

REPUBLIC OF KENYA



PARLIAMENT
OF KENYA
LIBRARY

NATIONAL ASSEMBLY OF KENYA

NINTH PARLIAMENT

**DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING,
LABOUR AND SOCIAL WELFARE**

REPORT ON THE TOBACCO CONTROL BILL, 2006

Clerk's Chambers,
National Assembly,
NAIROBI

November, 2006

PROPOSED AMENDMENTS TO THE TOBACCO CONTROL BILL, 2006

1.0 PREFACE

Mr. Speaker Sir,

The Departmental Committee on Health, Housing, Labour and Social Welfare was constituted at the commencement of the Ninth Parliament pursuant to the provisions of Standing Order No. 151. The said Standing Order No. 151 (1) (c) mandates the Committee to among other things:-

(c) to study and review all legislation after the First Reading subject to the exemptions under Standing Order No. 101 A (4)

2.0 SUBJECTS

The Committee's subjects are as follows:-

- (a) Health
- (b) Housing
- (c) Labour
- (d) Social Welfare

The Committee oversees the performance of the following Ministries:-

- (a) Health
- (b) Labour and Human Resource Development
- (c) Housing
- (d) Sports, Gender, Culture and Social Services

3.0 MEMBERSHIP

The Committee comprises the following Members:-

- The Hon. (Dr.) Hezron Manduku, MP – **Chairman**
- The Hon. Tobias Ochola Ogur, MP
- The Hon. Reuben Ndolo, MP
- The Hon. Norman M. G. K. Nyagah, MP

The Hon. (Dr.) Naomi Shaaban, MP
The Hon. Zebedeo J. Opore, MP
The Hon. Abdalla Ngozi, MP
The Hon. (Prof.) Julia Ojiambo, MP
The Hon. William Boit, MP
The Hon. Benson Mbai, MP
The Hon. David Koros, MP

4.0 INTRODUCTION

Mr. Speaker Sir,

On behalf of the Departmental Committee on Health, Housing, Labour and Social Welfare and pursuant to the provisions of Standing Order No. 162, I am pleased to present to the House, the Committee's report on *The Tobacco Control Bill, 2006*.

The Bill was referred to the Committee on Wednesday, November 01, 2006 upon a motion moved by the Minister for Health pursuant to provisions of Standing Order 101 (1).

Mr. Speaker Sir,

Allow me to take this opportunity to thank all the Members of the Committee and the Clerk's Office for their dedication and hard work and their demonstration of the desire to improve the Bill.

It is worth noting that two Bills with the same title, Tobacco Control Bill, had been referred to the Committee. One of the Bills was a private members Bill brought by the Hon. Gor Sunguh and the other of course by the Ministry of Health. The Committee studied the two Bills and invited the aforesaid Hon. Member and the Ministry of Health to discuss the way forward. From the meeting it was resolved that the two bills be merged, borrowing good aspects from each but the Government Bill was to be the reference point.

The Committee held a number of sittings to deliberate on the Bill and consultative meetings in which various stakeholders from the industry, research and civil society were invited to give their views so as to enrich the Bill.

Introduction

Tobacco plant botanically known as *Nicotina Tobacum* has been known to man since 3,500 BC. It was introduced in East Africa by the Portuguese and Spanish sailors in 1560 and was commercially introduced in Kenya in 1907.

Commercial farming of tobacco was limited in Kenya until 1975. Currently over 15, 000 small scale farmers are contracted to grow tobacco in Meru/Embu, Nyanza and Bungoma areas.

Tobacco has become a major issue because it kills on top of the suffering and harm to the people and the economies of countries since it strains the meagre resources in the health and other sector of the economy. Tobacco is produced and used either by smoking in form of cigarettes, cigars and pipes, chewing or sniffing (snuff). The leaves of tobacco plant contain many substances among them pollutants, poisons, carcinogens and addictive drug-like chemicals.

There are more than 4,000 chemicals that have been identified in any given cigarette. 400 of these chemicals are known to be harmful to human health, 40 are known carcinogens i.e. cause cancer.

In Kenya alone an estimated 6 Billion cigarettes are smoked in a year without regard to non smokers both born and unborn, since there is a legislation to protect them. Tobacco prevalence is estimated at 67% for males, 33% for females while 45% of all smokers are below 20 years.

Tobacco use is one the chief preventable causes of premature death in the world. By 2002, 4.9 million deaths were caused by tobacco. Its estimated that 2030 the figures will have reached, 10 million per year, 70% of which will be in developing countries, Kenya included. Cigarette smoking is associated with heart diseases; cancers of the lung, larynx, mouth, oesophagus and bladder, stroke and chronic obstructive airway diseases etc.

Indeed the problem of tobacco cannot be gain said, this is an issue of global concern. Its dangers are not isolated to one nation. Countries of the world have united to fight this problem under the umbrella of World Health Organisation (WHO).

Various efforts have been set up at the global stage among them the designation of May 31 of every year as World No-Tobacco Day by the

World health Assembly. This is marked as world wide event. In recognising the importance of legislation in tobacco control member countries of the WHO developed what is known as the framework convention on tobacco control (FCTC). This treaty was signed and ratified by Kenya which is a member of the world health body. Member states who ratified the treaty are bound by the same and are mandated to set up legislation based on this treaty. Having ratified this treaty, Kenya is not expected to set up legislation that is below the minimum standards espoused in the treaty.

Sponsorship of school events, like sports and musical festivals, agricultural shows etc are geared towards capturing future consumer markets. Tobacco use by school going children has been associated with indiscipline, ultimate graduation to abuse of alcohol and bang, an escalation of crime and insecurity in addition to the increase in tobacco related diseases.

School based tobacco education programme will go along way in encouraging those who have not experimented with tobacco to abstain from tobacco use and motivate those already smoking to quit the abuse. Increasing the knowledge and awareness on the dangers and harmful effects of tobacco in society will generally change attitude on tobacco use and increase abstinence.

There is no safe exposure to second hand tobacco smoke. WHO estimates have it that 700 million children are exposed to second hand tobacco smoke. Realizing that every body is becoming a tobacco user as a result of passive smoking the Bill recommends protection of non smokers by creating smoke free zones. Indeed the Government acknowledging this danger designated all its buildings and health institutions as smoke free zones.

It is a fact that Cigarette smoking is avoidable. We all have a responsibility to promote good public health practices. Legislators have the honourous responsibility to protect our people from exposure to passive smoke. Each Kenyan has the right to breathe clean air free from tobacco smoke pollution.

The committee supports the ban of smoking in public places and the creation of designated areas, creation of a fund to help in advocacy, research and dissemination of information on the effects of tobacco, integration of tobacco and its health consequences on the education system, protection of young people from deceptive inducement to tobacco use, restriction to access tobacco and tobacco products by

young people. The Committee further supports the right of non-smokers to live in a smoke free environment.

We wish to acknowledge the measures currently in place, where all government premises are designated as NO-Tobacco Smoke Zones but more drastic measures backed by legislation need to be put in place.

In Kenya there is no functional legislative or regulatory framework prohibiting people under the age of 18 years access to tobacco products as such tobacco is easily available to all. This can be witnessed in retail shops whose aim is to profit and end up selling cigarettes to small children. Accessibility and availability of tobacco to people under 18 years is a potential threat to the future of this community since tobacco use leads to mental retardation.

This Bill seeks to make it hard for the young people who are the future of this nation to access tobacco and tobacco products.

Mass media advertising and marketing including printed products affect the attitude and behaviour of consumers particularly the youth. Advertising and promotion of tobacco creates "friendly familiarity" for tobacco products among the young people.

The Bill recommends the following intervention measures;-

- High taxes
- High penalties
- Prohibition of tobacco adverts, promotion of sport sponsorship.
- To reduce use, consumption and its impact on related diseases.
- Partial bans will lead to enhanced permissible promotional activities
- Information – awareness on dangers
 - counter advertising
 - Prohibitive health warning and labels
 - Prohibition and dissemination of research findings on tobacco problems.
 - Restriction on smoking in working and public places

The social and economic impact of tobacco related ailments manifests itself in the depletion of the labour force and the resultant low productivity at the workplace. The cost in human pain, suffering and grief is inestimable. The monetary costs (preventive and research expenditure as well as morbidity and mortality costs) are impacting negatively on the country's development efforts. The costs incurred by

the health sector in treating tobacco related ailments far much out weigh the tax revenue to the government contributed by the tobacco industry.

For the last 7 years, since 1999, the Government has brought up the Tobacco Control Bill which has lapsed year in year out. Its time that Parliament legislates to save the lives and health of Kenyans, both smokers and non smokers born and unborn.

This House should legislate so that our children are protected from smoking. Smoking at a young age increases the risk of death from tobacco related illnesses and lowers the age at which death is likely to occur in addition to mental retardation.

The Committee in consultation with stakeholders studied the Bill and proposed several Amendments herein appended.

Mr. Speaker Sir,

On behalf of the Committee, I now beg to lay on the table of the House the Report of the Committee on the Tobacco Control Bill, 2006 pursuant to Standing Order No. 162 of the Kenya National Assembly Standing Orders.

**HON. (DR.) HEZRON MANDUKU, MP,
CHAIRMAN,
DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR
AND SOCIAL WELFARE.**

PROPOSED AMENDMENTS TO THE BILL

PART 1 – PRELIMINARY

Long title – That the long title be amended as follows:-

- Delete the word **regulate** appearing before the words **the manufacture** and substitute therefor with the words **control the growing of tobacco.**
- Delete the word **and** appearing after the word **advertising.**
- insert the words **and sponsorship** after the word **promotion.**
- insert the words **to create a national board for tobacco control** after the word **products.**
- insert the words **but not later than six months from the date of assent** after the word **appoint.**

***Rationale:- Farmers are important in effective tobacco control.
Sponsorship is a subject of promotion.
- To give time for industry to comply.***

CLAUSE 2: Interpretation

That **Clause 2** be amended as follows:

"advertisement" – delete the words **and designed to promote and or publicise** appearing after the word **public** and substituting therefor with the words **designed to or that has or is likely to have the effect of promoting or publicising.**

- insert the following words **and includes the use in any advertisement or promotion aimed at the public of a tobacco company's manufacturers name where the name or any part of the name is used as or is included in a tobacco product trade mark, and includes product stacking displays of any kind or size** after the words **uses of the product.**

"authorised officer" – delete all words appearing after the word **means** and substituting therefor with-

- (a) *a public officer appointed under the public health Act, or*
- (b) *a person appointed under section 33 of this Act; or*
- (c) *any other person upon whom any written law vests functions of ensuring public health, public safety and maintenance of law and order and includes a police officer;*

"board" - delete the words *products regulatory* appearing after the word *tobacco* and substitute therefor with the word *Control*.

Rationale: *The spirit of the framework convention on tobacco control is to control and not regulate. The board is also an advisory body.*

"brand element" - insert the words *colour, motto* after the word *design* and delete all the words appearing after the words *or service*;

"cigarette" - insert the words *or any other material* after the word *paper*.

"emissions" - insert the words *tobacco and produced, processed and* after the words *when and is* respectively.

Rationale: *to cover emissions when tobacco is being cured*

"entity" - insert the word *company* after the word *corporation*.

"harmful constituent" - insert the word *tobacco*, after the words *constituent of*.

"health institution" - delete all the words appearing after the word *rendered*.

Add the following new interpretations to read;

"Fund" - *means the tobacco control fund established under section 60;*

Rationale: *FCTC requires formation of Fund to support research and dissemination of information*

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

"prohibited smoking area" - includes but is not limited to public places defined in section 30;

"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;

"tobacco" - means the tobacco plant, including the seeds and the leaves;

"lifestyle advertising" - insert the words but is not limited to after the word includes.

"package" - insert the words including the carton in which the multiple packages are stored after the word distributed.

"public place" - insert the words partially enclosed or open after the word enclosed and the words or to which members of the public ordinarily have access to after the words any part of the public.

CLAUSE 3: Object and purpose of Act

That Clause 3 be amended as follows:-

Insert the words

- control of the growing before the word manufacture;
- labelling, advertising after the word sale;
- sponsorship after the word promotion
- and exposure to tobacco after the words use of
- and tobacco smoke after the word products

- subsection (a) - delete the word **Kenyans** and substitute therefor with the word **the individual**
- insert the words **growing; handling** after the word **tobacco**.
 - insert the words **and exposure to tobacco, tobacco smoke and tobacco products** after the word **use**.
 - delete the words **debilitating and fatal** and substitute therefor with the words **illness, disease, disability and death;**
- subsection (b) - insert the words **and inform them of the risks of using tobacco products and exposing others to tobacco smoke** after the word **them**
- subsection (c) - delete the word **restricting** appearing before the word **by** and substituting therefor with the words **preventing their exposure to tobacco or**.

Rationale: to protect children

- subsection (d) - delete all the words and substitute therefor with the words **inform, educate and communicate to the public the harmful health, environmental, economic and social consequences of growing, handling, exposure to and use of tobacco products and smoke;**

insert a new subsection (f) to read

- 3 (f) - ensure that **elicit trade in tobacco including smuggling, illicit manufacturing and counterfeiting is eliminated.**

PART II – ADMINISTRATION

CLAUSE 4: Powers of the Minister

That **Clause 4** be amended as follows:-

- subsection (a) - delete the words **International Standards Organisation** and substitute therefor with the words **World Health Organisation**.
- subsection (b) - insert the words **addition of and** before the word **use** and the words **or ingredient**

through agricultural practise or after the word constituent .

subsection (c) - delete all the words appearing after the words their emissions.

Insert new subsections (d) (e) and (f) and renumber accordingly

subsection (d) - prescribe such information that manufacturers shall provide to the board including and not limited to tobacco products and their emission; sales and advertising data; and information on the product composition, ingredients, hazardous properties and brand elements;

subsection (e) - prescribe for the manufacture of reduced-ignition-propensity cigarettes;

subsection (f) - prescribe product design standards to meet the health and safety objectives of this Act; and

The original subsection (d) be renumbered to read (g)

CLAUSE 5: Establishment of the Board

That Clause 5 be amended as follows:

subsection (1) - delete the words **products regulatory** appearing after the word **tobacco** and substitute therefor with the word **control**.

NB: Any where else in the Bill where the words **products regulatory** appears be deleted and substituted therefor with the word **Control**.

subsection (1) (d) - insert the words **or his/her representative** after the word **services**

subsection (1) (f) - delete the words **one person nominated by** and substitute therefor with the words **Director of** and insert the words **or his/her representative** after the word **institute**.

Insert a new sub section (g) and renumber subsequent subsections accordingly;

subsection (1) (g) - the Director of Agriculture or his/her representative

subsection (1) (i) - delete the words consumer protection appearing after the words relating to and substitute therefor with the words tobacco control.

insert new subsections (m) and (n) to read;

subsection (1) (m) - The Director National Environmental Management Authority or his/her representative.

subsection (1) (n) - Director of National Agency for the Control of Alcohol and Drug Abuse or his /her representative.

insert a new subsection (2) and renumber the subsequent subsections accordingly

subsection (2) - *No member of the board shall directly or indirectly be affiliated to the tobacco industry or its subsidiaries. Upon discovery that a member did not disclose his/her affiliation to the industry or its subsidiary, he/she shall have committed an offence under this Act and shall be liable to a fine not exceeding one million shillings or imprisonment for a period not exceeding five years or both.*

CLAUSE 6: Functions of the Board

That Clause 6 be amended as follows:

subsection (a) - insert the word growing before the word manufacture.

- insert the word advertising after the word sale.
- insert the words sponsorship and use of tobacco and after the word promotion.

subsection (b) (ii) - insert the words and ingredients after the word constituents.

subsection (b) (iii) - renumber subsection (c) to read (b) (iii) and add the words to be used in after the word

methods; and the words and any regulations made there under after the word Act.

Insert new subsection (iv), (v), (vi), (vii)

subsection (b)(iv) - *to advise the Minister on the information that manufacturers shall provide including and not limited to tobacco products and their emission; sales and advertising data; and information and product composition, ingredients, hazardous properties and brand elements required to be provided under section 4 (c);*

subsection (b)(v) - *to recommend to the Minister the manufacture of reduced-ignition-propensity cigarettes required to be prescribed under section 4 (d);*

subsection (b) (vi) - *to advise the Minister on the product design standards required to be prescribed under section 4 (e);*

subsection (b)(vii) - *to advise the Minister on the labelling, packaging, sale, distribution, promotion or advertising of tobacco products;*

subsection (d) - be renumbered to read (c) and delete the words section 49 appearing after the word under and substitute therefor with the words section 50.

Insert new subsection (d) to read;

Subsection (d) - to administer the Fund established under section 60; and

Insert a new part iii and renumber subsequent parts and Clauses accordingly

PART III - INFORMATION, EDUCATION AND COMMUNICATION

CLAUSE 7: Government to undertake information, education and communication.

Clause 7 (1) - the Government shall promote awareness about the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and the harmful

effects of tobacco growing and handling through a comprehensive nation-wide education and information conducted by the government through various ministries, departments, authorities and other agencies.

- (2) - the education and information campaign referred to in section (1) shall focus on the family as the basic social unit and shall be carried out in all schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities through out Kenya.
- (3) - the Government shall provide training, sensitization and awareness programmes on tobacco control for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons that they may acquire skills for proper information, dissemination and education on tobacco products.
- (4) - in conducting the education and information campaign referred to in this section, the government shall ensure the involvement and participation of individuals and groups affected by tobacco growing, and the handling and use of tobacco products.
- (5) - every local authority in collaboration with the civil society and the ministry, shall conduct education and information campaigns on tobacco within its area of jurisdiction.

CLAUSE 8: Ministry responsible for education to integrate tobacco matters into syllabuses.

Clause 8 - the Ministry for education, utilizing official information provided by the ministry shall integrate instruction on the health consequences, addictive nature and threat posed by tobacco consumption and exposure to tobacco smoke in subjects taught in public and private schools at all levels of education including informal and non-formal and indigenous learning systems.

CLAUSE 9: Tobacco control and dissemination

Clause 9(1) - tobacco control education and information dissemination shall form part of health care services by health care providers.

- (2) - for the purposes of subsection (1), the government shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on tobacco.

CLAUSE 10: Tax and price policies

Clause 10 - the Minister for the time being in charge of finance shall-

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

CLAUSE 11: Economically viable alternatives

Clause 11 (1)- the Minister for the time being in charge of agriculture shall put in place policies to promote, as appropriate, economically viable alternatives for tobacco growers.

- (2) the government through the relevant ministries shall put in place policies to promote, as appropriate economically viable alternatives for tobacco workers, distributors, retailers and individual sellers.

Rationale: To conform to Framework Convention on Tobacco Control (FCTC) article 6, 12 and 17.

Part iii be renumbered to read part iv

PART IV – TOBACCO PRODUCTS

CLAUSE 12: Conformity with requirements

That **Clause 12** be amended as follows;

subsection (1) – insert the words **import, distribute or sell** after the word **manufacture**.

Insert a new subsection **(3)** to read

(3) – Every stick, packet and package of tobacco for retail and wholesale in Kenya shall carry the statement **"Sales only in Kenya"** and shall also state the country of origin.

Rationale: To conform to Framework Convention on Tobacco Control (FCTC) article 15

CLAUSE 14: Information required on packages

That **Clause 14** be amended as follows;

subsection (2) (c) – delete all the words appearing after the word **and** and substitute therefor with the word **Swahili**.

CLAUSE 15: Vending machines

That **Clause 15** be amended as follows;

subsection (1) - delete all the words appearing after the words **automatic vending machine**.

Rationale: To conform to framework convention on tobacco control (FCTC) article 16

CLAUSE 18: Delivery of tobacco products

That **Clause 18** be amended as follows;

Subsection (1) – delete all the words appearing after the word **retailers**.

PART V: PROMOTION

That **Clause 20** be deleted and subsequent Clauses be renumbered accordingly.

CLAUSE 20: prohibition of promotion

That **Clause 20** be amended as follows;

Subsection (1) - insert the word **tobacco** after the word **promote**

CLAUSE 21: False promotion

That **Clause 21** be amended as follows;

Subsection (1) - insert the word **tobacco** or after the word **promote** and the word **including** after the word **product** and the words **and as may be prescribed by the Minister** after the words **emissions**.

CLAUSE 22: Testimonials or endorsements

That **Clause 22** be amended as follows:

Subsection (1) - insert the words **tobacco** or before the word **promote**.

Insert a new subsection (2) to read

(2) - For the purposes of this section the depiction of a person, character or animal, whether real or fiction, including and not limited to literary, dramatic, musical, cinematographic, educational or artistic works, productions or performances that use or depict a tobacco product or a tobacco product-related brand element, whatever the mode or form of its expression, shall be considered to be a testimonial for, or an endorsement of the product.

CLAUSE 23: Promotion by advertisement

That Clause 23 be amended as follows:

- Subsection (1)** - insert the words **tobacco** or after the words **promote** and the word **tobacco** after the words **in part**
- (2)** - delete the words **any of the mediums of** appearing after the word **on** and insert the words **print or any other form of** after the word **electronic**.
- delete all the words in the paragraph beginning with the word **provided** and substitute therefor with the words **no person shall promote tobacco or a tobacco product by means of lifestyle advertising**.

The title be amended by deleting the words **at sporting events etc** and substituting therefor with the words **promotion by sponsorship** so as to read;

That Clause 24 be deleted and subsequent Clauses be renumbered

CLAUSE 24: Promotion by sponsorship

- subsection 1 (a)** - insert the word **educational** after the word **recreational**.
- (b)** - insert the words **tobacco** or after the word **promote**, and the word **educational** after the word **recreational**.
- insert the word **or** after the word **activity**;

Insert a new sub section (c) to read

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

Insert a new sub-section (2) to read

- subsection (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 both.

Clauses 25, 26, 27, 28 be deleted and subsequent Clauses be renumbered accordingly.

INSERT NEW CLAUSES 25 AND 26 AND RENUMBER SUBSEQUENT CLAUSES ACCORDINGLY

CLAUSE 25: Accessories

- Clause 25 (1) - No manufacturer, distributor or retailer shall manufacture, distribute or sell an accessory the displays a tobacco product related brand name or the name of the manufacturer.**
- (2) - no person shall manufacture and / or sell objects including and not limited to sweets, snacks and toys that resemble tobacco products and /or would reasonably appeal to persons under eighteen years;**
- (3) - a person who contravenes any of this section commits an offence and shall, on conviction, be liable to a fine exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.**

CLAUSE 26: Displays on non-tobacco products

- Clause 26 (1) - No person shall display a tobacco brand element on a non-tobacco product.**
- (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 hundred and fifty thousand shilling, or imprisonment for a term not exceeding six months, or to both.**

CLAUSE 27: Sales promotions

That **Clause 27** be amended as follows;

- Clause 27 (1) - insert the word distributor, after the word manufacturer.**

- (2) - delete the words **hundred and fifty thousand** appearing after the word **one** and substitute therefor with the word **million**.

CLAUSE 28: Communication media

That **Clause 28** be amended as follows;

Clause 28 (1) - insert the words **of tobacco, a tobacco product or service** after the word **promotion**.

- (3) - delete the words **three hundred thousand** appearing before the word **shillings** and substitute therefor with the words **three million** and add the word **three** before the word **years**.

PART VI - INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

CLAUSE 30: Prohibited smoking areas

That **Clause 30** be amended as follows;

Subsection 2 be deleted.

Insert new subsections (1), (2), (3), (4), (5) and renumber subsequent subsections

- Clause 30 (1)** - **Every person has a right to a clean and healthy and the right to be protected from exposure to second hand smoke.**
- (2) - **Every person has a duty to observe measures to safe guard the health of non-smokers.**
- (3) - **Every head of family including and not limited to parent and or guardian is responsible for ensuring that the children are free from second hand smoke.**
- (4) - **No person shall smoke in any public place including and not limited to-**
- (a)- **office and workplaces including corridors, lounges, eating areas, reception areas, lifts, escalators, fly-overs, stairwells, toilets, laundries, amenity areas of such places;**
- (b) - **court buildings;**
- (c) - **factories;**

- (e) - cinema halls, theatres, video houses, such other halls or places of performance, or any other entertainment facilities at any time during which it is open to the public;
 - (f) - restaurants, hotels or other eating places;
 - (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, passengers vehicles, ferries or any other public conveyance;
 - (n) - education facilities;
 - (o) - public roads, railway lines, airports, air fields and other public transport terminals;
 - (p) - markets, shopping malls and retail and wholesale establishments;
 - (q) - oceans, beaches, lakes and water ways, ports, piers, shores;
 - (r) - public parks and forests;
 - (s) - stadia, sports and recreational facilities.
- (5) - 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 an imprisonment for a term not exceeding six months, or to both.

After renumbering subsection (1) becomes subsection (6)

(6) - insert the word other after the word any.

CLAUSE 31: Display of notices

That **Clause 31** be amended as follows;

subsection (1) - delete the letter **a** appearing before the word **specified** and substitute therefor with the word **every**.

- (5) - delete the word **five** appearing before the word **thousand** and substitute therefor with the word **fifty** and the word **one** appearing before the word **month** and substitute therefor with the word **six** .

PART VII – ENFORCEMENT

CLAUSE 33: Authorised officer

That **Clause 33** be amended as follows

- subsection (1)** - insert the words **In addition to public health officers and any other person whom any written law vests functions of ensuring public health, public safety and maintenance of law and order,** before the words **the Director of Medical Services.**

CLAUSE 34: Places authorised officer may enter

That **Clause 34** be amended as follows;

- Subsection (1) (a)** – insert the words **tobacco or,** before the words **a tobacco product** and the words **grown, handled,** after the words **has been.**
- insert the word **or used** after the word **sold.**
- (b)** - insert the words **growth, handling** after the word **used in the** and the words **tobacco products** after the word **tobacco.**
- (c)** - insert the words **growth, handling** after the words **relating to the** and the words **tobacco** or after the words **sale of.**

insert a new subsection **34(1) (d)** to read;

- (d)- any person or persons is in any way contravening the provisions of this Act.**

CLAUSE 35: Powers of officers

That **Clause 35** be amended as follows;

- Subsection (a)** - insert the word **tobacco,** after the word **examine.**
- (b)-** insert the word **the tobacco,** after the word **the officer.**

- (c) - insert the words **tobacco**, after the word **contains**.
- (d) - insert the word **tobacco**, after the words **sample of the**.

CLAUSE 40: Certificate of analysis

That **Clause 40** be amended as follows;

- insert the word **tobacco**, after the word **examined**.

CLAUSE 43: Seizure

That **Clause 43** be amended as follows;

- insert the word **tobacco**, after the words **seize any**.

CLAUSE 44: Storage and removal

That **Clause 44** be amended as follows;

- insert the word **tobacco**, after the words **that any**.

CLAUSE 45: Interference with seized product or thing

That **Clause 45** be amended as follows;

- insert the word **tobacco**, before the words **tobacco products**.

CLAUSE 46: Restoration of seized product or thing

That **Clause 46** be amended as follows;

- insert the word **tobacco**, after the word **whom**.

CLAUSE 47: Order for restoration

That **Clause 47** be amended as follows;

- subsection** - insert the word **tobacco**, after the words **that the**.
- (a) - insert the word **tobacco**, after the words **possession of the**.

CLAUSE 48: Order of later restoration

That **Clause 48** be amended as follows;

- Subsection (1)** - insert the word **tobacco**, after the words **possession of the** and words **tobacco, tobacco** after the words **that the** and delete the number **46** and substitute therefor with **47**.
- (2)** - insert the word **tobacco** after the words **this section if** and delete the number **48** and substitute therefor with **49**.

CLAUSE 49: Forfeiture

That **Clause 49** be amended as follows;

- subsection (b)** - insert the word **tobacco** after the words **respect of which**.
- (c)** - insert the word **tobacco** after the word **seized** and the words **tobacco, tobacco** after the word **the**.

INSERT A NEW CLAUSE 59 TO READ

CLAUSE 59: Compensation.

Clause 59 - Every manufacturer, distributor, or dealer in tobacco products shall be strictly liable for any injury or damage caused by such tobacco on any person.

INSERT A NEW PART VIII WITH NEW CLAUSES 60, 61, 62, 63, 64.

PART VIII: THE TOBACCO CONTROL FUND.

CLAUSE 60: Tobacco Control Fund.

- subsection (1)** The Minister shall establish 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;

- (b) such sums as may be realised from property forfeited to the Government under section 49 of this Act;
 - (c) sums received, including and not limited to fees, contributions, gifts or grants from or by way of testamentary bequest by any persons.
 - (d) moneys earned or arising from any investment of Fund pursuant to section 61(2)
 - (e) sums borrowed by the fund, including loan funds, for the purposes of meeting any of its obligations or discharging any of its functions; and
 - (f) all other sums which may in any manner become payable to, or vested in, the Fund.
- (3) For the purposes of this section "loan funds" means such sums as may be made available from time to time by the government by way of loan.
- (4) Whereby an order under subsection (2) (b) any immovable property is assigned to the fund, the minister shall deal with the property in such manner as he/she thinks fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established.
- (5) 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; and
 - (b) promoting national cessation and rehabilitation programs; and
 - (c) any other matter incidental to the matters stated in paragraphs (a) and (b)

CLAUSE 61: Administration

- subsection (1) subject to this part, the fund shall be administered by the Board.
- (2) the board may, with the approval of the minister for the time being responsible for

finance, invest or place on a deposit account any of the moneys of the fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the fund.

CLAUSE 62: Management of the Fund

Subsection (1) The Board shall-

- (a) impose conditions as to the use to be made of any expenditure authorized by the Board and such conditions may impose any reasonable prohibitions, or requirements concerning such use or expenditure;**
- (b) 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; and**
- (c) transmit to the controller and 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 Treasury may from time to time direct in accordance with the Public Audit Act, including any investment or deposit made under section 61 (2) and shall furnish such additional information as may be deemed sufficient and necessary for the purpose of examination and audit by the Controller and Auditor General under the Public Audit Act, 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 to the end of the financial year concerned.**

CLAUSE 63: Minister's role

Clause 63: The Board shall advise the Minister on such matters, as may be referred to it by the Minister, relating to the administration of the Fund and

any other matter incidental to or relating to its functions.

CLAUSE 64: Formulation of policy framework

Clause 64: The Minister may, in consultation with the Minister 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.

SECOND SCHEDULE

That the second schedule be amended as follows;

Add subsections (xi), (xii), (xiii), (xiv) to read

1. (xi) Tobacco use causes impotence
(xii) Tobacco use causes miscarriage
(xiii) Tobacco use causes infertility in women
(xiv) Tobacco use causes mental retardation in children
2. - delete the words in paragraph 1 appearing after the word **messages** and substitute therefor with the words **above or any pictures or pictograms prescribed**.
- delete the number **15** appearing after the word **section** and substitute therefor with the number **19**.
3. add the words **and type** after the word **text** and the words **pictures or pictogram** after the word **messages**.

MEMORANDUM OF OBJECTS AND REASONS

Delete the words **regulate** appearing after the words **framework** to and substitute therefor with the word **control**.