

Protecting Kids from Addiction & Promoting Public Health

A summary of the main provisions of Bill B7-2008

Background

- * Tobacco is harmful to health, the economy and the environment.
- * Tobacco use causes about 8% of all deaths in SA. This amounted to over 42 000 deaths in 2000 and is four times the number of deaths caused by motorcar accidents (about 10 000 annually). Tobacco use increases the risk of dying from TB.
- * The costs of treating the diseases caused by tobacco and the time lost by industry because workers are ill are greater than any economic contribution of tobacco to the economy. About 2.5 million working days are lost annually in South Africa from diseases caused by tobacco use, which affects the productivity of every sector of industry.
- * Tobacco use worsens poverty. Lower-income households spend about 4 percent of their total expenditure on cigarettes. Money that could be spent on food or basic essentials is instead wasted on tobacco. The cigarette companies have targeted the world's poorest countries as smoking rates in richer countries decline.
- * The government's efforts to reduce smoking are working. Fewer people are smoking and less tobacco is being consumed in South Africa. About 78% of South African adults do **not** smoke. Cigarette sales have dropped by 33% in the past decade.
- * The vast majority of South Africans support tobacco control laws. A 2002 survey found that over 80% of both smokers and non-smokers favoured restrictions on smoking in public places.

The New Bill

The Bill proposes amendments to improve the operation of the Tobacco Products Control Act of 1993 and brings national law into compliance with the country's international treaty obligations under the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC)¹.

The specific provisions included in the Bill:

- a) reinforce the current restrictions on tobacco advertising, sponsorship and promotions;
- b) introduce better health warnings on tobacco packaging, including the use of pictures;
- c) remove untruthful and misleading labelling on tobacco packaging like "light" and "mild";
- d) regulate the display of tobacco products at point of sale;
- e) require importers of tobacco products to meet the same manufacturing standards as local producers;

¹ The FCTC is the first treaty negotiated by the World Health Organization.

Its objective is "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke". The FCTC is one of the most rapidly embraced treaties in history. It entered into force on 27 February 2005 and, as of July 2008 it had 157(?) Parties. South Africa ratified the FCTC in April 2005.

- f) prohibit sales to, and by, those under 18-years;
- g) extend the ban on the free distribution of tobacco products;
- h) restrict the location of vending machines; and
- i) set penalties for contraventions of the law;

Specific Provisions of the Bill

Section - Advertising, sponsorship, promotion, display, packaging and labelling.

Summary of section:

Proposal in Bill: The definition of advertising is broadened. Advertising with ‘the aim, effect or likely effect’ of promoting the sale of tobacco products is prohibited.

Paying a film or television producer for indirect advertising by showing tobacco products in the movies, etc, is prohibited.

Manufacturers and importers of tobacco products will only be allowed to make charitable donations if it is not for the purpose of advertisement.

Reasons: Advertising encourages people especially the young to smoke. The WHO recommends a comprehensive ban on tobacco advertising and promotions. The industry has been by-passing the current law and it needs to be strengthened.

It is very difficult to prove why anyone advertises and what their intentions are but it is easier to show what the effect an advert has.

Donations by the industry are not charity but are designed to create a positive business environment for the industry. It buys friend and influence

Tobacco Advertising

* The main purpose of advertising is to increase sales of a product. Increased tobacco sales mean increased death and disease.

* The industry runs multimillion rand advertising campaigns to influence children to smoke Peter Stuyvesant, Lucky Strike, Camel or Marlboro cigarettes.

* The government banned tobacco advertising and sponsorships in 1999. This attempted to stop cigarette companies from making kids think that a deadly addiction was fun, exciting, and sexy.

* The law has worked. In 2002, a MRC survey found that 62% of 14 to 16 year-olds had never taken even one puff on a cigarette. This is up from 53% in 1999.

* Concerned by the decline in smoking the manufacturers have continued to advertise. In doing so they have deliberately misinterpreted and broken the law.

* Between 2003 and 2007, the Advertising Standards Authority ruled on no fewer than a dozen occasions that display mats and pamphlets distributed by tobacco companies at retail outlets were illegal.

* In addition, the industry found new ways to tell youth that smoking is cool. It used the Internet, SMS and personal delivery mechanisms (“buzz” or “viral” marketing) to reach teenagers.

* In viral marketing, industry reps go into clubs, campuses and wherever youth gather, to invite ‘smokers’ to exclusive events like a pop concert or a major sporting event. The parties are supposed to be for smokers, but non-smokers are lured into buying (and smoking) cigarettes in order to get into the ‘select’ group invited to these events.

* The bill closes the loopholes in the Act by broadening the definition of advertising . The current Act prohibits advertising “designed to promote or publicise a tobacco product”. The Bill proposes prohibiting advertising with ‘the aim, effect or likely effect” of promoting the sale of tobacco products. It is very difficult to prove what advertisers intentions are and what an advertisement is “designed” to do but it is easier to show what the effect an advert has.

Product placement

* This is a type of advertising in which manufacturers pay to have their products featured in plays, film, television series, music videos, video games and books. According to internal documents, Philip Morris paid \$US42,500 to have Marlboro appear in 'Superman II', and \$US350,000 to have James Bond and others light up in 'License to Kill'. A US subsidiary of BAT paid Sylvester Stallone \$US500,000 to use their brand in at least five films, including 'Rambo' and 'Rocky IV'. Even the producers of Walt Disney films were paid to include cigarette brands.

* Exposure to smoking in entertainment media is associated with increased smoking and favourable attitudes towards tobacco use among adolescents.

Promotion through charitable giving

* The Bill allows tobacco companies to give money to charity – but they will no longer be able to publicise their contributions.

* Donations to worthy causes are not charity but good for business – it buys friends and political support, and can be used to silence critics. Institutions that have accepted tobacco industry philanthropy have been urged to speak up for tobacco industry goals to political bodies.

* The industry donates to worthy causes in hopes that legislators and the public will see them as “socially responsible” and “good corporate citizens” and will be influenced to rule in their favor when deciding on legal matters. Internal documents from the companies’ own private files reveal their true motives.

* Cigarette companies believe they can cause widespread harm in communities and then salvage its reputation by giving to a few select charities. A few may benefit but a lot more will suffer.

* The NCAS supports a total ban on charitable donations. Even if gifts are given anonymously, the recipients are still aware of the identity of the donor and this buys undue influence.

Health warnings: better warnings, better choices

Proposal: Require picture-based health warnings on tobacco packaging.

Reason: Pictures help the public to better understand the risks of tobacco use and the FCTC recommends picture based health warnings.

* A manufacturer has a legal duty to warn consumers of any foreseeable hazards associated with the product. This is an important consumer right. Customers have a right to truthful information about a product, in a way they can understand.

* Research from Brazil, Canada and Australia shows that prominent warnings with colour pictures are effective in better informing people of the dangers of tobacco use. In Canada, after the introduction of new warnings, one in three smokers stated that they learnt more about the dangers of smoking than

they knew before.

* The warnings also had a greater impact on those with lower levels of education.

* Although some people may ignore health messages, the warnings are especially relevant to those wanting to quit and for youngsters thinking of starting. Twelve years after warnings were introduced in South Africa, thousands still call the national Quit Line because they have seen the telephone number on the tobacco pack.

* The aim is not to scare people but to help them understand the consequences of their actions and to provide a 'wake-up call'. Most smokers know that smoking is bad and 70% in SA want to quit. The problem is people postpone the decision to quit till "I'm forty" or at "The first sign of trouble". They also do not fully understand the risks "I could get run over by a bus", so smoking is no more dangerous than crossing the road. (In fact, about four times more people are killed by tobacco use than are killed on the roads). Emphysema is just a word, not a daily struggle to breathe.

* The FCTC also strongly recommends picture warnings. 15 Countries require picture warnings, including Australia, Belgium, Brazil, Canada, Chile, Hong Kong, India, Jordan, New Zealand, Panama, Singapore, Thailand, United Kingdom, Uruguay, and Venezuela.

Light & Mild Lies

Proposal: Manufacturers will not be allowed to use misleading terms like "light", "mild" and 'low-tar'.

Reason: Many smokers believe that light cigarettes are less dangerous than regular cigarettes. This is not true "light and 'mild" cigarettes cause cancer and other diseases like regular cigarettes.

* The marketing of so-called 'low-tar', 'light' and 'mild' cigarettes is a consumer fraud. These cigarettes are not less harmful than regular cigarettes, although cigarette manufacturers have created the false impression that they are.

* The tar and nicotine numbers that appear on cigarette packets say nothing useful about the health effects of the cigarettes nor can the ratings be used to compare different brands.

* 'Light' and 'regular' cigarettes of the same brand have virtually identical ingredients. The difference is that low tar cigarettes have tiny holes drilled in the filter with a laser, so that when the smoker draws on the cigarette, air is sucked in to dilute the smoke. In theory, this should to lower the amount of tar, CO or nicotine absorbed by a smoker.

* In practice, however, smokers who switch from 'regular' to 'light' cigarettes do not reduce their intake of tar or nicotine, because they block the air holes in the filter with their fingers, or take more puffs than usual, or inhale more deeply.

* The cigarette makers have known this for a long time. A 1975 Philip Morris memo, summarising tests on Marlboro and Marlboro Lights noted that smokers "did not achieve any reduction in smoke intake by smoking a cigarette ... normally considered lower in delivery."

* Yet, 'light' cigarettes were heavily advertised with promises of full "taste" or "satisfaction" with "low tar". These new brands were aimed at smokers who were worried about the damage cigarettes were doing to their health, but who were too addicted to quit. The implied promise was that they could continue to smoke safely.

* "Light" and 'mild' is a consumer fraud that kept many more people smoking who might otherwise have

quit. It exploits smokers desperate to reduce the health risk, but who find it very difficult to quit.

* In 2001, the family of a smoker who died of lung cancer at age 53 after smoking Philip Morris' low-tar Merit brand sued the company. A jury found in his favour and ordered Philip Morris to pay \$150 million in punitive damages.

* In 2006, a US federal court judge ordered US cigarette makers to stop marketing so-called 'light' and 'mild' cigarettes as being healthier than regular cigarettes. British American Tobacco, Phillip Morris and three other tobacco companies then asked the judge to let them continue advertising "low tar" and "light" cigarettes outside the US and so continue lying to smokers around the world.

* Brazil, Canada, the European Union have banned use of the words "mild," "light" and "ultra-light" on cigarette packages on the grounds the terms are misleading.

Restrictions on places of sale

Proposal: Sales of tobacco products in health and educational institutions are to be prohibited.

Reason: Hospitals should promote health and not sell products that cause disease. Alcohol is not sold in either hospitals or technikons, nor should tobacco be sold there

Displays at point-of-sale

Proposal The display of tobacco products at retail outlets is to be regulated. Self-service displays, which allow customers to handle tobacco products before paying for them are prohibited.

Reason. Retail displays serve an important promotional role for tobacco manufacturers. The Competition Commission has upheld a complaint by Japan Tobacco International (JTI) that British American Tobacco (BAT) bribed retailers to hide JTI brands under the counter. BAT paid R100 000 to hotels to sell its brands exclusively
Self-service displays leads to increased stealing, particularly by youth.

* Both the cigarette package itself and retail displays are powerful advertising tools. We know that the position of goods on retail shelves influences sales. A current case before the Competitions Commission in SA shows how important retail displays are to sales. In the case, Japan Tobacco International (JTI) has accused its rival British American Tobacco of South Africa (Batsa), of 'spending hundreds of millions' to get supermarkets, cafes, nightclubs and bars to display Batsa's brands prominently and to hide JTI's brands under the counter.

Batsa rewards retailers for promoting its products by giving them home theatre systems, golfing gear, perfumes, jewelry, power tools and cutlery. To receive such gifts retailers had to ensure that Batsa's products were the "primary visible cigarette merchandising units", or ensuring that only Batsa brands were stocked.

JTI's advocate reportedly stated "that Batsa dominated the vendor machines in clubs as a way of targeting young adults to convert them to smoking.... There is a process of persuasion leading to conversion that would leave most religions gasping."

Subject to the outcome of the tribunal Batsa faces a fine of R1.4-billion or 10% of its turnover. The case reflects the importance of point-of-sale advertising to the industry and strengthens the case for limiting or banning displays of tobacco products at retail.

The Bill will allow the display of cigarette packs at retail and wholesale but will restrict the size of the

displays. Several countries including Iceland and Canada have totally banned the retail display of tobacco products, and the UK is considering similar legislation.

Standards for manufacture import and export

Proposal: Imported tobacco products must meet the same manufacturing standards that apply to local manufacturers of tobacco products under the 2008 Act.

Reason: The purpose of the provision is to limit the use of chemicals in tobacco which are considered to be detrimental to health, or which increase addictiveness, or increase the appeal to children.

* The Act as amended in 2008 sets standards that South African manufacturers must comply with. This amendment ensures that the same rules apply to importers of tobacco products.

Sales to minors

Proposal: Raise the minimum age for the legal sale of tobacco products to 18 years. Tobacco may only be sold by those over 18 years. The sale of toys and sweets that resemble tobacco products is prohibited.

Reason: The tobacco industry has recommended that this age restriction be raised from 16 to 18 years. The FCTC requires that youth should not be allowed to sell cigarettes

* Every day, thousands of children buy cigarettes illegally in SA. Increasing the legal age for buying cigarettes will not prevent such sales. Health groups support this raising the age limit, because it reinforces the message that society disapproves of tobacco use. In the absence of such a law the tobacco companies would be able to openly target youth with their sales campaigns.

* The Bill allows supervised purchases by underage children to monitor compliance with the law. This is an important potential enforcement mechanism.

Internet and postal sales

Proposal: The sale of cigarettes through the post, Internet or electronic media.

Reason Such sales are difficult to monitor and make it easier for kids to obtain cigarettes.

* Sales through the Internet make it easier for underage customers to buy tobacco products. Most Internet sites have no procedures for verifying the age of customers.

* Buying cigarettes from Internet sites located outside the country makes it easier to avoid paying local excise taxes and VAT and evade product regulations.

Free distribution

Proposal: Neither manufacturers nor their agents may distribute tobacco products for free. No person shall offer gifts or invite people to participate in sporting, cultural, social or sporting events contingent on the purchase of a tobacco product or for being a smoker.

Reason: Stop the practice of promoting tobacco by inviting smokers to parties, nightclubs and other events.

Vending machines

Proposal: The location of vending is restricted to designated smoking areas. The sale of non-tobacco products (e.g., chocolates, cool drinks, crisps) from vending machines used for the sale of tobacco products is to be prohibited

Reason: These are steps towards reducing purchases by minors. The Tobacco Vending Association made the recommendation on the location vending machines.

* The Vending Machine Association has supported the restriction on the location of vending machines in an effort to reduce illegal youth access to tobacco products.