

F. No. P.16011/04/2020-TC (Part)

Government of India

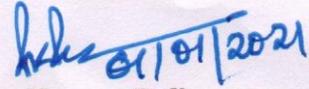
Ministry of Health & Family Welfare
(Tobacco Control Division)

Subject: Placing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 in public domain-**reg**

The Government of India has drafted the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020.

The said Bill is placed in public domain (ntcp.nhp.gov.in OR www.mohfw.gov.in), as part of pre-legislative consultations, with a view to elicit the comments/views of public. The comments should be specific and focused on the provisions of the Bill.

The comments/views must be e-mailed at cotpaamendment@gmail.com on or before 31st January, 2021 by 5:00 PM.


(Pradip Kumar Pal)

Under Secretary to the Government of India

THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) (AMENDMENT) BILL, 2020

	A BILL
	<i>further to amend the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.</i>
	Be it enacted by Parliament in the Seventy First Year of the Republic of India as follows:-
	<p>1. (1) This Act may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2020.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p>
No.34 of 2003 Amendment of Preamble	<p>2. In the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003(hereinafter referred to as the principal Act),-</p> <p>In the Preamble, after the words “.....take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco” the words, “AND WHEREAS, India is a signatory to the World Health Organization Framework Convention on Tobacco Control [WHO FCTC] adopted in Geneva, Switzerland on 21st day of May, 2003 which came into force on the 27th day of February, 2005” shall be inserted as a separate para.</p>
Amendment of Section 3	<p>3. In section 3 of the principal Act,--</p> <p>i. for clause (a), the following clause shall be substituted, namely:-</p> <p>(a) “advertisement” means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website or social media and includes through any notice, circular, label, wrapper, invoice or other documents or device.”</p> <p>(ii) for clause (k), the following clause shall be substituted, namely:-</p>

	<p>“production”, with its grammatical variations and cognate expressions, includes the making of tobacco products and shall include-</p> <p>(i) Packing, labeling or re-labelling, of containers;</p> <p>(ii) Re-packing from bulk packages to retail packages; and</p> <p>(iii) The adoption of any other method to render the tobacco product marketable;</p>
Amendment of Section 4	4. In section 4 of the principal Act, the proviso, shall be omitted;
Amendment of Section 5	5. In section 5 of the principal Act,-
	(i) For sub-section (1), the following sub-section shall be substituted, namely:-
	“(1) No person shall directly or indirectly advertise cigarettes or any other tobacco products through any medium and no person shall take part in any advertisement that directly or indirectly promote the use or consumption of cigarettes or any other tobacco products.”
	(ii) In sub-section (2), proviso (a) and (b), shall be omitted;
	<p>Explanation: For the purpose of this section, the expression, -</p> <p>a. “medium” includes but not limited to audio, visual, audio-visual, print (including newspapers or magazines whether domestic or international, pamphlets, leaflets, flyers and letters), billboards, hoardings, posters, signs, non-tobacco products, tobacco accessories, buildings or other structures, vehicles, television, radio, films, music, games, live performances, the internet including over-the-top media services, social media platforms, mobile telephones, and any other technologies;-</p> <p>b. “promote” includes but not limited to supply or offer to supply free samples, sale or offer to sale at discounted price, sale or offer to sale on internet and/or any other forms of communication, sponsorship, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;</p> <p>c. “indirectly advertise” includes but is not limited to the followings:</p>

	<ol style="list-style-type: none"> 1. the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events; 2. the use of a mark or trade mark of tobacco products for marketing, promoting or advertising other goods, services and events; 3. the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and services; 4. the use of particular colours and layout and/or presentation those are associated with particular tobacco products; and 5. the use of tobacco products and smoking situations when advertising other goods and services;
Amendment of Section 6	<p>6. For Section 6 of the principal Act, the following section shall be substituted, namely:-</p> <p>“6. No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product -</p> <p>(a) to or by any person who is under twenty-one years of age, and</p> <p>(b) in an area within a radius of one hundred meters of any educational institution.”</p>
Amendment of Section 7	<p>7. In section 7 of the principal Act,--</p> <p>(i) in sub-section(2), following proviso shall be inserted, namely:-</p> <p>“Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packaging.”</p> <p>(ii) for sub-section (4), the following sub-section shall be substituted, namely:-</p> <p>“(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply.”</p> <p>(iii) for sub-section (5), the following sub-section shall be substituted, namely:-</p>

	<p>“(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed.”</p>
Amendment of Section 10.	<p>8. In section 10, of the principal Act, the words “or indication of nicotine and tar contents”, shall be omitted.</p>
Insertion of new Section 10(A)	<p>9. After Section 10 of the principal Act, the following section shall be inserted, namely:-</p> <p>“10A. (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.</p> <p>(2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.</p> <p>Explanation. – For the purpose of this section, the expression, “illicit” means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.</p> <p>(3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government.”</p>
Amendment of Section 11.	<p>10. For section 11, of the principal Act, the following section shall be substituted, namely:-</p> <p>“11. For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary.”</p>
Amendment of Section 15	<p>11. In section 15 of the principal Act,-</p> <p>(i) In sub-section 2,-</p> <p>the words “and indication of nicotine and tar contents”, shall be omitted.</p>

	<p>(ii) After sub-section 2, the following proviso shall be inserted, namely -</p> <p>“Provided that this section shall not apply to seized packages of illicit cigarette or any other tobacco product.”</p>
Amendment of Section 20.	<p>12. For section 20 of the principal Act, the following section shall be substituted, namely:-</p> <p>“20 (1) Any person who produces or manufactures cigarettes or any other tobacco products, in contravention of section 7 shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.</p> <p>(2) Any person who sells or distributes cigarettes or any other tobacco products, in contravention of section 7 shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees.”</p>
Insertion of new section 20A	<p>13. After section 20 of the principal Act, the following section shall be inserted, namely:-</p> <p>“20A. (1) Any person who produces or manufactures or supplies or imports illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.</p> <p>(2) Any person who distributes, sell, offer for sale or permit sale of illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees.</p>
Amendment of Section 21	<p>14. In Section 21 of the principal Act, in sub-section (1), for the words “which may extend to two hundred rupees” the words, “of two thousand rupees” shall be substituted.</p>

Amendment of Section 22.	15. In section 22 of the principal Act,-
	(i) in sub-section (a):- “for the words, “one thousand rupees” the words, “ fifty thousand rupees ” shall be substituted.”
	(ii) in sub-section (b):- “for the words, “five thousand rupees” the words, “ one lakh rupees ” shall be substituted.”
Amendment of Section 23.	16. For section 23 of the principal Act, the following section shall be substituted, namely:-
	“23. Where any person has been convicted for contravention of the provisions of this Act, the packages of cigarettes and other tobacco products or advertisement materials or any other materials may be forfeited to the Government and such packages or materials shall be disposed of in accordance with the provisions contained in the Code of Criminal Procedure, 1973.”
Amendment of Section 24.	17. For section 24 of the principal Act, the following section shall be substituted, namely:-
	“24. Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with imprisonment for a term, which may extend to seven years and with fine which may extend to one lakh rupees.”
Amendment of Section 25.	18. In section 25 of the principal Act,-
	“The words “ and 6 ” and “ or section 6 ”, shall be omitted.”
Amendment of Section 27	19. For section 27 of the principal Act, the following section shall be substituted, namely:-
	“27. Offences to be cognizable and bailable.--
	(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable.
	(2) For the avoidance of doubts, it is hereby declared that offences punishable under sections 5, 6, 7 and 10A of this Act shall be cognizable.”
	20. In sub-section (1) of section 28 of the principal Act,-

Amendment of Section 28	<p>“(i) the words “or section 6” shall be omitted.</p> <p>(ii)for the words, “which may not exceed two hundred rupees” the words, “of two thousand rupees” shall be substituted.”</p>
Amendment of Section 30	<p>21. For section 30 of the principal Act, the following section shall be substituted, namely:-</p>
	<p>“30. The Central Government, after giving by notification in the Official Gazette, not less than three months’ notice of its intention so to do, may, by like notification, add to, or, omit from, the Schedule any tobacco products and thereupon the Schedule shall be deemed to have been amended accordingly.”</p>
Insertion of new Section 30A.	<p>22. After section 30 of the principal Act, the following section shall be inserted, namely:-</p> <p>“30A. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”</p>
Insertion of new Section 30B	<p>23. After the new section 30A, the following section shall be inserted, namely: -</p>
	<p>“30B. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.”</p>
Amendment of Section 31	<p>24. In section 31 of the principal Act, in sub-section (2), -</p> <p>(i) for clause (b), the following clause shall be substituted, namely:-</p> <p>“(b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under sub-section (2) of section 10A”.</p> <p>(ii) In clause (d), the words “or to indicate the nicotine and tar contents”, shall be omitted.</p>
Amendment of Section 32	<p>25. In section 32 of the principal Act, for proviso, the following proviso shall be substituted, namely:-</p>

Provided that nothing in this section shall be deemed to authorize the export of any package of cigarettes or other tobacco products, not containing the specified warning and quantity to any country if the law in force in that country requires that each package of cigarettes or other tobacco products shall have a specified warning and quantity.