

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

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**Bill No. 10/2016.**

*Read the first time on 29 February 2016.*

A BILL

*i n t i t u l e d*

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 is the Tobacco (Control of Advertisements and Sale) (Amendment) Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

### 5 Amendment of section 2

2. Section 2 of the Tobacco (Control of Advertisements and Sale) Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately before the definition of “advertisement”, the following definition:

10 “ “access” includes —

(a) access that is subject to a precondition (such as, but not limited to, the use of a password);

(b) access by way of push technology; or

15 (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:

20 “ “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:

25 “ “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)”;

30 (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: 5

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

“premises” includes any or part of any vacant land, building, conveyance or place in Singapore; 10

“publish”, in relation to an advertisement, includes to distribute, show, exhibit, display or broadcast by any form of communication or in any manner; 15

“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 20

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

“Singapore-connected person” means —

(a) a citizen or a permanent resident of Singapore; 25

(b) an individual in Singapore;

(c) a company or other body corporate incorporated in, or having its central management and control in, Singapore; 30  
or

(d) an unincorporated body established in Singapore,

and includes any person or persons constituting or responsible for the management of a person in paragraph (c) or (d);”;

5 (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:

10 “ “unauthorised advertisement” means any advertisement described in section 3(1)(a), (b), (c) or (d), but not —

(a) a price list referred to in section 3(1A);

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

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

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

20 “(2) For the purposes of this Act, 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.”.

## 25 **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**

30 **4.** Section 3 of the principal Act is amended —

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

“(1) Subject to subsection (1A) or (2), a person must not publish, or cause to be published, or take part in the publication, in Singapore, of any advertisement —

- (a) containing any express or implied inducement, suggestion or request to purchase or to use any tobacco product or imitation tobacco product; 5
- (b) providing a facility for a person accessing the advertisement on the Internet to purchase any tobacco product or imitation tobacco product;
- (c) relating to any tobacco product or imitation tobacco product or its use in terms which are calculated, expressly or impliedly, to lead to, induce, urge, promote or encourage the use of the tobacco product or imitation tobacco product; or 10  
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- (d) mentioning, illustrating or depicting —
  - (i) the name or trade name of any person associated or concerned with the manufacture, distribution or marketing of any tobacco product or imitation tobacco product; 20
  - (ii) a brand name of, or trade mark relating to, any tobacco product or imitation tobacco product; or
  - (iii) any pictorial device commonly associated with a brand name of, or trade mark relating to, any tobacco product or imitation tobacco product. 25

(1A) Subsection (1) does not apply to an advertisement comprising only a price list that is of a prescribed description and is published in prescribed circumstances. 30

(1B) 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, unless paragraph (b) applies; 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.

(1C) In subsection (1B), “qualifying conviction” means —

(a) a conviction for an offence under subsection (1B); or

(b) a conviction for an offence under section 3(1) as in force immediately before the date of commencement of section 4 of the Tobacco (Control of Advertisements and Sale) (Amendment) Act 2016.

(1D) In any proceedings against a person for contravening subsection (1), it is not necessary for the prosecution to prove that the person knew or had reason to believe that the advertisement published is of a type described in that subsection.”;

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

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

“(6) In this section, an advertisement that is published electronically is published in Singapore, if —

(a) the advertisement originates in Singapore, even if none of the persons capable of

having access to the advertisement is physically present in Singapore; or

(b) all of the following apply in respect of the advertisement:

(i) the advertisement did not originate in Singapore, or the advertisement's origin cannot be determined; 5

(ii) the advertisement is published or caused to be published by a Singapore-connected person or the Singapore-connected person takes part in that publication; 10

(iii) the advertisement is accessible by persons physically present in Singapore.”; and 15

(d) 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: 20

### **“Defences**

4. 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 — 25

(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 the nature of the business is such that persons undertaking it have no control over the nature or content of the communications or data; or 30

- (b) the person did not know and had no reason to believe that the advertisement was of a type described in section 3(1).”.

### **Amendment of section 6**

5     **6.** Section 6 of the principal Act is amended —

- (a) by deleting the words “relating to any tobacco product which has been published” and substituting the words “described in section 3(1)(a), (c) or (d)”;
- 10     (b) by inserting, immediately after the words “marketing of any tobacco product”, the words “or imitation tobacco product”; and
- (c) by deleting the word “knowingly”.

### **Amendment of section 7**

7. Section 7 of the principal Act is amended —

- 15     (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), (c) or (d) (called in this section a relevant advertisement), if the advertisement is contained in a newspaper that —

- 20             (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
- 25     (b) by deleting the words “advertisement relating to any tobacco product” in subsection (2) and substituting the words “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”.

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### **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 must not sell or offer for sale in Singapore to any person, whether in Singapore or elsewhere”; and
- (b) by deleting subsections (2) and (3) and substituting the following subsections:

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“(2) A person must not —

- (a) distribute or give in Singapore;
- (b) cause in Singapore to be distributed or given; or
- (c) assist in Singapore in the distribution or giving of,

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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.

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

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## **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 “directly or indirectly —” and substituting the words “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 5  
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, 10  
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 15  
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”. 20

## **Amendment of section 12**

**13.** Section 12 of the principal Act is amended —

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

“(1) A person must not do any of the following, 25  
except in the form of a package containing not less than  
the prescribed minimum number of cigarettes:

(a) import, or permit the import, into Singapore of  
any cigarette for the purpose of sale;

(b) distribute, or permit the distribution, in 30  
Singapore of any cigarette for the purpose of  
sale;

- (c) sell or offer to sell, or permit the sale of or offer for sale of, any cigarette in Singapore;
  - (d) possess in Singapore any cigarette for the purpose of sale in Singapore.”; and
- 5 (b) by deleting the words “prescribed number” in the definition of “prescribed number of cigarettes” in subsection (3) and substituting the words “prescribed minimum number”.

### **New section 12A**

10 **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 distributes, sells or offers for sale any tobacco product by retail on any premises —

- 15 (a) must not display or cause to be displayed any tobacco product on the premises when so distributing, 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
- 20 (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 —

- 30 (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

(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. 10

(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 15

(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** 20

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

#### **“Warning notices**

**13.—(1)** A person who distributes, 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 type and at such locations at the retail outlet as the Authority may direct. 25

(2) In relation to the type of warning notice to be displayed, the Authority may give directions about the size, wording or appearance of the warning notice, including requiring the display of any warning notice provided by the Health Promotion Board. 30

(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 \$5,000; or

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

(4) 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” in subsections (1) and (2) and substituting in each case the words “a person 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 must not import into Singapore, or distribute, sell or offer for sale in Singapore, any confectionery or other food product, or any 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 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 —

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(a) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both, unless paragraph (b) applies; 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.

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(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 2016.

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(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

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(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**

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

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**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**

5       **18.**—(1) A person must not import into Singapore any tobacco product, unless the person holds a valid import and wholesale licence.

10       (2) A person must not do any of the following in Singapore except by the authority of and in accordance with a valid import and wholesale licence:

- (a) distribute by wholesale any tobacco product;
- (b) sell or offer for sale by wholesale any tobacco product;
- (c) permit to be sold or offered for sale by wholesale any tobacco product;
- 15       (d) have in the person’s possession for sale by wholesale any tobacco product.

(3) A person must not do any of the following in Singapore except by the authority of and in accordance with a valid retail licence:

- 20       (a) distribute by retail any tobacco product;
- (b) sell or offer for sale by retail any tobacco product;
- (c) permit to be sold or offered for sale by retail any tobacco product;
- 25       (d) have in the person’s possession for sale by retail any tobacco product.

(4) In particular —

- (a) an import and wholesale licence may authorise the doing of any act in subsection (2) only at premises specified in the licence; and
- 30       (b) a retail licence may authorise the doing of any action in subsection (3) only at a single point of sale within a retail outlet specified in the licence.



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

(a) to a fine not exceeding \$5,000, unless paragraph (b) applies; or

(b) if the person has any previous qualifying conviction, to a fine not exceeding \$10,000. 5

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

(a) a conviction for an offence under subsection (5); 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 2016. 10

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

(8) Subject to subsection (9), the Authority may grant a licence on any terms and conditions, if the Authority is satisfied that the prescribed requirements for the grant of a licence are met. 15

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

(10) Any person who is aggrieved by a decision of the Authority refusing to grant or renew a licence to the person, or revoking, suspending or cancelling the person’s licence, may appeal to the Minister — 20

(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. 25

(11) 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.”. 30

### **Amendment of section 20**

**21.** Section 20 of the principal Act is amended by inserting, immediately after the words “satisfies the court that the offence”, the words “, other than an offence under section 3(1B),”.

### 5 **Amendment of section 21**

**22.** Section 21 of the principal Act is amended —

- (a) by deleting the words “No action, suit or other proceedings shall be brought or instituted in any court” and substituting the words “No liability shall lie”;
- 10 (b) by deleting the words “tobacco product,” and substituting the words “tobacco product or imitation tobacco product, being”; and
- (c) by deleting the word “suit” in the section heading and substituting the word “liability”.

### 15 **Amendment of section 22**

**23.** 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**

20 **24.** Section 23 of the principal Act is amended —

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

25 “(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;
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(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 be produced before a Magistrate's Court or a District Court (called in this section a Court) within 48 hours after the person is arrested.”; and

(b) by deleting subsection (3).

#### **Amendment of section 24**

**25.** Section 24 of the principal Act is amended —

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

“(1) For the purpose of investigating any offence under this Act, the Chief Executive or any authorised officer may —

(a) examine orally any person who appears to be acquainted with the facts and circumstances of the case (called in this section a relevant person);

(b) require, by written order, any relevant person to attend before the Chief Executive or an authorised officer to answer any question; or

(c) require any person —

(i) to furnish in writing any information within the person's knowledge that the Chief Executive or authorised officer may require; or

(ii) to produce for inspection any document or record within the person's possession that the Chief Executive or authorised officer may require.”;

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

(c) by deleting subsection (3) and substituting the following subsection:

5                   “(3) The Chief Executive or any authorised officer may reduce to writing any statement made under subsection (1)(a) or (b) by a relevant person, and that statement must be read over to the relevant person, corrected (if necessary) and signed by the relevant person.”;

(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:

15                   “(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**

**26.** Section 26 of the principal Act is amended —

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

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

30                   (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 an offence under this Act;

- (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 an offence under this Act; 5
- (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; 10 15
- (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 an offence under this Act has been committed; or 20
  - (ii) which the Chief Executive or authorised officer has reason to believe may be required as evidence in proceedings for the offence; 25
- (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.”; 30

- (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 —

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(a) seize the computer or other equipment (including a mobile telephone) 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.

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(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

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

### **Amendment of section 27**

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

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### **Amendment of section 29**

28. 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”;

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(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 according to the directions of the Chief Executive.”.

### **Amendment of section 30**

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

### **Repeal and re-enactment of section 31**

**30.** Section 31 of the principal Act is repealed and the following section substituted therefor:

#### **“Protection from personal liability**

**31.** No liability shall lie personally against any of the following individuals who, acting in good faith and with reasonable care, does or omits to do anything in the execution or purported execution of this Act:

- (a) the Chief Executive;
- (b) any police officer;
- (c) any authorised officer;
- (d) any other person acting under the direction of the Chief Executive.”.

### **Amendment of section 37**

**31.** 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; 5
- (c) requiring such information or security as the Minister considers necessary in relation to the application for the grant or renewal of a licence; 10
- (d) prescribing the books, records or accounts to be kept by licensees.”.

### **Application, saving and transitional provisions**

**32.**—(1) Despite section 20, a person who, immediately before the date of 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 6 months after that date or the earlier expiry, revocation, suspension or cancellation of the retail licence under the principal Act as amended by this Act — 15

- (a) distribute by retail; 20
- (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 though —

- (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 25
- (ii) tobacco products are sold at more than one point of sale at the retail outlet.

(2) Sections 4, 5 and 6 apply to and in relation to any advertisement the publication of which is under a contract or arrangement entered into before, on or after the date of commencement of those sections. 30

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

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Tobacco (Control of Advertisements and Sale) Act (Cap. 309) for the following main purposes:

- (a) to extend the prohibition on advertisements relating to tobacco products to advertisements relating to imitation tobacco products;
- (b) to ensure a comprehensive ban on cross-border advertising, promotion and sponsorship of tobacco products on all media, including the Internet, originating from Singapore, in compliance with the World Health Organization's Framework Convention on Tobacco Control to which Singapore is signatory;
- (c) to prohibit the display of tobacco products at points of sale;
- (d) to make refinements to and enhance the licensing regime;
- (e) to enhance the enforcement powers of the Chief Executive of the Health Sciences Authority (the Chief Executive) and authorised officers.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 —

- (a) to clarify the meaning of the term “chewing tobacco” that appears in section 15;
- (b) to extend the definition of “premises” to include vacant land and conveyances;
- (c) to update the definition of “publish” to reflect new modes of communication;
- (d) to insert new definitions for “access”, “conveyance”, “point of sale”, “retail outlet” and “sell” to support amendments elsewhere in the Bill;
- (e) to introduce a new definition of “Singapore-connected person” which is used in new offences that are of extra-territorial application;
- (f) to replace the term “advertisement relating to any tobacco product” with the more intuitive “unauthorised advertisement”; and
- (g) to define “sale in Singapore” in the case of online sale transactions.

Clause 3 amends the heading to Part II to include imitation tobacco products.

Clause 4 amends section 3 —

- (a) to extend the prohibition on tobacco product advertisements to include advertisements relating to imitation tobacco products;
- (b) to extend the prohibition on tobacco product advertisements to include Internet advertisements that provide a facility to a person accessing such advertisements to purchase tobacco products or imitation tobacco products;
- (c) to extend the prohibition on tobacco product advertisements to advertisements that are published electronically in Singapore, which is defined to mean advertisements originating from Singapore, even if the advertisements are for a foreign audience, or, if not originating from Singapore, are accessible by persons physically present in Singapore and published by a Singapore-connected person;
- (d) to exclude advertisements comprising only price lists from the prohibition, if the price lists are of a prescribed description and published in prescribed circumstances; and
- (e) to provide that the prosecution need not prove that a person who is charged with contravening subsection (1) knew or had reason to believe that the advertisement published is of a type described in that subsection.

Clause 5 repeals and re-enacts section 4 to update the defences for an offence under section 3(1).

Clause 6 amends section 6 to align the presumption relating to taking part in the publication of an advertisement that is described in section 3(1)(a), (c) or (d) with the elements of the offence of contravening section 3(1), and to extend the scope of section 6 to imitation tobacco product advertisements.

Clause 7 amends section 7 to extend the scope of the section to imitation tobacco product advertisements.

Clause 8 amends section 8 to extend its application to unauthorised advertisements, including imitation tobacco product advertisements.

Clause 9 amends section 9 to provide that the prohibition against sales promotions of tobacco products, such as the offering of a tobacco product as a free gift with the purchase of any other goods or services, includes promotions originating in Singapore and targeted at any person, whether in Singapore or elsewhere. Section 9 is also amended so that the prohibition against distributing or giving free sample tobacco products to the public in Singapore is extended to include the public outside Singapore. Similarly, offering or giving any tobacco product as a prize in a lottery, raffle, draw, game or competition is an offence, even if the lottery, etc., is not held in Singapore.

Clause 10 inserts a new section 9A to prohibit shopper loyalty programmes involving tobacco products, whether implemented or conducted in Singapore or elsewhere and whether or not the purchaser is physically in Singapore, so long as the person who implements or conducts the programme is in Singapore.

Clause 11 amends section 10(1) to clarify that the prohibition on the supply of tobacco products to young persons below the age of 18 years applies to persons who, in Singapore, sell, buy or acquire, or give or furnish tobacco products to such young persons.

Clause 12 amends section 11 to clarify that —

- (a) a person below the age of 18 years must not use, possess or buy a tobacco product, whether or not the possession or buying is for that person's own use or for someone else's use;
- (b) the use or possession of the tobacco product must be in a public place or on a road in Singapore; and
- (c) the purchase of the tobacco product must be in Singapore.

Clause 13 amends section 12 to clarify that the requirement on the minimum number of cigarettes in a package applies to a package imported into Singapore, or distributed or sold in Singapore.

Clause 14 inserts a new section 12A to prohibit the display of tobacco products at any retail premises unless the display is to a customer at the customer's request, or the display is done by the customer or under prescribed circumstances.

Clause 15 repeals and re-enacts section 13 to allow the Health Sciences Authority (the Authority) to give directions regarding the number and type, including the size, wording and appearance, of the notices which state that sale of any tobacco product to persons below the age of 18 years is prohibited by law. The Authority may also give directions on the locations at the retail outlet where the notices are to be displayed.

Clause 16 repeals section 14, as the sale of tobacco products by vending machines will be governed by the new section 18 (re-enacted by clause 20).

Clause 17 amends section 15 to clarify that the prohibition on importation, distribution and sale of harmful tobacco products applies to a person who imports such products into Singapore, or distributes, sells or offers for sale such products in Singapore.

Clause 18 repeals and re-enacts section 16 to extend the prohibition on imitation tobacco products to the components of a toy, a device or an article that is an imitation tobacco product. It clarifies that a product that is capable of being smoked or used in such a way as to mimic the act of smoking is also an imitation tobacco product. Previous convictions under the repealed section 16(2) will count as

antecedents for the purposes of sentencing an offender for an offence under the new section 16(3).

Clause 19 amends section 17A(1) and (2) to clarify that the prohibition on false or misleading packaging or labelling applies to tobacco products that are imported into Singapore, or are distributed, sold or offered for sale in Singapore.

Clause 20 repeals and re-enacts section 18 to require importers, wholesalers and retailers of tobacco products to hold valid import and wholesale licences, or retail licences, as the case may be. In particular, an import and wholesale licence may authorise wholesaling activities to be carried out only at premises specified in the licence, and a retail licence may authorise the retailer to only sell tobacco products at a single point of sale within a retail outlet specified in the licence. It also states that no licence will be granted by the Authority for the sale by wholesale or retail of any tobacco product by way of a vending machine. Previous convictions under the repealed section 18 will count as antecedents for the purposes of sentencing an offender for an offence under the new section 18(5).

Clause 21 amends section 20 to displace the defence of not knowing or consenting to an offence committed by a body corporate or unincorporate, which is available to a director, manager, secretary or other similar officer of that body, in the case of an offence under section 3(1B). This is because the defences for an offence under section 3(1B) are provided in section 4.

Clause 22 amends section 21 to provide immunity from liability arising from a failure to publish any advertisement prohibited by the Act and to extend such immunity from liability to advertisements relating to imitation tobacco products.

Clause 23 amends subsection (1) of section 22 to provide that an exemption by the Minister under that subsection is to be by way of an order published in the *Gazette*.

Clause 24 amends section 23 to enhance the search powers of police and authorised officers, and to clarify that any person arrested must be produced before a Magistrate's Court or District Court within 48 hours after the arrest.

Clause 25 amends section 24 to enhance the powers of investigation of the Chief Executive and authorised officers. The Chief Executive or an authorised officer has power to require any person to furnish in writing any information within that person's knowledge, or any documents or records in that person's possession, for the purpose of investigating an offence under the Act. A failure to comply with any requirement of the Chief Executive or authorised officer under the section is made an offence.

Clause 26 amends section 26 to extend the powers of inspection and seizure of the Chief Executive and authorised officers to include documents and material kept in electronic form. The clause also empowers the Chief Executive or authorised officer to seize the computer or other equipment in which the document or material

is stored, and require disclosure, in certain circumstances, of any password or access code for gaining access to the document or material held in the computer or equipment. The clause further empowers the Chief Executive or authorised officer at any time and without warrant to search premises or conveyances that the Chief Executive or authorised officer reasonably suspects are being used for or in connection with the commission of an offence under the Act.

Clause 27 amends section 27(1) to make wilful failure to comply with any requirement made by the Chief Executive or an authorised officer under section 26 an offence.

Clause 28 amends section 29 to extend its application to any thing seized in exercise of any power conferred under the Act and to empower the Chief Executive, instead of the Minister, to give directions on the disposal of any thing forfeited under that section.

Clause 29 makes a consequential amendment to section 30 as a result of the amendments to section 29.

Clause 30 repeals and re-enacts section 31 to clarify the scope of the protection from personal liability afforded to certain individuals for acts done or omissions made in execution or purported execution of the Act.

Clause 31 amends section 37 to provide for the Minister to make regulations relating to licensing matters.

Clause 32 sets out the application, saving and transitional provisions.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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