour” means a smell or taste other than one of tobacco which—

- (a) is clearly noticeable before, during or after consumption of the product; and
- (b) results from an additive or a combination of additives, including fruit, spice, herbs, alcohol, candy, menthol or related flavours;

“electronic cigarette” means a product that—

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges); and
- (b) is not a medicinal substance or a medical device as defined in the Pharmacy and Poisons Act (Cap 244);

“electronic nicotine delivery system” means an electronic device that may be used to deliver nicotine vapor or other substances to the person inhaling from the device, including, an electronic cigarette, an e-cigar, e-hookah, and a pipe;

Cap. 211

“institution of basic education and training” has the meaning assigned to it under the Basic Education Act (Cap 211);

“nicotine pouch” means a prefilled, microfiber packet containing powdered nicotine;

“unit pack”, in relation to a tobacco product or related product, means the smallest individual packaging in which that product is, or is intended to be, presented for retail sale but does not include any transparent wrapper.

3. Section 5 of the principal Act is amended in subsection (1) by deleting paragraph (j) and substituting therefor the following new paragraph (j) —

Amendment of section 5 of Cap. 245A.

(j) one person nominated by the Council of CountyGovernors.

4. Section 7 of the principal Act is amended—

Amendment of section 7 of Cap. 245A.

(a) in subsection (2) by—

(i) inserting the following new paragraph immediatelyafter paragraph (d) —

(da) fifty percent of the fees paid for testing and approval of products under section 14E of this Act;

(ii) deleting the word “cigarette” appearing immediately after the words “by any licensed” in paragraph (f) and inserting the words “tobacco product”;

(b) in subsection (4) by inserting the words “and the impact of their use” immediately after the words “and tobacco products”in paragraph (a).

5. Section 8 of the principal Act is amended in subsection (3) by inserting the following new paragraph immediately after paragraph (d) —

Amendment of section 8 of Cap. 245A.

(da) publish an annual report on the research activities and programmes undertaken, including the research findings and impact of the programmes.

6. Section 12 of the principal Act is amended—

Amendment of section 12 of Cap. 245A.

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph (a)—
 - (a) implement tax policies, and where appropriate, price policies on tobacco and tobacco products so as to contribute to the objectives of this Act, including—
 - (i) implementation of distinct tax policies for electronic cigarettes and related products, taking into consideration the various forms and nicotine concentrations;
 - (ii) progressive taxation of products based on volume and nicotine concentration, with higher concentrations incurring a higher tax rate to discourage excessive nicotine consumption; and
 - (iii) periodical review and adjustment of tax rates to ensure they reflect current public health objectives and market realities.

7. The principal Act is amended by inserting the following new sections immediately after section 14—

Insertion of new sections in Cap. 245A.

Requirements for electronic nicotine delivery systems.

14A. A person shall not manufacture or place on the market for sale, distribution or use an electronic nicotine delivery system or refill container unless —

- (a) the nicotine-containing liquid is contained in a dedicated refill container not exceeding a volume of ten millilitres, in a disposable electronic cigarette or in single use cartridge and that the cartridges or tank does not exceed a volume of two millilitres;
- (b) the nicotine-containing liquid does not contain nicotine exceeding ten milligrams per millilitre;

- (c) the nicotine-containing liquid does not contain additives specified under section 14F;
- (d) the nicotine-containing liquid is manufactured using pure ingredients as the Cabinet Secretary may prescribe;
- (e) substances contained in the in the nicotine- containing liquid, other than the ingredients specified, are present in trace levels and are technically unavoidable during manufacture;
- (f) except for nicotine, only ingredients that do not pose a risk to human health in heated or unheated form are used in the nicotine-containing liquid;
- (g) the system delivers the nicotine doses at consistent levels under normal conditions of use; and
- (h) the system and refill container is child and tamper-proof, is protected against breakage and leakage and has a mechanism that ensures refilling without leakage.

Requirements for nicotine pouches.

14B. A person shall not manufacture or place on the market nicotine pouches unless—

- (a) the pouches are child and tamper-proof and can be used without spilling their contents;
- (b) the pouches deliver nicotine doses at consistent levels;
- (c) the nicotine content of each pouch does not exceed 10 milligrams; and
- (d) each pouch has a removable sticker with a health warning printed on it in the prescribed form.

Approval of tobacco products.

14C. (1) A person shall not manufacture or import tobacco products unless such person has applied for, and obtained the approval of the Cabinet Secretary in accordance with this section.

(2) Subsection (1) shall apply to the manufacture or import a tobacco product —

- (a) whose approval under subsection (1) had been previously obtained; and
- (b) is subsequently substantially modified.

(3) A request for approval under this section shall be made at least six months before the date on which the manufacturer intends to first supply a product or modified product.

(4) Where the manufacturer first supplied a product before the commencement of this Act and intends to continue to supply that product on or after commencement of the Act, the manufacturer shall make the request for approval within three months of commencement of this Act.

Information to be contained in the request for approval.

14D. (1) An application for approval under section 14A(1) shall be in the prescribed form and contain the following information—

- (a) the name and contact details of—
 - (i) the person who manufactures the product,
 - (ii) the importer of the product, if applicable; and
 - (iii) if neither is based in Kenya, a responsible person in Kenya;
- (b) the ingredients contained in, and emissions resulting from the use of, the product by brand and variant name, including quantities;

- (c) toxicological data regarding the product's ingredients, including in heated form, and emissions, referring in particular to their effects on the health of consumers when inhaled and taking into account, amongst other things, any addictive effect; information on the nicotine dose and uptake when consumed under normal conditions;
- (d) a description of the components of the product including, where applicable, the opening and refill mechanism of the electronic cigarette or refill container;
- (e) a description of the production process and a declaration that the production process ensures conformity with the requirements of this Act; and
- (f) a declaration that the manufacturer bears full responsibility for the quality and safety of the product when supplied and used under normal conditions.

(2) Where the Cabinet Secretary considers that the information submitted under this section is incomplete, the Cabinet Secretary may request the manufacturer to provide such further information as may be necessary for the determination of the application.

(3) Section 14A(1) shall not apply in respect of a product if another entity has already obtained approval from the Cabinet Secretary in respect of that product.

Submission and testing of samples

14E. (1) A manufacturer shall submit samples of the product for which approval is being sought together with the request for approval.

(2) The Cabinet Secretary shall cause the samples submitted to be tested—

- (a) for conformity with the requirements under the Act; and
- (b) to confirm the accuracy of the information submitted in the request for approval.

(3) The Cabinet Secretary shall prescribe the fees payable for testing of samples and confirmation of information on the product for which approval is being sought.

Decision on request for approval.

14F. (1) The Cabinet Secretary shall communicate, in writing, the decision made within ninety days of a request for approval of a product being made.

(2) Where the Cabinet Secretary declines to approve a product for which approval has been sought, the manufacturer shall—

- (a) immediately take the corrective action necessary to bring the product into conformity with the Act if the product is an existing product;
- (b) withdraw the product from the market; and
- (c) recall the product.

Dealing in unapproved products.

14G. (1) A person shall not manufacture, sell, distribute, store, import or in any way deal with a tobacco product that is not approved by the Cabinet Secretary.

(2) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million Kenyan shillings or five percent of the person's gross turnover, whichever is higher, or to

imprisonment for a term not exceeding two years, or to both.

Banning of products.

14H. The Cabinet Secretary may ban any product which does not conform to the requirements of this Act from being manufactured or sold.

List of products.

14I. The Cabinet Secretary shall publish a list of—

- (a) products that have been approved or banned from sale;
- (b) the name of the authorised manufacturer or importer of the product;
- (c) the date the product was approved or banned; and
- (d) the duration and validity date of the approval.

Use of additives and characterising flavours

14J. (1) A person shall not produce or supply tobacco products containing—

- (a) vitamins or other additives that create the impression that a tobacco product has a health benefit or presents reduced health risks;
- (b) caffeine or other additives and stimulant compounds that are associated with energy and vitality;
- (c) additives which have colouring effects on emissions;
- (d) in the case of tobacco products for smoking, additives that facilitate inhalation or nicotine uptake.
- (e) additives which increase the toxicity or addictiveness of the product; or
- (f) additives which result in a characterising flavour.

(2) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.

8. Section 15 of the principal Act is amended—

(a) by deleting subsection (5) and substituting therefor the following new subsection —

(5) No person shall manufacture or sell—

(a) objects including sweets, snacks, toys, cartoon characters, popular youth motifs, or other similar objects that would reasonably appeal to persons under the age of eighteen years in designs that resemble tobacco products; or

(b) any tobacco product in designs that imitate sweets, snacks, toys, cartoon characters, popular youth motifs, or other similar objects that would reasonably appeal to persons under the age of eighteen years.

Amendment of section 15 of Cap. 245A.

9. The principal Act is amended by inserting the following new section immediately after section 17—

Insertion of new section.

In Cap. 245A. Hawking and mobile vending.

17A. (1) A person shall not sell tobacco products through hawking, from vehicles or through mobile vending.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

10. The principal Act is amended by inserting the following new section immediately after section 19—

Insertion of new section in Cap. 245A.

Online sales of tobacco products

19A. (1) A person shall not sell or offer for sale tobacco products including nicotine

pouches and electronic nicotine delivery systems online.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

11. The principal Act is amended by inserting the following newsection immediately after section 20—

Insertion of new section in Cap. 245A.

Licensing of premises by counties.

20A. (1) A person intending to manufacture, distribute, store, sell or in any other way deal in tobacco products shall obtain a licence from the respective county executive committee member.

(2) A person shall not deal in tobacco products anywhere other than at a fixed location that is designated in the licence.

(3) Each licence shall be prominently displayed in a publicly visible location at the licensed tobacco product retaillocation.

(4) A person licensed under this section shall only deal in products that conform to the requirements of this Act.

(5) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

County legislation.

20B. (1) A county assembly may enact county legislation to regulate licencing of premises under this Act.

(2) The legislation in subsection (1) shall be consistent with the provisions of this Act and may provide for, among other matters—

(a) different classes of licences;

- (b) the procedure for application and granting of licence; and
- (c) the minimum distance of licensed premises from institutions of basic education.

12. Section 21 of the principal Act is amended—

Amendment
of section 21
of Cap.245A.

- (a) by inserting the following new subsection immediately after subsection (2)—

(2A) The Cabinet Secretary shall not dispense with or modify any requirement under subsection (2) in favour of any tobacco product or person dealing with tobacco products.

- (b) by inserting the following new subsection immediately after subsection (5)—

(5A) Every unit packet of nicotine pouches and electronic nicotine delivery systems and refill containers shall, in addition to the requirements of subsection (2), include a leaflet with information on—

- (a) instructions for use and storage of the product, including a reference that the product is not recommended for use by young people and non-smokers;
- (b) contra-indications;
- (c) warnings for specific risk groups;
- (d) possible adverse effects;
- (e) addictiveness and toxicity; and
- (f) contact details of the manufacturer or importer and a legal or natural contact person within Kenya.

13. Section 25 of the principal Act is amended—

Amendment of
section 25 of Cap.
245A.

- (a) in subsection (2) by inserting the words “any online or digital platform, including social media sites, video-sharing platforms, or other digital content platforms” immediately after the words “of electronic print”; and

- (b) in subsection (3) by inserting the words “or advertisement through influencers, brand ambassadors, or similar entities” immediately after the words “lifestyle advertising”.

14. Section 26 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c)—

Amendment of section 26 of Cap. 245A.

- (ca) offer or provide free samples of electronic nicotine delivery systems, nicotine pouches or related components, whether online or offline, as a promotional strategy.

15. Section 33 of the principal Act is amended by deleting subsection

Amendment of section 33 of Cap. 245A.

(2) and substituting therefor the following the following new subsection (2) —

(2) Without prejudice to the generality of subsection (1)—

(a) smoking is permanently prohibited in the following areas—

- (i) institutions of basic education and training;
- (ii) places of worship;
- (iii) hospitals, clinics and other health institutions;
- (iv) children’s homes, child care facilities, children playgrounds;
- (v) residential houses and such other premises where children are cared for;
- (vi) public service vehicles, passenger vehicles, school buses and vans, commercial passenger aircrafts, commuter boats, ferries; and
- (vii) police cells; and

(b) smoking is prohibited in the following areas except in designated smoking areas —

- (i) offices and workplaces, including corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas of such places;
- (ii) court buildings;
- (iii) factories;
- (iv) cinema halls, theatres, video houses, such other halls or places of performance, disco halls or any other entertainment facilities at any time during which it is open to the public;
- (v) restaurants, hotels, bars or other eating place;
- (vi) prisons;
- (vii) police stations;
- (viii) aircrafts, passenger ships, or any other public conveyance;
- (ix) education facilities other than institutions of basic education and training;
- (x) railway stations, airports, air fields, ports, and other public transport terminals;
- (xi) markets, shopping malls and retail and wholesale establishments;
- (xii) stadia, sports and recreational facilities; and
- (xiii) public buildings.

16. The principal Act is amended by inserting the following new section immediately after section 34—

Insertion of new section in Cap. 245A.

34A. (1) In addition to the general health warnings applicable to all tobacco products under this Act, a person who offers for sale a nicotine pouch or an electronic nicotine delivery system including e-cigarettes and related products shall display the following warnings in their premise—

- (a) a clear warning that the sale and use of the products by persons under the age of eighteen is prohibited;
- (b) a clear warning about the specific health risks associated with the use of the products, including potential risks associated with additives or other unique e-liquid constituents;
- (c) a statement indicating that the products contain nicotine and highlighting the dangers of nicotine addiction and potential for overdose, especially with high-concentration e-liquids; and
- (d) a specific warning that the use of the products is not a safe alternative to traditional tobacco products and still poses health risks.

17. Section 53 of the principal Act is amended by—

Amendment of
section 53 of Cap.
245A.

- (a) in subsection (1) by inserting the words “and in consultation with the Council of County Governors” immediately after the words “of the Board” in the introductory clause;
- (b) inserting the following new subsection immediately after subsection (1)—

(1A) Without prejudice to the generality of subsection (1), regulations made under this section may—

- (a) prescribe permissible levels of constituents in e-liquids used in electronic cigarettes and other electronic nicotine delivery systems;
- (b) prescribe standards for the batteries and electrical components used in electronic nicotine delivery systems;
- (c) prescribe the maximum toxicity and emission levels of electronic nicotine

- delivery systems and other tobacco products;
- (d) provide for testing of tobacco products to verify conformity with the requirements under this Act;
 - (e) prescribe the procedure for approval, withdrawal and recall of electronic nicotine delivery systems and other tobacco products; and
 - (f) prescribe the permitted additives that may be incorporated in electronic nicotine delivery systems and other tobacco products; and
- (c) in subsection (2) by inserting the words “the Council of County Governors and” immediately after the words “in consultation with” in the introductory clause.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The main object of the Bill is to amend the Tobacco Control Act (Cap. 245A) to make further provisions on the regulation of smoking and production and sale of tobacco products, including electronic nicotine delivery systems. The Bill also aims to ensure that the advertising of tobacco products is regulated and that the sale of tobacco products, including electronic nicotine delivery systems, to persons under the age of eighteen years is prohibited. The Bill further seeks to regulate the promotion and advertising of tobacco products online or via any digital platform including social media sites and video-sharing platforms.

Additionally, the Bill seeks to ensure that no products, particularly electronic nicotine delivery systems are manufactured, distributed, imported or sold in Kenya without the prior authorisation of the Cabinet Secretary responsible for health. This is necessitated by the current situation where products have been introduced into the market and distributed without authorisation or understanding of the public health impact of such products.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

Clause 17 of the Bill empowers the Cabinet Secretary responsible for health to make Regulations on the control of tobacco and related products. The Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments as it relates to the control of tobacco, which contains nicotine, a drug. Paragraph 13 of Part 2 of the Fourth Schedule to the Constitution designates the control of drugs as a function of county governments.

Further, the Bill makes provision for the regulation of the trade and marketing of tobacco and related products. Paragraph 7(a) and (b) of Part 2 of the Fourth Schedule to the Constitution designates trade development and regulation, including markets and trade licences, as a function of county governments.

The Bill therefore affects the functions and powers of county governments in terms of 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill deals with matters other than those listed in the definition of a money bill under Article 114 (3) of the Constitution and is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 12th June, 2024.

CATHERINE MUYEKA MUMMA,
Senator.

Section 2 of Cap. 245A., which it is proposed to amend —

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“accessory” means a product that may be used in the consumption of a tobacco product and includes a pipe, cigarette holder, cigar clip, lighter or matches;

“advertisement” includes —

- (a) any statement, communication, representation or reference aimed at the public and designed to promote or publicise a tobacco product or encourage its use, or draw attention to the nature, properties, advantages or uses of the product;
- (b) the use, in any advertisement or promotion aimed at the public, of a tobacco product manufacturer’s company name where the name or any part of the name is used as, or is included in a tobacco product trade mark;
- (c) product stacking and product displays of any kind or size;

“authorised officer” means an authorised officer within the meaning of section 36;

“Board” means the Tobacco Control Board established by section 5;

“brand element” includes a brand name, manufacturer’s name, trade mark, trade name, logo, graphic arrangement, design, colour, motto or slogan that is reasonably associated with, or that evokes a product, a service or a brand of product or service;

“brand preference advertising” means advertising that promotes a tobacco product by means of its brand characteristics;

“cigarette” means any product which consists wholly or partly of cut, shredded or manufactured tobacco, or of any tobacco derivative or substitute, rolled up in paper or any other material and capable of being used immediately for smoking;

“cinema” has the meaning assigned to it in the Films and Stage Plays Act (Cap. 222);

“electronic communication” includes communication through the radio, television, telephone or the internet;

“emission” means any substance produced when tobacco or a tobacco product is produced, processed or used;

“entity” includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

“Fund” means the Tobacco Control Fund established under section 7;

“harmful constituent” means nicotine, tar or any other constituent of a tobacco product or of tobacco smoke which the Minister may, under section 4 (a), prescribe;

“health institution” means a hospital, nursing home, convalescent home, maternity home, healthcentre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

“illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of tobacco or its products, including any practice or conduct intended to facilitate such activity;

“information advertising” means advertising that provides factual information to the consumer about a product and its characteristics, availability, price or brands;

“ingredients” means the substances added to tobacco during the manufacturing process or from agricultural practices;

“legal entity” includes a non-governmental organisation and any other body recognised in law as having a separate entity from that of its members;

“lifestyle advertising” means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, sensuality, recreation, excitement, vitality, risk or daring;

“magistrate” has the meaning assigned to it in the Magistrates' Courts Act (Cap. 10) and for the purposes of this Act, means a magistrate above the rank of resident magistrate;

“manager” in relation to—

- (a) a cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;
- (b) a health institution, includes the owner or a person in charge or in control of the health institution;

(c) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified institution;

“manufacture” means the processing of a tobacco product and includes the packaging, labelling, distribution or importation of a tobacco product for sale in Kenya;

“manufacturer”, in respect of tobacco products, includes any entity that is involved in the manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“Minister” means the Minister for the time being responsible for matters relating to Public Health;

“package” means the container, receptacle or wrapper in which tobacco products are sold or distributed, including the carton in which multiple packages are stored;

“prohibited smoking area” means a place in which smoking is prohibited under section 33;

“promotion” means a representation, including an advertisement, whether direct or indirect, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviour about the product or service, or that is intended to or has the effect of inducing consumers to use tobacco products, underestimate the dangers of tobacco consumption, or create recognition of or goodwill for the tobacco manufacturer;

“public place” means any indoor, enclosed, or partially enclosed area which is open to the public or any part of the public, or to which members of the public ordinarily have access, and includes a workplace and a public conveyance;

“public service vehicle” has the meaning assigned to it in the Traffic Act (Cap. 403);

“retailer” means a person who is engaged in a business that includes the sale of any tobacco product to consumers;

“sell” includes—

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit;
- (d) supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain;

“smoking” means inhaling or exhaling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product or device containing an ignited tobacco product;

“specially designated smoking area” means an area provided under section 35;

“tobacco” means the tobacco plant, including its seeds and leaves;

“tobacco product” means a product composed, in whole or in part, of tobacco, including tobacco leaves and any extract of tobacco leaves intended for use by smoking, inhalation, chewing, sniffing or sucking and includes cigarette papers, tubes and filters;

“vending machine” means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token or similar object into the machine or device.

Section 5 of Cap. 245A, which it is proposed to amend –

5. Establishment of the Board

(1) There is established a board to be known as the Tobacco Control Board which shall consist of—

- (a) a Chairperson appointed by the Cabinet Secretary;
- (b) the Director of Medical Services;
- (c) the Chief Public Health Officer;
- (d) the Director of Children’s Services;
- (e) the Attorney-General;
- (f) the Director of Kenya Medical Research Institute;
- (g) the Director of Agriculture;
- (h) the Director-General of the National Environmental Management Authority;
- (i) the Planning Secretary for the time being responsible for matters relating to planning;
- (j) the Director of Local Authorities;
- (k) one person nominated by the Kenya Medical Association;
- (l) one representative of the business community in Kenya, to be nominated by the Kenya National Chamber of Commerce and Industry;

- (m) one representative of non-governmental organisations engaged in matters relating to tobacco control, to be nominated by the Non-Governmental Organisations Council;
- (n) one representative of religious organisations appointed by the Cabinet Secretary;
- (o) one representative of women's organisations to be nominated by the National Council of Women of Kenya;
- (p) one person nominated by the Law Society of Kenya.

(2) The members under paragraphs (b) to (i) may attend in person or designate a representative to attend on their behalf.

(3) No member of the Board shall directly or indirectly be affiliated to the tobacco industry or its subsidiaries.

(4) A member who fails to disclose his or her affiliation to the tobacco industry or its subsidiary commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or imprisonment for a period not exceeding five years or both.

(5) No person shall be qualified for appointment as the Chairperson of the Board under subsection (1)(a) unless such person—

- (a) holds a degree from a university recognised in Kenya; and
- (b) has at least fifteen years experience in public health, five of which shall be at a senior management level.

(6) The Chairperson shall hold office for four years, but shall be eligible for re-appointment, for one further term.

(7) The Chief Public Health Officer or the representative shall be the secretary to the Board.

(8) The secretary to the Board shall, within thirty days of the commencement of this Act, convene the first meeting of the Board at which the members of the Board shall, from amongst their number, elect a vice-Chairperson.

(9) A member of the Board, other than an *ex officio* member or chairperson, shall, subject to this section, hold office for a period of three years, but shall be eligible for reappointment for one further term.

(10) A member of the Board, other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary; or

- (b) be removed from office by the Cabinet Secretary if the member—
- (i) is absent from three consecutive meetings of the Board without the permission of the Chairperson, or in the case of the Chairperson, without the permission of the Cabinet Secretary; or
 - (ii) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine; or
 - (iii) is incapacitated by reason of prolonged physical or mental illness from performing his/her duties as a member of the Board; or
 - (iv) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors.

(11) The quorum at a meeting of the Board shall be six members.

(12) The Chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-Chairperson shall preside:

Provided that in the absence of both the Chairperson and the vice-Chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(13) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(14) Subject to subsection (11), no proceedings of the Board shall be invalid by reason only of a vacancy among the members.

(15) The Board may invite any person to attend a meeting of the Board for the purpose of assisting or advising the Board on any particular matter but such person shall have no right to vote at the meeting.

(16) The Board shall meet not less than four times in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.

(17) Subject to this Act and to any general or special directions in writing by the Cabinet Secretary, the Board shall regulate its own proceedings.

(18) The expenses of the Board shall be defrayed out of monies provided by Parliament for that purpose.

Section 7 of Cap. 245A, which it is proposed to amend —

7. Tobacco Control Fund

(1) There is established a fund to be known as the Tobacco Control Fund.

(2) The Fund shall consist of—

- (a) such sums as may be appropriated by Parliament for that purpose;
- (b) such sums as may be realised from property forfeited to the Government under section 52 of this Act;
- (c) sums received, including fees, contributions, gifts or grants from or by way of testamentary bequest by any person or persons:

Provided that such sums may not be received from any person that would create a conflict of interest;

- (d) monies earned or arising from any investment of the Fund pursuant to section 8(2);
- (e) all other sums which may in any manner become payable to, or vested in, the Fund;
- (f) a solatium compensatory contribution payable by any licensed cigarette manufacturers or importers in the country as may be determined by the Board.

(3) Where by an order under subsection (2) (b) any immovable property is assigned to the Fund, the Cabinet Secretary shall deal with the property in such manner as he thinks fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established.

(4) The Fund shall be used for meeting the capital and current expenditure relating to—

- (a) research, documentation and dissemination of information on tobacco and tobacco products;
- (b) promoting national cessation and rehabilitation programs; and
- (c) any other matter incidental to the matters stated in paragraphs (a) and (b).

(5) Unless the National Treasury directs otherwise, the receipts, earnings or accruals of the Fund and the balances of the Fund at the close of each financial year, shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Fund.

Section 8 of Cap. 245A, which it is proposed to amend –

8. Administration of the Fund

(1) Subject to this Part, the Fund shall be administered by the accounting officer of the Ministry for the time being responsible for matters relating to health, or a person appointed by such accounting officer in writing for that purpose, hereinafter referred to as the "Officer administering the Fund".

(2) The Officer administering the Fund may, with the approval of the Cabinet Secretary for the time being responsible for Finance, invest or place on a deposit account any of the monies of the Fund and any interest earned on monies so invested or deposited shall be placed to the credit of the Fund.

(3) The Officer administering the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) impose conditions on the use of any expenditure personally authorised and may impose any reasonable restriction or other requirement concerning use of expenditure;
- (c) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (d) transmit to the Auditor-General in respect of each financial year and within four months after the end of such financial year, a statement of account relating to the Fund specifying income to the Fund in such details as the National Treasury may from time to time direct in accordance with the Public Audit Act (Cap. 412B), including any investment or deposit made under section 8(2), and shall furnish such additional information as may be deemed sufficient and necessary for the purpose of examination and audit by the Auditor-General under the Public Audit Act (Cap. 412B), and every statement of account shall include details of the balance between the assets and liabilities of the Fund, and indicate the financial status of the Fund, as at the end of the financial year concerned; and
- (e) engage such staff as may be necessary to assist in the management of the Fund.

Section 12 of Cap. 245A, which it is proposed to amend –

12. Tax and price policies

The Cabinet Secretary for the time being in charge of finance shall—

- (a) implement tax policies and where appropriate, price policies on tobacco and tobaccoproducts so as to contribute to the objectives of this Act;
- (b) prohibit or restrict, as appropriate, any sale to, or importation of tax-free tobaccoproducts by international travellers.

Section 15 of Cap. 245., which it is proposed to amend –

15. Supply to and by young persons

(1) No person shall sell a tobacco product to a person under the age of eighteen years.

(2) Subject to subsection (3), a person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

(3) Notwithstanding the provisions of subsection (1), it shall be a defence to an offence under this section if it is established that the accused person attempted to verify that the young person was at least eighteen years of age by asking for and being shown any of the documents specified in subsection (4) for the purpose of verifying the age of the young person and believed, on reasonable grounds, that the documentation was authentic.

(4) For the purposes of this section, the following documentation may be used to verify a person's age—

- (a) a national identity card issued by the Republic of Kenya;
- (b) a driving licence issued by the Republic of Kenya or any other country;
- (c) a passport issued by the Republic of Kenya or any other country;
or
- (d) any other documentation as the Minister may prescribe.

(5) No person shall manufacture or sell objects including sweets, snacks and toys that resemble tobacco products or would reasonably appeal to persons under the age of eighteen years.

(6) A person who contravenes the provisions of subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 21 of Cap. 245A, which it is proposed to amend —

21. Information required on packages

(1) No person shall manufacture, sell, distribute, or import a tobacco product unless the package containing the product displays, in the prescribed form and manner, such information as may be prescribed with respect to the product and its emissions and the health hazards or effects arising from the use of the product or from its emissions.

(2) Every package containing a tobacco product shall —

- (a) have at least two warning labels of the same health messages, in both English and Kiswahili, comprising of not less than 30% of the total surface area of the front panel and 50% of the total surface area of the rear panel, and both located on the lower portion of the package directly underneath the cellophane or other clear wrapping;
- (b) bear the word "WARNING" appearing in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than seventy percent of such area, in which case the text may be of a smaller but conspicuous type size, provided that at least sixty percent of such area is occupied by the required text; and
- (c) bear text that is black on a white background or white on a black background in a manner that contrasts by typography, layout or colour with all other printed material on the package.

(3) All the warning labels specified in the Schedule shall be randomly displayed in each twelve-month period on a rotational basis and in as equal a number of times as is possible, on every successive fifty packages of each brand of the product and shall be randomly distributed in all areas within the Republic of Kenya in which the product is marketed.

(4) The Cabinet Secretary may, by notice in the *Gazette*, prescribe that the warning, required under this section, be in the form of pictures or pictograms:

Provided that such notice shall come into operation upon expiration of nine months from the date of its publication.

(5) Every package containing a tobacco product shall bear such statement as to the tar, nicotine and other constituents as may be prescribed and such statement shall be placed directly on the right hand side of the package, underneath the cellophane or other clear wrapping in a conspicuous and prominent format and shall be limited to the disclosure of the contents and not their quantities.

(6) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 25 of Cap. 245A, which it is proposed to amend —

25. Promotion by advertisement

(1) Subject to this Part, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element or one that evokes a tobacco product or element.

(2) No person shall advertise any tobacco product on any medium of electronic, print or any other form of communication.

(3) No person shall promote tobacco or a tobacco product by means of lifestyle advertising.

(4) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 26 of Cap. 245A, which it is proposed to amend —

26. Promotion by sponsorship

(1) No person shall—

(a) advertise tobacco or a tobacco product by means of organising, promoting or sponsoring a sporting, cultural, artistic, recreational, educational or entertainment programme, event or activity; or

(b) promote a tobacco product at any sporting, cultural, artistic, recreational, educational or entertainment event or activity; or

(c) advertise tobacco or a tobacco product by means of organising, promoting or sponsoring trade fairs, exhibitions, shows or any other events.

(2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 33 of Cap. 245A, which it is proposed to amend —

33. Prohibited smoking areas

(1) No person shall smoke in any public place.

(2) Without prejudice to the generality of subsection (1), no person shall smoke in—

(a) offices and workplaces, including corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas of such places;

(b) court buildings;

(c) factories;

(d) cinema halls, theatres, video houses, such other halls or places of performance, disco halls or any other entertainment facilities at any time during which it is open to the public;

(e) hospitals, clinics and other health institutions;

(f) restaurants, hotels, bars or other eating place;

(g) children's homes;

(h) residential houses and such other premises where children are cared for;

(i) places of worship;

(j) prisons;

(k) police stations and cells;

(l) public service vehicles;

(m) aircrafts, passenger ships, commuter boats, trains, passenger vehicles, ferries or any other public conveyance;

(n) education facilities;

(o) railway stations, airports, air fields, ports, and other public transport terminals;

(p) markets, shopping malls and retail and wholesale establishments;

(q) stadia, sports and recreational facilities;

(r) public buildings,

except in designated smoking areas.

(3) Any person who smokes in a prohibited smoking area commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(4) The Cabinet Secretary may by notice in the *Gazette* and subject to such conditions as the Board may recommend, specify any other building or vessel or part thereof, or class of buildings or vessels or part thereof to which members of the public have access, as being a place or places in which smoking is prohibited either permanently or during such period or periods as he may specify.

Section 53 of Cap. 245A, which it is proposed to amend —

53. Regulations

(1) The Cabinet Secretary may, on recommendation of the Board, make Regulations—

- (a) for prescribing anything required by this Act to be prescribed;
- (b) prohibiting anything required by this Act to be prohibited;
- (c) generally for the better carrying out of the objects of this Act.

(2) The Cabinet Secretary may, in consultation with the Cabinet Secretaries for the time being responsible for matters relating to agriculture, trade and industry, finance, education, information and communication, foreign affairs, internal security and any other relevant ministry, formulate the policy framework regarding—

- (a) the multidisciplinary and inter-sectoral implementation of this Act; and
- (b) any other matter which is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.