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THE TOBACCO CONTROL ACT

CHAPTER 245A

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CHAPTER 245A

TOBACCO CONTROL ACT

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CHAPTER 245A

TOBACCO CONTROL ACT

[Date of assent: 27th September, 2007.]

[Date of commencement: 8th October, 2007.]

An Act of Parliament to control the production, manufacture, sale, labelling, advertising, promotion and sponsorship of tobacco products, to provide for the Tobacco Control Board, to regulate smoking in specified areas and for connected purposes

[Act No. 4 of 2007, Act No. 6 of 2009.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Tobacco Control Act.

2. Interpretation

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;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to Public Health;

"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 Cabinet Secretary may, under section 4(a), prescribe;

"health institution" means a hospital, nursing home, convalescent home, maternity home, health centre, 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;

"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.

3. Object and purpose of Act

The object and purpose of this Act is to provide a legal framework for the control of the production, manufacture, sale, labelling, advertising, promotion, sponsorship and use of tobacco products, including exposure to tobacco smoke, in order to—

- (a) protect the health of the individual in light of conclusive scientific evidence implicating tobacco production, use and exposure to tobacco smoke and tobacco products, in the incidence of debilitating illness, disease, disability and death;
- (b) protect the purchasers or consumers of tobacco products from misleading and deceptive inducements to use tobacco products and consequent dependence on them; and inform them of the risks of using tobacco products and exposing others to tobacco smoke;
- (c) protect the health of persons under the age of eighteen years by preventing their access to tobacco products;
- (d) inform, educate and communicate to the public the harmful health, environmental, economic and social consequences of growing, handling exposure to and use of tobacco and tobacco products, and tobacco smoke;
- (e) protect and promote the right of non-smokers to live in a smoke-free environment;
- (f) protect and promote the interest of tobacco growers by providing viable alternative crops;
- (g) adopt and implement effective measures to eliminate illicit trade in tobacco including smuggling, illicit manufacturing and counterfeiting;
- (h) promote and provide for rehabilitation and cessation programmes for consumers of tobacco products;
- (i) promote research and dissemination of information on the hazardous effects of tobacco production and use including exposure to tobacco products and tobacco smoke, in particular the health risks including addictive characteristics of tobacco consumption and exposure to tobacco smoke.

PART II – ADMINISTRATION

4. Powers of the Cabinet Secretary

Notwithstanding the provisions of any other written law for the time being in force, the Cabinet Secretary, on the recommendation of the Board, may—

- (a) prescribe the permissible levels of tar, nicotine, and such other constituent of tobacco products or their emissions as the Cabinet Secretary may specify, which levels shall not exceed the levels set by the World Health Organisation;
- (b) prohibit the addition and use of any harmful constituent or ingredient in the production of tobacco products;
- (c) prescribe the methods to be used in testing tobacco products and their emissions;
- (d) prescribe the information that manufacturers shall provide to the Board, including information on tobacco products and their emissions,

sales and advertising data, and information on product composition, ingredients, hazardous properties and brand elements;

- (e) subject to this Act, control the labelling, packaging, sale, distribution, promotion or advertising of tobacco products, so as to—
 - (i) ensure that the purchaser or consumer of a tobacco product is not misled as to its quality, quantity, character, value, composition, effect, merit or safety;
 - (ii) prevent injury or harm to the health of the consumer.

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.

6. Functions of the Board

The functions of the Board shall be to—

- (a) advise the Cabinet Secretary on the national policy to be adopted with regard to the production, manufacture, sale, advertising, promotion, sponsorship and use of tobacco and tobacco products;
- (b) advise the Cabinet Secretary generally on the exercise of his powers and the performance of his functions under this Act, and in particular to—
 - (i) recommend to the Cabinet Secretary the permissible levels of the constituents of tobacco products or their emissions required to be prescribed under section 4(a);
 - (ii) advise the Cabinet Secretary on the harmful constituents and ingredients of tobacco products required to be prohibited under section 4 (b);
 - (iii) assist the Cabinet Secretary in determining the test methods to be used in testing tobacco products and their emissions in order to test conformity with the requirements of this Act and any regulations made thereunder;
 - (iv) advise the Cabinet Secretary on the information that manufacturers shall provide, including information on tobacco products and their emissions; sales and advertising data, and information on product composition, ingredients, hazardous properties and brand elements required to be provided under section 4(c);
 - (v) advise the Cabinet Secretary on the labelling, packaging, sale, distribution, promotion or advertising of tobacco products;
- (c) advise the Cabinet Secretary on matters relating to the administration of the Fund;
- (d) recommend to the Cabinet Secretary and to participate in the formulation of the regulations to be made under section 53;
- (e) perform such other functions as may, from time to time, be assigned by the Cabinet Secretary.

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.

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.

PART III – INFORMATION, EDUCATION AND COMMUNICATION

9. Government to undertake information, education and communication

(1) The Government shall promote public 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 campaign conducted by the Government through the relevant Ministries, departments, authorities and other agencies.

(2) The education and information campaign referred to in subsection (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 throughout Kenya.

(3) The Government shall provide training, sensitisation and awareness programmes on tobacco control for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons for proper information, dissemination and education on tobacco and 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.

10. Ministry responsible for education to integrate tobacco matters into syllabuses

The Ministry responsible for Education, utilising official information provided by the Ministry of Health shall integrate instruction on the health consequences, addictive nature and mortal 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.

11. Tobacco control education and dissemination to form part of health care

(1) Tobacco control education and information dissemination shall form part of health care services by healthcare 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.

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 tobacco products 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 products by international travellers.

13. Economically viable alternatives

(1) The Cabinet Secretary 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.

PART IV – TOBACCO PRODUCTS

14. Conformity with requirements

(1) No person shall manufacture, import or distribute a tobacco product that does not conform to the requirements of this Act or any regulations made thereunder.

(2) Every, packet or package of tobacco for retail or wholesale in Kenya shall carry the statement "Sales only allowed in Kenya" and shall also state the country of origin.

(3) *Deleted by Act No. 6 of 2009, Sch.*

(4) 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 five years, or to both.

[Act No. 6 of 2009, Sch.]

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 Cabinet Secretary 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.

16. Display of signs

(1) Every retailer shall post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of a tobacco product to a person under the age of eighteen years is prohibited by law, and that contain any of the prescribed health messages.

(2) Every sign required to be posted under subsection (1) shall—

- (a) be displayed on a surface measuring not less than 12" by 8" in size;
- (b) bear the word "WARNING" in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;
- (c) be in English and Kiswahili or in the predominant language of the area within which the sign is posted.

(3) A retailer who contravenes any of the provisions of this section 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.

17. Vending machines

(1) No person shall permit a tobacco product to be sold by way of an automatic vending machine.

(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 one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

18. Number of cigarettes in a package

(1) No person shall sell cigarettes except in a package containing at least ten cigarettes, or such other minimum number of cigarettes, not being less than ten, as may be prescribed.

(2) No person shall sell a tobacco product other than cigarettes, that is prescribed for the purposes of this subsection, except in a package that contains at least ten units of the product, or such other minimum number of units of the product, not being less than ten, as may be prescribed.

(3) 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 fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

19. Self service display

(1) No person shall sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.

(2) A person who contravenes the provisions of this section 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.

20. Delivery of tobacco products

(1) No person shall, for consideration, cause a tobacco product to be delivered or sent by mail unless the delivery is between manufacturers or retailers.

(2) No person shall advertise an offer to deliver or mail a tobacco product anywhere within the Republic of Kenya.

(3) 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 one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

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.

PART V – PROMOTION

22. Prohibition of promotion

(1) No person shall promote a tobacco product or a tobacco-related brand element except in accordance with the provisions of this Act.

(2) A person who contravenes 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.

23. False promotion

(1) No person shall promote tobacco or a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the tobacco product or its emissions and as may be prescribed 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 five hundred thousand shillings, or to imprisonment for a term not exceeding three years or to both.

24. Testimonials or endorsements

(1) No person shall promote a tobacco product by means of a testimonial or an endorsement, however displayed or communicated, that is misleading or incapable of fully informing consumers of the hazards of tobacco, without evoking a conflicting message or impression.

(2) For the purposes of this section, the depiction of a person, character or animal, whether real or fictional, including 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.

(3) A person who contravenes 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.

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.

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.

27. Name of facility

The name of a manufacturer or tobacco product-related brand name may only appear on a permanent facility if such facility is owned or leased and used by the manufacturer.

28. Accessories

(1) No manufacturer, distributor or retailer shall manufacture, distribute or sell an accessory that displays a tobacco product-related brand name or the name of the manufacturer.

(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.

29. Displays on non-tobacco products

(1) No person shall display a tobacco brand element on a non-tobacco product.

(2) No person shall furnish or promote non-tobacco products bearing tobacco-related brand names.

(3) 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 shillings, or to imprisonment for a term not exceeding six months, or to both.

30. Sales promotions

(1) No manufacturer, distributor or retailer shall—

- (a) offer or provide any consideration, whether directly or indirectly, for the purchase of a tobacco product, including a gift to a purchaser or

a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest;

- (b) furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or
- (c) furnish an accessory that bears a tobacco product-related brand element without monetary consideration or in consideration of a product or service or the performance of a service.

(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 six months, or to both.

31. Communication media

(1) No person shall, on behalf of another person, with or without consideration, publish, broadcast or otherwise disseminate any promotion that is prohibited by this Part.

(2) No person shall, by means of a publication that is published outside Kenya, or a broadcast that originates outside Kenya, or any other communication that originates outside Kenya, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco-related brand element in a manner that is contrary to the requirements of this Part.

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

PART VI – INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

32. Right to smoke free environment

(1) Every person has a right to a clean and healthy environment 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 a parent and or guardian is responsible for ensuring that the children are free from second-hand smoke.

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.

34. Display of notices

(1) The manager or owner of a prohibited smoking area shall cause to be displayed therein, clear and prominent notices in both English and Kiswahili, stating that smoking is prohibited and the prescribed penalty therefor.

(2) Every notice under subsection (1) shall be in such form and of such size, and shall be posted in such place, as may be prescribed.

(3) A manager or owner of any prohibited smoking area may order any person who smokes within the area or within the immediate vicinity of the entrance to the area to cease smoking forthwith, indicating the penalty therefor and may require any person failing, refusing or neglecting to comply with such order to leave the area.

(4) A person who hinders, obstructs, threatens or abuses or assaults a manager or owner of a prohibited smoking area, in the execution of the powers conferred by this section commits an offence and may be arrested without a warrant by such manager or by a police officer or other authorised officer.

(5) A person who commits an offence under subsection (4) 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.

(6) A manager or owner of a prohibited smoking area who fails to display the smoking prohibition warning as prescribed in subsections (1) and (2) commits an offence and shall be liable on conviction to a fine not exceeding one hundred and

fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

[Act No. 6 of 2009, Sch.]

35. Specially designated smoking areas

(1) Notwithstanding the foregoing provisions of this Part, the manager or owner of a prohibited smoking area may provide specially designated smoking areas within such place:

Provided that any specially designated smoking areas provided pursuant to this subsection shall meet the requirements of subsection (2).

(2) A specifically designated smoking area shall be a room—

- (a) that is ventilated in such manner as to ensure that air from the area is directly exhausted to the outside and does not re-circulate or drift to other areas within the public facility;
- (b) which is separate, enclosed and sealed from the floor to the roof with a door;
- (c) in which non-smoking individuals do not have to enter the area for any purpose while smoking is occurring; and
- (d) that is cleaned or maintained only when smoking is not occurring in the area.

PART VII – ENFORCEMENT

36. Authorised officers

(1) The Director of Medical Services may, from time to time, by notice in the *Gazette*, appoint any person or class of persons to be authorised officers for purposes of this Act.

(2) The Director of Medical Services shall issue a certificate of appointment to every person appointed under this section.

(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act—

- (a) public health officers appointed under the Public Health Act (Cap. 242); and
- (b) any other person upon whom any written law vests functions of the maintenance of law and order.

37. Places authorized officers may enter

(1) For the purposes of ensuring compliance with this Act, an authorised officer may, at any reasonable time, enter any place in which the officer believes on reasonable grounds that—

- (a) tobacco or a tobacco product is or has been produced, manufactured, tested, stored, labelled, sold or used;
- (b) there is anything used in the production, manufacture, testing, packaging, labelling, promotion or sale of a tobacco products;
- (c) there is information relating to the production, manufacture, testing, packaging, labelling, promotion or sale of tobacco product;
- (d) any person or persons is in any way contravening the provisions of this Act.

(2) An authorised officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 36(2).

38. Powers of officers

In carrying out an inspection in any place pursuant to section 37, an authorised officer may—

- (a) examine a tobacco product or any thing referred to in that section;
- (b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the tobacco, tobacco product or thing;
- (c) open or require any person in the place to open any container or package found in the place that the officer believes on reasonable grounds contains tobacco, the tobacco product or thing;
- (d) take or require any person in the place to produce a sample of the tobacco, tobacco product or thing;
- (e) conduct any test or analysis or take any measurements; or
- (f) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act.

39. Use of records

In carrying out an inspection in a place, an authorised officer may—

- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
- (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;
- (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document;
- (d) scrutinise any other record system in use in that place.

40. Entry of dwelling place

An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 41.

41. Authority to issue warrant

(1) Upon an *ex parte* application, a magistrate or judge of the High Court, may issue a warrant authorising the authorised officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

- (a) the dwelling place is a place referred to in section 37;
- (b) entry to the dwelling place is necessary for the administration or enforcement of this Act;
- (c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

42. Use of force

An authorised officer executing the warrant issued under section 41 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

43. Certificate of analysis

An authorised officer who has analysed or examined tobacco, a tobacco product or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

44. Assistance to officers

The owner of a place inspected by an authorised officer under this Act or the person in charge of the place and every person found in the place shall—

- (a) provide all reasonable assistance to enable the authorised officer to carry out his duties under this Act;
- (b) furnish the authorised officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

45. Obstruction

No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorised officer who is carrying out duties under this Act.

46. Seizure

During an inspection under this Act, an authorised officer may seize any tobacco, a tobacco product or thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

47. Storage and removal

The authorised officer may direct that any tobacco, tobacco product or thing seized be kept or stored in the place where it was seized or that it be removed to another place.

48. Interference with seized product or thing

Unless authorised by an officer, no person shall remove, alter or interfere in any manner with any tobacco, tobacco product or other thing seized.

49. Restoration of seized product or thing

Any person from whom tobacco, a tobacco product or thing was seized may, within sixty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the Cabinet Secretary within the prescribed time and in the prescribed manner.

50. Order for restoration

The High Court may order that the tobacco, tobacco product or thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that

- (a) the applicant is entitled to possession of the tobacco, tobacco product or thing seized; and

- (b) the tobacco, tobacco product or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

51. Order of later restoration

(1) Where upon hearing an application made under section 49 the court is satisfied that the applicant is entitled to possession of the tobacco, tobacco product or thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of section 50, the court may order that the tobacco, tobacco product or thing seized be restored to the applicant on the—

- (a) expiration of one hundred and eighty days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time; or
- (b) final conclusion of any such proceeding in any other case.

(2) No order for restoration shall be made under this section if tobacco, a tobacco product or thing has been forfeited by consent under section 52.

52. Forfeiture

Where—

- (a) no application has been made under section 49, or an application has been made but on the hearing of such application no order for restoration is made;
- (b) where a person has been convicted of an offence under this Act in respect of which tobacco, a tobacco product or thing has been seized under this Act;
- (c) an officer has seized tobacco, a tobacco product or thing and the owner or the person in whose possession it was at the time of seizure consents in writing to its forfeiture,

the tobacco, tobacco product or thing is forfeited to the State and may be destroyed or disposed of as the Cabinet Secretary may direct.

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.

54. General penalty

Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

55. Nature of offences

Offences under this Act shall be cognisable offences.

56. Directors and officers of corporations

Where a corporation, registered society or other legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall, on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.

57. Offences by employees or agents

In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused, whether or not the employee is identified or has been prosecuted for the offence.

58. Certified copies and certificate or report of officer as proof

(1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be proof of its contents.

(2) Subject to sections 59 and 60, a certificate or report purporting to be signed by an officer, stating that the officer analysed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

59. Notice to produce

The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report.

60. Attendance of officer

The party against whom the certificate or report provided for under section 58 is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.

61. Evidentiary proceedings

In a prosecution for a contravention of this Act—

- (a) information on a package indicating that it contains a tobacco product is, in the absence of evidence to the contrary, proof that the package contains a tobacco product; and
- (b) a name or address on a package purporting to be the name or address of the person by whom the tobacco product was manufactured

is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

62.

[Spent]

SCHEDULE

[s. 21]

HEALTH MESSAGES

1. The following health messages shall be displayed on every package containing a tobacco product, sign or advertisement stipulated under the provisions of this Act—

- (i) Smoking harms people next to you;
- (ii) Tobacco use kills;
- (iii) Tobacco harms your unborn baby;
- (iv) Tobacco use causes cancer;
- (v) Tobacco use causes heart disease;
- (vi) Tobacco use causes lung disease;
- (vii) Tobacco use is addictive;
- (viii) This product can cause gum disease and tooth loss (includes smokeless tobacco products);
- (ix) This product can cause mouth cancer (includes smokeless tobacco products);
- (x) This product is not a safe alternative to cigarettes (for smokeless tobacco products);
- (xi) Tobacco use causes impotence;
- (xii) Tobacco use causes miscarriages;
- (xiii) Tobacco use causes infertility in women;
- (xiv) Tobacco use causes mental retardation in children.

2. The health messages in paragraph one or any pictures or pictograms prescribed shall be displayed on every package containing a tobacco product in the manner prescribed under section 19 or such other manner as may be prescribed in the Regulations under this Act.

3. The Cabinet Secretary may upon the Board’s recommendation, adjust the format type, size, text and type of any of the health messages, pictures or pictograms required under the provisions of this Act if such change would promote greater understanding of the risks associated with the use of any tobacco product.

