

Republic of the Philippines
HOUSE OF THE REPRESENTATIVES

Seventeenth Congress
First Regular Session

House Bill No. **4713**



Introduced by Hon. Lawrence Lemuel H. Fortun

EXPLANATORY NOTE

Article II, Section 15 of the 1987 *Constitution of the Republic of the Philippines* mandates that the State "shall protect and promote the right to health of the people and instill health consciousness among them."

This bill seeks to prohibit the placing, posting, or displaying tobacco advertisements and promotion items including tobacco products in any place including point of sale sites except for the placement of a simple sign informing consumers of the availability of the tobacco products therein. The bill defines tobacco advertisement and promotion as any form of commercial communication, recommendation, or action that has the likely effect of promoting a tobacco product or its use.

Tobacco addiction is a global epidemic that creates an enormous toll of death, disease, and disability. Over many decades, it has remained prevalent, mainly because of the poor implementation of tobacco control policies and inconsistent enforcement. Driven by its commercial interest, the tobacco industry has actively promoted both, and has since been correctly identified as the primary vector of this epidemic.¹ Battling this epidemic should be an urgent concern especially in the developing countries, where over 80% of the world's smokers come from.² In the Philippines, an estimated 87,600 Filipinos die every year due to tobacco-related illnesses, or 240 Filipinos daily.³

As a State Party to the *World Health Organization ("WHO") Framework Convention on Tobacco Control ("FCTC")*, the world's first public health treaty which aims to address the global tobacco epidemic and provide protection to the world's population against the health hazards of tobacco use and tobacco smoke, the Philippines has an international obligation to uphold the principles contained

¹ See Sungkyu Lee, Pamela M. Ling, Stanton A. Glantz, *The vector of the tobacco epidemic: tobacco industry practices in low and middle-income countries*. 23 *Cancer Causes Control* 117, 117-129 (2012).

² WHO, *Report on the Global Tobacco Epidemic*, Geneva: WHO Press (2008), online at http://www.who.int/tobacco/mpower/mpower_report_full_2008.pdf (visited May 31, 2015).

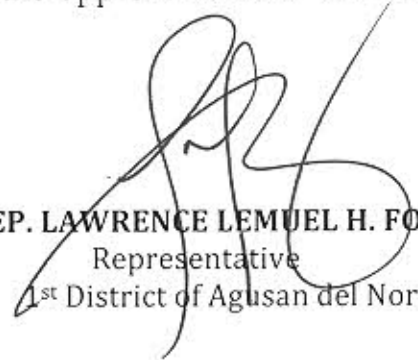
³ WHO, *Global Report Mortality Attributable to Tobacco*, Geneva: WHO Press (2012), online at http://whqlibdoc.who.int/publications/2012/9789241564434_eng.pdf (visited May 31, 2015); See also Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, *Global Tobacco Surveillance System 2009: Philippines' GATS: Global Adult Tobacco Survey - Country Report*, Atlanta GA (2012), online at http://www.who.int/tobacco/surveillance/2009_gats_report_philippines.pdf (visited May 31, 2015).

therein in good faith.⁴ The Philippines signed and ratified the FCTC in 2003, and the Senate concurred in 2005. In accordance with Section 21, Article VII of the 1987 Constitution of the Republic of the Philippines, the FCTC forms part of the laws of the land⁵ and has the force and effect of law in the Philippines.⁶ This treaty demonstrates global political will to strengthen tobacco control measures in order to save lives. The FCTC is legally binding and as such provides a solid foundation for countries to implement and manage effective tobacco control measures to address the tobacco epidemic. One such effective measure mandated by the FCTC is enforcing a comprehensive ban on tobacco advertising, promotions, and sponsorships (TAPS).

The evidence is clear that TAPS increase tobacco use and that comprehensive bans on TAPS decrease tobacco use. TAPS activities project an image of success, fun, and glamour to tobacco products that lure new users, especially the youth, into a lifetime of addiction. These deceive consumers into believing that tobacco is an ordinary consumer product, and not one that kills half of its regular users when used exactly as the manufacturer intended. In fact, Article 13.1 of the FCTC contains an explicit recognition among Parties that "a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products."

Republic Act No. 9211 or the *Tobacco Regulation Act of 2003* ("RA 9211") became effective in 2003, two years before the WHO FCTC came into force. The main policy areas of RA 9211 include: (a) smoke-free environments, (b) sale to minors, (c) health warnings, and (d) advertising, promotions, and sponsorships. It should be noted that a comprehensive ban on all TAPS is not provided for under RA 9211. There is a gap in the Philippines' obligation to implement Article 13 of the WHO FCTC as a result of the fact that the so-called "comprehensive" ban on advertising admits of exceptions for point-of-sale retail establishments, and there are only regulations imposed for promotions. Moreover, there is the issue on enforcement, particularly on certain restrictions on TAPS that are conditioned on age⁷ or distance from schools, public playground or other facility frequented particularly by minors.⁸ It is but time that the paramount objectives of R.A. 9211 be finally realized, Section 3 (c) of which provides for the regulation and subsequent banning of all tobacco advertisements and sponsorships.

In view of the foregoing reasons, the approval of this bill is earnestly sought.



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⁴ Vienna Convention on the Law on Treaties, U.N. Doc. A/C.39/27 (1969), Art. 26. (the time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement).

⁵ CONST, Art. VII, §21: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

⁶ *Luna v. Court of Appeals*, G.R. No. 100374-75, 216 SCRA 107 (1992).

⁷ RA 9211, Sections 18, 19, 20, 21, 23, 25, and 27.

⁸ *Id.*, Section 10 and 17(a).

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"AN ACT
PROVIDING FOR THE COMPREHENSIVE BANNING OF ALL FORMS OF
TOBACCO ADVERTISING, PROMOTIONS AND SPONSORSHIPS IN THE
PHILIPPINES, THEREBY AMENDING REPUBLIC ACT 9211, OTHERWISE
KNOWN AS THE TOBACCO REGULATION ACT OF 2003"

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Section 2 of Republic Act 9211, as amended, otherwise known as the Tobacco Regulation Act of 2003, is hereby amended to read as follows:

SECTION 2. Policy.— It is the policy of the State to protect the populace from hazardous products and promote the right to health and instill health consciousness among them. It is also the policy of the State, consistent with the Constitutional ideal to promote the general welfare, to safeguard the interests of the workers and other stakeholders in the tobacco industry. For these purposes, the government shall institute a policy whereby the use, sale and advertisements of tobacco products shall be regulated in order to promote a healthful environment and protect the citizens from the hazards of tobacco smoke.

Section 2. Section 4 of the same Act is hereby amended by inserting paragraphs (v), (w), and (x) to read as follows:

"Section 4. Definition of Terms. As used in this Act:

(V) "TOBACCO ADVERTISEMENT AND PROMOTION" REFERS TO ANY FORM OF COMMERCIAL COMMUNICATION, RECOMMENDATION, OR ACTION WITH THE AIM, EFFECT OR LIKELY EFFECT OF PROMOTING A TOBACCO PRODUCT OR TOBACCO USE, EITHER DIRECTLY OR INDIRECTLY, INCLUDING BUT NOT LIMITED TO, PUBLIC DISPLAY OF TOBACCO PRODUCTS, ANY MESSAGE OR IMAGE PROMOTING SMOKING, TOBACCO USE, TOBACCO PRODUCTS, BRAND NAMES, OR TOBACCO COMPANY

NAMES, LOGOS, INSIGNIAS OR ANY PROMOTIONAL MATERIAL OR STRUCTURE THAT CONTAINS THESE, SUCH AS, BUT NOT LIMITED TO, POSTERS, STREAMERS, SIGNAGES, STANDEES, BILLBOARDS, FLIERS, UMBRELLAS, PARASOLS, BUNTINGS, AWNINGS, TARPAULINS, STORE DISPLAY, CDS, FILM, T-SHIRTS, CAPS, SWEATSHIRTS, VISORS, BACKPACKS, SUNGLASSES, WRITING IMPLEMENTS, TOWELS, MUGS, CANDIES, STICKERS, ASHTRAYS, PAPER NAPKIN HOLDERS, LIGHTERS AND THE LIKE;

(W). "TOBACCO INDUSTRY" – REFERS TO ORGANIZATION, ENTITIES, ASSOCIATIONS, AND INDIVIDUALS THAT WORK FOR AND IN BEHALF OF THE TOBACCO INDUSTRY, SUCH AS BUT NOT LIMITED TO TOBACCO MANUFACTURERS, WHOLESALE DISTRIBUTORS, IMPORTERS OF TOBACCO PRODUCTS, TOBACCO RETAILERS, FRONT GROUPS AND/OR ORGANIZATIONS, INCLUDING BUT NOT LIMITED TO LAWYERS, SCIENTISTS AND LOBBYISTS WHO WORK TO FURTHER THE INTERESTS OF THE TOBACCO INDUSTRY.

(X) "TOBACCO SPONSORSHIP" REFERS TO ANY FORM OF CONTRIBUTION TO ANY EVENT, ACTIVITY, INDIVIDUAL OR PERSON, WHETHER JURIDICAL OR NON-JURIDICAL, WITH THE AIM, EFFECT OR LIKELY EFFECT OF PROMOTING A TOBACCO PRODUCT OR TOBACCO USE EITHER DIRECTLY OR INDIRECTLY."

Section 3. Comprehensive Ban on All Forms of Tobacco Advertisement, Promotions and Sponsorship. Upon the effectivity of this Act, all forms of tobacco advertisements, promotions and sponsorships, and any advertisement, promotions and sponsorships that indirectly promote tobacco products are prohibited, without any exceptions.

Section 4. A new provision is hereby inserted into Republic Act 9211 as Section 13-A to read as follows:

"SECTION 13-A. PROHIBITED ACTS. – THE FOLLOWING ACTS ARE PROHIBITED:

(A) PLACING, POSTING, OR DISPLAYING TOBACCO ADVERTISEMENTS AND PROMOTION ITEMS INCLUDING TOBACCO PRODUCTS IN ANY PLACE, EXCEPT FOR THE PLACEMENT OF A SINGLE SIMPLE SIGN WITH WHITE BACKGROUND AND BLACK FONT AND NOT EXCEEDING TWELVE INCHES BY EIGHTEEN INCHES (12"X 18") IN SIZE STATING ONLY THE FOLLOWING: "TOBACCO PRODUCTS

77 AVAILABLE HERE" INSIDE POINT-OF-SALE
78 ESTABLISHMENTS;
79

- 80 (B) PROMOTING, DIRECTLY OR INDIRECTLY, TOBACCO
81 PRODUCTS AND/OR TOBACCO PRODUCT SUBSTITUTES
82 IN AN EVENT, ACTIVITY, PROGRAM OR PROJECT WHERE
83 A TOBACCO COMPANY IS A PARTICIPANT AS
84 FACILITATOR, SPONSOR, CONTRIBUTOR, DONOR OR
85 BENEFACTOR, WHETHER OR NOT THE SAME IS PART OF
86 ITS CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES;
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- 88 (C) ENGAGING IN ANY FORM OF TOBACCO
89 ADVERTISEMENT AND PROMOTION.
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93 *Section 5.* A new provision is hereby inserted into Republic Act 9211
94 as Section 32-A to read as follows:
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96 SECTION 32-A. VIOLATIONS OF SECTION 13-A SUBSECTIONS
97 A, B, AND C BY MANUFACTURERS, IMPORTERS, AND
98 DISTRIBUTORS - ON THE FIRST OFFENSE, A FINE OF NOT
99 MORE THAN FIVE HUNDRED THOUSAND PESOS (P500,000.00)
100 OR IMPRISONMENT OF NOT MORE THAN ONE (1) YEAR, OR
101 BOTH AT THE DISCRETION OF THE COURT.
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103 ON THE SECOND OFFENSE, A FINE OF SEVEN HUNDRED
104 FIFTY THOUSAND (PHP 750,000.00) OR IMPRISONMENT OF
105 NOT MORE THAN TWO (2) YEARS, OR BOTH AT THE
106 DISCRETION OF THE COURT.
107

108 ON THE THIRD OFFENSE, A FINE OF ONE MILLION PESOS
109 (PHP 1,000,000) OR IMPRISONMENT OF NOT MORE THAN
110 THREE (3) YEARS, OR BOTH AT THE DISCRETION OF THE
111 COURT.
112

113 THE BUSINESS PERMITS AND LICENSES, IN THE CASE OF A
114 BUSINESS ENTITY OR ESTABLISHMENT, SHALL BE REVOKED
115 OR CANCELLED.
116

117 IN THE CASE OF A BUSINESS ENTITY OR ESTABLISHMENT,
118 THE OWNER, PRESIDENT, MANAGER OR OFFICIALS
119 THEREOF SHALL BE LIABLE.
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121 IF THE GUILTY OFFICER IS AN ALIEN, HE SHALL
122 SUMMARILY BE DEPORTED AFTER SERVING HIS SENTENCE,
123 AND SHALL BE FOREVER BARRED FROM RE-ENTERING THE
124 PHILIPPINES.

SECTION 32-A. VIOLATIONS OF SECTION 13-A SUBSECTION
A BY POINT OF SALE ESTABLISHMENTS. –

IN THE CASE OF POINT OF SALE ESTABLISHMENTS THE
VIOLATIONS OF SECTION 13-A SUBSECTION A SHALL BE
FIVE HUNDRED PESOS (PHP500.00) EACH DAY OF
VIOLATION FOR MICRO BUSINESS ENTERPRISE; ONE
THOUSAND PESOS (PHP1000.00) EACH DAY OF VIOLATION
FOR SMALL SCALE BUSINESS ENTERPRISE AND ONE
THOUSAND FIVE HUNDRED PESOS (PHP1500.00) EACH DAY
OF VIOLATION FOR MEDIUM SCALE BUSINESS ENTERPRISE.

THE MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES)
SHALL REFER TO THOSE AS DEFINED IN REPUBLIC ACT 9501,
AS AMENDED.

IN THE CASE OF SARI SARI STORES OR A NEIGHBORHOOD
VARIETY STORE WITH AN INVESTMENT OF LESS THAN
FIFTY THOUSAND PESOS (P50,000), VIOLATIONS COMMITTED
AGAINST SECTION 13.A SUBSECTION A - THE REGISTERED
OWNER SHALL BE PUNISHED WITH A WARNING ON THEIR
FIRST OFFENSE; FIVE HUNDRED PESOS (P500.00) PENALTY
ON THEIR SECOND OFFENSE AND CLOSURE OF THEIR
BUSINESS OPERATIONS ON THEIR THIRD OFFENSE.

Section 6. Implementing Rules.—The Inter-Agency Committee on Tobacco
(IAC-Tobacco) shall promulgate such rules and regulations necessary for the
effective implementation of this Act within three (3) months from the date of
publication of this Act. The said rules and regulations shall be submitted to
the Congressional Oversight Committee-Tobacco (COC-Tobacco) for its
review. The COC-Tobacco shall approve the implementing rules and
regulations within thirty (30) working days of receipt thereof: Provided, That
in the event the implementing rules and regulations are not promulgated
within the specified period, the specific provisions of this Act shall
immediately be executory.

Section 7. Appropriations. — The amount necessary to implement the
provisions of this Act shall be charged against the current year's
appropriations of the concerned national government agencies. Thereafter,
such funds as may be necessary for the continued implementation of this Act
shall be included in the budgets of the concerned national government
agencies under the annual General Appropriations Act.

Section 8. Repealing Clause – All laws, executive orders, ordinances, rules
and regulations and other issuances, or any part thereof, inconsistent with
this Act are hereby repealed, modified or amended accordingly.

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174 *Section 9. Separability Clause.*— Should any provision of this Act be
175 subsequently declared unconstitutional, the other provisions not so declared
176 shall remain in full force and effect.

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178 *Section 10. Effectivity.*— This Act shall take effect fifteen (15) days after its
179 publication in the Official Gazette and at least two (2) newspapers of national
180 circulation.

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182 Adopted,

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