Tobacco (Control of Advertisements and Sale) (Amendment) Bill

Bill No. /2015.

_Read the first time on_ 2015.

A BILL

_initiated_

An Act to amend the Tobacco (Control of Advertisements and Sale) Act (Chapter 309 of the 2011 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:
Short title and commencement

1. This Act may be cited as the Tobacco (Control of Advertisements and Sale) (Amendment) Act 2015 and comes into operation on such date as the Minister may, by notification in the Gazette, appoint.

Amendment of section 2

2. Section 2 of the Tobacco (Control of Advertisements and Sale) Act (referred to in this Act as the principal Act) is amended —
   (a) by inserting, immediately before the definition of “advertisement” the following definition:
   “‘access’ includes —
   (a) access that is subject to a pre-condition (such as, but not limited to, the use of a password);
   (b) access by way of push technology; or
   (c) access by way of a standing request;”;
   (b) by deleting the definition of “advertisement relating to any tobacco product”;,
   (c) by inserting, immediately after the definition of “Authority”, the following definition:
   “‘chewing tobacco’ means loose-leaf tobacco, plug tobacco, twist tobacco or tobacco bits intended for chewing;”;
   (d) by inserting, immediately after the definition of “cigarette”, the following definition:
   “‘conveyance’ includes any vessel, train, aircraft, vehicle, trailer or other mode of transport;”;
   (e) by inserting, immediately after the words “section 16(1)” in the definition of “imitation tobacco product”, the words “or (2)”;
(f) by inserting, immediately after the definition of “imitation tobacco product”, the following definition:

““licence” means an import and wholesale licence referred to in section 18(1) or (2), or a retail licence referred to in section 18(3);”;

(g) by deleting the definitions of “premises” and “publish” and substituting the following definitions:

““point of sale” means an immobile cash register or counter at which a sale by retail may be made, and does not include a vehicle or vending machine;

“premises” includes any vacant land, building, conveyance or place, or part of any land, building, conveyance or place, in Singapore;

“publish”, in relation to an advertisement, includes to distribute, show, exhibit, display or broadcast by any form of communication or in any manner;

“retail outlet” means any shop, kiosk or stall in Singapore at which goods are sold or exposed for sale by retail;

“sell” includes —

(a) to barter or exchange; or

(b) to supply in circumstances in which the supplier derives a direct benefit, pecuniary or otherwise;”;

(h) by deleting the words “, with its grammatical variations,” in the definition of “smoking”;

(i) by inserting, immediately after the definition of “tobacco substitute”, the following definition:

““unauthorised advertisement” means any advertisement described in section 3(1) relating to a tobacco product or an imitation tobacco product, other than —
(a) a price-list referred to in section 3(1A);  

(b) an advertisement the publication of which is approved under section 3(2); or  

(c) an advertisement published, or caused to be published, by a person exempted under section 22 from section 3(1);”; and  

(f) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:  

“(2) For the purposes of this Act —  

(a) an offer for sale that is on an online location is regarded as an offer for sale to a person in Singapore if, and only if, the online location is accessed, or is available for access, by end-users in Singapore; and  

(b) a sale that is transacted online is regarded as a sale in Singapore if, and only if, the purchaser is physically present in Singapore and the purchased product is intended to be delivered in Singapore.”.

Amendment of heading to Part II  

3. Part II of the principal Act is amended by inserting, immediately after the words “TOBACCO PRODUCTS” in the Part heading, the words “AND IMITATION TOBACCO PRODUCTS”.  

Amendment of section 3  

4. Section 3 of the principal Act is amended —  

(a) by deleting the words “subsection (2) or section 22, any person” in subsection (1) and substituting the words “subsection (1A) or (2) or section 22, any person in Singapore”;


(b) by inserting, immediately after the words “publication of any advertisement” in subsection (1), the words “with a Singapore-customer link or a foreign-customer link”;

(c) by inserting, immediately after subsection (1), the following subsection:

“(1A) Subsection (1) does not apply to a price-list that is of a prescribed description and is published in prescribed circumstances.”;

(d) by inserting, immediately after the words “tobacco product” wherever they appear in subsections (1), (2) and (3), the words “or imitation tobacco product”;

(e) by inserting, immediately after subsection (5), the following subsection:

“(6) For the purposes of subsection (1)—

(a) an advertisement has a foreign-customer link if none of the persons capable of having access to the advertisement is physically present in Singapore; and

(b) an advertisement has a Singapore-customer link if any of the persons capable of having access to the advertisement is physically present in Singapore.”; and

(f) by inserting, immediately after the words “tobacco products” in the section heading, the words “and imitation tobacco products”.

Repeal and re-enactment of section 4

5. Section 4 of the principal Act is repealed and the following section substituted therefor:

“Defences

4.—(1) Where a person is charged with an offence for contravening section 3(1) in relation to an unauthorised
advertisement, it is a defence for the person charged to prove, on the balance of probabilities, that —

(a) the person was acting in the course of a business of delivering, transmitting or broadcasting communications (in whatever form or by whatever means) or making data available; and

(b) the nature of the business is such that persons undertaking it have no control over the nature or content of the communications or data.

(2) Where a person is charged with an offence for contravening section 3(1) in relation to taking part in the publication of an unauthorised advertisement, it is a defence for the person charged to prove, on the balance of probabilities, that the advertisement was published in such circumstances that the person did not know and had no reason to believe that the person was taking part in the publication of the advertisement.”.

Amendment of section 6

6. Section 6 of the principal Act is amended —

(a) by deleting the words “an advertisement relating to any tobacco product which has been published” and substituting the words “an unauthorised advertisement which has been published with a Singapore-customer link or foreign-customer link (within the meaning of section 3(6))”;

(b) by inserting, immediately after the words “marketing of any tobacco product”, the words “or imitation tobacco product”.

Amendment of section 7

7. Section 7 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) This Part does not apply to any advertisement described in section 3(1)(a), (b) or (c) (called in this section a relevant advertisement), if the advertisement is contained in a newspaper that —
(a) is printed or published outside Singapore;
(b) is brought into Singapore for sale, free distribution or personal use; and
(c) is not a newspaper of a class or description specified by the Minister by notification in the Gazette.”; and

(b) by deleting the words “advertisement relating to any tobacco product” in subsection (2) and substituting the words “any relevant advertisement”.

Amendment of section 8

8. Section 8 of the principal Act is amended —

(a) by deleting the words “advertisement relating to any tobacco product” and substituting the words “unauthorised advertisement”; and

(b) by inserting, immediately after the words “brand of tobacco product”, the words “or imitation tobacco product”.

Amendment of section 9

9. Section 9 of the principal Act is amended —

(a) by deleting the words “No person shall sell or offer for sale” in subsection (1) and substituting the words “A person in Singapore must not sell or offer for sale to any person, whether in Singapore or elsewhere”; and

(b) by deleting subsections (2) and (3) and substituting the following subsections:

“(2) A person in Singapore must not —
(a) distribute or give;
(b) cause to be distributed or given; or
(c) assist in the distribution or giving of,
any free sample of a tobacco product to the public or any section of the public (whether in Singapore or elsewhere) other than to persons who are associated or concerned
with the manufacture, distribution or sale of tobacco products.

(3) A person in Singapore must not offer or give any tobacco product as a prize in any lottery, raffle, draw, game or competition, whether held in Singapore or elsewhere.”.

New section 9A

10. The principal Act is amended by inserting, immediately after section 9, the following section:

“Prohibition on shopper loyalty programmes involving tobacco products

9A.—(1) A person in Singapore must not implement or conduct a programme —

(a) under which a gift or other benefit may be obtained by a purchaser of tobacco products on the basis of the amount or type of those products purchased, whether or not the programme extends to the purchase of other goods or services; or

(b) under which a purchaser of goods or services may be entitled to a gift of any tobacco product, whether or not the purchaser may accept another gift.

(2) For the purposes of subsection (1), it does not matter whether the programme is implemented or conducted in Singapore or elsewhere, or whether or not the purchaser is physically present in Singapore.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both; or

(b) in the case of a second or subsequent conviction, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 12 months or to both.”.
Amendment of section 10

11. Section 10(1) of the principal Act is amended by deleting the words “who, directly or indirectly —” and substituting the words “in Singapore who, directly or indirectly, does any of the following in Singapore:”.

Amendment of section 11

12. Section 11 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) A person who, being below the age of 18 years —

(a) uses or has in the person’s possession, in a public place or on a road in Singapore, any tobacco product; or

(b) buys in Singapore any tobacco product,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $300.

(1A) For the purposes of subsection (1), it does not matter whether the possession or the buying of the tobacco product by the person is for the person’s own use or for someone else to use.”; and

(b) by deleting the words “the officer may seize any tobacco product in the possession of such person” in subsection (2) and substituting the words “or in possession of any tobacco product, the officer may seize the tobacco product”.

Amendment of section 12

13. Section 12(1) of the principal Act is amended by deleting the words “No person shall —” and substituting the words “A person in Singapore must not do the following in Singapore:”.

New section 12A

14. The principal Act is amended by inserting, immediately after section 12, the following section:
“Prohibition on display of tobacco products

12A.—(1) Except as otherwise provided in subsection (3) or exempted under section 22, a person who sells or offers for sale any tobacco product by retail on any premises —

(a) must not display or cause to be displayed any tobacco product on the premises when so selling or offering for sale;

(b) must ensure that no customer or member of the public can see the tobacco products from inside or outside the premises; and

(c) must ensure that paragraph (b) is complied with in the prescribed manner.

(2) Except as otherwise provided in subsection (3) or exempted under section 22, a person who is the owner or occupier of any premises to which the public or any section of the public in Singapore has access (on payment or otherwise) must not display or cause to be displayed any tobacco product on the premises.

(3) This section does not apply to the display of tobacco products on any premises —

(a) to a customer of the business concerned at the customer’s request;

(b) by a customer of the business concerned; or

(c) in such other circumstances as may be prescribed.

(4) However, a display of tobacco products referred to in subsection (3) must not consist of a display of the products, or representations of the products, that constitute an advertisement itself as distinct from the display allowed under that subsection.

(5) A person who contravenes subsection (1)(a) or (b) or (2) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both; or
(b) in the case of a second or subsequent conviction, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) A person who contravenes subsection (1)(c) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 3 months or to both; or

(b) in the case of a second or subsequent conviction, to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both.”.

Repeal and re-enactment of section 13

15. Section 13 of the principal Act is repealed and the following section substituted therefor:

“Warning notices

13.—(1) A person who sells or offers for sale any tobacco product by retail at any retail outlet must display or cause to be displayed at the retail outlet such number of warning notices of such wording, type or appearance and at such locations at the retail outlet as the Authority may direct.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding $5,000; or

(b) in the case of a second or subsequent conviction, to a fine not exceeding $10,000.

(3) In this section, “warning notice” means a notice stating to the effect that the sale of any tobacco product to persons below the age of 18 years is prohibited by law.”.

Repeal of section 14

16. Section 14 of the principal Act is repealed.
Amendment of section 15

17. Section 15 of the principal Act is amended by deleting the words “no person shall import, distribute, sell or offer for sale” wherever they appear in subsections (1) and (2) and substituting in each case the words “a person in Singapore must not import into Singapore, or distribute, sell or offer for sale in Singapore”.

Repeal and re-enactment of section 16

18. Section 16 of the principal Act is repealed and the following section substituted therefor:

“Prohibition of imitation tobacco products

16.—(1) A person in Singapore must not import into Singapore, or distribute, sell or offer for sale in Singapore, any confectionery or other food product, toy, device or article —

(a) that resembles, or is designed to resemble, a tobacco product;

(b) that is capable of being smoked;

(c) that may be used in such a way as to mimic the act of smoking; or

(d) the packaging of which resembles, or is designed to resemble, the packaging commonly associated with tobacco products.

(2) A person in Singapore must not import into Singapore, or distribute, sell or offer for sale in Singapore, any component of a toy, a device or an article referred to in subsection (1).

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) if the person has no previous qualifying conviction, to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both; or

(b) if the person has any previous qualifying conviction, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 12 months or to both.
(4) In subsection (3), “qualifying conviction” means —

(a) a conviction for an offence under subsection (3); or

(b) a conviction for an offence under section 16(2) as in force immediately before the date of commencement of section 18 of the Tobacco (Control of Advertisements and Sale) (Amendment) Act 2015.

(5) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both; or

(b) in the case of a second or subsequent conviction, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 12 months or to both.”.

Amendment of section 17A

19. Section 17A(1) of the principal Act is amended by deleting the words “no person shall import, distribute, sell or offer for sale” and substituting the words “a person in Singapore must not import into Singapore, or distribute, sell or offer for sale in Singapore”.

Repeal and re-enactment of section 18

20. Section 18 of the principal Act is repealed and the following section substituted therefor:

“Licence required for dealing with tobacco products

18.—(1) A person must not import any tobacco product, unless the person holds a valid import and wholesale licence.

(2) A person must not —

(a) distribute by wholesale at any premises;

(b) sell or offer for sale by wholesale at any premises;

(c) permit to be sold or offered for sale by wholesale at any premises; or
(d) have in the person’s possession for sale by wholesale at any premises, any tobacco product, unless the person holds a valid import and wholesale licence in respect of those premises.

(3) A person must not do any of the following in Singapore:

(a) distribute by retail;

(b) sell or offer for sale by retail;

(c) permit to be sold or offered for sale by retail;

(d) have in the person’s possession for sale by retail, any tobacco product, unless —

(i) the person holds a valid retail licence authorising any of those acts to be carried out at a single point of sale within a retail outlet specified in the licence; and

(ii) the person carries out any of those acts only at the specified point of sale in accordance with the terms of that retail licence.

(4) A person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction —

(a) if the person has no previous qualifying conviction, to a fine not exceeding $5,000; or

(b) if the person has any previous qualifying conviction, to a fine not exceeding $10,000.

(5) In subsection (4), “qualifying conviction” means —

(a) a conviction for an offence under subsection (4); or

(b) a conviction for an offence under section 18(4) as in force immediately before the date of commencement of section 20 of the Tobacco (Control of Advertisements and Sale) (Amendment) Act 2015.

(6) To avoid doubt, nothing in subsection (1), (2) or (3) authorises any person to import, distribute, sell or offer for sale, permit to be sold or offered for sale, or have in the person’s
possession for sale, any tobacco product that is prohibited under section 15.

(7) No licence is to be granted for the sale by wholesale or retail of any tobacco product by way of a vending machine.

(8) An application for a licence must be made to the Authority in writing in such form as the Authority may determine.

(9) The Authority may grant a licence on such terms and conditions as it thinks fit, if the Authority is satisfied that the prescribed requirements for the grant of a licence are met.

(10) Any person who is aggrieved by a decision of the Authority to refuse to grant or renew a licence to the person or to revoke, suspend or cancel the person’s licence may appeal to the Minister —

(a) within 14 days after receiving notice of the decision; or

(b) within such extended period as the Minister may allow in any particular case.”.

Amendment of section 21

21. Section 21 of the principal Act is amended by deleting the words “tobacco product,” and substituting the words “tobacco product or imitation tobacco product, being”.

Amendment of section 22

22. Section 22(1) of the principal Act is amended by inserting, immediately after the word “exempt”, the words “by order published in the Gazette”.

Amendment of section 23

23. Section 23 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:
“(1) If a police officer or an authorised officer reasonably suspects that a person has committed or is committing an offence under this Act, the officer may do all or any of the following:

(a) require the person to furnish evidence of the person’s identity;

(b) search any bag or thing belonging to or in the possession of the person;

(c) require the person to reveal the contents of the person’s pockets, if any;

(d) arrest the person without warrant.

(1A) Any person arrested under subsection (1)(d) must, within 48 hours after the person is arrested, be produced before a Magistrate’s Court or a District Court (called in this section a Court).”; and

(b) by deleting subsection (3).

Amendment of section 24

24. Section 24 of the principal Act is amended —

(a) by deleting the word “and” at the end of subsection (1)(a);”

(b) by deleting paragraph (b) of subsection (1) and substituting the following paragraphs:

“(b) require, by written order, any person who appears to be acquainted with the facts and circumstances concerning the case to attend before the Chief Executive or an authorised officer to answer any question or to provide a statement in writing; or

(c) require any person —

(i) to furnish in writing any information within the person’s knowledge that the Chief Executive may require; or
(ii) to produce for inspection any document or record within the person’s possession that the Chief Executive may require.”;

(c) by inserting, immediately after the words “subsection (1)(a)” in subsection (2), the words “, (b) or (c)”;

(d) by deleting the word “If” in subsection (4) and substituting the words “Without prejudice to subsection (5), if”; and

(e) by inserting, immediately after subsection (4), the following subsection:

“(5) A person who, without reasonable excuse, fails to comply with any requirement of the Chief Executive or an authorised officer under subsection (1)(b) or (c) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both.”.

Amendment of section 26

25. Section 26 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) The Chief Executive or an authorised officer may, for an enforcement purpose, do all or any of the following:

(a) inspect at all reasonable hours any advertisement, tobacco product or imitation tobacco product, vending machine, document, material, article or equipment;

(b) at any time and without warrant enter and search any premises that the Chief Executive or authorised officer reasonably suspects are being used for or in connection with the commission of the offence;
(c) at any time and without warrant stop, board and search any conveyance that the Chief Executive or authorised officer reasonably suspects is being used for or in connection with the commission of the offence;

(d) require any person carrying on a trade or business or employed in connection with a trade or business to produce, at a reasonable hour, any book, document or material relating to the trade or business and may take copies of, or of any entry in, any such book, document or material;

(e) seize any advertisement, tobacco product or imitation tobacco product, vending machine, document, material or article —

(i) for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed; or

(ii) which the Chief Executive or authorised officer has reason to believe may be required as evidence in proceedings for the offence;

(f) for the purposes of paragraph (e), require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, the Chief Executive or authorised officer may do so himself."

(b) by deleting the words “an advertisement relating to any tobacco product” in subsection (2) and substituting the words “an unauthorised advertisement”;

(c) by deleting the words “vending machine or document” in subsection (4)(a) and substituting the words “vending machine, document, material or article”; and

(d) by inserting, immediately after subsection (5), the following subsections:
“(6) For the purposes of subsection (1), if any document or material required by the Chief Executive or an authorised officer is kept in electronic form—

(a) the power of the Chief Executive or authorised officer to inspect the document or material includes the power to—

(i) access any computer or other equipment (including a mobile telephone) in which the document or material is stored; and

(ii) require any person having charge of, or otherwise concerned with the operation of, the computer or equipment to provide assistance in gaining such access;

(b) the power of the Chief Executive or authorised officer to require such document or material to be produced includes the power to require a copy of the document or material to be produced in legible form; and

(c) the power of the Chief Executive or authorised officer to seize such document or material includes the power to make copies of the document or material in legible or electronic form, or to transfer the information from the document or material to a disk, tape or other storage device.

(7) If the Chief Executive or authorised officer is unable to make copies of the document or material, or transfer the information from the document or material, under subsection (6)(c), the Chief Executive or authorised officer may—

(a) seize the computer or equipment in which the document or material is stored, as evidence in proceedings for an offence under this Act; and

(b) require any person having charge of, or otherwise concerned with the operation of, the
computer or equipment to disclose any password or access code for gaining access to the document or material held in the computer or equipment.

(8) In subsection (1), “enforcement purpose” means —

(a) ensuring that the provisions of this Act and the conditions imposed on any licence are complied with; or

(b) investigating any offence under this Act.”.

Amendment of section 27

26. Section 27(1) of the principal Act is amended by inserting, immediately after the words “section 25” in paragraph (b), the words “or 26”.

Amendment of section 29

27. Section 29 of the principal Act is amended —

(a) by deleting the words “advertisement, product or vending machine” wherever they appear in subsections (1), (2), (4) and (5) and substituting in each case the word “thing”;

(b) by deleting the words “advertisement, product or vending machine” wherever they appear in subsections (3) and (6) and substituting in each case the words “thing seized”; and

(c) by deleting subsection (7) and substituting the following subsection:

“(7) All things forfeited or deemed to be forfeited must be delivered to the Authority or an officer of the Authority and must be disposed of in accordance with the directions of the Chief Executive.”.

Amendment of section 30

28. Section 30 of the principal Act is amended by deleting the words “advertisement, product or vending machine” and substituting the word “thing”.

Amendment of section 37

29. Section 37 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to any of the following matters:

(a) the class or classes of licences to be granted under section 18, the form and duration of the licences, the terms and conditions upon which and the circumstances in which the licences may be granted, held, suspended, cancelled, altered, extended, renewed or replaced and the fees payable in respect of the licences;

(b) a register to be kept of the licences granted, the particulars to be entered in the register and for the publication of the names of licensees;

(c) requiring such information or security as the Minister considers necessary in relation to the application for the grant or renewal of a licence;

(d) prescribing the books, records or accounts to be kept by licensees.”.

Saving and transitional provisions

30.—(1) Despite section 20, a person who, immediately before the commencement of that section, holds a valid retail licence in respect of a retail outlet (as defined in the principal Act amended by this Act), may until [date] or the earlier expiry, revocation, suspension or cancellation of the retail licence under the principal Act as amended by this Act —

(a) distribute by retail;

(b) sell or offer for sale by retail;

(c) permit to be sold or offered for sale by retail; or

(d) have in the person’s possession for sale by retail,
any tobacco product at the retail outlet, even if—

(i) that retail licence does not specify a single point of sale at which the acts authorised by that retail licence are to be carried out; or

(ii) tobacco products are sold at more than one point of sale at the retail outlet.

(2) For a period of 2 years after the date of commencement of any provision in this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

Note 1: Tobacco (CAS) (Am) Bill v.09 (hns 18.6.15)